

**(1990) 07 KAR CK 0024**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 11592 of 1980**

G.S. Rao

APPELLANT

Vs

Hindustan Aeronautics Limited, Bangalore and Others

RESPONDENT

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**Date of Decision :** 20-07-1990

**Acts Referred:**

Hindustan Aeronautics Limited Disciplinary Action Rules — Rule 7(7)

**Citation :** (1993) 1 KarLJ 456

**Hon'ble Judges :** P. K. Shyamsundar, J

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## Judgement

1. In this writ petition, almost a decade old by now, the petitioner is one G.S. Rao formerly a middle-rung executive of the Hindustan Aeronautics Limited (hereinafter referred to as "the company") the first respondent herein, who found his services terminated by the company under an order of dismissal passed on the 16th August, 1979 vide Annexure-W pursuant to an enquiry held against him by an enquiry authority comprising of a panel of two officers of the company in relation to a barrage of six charges alleging that he had committed the various misconduct referred to therein. The charges pertained to the conduct of the petitioner in organising and spearheading a movement of the officer members of the Hindustan Aeronautics Officers' Association, an entity registered under the Trade Union's Act, to defy and raise against the management by resorting to strike, protestations, etc. all calculated to throw the management of the company into a disarray resulting in hampering the working of the company. Albeit the petitioner having denied the charges the Enquiry Authority held the same to be proved and on a report made by the authority to the disciplinary authority being the Managing Director of the company-respondent No. 4 herein passed the impugned order dismissing the petitioner from the services of the company. Hence, this writ petition challenging the order of dismissal seeking for its quashing and the consequential relief of being restored into service with all monetary benefits which petitioner has missed out in this interregnum.

2. The petition ha been keenly opposed by the management which has filed an elaborate statement of objections in which it has striven to meet the petitioner's

case and to deny the same. Not unnaturally the stand of the management seeks to uphold its action, desires sustaining of the impugned order of dismissal.

3. Before I proceed further to delineate the legal controversies brought to the fore by the two sides, it seems to me that I should as a prelude to venturing out on a consideration of the rival contentions and to state my views thereon, speak of the perturbation created by this decade old writ petition and the frustrating delay that has ensued in its disposal. While I am sure this is not the only case that had to suffer an intolerably longish period of delay in its consideration by the court for there are many more of its ilk in the archives of this court, I am bound to take note of a particular feature of this case in that the petitioner who was 47 years old on the date of this writ petition filed on the 22nd July, 1980, has now, during the pendency of the writ petition, grown older by 10 years, all spent in waiting to know what was in store for him at the end of the long sojourn. The point really to notice is that he will, I am told at the Bar, be reaching the age of superannuation by the end of the year. This interregnum, from the presentation of the writ petition to its disposal has spawned a poignant circumstances in that the man who came to the court seeking justice hoping to get back the job from which he feels he had been arbitrarily turned out now finds that even if success did come to him at this large stage, although it may bring some monetary compensation it will not, however, bring to him the joy or pleasure of having lived a meaningful life usefully spent pursuing a meaningful occupation. It so happens the writ petition was actually heard and disposed off in 1984 by a learned single Judge of this Court who had also allowed the same and directed restoration of the petitioner into service with all back wages and other benefits but that order regrettably and unluckily for the petitioner was recalled a few days later and the matter set at drift again. Thereafter it has either meandered or loosely drifted in its quest for a hearing in the archives of this Court for long years for. no fault of its own. I do hope the order which I now propose to make would bring to an end a long drawn legal battle. As noted earlier I have ventured to make these observations which I would not have normally made except for the fact that I have myself felt not just a tinge but a lot of anxiety, considerable anguish at the thought that a person almost in the prime of manhood had during these long years of waiting grown old and had reached the age of superannuation.

4. Now for a few facts before I post the issues arising for determination here. The petitioner who if regard is had to his qualifications can possibly be considered as a highly qualified person with not one but three acquired degrees. He is a Bachelor in Commerce and also in Law, in which he also has a Master's degree. He joined the services of the company at its Nasik Division in the year 1966 as a Stores Officer and was thereafter shifted to the Helicopter Division of the Company at Bangalore in February, 1975 and in 1978 became the Secretary General of the Hindustan Aeronautics Officers Association which till then was an entity registered under the Societies' Act. But in 1978 after the petitioner became the Secretary General the association was also registered under the

Trade Union's Act gaining in the process more teeth to its organisation, the sharpest being the well-known mode of collective bargaining to strike, an operation which is unwelcome to most managements some of whom probably would go to any extent to fore-stall such an happening. According to the petitioner the change in the format of the association from a friendly corporate body under the Societies' Act to a competitive entity under the Trade Union's Act was not to the liking of the company and it thereafter began to look upon the officers' association with not so friendly an eye. It, then, transpired that later in the year 1978 a controversy having arisen regarding the revision of pay-scales of the employees there appears to have developed serious differences between the management and the employees regarding an appropriate wage revision with the employees possibly asking for more and the employer displaying the usual reluctance to concede totally the claims of the employee, although in this case the employer happens to be a public sector organisation of the Government of India. It is said that the officers having got wind of the fact that the management had recommended a low package revision for the employees probably desired to show their resentment and therefore launched a series of demonstrations to mark their displeasure on the unkindly moves by the management. To start with they appear to have gone about wearing a black band at work expressing their grief at the soulless reaction of the management and had followed it up with a luncheon boycott of the mid-day meal provided to the officers by the company.

5. Having done that it is said the petitioner issued on behalf of the association a bulletin bravely captioned luncheon boycott-a "great success" and splashed it all over the premises. A copy of the said bulletin is produced at Annexures B(2)(a) and (b). However with neither of the remonstrations having cut the ice with the management who remained probably unmoved by these ventures, in an effort to force themselves right into the managerial eye, the association put out a call for mass casual leave campaign on 26-10-1978. It would appear in order to ensure the success of this mass casual leave move the association had taken recourse to picketing the factory premises and had actively resorted to inducing its members not to attend the factory on that particular day, even going to the extent of preventing a few officers from getting into the factory which indeed is the allegation made by the management. Having done all this, it is said, along with one Bhojarajan of the officers association, the petitioner held a press conference at which he denigrated the management holding forth particularly against the perchance of the management for acquiring technical know-how from sources abroad and cited the move for acquiring the technical know-how of jaguar fighter plane something which had, according to him, resulted in severe let up in the effort to promote an indigenous flying machine got together by the genius of the local talent. It is said that he has spoken about the empty hangers in the factory and had spoken also of the development of technology or the lack of it so much so, these utterances had led the management to conclude that the petitioner and his colleague Bhojarajan had gone public and disseminated information which should have been a closely guarded secret. What is more, all this having been

done without obtaining the permission of the management, the same constituted grave acts of insubordination. Therefore, the management framed a series of serious charges on Rao and several others as well and went on to place him under suspension by an order dated 28th November, 1978 as per Annexure-A. The allegations were that by indulging in all these activities referred to supra the petitioner had committed misconduct as enjoined by Rules 9, 15(i), 15(ii), 15(ix) and 15(x) of the H.A.L. Conduct Rules. He was called upon to submit his explanation. The petitioner-Rao did not demurely accept the charges. Apart from asserting that all the charges had been falsely trumped up against him, he went on to complain about the constitution of the panel of officers appointed by the management to enquire into the charges levelled against him, pointing out inter alia that both the enquiry officers were clearly prejudiced against him being the mouth-pieces of a management that had cast an evil eye on the petitioner and was out to do the petitioner in the eye for having dared to raise the voice of protest against the management's niggardly attitude towards its officers. I am to mention that initially a team of two officers had been nominated as enquiry authority one of whom was a gentleman by name Malkani, an officer of the Indian Air-Force, appointed as Chairman and the other was Raghavendra Rao, the Chief Administrative Officer of the Company in Bangalore. Rao's complaint against them was that both were biased being associates of the management. He had also made other allegations, vide Annexure F. The management turned down the plea of bias and asked him to get on with enquiry vide Annexure-M. Then the petitioner sent another representation asking for legal assistance stating that the charges levelled against him being complex and difficult it was very necessary for him to have the benefit of a lawyer's assistance and, therefore, sought permission of the management to engage a lawyer to defend him at the enquiry. That was also promptly turned down by the management pointing out the relevant rule in the enquiry rules which denied to a delinquent officer the advantage of being represented by a lawyer and instead it was pointed out he can requisition the services of a co-officer to assist him in the enquiry. Mr. Rao, then, went on to solicit the assistance of an officer by name Venkataraman to assist him in the enquiry and this request was promptly granted. But when the enquiry actually got underway at as a preliminary sitting on 28th December, 1978 it transpired that the officer Venkataraman had some difficulty in obtaining permission from his own official superior to make the trip to Bangalore to participate in the enquiry against Rao, with the result the enquiry it is seen from the order sheet of the enquiry authority produced by Mr. Narayana Rao, counsel for the Management, stood adjourned to the 5th of February, 1979. On 5th February Mr. Rao and his co-officer Venkataraman were both present but on a representation made by Venkataraman who was also the General Secretary of the Hindustan Aeronautics Officers Association, Nasik Division, that he had reached Bangalore only two days ago and thus he had no time to study the case so much so he prayed for 3 or 4 days time to get himself briefed appropriately to go on with the enquiry. This request was acceded to and the enquiry was adjourned to the next date. On the next date of hearing what happened was

Venkataraman, the co-officer, having fallen ill and admitted to a Nursing Home in Indiranagar, Bangalore the petitioner sought for an adjournment. After a little skirmish the enquiry stood adjourned to the 1st of March, 1979 with a warning that on the next occasion if the delinquent was not ready the enquiry would go on with or without the co-officer. On the 1st it was again adjourned to 9th on which day one witness was examined and partly cross-examined stood adjourned to 20th March for further evidence. On 20th the petitioner was not present. It appears he was away at New Delhi in connection with the work of the association but nonetheless the co-officer Venkataraman cross-examined the witness P.W. 1 till 5 p.m. on that day and the matter then stood adjourned to the 23rd but on 23rd when the enquiry authority assembled to continue the enquiry Rao, the petitioner, was not present and his representative Venkataraman pleaded for an adjournment mentioning inter alia that in the absence of Rao he could not continue the cross-examination although he ventured to do so on the previous occasion. But the enquiry authority rejected the prayer for an adjournment, discharged the witness Pandukar who was partly examined and then went on to record the evidence of the next witness P.W. 2-Mannaji Rao. The enquiry was then adjourned to the 24th on which day four more witnesses were examined on behalf of the delinquent because neither he nor his associate Venkataraman was present. The petitioner was away in Delhi and Venkataraman having expressed his unwillingness to participate in the enquiry in the absence of delinquent officer and having also expressed his inability to continue to stay on in Bangalore without a break had asked for an adjournment by 10 days so that in the meanwhile he can go back to Nasik and then return to Bangalore to rejoin the enquiry in the month of April by which time he also expected the delinquent officer Rao to be in Bangalore and in a position to participate in the enquiry. This request was, however, turned down by the authority who went on to record the evidence of other witnesses on the 24th and finally closed the enquiry itself. I am to mention, earlier on the 23rd the petitioner Rao had sent a telegram informing the authority he was unavoidably detained in Delhi where he had gone in connection with the work of the association and had, therefore, asked for an adjournment by a few more days. This request was also repeated to the authority by the associate officer-Venkataraman whose request for an adjournment was turned down resulting in the enquiry being conducted ex parte. Rao returned to Bangalore in the month of April, 1979 and promptly sent a telegram to the company and a representation as well, asking for reopening the enquiry by recalling the witnesses examined by the management to enable him to cross-examine them, mentioning inter alia the reasons which prevented him from participating in the enquiry on 23rd and 24th March. The enquiry authority however turned down the request for reopening the enquiry and recalling the witnesses but instead called upon Rao to produce his written statement before the authority on the next date of hearing, a step enjoined by the rules of procedure.

6. It also happens and that is discernible from a communication sent to

Raghavendra Rao, Chief Administrative Manager by the petitioner vide Annexure-GG, dated 10-4-1979, that the company despite telegrams seeking reopening of enquiry in a somewhat panick-stricken mood appears to have resorted to strong-arm tactics by approaching every court in Bangalore and filing caveats. Suffice it to refer to a part of Annexure-GG:

"Ref.:

9) Caveat dated 4-4-1979 in the High Court of Karnataka filed by the Bangalore Complex Management.

10) Caveat dated 4-4-1979 in the Court of Civil Judge (Rural), Bangalore District, filed by Bangalore Complex Management.

11) Caveat dated 4-4-1979 in the Court of Civil Judge, Civil Station, Bangalore filed by the Bangalore Complex Management.

12) Caveat dated 4-4-1979 in the Court of Second Munsiff, Bangalore City filed by Bangalore Complex Management.

13) Caveat dated 4-4-1979 in the Court of the Munsiff, Civil Station, Bangalore filed by the Bangalore Complex Management."

The precautionary step taken by the management in this respect to block the petitioner's entry into any court in Bangalore City by avoiding the magic eye of the management. However, the petitioner did not choose to take the matter to court at that stage instead sent a detailed report to Raghavendra Rao, one of the panel members of the enquiry authority, as per Annexure-GG stating how the enquiry against him was vitiated. He also made a request to reopen the enquiry and went on to add that in any event he preferred to make a defence statement orally before the authority and, thereafter, to examine his witnesses. It may be conveniently mentioned at this stage the disciplinary enquiry procedure framed by the management stipulated by Rule 15 as follows:

"When the case for the disciplinary authority is closed, the employee shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the employee shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer if any, appointed."

In fact at para 25 of the representation at Annexure-GG the petitioner states:

"I would like to submit, as Enquiry Authority asked me to submit my statement of defence, that I prefer to submit my defence statement orally as per sub-rule (15) of Rule 8 of HAL Disciplinary Action Rules. The date, time and venue to make my oral defence statement may kindly be intimated to me with due notice so that I can be present to make my defence statement.

xx xx xx.

26. The Enquiry Authority completed recording of prosecution evidence and the

case for the Disciplinary Authority was closed by the Presenting Officer on 24-3-1979. Immediately thereafter i.e., on 26-3-1979 the Enquiry Authority issued notice to me in accordance with the sub-rule (15) of Rule 8 of HAL Disciplinary Action Rules requiring me to submit my defence statement. The statement can be in writing or oral. I prefer to make oral statement."

Although the option to make an oral statement was open to him under the rules referred to supra the enquiry authority insisted that (sic) make a defence statement in writing and had extended the time to make such a statement from the 5th of April, 1979 to 12th of April, 1979. Then it so happened and there is no dispute about it, the enquiry authority never took notice of the option exercised by the petitioner but abruptly closed the enquiry and made a report basing itself literally on the unchallenged evidence of the witnesses examined for the management which in the circumstances it is can be said to be anything but fair to the delinquent officer. On the basis of the said report a second show cause notice was issued to Rao proposing to impose the penalty of dismissal. The petitioner made a suitable representation to the second notice but was nevertheless dismissed from service, by an order of the disciplinary authority vide Annexure-W. The petitioner then preferred an Administrative Appeal elaborately drawn up covering I believe more than 20 pages which, however, was turned down by the appellate authority, the Chairman of the Company-Dastur who appears to have written a letter to the petitioner as per Annexure Y, dated 8th December, 1979. It is a brief letter to the petitioner containing his decision to reject the appeal as not disclosing any justifiable ground for interference. It is some kind of an informal letter, most unlike an appellate authority, exercising quasi-judicial power. It reads:

"I have gone through your appeal dated 21st August, 1979 against the orders passed by the Managing Director, Bangalore Complex, dismissing you from service with effect from 16-8-1979 and connected documents. I do not find any ground to justify interference with the decision of the Managing Director, Bangalore Complex, dismissing you from service for proven acts of serious misconduct. Your appeal for reinstatement in HAL is therefore hereby rejected."

With the rejection of the administrative appeal by the Chairman, bringing the curtain down on Rao's saga of struggle which according to him was the cause of authoritative tyranny of a hostile management, Rao, it appears, filed a suit challenging said action but later withdrew the suit, and filed this writ petition all within a short interval then after the passing of the appellate order. It may also be mentioned here that Rao has filed a suit in the City Civil Court, Bangalore challenging the very charge-sheet issued by the management and that was dismissed as having become infructuous when he was dismissed from service. It so transpires that the Civil Judge while dismissing the suit took exception to the action of the management forestalling the decision of the court in that suit by bringing to close the enquiry, and concluding it with an order of dismissal so much so he awarded costs to the plaintiff while dismissing the suit. From that decree

the management having preferred an appeal. It is said to be still pending in this Court.

7. At the hearing of this writ petition learned counsel Sri Subba Rao who appeared for the petitioner raised many contentions mostly bearing on the fairness of the enquiry, severely maligning not just the unsympathetic attitude but a totally hostile attitude of the management making so obvious their intention of gunning down the petitioner willy-nily, whatever be the means whether fair or foul. He also contended that the charges, each one of them, in themselves did not spell out any misconduct since all of them bordered on the accusation of having organised and participated in a mass demonstration by the officers against what they decried to be the unsympathetic attitude of the management. According to learned counsel the accusations were clearly violative of the fundamental rights guaranteed under Article 19 of the Constitution of India. It is pointed out that the right to strike, to make a demonstration whether oral, occular or in writing were all integral parts of the freedom of expression and the freedom of association guaranteed to a citizen of India under Article 19 and any resort thereto cannot be treated as a show-down against the management in order to turn its wrath upon an employee struggling for recognition of his rights. Continuing in this strain Mr. Subba Rao, I must say delivered an argument that was totally broad spectrum in nature and as a matter of fact counsel went on to launch a blistering attack on the procedure adopted by the enquiry authority in holding the enquiry and assailed it as totally destructive of all canons of fair play and natural justice. This part of counsel's argument falls broadly into the following divisions and their rammifications, viz.:

(i) refusal of legal assistance to the petitioner violated not merely principles of natural justice but also his right to work leading ultimately to jeopardising the right to live enshrined in Article 19 of the Constitution.

(ii) the refusal to grant an adjournment and the conclusion of the enquiry almost ex parte denying the petitioner an opportunity to cross-examine the witness was again a factor that vitiated the enquiry.

(iii) the very unceremonious and abrupt termination of the enquiry without giving the petitioner the opportunity to make a defence statement and lead his evidence, a right to which he was entitled to under the disciplinary rules of the company itself is a further factor that should suffice to attach an intolerable blot on the enquiry as wholly draconian in character and thereby leading to a en-block vitiation of the enquiry and its result.

(iv) the members constituting the enquiry were wholly biased. The enquiry was not only unfair but thoroughly one sided. The result was the outcome of the object of the formation of the enquiry i.e. to somehow nail the charges which was the subject-matter of the enquiry on the petitioner.

(v) In any view of the matter the charges framed against the petitioner did not amount to misconduct under the conduct rules being clearly a misnomer.

(vi) the finding of the enquiry is clearly perverse and lastly,

(vii) the order of the appellate authority dismissing the petitioner's appeal indicating clearly the non-application of the mind was totally vitiated and legally unsustainable.

Mr. Subba Rao while elaborating each and every one of these grounds during the course of an extended hearing sought to make good every one of these contentions aided by a galore of authorities supplementing his argument that was full of punch and verve.

8. Mr. Narayana Rao, learned senior counsel who led the respondent for management in the course of an effective reply sought to sustain the dismissal of the petitioner from employment and went on to point out inter alia that it ill-behaved on the part of the petitioner to rely upon principles of natural justice, lack of fair-play in the treatment meted out to him by the enquiry authority albeit whatever prejudice was allegedly suffered by him, being his own undoing. He pointed out that there was an attempt on the part of the petitioner to drag his feet and to unnecessarily abstain from the enquiry making motion, for adjournment from distant place, viz., Delhi although he was committed to appear before the enquiry authority on the dates on which the enquiry was scheduled. He pointed out that the enquiry dates were fixed with the concurrence and knowledge of the petitioner in order to suit his convenience. He, therefore, urged that the deliberate non-chalance on the part of the petitioner and to absolute reluctance, apathy and total disdain he had towards the enquiry sparing no effort to block the enquiry left no alternative to the authority out to proceed ex parte and to conclude the enquiry against the petitioner against whom there were serious charges of misconduct ranging from a concerted effort made to paralyse the working of the company, to disclosing of classified and secret information, the publication of which was prejudicial to the interest of a defence oriented institution and to the Nation's welfare as well and that he had indulged in all these activities which almost partook of a subversive character with impugntly and without concern for discipline, morale and the interest of the nation. Strong as all these criticism indulged-in by both sides are, it remains to be seen to what extent all these aspects, have been made good.

9. To mention here, of the team of officers nominated to hold the enquiry, Malkani who has been designated as Chairman in the first instance had to resign because of his posting outside Bangalore and in his place Sq. Leader Periyalvar was nominated to fill the breach caused by Malkani's absence. Even to Periyalvar's nomination the petitioner had taken exception but the management simply contended itself by stating that they are unable to share the petitioner's view that either of their nominees empanelled for the purpose of holding the enquiry were biased against the petitioner and, therefore, disabled from continuing the enquiry. In one of their endorsements they asked the petitioner to raise whatever objection he had, before the enquiry authority and that the same would be considered by the said authority. But, once the enquiry started the

petitioner appears to have not raised any of these issues but instead participated in the proceedings but that does not mean that he had abandoned the (sic) assailing of constitution of the enquiry authority on grounds of bias.

10. Shortlisting now the points that arising for consideration. They are:

- 1) How far has the denial of right of legal assistance to the petitioner had affected the right of the petitioner to know or the principles of nature justice?
- 2) Has the procedure adopted by the enquiry authority at the enquiry resulted in denial of a fair opportunity to the petitioner of defending himself?
- 3) Was the right to make a defence statement and to lead evidence denied to the petitioner and if so what is the consequence?
- 4) Do not the charges framed against the petitioner amount to misconduct within the meaning of conduct rules?
- 5) Whether the findings recorded by the enquiry authority on the various grounds perverse and totally unsustainable?
- 6) Having regard to the nature of the order passed by the appellate authority being totally cryptic and subjective in character, is it sustainable in law?

I shall now take up each one of these contentions and proceed to record my findings.

Point No. 1:

11. The controversy is about the denial of the assistance of a lawyer for defending the petitioner at the enquiry, a facility which the petitioner had sought for, at the very inception. Under the conduct rules a lawyer's participation in the enquiry appears to be tabooed. Sub-rule (7) of Rule 7 states:

"The employee may take the assistance of another employee to present the case on his behalf but is not to engage a legal practitioner for the purpose."

A related provisions is regards the appointment of a Presenting Officer provided by Rule 6(a) which reads:

"Where the disciplinary authority itself enquires into any article of charge or appoints an inquiring authority for holding any inquiry into such charge, it may, by an order appoint an officer to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge."

Rule 6-A simple as it is makes it evident that the disciplinary authority may appoint any one to be a Presenting Officer to present its case in support of the charges and impliedly covers the appointment of even a lawyer or a legally trained person, but the only fore requisite being that the person appointed as a Presenting Officer must be an officer of the Company. Now the other side of the coin is Rule 7(7) which prohibits positively the employment of a lawyer by the

delinquent officer. The rule is ambiguous as it is without any frills or hedges makes it very plain that a delinquent officer can under no circumstances have the assistance of a lawyer although its counterpart in Rule 6-A given a free hand to the management to appoint a lawyer as a Presenting Officer on behalf of the company. A simple juxta-position of the rules one enabling the management to appoint the presenting officer under Rule 6 and the other emphatically denying to the delinquent officer the privilege of being represented by a lawyer without more conveys to any one the impression that the machinery devised for the enquiry as aforesaid is somewhat loaded in favour of the management and more so it permits a latitude to the management while banning the availing of a similar privilege by the delinquent officer. Prima facie the procedure appears to treat the proponent and opponent unequally and while it exposes the weaker of the two namely the employee facing an enquiry to greater hardship leaving as the (sic) employer free to choose their means of organising the prosecution on its behalf. Now in this case the grievance of the petitioner is that the management had availed the services of a presenting officer who was a near lawyer being a legally trained person but at the same time denying a similar privilege to him. While the petitioner did not in his representation seeking leave to avail of legal assistant state so in his letter dated 1-1-1979 which has been produced by Mr. Narayana Rao at the hearing of the case, in the course of the writ petition, however, he put forward the plea that the management had availed of the services of a legally trained officer and the denial of similar services to him by the enquiry authority was a circumstances which vitiated the enquiry. This plea was brought in by way of amendment to the writ petition proposed through I.A. I. The court having allowed the same, ground No. 34 was added to the writ petition. The management which had filed a statement of objections preceding the amendment of the writ petition, does not appear to have taken leave to file a fresh pleading denying or setting out its case with regard to the facility of a legally trained person being employed by the management while denying a similar facility to the petitioner, so much so it is rightly argued for the petitioner that while the management had the benefit of a trained prosecutor, viz., B. Raghavendra Rao that situation placed the petitioner at a disadvantage at the enquiry adversely affecting the interest of the petitioner. In this background and for the purpose of this writ petition I must proceed on the premise that the management had the benefit of a legally trained officer to project its case in the capacity of a presenting officer but the petitioner who had particularly asked for the assistant of a lawyer had been specifically denied the same and asked to content himself with a co-officer of his choice. I am to state that ultimately the petitioner settled for teaming up with Venkataraman-Officer from the Nasik division and was content to have that officer to assist him in the enquiry.

12. The question now arises whether on these facts i.e., the management being represented by somebody who knew the law and the petitioner left to his amateurish devices for fending the charges with the help of an officer who had not the advantage of being trained in law, whether in such circumstances the

enquiry could be said to be vitiated. Mr. Narayana Rao did not seek to deny that the management's representative at the hearing, the presenting officer, was a legally trained officer. Mr. Subba Rao, on the other hand, maintained that the presenting officer was an official drawn from the cadre of officers belonging to the C.B.I. and was, therefore, a policeman well-trained in matters of investigation and presentation of evidence before a forum of enquiry and hence the presenting officer being a person with considerable skill and in the art of presenting a case before court, the petitioner who was a mere stores officer and his friend from Nasik who was with him being just another official were at great disadvantage and this unequal factor had led to serious detriment and prejudice of the petitioner at the enquiry which ultimately went against him. No doubt in each case the question would ultimately reduce itself to the extent of damage done to the interest of the employee by the omission to grant him the facility he had sought for. But right now I am not on that question although Mr. Narayan Rao for the management sought to meet the contention of the petitioner on this facet of the petitioner's case by pointing out that the petitioner could not be held to have suffered any prejudice because he had the assistance of an officer of his choice and nextly he was himself a law graduate, the office bearer of the Union and not at all a stranger to court procedure. He, therefore, submitted that there was no substance in this argument of prejudice. I will take up this aspect of the matter after I finish dealing with the argument based on entitlement to legal assistant and the effect of its denial.

13. Mr. Subba Rao wanted to give this issue a very wide and a large sweep encompassing the right to life and the right to livelihood enshrined in Article 21 of the Constitution. The argument he put forward was that in a country like ours where jobs are too few and hands are too many, for a person to lose a job is so disastrous that it affected the very existence not merely of that person but also of all those depending on him. He submitted that if a person lost a job that was the only source of his livelihood, the employee and his family would most certainly perish for want of means of sustenance since chances of getting alternative employment being, in the present situation and context wholly impossible. Therefore, he submits that there a person's job is in jeopardy what is ultimately imperilled is his living and livelihood and he must therefore be given every opportunity to protect himself against such drastic consequences. It is the submission of counsel where such protection has been denied or was not afforded even though solicited then the result of such denial should be treated as affecting the employees's right to livelihood or living. It is also submitted that in the context of the move to instill the right to work as a fundamental right in the Constitution, refusing leave to the petitioner to engage a lawyer had resulted in violation of Article 21 of the Constitution. It seems to me apart from the fact at the moment this argument looks a little involved to foresee a direct hook up between dismissal from service to the affectation of a person's life, I am to mention that similar argument advanced on behalf of the hawkers displaced from pavements of Delhi by the Municipal Corporation, contending that action of the

Corporation affected their right to trade as also their right to live was negated by the Supreme Court in *Sodam Singh v New Delhi Municipal Corporation*, AIR 1988 SC 1989. But, as to what would happen if the right to work becomes a fundamental right and as to the effect of any obstruction there to is an aspect still in the embryo stage, it would therefore not be prudent to venture to state my views, on this question which is as large as life itself. I would, therefore, not permit this argument of right to live or right to livelihood detain me and would not like to go on to consider for the present purpose the limited question concerning the incongruent circumstance of the management holding a disciplinary enquiry against an employee being itself represented by a legally trained presenting officer whereas legal assistance of a lawyer denied to the employee who sought for it and was the one who need most such a privilege. In this connection Mr. Subba Rao relied on the decision of Supreme Court in AIR 1983 SC 109, *Board of Trustees, Bombay Port v Dilipkumar* which is directly in point. That was a case in which an employee being pitted at an enquiry against a legally trained person wanted permission to appear through a lawyer but was denied such permission. Later the enquiry which went on without the delinquent officer being represented by a lawyer, having resulted in the dismissal of the officer he challenged the same before a single Judge of the High Court of Bombay successfully resulting in the order of dismissal being set aside on the main ground of denial of an appropriate opportunity to the officer of effectively defending himself which order came to be affirmed by a Bench of the High Court of Bombay. The subsequent appeal to the Supreme Court by the management was turned down by Their Lordships holding that in a case where the management was represented by a legally trained officer, refusal of the request by an employee to be represented by a lawyer resulted in denial of a reasonable opportunity of hearing to the employee, thereby violating principles of natural justice. The precise question posed for consideration by Their Lordships in that appeal was formulated as follows:

"The narrow question which we propose to examine in this appeal is whether where in a disciplinary enquiry a domestic tribunal, the employer complaining misconduct appoints legally trained person as Presenting-cum-Prosecuting Officer the denial or refusal of a request by the delinquent employee seeking permission to engage a legal practitioner to defend him at the enquiry, would constitute such denial of reasonable opportunity to defend oneself and thus violate one of the essential principles of natural justice which would vitiate the enquiry."

Their Lordships then went on to accept the following statement of the law made by Lord Denning in *Pett v Greyhound Racing Association Ltd.*, (1968)2 All E.R. 545 (CA):

"I should have thought, therefore, that when a man's reputation of livelihood is at stake, he not only has a right to speak by his own mouth. He has also a right to speak by counsel of solicitor."

Their Lordships then went on to point out:

"The trend therefore is in the direction of permitting a person who is likely to suffer serious civil or pecuniary consequences as a result of an enquiry, to enable him to defend himself adequately, he may be permitted to be represented by a legal practitioner. But we want to be very clear that we do not want to go that far in this case because it is not necessary for us to do so. The all important question: where as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should he be permitted to appear through a legal practitioner, is kept open."

From the above passage it becomes clear the larger question of the identification of the right of a delinquent official to legal assistance wherever the result of the enquiry was likely to lead to serious civil and pecuniary consequences was left open, Their Lordships confining their dicta to a case of unequal confrontation, in that the management represented by a legally trained officer, the delinquent was left to fend for himself without the assistance of a lawyer although such assistance was solicited. Their Lordships held that such a situation would result in the negation of a proper opportunity of the right to be heard and appropriate hearing sanctioned by the principles of natural justice. In para 10 of the judgment Their Lordship vividly etched the manner in which a domestic enquiry goes on and the fact that the result of the enquiry affects the future of the delinquent official almost affecting his livelihood should make the enquiry authority ensure that the delinquent is given the same type of legal assistance the employer enjoys. Their Lordships pointed out that where the rules of procedure did not place an embargo on providing legal assistance, it would be only proper on the part of the authority to exercise its discretion in favour of the employee if the enquiry authority itself was assisted by a legal expert. In that case when the enquiry actually started, the rules as they then stood did not prohibit the appearance of a legal adviser on behalf of the employee. Sub-rule (5) of Rule 15 of the Central Civil Service Rules, applicable to the case, provided that the Government servant may present his case with the assistance of any Government Servant approved by the Disciplinary Authority but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the disciplinary authority having regard to the circumstances of the case so permits. Their Lordships after noticing the rule *supra* then went on to rely on an earlier decision of this Court in *Subramaniam v Collector of Customs, Cochin*, (1972) 3 SCR 485: AIR 1972 SC 2178 and in para 13 of the Judgment Their Lordships made an observation which I consider to be really the heart of the matter suggesting a rule covering every case in which an employee was pitted in a domestic enquiry against a legally trained person functioning as a presenting or prosecuting officer. This is what the court stated:

"In our view we have reached a stage in our onward march to fairplay in action that where in an enquiry before a domestic tribunal the delinquent officer is

pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant his request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated. This view has been taken by a learned single Judge and while dismissing the appeal in limine approved by the Division Bench of the High Court commends to us. Therefore, this appeal is liable to be jeo paradised and the same can be put in dismissed." (emphasis supplied)

While reaching the conclusion that legal representation should be provided to a delinquent where the enquiry authority was provided with a similar facility, Their Lordships highlighted the sublime values of life and its ramifications in the following terms:

"This view was taken as flowing from Article 21 which mandates that no one shall be deprived of his life or liberty except in accordance with the procedure prescribed by law. The expression "life" does not merely connote animal existence or a continued drudgery through life. The expression "life" has a much wider meaning. Where therefore the outcome of a departmental enquiry is likely to adversely affect reputation or livelihood of a person, some of the finer graces of human civilisation which make life worth living would be jeopardised and the same can be put in jeopardy only by law which inheres fair procedures. In this context one can recall the famous words of Chapter II of Bhagwad Gita:

Sambhavitasya Chakeertir Marnad atirichyate.

Therefore in this case, there can be no doubt that for the additional reason that after the Regulation 12(3) came into force, the first respondent should have been given a reasonable opportunity to appear through legal practitioner and failure on their part had vitiated the enquiry. For these reasons, this appeal fails and is dismissed with costs quantified at Rs. 2,000/-."

But, then, although the decision in Board of Trustees" case referred to supra can be treated as covering the instant case completely, Mr. Narayan Rao for the management relied on another decision of the Supreme Court in Sarin v Union of India, AIR 1976 SC 1786 and an unreported decision of a Division Bench of this court in Writ Appeal No. 112 of 1980 disposed off on 3rd September, 1981. In Sarin's case the delinquent officer was told that he was not entitled to the services of a professional lawyer since the rules pertaining to the enquiry did not say anything about affording the delinquent opportunity of being represented by a lawyer. That was a case, in which the officer was being tried at a domestic enquiry regards allegations of graft i.e., having taken money from a West-German Company. The accusation against him was very simple and in those circumstances the court did not accede to the contention that the omission to provide the services of a lawyer or an officer of his choice who had to be sent one from India could be said to have resulted in transgressing the principles of natural justice. Therein the earlier decision of Supreme Court in Subramaniam v Collector of Customs, Cochin was relied upon but was distinguished by pointing

out that in Subramaniam's case the disciplinary authority had wrongly refused to exercise the discretion for granting permission to the delinquent to be represented by a lawyer, while proceeding in that behalf on an entirely irrelevant ground or circumstances. Sarin's case has not been referred to in the later decision of Bombay Port Trust case referred to supra. But, then, it does (sic) that Sarin's case proceeded mainly on the ground that looked at from any angle the delinquent officer had not suffered any prejudice at all and regard being had to the very simple nature of the charge merely accusing him of having taken money from a West German Firm and having regard to the status of the delinquent official, the court held that apart from the fact that the rules did not provide for permission to engage a legal practitioner to appear on behalf of the delinquent, otherwise also the delinquent had actually not suffered any prejudice by the refusal to permit a lawyer to appear for him. Sarin's case had not been referred to by the court in Bombay Port Trust case which was decided 7 years later in the year 1983. But, then, as held by Their Lordships in Bombay Port Trust case regard being had to the progressive trend and widening horizon of an administrative enquiry the appearance of a lawyer at a domestic enquiry must be taken to kindly. At any rate an element of compulsion was recognised in the Board of Trustees, Port of Bombay case enjoining a duty on the enquiry authority to permit availment of the services of a legally trained person by the delinquent where the management was represented by a lawyer or a legally trained person, makes it clear that the decision in Sarin's case seemed to turn on its own facts. The question arising herein of an unequal battle between the management and the delinquent not having arisen in Sarin's case, I am afraid Mr. Narayana Rao cannot rely on it to retort the utility of the decision in the Bombay Port Trust case on the simple ground that the Bombay Port Trust case was decided by a Bench of two Judges whereas Sarin's case was decided by a numerically larger Bench of three Judges.

14. Even otherwise Sarin's case which can be easily distinguished on facts from the instant case, I must say really holds no barrier for being surmounted herein. But, Mr. Narayana Rao drew my attention to a Bench decision of this Court in Union of India v Balakrishna Rao, Writ Appeal No. 112 of 1980 in which the court followed Sarin's case, to set aside a decision of a single Judge who had relied on the decision of Subramaniam v Collector of Customs, Cochin, AIR 1972 SC 2178 and had negated the enquiry proceedings on that basis. His Lordship Mr. Justice Puttaswamy, as he then was, speaking for a Bench laid down that representation by a lawyer was not an integral part of principles of natural justice and, therefore, it cannot be said to be an axiomatic principle that where even leave was refused to at an enquiry to a delinquent for permission to take the assistance of a lawyer, then without more principles of natural justice stood negated leading to the invalidation of the proceedings. It so happens that it was also a case in which it had been urged that the presenting officer was a Superintendent of Police attached to C.B.I. and for that reason the delinquent had asked leave to be represented by a lawyer. On facts His Lordship found that

although the presenting officer Narayanaswamy was a police officer working in C.B.I. with considerable experience in law, "on that score it was difficult to say that he was a trained counsel". Resulting position was on the finding that the management's man could not be said to be a trained counsel and it also transpires from the judgment that the delinquent officer had not urged before the court that the omission to grant leave to engage a lawyer had resulted in severe prejudice to him, it does appear as if on these twin circumstances the court was inclined to hold that there was no failure of justice in turning down the request of the delinquent officer for assistance of a lawyer. The dicta in that case can also be confined to the facts therein resting as it did on the twin circumstances, viz., the court taking the view that the prosecuting officer was not a trained lawyer and that the officer himself had not made any complaint to the court of the ensuing prejudice to his cause by refusal of leave to hire or engage a lawyer. But, then, the said decision having been rendered in the year 1981 probably in the light of the Bombay Port Trust case following as it did the pronouncement of the Constitution Bench in *A.K. Roy v Union of India*, AIR 1982 SC 710 recognising the possibility that even in a preventive detention matter wherein lawyer's participation was barred by the Constitution mandate, there was yet scope for infiltration of a lawyer if the Government or the enquiry authority has the assistance of a lawyer or somebody trained in the law indicating the widening horizon of administrative enquiry taking it out of narrow cliches and a stymied route which barred the entry of a lawyer under any circumstance, may now appear to be less hallowed as a precedent. I may in this connection recall the statement of Jefferson who while referring to Judges and the need for expediency in discharging their duties, said "how can expedience be expected from abody which we have saddled with 100 lawyers". It is probably the fear of delayed results inevitably associated with the participation of a lawyer at an enquiry, has resulted in the emanating of a near uniform policy of keeping out lawyers from domestic enquiries which I am afraid would not do in these days where administrative enquiries dealt with issues, having very far and wide-reaching consequences affecting seriously the life style of the delinquent officer, (sic). It should not be assumed that a lawyer is always a stumbling block and should, therefore, be looked upon as somebody who should be avoided and hence made unwelcome in a domestic enquiry. Very recently the Supreme Court ruled that barring the entry of an Advocate before a Land Tribunal no doubt a feature of the statute would affect the fundamental right of a legal practitioner to practice his profession. But that question, no doubt, does not arise here but may very well be in the offing in which event it becomes possibly difficult to say no to a lawyer, wanting to appear in an administrative enquiry. But the decision herein must turn on the pronouncement of the Supreme Court in *Bombay Port Trust* case and as I have said with the decision of the Supreme Court in *Sarin's* case or the decision of this Court in the *Union of India v B. Ramakrishna*, not being in the way at all, turning as they did on their own facts, I must hold the blanket ban imposed under Rule 7(7) of the HAL Disciplinary Action Rules barring entry of a legal practitioner in an administrative enquiry under any circumstance even

where the management was represented by a legally trained officer as in this case, must, be treated as nugatory not just of the principles of natural justice but of all sense of fairplay and on that score alone the enquiry must be held to have been vitiated.

15. But, there is yet another angle to this question which I must on this occasion explore. It has now been held even in cases relating to preventive detention where legal assistance to (sic) is barred under Article 22 of the Constitution itself, the detenu can still be afforded legal assistance if the detention authority took the assistance of a lawyer or a legally trained officer, while projecting their case before the Advisory Board. In similar event the right of detenu or counsels assistance as a matter of course has been upheld in *A.K. Roy v Union of India*, AIR 1982 SC 710. The observations at para 94 are apposite are as follows:

"Another aspect of this matter which needs to be mentioned is that the embargo on the appearance of legal practitioners should not be extended so as to prevent the detenu from being aided or assisted by a friend who, in truth and substance, is not a legal practitioner. Every person whose interests are adversely affected as a result of the proceedings which have a serious import is entitled to be heard in these proceedings and he assisted by a friend. A detenu, taken straight from his cell to the Board's room, may lack the ease and composure to present his point of view. He may be "tongue-tied" nervous, confused or wanting in intelligence, (See *Pett v Greyhound Racing Association Ltd.*) and if justice is to be done, he must atleast have the help of a friend who can assist him to give coherence to his stray and wandering ideas. Incarceration makes a man and his thoughts dishevelled. Just as a person who is dumb is entitled, as he must, to be represented by a person who has speech, even so, a person who finds himself unable to present his own case is entitled to take the aid and advice of a person who is better situated to appreciate the facts of the case and the language of the law. It may be that the denial of legal representation is not denial of natural justice per se, and therefore, if a statute excludes that facility expressly it would not be open to the tribunal to allow it. Fairness, as said by Lord Denning in *Maynard v Osmond* can be obtained without legal representation. But, it is no fair, and the statute does not exclude that right, that the detenu should not even be allowed to take the aid of a friend. Whenever demanded the Advisory Boards must grant that facility."

The trend, therefore, as can be noted from the foregoing is of increasingly permitting legal assistance to those who solicit the same. It does seem that there has formerly been a less liberal approach to these matters, while think it is only proper for courts to be weaned away from the view projected by the school of thought pertaining to right to legal assistance not being part of procedural fairness and natural justice, and to break fresh ground in this behalf now that we have a follow-up from the hitherto unexplored (sic), almost a benefaction in Article 14 as a potent weapon to strike at and annihilate every law, rule, Act or Order or conduct of an administrative or executive authority which smacks of

arbitrariness. The apex court by ushering in this new doctrine had laid emphasis on the more universal application of Article 14 in a wider horizon and the role to be assigned to a potent force hitherto confined only to the narrow limits of classification had been lifted out of a cramped habitant into which it was earlier cribbed, cramped and confined to, liberating it as it were for roaming over vast fields of executive action to annihilate arbitrariness and capriciousness in the exercise of executive authority. The Supreme Court in a series of decisions starting with the case of *Royappa v State of Tamil Nadu*, AIR 1974 SC 555 followed by *Menaka Gandhi v Union of India*, AIR 1981 SC 597 and the subsequent cases of AIR 1979 SC 1628, *Ajay Hasia v Khalib Mujeeb*, AIR 1981 SC 487 and *Air India v Nargis Mishra* 1981 SCC 335, has heralded in a new look Article 14. In *Air India's* case supra a rule framed by the Air India authorities ordering the retirement of an air-hostess who became pregnant after 4 years of service with the employer, was struck down as an example of buerocratic despotism. Adverting to the nature of the rule and the arbitrary content of the same Their Lordships observed at page 367 of the report as follows:

"Coming now to the second limb of the provisions according to which the services of A. Hs. would stand terminated on first pregnancy, we find ourselves in complete agreement with the argument of Mr. Setalvad that this is a most unreasonable and arbitrary provision which shocks the conscience of the court. The regulation does not prohibit marriage after four years and if an AH after having fulfilled the first condition becomes pregnant, then there is no reason why pregnancy should stand in the way of her continuing in service. The Corporations represented to us that pregnancy leads to a number of complications and to medical disabilities which may stand in the efficient discharge of the duties by the A. Hs. It was said that even in the early stage of pregnancy some ladies are prone to get sick due to air pressure, nausea in long flights and such other technical factors. This, however, appears to be purely an artificial argument because once a married woman is allowed to continue in service then under the provisions of the Maternity Benefit Act, 1961 and the Maharashtra Maternity Rules, 1965 she is entitled to certain benefits including maternity leave. In case, however, the Corporations feel that pregnancy from the very beginning may come in the way of the discharge of the duties by some of the A. Hs., they could be given maternity leave for a period of 14 to 16 months and in the meanwhile there could be no difficulty in the Management making arrangements on a temporary or ad hoc basis by employing additional A. Hs. We are also unable to understand the argument of the Corporation that a woman after bearing children becomes weak in physique or in her constitution. There is neither any legal nor medical authority for this bald proposition. Having taken the AH in service and after having utilised her services for four years, to terminate her service by the Management if she becomes pregnant amounts to compelling the poor AH not to have any children and thus interfere with and divert the ordinary course of human nature. It seems to us that the termination of the services of an AH under such circumstances is not only a callous and cruel act but an open insult to

Indian womanhood the most sacrosanct and cherished institution. We are constrained to observe that such a course of action is extremely detestable and abhorrent to the notions of a civilised society. Apart from being grossly unethical, it smacks of a deep rooted sense of utter selfishness at the cost of all human values. Such a provision, therefore, is not only manifestly unreasonable and arbitrary, but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article 14 of the Constitution." (emphasis supplied)

Their Lordships while highlighting the new found use of Article 14 to put down arbitrary exercise of power referred to the decisions in *Dwarka Prasad v State of Uttar Pradesh*, AIR 1964 SC 224 and decision in *Maneka Gandhi v Union of India*, AIR 1978 SC 597 to draw support from the said decisions to conclude, "the impugned provisions appear to us to be a clear case of official arbitrariness". It seems to me I must take the cue from the pronouncement of the Apex Court in these cases particularly the decision in *State of Andhra Pradesh v Nalla Raja Reddy*, AIR 1967 SC 1458 (at page 1468, para 23) wherein Their Lordships held:

"Official arbitrariness is more subversive of the doctrine of equality than statutory discrimination. In respect of statutory discrimination one knows where he stands, but the wand of official arbitrariness can be waved in all directions indiscriminately." (emphasis supplied)

The application of these principles to Rule 7(7) of the Disciplinary Action Rules of the Company denying right of legal assistance is not difficult and in fact the circumstances of the management being left free to adopt any standard it chooses while denying a similar treatment to the employee is without more a glaring injustice committed on an employee meriting inter alia its condemnation. In this case clearly a question of gross unequal treatment arises and the matter is so plain in that the management having the services of a person who was legally trained in the art of collecting evidence and projecting it before a forum of enquiry, denied the (sic) to the petitioner who pitted as he was against a trained personnel had to fend for himself, particularly after Venkataraman left the enquiry midway leaving the petitioner to the tender mercies of a hard-riding enquiry authority. It appears to me all else failing the spectacle of a well-stocked management revelling before the enquiry authority in the company of a legally trained officer riding roughshod over two amateurs one of whom was the delinquent himself, would suffice to bring down on this kind of arbitrary (exercise) of authority to the cutting edge of Article 14 to severe for ever the power of the executive authority to roam at will and strike down the neck of a subordinate bowed down by the weight of the charges levelled against him. The instant rule may be examined in contrast with Rule 12(8) of the *Bombay Port Trust Employees' Regulations, 1976*. The present rule is more drastic and extremely harsh in its sweep. This is easily seen by a comparison of the two rules as follows: Rule 12(8) Rule 7(7)

The employee may take the assistance of any other employee or, if the employee

is a Class III or a Class IV employee, of an "Officer Bearer" as defined in clause (d) of Section 2 of the Trade Unions Act, 1926 (16 of 1926) of the union to which he belongs, to present the case of his behalf, but may not engage a legal practitioner for the purpose unless the said Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits. The employee may take the assistance of another employee to present the case on behalf of him but is not to engage a legal practitioner for the purpose.

A perusal would go to show that atleast in the Bombay Port case the authorities had a discretion to allow the delinquent to take the assistance of a lawyer. Then of course everything, i.e., permission or denial lay within its power and the court in that case pointed out that the authorities should have exercised discretion in favour of the delinquent by allowing him to engage a lawyer and having refused to exercise discretion in his favour omission proved to be one of the circumstances vitiating the enquiry. But in this case the rule is more draconic because it did not even permit any discretion to the authority to give legal assistance to a deserving delinquent but at the same time enabled the management to act as it wished. The position therefore is whereas the management was left free to induct into the enquiry any one on its behalf for the purpose of conducting the enquiry and that person may even be a lawyer or a legally trained person and it can do all this with or without reference to the views of the enquiry authority whom it is not obliged to consult or seek its approval, but the same rule however prohibits in toto the right to engage a counsel to the delinquent. The harshness of the rule becomes apparent if one notices that as the rule now stands the authority is absolutely without any power, in case where it feels the interest of the delinquent is best-served by a lawyer it is powerless to authorise the appearance of a lawyer. The curious position, therefore, is on the one hand the authority has no power to stop the management from doing whatever "wants" to do but on the other hand it has to plead its helplessness to assist the delinquent when he asks for the assistance of a lawyer to defend him. On these facts there is no getting away from the conclusion that official arbitrariness or managerial despotism is writ large in this rule and, therefore, it must be stilled and muted by declaring it to be invalid as violating Article 14 of the Constitution of India. No doubt the petitioner has not made any prayer for striking down the said rule as ultra vires but, then, it is not necessary that there should be a prayer for that purpose because within the broad sweep of the jurisdiction of this Court under Article 226 relief can be moulded appropriately. Therefore, it is, I think it is just and proper to strike down Rule 7(7) of the Disciplinary Action Rules of the Company and accordingly I strike down Rule 7(7) of the HAL Disciplinary Rules. This finding should lead without more to the concomitant finding that the whole of the enquiry is absolutely and totally vitiated.

16. Before concluding this topic I must, however, advert to the argument of Mr. Narayan Rao that the refusal of legal assistance to the petitioner could not have

resulted in any prejudice to him because the petitioner himself was a law graduate and had considerable experience in legal matters having filed a suit against the management and being the General Secretary of the Union he was one of those persons who had enough of legal expertise adequate to get on with the enquiry without feeling the need to engage a lawyer. It is also pointed out after all the petitioner was not alone and (sic) he had the assistance of a co-officer whom he had specially requisitioned and had been brought over to Bangalore all the way from Nasik. Reference is also made to some applications made by the petitioner for re-opening the case in which he had adverted to decisions of (sic) highlighting the requirements of natural justice, etc. It seems to me the management cannot be heard to say that the delinquent has not suffered any injury or hardship albeit his request for a lawyer having been turned down. I need hardly say that the shoe pinches the wearer and not the onlooker. Dealing with a similar argument the Supreme Court in *S.L. Kapoor v Jagmohan*, AIR 1981 SC 136, observed:

"It ill comes from a person who was denied justice that the person who has been denied justice is not prejudiced."

It ill comes, therefore, from the authority to contend that although it may have done a wrong, no prejudice was caused to the victim of the wrong. Even otherwise I cannot accede to the submission of Mr. Narayan Rao that the petitioner had not suffered any prejudice because he was capable of defending himself, he had a co-officer with him, etc., for the simple reason that both the petitioner and his co-officer were subordinates of the panel of members constituting the authority both of whom were superior to the delinquent and his friend. The petitioner was facing a barrage of serious charges which were likely to cost him his job as it ultimately did. What is more he had attributed bias to the enquiry authority and asked for a change of the personnel of the enquiry authority which demand had also been turned down. Undoubtedly the atmosphere for him was clearly not a friendly one. If in such circumstances he asked for a lawyer and was denied one, how can it be said that he did not suffer any prejudice. What a lawyer's presence means and what his absence connotes is an aspect what was told with great lucidity in *Muniswamy v The State of Mysore*, 1963(2) My. L.J. 1. That was a case in which a civil servant was tried and dealt with at an administrative enquiry wherein the prosecution was in the hands of a police inspector and in that situation when the Government servant asked for permission to engage the services of the lawyer and that request denied, the enquiry it was held was vitiated by reason of the arbitrary refusal of legal assistance to the delinquent. Dealing with that question Mr. Justice Somanath Iyer, as His Lordship then was, stated:

"To ask the delinquent civil servant to defend himself through another Government servant would be as unmeaning as the insistence of an engineer getting treatment for his illness only from another engineer or on a member of the medical profession getting his engineering difficulties solved only by another

member of the medical profession. The consequence in each would be equally unfortunate."

That this decision was subsequently not looked upon with favour in this very Court need not detain me as it appears to me to be more in tune with the prevalent legal thought in currency in the light of the decision in the Bombay Port Trust case wherein Their Lordship held, when the management was represented by a legally trained officer and the employee was without the services of a lawyer the enquiry proceedings would in toto stand vitiated. This dicta of the Supreme Court I think restores the dictum in Muniswamy's case to its pristine value although the later judgments of this Court had eroded its utility. It, therefore, seems to me even apart from precedents, on the plain fact situation it cannot be denied that the petitioner had suffered a serious prejudice in his defence for lack of services of a lawyer for which reason alone the result of the enquiry culminating in the dismissal of petitioner from service should be held to have been vitiated.

Point No. 2:

17. But, there are also other circumstances which should lead to the same consequence and that which demonstrates the severity of prejudice the man had suffered by an enquiry authority which appears to have virtually steam-rolled the enquiry proceedings. In this context the refusal of adjournment to the petitioner on 20th March, 1979 and the subsequent refusal to reopen the enquiry and to recall the witnesses who were examined in the absence of the petitioner and his co-officer, comes up for consideration. The enquiry that had started on 28th February, 1979 appears to have proceeded well uptill 9-3-1979. There were several hearings (sic). Except on the hearing on 9th, on all hearings previous to that, no witness was examined. At those hearings time appears to have been taken up debating the question of granting assistance of a legal practitioner to the petitioner, about permitting him to have the assistance of a co-officer, etc. While it is true that nearly 8 or 9 sittings held earlier have produced no results, but the petitioner could not be blamed for that. When the petitioner exercised his choice in favour of Venkataraman to assist him (sic) the enquiry and that probably was due to the fact that the petitioner and Venkataraman were well-acquainted with one another because the petitioner had started his career at Nasik and in fact Mr. Narayan Rao said at the hearing that Venkataraman was a man of considerable experience in these matters of enquiry, he would have had little reason to imagine that Venkataraman would have difficulties in coming over to Bangalore to assist the petitioner because his (Venkataraman's) boss did not relieve him. Definitely the petitioner could not have foreseen that Venkataraman would fall sick at Bangalore, being one of the reasons why the enquiry was adjourned formerly. So, if there was some delay before the 9th March, 1979 in getting on with the enquiry the petitioner was hardly not to blame. On the 9th March, 1979 P.W. 1 Pangarker was partly examined and thereafter the enquiry stood adjourned to 20th March. According to the enquiry authority the case was

adjourned to 20th March to suit the convenience of the petitioner whereas according to the petitioner it was done to suit the convenience of one of the panel members who had some private business at Hyderabad at that point of time. In the meanwhile the petitioner left for Delhi to attend to union work and was held up there and, therefore, sent a telegram and also caused a request made through his co-officer Venkataraman for an adjournment and when everyone assembled for the enquiry on 20th, in the absence of the petitioner, the cross-examination of P.W. 1 was done in part by Venkataraman. On 20th March, the enquiry was adjourned to 23rd instant with clear instruction to Venkataraman to keep the petitioner present on that day. However, on the 23rd Venkataraman pleaded that the petitioner could not be present on that day and that he (Venkataraman) had to go to Nasik for 10 days atleast due to personal reasons and had sought for an adjournment. The adjournment being refused, Venkataraman pleaded his inability to cross-examine the witness in the absence of the petitioner and declined to proceed with the enquiry. On his refusal to go on with the enquiry the enquiry authority went on to record the evidence of 5 more witnesses and closed the enquiry and called upon the petitioner to make a statement in his defence. The petitioner who came back to Bangalore on 3rd April, 1979 dashed off a telegram notifying his arrival and requested the authority to start the enquiry again so that he can cross-examine the witnesses. But, the authority who not merely refused his request appears to have rushed post-haste to all the courts in Bangalore including this Court posting caveats in each and every court anticipating legal action by the petitioner whom it expected to complain about the winding up of the enquiry literally without his participation. But, the petitioner did not give the panic-stricken management an opportunity of crossing swords with him in a court of law at that stage but went on bombarding the management with his representations extolling in each and every one of them how he had been denied an opportunity of effectively defending himself at every stage, how the closing of the enquiry after an ex parte hearing was the piece-de-resistance. But, then, when a second show-cause notice was issued to him to show cause as to why the punishment of dismissal should not be imposed he made a representation in that behalf and after setting forth all his arguments about the intended move in the course of which he attacked with great gust the hustling through of the enquiry against him and also the fact that he could not put-in his defence statement at all. It was also stated by him that his request to examine witnesses on his behalf and his request to record a oral defence statement were all consigned to cold-storage by the enquiry authority which jumped levels to the issuance of a show cause notice (sic) the (sic) of the extreme penalty of dismissal against him. There are really two aspects of the matter, viz.:

a) the refusal of the adjournment and the refusal by the enquiry authority to reopen the enquiry, and b) non-granting of an opportunity to the petitioner to lead rebuttal evidence and of making a statement orally in his defence.

18. Dealing with the first issues apropos the refusal to grant an adjournment, I

should think that it has resulted in great prejudice to the petitioner. On 28th the petitioner was not in Bangalore but was in Delhi. The enquiry authority was told about that. It was also conveyed to the enquiry authority the petitioner would be back in Bangalore in a week's time and the enquiry could proceed thereafter. Yet, the adjournment was refused and the co-officer was forced to go on with the enquiry. The man struggled for one day and when the matter was adjourned to the next date of hearing he simply walked out of the enquiry throwing up his hands in anguish because the delinquent himself was not with him to give instructions. It was more so because the evidence that was being led related to the charge of personal involvement of the petitioner in the strike. The cross-examination not being possible in the absence of instructions from the petitioner, the co-officer could not do anything except declining to participate in the enquiry. There is yet another reason why Venkataraman could not proceed with the enquiry. The man having arrived some time in the month of March, 1979 had been staying in Bangalore for nearly a month during the course of which he had also fallen ill, not unnaturally he wanted a break to go back to Nasik perhaps to join his family or perhaps to seek extension of the permission granted to him by his boss to go on with the enquiry. Vexed by all these possibilities Venkataraman virtually deserted the enquiry and in the process abandoning the petitioner. One can very well ask whether it was an ideal circumstance, in that these two officers enquiring into the serious allegations against an officer which ultimately resulted in his dismissal from service in a post he held for nearly 14 years, to have rejected such a request. The answer should be, if one is to take a non-biased and detached view of the circumstances, to say that the authority had clearly misled itself (sic) being persuaded to go on with the enquiry without the delinquent and his co-officer, action which tends to indicate without more that the enquiry authority hustled the enquiry to finish it when the back of the petitioner was turned so that there could be no resistance and possibly one could say that they wanted no resistance (sic) to hold the petitioner guilty of the charges levelled against him. By exhibiting this kind of alacrity to wind up the enquiry and the subsequent refusal to reopen the enquiry and recall the witnesses to enable the petitioner to cross-examine them and all this because the man was not present on one particular date of hearing and wanted an adjournment by a week or in little more than a week. True date was fixed in consultation with him and despite such consultation he had remained absent. But this is not a case in which the petitioner even while he was in Bangalore had stayed away from the enquiry. Admittedly he was away at Delhi where he says he had been to attend to some union work. This assertion is not controverted. Definitely he could not have gone to Delhi on any personal business. He had gone to Delhi because of the work of the association probably for lobbying on behalf of the association to get a better deal in the wage revision. It can be seen from the proceedings of the Parliament produced in this writ petition that Members of Parliament had evinced considerable interest in the move to revise or refusal to revise their wage packet. He probably expected to get back to Bangalore in time to attend the enquiry but having been held up he sought for a respite and that was not given. Even

assuming that he had deliberately avoided appearing before the authority by staying away at Delhi, nothing would have been lost in granting an adjournment which could have been granted (sic) taking an undertaking from the co-officer that on the next date of hearing the enquiry would go on without any let or hindrance and without any motion for adjournment. Even granting the refusal of the adjournment was justified, was the refusal to reopen the enquiry after the petitioner had (sic) returned justified? By refusing to reopen the enquiry the enquiry authority was simply penalising the delinquent for not appearing before it. If he had stayed away at Delhi deliberately, he had suffered. Was it fair on the part of the enquiry authority to refuse to re-open the enquiry with a view to penalise him for his absence on the last occasion, even if such absence can be termed as a misdeed, that had ultimately led to his being dismissed from service. We have the minutes of enquiry. No reason is forthcoming from the minutes as to why the prayer for reopening of enquiry was refused and that by itself should suffice to censure the thoughtless act of the enquiry authority. What is more how eager they were to cling on to the advantage of proceeding against the petitioner ex parte becomes clear if we take note of the spate of caveats filed in almost all the courts in Bangalore. This is an aspect which is not denied to this day. While they were prepared to battle it out with the petitioner in court if he had challenged their action and had made the necessary preparations in that behalf guarding against any preemptive action by the petitioner, they were not prepared to hear him again at any cost. After all six witnesses had been examined at the enquiry. P.W. 1 had been cross-examined in part. None of the other witnesses were cross-examined. All the witnesses were from the Bangalore unit. Their evidence had been closed just a fortnight before this development. The management would have had no difficulty in recalling the witnesses and allowing the petitioner to cross-examine them and all this could have been done by imposing some terms on him. Why at all this aspect had not occurred to the management, I am at a loss to understand unless it be it is a case of close circuit mind running only on one track just directed to getting rid of the petitioner somehow or at any cost. In their anxiety to avoid a confrontation at the enquiry level the authority had missed performing a duty statutorily enjoined on it. It is needless to point out that Tight of cross-examination and of leading defence evidence is an attribute of every enquiry, whether judicial, quasi-judicial or administrative, and these procedural steps are the safety valves designed for containing arbitrary action and wayward exercise of authority. The denial of such a right does not just violate the principles of natural justice but leads to total negation of all basic tenets of civilised human conduct such as tolerance to the other's view point. Judicially these steps in an enquiry, viz., right to cross-examine and right to lead one's own evidence are well-recognised and suffice it to refer to the decisions of the Supreme Court in *Union of India v T.R. Varma*, AIR 1957 SC 882 and *Khem Chand v Union of India*, AIR 1958 SC 300. The refusal to grant adjournment, refusal to recall the witnesses and thereby permit the petitioner to participate more effectively in the enquiry that would have satisfied the civilized conscious, as also the requirement of the rules of the

enquiry and the principles of natural justice, has in this case led to a total negation of fair-play. In *Priddle v Fisher and Sons*, 1968(3) All England Reports 506 the Queen's Bench Division set aside the result of an enquiry taking note of the failure to grant an adjournment which in that case; was found to have been not actually sought for in so many words but the court being satisfied that the tribunal had wrongly proceeded to dispose off the case on its merits thinking that no adjournment had been sought for, held it to be a sufficiently grave mistake to (sic) annulling the enquiry itself. It was a case in which the appellant had preferred a claim to redundancy payment before the Industrial Tribunal for determination. The Tribunal was aware that he intended to be present at the hearing. The appellant had arranged to be represented by a trade union representative with whom he intended to travel to the place of hearing. The union representative being unwell on the day of the hearing was unable to make the journey. Appellant set off on his own intending to conduct the case himself but did not complete the journey because of heavy snow fall. A phone message sent on his behalf reached the tribunal some five minutes after the hearing had begun. It was explained that neither appellant nor the union representative could attend the hearing but no motion was made for an adjournment. The tribunal proceeded in the absence of the appellant. The appeal was dismissed. On an appeal to the court it was held that it was quite appropriate for the Tribunal to have adjourned the case in exercise of its discretion and the non-exercise of judicial discretion in that manner had resulted in committing of a substantial wrong for which reason the court had to interfere and annul the Tribunal's order. Their Lordships after adverting to the argument advanced before them, made the following observations:

"The matter can be put in many ways, but the way in which it appeals to me is that a tribunal is acting wrongly in law, if, knowing that an appellant has all along intended to turn up and give evidence and support his claim, and being satisfied, they refuse to adjourn merely because he had not asked expressly for an adjournment. Before deciding to continue the tribunal should be satisfied that he was inviting them to continue in his absence. The matter is even more clear when one realises here that the burden is on the employers and the appellant has a right to cross-examine them to show if he can that the reason given for dismissal was a disguise for a dismissal on the ground of redundancy."

The decision, if I may say so with respect, illustrates the type of anxiety which every one whatever be the authority and whoever be the authority should exhibit in these matters which are likely to lead to such grave consequences of a man's livelihood being affected as a result of a proceeding before an Authority. We have in our country decisions enjoining granting of a hearing to any person who is likely to suffer a civil consequence by a verdict of the authority but I would applaud the decision in *Priddle v Fisher*, for its wide span encompassing within it the great anxiety the court in England displayed, the alacrity shown for righting a wrong suffered by a person without being heard in a case in which, facts showed, the appellant had not made a specific motion for adjournment indicating

his desire to be heard on some other occasion. But even then Their Lordships felt that in the very nature of things, regard being had to the fact that the appellant was expecting to be heard and that he had (sic) expressed his difficulty to appear before the Tribunal which according to Their Lordships indicated by implication seeking of an adjournment and for another opportunity of being heard without stating it in so many words, interference was called for because the Tribunal was not so finely tuned to recognise the submissions made to the Tribunal through a telephonic message expressing the appellant's inability to appear before it to be truly a prayer for another opportunity to appear before the Tribunal. The court in that case had interfered because the Tribunal had missed the fine nuances arising from the facts, making it clear by implication that what the appellant wanted was some more accommodation in the matter of hearing his case and because of the mere omission to grant an adjournment Their Lordships, acted and set aside the result of the enquiry whereas in this case an adjournment had been sought for by the petitioner through a telegraphic communication and the same was reiterated by his colleague at the enquiry not once but more than once. Later on the 23rd, the colleague departed from the scene of enquiry under circumstances of his own inability to continue the enquiry in the absence of the petitioner and because he had to go back to Nasik from where he had come and had been staying at the place of enquiry for nearly a month. In such circumstances I for one cannot see any motive or desire to convert the proceeding into a hung enquiry and to protract the same but what I (sic) is a prayer for clemency expressing one's inability to be with the enquiry because of some expediency. Merely because he was committed to appear before the enquiry earlier, is in my view no ground to be so frigid abrasive unless if (sic) one is satisfied the move and the motion made was clearly (sic). In *P. Nagaraj v Joint Registrar of Co-operative Societies, Mysore*, 1990(2) Kar. L.J. 2: ILR 1990 Karnataka 858, Balakrishna, J. observed:

"Fair administrative procedure involves procedural fairness and regularity which are indispensable attributes of liberty. Stringent substantive laws can be endured only if they are fairly and impartially applied."

Taking a cue from the above observation, I would also emphasis that administrative justice should never be bereft of fair-play and wherever fair-play is a casualty, administrative justice should be held to have suffered. I may point out the disciplinary proceedings to provide for reopening enquiry and recalling the witnesses. But, then, the rule gives the enquiry authority the requisite discretion and it looks as if this discretion is made exercisable at the instance of the presenting officer. The relevant rule is Rule 7(14). It reads:

"If it shall appear necessary before the close of the case on behalf of the Disciplinary Authority, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the employee or may itself call for new evidence or re-call and re-examine any witness and in such case the employee shall be entitled to have, if he demands

it, a copy of the list of further evidence proposed to be produced, and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the enquiry is adjourned. The Inquiring Authority shall give the employee an opportunity of inspecting such documents before they are taken on the record. The Inquiring Authority may also allow the employee to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interest of justice."

The above rule undoubtedly gives the authority the necessary power to act (sic) reopening an enquiry, for recalling a witness, etc., etc. and no doubt provides for an opportunity being given to the employee to produce new evidence in the context of the further evidence recorded after the enquiry was reopened but does not persay provide an opportunity to the employee to solicit the reopening of the enquiry and to recall a witness already examined. From the frame-work of the rule it looks as if all these privileges are open to the presenting officer who could probably move the authority in this behalf whereas a similar benefit ipso facto does not seem to be available to the censured employee. But, then, in my opinion this rule does not preclude the employee from asking for a former hearing or for seeking a reopening, etc., because such a power can be read into these rules by implication. My only object in highlighting the feature of this rule is to indicate that it does appear to be one sided and a bit lop-sided as well.

19. Another foible and at that a very glaring one permeating as it does the very substance of the enquiry virtually wittling down its tenability is the fact that the employee who was entitled to an opportunity of leading his own evidence at the conclusion of the evidence led on behalf of the disciplinary authority and the opportunity of making a defence statement was never afforded such an opportunity and was in fact denied the same despite a demand made by him specifically in that behalf. The relevant rules to be noted are Rules 15 and 16, which read:

"(15) When the case for the disciplinary authority is closed, the employee shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded the employee shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(16) The evidence on behalf of the employee shall then be produced. The witness produced by the employee shall then be examined and shall be liable to cross-examination and re-examination and examination by the Inquiry Authority according to the provisions applicable to the witnesses for the Disciplinary Authority."

Rule 15 it may be noticed postulates the first step to be taken by the enquiry authority after the closure of the case of the disciplinary authority and that step is to call upon the employee to state his defence either orally or in writing as be

may prefer. The rule further enjoins that the defence made orally shall be recorded and the employee made to sign the record. In this case it so happened the authority had admittedly asked the petitioner to produce a written statement comprising of his defence. For that purpose it did extend time from 5th of April to 12th of April but then the petitioner had clearly told them and there is no dispute about it that he wanted to make an oral statement and not a statement in writing. But, then, it is not denied the authorities simply folded up the enquiry without recording the oral statement of the petitioner and without calling upon the petitioner to examine his witnesses. While the enquiry authority does notice in the report that the defence statement was not made but seems to ignore the circumstance under which it was not made and that was because the man wanted to make an oral statement in its defence. Rule 15 gives him an option to do just that, if he so chooses. In this case there being no dispute that the petitioner opted to have his statement recorded orally, the authority was duty bound to record his statement and what is more under Rule 16 should have called upon the petitioner to examine his witnesses regards which he had already submitted a list of witnesses whom he desired to examine on his behalf. To bear out the factum of exercising this option of having the statement recorded orally, I may refer to paras 25 to 29 of the communication sent by the petitioner to the management as per Annexure-GG, dated 10-4-1979.

"25. Without prejudice to the above request and my right to cross-examine the prosecution witnesses which I was denied by injudicious, arbitrary and improper exercise of "discretionary power", and by conducting ex parte proceedings with undue haste by taking undue advantage of my unavoidable and pre-notified absence from Bangalore for bona fide purposes, with malicious intentions and with pre-conceived notions to destroy me and the Association of 2,500 officers, and by denying me the right to put the prosecution witnesses to the acide test of cross-examination, I would like to submit, as Enquiry Authority asked me to submit my statement of defence, that I prefer to submit my defence statement orally as per sub-rule (15) of the Rule 8 of HAL. Disciplinary Action Rules. The date, lime and venue to make my oral defence statement may kindly be intimated to me with due notice so that I can be present to make my defence statement.

xxx xxx xxx.

26. The Enquiry Authority completed recording of prosecution evidence and the case of the Disciplinary Authority was closed by the Presenting Officer on 24-3-1979. Immediately thereafter, i.e. on 26-3-1979 the Enquiry Authority issued notice to me in accordance with the sub-rule (15) of Rule 8 of HAL Disciplinary Action Rules requiring me to submit my defence statement. The statement can be in writing or oral. I prefer to make oral statement.

xxx xxx xxx.

29. "This request of mine to make a defence statement orally instead of

submitting written statement as asked for by the Enquiry Authority under sub-rule (15) of Rule 8 is without prejudice to my primary contention that the defective, unreasonable and invalid ex parte proceedings should be annulled and the prosecution witnesses should be examined in my presence and that I shall have the right to cross-examine them. As per HAL Rules the Enquiry Authority has power to re-open the case de novo."

As pointed out earlier the authority maintained discreet ailence in regard to the request by the petitioner to record his defence statement orally. What is more, it also neglected to grant the petitioner an opportunity to lead evidence on his behalf as enjoined by Rule 16 of the Rules. The result of the omission by the authority to follow the rules of enquiry by which it was bound should lead to total stultification of the enquiry for the simple reason that the authority whose proceedings are regulated by procedure laid down for that purpose by the management, cannot afford the luxury of committing a breach of those very rules and wherever and whenever it does commit such a breach it pays the penalty of forfeiting the result of the enquiry. I may in this connection refer to the often quoted decision in *Vitarelli v Seaton*, 1959(359) US 535: 3 L. Ed. 2d 1012 (Followed by the Supreme Court in *Ramana v I.A. Authority of India*, AIR 1979 SC 1628) wherein Justice Frank further highlighting the effect of omission by an executive agency to follow its own rules, said:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword." (emphasis supplied)

Following the above dicta in *Vitarelli*'s with respect I should hold that in this case where the authority had conveniently overlooked a necessary step in the procedure to be adopted by it in holding the enquiry, must, without more lead to the necessary consequence of vitiating the enquiry proceedings en masse.

20. The next facet is about executive bias as a factor which was not just apparent but absolutely inherent in the enquiry. While on this aspect Mr. Subba Rao for the petitioner urged with a lot of vehemence and addressed an argument which was filled with pathos highlighting the fact that the petitioner in his capacity as Secretary General had incurred the wrath of the management the moment he got the Union registered under the Trade Union's Act which gave to the officers' Union more teeth and power to bargain with the management. Not having forgiven him for that the management was, right from the beginning, trying to gun down the petitioner and in so doing it was also not particular about any rule or procedure. He referred in this connection to a printed bulletin put forward by the management, as aspect which is not disputed. That bulletin is produced at Annexure-FF captioned as "HAL agitation by Hindustan Aeronautics

Officers" Association-Management Stand". In the course of the bulletin reference is made to the activities of the officers association and the reasons for taking action against the association while setting out the reasons for taking action against the association it is stated:

"The management could no longer be passive spectator to the mischievous and reprehensible activities of the Officers" Association which assumed serious proportions and threatened discipline and order in our factories. We therefore, had to proceed against the worst offenders among the office bearers of the Association as well as their chief supporters by charge-sheeting seven and suspending from service five of them."

Basing himself on the aforesaid statement in the management's pamphlet counsel urged and very pertinently, the enquiry against the petitioner and other officers attached to the union was a predetermined step taken to decimate them and that the management having made that intention quite clear even at the very start of the enquiry one can, therefore, unhesitatingly say, that this is a case in which the battle lines had been drawn up even before the commencement of the enquiry, the targets marked and the intention of the management to hit the target at any cost being well-expressed, the result of the enquiry was a foregone conclusion pointing out clearly that the enquiry would end only in one way and that by pronouncing the petitioners doom. Mr. Subba Rao again invited my attention to an epithet employed by the enquiry authority in the course of the report that was made by the disciplinary authority wherein it referred to Mr. Rao as the "kingpin". At para 50 of the report the enquiry authority referred to the petitioner in that manner and went on to conclude as follows:

"From the above, it may be seen that all the charges framed against Sri G.S. Rao have been fully established and he has not only taken a leading role, but in our view he is the Kingpin for instigating the officers not to attend the work on 27-10-1978 publishing pamphlets, addressing without authority unlawfully assembly, holding a press conference and conveying to Newsmen official information on without the prior approval of the competent authority."

Although the description of the petitioner as Kingpin or as a leading light behind the stir by the officers as just a case for emphasising the role played by the petitioner was capable of being dismissed as such, but, then, it does seem to me from the proceedings that the administrative authority appeared to have made it its business to pursue the petitioner relentlessly with the avowed purpose of putting him out of action. I am afraid I cannot help arriving at this conclusion fortified as it is by the conduct of the management in scampering to every court in Bangalore anticipating legal action by the petitioner when the management had turned down his request for reopening the ex parte enquiry and for permitting him to participate in the enquiry. That the management should have thought it so necessary or displayed so much of alacrity in locking horns with the petitioner after turning down his prayer for reopening the enquiry is not

explainable on any basis other than as attributable to the management's earnest desire not to give the petitioner any quarter or advantage over them and that kind of obsession had propelled the management action to rush into half a dozen courts in the city by entering caveats to stall the approach by the petitioner to a court of law for ventilating his grievances. Why at all the management should have gone to that length I am at a loss to understand unless it is said that their avowed intent was somehow to crush this man. The filing of a galore of caveats to my mind appears as an act of a sanguine management thirsting for the petitioner's blood, an attitude which is unwholesome and would endear itself to no one and one which should be deprecated as unbecoming of an employer which is equated to a State under the Constitution essentially geared to secure the welfare of the citizen. Mr. Subba Rao said that at the very outset the petitioner called the panel members the obedient lieutenants of an administration that was out to finish him off. Mr. Subba Rao says that Raghavendra Rao being a close associate of the Managing Director was ill suited to sit at the enquiry. I, do not, however wish to read in the copiously cited authorities in this behalf most of which said that bias as a fact can always be inferred taking an overall view of the proceedings of the enquiry for invalidating the same while the actual existence of bias is not always necessary and if its factual existence can be proved or is discernible otherwise than in an ostensible form the enquiry in such a case would without more be doomed. These principles are well-settled and need no reiteration. As mentioned earlier and I may repeat it again that in this case may be the management generally thought they were justified, but it does appear that they had taken unkindly to the office bearers of the HAL Officers' Association, in particular to the petitioner and had decided to wield the big stick against him and that the enquiry was merely a modality, or if I may say so merely a vehicle of vengeance. I am satisfied the enquiry is vitiated by official bias against the petitioner starting right from the top brass i.e., Managing Director. It cannot be said that the feelings of disaffection towards the petitioner had not permeated to the officers who formed the enquiry authority. I may in this connection mention one of the rules, viz., Rule 18 which enumerates the circumstances under which the enquiry authority may hold the enquiry ex parte. The said rule reads:

"If the employee to whom a copy of the articles of charge has been delivered does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of this rule, the Inquiry Authority may hold the enquiry ex parte."

In this case the petitioner had appeared at the very first date of the enquiry, submitted a written statement and had participated in the enquiry till the 20th and when the enquiry stood adjourned to 23rd his colleague went on with the enquiry and it is only thereafter the petitioner had dropped out and that was because he was not in town and had made a request for adjournment which had been turned down. It is interesting to note that after turning down the

adjournment motion on the 23rd the Enquiry Authority had proceeded to conclude the enquiry on the very next date by examining a few witnesses for the management in the absence of the petitioner and thereafter hastened to ring the curtain down on the enquiry without recording the petitioner's statement and without giving him an opportunity of leading his evidence. It is for this reason that I have held the enquiry to be wholly invalid but the objection of drawing attention to Rule 18 is to indicate that this was not a case in which as the rule stands the authority could have proceeded ex parte because the petitioner had complied with that rule and had not committed a breach thereof. It looks as if in the facts and circumstances of the case and having regard to the concepts of Rule 18 the authority had no jurisdiction at all to proceed ex parte and in the very nature of things could not have refused the adjournment sought for on behalf of the petitioner if not for the reason that he was compelled to apply for the adjournment but for the reason that in the facts and circumstances the enquiry could not be proceeded ex parte at all and had to be conducted in the presence of the petitioner which is yet another reason why I think the enquiry is wholly vitiated.

21. But, then, Mr. Narayan Rao while he did not deny the omission on the part of the enquiry authority in failing to record the oral statement of the petitioner who had opted for the same under Rule 15 and the omission of the authority to fix a hearing for recording the defence evidence, however, went on to contend that no prejudice had accrued to the petitioner on account of this procedural lapse committed by the authority and also sought to urge that the petitioner having admitted charge No. 6, the finding of guilt recorded in relation to that charge was in itself sufficient to sustain the punishment imposed on him by the enquiry authority. It seems to me after having given my anxious consideration to the submission of Mr. Narayan Rao in this behalf I find it difficult to accede to either of the contentions.

22. To begin with, apropos the contention that the petitioner could not be said to have suffered any prejudice at all, I am afraid the argument is clearly myopic. The man was not given an opportunity to cross-examine witnesses who were seeking to indict him with reference to the charges levelled against him. He was again not given a chance to say what he wanted to say about the evidence adduced against him. He was not given an opportunity to lead evidence in rebuttal. Can it be said, even then, all these lapses accredited to the authority have not prejudiced or harmed the interest of the petitioner. When treated to a similar argument the Supreme Court in *S.L. Kapoor v Jagmohan*, AIR 1981 SC 136 has said:

"It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced."

Therefore, I should think that it is not open to a person who has found to have not played the game with a straight bet to say, "fair or foul it matters nothing to the otherside" and I cannot accede to this kind of argument.

23. I now come to the next and the most serious argument of Narayan Rao, learned Senior Counsel, that the petitioner having made a clean breast by admitting his guilt under charge No. 6 and the finding of guilt being an academic follow-up from such an admission. The verdict of guilt following therefrom was a matter of course and the punishment imposed on the petitioner could be veritably sustained on that single charge alone. Reference in this connection is made to the decision of Supreme Court in *State of Orissa v Bidyabhushan*, AIR 1963 SC 779 and in *Railway Board v N. Singh*, AIR 1969 SC 966. In both the decisions it has been held where there is a multitude of charges and if one of them is upheld the same could support the penalty imposed, then it is not open for the court to consider whether that ground alone had weighed with the enquiry authority. The principle as above is unexceptionable but in its application to the case on hand I have doubts. Probably counsel would have been on very firm ground if I could accede to the submission that the petitioner had admitted charge No. 6. In dealing with this argument it becomes necessary to take note of the factual matrix. Charge No. 6 is a reference to a press statement at a press conference held by the petitioner and another person. It reads as follows:

"On 23-10-1978, Shri G.S. Rao, along with Shri K.S. Bhojarajan, Assistant Engineer (Methods), Aircrafts Division, held a press conference at Bangalore and conveyed to newsmen, without prior approval of the competent authority, official information and thereby he committed misconduct explained in Clause (9) of the Conduct Rules, viz., No employee shall, except in accordance with any general or special order of the company, or in performance in good faith, of the duties assigned to him, communicates directly or indirectly and official document or information of the company of a secret or confidential nature to any employee or any other person, to whom he is not authorised to communicate such documents or information."

It is also the case of the petitioner that he did address a press conference as alleged but he denied he made at the press conference the statement referred to in the charge and treated by the authorities as objectionable. As a matter of fact in the course of his explanatory statement he has adverted to what according to him was the statement he had made on that occasion. In relation to the said charge he stated in the written statement dated 11th December, 1978 vide Annexure-C as follows:

"The charge alleged against me is that on 23-10-1978, I along with one Sri K.S. Bhojarajan, Assistant Engineer (Methods), Aircraft Division, held a Press Conference at Bangalore, and conveyed to the newsmen official information and thereby committed misconduct explained in Clause (9) of the HAL Conduct Rules without prior approval of the competent authority, is denied as false. I submit that this charge is highly vague. It lacks in material particulars. That apart, to the best of my recollection I have never disclosed any official information which has come to my knowledge in the discharge of my duties to the press nor have I made any such statement in violation of the HAL Conduct Rules. Therefore, I

have not committed any misconduct as alleged. As a matter of fact, the sum and substance of the press conference was that the officers, technicians, scientists, engineers, designers and others who have acquired advance technology and sophisticated knowledge have some grievances and those grievances have been brought to the notice of the public with the intention of focussing the attention of the Government so that the country may proceed on the right track. At no time, I have disclosed any official information as alleged against me." (emphasis supplied)

Again in the course of the reply submitted to the show cause notice to him the petitioner refers to charge No. 6 and stated categorically:

"I have not conveyed to the press any information of the company of a "secret or confidential nature".

... ..

Further, the charge itself is very vague and no evidence was brought out by the prosecution to prove that what all appeared in the press was actually conveyed by me as reported in the press. The prosecution has miserably failed to prove the charge."

At the enquiry P.W. 4-G.R. Rao, the Deputy Stores Manager gave evidence in support of charge No. 6 referred to supra. The following is the relevant portion of the brief text of his evidence.

"I am working as a Deputy Stores Manager in the said Helicopter Division from 2nd April, 1978 till of date. Shri G.S. Rao, Stores Officer is working under me. He is also apart from being a Stores Officer is also the General Secretary of HAOA. I see before me the photostat copy of the News Item which appeared in Deccan Herald, dated 25th October, 1978. In it a Press Conference release by Shri G.S. Rao and Shri Bhojarajan has been printed. Shri G.S. Rao has not obtained my prior permission to release any press statement."

This witness never said that he was present at the press conference and, therefore, he could not have spoken with any authority as to what transpired at the press conference. The fact that he identified the news item as it appeared in the Deccan Herald and purported to be an account of the press conference held by the petitioner and one Bhojarajan, is really besides the point since the witness himself had no personal knowledge of what had actually transpired at the press conference. I have earlier pointed out the statement of the petitioner in which he had denied the statement attributed to him by the press report. Of course he also stated what exactly he did at the press conference. If his version is accepted the activity at the press conference must be held to be innocuous and cannot be treated as misconduct. The position, therefore, is the management could not, as Mr. Narayan Rao-learned counsel for the management appeared to do, proceed on the basis that the petitioner had accepted or admitted charge No. 6 and, therefore, as argument that the said charge having been proved and hence

unassailable and that in consequence the punishment of dismissal could be attributed as well to the finding in relation to charge No. 6. I am afraid the whole of the said argument turns on a wrong premise. A news item in a newspaper without any further proof of what happened in the press conference established through oral evidence of witnesses who were present at that time is of no value and is at best second hand, or secondary evidence is what the Supreme Court said in *S.N. Balakrishna v Fernandez*, AIR 1969 SC 1201. The relevant Head Note at "D" is to the following effect:

"A news item without any further proof of what had actually happened through witnesses is of no value. It is at best second-hand secondary evidence. It is well-known that reports collect information and pass it on to the editor who edits the news item and then publishes it. In this process truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible. A fact has first to be alleged and proved and then newspaper reports can be taken in support of it but not independently."

Therefore, if there was in proof of charge No. 6 nothing other than the press report, in law, the same does not suffice and is not at any rate adequate to sustain the said charge. The position is more acute in this case where the correctness of the press report is not only denied but questioned by putting forth a competing version. Therefore the press statement, contents of which are denied cannot be accepted as gospel truth, in the absence of there being further proof, furnished by somebody who was present at the press conference or may be by the examination of the news correspondent who had filed that report.

24. In these administrative enquiries it is true we do not go by the strict rules of evidence but, then, the authority is not enjoined to overlook relevant principles and the rules of evidence wherever it becomes necessary. The resulting position is the news item attributing a statement to the petitioner allegedly denigrating the management and supposedly giving out confidential information having been denied by the petitioner, the witness who was examined in support of the charge having done nothing more than identifying the news item appearing in a newspaper and being a person who was himself not present at the press conference, can by no stretch of imagination be said to have proved charge No. 6.

25. I must also point out and I have done so already that the petitioner does not admit the charge but on the other hand he had refuted and repudiated the same. If that be the position on facts, it becomes evident the submission of Mr. Narayana Rao, learned counsel, proceeding on the basis that the petitioner admitted charge No. 6 and the further endeavour made by him in justifying the penalty of dismissal imposed on the petitioner being supported by the finding on charge No. 6 even if treated as the sole and solitary finding against the petitioner, is clearly untenable. From the above discussion so far made what follows is that the enquiry held by the authority must be held to have been vitiated by the non-observance of principles of natural justice and also for the

reason that it had been conducted in breach of or an violation of the provisions of the Hindustan Aeronautics Disciplinary Action Rules.

26. The two further aspects to be considered alongside are in regard to the complaint touching the tenability of the findings recorded by the enquiry authority vis-a-vis the several charges framed against the petitioner and the total lack of objectivity in the appellate order passed by the appellate authority. Findings on these matters would bring to a close consideration of all aspects raised by the petitioner projecting an integrated attack on the enquiry launched against him in relation to which I have had occasion so far to make a critical examination thereof. The appellate order at Annexure-Y reads:

"I have gone through your appeal dated 21st August, 1979 against the orders passed by the Managing Director, Bangalore Complex dismissing you from service with effect from 16-8-1979 and connected documents. I do not find any ground to justify interference with the decision of the Managing Director, Bangalore Complex, dismissing you from service for proven acts of serious misconduct. Your appeal for reinstatement in HAL is therefore hereby rejected."

Suffice it to note that the elaborate appeal submitted by the petitioner raising several contentions against the decision of the Managing Director dismissing him from service had received but a token consideration by the appellate authority totally bereft of objective consideration of the grievance of the appellant. Without more the order of the appellate authority which by the mere look establishes that the appellate authority has not applied its mind at all to the appeal laid to it which conclusion should be enough to treat the appellate order as meriting annulment. Mr. Narayan Rao for the management does not deny that the appellate order was to say the least more unsatisfactory but his endeavour has been to justify outright the impugned order of dismissal, an aspect which I have already considered and recorded my views thereon. The appellate order under any circumstances is unsustainable and is hereby ordered to be quashed for the simple reason that the appellate authority had not applied its mind at all to the appeal laid to it, before rejecting the same.

27. Apropos the kindred aspect turning on the findings recorded by the enquiry authority being perverse, I have had occasion to reject the findings recorded by the authority in relation to charge No. 6 to hold it to be not proved. But, then, it however seems to me that it is not necessary to delve further into this aspect of the petitioner's case as in my view the entire enquiry is vitiated as a consequence of the error committed by the authority in abandoning the procedure which it was bound to follow under the rules of procedure and acting further in gross violation of principles of natural justice. Resting on these findings I am virtually at the exit except for the one and the only other point which remains for consideration turning on the contention that the entire gamut of the charges levelled against the petitioner did not amount to misconduct within the meaning of the law.

28. There were in all, it must be remembered, 6 charges all spelling out personal involvement and implication of the petitioner. In the earlier part of the Judgment I have set out in extenso all the charges. The conduct rules framed by the management of the company known as "HAL Conduct Rules" not perse define or enumerate "misconduct". These rules as I see are a set of "dos" and "donts" comprising of an incantation of activities which are permitted and those which are not permitted, and having cannot be indulged in by the employee of the company. It is clear that the activities which under the rules are treated as impermissible and as treated (sic), misconduct are enumerated under Rule 15 of the conduct rules. The petitioner is alleged to have committed acts mentioned in clauses (i), (ii), (ix) and (x) of Rule 15. These relates to wilful insubordination, participation in strikes, holding meetings, distribution or exhibition of any newspapers, handbills, pamphlets, etc. According to Mr. Subba Rao, learned counsel for the petitioner, none of these activities was allegedly carried on by the petitioner. The charges were, however, criticised on the ground that the short-sighted management had chosen to ignore the fundamental right open to the petitioner under the Constitution of India to express himself in whatever manner he chooses and the activity of demonstrating in a (sic) manner the expressing displeasure a body of people raising against an unsympathetic management was merely a part of the system or the fundamental right of expression guaranteed to a citizen who is also assured of the right to band together to form an association or union. In short the rights granted to the petitioner under Article 19(1)(a), (b) and (c) of the Constitution of India are relied upon and an argument is built stating that if the petitioner had organised a strike, distributed pamphlets or addressed a meeting all that was a part of an endeavour to demonstrate the employees' view point and so long as it was not done in an arbitrary manner and without indulging in violence and without posing any law and order problem, it was just a exercising the fundamental right granted to a citizen and, therefore, cannot be treated by a nonchalant management as acts of misconduct meriting punishment.

29. Per contra Mr. Narayan Rao for the management maintained that no employee can, in the guise of exercising his fundamental right, seek to create chaos, confusion and disorder in the establishment leading not merely to economic loss but constituting a grave threat to the authority of the management. What is more it is urged an employee cannot seek to assert his fundamental right inside the precincts of the employer's premises, while he may do whatever he desires outside the premises, but once inside the employer's premises he must conform to the rules of behaviour and conduct, prescribed by the establishment. Counsel urges that no employee can in the assertion of even a fundamental right permit himself the liberty of sabotaging the (sic) discipline to subvert the code of conduct enjoined on him under the rules framed by the management which he must be deemed to have accepted by the very act of accepting employment. Both sides have relied upon a number of decision in support of respective contentions.

30. But, then, to me it does seem misconduct in itself is nothing more than an attitude of the mind and in this case of the employee towards the management which presumably was not to the liking of the management. An employee while he certainly is entitled to give vent to his fears and apprehension at the attitude of an unsympathetic management, the fact remains if the actions of the employees constituting acts of indiscipline under the rules of the company probably the employee cannot avoid action by the authority resorted So put down the alleged indiscipline in which event we are the protective shield of a fundamental right may not stand in goods stead and may not save the employee from being consumed by the management's wrath. On the right of the employee to resort to strikes and the kindred movements of ghearo, slogan shouting etc. etc., being recognised aspects of modern antithetic expression of the employee's grievance, I may refer to some of the pronouncements of Supreme Court starting with a few observations made in the case of Gujarat Steel Tubes Limited v Its Mazdoor Sabha, AIR 1980 SC 1896 at page 1927.

"A selective study of the case-law is proper at this place. Before we do this, a few words on the basis of the right to strike and progressive legal thinking led by constitutional guidelines is necessitous. The right to unionise, the right to strike as part of collective bargaining and, subject to the legality and humanity of the situation, the right of the weaker group viz., labour, to pressure the stronger party, viz., capital, to negotiate and render justice, are processes recognised by industrial jurisprudence and supported by Special Justice. While society itself, in its basic needs of existence, may not be held to ransom in the name of the right to bargain and strikers must obey civilised norms in the battle and not be vulgar or violent hoodlums, Industry, represented by intransigent Managements, may well be made to reel into reason by the strike weapon and cannot then squeal or wail and complain of loss of profits or other ill-effects but must negotiate or get a reference made. The broad basis is that workers are weaker although they are the producers and their struggle to better their lot has the sanction of the rule of law. Unions and strikes are no more, conspiracies that professions and political parties are, and, being far weaker and succour. Part IV of the Constitution read with Article 19 sows the seeds of this burgeoning jurisprudence. The Gandhian quote at the beginning of this Judgment sets the tone of economic equity in Industry. Of course, adventurist, extremist, absurdly insane persistence and violent and scorched earth policies boomerang and are anathema for the law. Within these parameters the right to strike is integral to collective bargaining. (emphasis supplied)

The court again in *Bihad Singh v Union of India*, AIR 1990 SC 1, referring to the legitimacy of union activity extending to resorting to strikes, said:

"Strike in a given situation is only a form of demonstration. There are different modes of demonstrations, e.g., go slow, sit in, work to rule absentism etc., and strike is one such mode of demonstration by workers for their rights. The right to demonstrate and, therefore, the right to the workers. This right has been

recognised by almost all democratic countries. Though not raised to the high pedestal of a fundamental right, it is recognised as a mode of redress for resolving the grievances of workers. But the right to strike is not absolute under our industrial jurisprudence and restricts have been placed on it."

The two decisions of the Supreme Court referred to supra while upholding undoubtedly the right of a workman or an employee to resort to a strike as a means of articulating his grievance, the court also notices the limitations therefor and the fact that the right to strike is not absolute and is hedged by many limitations. But in *P. Balakotiah v Union of India*, AIR 1958 SC 232, Their Lordships pointed out, while it would be open to the employee to exercise a fundamental right but if an exercise of that right led to the contravention of the rules of conduct meriting imposition of punishment, the action of the management could not be assailed or maligned as violative of the fundamental rights of the employee. It may be apposite to refer herein to the statement made by Their Lordships at para 17. It reads:

"The real complaint of the appellants is that their services have been terminated; but that involves, apart from Article 311, no infringement of any of their Constitutional rights. The appellants no doubt have a fundamental right to form associations under Article 19(1)(c), but they have no fundamental right to be continued in employment by the State, and when their services are terminated by the State they cannot complain of the infringement of any of their Constitutional rights, when no question of violation of Article 311 arises. This contention of the appellants must also be rejected." (emphasis supplied)

It, therefore, seems to me that in the light of the dicta in *Balakotiah*'s case referred to supra, it may not be open to the petitioner to say that rules of the management prohibiting strikes, demonstrations, etc., are themselves redundant affecting as they do the fundamental rights of the employee guaranteed under Article 19 of the Constitution. As pointed out by the Supreme Court, the ban imposed by the management on strikes, demonstrations, etc. may not ipso facto prevent the employee from resorting to such activity but, then, if it resulted in action being taken against the striking or demonstrating employee, the fundamental right relied on by the employee will not save him from the wrath of the employer as pointed out by the court in *Balakotiah*'s case. However, it does seem to me in the context of this case it is not necessary to investigate further into this matter and, therefore, I wish to leave it just at that.

31. In the result, regard being had to the totality of the conclusions arrived at by me, I sum them up as follows:

- (1) The enquiry against the petitioner is vitiated for:
  - (a) for non-providing of legal assistance in view of availability of the services of a legally trained officer to the management.
  - (b) the failure to provide an adequate opportunity to the petitioner to defend

himself at the enquiry.

(c) violation by the authorities itself of the rules of procedure enjoined by the disciplinary rules, and (d) the cryptic and highly subjective order of the appellate authority dismissing the petitioner's appeal without considering the same.

In the light of the above findings I must hold that the order of dismissal passed by the management dismissing the petitioner from service and the order of the appellate authority at Annexure-YY dismissing the petitioner's appeal are clearly otiose in law and, therefore, merit annulment and they are, hereby, ordered to be struck down resulting in a consequential order being made restoring the petitioner into service with all attendant wage benefits, appreciation of emoluments, perquisites etc., etc. Tracing it back to the date of his suspension from service as per the order at Annexure-A dated 20-11-1978. The management is given 3 months' time to work out the fall-out from this order vis-a-vis the monetary benefits and to ensure payment thereof. The management is barred from holding any further enquiry against the petitioner in view of the long drawn-out battle and the interminably long interval between the institution of the enquiry and its annulment, although such a step may have been open to the management in normal times.

It is said that the petitioner will soon approach the age of superannuation by the end of December, 1990. If that is so, subject to the concurrence of the petitioner, it will be open to the management to pay him in a lumpsum the salary that would fall due from the date of this order to the date of superannuation, in advance and not insist on the petitioner to rejoin his old post at the HAL, Bangalore. This is of course a matter between the petitioner and the management. Petitioner will be entitled to his costs. Advocate's fee Rs. 2,000/-. Rule made absolute. If on the past wages payable to the petitioner income tax becomes due, the income tax authorities may consider recovering the same in a phased manner.