
(2014) 01 JH CK 0117

In the Jharkhand High Court

Case No : Writ Petition (S) No. 387 of 2013

Gauri Shankar Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:

Constitution of India, 1950 — Article 21 309

Citation : (2014) 2 AJR 529 : (2014) 1 JLJR 603

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Pandey Neeraj Rai, Nehala Sharmin and Rohit Ranjan Sinha, for the Appellant; Vaibhav Kumar, J.C.A.G. for State and Mr. R.N. Sahay for Respondent No. 6 and 7, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the petitioner, learned counsel appearing on behalf of the State as also learned counsel appearing on behalf of Jharkhand Police Housing Corporation Ltd. The petitioner has been imposed with the punishment of recovery of 9 lakhs from his salary; withholding of 3 annual increments with cumulative effect and that he would be paid only the subsistence allowance for the period of his suspension by the impugned order dated 13.12.2011(Annexure-6) contained in memo no. 8290 issued under the signature of Deputy Secretary, Road Construction Department, Government of Jharkhand.

2. The petitioner has been placed under suspension on 4.9.2009 vide memo no. 4515(s) annexed as Annexure-1 and remained as such till the impugned order of punishment was passed. He was proceeded against for certain charges which are enclosed as Form Ka in Annexure-2 of the writ petition. The charge no. 1 relates to preparation of estimates by dividing the work and bringing it within the value of Rs. 25,000/- which in total were equivalent to a sum of Rs. 27 lakhs and related to repairing work in certain sections of road under his jurisdiction as

Executive Engineer, Road Division, Gumla; charge no. 2 related to the allegation that amount were paid for WBM grade III work, which on inspection were found not to have been executed; charge no. 3 states that more work was found to be of inferior quality and also not executed at many places in the roads under repair; charge no. 4 related to the expenditure of 27 lakhs of certain departmental work without any purchase of materials or engagement of labour for the said work. The aforesaid acts amounted to gross irregularity on the part of the petitioner, who was in the capacity of Executive Engineer under Road Construction Division, Gumla.

3. According to the petitioner the Inquiry Officer, after conclusion of the inquiry did not found any of the charges to be established against him. Petitioner was served with second show cause notice vide Annexure-4 on 7.9.2011 allegedly containing the reasons for differing with the opinion of the inquiry Officer, issued under the signature of Deputy Secretary, Road Construction Department asking him to reply as to why he be not punished for the aforesaid charges. The petitioner's reply is at Annexure-5 dated 20.9.2011 and after consideration of his reply the impugned order of punishment has been passed contained in notification no. 8290 S, Ranchi dated 13.12.2011.

4. One of the grounds for assailing the impugned order of punishment is that during the entire period of suspension, he was not paid a single farthing as subsistence allowance. It is submitted that the respondents have taken a plea that at the time of issuance of suspension order under Rule 96 there was typographical error in the language used i.e. instead of "jivan nirvah bhatta" "jivan yapan bhatta" was typed and instead of word "dey" "aadey" was typed, which were subsequently corrected vide notification dated 16.11.2011, which is at Annexure-9 to the supplementary affidavit. Even then the petitioner was not paid any subsistence allowance and subsequently, the impugned order of punishment was passed. It is the contention of the petitioner he kept on filing representation showing his difficult financial condition and further eligibility to receive subsistence allowance during the period of suspension through his representations dated 5.10.2009, 10.11.2009, 20.1.2010, 5.2.2010, 6.3.2010, 10.4.2010, 15.4.2010, 18.6.2010, 5.7.2010, 8.11.2011 and 6.12.2011 respectively.

5. Learned counsel for the petitioner has drawn the attention of this Court to the observation made by the Inquiry Officer in the inquiry report where the contention of the petitioner was taken note of that in the absence of subsistence allowance all through, he was facing difficulty in attending the departmental proceeding at the Headquarter in Ranchi in the office of Chief Engineer, Ranchi since petitioner was posted at Gumla. In such circumstances, the punishment order is clearly in teeth of the relevant provisions of Rule 96 of the Jharkhand Service Code. He has submitted that the Hon'ble Supreme Court in a catena of judgments categorically held that denial of subsistence allowance during the pendency of the departmental proceeding, vitiate the entire proceeding itself.

The subsistence allowance is bare minimum for an employee to survive, which cannot be taken away as it is the essential attribute of human right and the right to life guaranteed under Article 21 of the Constitution of India. It is submitted that the petitioner made several request/representation before the department for releasing his subsistence allowance and in the absence of same he was unable to take steps for proper defence in the inquiry pending against him. It has been stated by referring to the letter no. 126(E) dated 6.12.2011 (Annexure-7) that in the absence of subsistence allowance his family had come on the road and the education of his children had been affected. He had been prevented from undertaking proper treatment of his mother who as a result passed away in the meantime during his suspension. It has been further stated that in the matter of payment of subsistence allowance even though similar orders containing the same errors were passed in respect of the Junior Engineers namely Binda Paswan, Sambhu Singh and Turia Oraon but they were paid subsistence allowance while the petitioner was denied the same on one pretext or other. Learned counsel for the petitioner has relied upon judgments rendered by the Hon"ble Supreme Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , in the case of State of Bihar and Others Vs. Arbind, and in the case of Jagdamba Prasad Shukla Vs. State of U.P. and Others,

6. Learned counsel for the petitioner further assailed the order of punishment on the ground that the Inquiry Officer has exonerated the petitioner on all counts, however the Disciplinary Authority while issuing the second show cause has undertaken a purported exercise to show difference with the opinion of the Inquiry Officer and subsequently passed the impugned order of punishment against him. His defence has not been properly considered while imposing the impugned punishment of recovery of sum of Rs. 9 lakhs. The petitioner in his reply to the second show cause had also taken a plea by referring to the judgments rendered by the Hon"ble Supreme Court that in a case where the Disciplinary Authority proposes to differ with the conclusion of the Inquiry Officer exonerating the petitioner, then the Disciplinary Authority before passing the order of punishment must give an opportunity of hearing to the delinquent employee otherwise he would be condemned unheard. According to the petitioner the impugned order of punishment has been passed by the Disciplinary Authority without giving any opportunity of hearing to the petitioner. It has been submitted on the part of the petitioner that the Disciplinary Authority had contradicted the findings of the Inquiry Officer exonerating the petitioner and also failed to disclose any reasons for disagreement with the conclusion reached by the Inquiry Officer in his inquiry report. It is submitted that the amount of Rs. 2,50,000 was deposited in the Mining Head before the Treasury for purchase of stone chips and was inclusive of the total amount of 27 lakhs; even then the entire amount of Rs. 27 lakhs have been directed to be recovered from the petitioner and 4 others. Petitioner has also taken a plea that his appointment letter was issued by the approval of the Hon"ble Governor who is a appointing authority and, therefore, the impugned order of punishment ought to have been

issued upon approval of the Hon''ble Governor, which has not been done. Petitioner, therefore, has alleged that he has been denied adequate opportunity to defend himself in the absence of subsistence allowance during the entire period of his suspension which has seriously prejudiced his case. He has been denied opportunity of hearing after submission of reply to the second show cause notice issued by the Disciplinary Authority before passing the impugned order of punishment which vitiated the entire inquiry proceeding and the order of punishment has been imposed upon him. It is therefore submitted that impugned order deserves to be quashed.

7. The respondent-State has appeared and filed their counter affidavit. The contention of the petitioner that no subsistence allowance was paid to him during the period of his suspension has not been denied by the respondents in the counter affidavit. Various statements made in the writ petition especially at para 12 and 14 have not been denied as would appear from the averments made in para 15 of the counter affidavit filed by the respondent-State. The only ground that has been made by the respondents is that the original notification of suspension suffered from typographical error in the use of expression " aadey" instead of "dey", which were corrected by the subsequent notification dated 16.11.2011. The impugned punishment has been inflicted by the notification dated 13.12.2011 and that petitioner has been paid entire subsistence allowance after the punishment order and therefore no prejudice remains to the petitioner any longer. Learned counsel for the respondent-State fairly conceded that payment of subsistence allowance is sine qua non during the period of suspension.

8. However, it has been stated by learned counsel for the respondent-State by referring to the counter affidavit filed on their behalf that the petitioner being an Executive Engineer under Road Division, Gumla with the help of Assistant Engineer and Junior Engineer not only prepared separate estimates for one road but also separate estimates were prepared for different kilometers of one road so that these estimates be brought under the sanctioning power of the petitioner i.e. Rs. 25,000/- without the approval of the higher authority and by preparing fake bills the amount has been misappropriated. When the matter was inquired it was found that work was shown to have been executed with respect of additional WBM Grade III but the inquiry revealed that the same was not at all executed.

9. Similarly, in the financial year 2008-09 under the discretionary quota the estimates were sanctioned for doing earth work in the flank and to lay morum. However, after inquiry it was found that in the maximum cases works were not executed. The quality was not up to the mark as per specification. All the works were shown to be executed departmentally but neither the materials were obtained nor work was executed through labourers. On the contrary payments were made as finished work violating the procedure laid down. In the wake of aforesaid circumstance, petitioner was placed under suspension vide notification dated 4.9.2009 and departmental proceeding was initiated vide memo dated

10.2.2010. The Chief Engineer, National Highway, Jharkhand, Ranchi was appointed as Inquiry Officer and Executive Engineer, C.D.O, R.C.D., Ranchi as Presenting Officer. The inquiry report of the Inquiry Officer was thoroughly examined and Disciplinary authority differed with the findings conducted by the Inquiry Officer and the same was communicated to the delinquent employee for submission of his show cause vide letter dated 7.9.2011. The petitioner submitted his written defence and after thorough examination of his defence it was not found satisfactory. Therefore, punishment has been imposed vide notification dated 13.12.2011 after getting the approval of the competent authority. It has however been stated that subsistence allowance for the period of suspension from 4.9.2009 to 13.12.2011 has already been paid and accepted by the petitioner. In such circumstance, when the charges against the petitioner have been proved in the departmental proceeding, the impugned punishment is fully justified and proper in the eye of law.

10. I have heard counsel for the parties and gone through the relevant materials on record. In the aforesaid state of affairs, it is difficult to conceive that the respondent-department and its authorities would have failed to pay even subsistence allowance to the delinquent employee i.e. the petitioner during the period of suspension. In this context reference may be made on the erudite opinion of the Hon''ble Supreme Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, is illustrative and para 28, 29, 31 of the said judgment are being reproduced herein below:-

28. Service rules also usually provide for payment of salary at a reduced rate during the period of suspension. (See: Fundamental Rule 53.) This constitutes the "subsistence allowance". If there is no provision in the rules applicable to a particular class of service for payment of salary at a reduced rate, the employer would be liable to pay full salary even during the period of suspension.

29. Exercise of right to suspend an employee may be justified on the facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by a "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of subsistence allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nickname of "subsistence allowance", so that the employee may sustain himself. This Court, in O.P. Gupta v. Union of India made the following observations with regard to subsistence allowance: (SCC p. 340, para 15)

An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in Khem Chand v. Union of India is that he continues to be a member

of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance--generally called subsistence allowance--which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental enquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression "subsistence allowance" has an undeniable penal significance. The dictionary meaning of the word "subsist" as given in Shorter Oxford English Dictionary, Vol. II at p. 2171 is "to remain alive as on food; to continue to exist". "Subsistence" means--means of supporting life, especially a minimum livelihood.

(emphasis supplied)

31. On joining government service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Government. The Government, only because it has the power to appoint does not become the master of the body and soul of the employee. The Government by providing job opportunities to its citizens only fulfils its obligations under the Constitution, including the Directive Principles of State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employer, like instrumentalities of the Government or statutory or autonomous corporations, etc., is regulated by the terms of contract of service or service rules made by the Central or the State Government under the proviso to Article 309 of the Constitution or other statutory rules including certified standing orders. The fundamental rights, including the right to life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. The provision for payment of subsistence allowance made in the service rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in *State of Maharashtra v. Chandrabhan Tale* struck down a service rule which provided for payment of a nominal amount of rupee one as subsistence allowance to an employee placed under suspension. This decision was followed in *Fakirbhai Fulabhai Solanki v. Presiding Officer* and it was held in that case that if an employee could not attend the departmental proceedings on account of financial stringencies caused by non-payment of subsistence allowance, and thereby could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated. For this purpose, reliance was also placed on an earlier decision in *Ghanshyam Das Shrivastava v. State of M.P.*

11. In the said case the Hon'ble Supreme Court noticed that the delinquent may not have raised the issue of non payment of subsistence allowance before the Inquiry Officer but he had raised it before the High Court and also before the Apex Court. In the present case the delinquent employee i.e. the petitioner has

even raised the said ground before the Inquiry Officer and made several representation for payment of subsistence allowance.

12. Upon perusal of the order of suspension dated 4.9.2009 and the rectification notification dated 16.11.2011 it appears that instead of the expression " jivan nirvah bhatta" and "dey" contained the expression "Jivan yapan bhatta" and "aadey". The petitioner admittedly remained without subsistence allowance during the entire period of his suspension. However, it appears that during the course of inquiry proceedings the petitioner duly participated in the said proceeding and also submitted his defence, though he had taken a plea that in the absence of the subsistence allowance he was facing difficulty in presenting his defence as also facing financial stringencies. It also appears that the petitioner was posted as Executive Engineer, Road Construction Division, Gumla but the departmental proceeding were being conducted before the Inquiry Officer i.e. Chief Engineer, National Highway, Jharkhand, Ranchi.

13. A perusal of the Inquiry report shows that the petitioner presented his defence in respect of each of the charges. It has been stated in the inquiry report that though the charge-sheet refer to certain documents which were annexed to it in support of alleged charges but there were no witnesses named, neither any witness were produced during the course of inquiry on behalf of the department. On consideration of the relevant materials produced during the course of inquiry by the prosecution and the defence of the delinquent employee-petitioner the inquiry officer came to a conclusion in respect of charge no. 1 that the Executive Engineer has the authority to grant technical approval for ordinary repairing works within the limits prescribed under the budgetary head. He gave his opinion that the petitioner had approved the estimates in line with the guidelines prescribed under letter no. 7936(S) dated 17.12.2008 and letter no. 5732(s) dated 13.9.2007. He observed that it is practically impossible to carry out repair of entire stretches of road in one estimate within the limit of Rs. 25,000. Therefore, in line with the letter no. 5732(s) dated 13.9.2007 preparation of such estimates in parts was a compulsion. It therefore opined that the instant charge no. 1 was not proved against the petitioner.

14. Charge no. 2 related to the allegation that during physical inspection of WBM Grade III works were not found to be executed. The Inquiry Officer upon consideration of the materials produced on behalf of either of the parties came to a conclusion that the Deputy Commissioner, Gumla was aware of the allotment order and that is why after inspection he had directed the Executive Engineer to carry out certain improvement in the Premix Carpet, Pot Patch in respect of WBM Grade III work. There was no subsequent correspondence from the Deputy Commissioner after the compliance report submitted by the Executive Engineer which indicates that the work of WBM Grade III was done properly. Therefore, the inference drawn by the inspecting team in respect of WBM Grade ill appears to be logical as the WBM Grade III work could have been covered by premix carpet or pot patch. The aforesaid charge was also not found to be established.

Charge No. 3 alleged that during the course of inspection it was found that the morum work had not been carried out or was of inferior quality.

15. The petitioner has adduced certain evidence in his defence including the letter of the Deputy Commissioner, Gumla dated 14.3.2009 as also letter addressed to the Deputy Commissioner dated 25.3.2009 apart from other defence taken. The Inquiry officer gave his opinion that though such allegation have been made in the charge but in both the inspection report in respect of any such stretch of road there are no reference of any measurement undertaken in the measurement book nor the same have been co-related with the findings of the inspection team also in respect of the quantity of morum said to have been found. No reference has been made in the report as to whether any quality test were conducted. In such circumstance, the petitioner-delinquent employee was entitled to be exonerated on the benefit of doubt.

16. So far as charge no. 4 is concerned it related to no evidence of any purchased material or engagement of labourers as reflected in the labour register despite the fact that work was executed departmentally. The Inquiry Officer after considering the submission of the Presenting Officer along with the materials adduced on his behalf as also on behalf of the petitioner came to a conclusion that earlier also such works were executed in the division at the finished rate. He also referred to Rule 228 of the Public Works Accounts Court Code wherein such work could be executed without engaging labourers, through contractors. He also observed that this could have been undertaken in view of the impending Lok Sabha Election for getting the work executed within time. The employee therefore could be exonerated of the charge. The Inquiry Officer also thereafter considered the defence taken by the petitioner relating to non payment of subsistence allowance with an observation that it is in relation to the department and no observation are to be made on his part.

17. In the wake of aforesaid categorical findings of the Inquiry Officer exonerating petitioner on each of the aforesaid 4 charges, the Disciplinary Authority appears to have disagreed with the findings and issued second show cause notice vide Annexure-4 dated 7.9.2011 referring to certain materials for differing with the report of the Inquiry Officer. In respect of the Charge No. 1 it has been observed in the second show cause that it is true that for ordinary repairing the Executive Engineer is competent to provide technical approval for such repairing work which were fit to be approved at the departmental level by fragmenting the work bringing with the estimate of Rs. 25,000/- each. However he deferred with the findings of Enquiry Officer exonerating the petitioner. The Disciplinary Authority while differing with the findings in respect of charge no. 2 by the Inquiry Officer observed that in certain stretches of roads where WBM Grade III work was to be executed, during inspection much less morum was found to be have been used. It referred to different findings by the inspecting team in respect of different stretches of roads where WBM Grade III work were not found to be executed. He therefore differed with the findings of the Inquiry

Officer. In respect of Charge No. 3 also, the Disciplinary authority did not find reasons to give benefit of doubt to the petitioner in respect of the use of less morum or inferior quality of morum which was found during the course of inspection by the inspecting team. Similarly, in respect of charge no. 4 also the Disciplinary Authority did not agree with the findings of the Inquiry Officer that such departmental work could be undertaken without engaging labourers on muster roll and such purchase of materials after quotations. The Disciplinary authority, therefore asked the petitioner to furnish his reply to the proposed punishment and the reasons for differing with the report of the Inquiry Officer on each of those charges.

18. Petitioner seems to have submitted detailed reply vide Annexure-5 dated 20.9.2011 inter alia reiterating his defence and also relied upon several documents and materials which were produced during the course of inquiry proceeding as well. He also took categorical plea that the Disciplinary Authority had no plausible material or evidence before it to differ with the findings of the Inquiry Officer. The petitioner also took plea that no witnesses were produced by the Presenting Officer during the course of Inquiry, though sufficient opportunity was granted to him. Accordingly on the basis of conjecture and surmises major punishment cannot be imposed upon the petitioner which also related to recovery of a huge amount of Rs. 9 lakhs out of total 27 lakhs said to have been expended for execution of work. It was stated that the Disciplinary Authority had no basis to quantify the loss of Rs. 9 lakhs upon the petitioner while the Assistant Engineer and Junior Engineer were responsible for the actual execution of the work and payments made. The petitioner sought for an opportunity of hearing in line with the ratio laid down in the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , in a case where the Disciplinary Authority differs with the findings of the Inquiry Officer exonerating the delinquent employee. Several judgments were also referred in reply to the second show cause.

19. However, from perusal of the impugned order of punishment dated 13.12.2011 it appears that the Disciplinary Authority without any opportunity of hearing to the petitioner, in such situation where he proposed to differ with the findings of the Inquiry Officer exonerating the delinquent employee, has chosen to inflict major punishment i.e. (i) recovery of 9 lakhs from his salary; (ii) withholding of 3 annual increments with cumulative effect; (iii) and that he would be paid only the subsistence allowance for the period under suspension. A perusal of the impugned order also does not indicate that the contention of the petitioner raised in his reply to the second show cause notice have been dealt with by proper application of mind. It appears that the observation made in the second show cause notice have been more or less incorporated without discussion of the reply furnished by the petitioner. In the instant case though the subsistence allowance was not paid to the petitioner during the course of the departmental proceeding and he took plea that he was facing difficulty and was inhibited in defending himself in departmental proceeding but from perusal of the inquiry report it appears that petitioner had participated in the inquiry proceeding

which was held in the office of Chief Engineer, National Highway, Jharkhand, Ranch). It further appears that petitioner had furnished enough defence during the course of inquiry proceeding upon consideration of which the Inquiry Officer exonerated him on all counts. In such circumstance, though the petitioner may not have been paid the subsistence allowance during the period of suspension, however the same has not prejudiced him in defending himself during the course of inquiry proceeding so as to held that the inquiry proceeding itself was vitiated. It would however be worthwhile to observe wherein that such a insensitive approach on the part: of State authorities is not appreciated. When the employee is placed under suspension it is mandate of law has been held in the case of Capt. M. Paul Anthony Vrs. Bharat Gold Mines Ltd. And another(supra) that subsistence allowance is the bare minimum which is required to be paid to such employee as he does not mortgage or barter away his basic right as a human being including his Fundamental right in favour of the Government simply by joining Government service.

20. However, the Disciplinary authority seems to have differed with the findings of the Inquiry Officer by issuing the second show cause notice. The Hon''ble Supreme in the case of Punjab National Bank and others Vrs. Kunj Behari Misra(supra) held that the Principles of Natural Justice demand that in a case when the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In a departmental proceeding what is of ultimate importance is the finding of the Disciplinary authority. The opinion of the Hon''ble Supreme Court expressed by B.N. Kripal, J. (as His Lordship then was) at para 17 to 19 laying down the law are quoted here under:-

Para 17:-These observations are clearly in tune with the observations in Bimal Kumar Pandit case quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar case the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent

officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the findings of the disciplinary authority".

Para 18:-Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar case.

Para 19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

21. The aforesaid proposition of law have been reiterated by the Hon'ble Supreme Court in another case of *Lav Nigam Vrs. Chairman & M.D., ITI Ltd.* reported in 2006(9) SCC 440. Para 10, 11 and 12 are also quoted herein below:-

Para 10:-The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant, It is only after hearing the appellant that the

disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.

Para 11:-In *Punjab National Bank v. Kunj Behari Misra* a Bench of this Court considered Regulation 7(2) of the *Punjab National Bank Officer Employees'* (Discipline and Appeal) Regulations, 1977. The Regulation itself did not provide for the giving of any notice before the disciplinary authority differed with the view of the enquiry officer. This Court held: (SCC p. 97, para 19)

The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

Para 12. This view has been reiterated in *Yoginath D. Bagde v. State of Maharashtra*. In this case also Rule 9(2) of the *Maharashtra Civil Services* (Discipline and Appeal) Rules, 1979 did not specifically provide for a disciplinary authority to give an opportunity of hearing to the delinquent officer before differing with the view of the enquiry officer. The Court said: (SCC p. 758, para 29)

But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of "not guilty" already recorded by the enquiring authority was not liable to be interfered with.

22. Apparently the impugned order of punishment has been passed without giving any opportunity of hearing to the petitioner by the Disciplinary Authority.

In such circumstance, given the grave nature of charges alleged against the petitioner and the major punishment inflicted upon him, also for recovery of a sum of Rs. 9 lakhs from petitioner, it was wholly obligatory on the part of the Competent Authority/Disciplinary authority to have afforded an opportunity of hearing to the petitioner before passing the impugned order so that he could adequately defend himself before the findings recorded in his favour by the Inquiry Officer were overruled by the Disciplinary authority while imposing the proposed punishment. In the aforesaid fact and circumstances, therefore, the decision making process leading to passing of impugned order of punishment inflicted upon the petitioner by the Disciplinary authority suffers from violation of Principles of Natural Justice and is in teeth of the judgment rendered by the Hon"ble Supreme Court in the case of Punjab National Bank and others Vrs. Kunj Behari Misra(supra)

23. In view of the reasons recorded herein above, the impugned order dated 13.12.2011 is quashed. However, the respondent-State authorities are at liberty to take a decision in accordance with law from the stage of second show cause notice after giving due opportunity of hearing to the petitioner. The writ petition is allowed in the aforesaid manner.