
(1986) 05 AHC CK 0013
In the Allahabad High Court
Case No : Writ Petition No. 2812 of 1981

G.P.Swami

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 14-05-1986

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1986) 05 AHC CK 0013

Hon'ble Judges : P.Dayal, J and G.B.Singh, J

Final Decision : Disposed Of

Judgement

G.B. Singh,J.

1. This is a writ petition for issuing a direction in the nature of Gertiorari quashing the order of dismissal dated 2841981, Annexure no. 9, and in the nature of Mandamus directing the opposite parties not to enforce the said order.

2. The petitioner was appointed as Forester on 2221956. He was promoted as Deputy Ranger in February, 1963 and was confirmed on that post on 111974. The petitioner was due for promotion to the post of Forest Ranger in the month of August, 1977. Some persons junior to him were promoted in that month as Forest Range Officers, whereupon the petitioner made representation, to the Chief Conservator of Forests, opposite party no.2. When he did not get any favourable order or reply from the State Government and Chief Conservator of Forests he filed a Claim Petition No.127/11/1979 before the U.P. Public Services Tribunal for a declaration that his supersession by the Chief Conservator of Forests was illegal and invalid. That claim petition was allowed on 28111980 and a direction was issued to the opposite parties to consider the petitioner for promotion with effect from the date when his next junior was promoted as Forest Ranger. It appears that in pursuance of that judgment the Selection Committee considered the case of the petitioner on 2341981 and found him fit for promotion. On 2441981 the Chief Conservator of Forests approved the decision of the Selection Committee. It appears that the petitioner committed some

illegalities and irregularities during the years 1977 to 1979. A decision for starting departmental proceedings against him was consequently taken. A chargesheet dated 631979, Annexure no.1, relating to Hamirpur Range was served on him. It contained five charges. Another chargesheet dated 2091979, Annexure no.2, relating to the same range containing eight charges was also served on him. The petitioner submitted reply to those chargesheets. After taking evidence in connection with both the chargesheets the report, Annexure no. 8, was submitted. In that enquiry three charges out of thirteen charges were found not proved, five charges were partly proved and rest were held to be fully proved. The disciplinary authority, on the basis of that report, dismissed the petitioner from service vide order dated 2841981. Against this order of dismissal the present writ petition was filed on 961981.

3. After the order of dismissal dated 2841981 the petitioner moved an application for execution of the order of the Public Services Tribunal on 2851981. Against that application the State filed objection which was rejected on 1371982 by the District Judge, Hamirpur. A Civil Revision No. 502 of 1982 was filed in the High Court against that order. The revision was dismissed on 581983. The State Government filed Special leave Petition before the Hon"ble Supreme Court but it was dismissed on 2511984. On 2121984, the Chief Conservator of Forests passed an order notionally promoting the petitioner from 1981977 retrospectively till 2841981 when the order dismissing him from service was passed.

4. The order of dismissal has been challenged in this writ petition mainly on the grounds that the petitioner was not supplied copies of the statements of the witnesses relied upon in respect of different charges, and was not given an opportunity to cross-examine the witnesses inspite of the written demand and, thus, he was not given reasonable opportunity to defend himself, that the punishing authority disagreeing with the findings of the enquiry officer imposed major penalty of dismissal without recording reasons in his order, that the transfer of enquiry to different enquiry officers was mala fide and illegal and it caused great prejudice to the petitioner, that the order of dismissal could not be passed after the decision of giving promotion to the petitioner and that the order of dismissal is invalid and inoperative because the petitioner having been promoted retrospectively from 1981977 he could not be dismissed by the Conservator of Forests, opposite party no.3 as his appointing authority was the Chief Conservator of Forests opposite party no.2, on the date of the impugned order.

5. In the counter affidavit filed on behalf of the opposite parties it was admitted that after the judgment of the public services Tribunal dated 28111981 a selection committee was constituted on 2181981 and it held its sitting on 2341981. the selection committee recommended the promotion of the petitioner but before issuing final orders, it was intimated to the opposite party no.2 that the petitioner had been dismissed from service by an order dated 2811981. It

has been further pleaded that on 28/4/1981 the petitioner was working on the post of Deputy Ranger and not on the post of Forest Ranger and, therefore, the Conservator of Forests, Opposite Party no.3, was competent to pass the order dated 28/4/1981. With regard to supply of copies of the document demanded by the petitioner, it has been stated in the counter affidavit that the petitioner was ordered to copy out those records and the petitioner himself wrote on 9/11/1980 that he did not want to see any other documents. The opposite parties denied that the copies demanded were not supplied and, thus, his defence was prejudiced in any way. As regards the change of the enquiry officers, it has been disclosed in the counter affidavit that Shri H.C. Raizada, D.F.O. Barida was appointed enquiry officer with respect to chargesheet no.1 and since he was transferred to another Division, his successor Shri A.S. Negi, D.F.O., Banda was appointed his enquiry officer. In case of second chargesheet Shri D.S. Singh, D.F.O., Hamirpur, was appointed enquiry officer but due to certain allegations made against him the opposite party no.3 in the interest of impartial enquiry appointed Shri A.S. Negi, D.F.O. Banda, as enquiry officer of the second chargesheet also. Later on the petitioner himself made certain complaints against the enquiry officer and the; Additional Conservator of Forests (P.) acceded to the demand of the petitioner and Shri S.C. Pandey, Deputy Conservator, P.A. to Additional Chief Conservator of Forests was appointed as enquiry officer in respect of both the chargesheets. It has been denied that the transfer of the enquiry officer was made with ulterior motive. It has been further stated in the counter affidavit that the complete enquiry report alongwith the punishment suggested were forwarded separately to the disciplinary authority and the punishing authority accepting the findings of the enquiry officer after due consideration passed the impugned order. The opposite parties denied that any show cause notice to the petitioner was necessary before passing the impugned order. With regard to cross-examination it has been pleaded in the counter affidavit filed on behalf of the opposite parties that the petitioner wanted to cross-examine the appointing authority which being not justified was disallowed because he had not given any statement against the petitioner. It has also been disclosed in the counter affidavit in this connection that the appointing authority did not influence the enquiry officer as well as the witnesses examined in the case and as such the request for his cross-examination was tightly turned down. The opposite parties denied the contention of the petitioner that no reasonable opportunity was given to defend himself. It was also disclosed in the counter affidavit that the order of dismissal does not suffer from any infirmity and even if the order for notional promotion of the petitioner from the back date had been passed, the petitioner could be dismissed by the Conservator of Forests as he was working on the post of Deputy Ranger on the date of order of dismissal and Conservator of Forests was his appointing authority.

6. The first argument advanced by the learned counsel for the petitioner is that the petitioner was not supplied copies of the documents due to which he could not meet the charges levelled against him and, thus, reasonable opportunity to

defended himself was denied. In this connection he made reference to paras 10 to 12 and 34 of the writ petition. It has been disclosed in para 10 of the writ petition that copies of the statements of Muneer Ahmad and Ram Sajiwan as well as the members of the public recorded by the D.F. O. alongwith the enquiry reports of Shri K.K. Chaudhari, A.C.F. and Sri M.D. Pandey D.F.O., were not supplied. Para 11 contains an allegation that copy of the complaint of the residents of village Bewar regarding illicit felling of trees, copies of enquiry report of Shri K.K. Chaudhari A.C.F. and M.D. Pandey D.F.O., copy of the report of Conservator of Forests; Copy of statement of Shri Sharda Prasad Singh, copy of the estimate and measurement book were not supplied and inspection of vouchers and other records relevant to the charges levelled was not permitted. Para no.12 of the writ petition is to the effect that when the aforesaid documents were not supplied the petitioner sent two letters dated 10111979 Annexures no.3 and 4. One of them relates to chargesheet no.1 and the other relates to chargesheet no.2. He has further alleged in para 34 that nonsupply of the aforesaid documents caused prejudice to the defence of the petitioners and, thus, the enquiry was bad in law. The opposite parties, in their counter affidavit, did not dispute the contents of paras 10 and 11 of the writ petition. It was, however, pleaded in connection with para 12 of the writ petition that the petitioner was directed to attend the office of Conservator of Forests, Jhansi to copy out the relevant records and, thus, it is wrong to say that the relevant documents were not supplied. It has been further disclosed in the counter affidavit that after the inspection of those documents the petitioner made an endorsement that he had nothing to see at present. In reply to para 34 of the writ petition it has been again reiterated in the counter affidavit that after the examination of the record, the petitioner himself gave in writing that he did not want to make further examination or inspection of the documents at the divisional level. In the rejoinder affidavit the petitioner admitted assertions of the opposite parties on this subject but pleaded that inspection could not be a substitute for supply of copies of the documents. It has been further stated that even if copies of some of the documents which were shown could not have been supplied the copies of other documents should have been supplied. It is worthy to note that such documents have not been specified. In para no13 of the rejoinder affidavit it was further stated that perusal of the documents as stated in the counter affidavit is not a substitute for supply of copies of documents. In view of these assertions it can be safely observed that the petitioner was allowed to inspect: and take copies of the documents and he after inspecting them made a note that he did not want to make further examination or inspection of the documents.

7. The letters dated 10111979 and 8111979, Annexures no.3 and 4, reveal that the petitioner, before submission of reply to the chargesheet, prayed for the copies of and the inspection of several documents specified in these two letters. It is significant to note that in the letter, Annexurje no.3, the petitioner admitted inspection of documents and simply asserted that copies could not be prepared

due to lack of time. It may also be mentioned that long lists of documents have been given in these two letters but most of them are not mentioned in the writ petition. All this indicates that much reliance cannot be placed on these two letters to find out if opportunity to inspect and prepare copies was not given to the petitioner. The facts brought on the record on the other hand show that after availing of such an opportunity the petitioner cannot complain of not getting copies of these documents.

8. At the time of arguments the learned counsel for the petitioner could not point out which document of the aforesaid list was relevant in connection with what charge of the two chargesheets and how his case was prejudiced by nonsupply of the copy of those documents. Whether a reasonable opportunity has been afforded and any prejudice has been caused to the delinquent officer by nonsupply of the copies of the documents or inspection thereof, depends upon the facts of each case. In a departmental enquiry where relevant documents on which charges are framed were made available and inspection was made of those documents it cannot be said that there was denial of reasonable opportunity, The delinquent is entitled to

the copies of those statements of the witnesses or the documents which are relied upon in the departmental enquiry and he asked for their copies. A "document may be relevant to a particular charge. If copy is not supplied of a particular document which may be relevant to a particular charge then only that charge can be ignored. Not only this, if prayer for inspection or for supply of a copy of document is made and that document is irrelevant that prayer can be refused, and it cannot be held that such a refusal caused prejudice to the delinquent officer and vitiated the enquiry. In view of all this the learned counsel for the petitioner should have pointed out specifically as to how these documents were relevant and nonsupply of their copies prejudiced his defence. A general and vague allegation on this subject appears to be quite insufficient to hold that prejudice has been caused to the petitioner on account of nonsupply of documents and as such the enquiry vitiated.

9. It has been held in *Krishna Chandra Tandon v. Union of India*, AIR 1974 SC 1589 that where neither the enquiry officer nor the punishing authority relied on the reports obtained as a result of preliminary investigation against the delinquent servant for arriving at his conclusions the government servant cannot make a grievance of the denial of reasonable opportunity on the ground of nonsupply of copies of these reports. In the present case the learned counsel for the petitioner has not pointed out any where in the writ petition as well as in the rejoinder affidavit that the preliminary reports mentioned in paras 10 and 11 and Annexure 3 & 4 of the writ petition were relied upon by the enquiry officer as well as the punishing authority, in arriving at the conclusions. He cannot, therefore, have any grievance on the basis of the fact that he was not supplied with the copies of those enquiry reports. The other documents referred to in the aforesaid paragraphs of the writ petition and Annexure no.3 and 4 are copies of

the statements of certain witnesses. With regard to these documents also the petitioner did not disclose in the writ petition and the affidavits filed on his behalf as well as by the learned counsel for the petitioner at the time of arguments as to which statement was relevant in connection with cross-examination of the witnesses examined during the departmental enquiry and as to how his case has been prejudiced by the non-supply of the copies of those statements. It has been held in *R.C. Sharma v. Union of India* 1976 (2) SLR 265 (Supreme Court) that :

"The question whether the appellant was given a reasonable opportunity to lead evidence and to be heard or not is largely a question of fact. It is only when an opportunity denied is of such a nature that the denial contravenes a mandatory provision of law or a rule of natural justice that it could vitiate the whole departmental trial. Prejudice to the government servant resulting from an alleged violation of a rule must be proved.?"

10. It leaves no room for doubt that the petitioner in such a case should not only feel contented by mere allegation of non-supply of copies of certain documents but he should prove that it was in violation of any mandatory provision of law or rules of natural justice and a prejudice has resulted from that violation. In the present case it has not been made clear by the petitioner how these reports and statements were material for his defence and as to how prejudice has resulted from non-supply of their copies. When he had been allowed an inspection of those documents and he inspected those documents, it is difficult to hold in absence of any specific allegation and proof of prejudice that non-supply of the copies of these documents vitiated the departmental enquiry. It has been further held in *R.C. Sharma's* case (*supra*) at page 268 that:

"It is not uncommon for such Government servants, facing such enquiries, to give long lists of witnesses and documents so as to! either prolong the enquiry or to prepare grounds for future litigation. Unless the exclusion of evidence is of a kind which amounts to a denial of natural justice or would have affected the final decision it could not be material.?"

1... In the present case the petitioner has complained for non-supply of copies of four documents in para 10, copies of 7 documents in para 11, copies of 43 documents in Annexure no.3, and 7 documents in Annexure no.4. It leaves no room for doubt that a long list of documents had been furnished to supply copies thereof. The manner in which their relevancy has not been explained in the writ petition, affidavits and arguments on behalf of the petitioner clearly points out that the object of the petitioner was simply to prolong such an enquiry. As I have observed above, after the inspection of these documents, the petitioner did not press for supply of copies of these documents. It is, therefore, clear that no prejudice was caused to the petitioner on account of non-supply of these documents and a departmental enquiry cannot be held to be vitiated on this ground as contended by the learned counsel for the petitioner. Thus, the first argument advanced by the learned counsel for the petitioner falls to the ground.

12. The second point argued by the learned counsel for the petitioner is that the petitioner was not given an opportunity to cross-examine the witnesses in spite of the written demand and as such reasonable opportunity to defend himself was not given. The observations made in *Khem Chand v. Union of India*, AIR 1958 SG 300, make it clear that the reasonable opportunity envisaged to the government servant by the provision contained in Article 311 (2) of the Constitution of India includes an opportunity to the government servant to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witness in support of his defence. It appears that on the basis of this principle learned counsel for the petitioner had advanced this argument. But the facts on record clearly point out that this argument cannot be accepted. The allegations on this subject are contained in paras 23 and 35 of the writ petition. It has been stated in para 23 that the Conservator of Forests, opposite party no. 3, recorded the statements of certain witnesses in the preliminary enquiry and since he influenced the persons whose statements were recorded, the petitioner wanted to cross-examine him. In para 35, it has been further stated that the petitioner was not given an opportunity to cross-examine the witnesses in spite of the written demand dated 16/9/1980. It is significant to note that the copy of the written demand dated 16/9/1980 has not been produced by the petitioner to show to whom he wanted to cross-examine for the purposes of his defence. The letter dated 19/9/1980, Annexure no. 10, was sent in continuation of the letter dated 16/9/1980. In this letter the petitioner clearly mentioned that he did not want to cross-examine the witnesses named in the letter except Shri S.S. Srivastava, Conservator of Forests, opposite party no.3. The reason assigned for his cross-examination is the same as mentioned in para 23 of the writ petition. The Conservator of Forests, opposite party no.3, did not appear as a witness in the case. Unless a person appears as a witness or his statement is relied upon by the enquiry officer, he cannot be tendered as a witness for cross-examination. In the present case neither the opposite party no.3 was examined as a witness against the petitioner nor his previous statement was to be relied upon in support of the charges framed against the petitioner. It was, therefore, not necessary to tender the opposite party no.3 for cross-examination. The mere fact that he examined some of the witnesses during the preliminary enquiry cannot make him liable for cross-examination. The allegation that he influenced some of the witnesses during preliminary enquiry is, undoubtedly, vague and on such a suggestion, it cannot be held that the cross-examination of the opposite party no.3 was necessary and failure to produce him for cross-examination prejudiced the defence of the petitioner. The letter dated November 15, 1980 from Shri S.C. Pandey, Enquiry Officer, Annexure no.15, contains reasons why Shri S.S. Srivastava, Conservator of Forests, opposite party no.3, was not allowed to be cross-examined. According to this letter Shri S.S. Srivastava, opposite party no.3, is the appointing and punishing authority of the petitioner and he served the chargesheet. These facts clearly indicate that the petitioner wanted to drag in opposite party no.3 only to create embarrassment and cause harassment and his evidence being not necessary and material in relation to the charges framed, the prayer for

producing him for crossexamination could be refused by the Enquiry Officer as the; prayer for producing him as a witness for crossexamination was simply to achieve that object only. Such a prayer when could be refused by the inquiry officer, the discretion so exercised cannot be said to be in violation of any law or principle of natural justice.

13. Para 32 of the counter affidavit indicates that through letter dated 16/9/1980 the petitioner made an application for production of 8 persons for crossexamination and all of them were called by the Enquiry Officer. But the petitioner finally decided to crossexamine only four witnesses, out of them Shri M.D. Pandey and Shri M.K. Varma were actually tendered for crossexamination and they were, in fact, crossexamined by him. It is further stated in this para of the counter affidavit that the petitioner's prayer for crossexamination of Shri S.S. Srivastava, Conservator of Forests, and Shri V.B. Singh, Conservator of Forests, Wild Life Preservation Organisation was refused because they had not given any evidence in the case. It has also been stated in this paragraph of the counter affidavit that Shri V.B. Singh made some preliminary enquiry and his report was originally included in the chargesheet but subsequently it was excluded therefrom. Shri V.B. Singh was, therefore, not a necessary witness. With regard to Shri S.S. Srivastava, Conservator of Forests, opposite party no.3, it has been stated that he served the copy of the chargesheet and was the punishing authority so he could not be tendered for crossexamination. In the rejoinder affidavit filed by the petitioner, he did not challenge the facts stated in the paragraph no.32 of the counter affidavit. These facts also show that the demand of production of Sri V.B. Singh and Shri S.S. Srivastava contained in the letter dated 29/9/1980, Annexure No.12, and the letter dated 4/10/1980, Annexure no.14, cannot be attached any importance and the contention of the learned counsel for the petitioner that the enquiry has been vitiated on account of refusal to crossexamine the witnesses cannot, therefore, prevail.

14. The next point pressed by the learned counsel for the petitioner is that there had been repeated change in the enquiry officers and as such the defence of the petitioner was prejudiced. We do not find any substance in this contention. The learned counsel for the petitioner could not explain at the time of arguments as to how fair and impartial enquiry could not be held by the change of the enquiry officers. The suggestion that Shri S.C. Pandey, Deputy Conservator of Forests who concluded the enquiry and submitted the report was not impartial cannot be attached any importance specially when no objection had been raised against him while he was making enquiry. In para 14 of the counter affidavit necessary details of the circumstances in which the enquiry officers were changed have been given. It discloses that Shri H.C. Raizada, D.F.O., Banda was appointed enquiry officer with respect to the first chargesheet and since he was transferred to another Division, his successor Shri A.S. Negi was appointed as enquiry officer. The counter affidavit further discloses that Shri D.S. Singh, D.F.O., Hamirpur was appointed enquiry officer in respect of the second chargesheet and when certain allegations were made against Shri D.S. Singh, D.F. O., Hamirpur the enquiry

relating to the second chargesheet was also given to Shri A.S. Negi, D.F.O., Banda. The petitioner then made certain complaints against Shri A.S. Negi also and ultimately Shri S.G. Pandey, Deputy Conservator of Forests, completed the enquiry and submitted a report in respect of both the chargesheets. The petitioner did not challenge the contents of para 14 of the counter affidavit in his rejoinder affidavit. In para 15 of the rejoinder affidavit he simply stated that Shri D.S. Singh conducted the enquiry relating to second chargesheet partly and thereafter it was completed by Shri S.C. Pandey and as such the report relating to second chargesheet cannot be said to be on the proper appraisal of evidence adduced during the enquiry. At the time of arguments the learned counsel for the petitioner could not explain as to how there could not be proper appraisal of the evidence at the time of the report even if some of the witnesses were not examined in presence of the Officer who submitted the report in the matter. The observations made in *Union of India v. M.B. Ratnayak* 1981 (1) SLR 377 (Supreme Court) show that it is not at all necessary that the enquiry which has been held in part by one enquiry officer should be continued by the same enquiry officer until the end. Apart from this, it is the prejudice that counts and in the present case the learned counsel for the petitioner could not point out as to how the defence of the petitioner was prejudiced by the change of the enquiry officers. It is, therefore, evident that this argument of the learned counsel for the petitioner has also no force.

15. The fourth point raised by the learned counsel for the petitioner is that the punishing authority did not record reasons in the order dated 28/4/1981 dismissing the petitioner and, thus, the impugned order stands vitiated. There is no force in this contention. The recording of reasons would have become necessary when the punishing authority had differed from the enquiry officer on any finding. The enquiry officer gave reasons about all the 13 charges. He clearly held that the charges no.1 to 3 of chargesheet no.1 and charges 1 and 4 of chargesheet no.2 have been partly proved, charge no.5 of chargesheet no.1 and charges no.5 to 8 of chargesheet no.2 are proved and the charge no.4 of chargesheet no.1 and charges no.2 and 3 of chargesheet no.2 have not been proved. The punishing authority vide his order dated 28/4/1981 Annexure no.9 fully agreed with the findings of the enquiry officer and he discussed the charges proved against the petitioner, in brief, in the order of dismissal. In view of this it cannot be said that the punishing authority passed the impugned order without applying his mind or appreciating the material placed against the petitioner. The order of dismissal cannot, therefore, be held to be invalid on this ground.

16. It was fifthly argued by the learned counsel for the petitioner that in the impugned order the punishing authority used words "Sewa Vimukti" in Hindi and "dismiss" in English whereas both the words do not convey the same sense and as such the order being indefinite is liable to be quashed. The correct Hindi equivalent of the word "dismiss" is "Padchhut" and not "Sewa Vimukti". Since the word "dismiss" had been clearly used in the impugned order and the petitioner himself took it as an order of dismissal, the improper use of the word

"Sewa Vimukti" cannot invalidate the impugned order.

17 It was lastly argued on behalf of the petitioner that he was given promotion vide order dated 2121984, of Chief Conservator of Forests, U.P. with effect from 1981977 and on account of this promotion, his misconduct must be deemed to have been condoned and the order of dismissal dated 2841981 must be deemed to have become null and void. It was also vehemently argued by the learned counsel for the petitioner in this connection that when the petitioner was promoted from the back date i.e., 1981977 to the post of Forest Ranger, his appointing authority was the Chief Conservator of Forests on 2841981 and as such he could not be proceeded against and dismissed by the Conservator of Forests, opposite party no.3, who is subordinate to the Chief Conservator of Forests and is the appointing authority of the Deputy Forests Ranger.

18. Learned Standing Counsel appearing on behalf of the opposite parties, on the other hand, argued that the petitioner was Deputy Forest Ranger on 2841981 when the order of dismissal was passed and since the Conservator of Forests was the appointing authority of the Deputy Forests Ranger on that date, he could be validly dismissed from service by the Conservator of Forests and the notional promotion given to the petitioner from the back date cannot invalidate that order, it has also been argued that the order of promotion can, at the most, condone the misconduct which were committed prior to 1981977 and not thereafter and since the charges related to the incidents subsequent to the date 1981977 also the order of dismissal cannot be invalid or ineffective. There is much force in the argument advanced by the learned counsel for the petitioner.

19. In order to appreciate the controversy it is necessary to give a few facts and dates about the promotion and the departmental enquiry. It is undisputed that on 1981977 the petitioner was working as Deputy Forest Ranger. On that date some persons junior to him were promoted and the petitioner could not be promoted due to some adverse entries. He, therefore, made representation and filed appeal. Having remained unsuccessful he made a reference petition before the Services Tribunal in the year 1979. That petition was allowed on 28111980 and the opposite parties were directed to consider him for promotion. In pursuance of that order a selection committee was constituted and it took decision on 2341981. Before any formal orders could be passed in favour of the petitioner, the departmental enquiry was concluded against him and he was dismissed on 2841981. Due to this dismissal order he was not promoted by the Department to the post of Forest Ranger. He, therefore, applied for execution of the order of the Services Tribunal after obtaining the necessary certificate and in the execution proceedings an objection under Section 47 C.P.C. was filed. That objection petition was dismissed and then the State Government filed revision under Section 115 C.P.C. in this Court. That revision was dismissed on 581983. Thereafter the State Government moved an application for special leave to appeal and that too was dismissed on 2511984. When the State Government remained unsuccessful even before the Supreme Court the promotion order

dated 2121984, Annexure no. 4 to the rejoinder affidavit was passed.

20. Since on the date of dismissal order, the petitioner was holding the office of Deputy Forest Ranger, his appointing authority, undisputedly, was the Conservator of Forests, opposite party no.3. Had the promotion of the petitioner not been made with retrospective effect from 1981977 to the post of Forest Ranger, the order of dismissal passed by the opposite party no.3 could not be said to be illegal. It is undisputed that the appointing authority of the Forest Ranger is the Chief Conservator of Forests opposite party no.2. On account of the promotion of the petitioner with retrospective effect from 1981977 he will be deemed to be holding the post; of Forest Ranger on 2841981, the date on which the order of dismissal was passed. He could, therefore, be dismissed on that date by the Chief Conservator of Forests, opposite party no.2 and not by the Conservator of Forest, opposite party no.3 who is undisputedly an authority subordinate to the Chief Conservator of Forests. Learned counsel for the opposite parties argued that the existing state of affairs on the date of dismissal should be seen and as such the order of promotion dated 2121984 which was passed with retrospective effect from 1981977 should not be taken into account in deciding if the order of dismissal has been passed by an authority subordinate to the appointing authority. I do not agree with this argument. The reason is that the petitioner's order for promotion was not passed in time by the departmental authorities and they withheld his promotion order even though specific direction was given in that regard by the Services Tribunal and the petitioner had been selected for promotion by the selection committee much before the order of dismissal. It may be added that the departmental authorities themselves kept those decisions in abeyance and hurriedly dismissed the petitioner. When the petitioner had been promoted with retrospective effect he became entitled to all the consequential benefits. The observations made in *Alaffat Narayana Menon v. State of Kerala*, 1977 (2) SLR 656 (Kerala) clearly indicate that on account of the promotion Order with retrospective effect, he became entitled to consequential benefits from the date of promotion z. e., 1981977 and the use of the words "notional promotion" in the promotion order is of no avail. In view of this, the appointing authority of the petitioner must be deemed to have been changed by the promotion order from the date of the promotion. It may be added that the promotion means appointment to a new post in a higher category. Thus the authority who promotes becomes appointing authority of the promotion post. The promotion of the petitioner could not be postponed even if the departmental proceedings were pending specially when he had been found fit for promotion. The right to be considered for promotion is a fundamental right and on the basis of this principle the Services Tribunal had directed the departmental authorities to consider the petitioner for promotion. The departmental authorities even though found the petitioner fit for promotion did not issue promotion order till he was dismissed and thereafter promoted him to a higher post with retrospective effect. Thus the departmental authorities themselves created complication and the petitioner cannot be deprived of the benefit which accrued to him on account

of promotion. All these facts also indicate, when the departmental authorities promoted the petitioner from the back date his appointing authority must be deemed to have been changed and on the date of dismissal his appointing authority was the Chief Conservator of Forests, opposite party no.2, and as such he could not be dismissed by the Conservator of Forest, opposite party no.3 who is undisputedly subordinate to the Chief Conservator of Forest.

21. Another infirmity in the order of dismissal came into existence on account of the order of promotion dated 21.12.1984. On account of this promotion order the petitioner was promoted to the post of Forest Ranger from 19.8.1977. On account of this promotion Chief Conservator of Forest, opposite party no.2, became disciplinary authority of the petitioner. There is nothing on record showing that he delegated his authority to the Conservator of Forest, opposite party no.3, and thus charges could not be framed by the Conservator of Forest and he could not appoint enquiry officer. All this could be done by the Chief Conservator of Forest only. The enquiry, therefore, stands vitiated on this ground and the order of dismissal could not be passed on the basis of such an enquiry.

22. There is another circumstance which also may be mentioned in this connection. It has been observed in the Collector of Customs v. Rebati Mohan Chatterji 1976 (2) SLR 897 (Cal) that promotion during pendency of appeal condones allegation against the delinquent government servant prior to the date of promotion and the Customs authorities cannot be allowed to approbate and reprobate at the same time. Similar observations were made in Mohammad Habibul Haq v. Union of India, 1978 (1) SLR 637 (Cal) and Union of India v. Mohammed Habibul Haq, 1978 (1) SLR 748 (Cal). The observations made in these cases show that on account of doctrine of approbation and reprobation the Government servant cannot be condemned for the deeds committed by him prior to the date of promotion. In the present case the date of promotion is 19.8.1977. He could not, therefore, be condemned for his misdeeds said to have been committed prior to 19.8.1977.

23. A perusal of the chargesheets no.1 and 2 reveals that in the first chargesheet the charges no.1 to 4 related to the period prior to 19.8.1977. Only charge no.5 of this chargesheet related to the period subsequent to 19.8.1977. This charge no.5 was about payment of wages to one Sada Shiva Gupta for the month of July, 1978. In the other chargesheet charge no.1, completely, and main part of charge no.4 related to the period prior to 19.8.1977 and the other charges of this chargesheet relate to the period subsequent to the period 19.8.1977. Out of these six charges of second chargesheet, charges no.2 and 3 had not been found proved. Thus, only charge no.5, of the first chargesheet and charges no.5 to 18 of the second chargesheet remained. It may be mentioned that charge no.5 of second chargesheet relates to plantation of trees and charges no.6 to 8 relate to repairs of rest house of "Kunheta". Since the order of dismissal was passed on the cumulative effect of the charges no.1,2,3 and 5 of the first chargesheet and charges no.1 and 4 to 8 of the second chargesheet, and the charges no.1 to 3 of

the first chargesheet and charges no.1 and 4 of the second chargesheet are liable to be excluded on account of the application of the aforesaid doctrine of condonement of guilt on promotion. It is difficult to hold to what extent the order of dismissal was based on the ground found liable to be excluded. It has been held in *Sheo Dhyani Singh v. State of Bihar*, 1976 (2) SLR 633 (Pat) that when a Court of fact acts on material partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the Court was affected by the irrelevant material used by it in arriving at the conclusion finally and, thus, the order of dismissal based on such a material is liable to be set aside. The observations made in *Dhiraj Lal Girdhari Lal v. Commissioner of Income Tax, Bombay*, AIR 1955 (SC) 271 and *Binny Limited. Their Workmen*, AIR 1972 (SC) 1975 also lead to the same inference. The order of dismissal cannot, therefore, be allowed to stand on this ground also.

24. The writ petition is, therefore allowed. The order dated 28/4/1981 dismissing the petitioner is quashed. It is, however, open to the Chief Conservator of Forest, opposite party no.2, to start enquiry afresh if he deems it just and proper, against the petitioner for the misdeeds said to be committed by the petitioner after 1981/1977 and impose appropriate penalty in case any charge is found proved against him. In the circumstances of the case, parties are directed to bear their own costs.