

(2002) 05 DEL CK 0004

In the Delhi High Court

Case No : Civil Writ Petition No. 641/98

Dr. Chandra Prakash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-05-2002

Acts Referred:

All India Services (Discipline and Appeal) Rules, 1969 — Rule 8, 8(5)
Commissions of Inquiry Act, 1952 — Section 3

Citation : (2002) 100 DLT 335 : (2003) 3 SLJ 293

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : P.N. Lekhi and J.K. Das, for the Appellant; Jyoti Singh, for the Respondent

Judgement

A.K. Sikri, J.—The petitioner is an IPS Officer of Arunachal, Goa, Mizoram and Union Territories Cadre (earlier known as Union Territories Cadre). His year of allotment is 1971. In the year 1984, he was posted as the Deputy Commissioner of Police, South District, Delhi. As is well known, following the assassination of Prime Minister Smt. Indira Gandhi on 31st October, 1984, wide-spread riots broke out in various parts of the country including Delhi. As a result of this pogrom targeting a particular community, large scale arsoning, looting and killing of innocent persons continued for some days. There were allegations to the effect that appropriate steps were not taken by the administration including the police administration for controlling the situation which led to complete break down of law and order. It resulted in various follow up actions. On 12th November, 1984 Sh. S. Tandon, the then Commissioner of Police was transferred and in his place sh. S.S. Jog was appointed.

2. By his order dated 25th November, 1984 Sh. Jog appointed Mr. Ved Marwah, additional Commissioner of Police, Delhi as One Man Commission to enquire into the alleged failure of Delhi Police and also to identify the causes as well as the officers/men behind the alleged failure of Delhi Police to maintain the law and

order .The said Committee, however, could not function as a restraint order dated 25th November, 1985 was passed by this court in Suit No. 677/85 filed by the petitioner and Sh. Sewa Dass restraining the Committee from publishing the enquiry report and submitting the same to the Lt. Governor and the Union of India from taking action against the petitioners. However, on 12th April, 1985 the Government of India issued a Notification u/s 3 of Commission of Enquiry Act, 1952 appointing Mr. Justice Rangnath Mishra (as he then was) as a Commission of Inquiry to Enquire into the allegations in regard to the circumstances of organized violence which took place in Delhi following Smt. Gandhi's assassination. Mr. Justice Rangnath Mishra submitted his report which, inter alia, contained recommendation for setting up an inquiry Committee to make further detailed inquiry into the delinquencies and good conduct of police officers.

3. Acting on this report, the Delhi Administration issued an order appointing a Committee (consisting of Mr. Justice Dalip K. Kapur, retired Chief Justice of this court and Ms. Kusum Lata Mittal, retired IAS) to conduct inquiry with specific terms of reference. The two members submitted two separate reports to the Lt. Governor on 1st March, 1990. Whereas Mr. Justice Kapur declined to record any findings against any person unless and until an opportunity of hearing was given to the affected parties, Ms. Mittal submitted her report in writing indicting 72 police officers.

4. On the basis of the report of Ms. Mittal, Memorandum of charge-sheet was issued to the various police officials. The petitioner was also issued charge-sheet dated 21st September, 1992 proposing to hold an enquiry under Rule 8 of All India Services (Discipline & Appeal) Rules, 1969

5. At this stage it may be mentioned that some of these police officials filed OAs before the Central Administrative Tribunal seeking in the main, the relief of restraining the Government from serving charge memos on them based on Ms. Mittal inquiry report. Order dated 9th March, 1992 was passed by the Central Administrative Tribunal to the effect that in case the Government wanted to serve charge memos on the affected police officials, they should be provided with the copy of the Ms. Mittal Inquiry report. After this order the petitioner made a request to the Government vide letter dated 15th September, 1992 to provide him with a copy of the Ms. Mittal inquiry report on the ground that he was similarly situated officer and Therefore the spirit of order dated 9th March, 1992 applied to his case as well. The respondents did not supply the copy of the inquiry report. It may be pertinent to mention here that against the aforesaid order dated 9th March, 1992 of the learned Tribunal in OA filed by other officers, the Government filed Special Leave Petitions and vide order dated 21st September, 1992 while issuing notice in the SLPs the Supreme Court Granted interim stay to Tribunal's order which directed the Government to hand over copy of the report of the Committee to these police officers.

6. At this state, the petitioner herein filed OA No. 2971/92 on 9th November, 1992 essentially with the prayer to supply him copy of the Ved Marwah inquiry

report even though not officially submitted or acted upon as well as copies of the separate reports of Ms. Kusum Lata Mittal and Mr. Justice Dalip K. Kapur as also the statements of all the witnesses/relevant documents.

7. On 30th August, 1996 the Supreme Court dismissed the Government's SLPs filed against the interim order dated 9th March, 1992 passed in the cases filed by other police officers.

8. After this order the petitioner filed MA No. 1930/96 seeking direction to the respondents to consider him for promotion to the next higher rank subject to the outcome of the departmental enquiry which was dismissed by the Tribunal vide order dated 16th December, 1996 as beyond the scope of adjudication on OA. Thereafter, he filed MA No. 446/96 seeking to amend the OA by including the prayer that in the event of failure of the respondents to supply a copy of the Mittal report and other documents the charge memo served upon him shall be deemed to have been quashed and he may be considered for empanelment for promotion as Inspector General of Police irrespective of the pending of the charge memo and subject to the outcome of the OA. This MA was also dismissed vide order dated 4th April, 1997 as beyond the scope of Main OA as well as unconnected with the relief prayed for therein. The Writ Petition No. 1568/97 challenging the said order dated 4th April, 1997 was also dismissed by this court on 6th May, 1997

9. Now the petitioner filed another substantive OA being OA No. 1458/97 for quashing of charge memo dated 21st September, 1992 initiating departmental proceedings against him.

10. Both these OAs i.e. 2971/92 and 1458/97 were heard together by the learned Tribunal which stand dismissed by reason of impugned judgment dated 9th December, 1997. This writ petition is preferred challenging the aforesaid judgment.

11. In OA No. 2871/92 the relief prayed for by the petitioner was directing the respondents to supply him the copies of Ved Marwah inquiry report even though not officially submitted or acted upon, copies of the separate inquiry reports of Ms. K.L. Mittal as Well as Justice D.K. Kapur and statements of all witnesses/ relevant documents to enable him to submit his defense statement under Rule 8(5) AIS (Discipline & Appeal) Rules.

12. By reason of the impugned judgment, the learned Tribunal disposed of this OA with the following directions:

(i) Prayer for copy of the Ved Marwah Inquiry report if rejected.

(ii) Respondents are directed to supply the applicant copies of the reports of Ms. Mittal and Justice Kapur in full within six weeks from the date of receipt of a copy of this judgment.

(iii) Respondents are directed to supply to applicant additional copies of the

documents mentioned in Annexures III to IV to the Charge Memo dated 21.9.92 copies of which are stated to have already been supplied to him vide Respondents' letter dated 14.10.92, within six weeks from the date of receipt of a copy of this judgment.

(iv) Within the aforesaid period prescribed Respondents should also give applicant a further opportunity of inspecting those documents, inspection of which was earlier allowed vide letter dated 14.10.92 and it will be open to him to avail of the same."

In OA No. 1458/97 the relief claimed by him was worded as under:

"...in view of the facts and circumstances set out above and in the interest of justice, this honorable Tribunal be graciously pleased to quash the charge-memo No. 14033/8/92/UTS dated 21.9.92 initiating departmental proceedings against the applicant."

13. A perusal of the impugned judgment shows that the petitioner had sought quashing of the charge memo on various grounds which, inter alia, included the contention that the charge memo was in violation of principles of natural justice, there was delay in supplying the extracts of Ms. Mittal report after the dismissal of the SLPs by the Supreme Court Vide order dated 30th August, 1996, there was delay in serving the charge memo, the respondents had acted with bias, malafide and closed mind and the charge memo was discriminatory. All these grounds were brushed aside by the learned Tribunal as devoid of any merit. It may be pointed at this stage that one of the grounds for impugning the charge memo was that it was a case of "no evidence". This ground was founded on the contention that some of those who had filed affidavits against the petitioner before Ms. Mittal had subsequently retracted while others who had filed affidavits were motivated by personal animus and also that there were various discrepancies and improbabilities in the contents of the affidavits in so far as they related to petitioner's role in November, 1984 riots. Even this ground did not find favor of the learned Tribunal primarily because of the reason that sufficiency and quality of that evidence was not a matter which could be gone into by the learned Tribunal when the departmental proceedings had not even commenced and such questions would be gone into during the course of departmental enquiry and any finding at that stage even before the departmental enquiry had commenced were not only outside the learned Tribunal's jurisdiction but highly premature. Resultantly, this OA was dismissed by the learned Tribunal giving aforesaid reasons in support of the impugned judgment.

14. Some developments have taken place during the pendency of the present writ petition and it would be appropriate to take note of these developments at this stage. In fact, as would be noticed at the appropriate stage, the submissions before us at the time of hearing of the present writ petition were essentially based on these subsequent developments.

15. It may be mentioned that during the pendency of the present writ petition,

the petitioner was considered for selection to the post of Inspector General of Police for which DPC was held on 9th April, 1997. However, since the departmental proceedings were pending against the petitioner, the respondents resorted to sealed cover procedure. This prompted the petitioner to file CM. No. 1101/98 with prayer that the recommendations of the DPC as contained in sealed cover be given effect to who also pointed out that even the next DPC was scheduled to be held on 6th April, 1998 and persons junior to him were being promoted with the result that they were becoming his seniors and he was made to suffer for certain irregularities which allegedly took place in the year 1984. Keeping in mind these circumstances, vide order dated 2nd April, 1998 the respondent No. 1 was directed to complete the inquiry and pass final order within four months from the said date. Review application No. 32/98 was filed by the petitioner seeking review of this order which was dismissed vide order dated 17th April, 1998. SLP filed by the petitioner met the same fate at the hands of the Supreme Court.

16. in the meantime the petitioner filed another CM. No. 6860/98 pointing out the holding of another DPC and keeping the result in sealed cover. On this application the following order was passed on 26th June, 1998:

" In the event of the respondents not complying with the order passed by this court on 2.4.1998, the sealed envelope will be opened by this court. If on opening the sealed cover the opinion of the DPC is in favor of the petitioner, the respondents may have to be directed to post the petitioner in the promotion post and for that purpose we direct the respondents to keep one of the posts vacant till 3.8.1998. On 3.8.1998 appropriate directions would be issued by this Court depending upon the outcome of the enquiry and the orders to be passed by the respondents.

If exigencies of service would require, the respondents are at liberty to make officiating appointment to the above two posts."

17. The Inquiry Officer went ahead with the enquiry and submitted his report dated 31st July, 1998. As per his report, he did not find the petitioner guilty of any charges and exonerated him of all the eight charges leveled against the petitioner.

18. As per order dated 2nd April, 1998 the respondents were required not only to complete the inquiry but to pass the order within four months i.e. 2nd August, 1998. The respondents filed CM No. 6830/98 seeking two weeks time to enable the respondents to complete the process as inquiry report submitted by the Inquiry Officer on 31st July, 1998 was under consideration by the disciplinary authority. The matter was accordingly directed to be listed on 10th August, 1998, the date of which was already fixed, with directions to place before the court the latest position. On 10th August, 1998 the court was informed that the disciplinary authority had tentatively decided not to agree with the decision of the inquiry officer and Therefore, a memorandum dated 8th August, 1998 was

served upon the petitioner calling upon him to file reply within five days. It was stated that after receiving the reply, the disciplinary authority would take the decision within three days. The Petitioner submitted his reply dated 19th August, 1998. Moreover, the petitioner also filed CM No. 8476/98 seeking direction for his promotion to the next higher post. This application Along with CMs No. 1101/98 & 6830/98 were heard at length and decided by a detailed order dated 23rd September, 1998. The respondents were directed to open the sealed cover forthwith and process the recommendations of the DPC for promotion of the petitioner, if any, to higher post which would be subject to final outcome of the writ petition. Review application No.99/98 filed against this order was dismissed and the SLP against it was dismissed by the Supreme Court.

19. Sealed cover was opened and the recommendation contained therein was processed. As the petitioner was recommended for promotion to the post of Inspector General of Police, order dated 31st October, 1998 was passed by the respondents promoting the petitioner to the Inspector General of Police Grade.

20. It may be mentioned that the petitioner at this stage filed CMs No. 10586/98 and 11426/98. In the later application, the court passed order dated 24th November, 1998 directing that no order adverse to the petitioner would be passed in departmental inquiry without leave of the court. On 16th December, 1998 when these applications came up for hearing again, learned counsel for the respondents prayed for variation of the aforesaid order on the ground that the UPSC had conveyed its decision and the respondents be permitted to pass the final order subject to outcome of the writ petition. However, the court was of the opinion that the main writ petition itself be heard finally Along with these applications and directed that writ petition be listed for final hearing. Interim order dated 24th November, 1998 was, however, made absolute till the disposal of the writ petition.

21. When the matter came up for hearing on 11th December, 2001 the following order was passed:

"The only point in this petition is whether Disciplinary Authority while disagreeing with the inquiry officer's report could take in regard extraneous material which was not before the inquiry officer. Mr. Lekhi submits that he wanted to cite some judgments on this and that Disciplinary Authority could not be granted liberty to pass any fresh order excluding such material.

List for disposal on 14th March, 2002."

22. When the matter was argued, learned counsel appearing for the respondents at the outset took a preliminary objection to the effect that the aforesaid question framed by the court could not be gone into as Memorandum dated 8th August, 1998 was a subsequent cause of action and was not subject matter of the main writ petition, and Therefore, the petitioner could challenge the same only before the Central Administrative Tribunal in the first instance.

23. Elaborating this argument, she submitted that the scope of the writ petition filed by the petitioner was limited as it had impugned judgment dated 9th December, 1997 which arises out of OAs No. 2971/92 and 1458/97. However, since the enquiry had already been completed and the prayers contained in the OAs did not survive, the point in issue at this stage was validity of memorandum dated 8th August, 1998. However, this was not the subject matter of challenge. Further, it was only a tentative memorandum whereby the disciplinary authority had proposed to differ with the findings contained in the inquiry report submitted by the Inquiry Officer. The disciplinary authority had yet to take the decision in the light of the reply dated 19th August, 1998 filed by the petitioner to this memorandum as well as advice of the UPSC. The challenge to such a memorandum was, Therefore, in any case premature.

24. Mr. P.N. Lekhi, learned senior counsel appearing on behalf of the petitioner, strongly refuted the aforesaid argument by submitting that the memorandum dated 8th August, 1998 was continuation of the charge memo as well as the inquiry held pursuant thereto, and thus, it was permissible for this court to go into this aspect. His submission was not in OA No. 1458/97 the petitioner had prayed for quashing of the charge memo itself. One of the grounds taken before us, which was taken before the learned Tribunal as well, was that it was a case of "no evidence". Thus the petitioner had in fact made the prayer of quashing of the charge memo itself. His basic prayer remains the same although certain events have taken place thereafter. In fact the Inquiry Officer has upheld his plea in his report dated 31st July, 1998 to the effect that there is no evidence against the petitioner to establish any of the charges leveled against him. These subsequent events can always be taken into consideration to do complete justice in the matter. In support of this plea, the learned senior counsel for the petitioner referred to the judgments of the Supreme Court in the cases of: 1) A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, , 2) State Bank of India v. S. S. Koshal , 3) Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, as well as judgment of Andhra Pradesh High Court in the case of Syed Jaleel Zane Vs. P. Venkata Murlidhar and Others, and that of the English court in the case of Robinson and Ors. v. Unicos Property Corporation Ltd. reported in (1962) 2 All E.R. 24 (at page 26) for the proposition that from the serving of charge memo to the holding of an enquiry by the Inquiry Officer and order of the disciplinary authority would construe one single proceeding and further that "doctrine of overlap" would apply in such a case.

25. On merits he submitted that the Inquiry officer has exonerated the petitioner of all the charges. The inquiry report dated 31st July, 1998 which runs into thirty three (33) pages has analysed the entire evidence, documents and other material placed before it on the basis of which the Inquiry Officer came to the conclusion that none of the charges stood proved against the petitioner. No doubt the disciplinary authority is not bound to accept the findings of the Inquiry Officer and it can differ there from. But, for this it has to record its reasons for such disagreement and give opportunity to the delinquent officer to make

representation against the same before passing the final order. However, in the instant case, the memo dated 8th August, 1998 of the disciplinary authority states that it has tentatively decided to disagree with the findings of the Inquiry Officer in so far as following aspects are concerned:

(i) As per the South District Police Control Room Log Book of the relevant period, the Charged Officer is seen to have received repeated messages about the orgy of violence in the area under his jurisdiction but even after his having acknowledged these messages, he chose not to give any specific directions to his staff for controlling the situation. The details of some of these messages are given below:-

(a) At 1801 hours on 31/10/84 - some Sikhs were being beaten up at Safdarjung Airport area.

(b) At 1825 hours on 31/10/84 - about 1500 people had gathered at Sarojini Nagar Gurudwara and the situation was tense.

(c) At 1841 hours on 31/10/84 - 3 buses were set on fire near East Kidwai Nagar and the mob was going towards B Block Sarojini Nagar Gurudwara.

(d) At 1842 hours on 31/10/84 - on the road leading from Green Park to Mohammedpur village, many buses were blocked and a car was set on fire.

(e) At 1845 hours on 31/10/84 - at Ring Road/Africa Avenue, many people had gathered and stopped the buses and the Sikhs were being beaten up and some were setting the buses on fire.

(f) At 1851 hours on 31/10/84 - the Taxi stand near East Kidwai Nagar had been set on fire.

(g) At 1855 hours on 31/10/84 - Gurudwara situated behind PS/Sarojini Nagar had been set on fire.

(h) At 1900 hours on 31/10/84 - shops in South Extn. Part-II were being set on fire by some boys.

(i) At 1916 hours on 31/10/84 - some shops in South Extn. Part II were being set on fire by some 16-17 boys.

(j) At 1918 hours on 31/10/84 - at Laxmibai Nagar one bus and one car been set on fire.

(ii) The Daily Diary Registers of the relevant period maintained at PS/Srinivasपुरi and PS/Delhi Cantt established the fact that no preventive arrests were made for controlling the riots from these areas nor any rioters booked under the relevant provisions of law.

(iii) The PCR "A Net" Logbook shows that the Commissioner of Police, Delhi, observed at 0315 hours on 3/11/84 that the number of bad characters arrested in the area was too low. But there is no evidence that the Charged Officer made

any efforts in this regard.

(iv) The PCR "A Net" logbook of his jurisdiction shows that at 1309 hours on 1/11/84, the Charged Officer was authorised by the Commissioner of Police to impose curfew wherever he considered it necessary. However, there is no evidence that the CO exercised this power to control the riots.

(v) the Daily Diary Registers of the relevant period maintained at PS/Srinivaspuri and PS/Delhi Cantt do not corroborate in any manner the assertions made by the Charged Officer that he had taken effective measures by way of lathi-charging the rioting mob and use of tear-gas shells etc. against them throughout the area under his jurisdiction.

(vi) In the movement chart submitted by him vide his letter dated 15/2/85, the Charged Officer had claimed that when he reached Ashram Chowk at 1100 hours on 1/11/84, he "fired and prevented direct clash between two groups" engaged in arson, etc. However, the daily diary register recorded during the relevant period in the PS Srinivaspuri does not show any such incident. The South District Police Control Room Logbook for the relevant period also does not show any such firing having been resorted to by the Charged officer.

(vii) The evidence of PW-1 and PW-3 clearly establishes the apathetic manner in which police had handled rioting mobs. This apart, there is sufficient evidence submitted in the form of affidavits before Justice Ranganath Mishra, that the police force in general was acting as mute and ineffective spectators without checking the movement of rioter mobs, for which responsibility attaches to the leadership of the Charged Officer being the head of the District Police.

(viii) It is further shown that 40 miscreants rounded up by the then Addl. Commissioner of Police, Shri Gautam Kaul, and the Charged Officer himself, were somehow let off without being arrested and detained. This would show that the Charged Officer had no effective control over his force.

(ix) The wireless operators dedicated to record messages in the vehicle of the Charged Officer had no motive to tamper with the log-books. On the other hand, log-books were effectively under the control of the Charged Officer at all times and in his official car. The only motive which existed for concealing the movement of the Charged Officer was with the Charged Officer himself, in an effort to conceal that he had not taken effective action against the miscreants and otherwise committed dereliction of duty. For instance, the Charged Officer has claimed to have resorted to lathi-charge and ordered firing at 1100 hours on 1/11/84 whereas neither the daily diary register recorded during the relevant period in PS/Srinivaspuri nor the South District Police Control Room logbook of the relevant period shows any such incident.

26. The contention of Mr. P.N. Lekhi was that none of these materials was proved on the record of Inquiry Officer. The reference to the aforesaid material mentioned at S. Nos. (i) to (vi) and as well as S. Nos. (viii) and (ix) does not

stipulate as to whether these documents to which reference is made were exhibited in the inquiry and/or any witness proved these documents.

27. We may first deal with the preliminary objection raised by the learned counsel for the respondents. Admittedly, the petitioner had approached the learned Tribunal challenging the charge memo with prayer that the same be quashed. The learned Tribunal, by reason of the impugned judgment, dismissed the OAs filed by the petitioner. The learned senior counsel appearing for the petitioner did not argue on the correctness of the judgment of the learned Tribunal. As stated above, the entire argument was confined to the validity of Memorandum dated 8th August, 1998 with reference to report of the Inquiry Officer. Even otherwise, for quashing of the charge memo at a stage when the inquiry is yet to be held, the delinquent officer has to make out a very strong case therefore. Scope of challenge at this stage is very limited. The grounds on which the petitioner challenged the charge memo were looked into by the learned Tribunal and it did not find substance therein. May be the inquiry officer after holding the inquiry has now returned his findings that the charges against the petitioner have not been proved but that may not be a ground to challenge the charge memo itself.

28. Fact remains that after the inquiry officer has given his findings, the disciplinary authority has not agreed with the inquiry officer and has, vide Memorandum dated 8th August, 1998 given its note of disagreement. Now that show cause notice has been served upon the petitioner, the further action can be taken only after consideration of the reply of the petitioner to the said show cause notice. If after consideration thereof any adverse order is passed against the petitioner, it would be a fresh cause of action. The nature of challenge to the charge memo is totally different from the grounds on which the Memorandum dated 8th August, 1998 or the adverse order ultimately passed on that basis is concerned. There appears to be force in the contention of the learned counsel for the respondents that the scope of the present writ petition filed by the petitioner was limited as in this writ petition we are concerned with the validity of the impugned judgment dated 9th December, 1997 passed by the learned Tribunal in OA No. 2971/92 and OA No. 1458/97.

29. In view of the judgment in the case of L. Chandra Kumar Vs. Union of India and others, , we are sitting in judicial review of the impugned judgment of the learned Tribunal. If there is any subsequent cause of action then, as per the aforesaid judgment of the Apex Court, the petitioner is required to approach the Tribunal in the first instance. The Memorandum dated 8th August, 1998, Therefore, cannot be subjected to judicial scrutiny in these proceedings without petitioner having approached the Tribunal and the learned Tribunal giving its findings thereon.

30. There may yet be another difficulty in the way of the petitioner. The matter is at the stage of show cause notice. As held by the Supreme Court in the case of State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, when a show cause

notice is issued to a Govt. Servant under a statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is whom to have been issued palpably without any authority of law. The purpose of issuing show cause is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature.

31. The judgment cited by the petitioner to the effect that subsequent events can be taken into consideration to do complete justice in the matter may not have applicability to the facts and circumstances of this case. Those were the cases where the reliefs prayed for remained the same and the court held that it would be permissible for the court to consider the subsequent events to mould the reliefs and to do complete justice in the matter. In the present case the relief is not the same. As already stated above, before the Tribunal the petitioner had challenged the validity of the charge memo which challenge failed by virtue of the impugned judgment and it is the impugned judgment which is under judicial scrutiny in this writ petition. Now, the petitioner seeks to challenge Memorandum dated 8th August, 1998 which is a show cause notice, disagreeing with findings of the inquiry officer after the inquiry has already been held against the petitioner. Based on such show cause notice, if any order is passed, it would be a totally different cause of action.

32. There may be substance in the submissions of learned senior counsel for the petitioner to the effect that the Memorandum dated 8th August, 1998 of the disciplinary authority takes into consideration fresh material which was not produced before the inquiry officer, and Therefore, the disciplinary authority is precluded from taking this material into consideration. However, it is not necessary to traverse this aspect because of the view we are taking. Without going into the merit of the submissions of the petitioner to this effect, it would be appropriate to observe that the petitioner may file show cause to the Memorandum dated 8th August, 1998 and bring these aspects to the notice of the disciplinary authority. The petitioner had not replied to Memorandum dated 8th August, 1998 in view of the pendency of the present writ petition and stay operating in favor of the petitioner. The petitioner is granted two weeks" time from the date of receipt of the copy of this order for this purpose. We hope and trust that on filing of such show cause notice, the disciplinary authority shall consider the entire matter in the light of the said show cause notice objectively and dispassionately. Keeping in view the peculiar circumstances, we also direct that the disciplinary authority shall grant personal hearing to the petitioner before passing the final order.

33. The writ petition stands disposed of in terms of the aforesaid directions.

34. There shall, however, be no order as to costs.