

(2014) 03 AP CK 0073

In the Andhra Pradesh High Court

Case No : Writ Appeal Nos. 1722 & 1751 of 2003

Electronics Corporation of India Limited (ECIL)

APPELLANT

Vs

H.K. Bhatia

RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Citation : (2014) 6 ALD 134 : (2014) 4 ALT 752

Hon'ble Judges : G. Chandraiah, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : Uma Devi, Advocate for K. Srinivasa Murthy, Advocate for the Appellant; G. Vidyasagar for K. Udaya Sri, Advocate for the Respondent

Final Decision : Dismissed

Judgement

G. Chandraiah, J.—Writ Appeal No. 1722 of 2003 is filed questioning the common order dated 29.08.2003 passed by a single Judge of this Court in W.P. Nos. 2988 of 1989 and the Writ Appeal No. 1751 of 2003 is filed questioning the common order dated 29.08.2003 passed by a single Judge of this Court in W.P. No. 9205 of 1992. Both the writ petitions were disposed of by a common order dated 29.08.2003 as the petitioner and the respondents are one and the same. Inasmuch as the result in the Writ Appeal No. 1722 of 2003 has a bearing on Writ Appeal No. 1751 of 2003, both are dealt with separately.

I. Writ Appeal No. 1722 OF 2003:

The parties to the proceedings are referred to as they are arrayed in the writ petitions.

2. The brief facts of the case of the writ petitioner is that he joined in the 1st respondent organisation as a Technical Officer Trainee in the year 1971. After successful completion of training for one year, the petitioner was appointed as a Technical Officer-I in the year 1972 and later promoted as a Technical Officer-II in 1975. Thereafter, he was further promoted as a Senior Technical Officer in the year 1978. The petitioner was eligible for promotion to the post of Technical

Manager in 1983 on completion of five years service as Senior Technical Officer, in terms of promotion policy of the respondents organisation. While, so the petitioner was interviewed and was considered for promotion by the proceedings on 17.4.1985, but, however, he was not promoted as Technical Manager as per the said selection inspite of his repeated representations and he was informed by the Managing Director of the 1st respondent Corporation that his promotion to the post of technical manager prior to 1986-87 series cannot be reviewed at that stage. As no reasons were furnished, the petitioner got issued legal notice dated 4.1.1988 explaining as to how he was entitled for promotion as per the selection prior to 1986-87 series; that in reply to his legal notice, the 2nd respondent by memo dated 25.1.1988, while admitting that the petitioner was found fit for promotion for 1984-85 series, justified his non-promotion by extraneous reasons. When the petitioner got issued a rejoinder dated 4.3.1988, another memo dated 21/30.9.1988 was issued stating that the petitioner's promotion to the post of Technical Manager could not be effected during the currency of penalty and also for the reasons that the petitioner has been reverted to the post of Technical Officer by an order of punishment dated 02.09.1988.

It is further stated that the petitioner was charge sheeted for his unauthorised absence vide charge sheet dated 19.03.1987. The specific charges are (i) Absence without leave or without sufficient grounds or proper or satisfactory explanation; (ii) Habitual or irregular attendance; (iii) Neglect of work or negligence in performance of duty; (iv) Commission of conduct subversive of discipline or of good behavior. Petitioner was given a time of 48 hours to submit his explanation as to why action should not be taken against him for the above stated misconduct and it was further stated if no explanation is received within the stipulated time, action as deemed fit would be taken. Thereafter, by proceedings dated 22.4.1987, enquiry officer was appointed, who had submitted his enquiry report on 12.5.1988 which resulted in passing of the impugned order dated 2.9.1988. The petitioner's appeal to the appellate authority was rejected. This came to be challenged before the learned single Judge in the above said writ petition, and the learned single Judge allowed them holding that there was gross violation of principles of natural justice while conducting the disciplinary proceedings as well as before imposing the punishment on the petitioner.

3. Ms. Uma Devi, learned counsel appearing for the Appellants corporation would submit that the learned single Judge has grievously erred in allowing the writ petitions holding that there was a gross violation of principles of natural justice in conducting the enquiry and in passing the impugned order of punishment on total misconception of the relevant rules and governing law as enunciated by the Apex Court in the judgments reported in Union of India and others Vs. Mohd. Ramzan Khan, , Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and State Bank of Patiala and others Vs. S.K. Sharma, .

4. Further elaborating, the learned counsel for the appellants would venture to submit and question each of the findings recorded by the learned single Judge as

erroneous.

(i) The orders impugned are non speaking orders:

The learned counsel for the appellants submits that the nature of charges being self-explanatory coupled with the fact that the petitioner's failure to submit his explanation in response to the show-cause notice framing charges, petitioner was disentitled to urge that there was a violation of principles of natural justice. She would further submit that the petitioner failed to avail the opportunity provided under the rules and remained ex parte and in such circumstances, the enquiry report cannot be found fault. Inasmuch as the disciplinary authority had accepted the enquiry report which was confirmed by the appellate authority, there is no requirement of recording any reasons as the order of the disciplinary authority has been accepted by the appellate authority.

(ii) There is violation of the procedure contemplated under Rule 34(3) of Conduct, Discipline and Appeal Rules, 1978:

The learned counsel for the appellants would submit that the finding of the learned single Judge that the petitioner was not furnished with the details and list of documents and the witnesses who were proposed to be examined along with the charge sheet as required under law is erroneous and the petitioner is not entitled to raise this ground having not submitted his objections to the charge sheet issued on 19.3.1987. She would further submit that on a proper reading of the Rule 34(3) of the Conduct, Discipline and Appeal Rules, 1978 (for short "the Rules"), it is clear that there is no requirement of furnishing any documents along with the charge sheet and the finding given by the learned single Judge is perverse.

(iii) The petitioner was not allowed to take defence assistance:

The learned counsel for the appellants would submit that a proper reading of Rule 34(6) of the Rules shows that the petitioner is entitled to take assistance of any other employee or public servant and the petitioner chose to be represented through one Sri D. Rama Subba Reddy, L.S.G., Postal Assistant, Stonehousepet (P.O.), Nellore as defence assistant through his letter dated 20.07.1997, but the said defence assistant did not choose to make his appearance before the enquiry officer inspite of giving ample opportunities and thus the enquiry officer cannot be found fault for proceeding with the enquiry ex parte. It was the responsibility of the petitioner delinquent employee to make arrangements to bring his defence assistant and it is not for the enquiry officer to ensure and facilitate the presence of the defence assistant. The petitioner himself having failed to avail the opportunity of bringing the defence assistant, cannot blame the enquiry officer and in that view of the matter the finding of the learned single Judge that no adequate opportunity was provided to the petitioner to be defended by the defence assistant, in the facts of the case, is totally unsustainable.

(iv) There is violation of Rule 35(5) of the Rules.

The learned counsel for the appellants would submit that the respondent had specifically pointed out that there was no Sub Rule 5 of Rule 35 of the Rules at relevant point of time as the same came to be added with effect from 30.6.2000 as evidenced by the Personal Circular No. 876/2000-2001 dated 20.09.2000 issued by the respondent corporation. Sub Rule 5 of Rule 35 of the Rules could not have been applied to the enquiries conducted prior to June, 2006. She would further submit that the absence of Sub Rule 5 of Rule 35 of the Rules was specifically pointed out and inspite of the same, the learned single Judge ignored the same and relied on the Sub Rule 5 of Rule 35 of the Rules. By placing reliance on the judgment of the Supreme Court reported in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., she would point out that the law declared by the Supreme court in the decision reported in Union of India and others Vs. Mohd. Ramzan Khan, , was held not applicable to the cases which were decided prior to the said judgment and in that view of the matter, there is a grave error committed by the learned single Judge in holding that the order of imposing punishment as vitiated on account of non furnishing of enquiry report prior to imposition of penalty under Rule 34 of the Rules.

5. On the other hand, Sri G. Vidyasagar, learned senior counsel instructed by Smt. K. Udaya Sri, would support the order of the learned single Judge point by point.

6. He would submit that the very order imposing punishment is bereft of any reference to the allegations, evidence and findings recorded by the Enquiry Officer and the supporting material for finding the petitioner as guilty. In other words, except conclusion, there are no findings backed by material evidence. The orders of the disciplinary authority as well as the appellate authority are to the same effect. He would further submit that in the appeal submitted by the petitioner on 4.10.1988 several objections both on facts and law were made and the order of the appellate authority does not refer to even remotely to any of the objections and appeal grounds. In the absence of show-cause notice being issued to the petitioner before a major penalty being imposed, the right of the petitioner to appeal against the punishment imposed the consideration of the appeal and appeal grounds by the appellate authority, is a very valuable right and the only safeguard to a delinquent employee who has suffered punishment. The laconic order of the appellate authority confirming the order of the disciplinary authority is in violation of the valuable right conferred by the Rules on the petitioner.

7. The learned senior counsel would point out that a plain reading of the Rule 34 of the Rules would leave no manner of doubt that the disciplinary authority after framing the definite charges, is duty bound to furnish in writing a list of documents and witnesses by whom the charges are proposed to be substantiated to enable the charged employee to submit his written explanation. In the present case, it is an undeniable and admitted case that the procedure contemplated under Rule 34(3) of the Rules was violated.

8. So far as the defence assistant is concerned, the learned senior counsel would

urge that though by the proceedings dated 11.9.1987 and 19.9.1987, the enquiry officer communicated to the petitioner that it is for him to make arrangements to bring the defence assistant, later by letter dated 28.1.1988, the disciplinary authority had infact sent notice to the defence assistant Sri D. Rama Subba Reddy about the enquiry to be held on 19.2.1988 but failed to inform about the postponement of the proceedings later to 10.3.1988 and 19.3.1988 and finally to 2.4.1988. He would further submit that in the absence of the communication, the defence assistant could not attend the enquiry proceedings to conduct the defence proceedings and as such there was violation of giving adequate opportunity as found by the learned single Judge.

9. With respect to non furnishing of the enquiry report prior to imposition of punishment by the disciplinary authority, learned senior counsel would submit that the Personal Circular No. 876/2000-01 dated 20.9.2000 was never placed before the learned single Judge and for the first time, the same has been brought in the paper book at the time of arguments and the same was also not forming part of the appeal grounds and material documents filed along with the appeal and the contention of the learned counsel for the respondents corporation that the same was brought to the notice of the learned single Judge is factually incorrect. He would further submit that if the respondents corporation is of the opinion that the learned single Judge had erred in taking into consideration of Sub Rule 5 of Rule 35 of the Rules, the remedy for the respondents corporation would lie in seeking review of the order of the learned single Judge and appeal before this Court would not lie.

10. Finally the learned senior counsel would urge to dismiss the appeal.

11. To appreciate the respective submissions of the parties, we may have to refer to some of the orders made by the respondents, as the case mainly turns on the appreciation of the facts on record. We have already referred to the charges framed against the petitioner in para No. 2. The final enquiry report is a short one consisting of one page of 6 paragraphs. Paras 1 to 4 narrate the appointment of enquiry officer, commencement and conclusion of enquiry and the charges which were enquired into. Para Nos. 5 and 6 are relevant which infact records the findings which reads as under:

5. Shri B.V. Rao, Presenting Officer has produced sufficient records about the absence of Shri H.K. Bhatia as stated in the charge sheet and Shri Bhatia has not produced any record to counter the charges. Finally the enquiry has been concluded on 2.4.1988 in the absence of Shri H.K. Bhatia. The evidence submitted by Shri B.V. Rao, Presenting Officer clearly indicates, on record, that Shri H.K. Bhatia has been absent without leave which is habitual and in negligence of performance of his duty which also constituted an act of indiscipline.

6. In view of the above, I found Shri H.K. Bhatia guilty of committing the charges alleged against him vide the charge sheet No. ECIL/CMG/PC/1782, dated

19.3.1987.

12. The para No. 5 as extracted above though records a finding that the evidence submitted clearly indicated that the petitioner has been absent without leave, what evidence was considered and who had lead the said evidence is conspicuously absence. Further a conclusion with regard to all the charges had been recorded without there being any discussion with regard to the material for recording the said findings and the conclusions drawn are based on no evidence. The order of the disciplinary authority dated 7.9.1988 reads as under:

Electronics Corporation of India Limited Computer Group

ECIL: CMG: 18501: Date: 1988.08.

Shri H.K. Bhatia,

Code No. 18501,

STO, CMG

Further to charge sheet No. ECIL:CMG:PC:1782 dated 1987.03.19, a domestic enquiry was ordered vide ECIL:ESG: ACE(C):87:1393 dated 1987.05.07.

2. The Enquiry Officer has now submitted his findings.

3. The Enquiry Officer has concluded that you are guilty of the following four charges framed vide charge sheet mentioned above:

(i) Absence without leave or without sufficient grounds or proper or satisfactory explanation;

(ii) Habitual or irregular attendance;

(iii) Neglect of work or negligence in performance of duty;

(iv) Commission of contact subversive of discipline or of good behavior.

4. After carefully going through the Enquiry Report, the proceedings of enquiry and other connected documents & papers, I accept the findings of Enquiry Officer. I, as disciplinary authority, impose the penalty of reduction to a lower post and accordingly you are brought down from the post of STO to TO on a basic pay of Rs. 1940/- in the scale of Rs. 1100-60-1940 with immediate effect.

5. A copy of the report of enquiry is enclosed for your information.

6. You are required to acknowledge the receipt of this order.

(B.S. Prabhakar) Chairman & Managing Director.

13. A reading of the order of the disciplinary authority would go to show that it is a case of imposition of major penalty. There are no reasons forthcoming as to why the penalty of the nature is required to be imposed. The order of the disciplinary authority is also laconic. The consideration by the appellate authority

is also to the similar effect. At this juncture, it may not be out of place to refer about the duty of the enquiry officer and the conclusion of the enquiry and the nature of the report which is required to be made under Rule 34 of the Rules. Sub-rules 18 and 19 of Rule 34 of the Rules are extracted hereunder:

RULE-34: PROCEDURE FOR IMPOSING MAJOR PENALTIES:

18) After the conclusion of the inquiry, report shall be prepared and it shall contain:-

- i) a gist of the articles of charges and the statement of the imputations of misconduct/misbehavior.
- ii) a gist of the defence of the employee in respect of each article of charge.
- iii) an assessment of the evidence in respect of each article of charge; and
- iv) the findings on each article of charge and the reasons therefor.

Explanation: If in the opinion of the Inquiring Authority the proceedings of the inquiry establish any article of charge different from the original article of charge, it may record its findings on such article of charge;

Provided that the findings on such article of charge shall not be recorded unless the employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

19) The Inquiring Authority, where it is not itself the Disciplinary Authority shall forward to the Disciplinary Authority, the records of inquiry which shall include.

- i) the report of the inquiry prepared by it under Sub-rule (18) above;
- ii) the written statement of defence, if any, submitted by the employee referred to in Sub-rule (13);
- iii) the oral and documentary evidence produced in the course of the enquiry; and
- iv) the orders, if any, made by the Disciplinary Authority and the inquiring authority in regard to the inquiry.

14. A bare reading of the enquiry report would leave no manner of doubt that the enquiry officer had miserably failed to comply and adhere to the procedure prescribed in Rules 18 and 19 of the Rules in making the enquiry report. In other words, the so-called enquiry report cannot be termed as enquiry report in the eye of law. The duty of the disciplinary authority in considering the enquiry report is governed by Rule 35 (as then in existence). For better appreciation, Sub Rules 1 to 4 of Rule 35 of the Rules are extracted hereunder:

RULE-35: ACTION ON THE INQUIRY REPORT:

1) The Disciplinary Authority, if it is not itself the Inquiring Authority, may, for

reasons to be recorded by it in writing, remit the case to the Inquiring Authority for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule-34 as far as may be.

2) The Disciplinary Authority shall, if it disagrees with the finding of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

3) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Rule-32 should be imposed on the employee, it shall notwithstanding any thing contained in Rule-36 make an order imposing such penalty.

4) If the Disciplinary Authority having regard to its finds on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned.

15. The disciplinary authority is required to examine and scrutinise the enquiry report to come to a conclusion for the purpose of taking a decision in terms of the Rule 35 of the Rules and need to come to a definite conclusion in an objective manner as to whether it is a case of major penalty or a minor penalty or exoneration of the delinquent employee of the charges. In the present case, the order of the disciplinary authority does not indicate such exercise having been made. In the light of the relevant rules governing the making of an enquiry report and consideration of the same by the disciplinary authority leading to imposition of penalty under Rule 32 of the Rules having been not followed in the present case, the finding recorded by the learned single Judge is perfectly justified not only for the violation of the principles of natural justice but also on account of violation of the Rules governing the issue.

16. So far as the allegation of violation of Rule 34(3) of the Rules, the learned counsel for the respondents corporation would fairly concede, as a matter of fact, though advancing a legal plea, the petitioner was not furnished with the list of witnesses and documents and any material which was the basis for issuance of the charge sheet. Her contention that the petitioner having not submitted his explanation to the charge sheet dated 19.3.1987 cannot now complain for not furnishing of list of witnesses and documents. We are unable to accept the arguments of the learned counsel for the respondents corporation for the reason that the Rule 34(5) of the Rules mandates supply of relevant documents and the list of witnesses along with the charge sheet to enable the delinquent employee to either specifically admit or deny any or all the charges through a written submission. His not submitting explanation/written submission would only entitle the disciplinary authority to proceed further in terms of Rules 4 to 6. This by itself does not mean that there is no duty cast on the disciplinary authority to adhere to the procedure prescribed and to violate Sub Rule 3 of Rule 34 of the

Rules. In that view of the matter, we reject the argument of the learned counsel that there is no requirement of compliance with Rule 34(3) of the Rules. The finding of the learned single Judge cannot be found fault with.

17. In the facts of the case, we are in agreement with the arguments of the learned counsel for the respondents corporation that there is no duty or obligation cast on the enquiry officer to facilitate and ensure the presence of the defence assistant to conduct the enquiry on behalf of the delinquent employee. As a matter of fact, in the present case, the enquiry officer had acceded to the request of the petitioner by issuing a communication to the named defence assistant Sri D. Rama Subba Reddy and infact the postponement of enquiry accede to the request of the defence assistant through his letter dated 8.2.1988. For this reason, we are unable to concur with the finding and conclusions reached by the learned single Judge.

18. A close scrutiny of the material documents on record and the respective contentions which were advanced before the learned single Judge and recorded, we are in agreement with the learned counsel for the petitioner that the Personal Circular dated 20.09.2000 was not brought to the notice of the learned single Judge and infact only the amended Rules were brought to the notice of learned single Judge and basing on such material, the learned single Judge had delivered the judgment. As a matter of fact, the learned single Judge had dealt with the consequences that flow even in the absence of Sub Rule 5 of the Rules and had come to the conclusion that such requirement of furnishing a copy of the enquiry report to the delinquent employee before imposing of punishment having been recognised by the Supreme Court in the case of State of M.P. Vs. Chintaman Sadashiv Waishampayan . While we are on this point, we may notice that this judgment was unfortunately not brought to the notice of the Supreme Court in the case of Union of India and others Vs. Mohd. Ramzan Khan, . This is evident from the observation in para No. 17. "There have been several decisions in different High Court which, following the Forty-second Amendment, have taken the view that it is no longer necessary to furnish a copy of the inquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgments in the different High Courts taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of a co-ordinate or a larger bench of this Court taking this view. Therefore, the conclusion to the contrary reached by any two Judge bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground."

19. State of M.P. Vs. Chintaman Sadashiv Waishampayan been brought to the notice of the Supreme Court, the necessity of prospective over ruling would not have arisen. We also find that the said judgment was not referred to in the judgment of the Supreme Court reported in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . The learned single Judge while dealing with the matter

in detail had allowed the writ petition on the ground that there was a gross violation of the principles of natural justice at every stage. We must bear in mind that the legal concept audi alteram partem and principles of natural justice are creation of the judge made law invented as a minimum and basic protection against the arbitrariness in an administrative/quasi judicial/judicial proceedings. The principles of natural justice are red into as a protection even in cases where the relevant rules do not provide for. In the cases, where there are rules adherence to the rules and procedure in existence is mandatory unless otherwise indicated. Be that as it may, in the light of our finding that there is gross violation of the rules in conducting the enquiry and consideration of the enquiry report leading to imposition of major penalty and non consideration of the appeal of the petitioner in the facts of this case, the order of the learned single Judge allowing the writ petitions cannot be found fault and accordingly this writ appeal is liable to be dismissed.

II. Writ Appeal No. 1751 of 2003:

20. The Writ Appeal No. 1751 of 2003 is filed questioning the order dated 29.08.2003 passed by the learned single Judge in W.P. No. 9205 of 1992, which was filed questioning the removal order No. ECIL, CMG;GM;18501; 38 dated 31.7.1991 passed by the 2nd respondent as confirmed by the 1st respondent by his Appellate Order No. ECIL;CMG 18501;71 dated 12.10.1991.

21. The petitioner was issued with a charge sheet on 31.10.1989 with the following mentioned charges:

- (i) Absence without leave or without sufficient grounds or proper or satisfactory explanation;
- (ii) Habitual or irregular attendance;
- (iii) Neglect of work or negligence in performance of duty;
- (iv) Commission of conduct subversive of discipline or of good behavior.

22. This charge sheet relates to the alleged unauthorised absence of the petitioner for the period between 10.2.1987 to 1.6.1989. The total days of absence are 222. Enquiry officer was appointed and he submitted his report on 23.5.1991. The findings recorded by the enquiry officer were accepted by the disciplinary authority finding the petitioner guilty, an order of removal of the petitioner from service on 31.7.1991 was made. This order was passed by the General Manager (Computers) and Disciplinary Authority. The learned single Judge had accepted the contention of the petitioner that the General Manager is not the appointing authority on account of the fact that the petitioner's scale of pay being Rs. 1,100/- to Rs. 1,940/-, the Disciplinary Authority was held to be the Managing Director and as the order impugned was passed by the General Manager, the same was set aside.

23. The learned counsel for the appellants would point out that by drawing the

attention of this Court to the proceedings ECIL:CMG: 18501 dated 2.9.1988 whereunder after imposition of punishment of reduction of rank, petitioner's salary was in the scale of Rs. 1,100-60-1940, which corresponds to original pay scale of Rs. 750-40-1350 and would point out in which case in terms of schedule-I, General Manager is the Disciplinary Authority and the appellate authority being the Managing Director. This aspect of the matter was not disputed by the learned counsel for the petitioner. However, learned counsel for the petitioner would submit that the order impugned is also bad in law on account of the fact that the enquiry was conducted without affording any opportunity to him when he infact was on sick leave. He would also urge that the ex parte enquiry was held on 22.3.1991, inspite of his specific request for adjournment telegraphically due to sickness and as a matter of fact medical leave was also sanctioned by the 2nd respondent. In that view of the matter, the petitioner was denied a due opportunity. He would point out that there was a specific pleading in the writ petition to this aspect and point out that there was no denial in the counter-affidavit. He would further submit that the order dated 31.7.1991 of the disciplinary authority is laconic and there is no consideration as to his submissions made vide his representation dated 20.5.1991 on the enquiry report though show cause notice was issued on 26.04.1991 under Sub Rule 5 of Rule 36 of the Rules. He would submit that the appeal to the Managing Director also ended up with the same fate. Even on this account, the order of the removal is unsustainable. He would further submit that inasmuch as the learned single Judge had set aside the punishment of reduction of rank in terms of the pay scale which the petitioner was drawing is being within the scale of Rs. 1,100/- to Rs. 1,940/-, the Managing Director alone was competent disciplinary authority and as such the disciplinary proceedings conducted by the General Manager is ultra vires the rules. Accordingly, he would submit the decision of the learned single Judge is perfectly valid and does not require any interference by this Court.

24. At the time of hearing, the learned counsel for the appellant corporation fairly conceded in the event of this Court upholding the order of the learned single Judge and dismissing the W.A. No. 1722 of 2003, then the competent authority for conducting disciplinary proceedings would be the Managing Director. However, she would contend that in the absence of an independent appeal being filed by the petitioner assailing the order of the learned single Judge, it is not open for the learned counsel for the petitioner to urge other grounds which were never considered by the learned single Judge. Unfortunately, we are unable to accept this submission of the learned counsel for the appellants as it is well settled law that a successful party may support the order of the court below which is in his favour and urge all other grounds that are available notwithstanding the fact the said grounds were not forming part of the discussion of the court below. Even finding of facts could be shown to be erroneous without there being an independent appeal.

25. In the light of the discussion above, considering the fact that we had dismissed the Writ Appeal No. 1722 of 2003 confirming the order of the learned

single Judge which was passed setting aside the reduction order dated 17.10.1988 issued by the 2nd respondent corporation, this appeal is also liable to be dismissed.

III. One another aspect which the learned counsel for the appellants corporation would urge with respect to the course that is required to be followed by the court. She would bring to the notice of the court the judgment of the Supreme Court reported in State Bank of Patiala AIR 1996 Supreme Court 1669 and would contend that the learned single Judge while allowing the W.P. No. 9205 of 1992 ought not have granted all consequential benefits to the petitioner. We have no quarrel with the general observations made by the Supreme Court in the above said judgment. However, the very judgment of the Supreme Court had left open to the courts for considering the facts of the case before it and what relief should follow in the event of the petitioner-employee succeeding in the writ petition. In the present case on hand, as a matter of fact, we found that there is utter violation of procedure contemplated under the very rules framed by the organisation right from issuance of charge sheet while conducting the enquiry to the stage of considering the appeals. Even after the learned single judge's order, the appellant corporation had chosen to challenge the same instead of pragmatically accepting the lapses on their part in conducting the enquiry. After passing of the order by the learned single Judge, it was always open for the appellant corporation to have conducted a proper enquiry and taken steps to pass appropriate orders which they did not do. A middle level officer was condemned over a period of 25 years and made to suffer. In those circumstances, we do not find any infirmity with the order of the learned single Judge even applying the guiding principles laid down in the judgment referred to by the learned counsel for the appellants corporation.

IV. In the result, both the Writ Appeals are dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in these writ appeals shall stand closed.