
(2004) 11 GUJ CK 0019
In the Gujarat High Court

Case No : Special Civil Application No's. 8968 of 1993, 1853 of 2002 and 15422 and 15423 of 2003

B.M. Rao

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 02-11-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 21, 226
Gujarat Civil Services (Conduct) Rules, 1971 — Rule 10, 3(1), 6, 7, 9
Penal Code, 1860 (IPC) — Section 95

Citation : (2005) 1 GLR 481

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : Y.N. Oza and G.M. Joshi, for the Appellant; S.N. Shelat, learned A.G. and Shruti Trivedi, learned Asstt. Govt. Pleader, for the Respondent

Judgement

J.N. Bhatt, J.

PREFATORY PROFILE OF THE AVOIDABLE LEGAL BATTLE:

1. In this group of four petitions, pertaining to the Service Jurisprudence, by a common petitioner, under Article 226 of the Constitution of India, assailing the legality and authority of the initiation of Departmental Inquiries and for quashing, the departmental penalty in one inquiry, three aspects: (i) Incumbency of the disciplinary jurisdiction in the matter of discipline against Civil Services; versus Expediency of initiation of inquiries; (ii) Amplitude and altitude of the zone of disciplinary punishment; and, (iii) Resultant ramifications, on the administrative mechanism, as well as, on the independence and equal right of Civil Servants, are, sharply, brought into focus, mainly on the grounds of bias, unfairness, mala fide, victimization and colourable exercise of power with a view to project favoured person, junior to petitioner preventing him from the Zone of Consideration by imposing token minor punishment adopting highly discriminatory action and approach while exonerating all the rest 16 such officers

similarly charged and similarly situated. This is the subtractum from pioneering concised profile of old, on-going Legal Battle, between officer and Government of Gujarat.

2. Since in this group, all the four petitions, being Special Civil Application Nos. 8968 of 1993, 1853 of 2002, 15422 of 2003 and 15423 of 2003, are between the common parties and, virtually, involve identical questions in the realm of Service Disciplinary Jurisdiction, upon consensus, they are heard together, and, are, therefore, now, being disposed of by this common judgment. The aforesaid four petitions are, hereinafter, referred to, for the brevity and convenience sake, as the First Petition, the Second Petition, the Third Petition and the Fourth Petition, respectively.

3. The petitioner is common in all the four petitions, raising and involving the common dispute relating to the denial of promotion in the Higher Cadre to the meritorious petitioner, on the ground and in the guise of alleged irregularities, starting of disciplinary proceedings, as well as, the imposition of minor departmental penalty in one inquiry. In the First Petition, the challenge is against the two charge-sheets, dated 27-04-1993, issued by respondent No. 1-State of Gujarat, against the petitioner from claiming the right of promotion and for that, seeking the writs or directions, of the Court to the respondents to operate the Select List prepared for the post of Chief Engineer, as per the recommendations of the Departmental Promotion Committee ("DPC"), `inter-alia" contending that the impugned charge-sheet, dated 27-04-1993, should be ignored, as, on the date of taking decision in the DPC, no inquiry or disciplinary proceedings were pending or no even prima facie decision was taken by the Government of Gujarat for victimising him and taking mala fide action.

4. In the Second Petition, the challenge is against the impugned order of departmental punishment dated 24-01-2002, whereby, the petitioner has been imposed departmental punishment of stoppage of one increment for two years, without any future effect, which came to be imposed on the ground of the petitioner's indulgence in purchase of Engineering Kit, without inviting tenders, worth Rs. 42,550/= in October 1985, from one Reputed and Accredited (Women Organisation) N.G.O., known as "Jyoti Sangh", in violation of prescribed procedure under paragraphs 45, 46, 200, 201 and 211 of the Public Works Department Manual (Part I) and thereby, having committed misconduct in terms of Rule 3 (1) (ii) of Gujarat State Civil Services (Conduct) Rules 1971 ("RULES"). This purchase was made, by Kakrapar Canal Remodelling Division (I), Surat Office, where and when the petitioner was working, as an Executive Engineer in the Department of Narmada and Water Resources, Department of the State of Gujarat, in 1985.

5. The petitioner has, `inter-alia" raised the common grievance alleging that the initiation of Departmental Inquiry and one, disciplinary punishment order, dated 24-01-2002, is arbitrary, illegal, discriminatory, mala fide, unconstitutional and with oblique motive to deprive the petitioner from his legitimate right of

promotion to the Higher Cadre with a view to project favoured person while exonerating all the 16 officers similarly charged and similarly situated.

CONCISE CONSPECTUS OF MAIN CONTROVERSY

6. Before the merits of each petition and challenge against each petition are scrutinized and evaluated on the anvil of Judicial Review, under Article 226 of the Constitution of India, let there be following relevant, material and brief articulation of the service record and factual profile, emerging from the records and proceedings of the four petitions on hand:

i. The petitioner came to be selected and appointed in the year 1980 by respondent No. 1-State of Gujarat as Executive Engineer on Direct Recruitment quota and later on, came to be promoted as Superintending Engineer during March 1991 with deemed date i.e. 13-07-1990.

ii. The DPC was constituted for considering the case of the petitioner for promotion to the post of Chief Engineer, on 16-02-1993. The petitioner was qualified and eligible and also was within the Zone of Consideration. His case was considered by the DPC, but kept "OPEN" along with another similarly situated officer, Mr.M.S.Patel, Superintending Engineer. It is the case of the petitioner that, as on that date, no Departmental Inquiry was pending against him nor was any conscious decision taken to initiate such an inquiry. The case of the petitioner, after consideration for the post of Chief Engineer, was kept "OPEN" with oblique and ulterior motive and by adopting unusual, uncommon methodology, which is foreign to the principles of Service Jurisprudence.

iii. Again, on the next date instead of meeting of DPC, strangely, on 27-04-1993, a decision came to be taken to initiate Departmental Inquiry and on the same date, two charge-sheets were hurriedly framed and served to the petitioner, at midnight. Again, the DPC, which was convened on 11-05-1993, had as such, not met on that date. Insofar as the two charge-sheets are concerned, one was in respect of payments during execution of Kakraparnahar Project and admittedly, the inquiry based on that charge-sheet resulted into exoneration of the petitioner, whereas, the second charge-sheet related to the allegation of purchase of Engineering Kit, without inviting tenders, worth Rs. 42,550/= from "Jyoti Sangh", in violation of the instructions contained in the Manual of the Public Works Department, as stated hereinbefore.

iv. Mr. Patel, Superintending Engineer, similarly, situated officer, had initiated legal battle by filing a Writ Petition, being Special Civil Application No. 4887 of 1993, wherein the Letters Patent Appeal No. 262 of 1993 came to be filed, against Interim Order of Single Bench, wherein the Division Bench of this Court, allowed the Appeal and directed the State Government to consider the case of the petitioner in that petition, one, Mr.M.S.Patel, Superintending Engineer, ignoring the charge-sheets against him. The case of the petitioner, being similar to the case of Mr.Patel, the DPC, which was convened on 29-06-1993, considered cases of both the officers, but no promotion was given keeping their cases

"OPEN" in view of the issuance of charge-sheets to both of them. Not only that, in the Miscellaneous Civil Application No. 974 of 1993 in Letters Patent Appeal No. 262 of 1993, preferred by Mr.Patel, the Division Bench, specifically, observed that, as on 16-02-1993, the date on which the DPC met, no even decision was taken or no charge-sheet was issued. State SLP against that order was dismissed and he was given promotion as Chief Engineer.

v. Despite the fact that the petitioner was similarly situated and facing similar charges, he was not considered. Prompted by the relief obtained by Mr.Patel, Superintending Engineer, the petitioner preferred the First Petition, on 01-09-1993, wherein the following order was passed by this Court:

"Notice returnable on 06-09-1993. In the mean-time, if the Select List for the post of Chief Engineer is operated and if Mr.M.S.Patel is found to be sailing in the same boat as the petitioner by the DPC and if the petitioner is also selected, the petitioner shall be treated in the same manner as Mr.M.S.Patel is treated in the matter of promotion to the post of Chief Engineer. Such promotion shall be subject to the result of interim relief as also the petition, as the case may be. D.S. permitted."

vi. The First Petition of the petitioner was admitted by issuance of Rule and interim order continued, and on dismissal of SLP filed by the State Government in the Hon"ble Apex Court, both the officers, the petitioner and Mr.Patel, were promoted to the post of Chief Engineers. Accordingly, the petitioner came to be promoted and appointed, as Chief Engineer, on 25-11-1993 and since then, he has been working as such as Chief Engineer under the order of this Court in view of special and peculiar factual profile of prima facie case of victimisation and strong case of biased and discriminatory impugned order. Of course, the respondent-State has considered such appointment as ad-hoc and, therefore, his case for promotion to the Higher Cadre, namely, Secretary, was not considered again when DPC met for this purpose despite petitioner being eligible and falling in the Zone of Consideration for promotion.

vii. On 24-01-2002, the Disciplinary Authority passed an order of departmental punishment of withholding one increment for two years, without any future effect and while granting full exoneration to rest of 16 co-delinquents and officials similarly situated in joint inquiry and that is the main contention and root case of the Second Petition. During the pendency of the petitions, Mr.A.S.Bharti, has been selected and promoted to the post of Secretary, ignoring the case of the petitioner on the ground that he was not fully exonerated from the charges in the said Departmental Inquiry against him. What a travesty of independence and Right to Equality by adopting unreasonable, unfair and discriminatory approach of the State?

7. CORE OF COMMON CONTENTIONS OF PETITIONERS:

i. That respondent No. 1-State, deliberately, and with `mala fide" did not consider the case of the petitioner, though he was within the Zone of

Consideration for the post of Chief Engineer (and thereafter to the post of Secretary) when the DPC first met on 16-02-1993, for consideration of the case of the petitioner for promotion to the post of Chief Engineer, and there was no any conscious decision for initiation of Departmental Inquiry nor any issuance of charge-sheet, on that date and, therefore, the deference and postponement of DPC meeting, and the subsequent service of charge-sheets on petitioner, at midnight, on 27-04-1993 and the decision to initiate Departmental Inquiry on the same day all these actions are arbitrary, mala fide, unreasonable, with oblique motive, while adopting strange and unusual methodology of keeping his case "OPEN", instead of either placing the name in the Select List or adopting the 'Sealed Cover Procedure' after consideration of the merits, as per the rules. Therefore, pleas of victimisation and colourable exercise of Discretion and Power by adopting unfair approach.

ii. That the charge-sheets issued against the petitioner were all as such old incidents and stale matters as well as insignificant trivial alleged charges. Initiation of the Departmental Inquiry is, also, thus, questioned 'inter -alia' contending that such a decision was delayed and out of a stale and trivial incident, with a view to deprive the petitioner from his right to be considered for the promotion to the higher post and to favour other officers and thereby, causing great damage to the service career of the petitioner and making him subject of pure and simple victimisation.

iii. That the petitioner and 16 other persons were charge-sheeted and Departmental Inquiries were initiated against them on the same charges of having made irregular purchases and without inviting tenders from N.G.O., "Jyoti Sangh", the respondent-State and disciplinary authority found 16 such other officers "not guilty" and exonerated them from the Departmental Inquiries, the petitioner came to be imposed disciplinary punishment vide order dated 24-01-2002, despite the fact that he had made only one purchase of Engineering Kit worth Rs. 42,550/= from "Jyoti Sangh."

iv. That the State Government, in its Industries, Mines and Energy Department, vide Resolution dated 08-03-1979 had permitted purchase of certain items from the voluntary organisations like Mahila Gruh Udyog as well as institutions like "Jyoti Sangh" without inviting tenders. Accordingly, "Jyoti Sangh" had, also, circulated a letter along with the Resolution of the Government to all the Government Departments on 22-09-1985, inter-alia, stating that the Government offices could purchase all items, including Engineering Kit, without inviting tenders.

v. Accordingly, the concerned office had proposed for the purchase of for Rs. 42,550/= Engineering Kit, without inviting tenders, in view of the urgency, in terms of the Government Resolution and the letter of "Jyoti Sangh". Though 16 other departments' officers, including Superintending Engineers, who had purchased such items, without inviting tenders, from "Jyoti Sangh" more than once and of higher amount, came to be exonerated from the inquiries which

were conducted after a long delay, the petitioner -despite the Report of the Commissioner of Inquiry in favour of the petitioner, and even after the regularisation of audit objections by the Government and the fact that there is no even remote allegation of loss of Government Money or any oblique intention or any other adverse charge affecting the conduct of the petitioner - came to be visited with a departmental penalty of stoppage of one increment for a period of two years, merely, with a view to depriving him of his legitimate right of promotion to the higher post of Chief Engineer, by instituting a delayed and oblique Departmental Inquiry followed by penalty by victimising him.

vi. That the delayed, unnecessary, motivated charge-sheets and resultant inquiry should be quashed and the petitioner should be considered for promotion to the higher post of Chief Engineer from the date his junior, Mr.A.S.Bharti, who was the Presenting Officer in the Departmental Inquiry against the petitioner, and, who, went on delaying the inquiries for ulterior object and for self-gain, was given the promotion to the post of Secretary.

vii. In short, the inquiries, in all these petitions and the resultant punishment in one inquiry, are quite unjustified, arbitrary, motivated, contrary to the principles of natural justice and are in violation of the provisions of Articles 14, 16 and 311 of the Constitution of India, and to direct the respondent-State of Gujarat, to grant promotion to the petitioner to the post of Secretary from the date his junior came to be promoted, with all incidental service benefits, by quashing all disciplinary proceedings and the disciplinary penalty.

viii. It is, also, alternatively, submitted that the nature of the punishment imposed on the petitioner, being minor, in terms of Rule 6, providing for minor penalties in the Rules, and pursuant to the Government Resolution dated 18-03-1998, the departmental punishment order dated 24-01-2002 will not disable or disentitle the petitioner from pursuing and claiming his right of promotion to the post of Secretary. The said G.R. dated 18-03-1998 of the respondent is relied on and it is forcefully submitted that in view of the Government decision manifested in the said G.R., minor penalty of Rule 6 of the Rules, except the penalty of withholding of promotion, shall not constitute any hinderance or any impediment in the right of the petitioner to claim promotion to the post of Secretary.

In support of the aforesaid various submissions and to reinforce the claims made in the petitions, the case-law relied on by Mr.Yatin N.Oza, learned Senior Counsel, appearing on behalf of the petitioner, with Mr.G.M.Joshi, learned Advocate, will be considered hereinafter at an appropriate stage.

8. DEFENCE ARMOURY TO CONTEST CLAIMS

On behalf of the respondent-State, Mr.S.N.Shelat, learned Advocate General appeared with Ms.Shruti Trivedi, learned Assistant Government Pleader, and raised the following submissions:

i. That the petitioner is not entitled to any relief, in view of the Government Resolutions and the standing instructions of the Government, and the Report of the Vigilance Commission.

ii. Even Government Resolution dated 23-09-1981, provides in Clause 7 that if the Government servant's name is included in the Select List and, subsequently, departmental proceedings have been initiated, he would not be promoted on the basis of his inclusion in the Select List until he is exonerated.

iii. That the petitioner is not entitled to any relief, as he is not exonerated from the Departmental Inquiry against him and as the order of punishment has been imposed. It is, therefore, the contention of the State that in view of Clause (2) and Clause (3) of the said Government Resolution dated 23-09-1981, the petitioner is not entitled to any relief.

iv. That the petitioner is not exonerated in view of Clause (6) of the Government Resolution dated 02-04-1983 and the ad hoc promotion given to the petitioner is required to be put to an end and he is required to be considered for future promotion in usual course of the DPC.

v. That there is no delay in holding Departmental Inquiries; even if there is a delay in holding Departmental Inquiries, no prejudice is shown to have been caused to the petitioner and, therefore, petitioner is not entitled to any relief.

EVALUATION AND SCREENING OF RIVAL VERSIONS

9. As the aforesaid rival submissions are virtually inter-connected and inter-woven, with a view to avoid repetition of the factual profile, it will be expedient to deal with them, simultaneously, in the light of the relevant propositions of law and the case-law relied on by the learned Advocates appearing for the parties.

10. It is amply borne out from the record of the present group of petitions that at the time of the consideration of the case of the petitioner for the post of Chief Engineer, when the DPC was first convened on 16-02-1993 for the very purpose, admittedly, no charge-sheet was issued nor any other Departmental Inquiry was pending and no decision was taken by the State. There is no dispute about the fact that when the petitioner was eligible and he was within the Zone of Consideration, his case was considered along with the case of Mr. Patel, Superintending Engineer, but in the guise of keeping their cases "OPEN", no decision was finalised. There is nothing on record to show that there was no conscious decision to initiate Departmental Inquiry again or to start the Departmental Inquiry on the date when he was first due to be considered for the promotional post by the DPC.

11. The contention advanced by the learned Advocate General has been that though decision was not taken by State, the 'Sealed Cover Procedure' was not required to be adopted, as the Vigilance Commission had recommended the Government to initiate Departmental Inquiry against the petitioner in two cases, under Rules 9 and 10 of the Gujarat Civil Services (Discipline and Appeal) Rules,

1971, and the decision of the Government thereon was awaited. The Vigilance Commission had submitted two different reports, dated 03-01-1991 and 30-12-1992. These aspects were placed before the Top Level Selection Committee and in view of the recommendations of the Vigilance Commission, the case of the petitioner for promotion was kept "OPEN" by the DPC. The reliance is, also, placed on the provisions of G.R. dated 23-09-1981. In the opinion of this Court, this submission and reliance on said G.R. is not sustainable in view of explicit Rule provisions and settled Legal Proposition, as on the date of DPC, there was no even conscious decision of State of Gujarat to start Inquiry.

12. It leaves no manner of doubt that the incident of 1985 came to be invoked first time for the purpose of initiating departmental proceedings against the petitioner, by issuing and service of charge-sheet only on 27-04-1993, almost after 8 long years and on the same day, the decision was taken to initiate Departmental Inquiry, and on the same date, another charge-sheet came to be framed and served upon the petitioner and that too, at mid-night. (What an unusual approach!) Thus, the petitioner was served with two charge-sheets on 27-04-1993, which is, undoubtedly, delayed and of stale and for trivial charge of irregularity. This inescapable conclusion is, fully, reinforced and fortified by other material on record. The decision of the Government in starting an inquiry upon Vigilance Report, in similarly situated 16 cases of officers and other officers and granting them full-exoneration from similar charges by scrutiny and evaluation of evidence and facts even though of higher magnitude, is undoubtedly discriminatory. No reason or ground worth the candle is shown or spelt out. Whereas defence of alleged mistaken decision of exoneration of 16 co-delinquents of Government in all other similarly situated officers is not only lame and blind but is only an after-thought to get out from the charge and pleas of unfairness bias, mala fide, victimisation and discrimination and colourable exercise of discretionary power by the State of Gujarat.

13. Following particulars and information depicted and articulated in a tabular form will, undoubtedly, and vividly unlock the facts as to how the officers of the Government made purchases more than once, unlike the petitioner from "Jyoti Sangh", which is indisputably, a distinguished and reputed Non Governmental Organisation, and, which had, also, addressed letters to the Departments of the Government, highlighting the Government's `approval" for the purchase of certain identical items, including the referred Engineering Kit from "Jyoti Sangh", without inviting tenders:

Sr. Name of the Delinquent and Designation. No. Dates of Charge-sheet and Punishment and Outcome

i. Shri M.I.Mehta, Secretary. 06-06-1994, 29-11-1999, Exonerated. ii. Shri A.M.Gadani, Chief Engineer. 04-04-1994, 29-11-1999, Exonerated. iii. Shri M.K.Parmar, Chief Engineer. 04-04-1994, 29-11-1999, Exonerated. iv. Shri K.A.Patel, Executive Engineer. 28-07-1993, 29-11-1999, Exonerated. v. Shri P.J.Daraji, Executive Engineer. 30-12-1992, 29-11-1999, Exonerated. vi. Shri

S.B.Shah, Deputy Executive Engineer. 26-02-1994, 29-11-1999, Exonerated. vii. Shri V.K.Shah, Deputy Executive Engineer. 21-02-1994, 29-11-1999, Exonerated. viii. Shri P.A. Patel, Assistant Engineer. 04-04-1994, 29-11-1999, Exonerated. ix. Shri N.J.Govani, Assistant Superintendent. 21-02-1994, 29-11-1999, Exonerated. x. Shri H.K.Bhatt, Additional Assistant Engineer. 21-02-1994, 29-11-1999, Exonerated. xi. Shri N.M.Babra, Additional Assistant Engineer. 21-02-1994, 29-11-1999, Exonerated. xii. Shri K.B.Modh, Deputy Accountant. 04-04-1994, 29-11-1999, Exonerated. xiii. Shri N.G.Gothi, Deputy Accountant. 04-04-1994, 29-11-1999, Exonerated. xiv. Shri D.B.Dalvadi, Senior Clerk. 04-04-1994, 29-11-1999, Exonerated. xv. Shri M.I.Patel, Senior Clerk. 21-02-1994, 29-11-1999, Exonerated. xvi. Shri G.B. Raval, Draftsman. 04-04-1994, 29-11-1999, Exonerated.

14. The learned Advocate General is unable to make any capital out of the strong reliance made on the G.R. dated 23-09-1981. It is no where, categorically, mentioned of keeping the consideration of the case for promotion on one hand and then keeping it "OPEN" on the other hand and then serving Charges Memo on the next date. Even it is not, satisfactorily, explained as to why a novel, even if assumed to be not prejudicial or discriminatory, category or pattern was adopted under which the case of the petitioner was characterised and placed undecided. It is apparent from the recital in the said G.R., the relevant paragraph of which is reproduced below:

"2. The case of Government servants who are facing Departmental enquiries of whose conduct is under investigation could broadly be classified as under:-

(i) those who are under suspension; or

(ii) those against whom disciplinary proceedings are initiated i.e. where a charge-sheet and the statement of allegation have been issued; or

(iii) those against whom disciplinary proceedings are proposed to be initiated i.e. on the basis of a preliminary enquiry or otherwise a decision has been taken by the competent authority to initiate disciplinary proceedings against them, but where a charge-sheet and the statement of allegation have not been issued.

At the outset, it is clarified that in the case of Government servants whose conduct is under investigation i.e. the complaints are being looked into departmentally or otherwise, but no conclusion has been reached about the prima-facie misconduct, it should not be a ground for treating the said Government servant, as one whose conduct is under investigation.

It is further clarified that in respect of Government servants whose conduct is under investigation, the procedure prescribed hereafter should be followed only after the conclusion of the investigation and when the competent authority, on consideration of the results of the investigation by any agency departmental or otherwise including the ACB or the Vigilance Commission and after obtaining the Vigilance Commission's advice wherever necessary has formed an opinion that a

charge-sheet may be issued on specific imputations where departmental action is contemplated, or that sanction for prosecution may be accorded where prosecution is proposed. Until the competent authority arrives at such a conclusion, the Government servant should be treated on par with others."

15. The instructions and the guidelines given in the G.R., dated 23-09-1981, are further reiterated with regard to the promotion of officers in whose cases 'Sealed Cover Procedure' has been followed, but against whom disciplinary or legal proceedings are pending for a long time. The Appointing Authority is, also, empowered to consider the case of an officer who is within the Zone of Consideration. If the Appointing Authority reaches the conclusion that it would be not against the public interest to allow 'ad-hoc' promotion to the officer, then in that case, the case of such officer is required to be placed before the next meeting of the DPC to be held in the normal course or after the expiry of the two years period to decide whether the officer is suitable for promotion on 'ad-hoc' basis. Where the officer is considered for 'ad-hoc' promotion, the DPC, again, will have to consider the case of such officer upon the assessment on the basis of the totality of the officer's Service Dossiers.

16. The fact that disciplinary or legal proceedings are pending should not affect the assessment regarding the suitability for such an 'ad-hoc' promotion. It means that even if departmental proceedings or the Court proceedings are, on-going, the Appointing Authority is empowered to assess and make 'ad-hoc' promotion, which, obviously, would not confer the right of a regular promotion and such promotion would be until further orders. One thing is very clear even from this G.R., is the principle that where departmental proceedings are initiated or disciplinary proceedings are proposed and decided to be initiated or the legal proceedings are pending, the Appointing Authority has to exercise this empowerment of discretion even after the expiry of two years of such proceedings, so as to decide whether officer is suitable for promotion, on 'ad-hoc' basis or not. Thus, the principle emanated from the G.R. dated 23-09-1981 is that if on the date of the meeting of DPC, no such eventualities exist, the case of such officer has to be considered for promotion and his right of consideration for the promotion cannot be thwarted by the Disciplinary Authority on the premise that on the date of the subsequent meeting of DPC, charge-sheet was framed and served.

17. In Delhi Development Authority Vs. H.C. Khurana, ", it has been clearly held that what is required to be considered by the Disciplinary Authority, at the time of First Meeting of DPC with regard to the promotion of the officer, has been lucidly expounded by the Hon"ble Supreme Court. The principle enunciated in the G.R. dated 23-09-1981 and further ameliorated by the subsequent G.R. dated 02-04-1983, liberalising and rationalising to protect the interest of such officers, who are falling within the Zone of Consideration for promotion, is very much reinforced by this decision.

18. In Khurana's (supra), it has been further held that the decision to initiate

disciplinary proceedings cannot be subsequent to the proceedings of the issuance of charge-sheet. Since issue of charge-sheet is a sequence of a decision to initiate the disciplinary proceedings, framing of charge-sheet is a first step taken for holding inquiry into the alleged misconduct or allegations made against the Government servant or such officers. The charge-sheet is then served to enable him to give his explanation. If the explanation is found satisfactory, the proceedings can be closed and the Civil Servant or the Government Employee can be exonerated. The issue of charge-sheet, therefore, needs to be examined in the context of decision taken to initiate disciplinary proceedings, as it has framed the charges and taken necessary action to despatch the charge-sheet to the employee for informing him of the charges framed against him and other acts of serving of charge-sheet will be complete the moment steps are taken for the purpose of framing the charge-sheet and then step required is to despatch it to the Government Servant.

19. Further facts of actual service on the Government Servant in that cases will not be necessary or an important part of its requirement. Thus, if no contingency highlighted and enumerated in the said G.R. on the date of meeting of the DPC, the right of consideration for promotion as on that date is required to be considered and this right cannot be effaced or defaced merely because subsequent to the meeting of the DPC, he came to be served with charge-sheet or decision came to be taken. None of these G.R.s would admit or confirm the methodology adopted by respondent-State of keeping the case of petitioner and other officers, similarly, situated "OPEN" and, therefore, the contention that such action of keeping the case "OPEN" though the petitioner was eligible and was within the Zone of Consideration for being considered for the higher post on the date when DPC was convened does substantially lend support to the plea of 'mala-fide'.

20. No reasonable explanation has been placed on record as to why such an unusual and novel procedure was adopted in the case of the petitioner when he was answering all the requisite criteria for being considered for the promotion to the Higher post of Chief Engineer and then for the post of Secretary and absence of such explanation or clarification, the serious allegation of victimisation and 'mala-fide' raised by the petitioner would, obviously, get strengthened. The case cannot be shelved merely because it is not decided whether the case is to be dealt with departmentally or not on the alleged misconduct of purchase of Engineering Kit Material from N.G.O. "Jyoti Sangh". It is, also, settled proposition of law that even after conviction of the Government employee in a criminal prosecution, the Disciplinary Authority, 'ipso-facto', is not obliged to award any departmental punishment. It is a part of the principles of natural justice to consider the facts of the prosecution, the nature of charge therein and the resultant outcome of the said prosecution like conviction. Say for illustration, conviction on minor violation of Traffic Rules or so. This clearly indicates the incumbency cast upon the Disciplinary Authority, as well as, the Appointing Authority to act, at all such stages, reasonably, rationally and objectively, and

with all fairness so that Right of Equality and independence of employees or officers.

21. The magnitude of the principles of natural justice would, undoubtedly, involve all such stages and the Disciplinary Authority is, therefore, required to be vigilant before the Government Servant or office is visited with any such evil or civil consequences, affecting his meritorious service career. No satisfactory reason is found, as to why action or consideration was not made when the DPC first met, for the very purpose and on the subsequent date, the charge-sheet is served, as well as, the decision to initiate inquiry is taken and the charge-sheet is also served on the same date and that too at mid-night. Of course, the petitioner cannot object for such an odd time, but nothing is shown as to why mid-night process of service of charge-sheet came to be adopted and followed. It is in this context, again, the allegation of want of bona fide, if not straight way allegation of mala fide, would be receiving some support. Of course, in a given case, mere service of charge-sheets at mid-night may be bona fide also, but it has to be explained as to why such unusual procedure of taking a decision to initiate Departmental Inquiry coupled with the framing of charge-sheets and service of charge-sheets at mid-night was adopted. Thus, this chain of events, is, rightly, therefore, pressed into service in support of the allegation of victimisation and mala fide, when first DPC met case of petitioner was fully eligible in which no decision was taken and no reasons are shown why?

22. It is only through the intervention of this Court and by judicial fiat, an interim order, during the pendency of the two writ petitions, came to be passed, whereby the case of petitioner for promotion to the post of Chief Engineer, was required to be considered. As a resultant effect and as he was found fit, he was given ad hoc promotion as Chief Engineer, on 25-11-1993. Normally, High Court under Article 226 power would not grant such order and direction. But this Court found strong and sound reasons for making a departure from normal practice and SLP against such order was filed and dismissed.

23. Again, the imposition of minor penalty of stoppage of increment for two years without any future effect is worth noting in the back-drop of facts that the purchase of Engineering Kit, worth Rs. 42,550/=, was in pursuance of the Government decision to treat and consider the said "Jyoti Sangh", N.G.O. as an 'Approved Women Organisation', wherefrom the purchases could be made, without undergoing the exercise of inviting tenders, together with the fact that there was a letter addressed to almost all the departments by the "Jyoti Sangh", highlighting this aspect and as a result of which, so many Departments and even so many offices of the Government Department, in which the petitioner had been working, and others, also, made purchases more than once and exceeding the purchase amount of Rs. 42,550/=, expended by the petitioner during his tenure for the purchase of Engineering Kit from the "Jyoti Sangh" and even the audit objections, which were raised in such case were Regularised by the 'State of Gujarat'.

24. Not only that 16 other similarly situated officers, including some of the Superintending Engineers, who made purchases from "Jyoti Sangh" and who were charge-sheeted and departmentally dealt with, were exonerated by respondent No. 1-State of Gujarat, whereas, the petitioner was given punishment finding him 'guilty' even without any grounds and remains which could distinguish his case from others. What colourable exercise of power and victimisation!

25. The explanation given by respondent No. 1-State in the affidavit-in-reply, in this connection is, rightly, criticised to be very meek, weak and lame and without bona fides. It appears to be an after-thought and blind as well merits straightaway rejection. The attempt of the Government is to explain that earlier mistake was committed in exonerating, as many as, 16 such officers, facing similar charges of purchases from the N.G.O. "Jyoti Sangh". Of course, prima facie, one would be inclined to say that there are two probabilities i.e. there may be a mistake or there is a manipulation in the case of the petitioner for making him victimised by taking shelter of mistake. But the impugned action is pure and simple arbitrary or discriminatory. In order to rule out the first probability of mistaken action on the part of State of Gujarat in the case of as many as 16 such officers having been considered 'not guilty' and having been considered for a further promotion, respondent No. 1-State of Gujarat ought to have taken some steps or action to rectify such so-called mistake in terms of or in pursuance of the powers conferred in the Gujarat Civil Services (Discipline & Appeal) Rules, 1971, like 'suo motu' revision.

VICTIMISATION AND DISCRIMINATORY ACTION

26. The affidavit-in-reply is, conspicuously, silent on this score. It is in this context, the allegation of the petitioner of having become victimised requires to be seriously considered and given weightage. It is in this context, such an action for treating the case of the petitioner only for the purpose of departmental action or penalty of stoppage of one increment for two years without future effect, at the time of his promotion for higher post of Chief Engineer, on 8 years old trivial and trifle and stale matter, is, self-eloquent. Even Section 95 of the Indian Penal Code, 1860, provides no criminal action in such trifle and trivial matters. Such a discriminatory action, approved or affirmed, on the part of any public authority, much less the constitutional functionary like the State of Gujarat, when there is support of such allegation of victimisation and discrimination, in exercise of disciplinary jurisdiction such Giant or Model master or the employer has to be strongly denounced and corrected by such process of Judicial Review and requires to be quashed and set aside keeping in mind, pioneering, progressive, proliferating pervasive philosophy of the process and powers under Articles 14, 16 and 311 of the Constitution of India.

27. In order to consider the case of the petitioner in the ambit of principles of nature justice and the discrimination against the petitioner, the principles of parity of punishment with co-delinquents can also be invoked. The Disciplinary

Authority cannot be permitted to act arbitrarily and work like a Roman Knight. It cannot be allowed a fight between David and Goliath. The Constitutional writ redressal is designed to interfere in such situational realities for the protection and promotion of Rights of persons who are done wrongs. The power of imposing the punishment is always the prerogative of the Disciplinary Authority. However, this exercise of power is improper, when, questioned under the anvil of Judicial Review, is not endorsed by the Court; while being not bona fide or discriminatory or committing the breach of principles of natural justice in not observing the principle of parity amongst the co-delinquents, having the same set of facts and charges.

28. In *The Director General of Police and Others Vs. G. Dasayan*, ", the Constitutional Bench of the Supreme Court has, clearly, propounded this proposition as to how such a disparity should be dealt with, where it is questioned under the judicial scrutiny. In that case, a breach of parity in punishment with co-delinquents was committed as order of dismissal against similarly situated delinquents was passed while exonerating other co-delinquents, giving no acceptable or recognisable explanation. It was, therefore, held that in such circumstances, the differential treatment, even in award of quantum of punishment to the co-delinquent, cannot be subscribed to, infracting the principle of parity in punishment with co-delinquents. In such a situation, the dismissal order, the employee was visited with, was found to be discriminatory and violative of principles of equality and the dismissal was set aside and the 'parity in punishment' of co-delinquents was followed. Of course, such a course can be followed in a rarest of rare case, as otherwise discretion of punishment has been the domain of Master or Employer. It can, also, be checked by the Doctrine of Proportionality in a given case which may not be an issue here. It is, therefore, very clear that even, while exercising administrative prerogative or like imposition of punishment, it is incumbent upon the Disciplinary Authority to act justly, reasonably and objectively and with complete fairness so that there should not be any scope for allegation of mala fide, victimisation or discriminatory treatment or even colourable exercise of power or unfairness.

29. After having considered threadbare the entire chain of facts, the catalogue of events emanated from record and the actions resulting into differential unfairness and discriminatory treatment amongst similarly situated and charged officers, though insofar as the imposition of punishment against the petitioner, which is directly under challenge in the Second Petition is concerned, apart from the delayed initiation of inquiry and initiation of such inquiry with ulterior motive and differentiating the case of the petitioner for consideration for promotion for the post of Chief Engineer when the DPC was first convened, on 16-02-1993, the date on which, no charge-sheet was framed, no decision was taken to deal with the petitioner, departmentally, it is necessary to observe that mere consideration of some reports of Vigilance and other Committees at the preliminary stage without even, tentative decision of the State on prima-facie facts ipso-facto, would not and should not constitute a hinderance or an impediment in the right

of the petitioner for being considered for the promotion on the date when DPC was first convened. Even there was no prima-facie decision for Departmental Actions. It can, therefore, safely, be concluded that the action of initiation of such departmental inquiry was very late and of stale incident of 1985 and in respect of trifle and trivial matters and in respect of the charges which resulted in the exoneration of similarly situated 16 such other officers. Therefore, the action and impugned order of punishment by respondent No. 1, State of Gujarat, is neither bona fide nor reasonable and as such fully discriminatory, unfair and unjustified in the back-drop of the aforesaid special facts and peculiar circumstances.

30. The right of the employer or the master to take action for the maintenance of discipline in the employment has to be, also, considered and protected, but at the same time, in exercise of such powers, administrative or in its departmental inquiries, the Disciplinary Authority cannot afford to be biased or unfair, unreasonable or act in any manner, leading straightway to the presumption of victimisation and colourable exercise of power. The prerogative of the master is not untrammelled or unqualified for the purpose of maintenance of discipline and imposition of departmental punishment even upon proof of mis-conduct. Even the nature of mis-conduct is very important for the purpose of imposition of penalty as, at times, it results into deprivation of the Equality Right of the Civil Servant or the Government Employee. The circumstances and the peculiar facts referable to the case of the petitioner, since the time of his qualifying for consideration for the promotion, would speak loudly in support of the allegation of unreasonableness, discrimination and want of bona fide in initiation and resultant imposition of departmental penalty.

31. The quantum of penalty has, also, to be proportionate to the kind and type of delinquency. If it is shown or spelt out from the record that even the exercise of imposition of departmental penalty, as an outcome of the domestic tribunal for disciplinary actions, is disproportionate to the delinquency established, then, on the principles of proportionality of punishment, in exercise of Judicial Review, the Court has to interfere with and quash such impugned improper actions or orders, by exercising the constitutional writ jurisdiction under Article 226 of the Constitution of India. The very purpose of punishment is to maintain the discipline and to see that the wrong-doer in the public law or any employee, who has committed mis-conduct, is properly dealt with and such wrongs are properly punished. It can never be conceived by the Disciplinary Authority, much less the constitutional functionary like the State of Gujarat, to initiate and then to impose departmental punishment in such a way that even from the plain examination and scrutiny of the totality of facts and record, the allegation of unreasonableness, victimisation, unfairness and discrimination receive support.

THE PURCHASE OF MATERIAL WITHOUT PROCEDURE WAS EVOLVED BY THE STATE FOR GOOD FROM "JYOTI SANGH"

32. It will, also, be interesting to highlight and herald, at this juncture, that pursuant to the letter addressed by "Jyoti Sangh" and the `approval" of

respondent No. 1-State of Gujarat, so many Departments, Divisions and Offices of the Government had made purchases from "Jyoti Sangh" without inviting tenders. There is no dispute about the fact that, accordingly, as per the record:

- (i) 18 Divisions had made purchases;
- (ii) 19 Executive Engineers of even Narmada Water Resources Department had made purchases without tenders;
- (iii) The predecessors and successors of the petitioner in the Office of Executive Engineer, as he then was, had also made purchases;
- (iv) 19 Executive Engineers came to be charge-sheeted.

33. The predecessor in office of the petitioner, one Mr. A.B.Mandavia, made purchases more than 17 times without inviting tenders from "Jyoti Sangh" and for amount of lacs of rupees and after the full-fledged inquiry on the same charges and similarly situated person, Mr.Mandavia, came to be exonerated from all the charges.

34. Even Mr.M.I.Mehta, Executive Engineer, who was successor in office of the petitioner and had made purchases from "Jyoti Sangh" without inviting tenders, also, came to be exonerated by the Government. It was, also, observed in a composite report of the Inquiry Officer, after conducting a joint inquiry against such persons, that in the light of the circumstances and the totality of the factual profile and the reputation of the N.G.O. "Jyoti Sangh" and the 'approval' accorded by the Government of Gujarat and regularization of audit objections, the inquiries initiated were insignificant for trifle and trivial so-called charges.

35. As such, there is no satisfactory explanation as to why no inquiry was started early and what prompted them to open a closed chapter after a lapse of 8 years. Old inquiry, undoubtedly, affects the right of the delinquents and the powers of the disciplinary authority. Such a long unduly delay, on behalf of respondent-State, is nothing but a sheer and mere act of indifferenceness and the explanation tendered for delay, in the opinion of this Court, is totally baseless and unsustainable in the light of the settled proposition of law.

36. Now, the question that calls for consideration is, as to whether the initiation of the charge-sheets and the resultant pendency of two departmental inquiry proceedings could be quashed. Of course, it is, always, within the jurisdiction of the Court, if satisfied from the set of facts, to quash not only the initiation of departmental inquiry, but also all charges if parameters evolved are attracted. So, as a part of judicial review, it could, also, be considered. However, the nature of charges and the advanced stage at which one departmental inquiry is pending (as out of two departmental inquiries, one has resulted in the exoneration) has reached, it would be justified to quash and intercept the on-going such proceedings. It is stated at the Bar that even in one pending inquiry the Inquiry Report is submitted, but for pendency of this group of petitions, the Disciplinary Authority has not taken further action, which would, not, now require to be

meticulously examined, as it is directly under challenge in this Group of Petitions. In fact, in the Third Petition, the challenge is against the initiation of departmental proceedings and framing of departmental charge-sheets, whereas in the Fourth Petition, the main relief sought for is to direct the authority to consider the case of the petitioner for further promotion for the post of Secretary of the Department, irrespective of the pendency of the departmental proceedings. The Third and the Fourth Petition raises the challenge against the charge-sheet dated 01-08-2001, whereby respondent No. 1-Government had decided to inquire into the charges against the conduct of petitioner, as Chief Engineer and Additional Secretary in respect of short-comings on his part in the work of Flood Damage Repair and Mahi Irrigation Circle, which was additional to his duties as Chief Engineer, Area Development, under the Narmada and Water Resources Department in the years 1994 and 1995.

37. This Court has, dispassionately, examined the nature of charges in the said departmental charge-sheet for holding inquiry, alleging the petitioner for lack of devotion and committing breach of sub-rule (ii) of rule 3 (1) of Rules 1971. Ordinarily, as per the settled propositions of law in the realm of Service Jurisprudence, the right of the employee to take disciplinary action by following the principles of natural justice in a Domestic Tribunal or in-house process, if prima-facie case, which is not within the prohibited parameters, like being stale or delayed, should not be intercepted by exercise of Judicial Review, for the reason that such alleged mis-conduct or charges, after initiation of departmental inquiry, upon issuance of charge-sheet, should be allowed to come to its legal and logical ends, without influencing and affecting the right of master to take actions for the alleged mis-conduct or commission or omission on the part of government employee. The exercise of powers of this Court, under Article 226, is undoubtedly, though plenary and prerogative, is, also, discretionary and equitable, the Court has to exercise that Judicial approach with fully objectivity. The principles referable to the situational realities emerging from such departmental inquiry proceedings are extensively explored and very well settled by several decisions.

38. Let it be mentioned that the departmental proceedings initiated on the basis of the charge-sheet dated 03-09-2002, on the allegation of harming the financial interest of the Government by misusing his post as Superintending Engineer during the period 1994-95, which resulted into the commission of grave irregularities in the discharge of his duties in violation of the provisions of paragraphs 40 and 214 (7) (o) of Part (I) of the Gujarat Public Works Manual, as well as, thereby, committing dishonesty and grave negligence in breach of provisions of the some rules, for which he was alleged to be responsible in his capacity as Superintending Engineer, has culminated, resulting into clear exoneration. Thus, the State found no case in inquiry against the petitioner in that matter. It is in this context, except the factum of initiation and exoneration from the said departmental charges and inquiry, further screening or scrutiny of facts would not now be warranted.

39. Notwithstanding that the charge-sheet dated 24-07-2003 on the basis of which, as stated before this Court, the departmental inquiry has to be initiated and it is at the stage of appointment of the Inquiry Officer, looking to the nature of charges, although it may not be expedient to quash the departmental inquiries, at this stage, in exercise of powers of Judicial Review under Article 226, but at the same time, it is an undisputable fact that such inquiries, even after initiation, takes long time for the conclusion and, therefore, the question would, now, be, as to how relief or what relief could be granted or given to the petitioner, even if the imposition of departmental penalty in the Second Petition is quashed at all and set aside insofar as the consideration of the case of the petitioner for the promotion to the post of Secretary is concerned, will become significant.

JUDICIAL AND JURISTIC PARAMETERS

40. The power, under Article 226, is, obviously, one of Judicial Review. It is not an appeal from the impugned decision, but a review of the manner in which the decision has been rendered. The jurisdiction of the High Court under Article 226 of the Constitution of India is extraordinary, original, plenary, equitable and discretionary, but not appellate or revisional. This jurisdiction is, as such, modelled on the prerogative jurisdiction of the English Courts and its objective is, mainly, to enable and empower the High Court to keep the subordinate Courts, Tribunals and other statutory functionaries within the bounds and restrain the executive from exceeding its statutory powers.

41. In a jurisdiction under Articles 226 and 227 of the Constitution of India, the High Court cannot sit in an Appeal over the findings recorded by the competent Court, Tribunal or authority or any statutory functionary. The jurisdiction of the High Court is, therefore, supervisory and, obviously, not appellate. Consequently, Article 226 is not designed to enable the High Court to convert itself into the Court of Appeal and examine for itself the correctness of the decision impugned and decide what is proper view to be taken or ordered to be made. The main premise of Article 226 and underlying purport of Judicial Review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter, which it is authorized or enjoined by law to decide for itself, a conclusion which is correct in the eyes of Court.

42. It will be interesting to mention that the High Courts, under Article 226, have power not only to issue writs, but also to make orders and to issue directions. Accordingly, the High Courts do not only issue writs, but discharge a much wider function i.e. to mould relief in accordance with the facts of the case with a view to do complete justice between the contending parties, and competing and rival interests.

43. Judicial Review is not directed against the quality of the decision, but is confined to the decision-making process. The purpose of Judicial Review, thus, is to ensure that the individual receives fair treatment, and not to ensure that the

authority, after according fair treatment, reaches on a matter, which it is authorised or enjoined by law to decide for itself, a conclusion which is correct in the eyes of Court. The Hon'ble Supreme Court in *State Bank of India and Others Vs. Samarendra Kishore Endow and Another*, " , referring to the decision in *State of Andhra Pradesh Vs. Sree Rama Rao*, " and *State of Orissa Vs. Bidyabhushan Mohapatra*, " and, also, a decision in *Union of India (UOI) Vs. Parma Nanda*, " , held and made the following pertinent observations:

a. The imposition of appropriate punishment is within the discretion and judgment of the Disciplinary Authority and the same should not normally be interfered with while exercising power under Article 226, as the power is one of the Judicial Review and not an appellate power.

b. The power of Judicial Review is made to ensure that individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matters, which it is authorized or enjoined by law to decide for itself, a conclusion which is correct in the eyes of Court.

c. The High Court, undoubtedly, would interfere where the departmental authorities have held the proceedings in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by consideration of material extraneous to the evidence.

AMPLITUDE AND ALTITUDE OF JUDICIAL REVIEW

44. In the realm of Judicial Review, the Court is, also, required to consider whether the impugned action or the order suffers from the vice of arbitrariness, unreasonableness, bias, mala fide, discrimination, and, also, victimisation when the impugned action or the order is the outcome of the exercise of the powers in such and like manner even under the Service Jurisprudence.

45. It is, therefore, absolutely, necessary, on the part of the authority to avoid arbitrariness even in a field where the relevant provision does not lay down any quasi-judicial obligation. This proposition is extensively explored by the Hon'ble Supreme Court in "*Union of India v. E.G. Nambudiri* (1991) 2 UJSC 303". It is, also, stated in paragraph-3 in the said decision that in India, certiorari, would be available even against the administrative bodies, not having any quasi-judicial obligation, if the rights of the individuals are affected without conforming to the principles even of "fair-play". Fair-play is the heart and hub of the provisions of Articles 14, 16 and 311(2) insofar as the matters arise out of Service Jurisprudence.

46. If the Inquiry Officer or the Disciplinary Authority does not see with an open mind to hold an impartial domestic inquiry, which is an essential component of the principles of natural justice as, also, that of "Reasonable Opportunity", contemplated by Article 311(2) of the Constitution and if the action or order in a domestic inquiry against the employee or Civil Servant is found to be tainted with

bias, arbitrariness, or discrimination or victimization, then, obviously, there will be violation of the principles of natural justice, as, also, that of "Reasonable Opportunity" enshrined in Article 311(2) of the Constitution of India. This proposition of law is, also, fully reinforced by the decision of the Hon'ble Supreme Court in *Kuldeep Singh Vs. The Commissioner of Police and Others*, ". In the case on hand, similarly, situated 16 other officers, who were facing similar charges, came to be exonerated by the respondent-State of Gujarat, whereas the petitioner has been held guilty of irregularities and mis-conduct on the similar charge. It is in this context, the allegation of impugned order of punishment passed in a domestic inquiry by respondent-State of Gujarat is mala fide, biased, unreasonable, discriminatory would, obviously, get fully reinforcement.

47. In a domestic inquiry, the principles of natural justice must be observed. The amplitude of the realm of natural justice is very wide and when the Court finds, in exercise of its Judicial Review under Article 226, that the impugned action or the order is tainted with colourable exercise of power, mala fide, arbitrary, unreasonable, discriminatory or the case of victimization, then the Court has to quash and annul such action or order of the administrative authority or the executive functionary.

48. The requirement of "fairness" implies that even administrative authority must not act arbitrarily or capriciously and must not come to a conclusion, which is perverse or is such that no reasonable body of persons properly informed could arrive at such decision. The fairness is an integral part of the principles of natural justice as, also, that of "Reasonable Opportunity" contemplated by Article 311(2) of the Constitution. Obviously, therefore, where the administrative function is statutory, the Court must read into the statute or the rules, including the principles of natural justice, the requirement of fairness, which means the minimum principles of natural justice. This proposition is, also, very expounded in *"Union of India v. Namdoori (supra)."*

49. Judicial Review, in the realm of public law, is the hear of the judicial mechanism in our Constitution. The main grounds of Judicial Review are illegalities, irrationality and procedural impropriety as well as violation of principles of natural justice and fair-play. While it has been stated that the grounds of Judicial Review defy precise definition, most, if not all, are concerned with either the process by which the decision was made or the scope of the power of the decision-maker. It is important to remember that initial source of power of Judicial Review was Common Law and that the overall ground of Judicial Review is that repository of public power has breached the limits placed upon the grant of power.

50. The Doctrine of Judicial Review is a great weapon in the armory of Administration of Justice. Judicial Review is an integral part of judicial and constitutional process and mechanism. So long as the fundamental rights, as well as, the statutory rights exists and are part of our law, power of Judicial Review has to be exercised with a view to see that guaranteed rights are not violated or

contravened. Judicial creativity of Apex Court and High Courts in India is very well known and appreciated and the Courts have adopted a positive approach in interpreting statutory provisions, constitutional rights and the principles of natural justice. Insofar as the contention that the impugned action and order of the respondent-State suffers from the vice of discrimination and differentiation, etc., it is required to be accepted in the light of the peculiar facts of the case, highlighted hereinabove and the relevant proposition of law.

LEGAL PHILOSOPHY OF ARTICLES 14, 16 AND 311

51. All that Article 14 guarantees is similarity of treatment, contra-distinguished from identical treatment. The executive authority or the administrative functionary while exercising statutory power cannot behave or act in a fanciful and arbitrary manner emanating discrimination and victimization of a party, who has the right guaranteed under the law. Reasonableness and fairness are the essential components of principles of natural justice and reasonable opportunity in a domestic inquiry, indubitably, would demand and command that similarly situated persons and facing similar charges by the rule provision should be equally administered and the like should be treated alike. The same authority i.e. respondent No. 1-State of Gujarat having exonerated 16 other such officers, similarly situated facing similar charges could not be heard to say, subsequently, in affidavit-in-reply to the allegations made in the petition that the exoneration of 18 officers similarly situated was a mistake of the State.

52. It is nothing but an after-thought. What a bold but not beautiful plea! The allegations of the petitioner that the respondent-authority, by passing the impugned order of punishment challenged in the Second Petition, acted in a biased, arbitrary, unfair, discriminatory manner and violated the equal treatment meted out to the equally situated persons with a view to prevent the petitioner from getting the consideration for the post of Chief Engineer and promote the interest of pet and favoured officers by giving promotion to the post of Chief Engineer and thereafter to the post of Secretary of the Department, could not be ruled out. On the contrary, such allegations are reinforced by the material on record and the conduct of the respondent-State.

53. In this connection, the proposition of law expounded by the Hon'ble Apex Court in *Badrinath Vs. Government of Tamil Nadu and Others*, is very important and relevant. It has been, clearly, held that the assessment by the Departmental Promotion Committee, in regard to the merit or fitness of an officer or Civil Servant, can be interfered with, if such assessment is proved to be mala fide or based on unfairness or trivial material or without giving the due weightage to positive aspects of the career of the incumbent. In this case, when there was denial of Super-time Scale to an I.A.S. Officer in the circumstances of the case showing that there was continuous unfair treatment meted out to the Officer by the State Government, a mandamus came to be issued, directing the State Government to grant the candidate the benefit of Super-time Scale from the date on which, his junior was granted such Super-time Scale.

54. Let it also be mentioned that in R.C. Sood Vs. High Court of Judicature at Rajasthan and Others, , it has been, succinctly, expounded that for any unfair exercise of disciplinary power even by the High Court, acting on its administrative side against the Judicial Officer, if found to be not bona fide from the record and proceedings and the profile of facts, the Writ Court can quash and set aside such exercise of power on the ground of being arbitrary, mala fide and unwarranted. The proposition of law enunciated in this decision is attracted to the facts of the present case. As a matter of fact, there is no any manner of doubt that there was complete lack of bona fides on the part of the respondent-State of Gujarat when it decided to initiate disciplinary proceedings against the petitioner by serving him with charge-sheets dated 27-04-11993 after even deferring for one or the other reason the meeting of DPC on 16-02-1993 when case of the petitioner was to be considered for promotion to the post of Chief Engineer. It is an admitted fact that on that date, DPC was convened for considering the case of the petitioner for promotion to the post of Chief Engineer and the petitioner was eligible and within the Zone of Consideration.

55. Notwithstanding that, after considering the case of the petitioner for promotion, the case was kept "OPEN" together with similarly situated one officer Mr.M.S.Patel even though on that date, no Departmental Inquiry was initiated or pending and no any conscious decision by the Disciplinary Authority had been taken against the petitioner. What a great fun, if at all it is a great fun and not farce! On 27-04-1993, a decision was taken to initiate Departmental Inquiry against the petitioner and on the same date, two charge-sheets came to be framed and served on the petitioner at night and thereafter, again, DPC was convened on 11-05-1993, but could not meet. This shows that the petitioner was qualified and eligible and was within the Zone of Consideration for the post of promotion to the post of Chief Engineer on the date when the First DPC was convened, on 16-02-1993 and there was no any charge-sheet or any conscious decision or pendency of disciplinary proceedings and despite, respondent No. 1-State adopted a very innovative but invasive methodology to hurt the interest of the petitioner by keeping his case "OPEN", on 16-02-1993, which by itself is contrary to the avowed policy of the respondent and the rules and regulations relied on in this petition speaks volumes about the conduct of a Model Master-Employer which can be characterised nothing but only arbitrary, discriminatory, biased and unfair.

56. Since the imposition of departmental punishment, which is challenged in the Second Petition, is not legal and sustainable and is directed to be quashed by this Court, the case of the petitioner will be same as that of Mr.M.S.Patel, who was similarly situated and who got regular promotion as Secretary and it is stated at the Bar that now, he is also retired from the service. The only difference, which is highlighted in the affidavit-in-reply, has been that Mr.M.S.Patel was given promotion to the post of Chief Engineer under the order and direction of the High Court, and on being found not guilty and resultant verdict of exoneration from all charges against him in departmental inquiry, he was promoted of the post of

Secretary from the post of Chief Engineer. The interpretation of the Government Resolutions dated 02-04-1983 and 18-03-1998 sought to be placed in the affidavit-in-reply and repeated in the course of submission before this Court is not acceptable.

57. It is not necessary in the opinion of this Court that the petitioner, who has been working as a Chief Engineer by way of ad hoc promotion, pursuant to the order and direction of the High Court, is required to be brought to an end, as the petitioner is not fully exonerated in the departmental proceedings. The stand taken by respondent No. 1-State of Gujarat and reiterated in the course of submission before this Court is unacceptable and unsustainable, as the departmental punishment imposed and challenged in Second Petition has been quashed and set aside, and the resultant effect would be that he has been fully exonerated from all the charges insofar as that departmental inquiry is concerned. There would not arise any question of reversion from purely ad hoc promotion. The contention of respondent No. 1-State that the petitioner's case for promotion will have to be considered for promotion as per the G.R. of 1983 and 1998 only after he is reverted to substantive post. The interpretation sought to be advanced is neither logical nor permissible in peculiar facts of the present case. The departmental punishment imposed and challenged in the Second Petition, pursuant to the charge-sheet dated 27-04-1993, has been quashed by this Court in this judgment. It was mistake or manipulation on the part of the respondents by not following the case of the petitioner and Mr.M.S.Patel in terms of G.R. of 1981 and not following "Sealed Cover Procedure" and instead keeping the cases for consideration "OPEN" and in the meantime, taking advantage of the situation and serving the charge-sheet at mid-night before the next date of DPC cannot be encouraged.

58. In the clear opinion of this Court, it is not necessary that reversion from ad hoc promotion to the post of Chief Engineer is an unavoidable necessity and more so, when the departmental punishment is found to be not legal and having been quashed and, therefore, in the peculiar facts and circumstances and total exoneration of the petitioner as that of the case of Mr.M.S.Patel coupled with the conjoint reading of the provisions of two Government Resolutions dated 02-04-1983 and 18-03-1998, the ad hoc promotion, which is subject to the final outcome of the petitioner, is now required to be regularised, as it was done in the case of Mr.M.S.Patel and the case of the petitioner, in the peculiar facts and circumstances and the undesirable unsustainable approach and conduct of the respondent No. 1-State qua the petitioner and mere factum and pendency of other departmental inquiries, should not come in the way of the petitioner in getting the promotion to the post of Secretary on ad hoc basis subject to the result of the inquiries as stated before this Court and as found from the affidavits, 50 delinquents are yet to be impleaded in the on-going departmental inquiries. It is going to take a long time together with the fact that prima facie the nature and allegation of the charges in the charge-sheets and in the light of the provisions specifically made in the Resolution of the Government dated

02-04-1983 that where there is a delay in departmental inquiries for more than two years, the ad hoc promotion can be granted subject to the result and the inquiry.

59. In the opinion of this Court, there is a purpose and policy behind incorporating the provisions for 'ad-hoc' promotion. Even when the employee's fate is in the sealed cover, the Appointing Authority is empowered to review such cases, provided the officer concerned is not under suspension and, admittedly, the petitioner has not been suspended in any of the inquiries and as a matter of fact, he has been exonerated in two inquiries by respondent No. 1 and in one inquiry, we have found a fit case for exoneration as the imposition of the departmental penalty is illegal. It is not the case of respondent No. 1-State that the charges in other pending departmental inquiries are so grave enough to warrant continued denial of promotion and that the promotion of such officer will be against the public interest, whereas it is an admitted fact that there is no likelihood of cases coming to a conclusion in the near future and there is no allegation that delay in finalisation of proceedings is directly or indirectly attributable to the conduct and the action of the official concerned i.e. petitioner. Again, the promotion is being made to the post of Secretary on purely ad hoc basis and ad hoc promotion will not confer any right for regular promotion. The promotion shall be until further orders. The ad hoc promotion shall also be subject to the final outcome in the pending departmental inquiries.

60. In the subsequent Resolution of the Government dated 18-03-1998, the Government has liberalised the policy for giving promotion to such officers, who are facing departmental actions and has taken a clear stand that, except withholding of promotion, in any of the penalties enumerated in Rule 6 of Gujarat Civil Services (Discipline & Appeal) Rules, 1971 for the purpose of considering the case of person, who is not fully exonerated and imposed minor penalty except the withholding of promotion, can be considered for promotion. Moreover, considering the width and amplitude of the jurisdictional sweep of the writ court under Article 226 of the Constitution, the Court can appropriately mould the relief so as to see that complete justice has been done between the parties. Extra-ordinary Writ Court should not be a mute spectator to a gross misuse of power or palpable injustice raising its hands in helplessness.

61. Respondent No. 1-State cannot be allowed to raise technicality, more so when the State itself appears to have partisan view qua the petitioner and when the petitioner has become victim of arbitrariness and unfair impugned order in the departmental inquiry is passed. The judicial conscience would command and demand that in such a situational reality, the officer of such high rank, against whom there is no any adverse record in the past though he has been in service since 1980 directly as an Executive Engineer and who came to be promoted as Superintending Engineer in the year 1990 and even this Court at the interlocutory state found strong prima facie case for giving promotion to consider the case of the petitioner for the post of Chief Engineer and he has been working

as Chief Engineer since then, cannot be allowed to suffer by a writ court, merely raising its hands in helplessness and stating that in accepting the technical aspect raised on behalf of respondent No. 1-State, it would evidently and unambiguously run diametrically opposite to the underlined design and desideratum of provisions of Articles 14, 16, 21 and 311(2) of the Constitution of India.

62. It is incumbent upon the Court to consider the peculiar facts and special circumstances obtainable in a given case and to see that justice is done and full and complete justice is rendered so that in cases of service-victimisation and exploitation and vendetta against the officers whose past record has led him to the one after other promotion is not further made to suffer. On this point, there is a host of judicial pronouncements to which the reference will be made hereinafter.

CONSENSUAL IMPORTANT CHRONICLES

63. Let it be also mentioned even at the cost of repetition that it is not the case of respondent No. 1-State:

- (i) that the petitioner has caused any pecuniary loss to the Government, or,
- (ii) that the petitioner has taken undue advantage, or,
- (iii) that the petitioner has gained anything, or,
- (iv) that he has obtained pecuniary benefit, for self or,
- (v) that there is any remote insinuation of direct misappropriation of money or allegation of dishonesty, or,
- (vi) that there was any attempt of misuse of power, or,
- (vii) that the service career of petitioner is not meritorious, or,
- (viii) that even there was prima-facie case for suspension since the starting Legal Battle, or,
- (ix) that he is likely to abuse his position in the Higher Post on promotion as Secretary, or,
- (x) that even in pending inquiries he is directly responsible having taken undue advantage.

64. So-called irregularities in purchase of Engineering Kit and other goods from the reputed N.G.O. "Jyoti Sangh" only once by the petitioner for an amount not exceeding Rs. 42,550/= without inviting tenders upon letter and circular and while other officers who have made several purchases of higher amounts for the purchase from the said institution have been exonerated by respondent No. 1-State. This could be clearly visualised from the following information and data articulated as under:

DETAILS OF THE PURCHASES MADE BY DIFFERENT OFFICERS FROM "JYOTI SANGH" WITHOUT INVITING TENDERS:

- i. Officers Name: Mr.A.B.Mandavia Number of Purchases made: 17 Purchase Amount : More than Rs. 10,00,000/=
- ii. Officers Name: Mr.A.M.Gadhani Number of Purchases made: 14 Purchase Amount : Rs. 4,69,049.05ps
- iii. Officers Name: Mr.M.I.Mehta Number of Purchases made: 10 Purchase Amount : Rs. 3,72,835.00ps
- iv. Officers Name: Mr.P.J.Darji Number of Purchases made: 03 Purchase Amount : Rs. 6,22,690.25ps
- v. Officers Name: Mr.B.M.Rao Number of Purchases made: 1 Purchase Amount : Rs. 42,550.00ps

65. Alleged irregularities cannot be said to be very serious and grave charges in the peculiar facts of the case. Even plain perusal of the charges of the pending inquiries would be found if not vague but very general and not particularising the role of the petitioner. Of course, no opinion is expressed on merits, it will be open for the competent Disciplinary Authority and consider and decide in accordance with rules and with complete objectivity.

66. It is not the case that by purchasing the Engineering Kit from "Jyoti Sangh", which is recognised by respondent No. 1-State Government, the higher prices are paid by the petitioner. There is no allegation of loss of money or loss of government property. Even the minor objections raised in the audit by the office of the Accountant General in some such cases and against so many officers, respondent No. 1-State of Gujarat has regularised the audit objections and accepted as unobjectionable. Out of such officers, 16 officers came to be exonerated by respondent No. 1-State and the only one officer, who purchased one time, only for the amount not exceeding Rs. 42,550/= without inviting tenders and though his attention was not drawn by the office staff at the relevant time and in absence of any damage or loss to the Government money or property, or any gain by the petitioner, how could it be branded or characterised as a "mis-conduct" leading to a launching pad for the refusal of the promotion to the higher post, despite the satisfactory and meritorious service record earned by him and obtaining two promotions and more so, it is stated at the Bar by learned Advocate General that for the completion of pending departmental inquiry process, a time-frame cannot be drawn and rightly so, when again 50 co-delinquents are sought to be impleaded in one of the departmental inquiries.

TIME-CONSUMING - STATUS OF PENDING INQUIRES

67. It is, obviously, going to take a very long time. Many such old inquiries by the State of Gujarat are pending and when more than one or two persons are delinquents and joint inquiries are held the time lag or span is very high. The

State has not been able to follow time limits prescribed in two Government Resolutions. At times, delay affects quality and result of such inquiries as well as moral and resourceful services of employees and officers leading them to a great sense of despondency and frustration and impact on efficiency and effective Administration. Government and Employers must, therefore, keep vigil and strong monitoring mechanism in prompt commencement as well as early and expeditious conclusions of such Departmental Actions and Inquiries. Let this be not a cry in the wilderness. It will be necessary to mention that one of the objects of the two Government Resolutions dated 02-04-1983 and 18-03-1998 is to see that the concerned officers are not put to unnecessary considerable further hardship and even in cases where it is not intended to deprive them of promotion for such a long time. The Government, therefore, in consultation with the proper functionaries and after examining the entire issue objectively evolved a new procedure with a view to mitigate the avoidable hardship caused to the government servants and officers and the DPC, irrespective of the pendency of cases, departmental or in Court, may then assess the suitability of such officers for promotion to the next Grade or post and if the official is found unfit for promotion on the basis of his record without taking into consideration the cases pending against him, the findings shall be recorded in the proceedings whereas in respect of any kind of assessment, the grading awarded by DPC may be kept in a "Sealed Cover Procedure".

68. In the normal course on the conclusion of disciplinary or court proceedings, "sealed cover" may be opened and in case officer is completely exonerated i.e. no statutory penalty is imposed, the earliest possible date of his promotion but for the pendency of the disciplinary or court proceedings against whom may be determined with reference to the post assigned to him in the findings in the sealed cover and with reference to the date of promotion of his next junior on the basis of such position. The officer concerned may then be promoted, if necessary be reverting the junior most officiating person and he may be given a notional promotion from the date he would have been promoted and determined in the manner indicated in the Resolutions. It will also be interesting to note that it is further laid down in the said procedure for giving ad hoc promotion as appointment of the concerned officer when the disciplinary or court proceedings are not concluded even after the expiry of two years from the date of DPC, which first considered him for promotion and whose findings are kept in the sealed cover provided, however, that the officer is not under suspension.

69. In short, as per the procedure laid down in the said Resolutions of the Government for giving ad hoc promotion in such cases after the expiry of period of two years can be considered by DPC and ad hoc promotion has to be made on the basis of the totality of the record of the service. This aspect is considered by this Court, which is revised, liberal policy, procedure provided and followed by respondent No. 1-State in such cases is an additional fact for our concluding directions and observations and even in the interim order, direction to consider the case of the petitioner for the purpose of promotion to the post of Chief

Engineer by the Single Bench and confirmed of the Division Bench in L.P.A. relying on the case of Mr.M.S.Patel, which case went upto the Supreme Court.

70. The petitioner has been working on ad hoc basis as Chief Engineer as since we have found the imposition of the departmental punishment challenged in the Second Petition, it is deemed not only expedient but also incumbent and considering the mandate of Article 226, requiring the Court to see that appropriate relief is given to do complete justice between the parties as the writ court under Article 226 enjoys all the extraordinary, discretionary, equitable, but plenary powers. At times, it becomes necessary to ensure that a right person is not further done wrong by the administrative instrumentalities or agencies and to see that the victim of arbitrary, unjust, colourable exercise of power is given full justice, more so even respondent No. 1-State has not thought it expedient to place him under suspension all throughout.

71. Reliance is placed on the decision of the Apex Court in Union of India Vs. K.V. Jankiraman, etc. etc., . In this decision, when "Sealed Cover Procedure" can be resorted to has been highlighted. The Government of Gujarat, by its Resolution dated 23-09-1981, has evolved guidelines and procedure to be followed by DPC in the case of Government Servants under suspension and Government Servants against whom inquiries are pending or are to be initiated. The instructions contained in the Government Circular G.A.D. No.PSY-1065-G dated 24-05-1966 and also the instructions issued under the Government Circular No. 19-12-1979 and the High Court of Gujarat decision in S.C.A. No. 277 of 1980, the guidelines and instructions are evolved by respondent No. 1-State regarding the consideration of the cases of Government Servants for promotion to the higher posts against whom departmental inquiries are pending and they suggested that the State Government should adopt and comply the procedure followed by the Government of India. In this context, the Government of Gujarat has review the then existing policy applicable to such cases and in supersession of orders contained in para 4 of G.C.G.A.D. dated 24-05-1966 and the G.C.G.A.D. dated 19-12-1979 and has issued further guidelines and instructions.

72. G.R. No.SLT-1080/895/G2 of G.A.D. dated 02-04-1983 is also relied on. In this Resolution, instructions issued under the Government Resolution of G.A.D., No.SLT-1080-895-G2 dated 23-09-1981 are further considered and modified. It provided for the instructions and procedure for promotion of the officers in whose case "Sealed Cover Procedure" has been followed, but against who disciplinary or court proceedings are pending for a long time. On fulfillment of certain fact situations, the appointing authority is empowered to review the case of such officer for promotion provided the officer concerned is not under suspension after the expiry of two years period of departmental proceedings to give suitable officer promotion on ad hoc basis.

73. Where the officer is considered for ad hoc promotion in terms of this Resolution, the DPC or other authorities as the case may be, should make their assessment on the basis of the totality of the officer's record of service and the

fact that the disciplinary or court case is pending should not affect the assessment regarding the suitability for ad hoc promotion. If the officer is recommended by DPC as a result of such consideration for ad hoc promotion, his actual promotion will be subject to the decision of the Appointing Authority, which should take into account the seriousness of the nature of the evidence available, the stages at which the disciplinary or the Court proceedings against him are, as, likelihood of misuse of official position, which the officer may occupy after his ad hoc promotion and the record of service available upto that date.

74. After the decision to promote the officer on ad hoc basis as indicated above, the order of promotion may be issued making it clear in the order itself that (i) the promotion is being made on purely temporary basis and ad hoc promotion will not confer any right for regular promotion and (ii) the promotion shall be "until further orders." It should also be indicated in the orders that the Government will reserve the right to cancel the ad hoc promotion and revert the officer to the post from which he was promoted at any time. (iii) If the officer concerned is acquitted in the court case on merits of the case or exonerated in the departmental disciplinary proceedings, the ad hoc promotion already made may be assigned its place in the Seniority List as he would have got in accordance with the recommendation of the DPC (iv) Where the acquittal in court case is not on merits, but on technical grounds, and the Government either proposes to take the matter to a higher court or to proceed against the officer departmentally, the Appointing Authority may review whether the ad hoc promotion should be continued. (v) Where the acquittal by the Court on technical grounds and if the Government does not propose to go in appeal to a higher court or to take further departmental action, then the action would be taken in the same manner as the officer had been acquitted by the Court on merits. (vi) If the officer concerned is not acquitted or exonerated, the ad hoc promotion already granted should be brought to an end and the officer concerned will be reverted from the post from which he was promoted on ad hoc basis after such reversion, the officer may be considered for future promotion in the usual course by the DPC.

75. Whereas in further Government Resolution No.SLT-1080/895/G-2 dated 18-03-1998, further guidelines and instructions have been issued as to what procedure should be followed when Government Servant is imposed minor punishment in terms of Rule 6 of 1971 Rules, except withholding of promotion. It is provided that minor punishment in terms of Rule 6 of 1971 Rule except the order of withholding of promotion, such an official of the Government will not be considered disqualified for being considered for promotion to the higher post.

76. Relying on the aforesaid decision and the G.Rs., it has been vehemently contended that the petitioner as well as one Mr.M.S.Patel, Superintending Engineer, got interim orders in their favour, whereby, respondent No. 1-State of Gujarat has been given three directions:

(i) That the case of the officer shall be considered by the DPC for promotion to the post of Chief Engineer within four weeks from today without reference to the

charge-sheet, the subject-matter of the Special Civil Application.

(ii) The respondent-State shall fill-up the vacancies in the post of Chief Engineer as per all the recommendations of the DPC, if the candidates are otherwise found fit for promotion as per the rules and other provisions governing promotion.

(iii) The promotion of the officer, if that should happen, shall be subject to the result in the writ petition.

77. The interim order passed in the L.P.A. was also challenged before the Supreme Court in S.L.P., but unsuccessfully as it was dismissed. It was observed that it will be open for the petitioner in SLP to seek a review, if so, advised in regard to the contention based on Rule 7 which appears to be pending.

78. The petitioner in First Petition, being Special Civil Application NO. 8698 of 1993, also, got interim orders from this Court to the effect that if the Select List for the post of Chief Engineer is operated and if Mr.M.S.Patel is found to be sailing in the same boat as the petitioner by the DPC and if the petitioner is also selected, the petitioner shall be treated in the same manner as Mr.M.S.Patel is treated in the matter of promotion to the post of Chief Engineer. Such permission shall be subject to the result of interim relief as also the petition as the case may be and by virtue of such interim order and direction of this Court, the case of the petitioner was considered and he was found fit and he has been given ad hoc promotion to the post of Chief Engineer and he has been working as such since then, which is not in dispute. It is in this context submitted that the petitioner is victimised and since his case and the case of Mr. M.S.Patel stands on the same footing, the petitioner is entitled to the same treatment and relief.

79. On behalf of the petitioner, it is further submitted, placing reliance on the decision in "Union of India And Ors. v. K.V.Janakirama and Ors.(supra)" that when the DPC first met to consider the petitioner's promotion to the post of Chief Engineer, there was no departmental or disciplinary proceedings or any case in Court of Law pending or there was no prima-facie case on the basis of which a decision has been taken to proceed against the petitioner either departmentally or in Court of Law.

80. Merely, preliminary investigation was being made and in absence of any decision to take the case of petitioner for disciplinary action, respondent No. 1-authority ought not to have postponed the DPC meeting for considering the case of the petitioner for promotion to the post of Chief Engineer. The petitioner was eligible and was within the Zone of Consideration and his case should have been considered on merits and should not have been treated as "OPEN" together with similarly situated Mr.M.S.Patel, Superintending Engineer.

81. There is no dispute about the fact that Mr.M.S.Patel, who is exactly similarly situated officer, filed S.C.A. No. 4887 of 1993 in this Court and got the interim order in his favour. Thereafter, the matter was taken up and Rule was issued as no relief was continued by the Single Bench by a reasoned order which was

challenged by Mr. Patel in L.P.A. No. 262 of 1993, which was heard by the Division Bench, consisting of Hon'ble Chief Justice and Hon'ble Mr. Justice S.D. Dave, as he then was and the Division Bench allowed the appeal and directed the State Government to consider the case of Mr. M.S. Patel ignoring the charge-sheet. Mr. M.S. Patel and the petitioner's case were considered by the DPC meeting on 02-06-1996, but no promotion was given in view of charge-sheets to both of them. Therefore, M.C.A. No. 947 of 1993 in L.P.A. No. 262 of 1993 preferred by Mr. M.S. Patel, in which the Division Bench specifically observed that as on 16-02-1993 when the DPC first was convened for considering the case for promotion to the post of Chief Engineer, no charge-sheet was issued, no departmental proceeding was pending and there was no any decision. SLP at the instance of respondent No. 1 State of Gujarat was filed, which came to be dismissed and thereafter, the petitioner and Mr. M.S. Patel, both came to be promoted as directed by the Court.

82. At the time of consideration of the case of the petitioner as well as Mr. M.S. Patel, when DPC first met on 16-02-1993, no disciplinary or court case was pending and there was no decision to take departmental action and to prosecute the officers. The petitioner challenged the departmental punishment order dated 24-01-2002 by filing a writ petition, being Special Civil Application No. 1853 of 2002 and the Single Bench after admitting the said petition, confirmed the ad interim relief granted earlier till final hearing of the petition so far as it relates to the question of reversion of the petitioner from the post of Chief Engineer on which he was appointed on ad hoc basis by virtue of order of the Court to the post of Superintending Engineer on account of departmental punishment awarded to him while exonerating all other 16 such officers similarly situated and facing similar charges. Needless to reiterate that the petitioner has never been put under suspension.

MISCONDUCT VIS-A-VIS DISCIPLINARY JURISDICTION

83. The expression "misconduct" is not defined under the Rules or the Regulations. The dictionary meaning of the word is given as bad management, malfeasance or capable neglect of an official in regard to his office. Misconduct is a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand. It is evaluation of definite law, a forbidden act, which implied a wrongful intention and not a mere error of judgment.

84. Notwithstanding, it very well was visualized that the expression "misconduct" though not capable of precise definition, its reflection to receive its connotation from the context, the delinquency in its performance, and its effect on the discipline and the nature of duty. It may involve moral turpitude. Misconduct has to be improper or wrong behavior, unlawful behaviour, wilful in character, forbidden act, a transgression of stabilized and definite rule of action, or code of conduct. It is therefore, required to be seriously noted that mere error of judgment, carelessness or negligence in the performance of the duty, the act

complained of bears forbidden quality, the character, its ambit has to be construed with reference to the delinquency, alleged or the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. It is true that the discipline in service and its resultant impact on management, plays very important role. It requires to maintain strict discipline. Laxity in this behalf erodes, discipline in the service causing serious effect in the maintenance of good governance, legal problems.

85. In absence of any allegation of lack of integrity, want of efficiency, administrative capacity, corruption, misappropriation, unbecoming conduct, dereliction of duty, and when action of proposed only on the premise of having not adhered to the instructions contained in a public works manual, without any allegation of purchase for higher rates and price or with ulterior motive or any loss or damage to the Government property or money, or any deliberate attempt joining hands with other officers, in a quasi judicial action or that for purposes, even in a departmental action higher care and better precautions are warranted in the face of the pleas raised of mala fide, arbitrariness, unfairness, unjustness and vindictiveness, victimization by taking action for non existent delinquency after a lapse of 8 years so that the officer goes out of run for the higher post by promotion cannot be slightly and lightly taken or brushed aside, while testing the merits of the petition with the aid of judicial review, by invocation of constitutional plenary, prerogative, protective, discretionary, equitable relief.

86. It is a settled proposition of law that when the law under which the authority is making a decision, itself requires a judicial approach, and the decision will be quasi judicial. It is incumbency upon the disciplinary authority to address itself whether the so-called or impugned delinquency is in any way actionable wrong, whether it is justiciable to hold the departmental inquiry and that too, after a period of 8 years. In such a peculiar factual profile and special circumstances and special orders and actions taken by the Government, the office of the Advocate General and exoneration of other similarly situated officers. It is also necessary for the Court to address itself and to find out from the record as to whether the impugned actions or the charge delinquency in the backdrop of the facts and the ultimate conclusion of holding an employee or the officer guilty, we thought when the serious punishment, whether the impugned imposition of penalty, holding guilty is fair, just, reasonable, rational, or tainted with malice and smelt of extraneous consideration, leading to victimization. If that be so, it becomes equally duty or incumbency upon the Court, more so, in a petition under Article 226 to see that the victim is protected, and the innocent is assisted against the mighty power of State management of the company, as the case may be. If not, the impugned action of imposition of penalty finding person guilty, cannot be interfered with, as the Writ Court does not sit as an appellate Court and cannot reappreciate and reexamine the evidence and reverse the impugned actions by holding that the different perception or the view is permissible and possible.

LEGAL CONTOURS AND JURIDICAL CHRONICLES

87. Although the discretion is that the disciplinary authority to impose quantum of punishment, but if such discretion is not exercised by the authority in the spirit of statue or fairly or honestly or according to the Rules on reasons and justice then the order passed by such authority can be interfered with. This proposition is, also, very well settled in Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another, .

88. Equally true is the fact that the Article 14 condemns discrimination not only by a Substantive Law, but, also, by a Law of Procedure in Budhan Choudhry and Others Vs. The State of Bihar, . It has been, clearly, held that if any impugned action or order of the authority if is found to be discriminatory, it has to be quashed.

89. Article 14 enshrines the fundamental right of equality before the law or the equal protection of the laws. Clause (1) of Article 16 guarantees equality of opportunity for all citizens in matters relating to employment or appointment of any office under the State, and Clause (2) prohibits discrimination on certain grounds in respect of any such employment or appointment. This proposition is very well settled in Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others, .

90. The expression "matters relating to employment or appointment" in Article 16(1) must include all matters in relation to employment both prior and subsequent to employment which are incidental to the employment and form part of the terms and of conditions of such employment. This proposition of law is very well elucidated in The General Manager, Southern Railway Vs. Rangachari, .

91. It is, therefore, clear that the ambit and scope of Articles 14 and 16 of the Constitution of India are not limited to cases where the Public Servant affected has a right to a post. Even if a Public Servant is an officiating capacity, he can complain of violation of Articles 14 and 16 if he has been arbitrarily or unfairly treated or subjected to a mala fide exercise of power by the State machinery. The celebrated case on this principle is E.P. Royappa Vs. State of Tamil Nadu and Another,

92. The departmental proceedings are, undoubtedly, quasi judicial. Even the administrative order of an authority is found suffering from the vice of violation of provisions of statue or irrationality or unreasonableness or impropriety, the factum of such order can seek constitutional redressal. The inquiry, under Article 311, is domestic inquiry and Court is not concerned with the question whether, on the evidence before the State or the authority passing the order against the Civil Servant, there is sufficient evidence to justify the orders. However, the guarantee under Article 311 is regarding the regularity of the inquiry. If the inquiry is not initiated on the ground of any procedural irregularity or is not suffering from any vice of unfairness, mala fide or victimization, the Court is not

concerned to decide whether the evidence has justified the order. This proposition is very expeditiously expounded in *Kshirode Behari Chakravarty v. Union of India*, 1971 (3) SCC 850 .

93. The redressal of grievance, in the hands of the departmental authorities, has taken a unduly long time. This is so on account of the fact that no attention is ordinarily bestowed over these matters and they are not considered to be Government business of substance. This, the approach has to be deprecated and authorities on whom power is vested to dispose of appeals and revisions under the Service Rules, must dispose of such matters as expeditiously as possible. Ordinarily a period of three to six months should be the outer limit. That would discipline the system and keep the public servant away from a protracted period of litigation and unnecessary hardship and avoidable stress and strain. In this behalf the celebrated case is *S.S. Rathore Vs. State of Madhya Pradesh*,

94. In "*Indrani Bai v. Union of India* 1994 (2) SCC 256" the Supreme Court has made following pertinent observations:

"It is clear case of the violation of principles of natural justice. It is seen that right through, the delinquent officer had entertained a doubt about the impartiality of enquiry to be conducted by the enquiry officer, when he made representation at the earliest, requesting to change the enquiry officer, the authorities should have accepted to the request and appointed another enquiry officer, other than the one whose objectivity was doubted. If unfortunately it is not done then and also when the enquiry officer did not adopt the said procedure which would have been just, fair and reasonable. Under these circumstances, it is a clear case that the delinquent had not been afforded a fair opportunity, much less a reasonable opportunity to defend himself. That has resulted in violation of the principles of natural justice and fair play offending Articles 14, 21 and 311(2) of the Constitution. The orders of dismissal as confirmed by the appellate authority are accordingly quashed."

95. A person with a bias or who is competing and taken interest with the delinquent is disqualified to act as an Inquiry Officer. This proposition and principle is now very well established. It is a public policy that as far as possible judicial proceedings and disciplinary proceedings in a domestic Tribunal which are quasi judicial in nature shall not be only free from actual bias or prejudice of the adjudicator but they shall be free from the suspicion of bias or prejudice. In this connection it would be interesting to refer to the decision in *R. Viswanathan Vs. Rukn-UI-Mulk Syed Abdul Wajid*, but let it be noted that the petitioner had time and again written against the Inquiry Officer for delaying the proceedings and he had written many times to expedite the pending proceedings so that prejudice may not be caused to him for his case for promotion to the Higher Post. Inquiry Officer or Presenting Officer, who is biased or having adverse interest, should not conduct the proceedings, as it, also, against the principle of fairness and reasonable opportunity. The petitioner drew attention of the authorities that one rival, Mr.Khatri, who was in charge of presenting the proceedings before the

Inquiry Officer against the petitioner was not at all considered. It is an admitted fact that Mr.Khatri got promotion to the higher post in the cadre of Secretary. This also goes to show that the proceedings were conducted by a person so far as interest has been adverse to the interest of petitioner and, therefore, fairness and reasonable opportunity on account of bias cannot be said to have been observed.

96. In the result, the Second Petition, being Special Civil Application No. 1853 of 2002, is allowed by quashing and setting aside the impugned order of departmental punishment, dated 24-01-2002, whereas, in the Third Petition, being Special Civil Application No. 15422 of 2003, wherein, the challenge is against the initiation of departmental proceedings, which have now reached to a stage of final hearing as the evidence part is over, whereas in the Fourth Petition, being Special Civil Application No. 15423 of 2003, the departmental proceedings are not yet started though charge-sheet is served, and looking to the peculiar facts and circumstances and nature of it, instead of quashing and giving any directions against the on-going departmental proceedings, the respondents are directed to consider the case of the petitioner for promotion to the post of Secretary from the date his junior is given promotion, irrespective of the pendency of such inquiries and to take a decision on or before 31st January, 2005, on `ad-hoc" basis, in accordance with the prevalent rules and in the event of his fitness and such appointment being made, the same will be subject to the final outcome of the pending ongoing departmental inquiries, by regularising his ad-hoc promotion, based on the direction of the Division Bench of this Court for the post of Chief-Engineer in accordance with the rules and in the light of our observations and directions made hereinbefore. The First Petition in which the challenge is against the initiation of departmental proceedings and quashing of charge-sheet dated 27-04-1993 which have, now, resulted into the departmental punishment, which is challenged in the Second Petition and which is allowed quashing punishment, this petition, therefore, will assume no survival value and accordingly, it shall stand disposed of, leaving the parties to bear their own costs. Rule shall follow accordingly in all the petitions in this group.