
(2014) 12 GAU CK 0009
In the Gauhati High Court
Case No : W.P. (C) No. 6261 of 2012

Guna Kanta Tamuli

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2)

Citation : (2015) 1 GLT 237 : (2015) LabIC 1041

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : D. Borgohain, M. Bhuyan, K. Baruah, P. Gohain, Z. Ahmed and M. Sarma, Advocates for the Appellant; U.K. Goswami, S.C. and T.C. Chutia, SC, SEBA, Advocates for the Respondent

Judgement

Ujjal Bhuyan, J.—This case was heard on 27.11.2014 and today is fixed for delivery of judgment. Accordingly, the judgment is dictated in the open Court.

2. Heard Ms D Borgohain, learned counsel for the petitioner and Mr. U.K. Goswami, learned Standing Counsel, Education (Secondary) Department. Also heard Mr. T C Chutia, learned Standing Counsel for the Secondary Education Board of Assam (SEBA).

3. By way of this petition under Article 226 of the Constitution of India, petitioner seeks quashing of the order dated 27.07.2012, passed by the Director of Secondary Education, Assam, imposing the penalty of compulsory retirement on the petitioner, but providing for full pension, and for re-instatement in service.

4. Case of the petitioner is that he was the Headmaster of Kamalabari Auniati Hem Chandra High School, Majuli, in the district of Jorhat. The school was made an examination centre for conducting High School Leaving Certificate (hereinafter, HSLC, in short) Examination. HSLC Examination for the year 2012 was scheduled from 21.02.2012 to 10.03.2012. Petitioner was appointed as the Centre In-Charge. Due to leakage of General Science question paper in some

other centre, examination in respect of the General Science paper was re-scheduled on 26.03.2012. After the examination was over, the school centre came to realize that the question paper of the General Science Examination delivered to the examinees was the question paper which was cancelled due to leakage.

5. Inspector of Schools, Jorhat District Circle, Jorhat issued order dated 26.03.2012, placing the petitioner under suspension. It was alleged in the suspension order that the petitioner had acted in an irresponsible and negligent manner in conducting the General Science Examination on 26.03.2012, by handing over the cancelled question paper.

6. Thereafter, show cause notice was issued to the petitioner on 15.05.2012 by the Director of Secondary Education, Assam (respondent No. 2), charging the petitioner of having acted in a most negligent way for which the examination in General Science had to be rescheduled on 10.04.2012, thereby bringing the Education Department into disrepute. The petitioner was therefore charged with gross-negligence, carelessness and dereliction of assigned duty. Petitioner submitted his reply in the form of written statement dated 13.06.2012. Stand of the petitioner was that the cancelled question papers, which were handed over by the school centre to the Kamalabari Police Station, were not taken back by the SEBA authorities. On the other hand, the SEBA authorities dispatched another packet containing the new question papers. It was the Officer In-Charge of the Kamalabari Police Station, who had handed over one packet containing question papers to the special messenger sent by the petitioner for bringing the question papers. Kamalabari Police Station did not indicate to the special messenger of the examination centre as to which packet contained the cancelled question papers and which packet contained the fresh question papers. The petitioner therefore contended that he could not be held responsible for the lapse of the police. He finally stated that in his entire service career he had always discharged his duties with utmost sincerity and dedication and therefore, the charges should be dropped.

7. Respondent No. 2, however, passed the impugned order dated 27.07.2012, stating that he had perused the report of the Enquiry Officer, which found the petitioner guilty of improperly conducting the HSLC Examination. The charge of negligence and dereliction of duty stood proved. It was stated that the Government servant (petitioner) had outlived his utility. Consequently, the penalty of compulsory retirement as provided under Rule 7 of the Assam Services (Discipline and Appeal) Rules 1964, (hereinafter, referred to as "the 1964 Rules", in short) was imposed but it was stated that the petitioner would be entitled to full pension. Further direction was issued to furnish a copy of the enquiry report to the petitioner. Thereafter, a copy of the enquiry report dated 28.06.2012, was furnished to the petitioner.

8. Aggrieved, the petitioner has filed the present writ petition seeking the reliefs as indicated above.

9. Respondent No. 2, in his affidavit, has justified the penalty imposed on the petitioner. It is stated that due to leakage of the question paper of General Science at Chamata Centre of Nalbari District, the General Science Examination, throughout the State had to be re-scheduled on 26.03.2012, but the petitioner conducted the said examination with the rejected question paper. The petitioner was appointed as the Officer In-Charge of Kamalabari Centre to conduct the HSLC Examination. It was his duty to collect the fresh set of question paper of General Science meant for the rescheduled examination on 26.03.2012. The petitioner did not go personally to collect the question papers and instead deputed his Assistant, who brought the packet containing the rejected question papers. As a result, SEBA had to re-schedule the General Science Examination again to 10.04.2012. The Disciplinary Authority had rightly passed the impugned order based on the enquiry report. No interference is called for.

10. Respondent No. 4 (SEBA) has also filed an affidavit stating that because of the conduct of the petitioner the image of SEBA suffered a setback. Due to technical reasons, SEBA did not collect the original question papers, which were cancelled. The petitioner ought to have been careful while collecting the fresh set of question papers. Petitioner displayed extreme carelessness. Therefore, punishment is justified.

11. Ms Borgohain, learned counsel for the petitioner submits that the procedural requirement under the 1964 Rules, were not complied with in the present case. List of witnesses and list of documents were not furnished. During the enquiry, the Enquiry Officer relied upon statements of persons and documents which were not informed to the petitioner earlier. Even a copy of the enquiry report was not furnished to the petitioner prior to imposition of the penalty, which caused serious prejudice to him. Thus, there is violation of Rule 9 of the 1964 Rules. There is also clear violation of the principles of natural justice which has vitiated the impugned penalty. On a query by the Court, learned counsel for the petitioner submits that had the petitioner been in service he would have superannuated by now in due course.

12. Mr. Goswami, learned Standing Counsel for the Education (Secondary) Department, submits that negligence of the petitioner is quite apparent and the Disciplinary Authority had considered all relevant aspects before imposition of the penalty. The penalty cannot be said to be disproportionate. Rather, the petitioner has been dealt with very leniently.

13. Mr. Chutia, learned Standing Counsel for the SEBA, submits that though it is a matter between the Disciplinary Authority and the Government servant and SEBA has no role in it, yet, because of the negligence of the petitioner, the image of SEBA suffered in the eyes of the public. Therefore, imposition of penalty is justified.

14. Submissions made have been considered.

15. It is not in dispute that the school in question is a provincialised school and

matters of discipline and conduct of the school teaching and non-teaching staff are governed by the provisions of the relevant statute. In all matters relating to discipline provisions of the 1964 Rules will be applicable. Rule 9 of the 1964 Rules lays down the procedure for imposing penalties. Under Sub-rule 1, it is clear that no order imposing any of the penalties specified under Rule 7 shall be imposed on a Government servant except after holding an enquiry, held as far as may be, in the manner provided under Rule 9. Sub-rule 2 provides for framing of charges and communication thereof to the delinquent, who is required to submit his reply in the form of written statement of defence within the time specified. Second part of Sub-rule 2 mandates that at the time of delivering the charges, the Disciplinary Authority shall invariably furnish to the Government servant a list of documents and witnesses by which each article of charges is proposed to be sustained. Sub-rule 3 enables the Government servant to inspect the relevant documents and official record and take extracts therefrom. Under Sub-rule 4, on receipt of the written statement of defence, the Disciplinary Authority may inquire into the charges, which are not admitted by appointing an Enquiry Officer. Sub-rule-5 provides for appointment of Presenting Officer by the Disciplinary Authority to present its case before the Enquiry Officer. The Government servant is permitted to present his case with the assistance of any other Government servant as may be approved by the Disciplinary Authority. Engagement of legal practitioner is prohibited unless permitted by the Disciplinary Authority. Sub-rule 6 deals with the enquiry. The Enquiry Officer may consider such documentary evidence and oral evidence as may be considered relevant to the charges. The Government servant would be entitled to cross-examine the witnesses adduced by the Disciplinary Authority. The Presenting Officer is also entitled to cross-examine the Government servant and the witnesses adduced by him. Under Sub-rule 7, at the conclusion of the enquiry, the Enquiry Officer is required to prepare a report of enquiry recording his findings on each of the charges together with reasons therefor. Sub-rule 8 deals with the record of enquiry. Under Sub-rule 9, the Disciplinary Authority is required to consider the record of the enquiry, which includes the enquiry report and record its findings on each charge. Thereafter, penalty, either major or minor, may be imposed as the situation may warrant. This is the scheme of Rule 9 of the 1964 Rules. What would be relevant to note for the purpose of the present case is that under Sub-rule 1 holding of enquiry in the manner prescribed under Rule 9 to the extent possible is mandatory. At the time of delivering the charge memo, the disciplinary authority is required to invariably furnish to the Government servant a list of documents and witnesses by which the charges are sought to be sustained. The Rules also provide for nominating a Presenting Officer on behalf of the Disciplinary Authority. In the enquiry, right to adduce evidence in his support is available to the Government servant. So also the right to cross-examine the witnesses adduced on behalf of the Disciplinary Authority.

16. From the language of the second part of Sub-rule 2 of Rule 9 of the 1964 Rules, it is evident that at the time of delivering the charges, the Disciplinary

Authority shall invariably furnish to the Government servant a list of documents and witnesses by which each article of charges is proposed to be sustained. The language used, particularly, the expression "shall invariably" is clearly suggestive of the obligatory/mandatory nature of the requirement, which is required to be complied with by the Disciplinary Authority. Thus, at the time of delivering the charges, the Disciplinary Authority is mandatorily required to furnish to the Government servant the list of witnesses and the list of documents on the basis of which each article of charge is sought to be proved. If there is non-compliance of such mandatory requirement it will definitely have an adverse impact on the validity of the disciplinary proceeding itself.

17. It is a settled proposition of law that when a statute provides for a thing to be done in a particular manner, then, it must be done in that manner and proceeding in any other manner must be deemed to have been necessarily prohibited. Starting from *Taylor v. Taylor* and adopted by the Privy Council in *Nazir Ahmed v. King Emperor*, this proposition of law has found favour with the Apex Court and has been consistently applied. Rule 9 of the 1964 Rules lays down the procedure to be followed before imposition of penalty. Certain procedures are obligatory and certain procedures are non-obligatory. Those procedures which are obligatory are required to be followed, failing which the above proposition of law will be attracted.

18. Coming to the case in hand, it is seen that in the show-cause notice dated 15.05.2012, the following allegation was brought against the petitioner:--

"1) That while you were acting as Headmaster of Majuli Auniati Hem Chandra High School, Kamalabari, Majuli, Jorhat. The examination for class x final (H.S.L.C. final examinations) at Majuli Auniati High School, Kamalabari Centre were conducted under your responsibility. You were the Officer-in-charge of that Centre. The Board of Secondary Education (SEBA) rescheduled the examination of Science subject from 10th of March to 26th of March, 2012. This was done due to leakage of question papers at Nalbari.

You deputed Sri Rudra Saikia, Asstt. Centre-in-charge and Headmaster i/c of Madhya Majuli Parijat High School, Majuli, District Jorhat to bring the question papers from Majuli Police Station, Kamalabari. The set of rejected question papers of Science subject were brought, seal opened and were distributed to students instead of the papers containing the new question papers of Science subject dispatched by the Board of Secondary Education (SEBA) to the Majuli Police Station at Kamalabari.

The question papers you distributed to the examinees were the set of question papers already rejected by the Board of Secondary Education (SEBA). As a result the Board of Secondary Education (SEBA) had to cancel the examination in your Centre and had to reschedule the examination to 10.04.2012. The old (rejected) and the new question papers were of different colours. Despite that you started the examination with rejected question papers.

As Officer-in-charge of the Centre you did not receive the question papers yourself from the police station and instead deputed your Asstt. Centre-in-charge.

The SEBA had to reschedule the examination for Science on 26.03.2012 (sic) instead 10.03.2012 (sic)."

19. Petitioner was therefore charged with gross negligence, carelessness and dereliction of duty.

20. The charge memo was accompanied by a short and crisp statement of allegation of 4 (four) lines. No list of documents and no list of witnesses on which the Disciplinary Authority wanted to rely upon to establish the charge against the petitioner were enclosed with the charge memo. In view of the discussions made in paragraphs 16 and 17 above, this omission has vitiated the disciplinary proceeding against the petitioner.

21. The Court may now examine the impugned order dated 27.07.2012, the relevant portion of which reads as under:

"Smti Darpana Bora, Assistant Director of this Directorate and Sri Deba Kanta Bora, Senior Assistant were appointed as the Enquiry Officer and Presenting Officer respectively vide order dated 6/4/12 passed by the undersigned at Note Sheet Page No. 9/N.

Seen and perused the letter No. SEBA/Ex/Enquiry/12/2047, dated 2/6/2012 addressed to the undersigned by the Secretary, SEBA. The Secretary, SEBA informs vide the above letter that an enquiry was conducted by the Inspector of Schools, JDC, Jorhat and it reveals in the report that the unfortunate incident occurred in the examination centre due to utter negligence and in-sincerity of Sri Guna Kanta Tamuly, officer-in-charge and Sri Reba Saikia, Assistant office-in-charge of the Examination Centre who engaged one casual employee to bring the packets of question papers from the Police custody on 26/03/2012. It further reveals from the letter of the Secretary SEBA that Sri Guna Kanta Tamuly, delinquent government servant did not allow the Assistant officer-in-charge and the S.O. to put their signature at the packets of the question papers at the time of opening of the same prior to commencement of the examination. The letter of the Secretary, SEBA is at SI 74/c of the file.

I have perused the report submitted by the Inspector of Schools, JDC, Jorhat on the matter which is at page 73/c of the file. It is seen that the packet of question paper of General Science as was taken by Sri Rudra Saikia, Headmaster In-charge of Madhya Majuli Parijat High School and Assistant Centre in-charge of Kamalabari HSLC Examination Centre from the custody of Kamalabari Police Station with help of a person engaged on temporary basis. The Centre in-charge should have ensured signature of all concerned but he did not follow rules of examination not ensuring signature of all concerned on the packet of the question paper at the time of opening.

I have perused the report of Enquiry Officer submitted to me. The report finds Sri

Guna Kanta Tamuly and Sri Reba Kanta Saikia guilty. They are found guilty of improperly conducting the HSLC Examination Centre under Jorhat District.

Having perused the Enquiry Report, I am of the opinion that the delinquent government servant was careless in conducting the examination. He failed to ensure that he had to conduct the examination with new sets of question papers dispatched by SEBA which were of different colours. The rescheduling of the examination of General Science in the whole of Assam was a matter so published that every prudent citizen of Assam came to know of this. Ignorance of the fact by the delinquent government servant although he was the Centre in-charge of the Examination Centre looks and sounds absurd and cannot be believed.

It is, further, mentioned by the Secretary, SEBA vide letter No. SEBA/Ex/Reg-Pvt/10/12/19162-974, dated 16/3/2012 informing all the Officer in-charge regarding dispatch of new packets meant for their centre. The letter further directed that the concerned Centre in-charge of the Examination Centre himself must collect the packets on 26/3/2012 under his direct supervision or person authorized by him not more than an hour before examination starts.

The delinquent government servant before opening the packet of question papers failed to exercise prudence and sincerity to ensure that the question papers brought are the actually the question papers to be used on 26/03/2012.

Considering the report of the Enquiry Officer, I am convinced that the incident happened only due to negligence of delinquent government servant. The charge of negligence and dereliction of duty as framed stands proved in the enquiry report submitted by Smti Darpana Bora, Assistant Director of this office. The Government servant has, in my opinion, outlived his utility.

I, therefore, punish the delinquent government servant with compulsory retirement under Rule 7 of the Assam (Services) Discipline & Appeal Rules, 1964. The delinquent government servant stands compulsorily retired with effect from the date of this order. Under FR 54 (B), his period of suspension shall not be treated as on duty except for pensionary purpose. He will however get full pension and there shall be no reduction on his pension consequent to passing of this order.

The Branch shall send a copy of the Enquiry Report to the delinquent government servant immediately as required under Rule 9(A) of the Assam Services (Discipline & Appeal) Rules, 1964.

With this the departmental proceeding is concluded."

22. A careful perusal of the impugned order would show that the Disciplinary Authority had considered the enquiry report and thereafter imposed the penalty. As can be seen from the above, the Disciplinary Authority had also considered the letter of the Secretary of SEBA dated 02.06.2012 and also the report of the Inspector of Schools, Jorhat District Circle. In the penultimate paragraph of the impugned order, it is stated that a copy of the enquiry report be furnished to the

petitioner under Rule 9(A) of 1964 Rules, which is an admission on the part of the Disciplinary Authority that a copy of the enquiry report was not furnished to the petitioner before passing the order of penalty.

23. As stated by the petitioner, a copy of the enquiry report was thereafter furnished to him, i.e., after imposition of penalty. Before deliberating on this aspect of the matter, it would be apposite to examine the enquiry report. Relevant portion of the enquiry report reads as under:--

"Sri Guna Kanta Tamuly, Headmaster (Suspended) of Majuli AHC High School, Kamalabari, Majuli, in the district of Jorhat was placed under Suspension on the charge of gross negligence, carelessness & dereliction of duty while he was performing his duties as officer in-charge of the HSLC Examination, 2012 for the Centre with reference to holding of General Science Examination on 26.03.2012 with the question paper set that was meant for 10-03-2012.

As a result the said Examination for the Centre was rescheduled to 10-04-2012 for the General Science subject. From the written statements of Sri Pranab Saikia, Grade IV and Debojit Hazarika, Grade-IV (Casual Employee), Sri Gajen Borah, Supervising officer of the Centre, Sri R.K. Saikia, A.O.C. (Suspended) of the Centre and Sri G K Tamuly, Headmaster (Suspended) and office in-charge of the HSLC Centre it is seen that the Question Papers were lifted from the Kamalabari Police Station by Sri R.K. Saikia, AOC along with Sri Debajit Hazarika, Grade-IV (Casual Employee) engaged for the HSLC Centre on 26-03-2012. The sealed covers were opened by the officer incharge of the Centre in presence of other staff attending duty on 26.03.2012, but none of them verified the date marked on the packet. The examination was over but it came to light when the guardians detected the defect. This has created public resentment and has led to the assumption of total failure in the Examination process conducted under the Control of SEBA due to the negligence and carelessness of the Centre In-Charge Sri Guna Kanta Tamuly including Sri R.K. Saikia and others involved in the management of the Centre. As a result Sri Guna Kanta Tamuly was suspended along with Sri R.K. Saikia, on the charges of total negligence of duty, carelessness in managing the Centre as Centre In-Charge & Assistant Officer Incharge.

As per report submitted by the Inspector of Schools, JDC, Jorhat, Sri G K Tamuly (Headmaster suspended), Officer Incharge & Sri R.K. Saikia, AOC were charged with the dereliction of duty assigned to them as the Head of the Institution and also as Officer-in-Charge & AOC of the HSLC Examination, 2012 at the venue. Further, it has been recorded in the report that the centre incharge (Sri G K Tamuly) did not allow the AOC and SO to put their signature at the packet of the question paper at the time of opening the same.

However, Sri Guna Tamuly has stated that the negligence on his part was a result of his being distracted by some other pressing matters.

Findings:

From the above inferences it is seen that Sri Guna Kanta Tamuly and Sri R.K. Saikia are guilty being the Officer-in-Charge & Assistant Officer Incharge of the Centre of the HSLC Examination 2012 in conducting the Examination with the assigned duties and responsibilities entrusted to them as per guidelines issued to them vide SEBA's letter dtd. 17-03-2012 with Appendix - 1.

On the basis of records and statements, all the charges against Sri G K Tamuly, (Headmaster Suspended) Officer Incharge & Sri R.K. Saikia, Asstt. Officer Incharge (Suspended) stand proved and they are found guilty of improperly conducting the H.S.L.C. Examination at Kamalabari Centre under Jorhat District.

With this the report is submitted on 28th Day of June, 2012."

24. From a careful reading of the enquiry report, it is seen that the Enquiry Officer had clubbed together his report in respect of 2(two) enquiries, one against the petitioner and other against Sri R.K. Saikia, the Assistant Centre Incharge. In the enquiry report, the Enquiry Officer did not indicate the exact charges framed against the petitioner as well as against Sri R.K. Saikia, but gave his finding that all the charges against the petitioner and against Sri R.K. Saikia stood proved and that they were found guilty of improperly conducting the HSLC Examination at Kamalabari Centre in Jorhat District. As noticed above, Sub-rule 7 of Rule 9 of the 1964 Rules, requires that at the conclusion of the enquiry, the Enquiry Officer has to prepare the enquiry report recording his findings on each of the charges together with reasons therefor. Since the Enquiry Officer did not mention the charges framed against the petitioner and the other officer, she had recorded a common finding in respect of both the 2(two) Government servants. No reasons have been assigned for recording such findings. As a matter of fact, the Enquiry Officer did not at all discuss the various materials and evidence, which were taken on record during the enquiry. However, it is evident that the Enquiry Officer had taken into consideration letter of SEBA dated 02.06.2012 and letter of the Inspector of Schools dated 11.05.2012. Furthermore, the Enquiry Officer had relied upon the statements of Sri Pranab Saikia, Grade-IV, Sri Debajit Hazarika, Grade-IV, Sri Gajen Borah, Supervising Officer of the Centre and Sri R.K. Saikia. The enquiry report does not indicate that copies of the 2(two) documents relied upon by the Enquiry Officer were furnished to the petitioner. It is also silent as to whether petitioner was given an opportunity to cross-examine the persons named above, who had given statements before the Enquiry Officer.

25. Thus, admittedly, in this case, there has been an infraction of Rule 9 of the 1964 Rules in the enquiry as well. Firstly, from a perusal of the enquiry report as noticed above, it is evident that statements of various persons were recorded by the Enquiry Officer and relied upon. Likewise, the Enquiry Officer placed reliance on 2(two) documents. It appears that the witnesses were neither subjected to cross-examination by the petitioner in terms of Sub-rule 6 nor the documents questioned. Secondly, the Enquiry Officer clubbed together his report regarding the 2(two) Government servants, i.e., the petitioner and Sri R.K. Saikia. Finally, no findings on each of the charges together with reasons have been recorded in

the enquiry report. Such vital omissions adversely affected the enquiry and consequently the enquiry report.

26. The aspect relating to furnishing of a copy of the enquiry report after imposition of penalty may now be adverted to. Article 311 of the Constitution of India deals with dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. Clause-2 provides that no such person shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. As per the proviso, in the event, such penalty is proposed to be imposed, it should be on the basis of the evidence adduced during such enquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed. Article 311(2) as it stands now was substantially amended by the Constitution (42nd Amendment) Act, 1976. Prior to the 1976 Amendment, Article 311(2) provided that opportunity of hearing had to be given to the delinquent at 2(two) stages, i.e., at the stage of enquiry into the charges and then before imposition of punishment on the basis of findings at the enquiry. The 1976 Amendment eliminated the provision providing for second opportunity of hearing before imposition of punishment. There was some difference of judicial opinion on the question of opportunity of hearing before imposition of penalty following the 1976 Amendment, more particularly, on the question of consequence of non-supply of the enquiry report to the delinquent employee. In *Union of India and others Vs. Mohd. Ramzan Khan*, , a three Judge Bench of the Apex Court held that whenever the Enquiry Officer is other than the Disciplinary Authority and the report of the Enquiry Officer holds the employee guilty of all or any of the charges, the delinquent employee is entitled to a copy of the enquiry report to enable him to make a representation to the disciplinary authority against the report. Non-furnishing of the enquiry report amounts to violation of the rules of natural justice.

27. The question as to whether the enquiry report of the Enquiry Officer, who is appointed by the Disciplinary Authority to hold the enquiry into the charges against the delinquent employee is required to be furnished to the employee to enable him to make proper representation to the Disciplinary Authority before such authority arrives at its own final decision with regard to the guilt or otherwise of the employee and the punishment proposed was referred to the Constitution Bench in the case of *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, . The reference was made in view of what was thought to be conflicting decisions in *Ramzan Khan (supra)* and *Kailash Chander Asthana Vs. State of U.P. and Others*, . The question as referred to above has since been authoritatively settled by the Constitution Bench in *Managing Director, ECIL (supra)*. It has been held that when the Enquiry Officer is not the Disciplinary Authority, the delinquent employee has a right to receive a copy of the Enquiry Officer's report before the Disciplinary Authority arrives at the conclusion with regard to guilt or innocence of the employee and imposition of penalty. That right

has been held to be a part of the employee's right to defend himself against the charges leveled against him. It is clearly held that denial of the Enquiry Officer's report before the Disciplinary Authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice. However, the Constitution Bench had put in a word of caution not to apply this principle in a mechanical manner while quashing the penalties imposed on the above ground and directing reinstatement with back-wages. Courts and Tribunals would have to examine whether prejudice was caused to the employee or not on account of non-furnishing of the enquiry report, but that is an aspect, which would require consideration on the facts and circumstances of each case. The penalty of compulsory retirement is a major penalty and the ratio laid down in *Managing Director, ECIL (supra)*, will be applicable in the event of imposition of such penalty. Coming to the facts of this case, it has already been noticed that copy of the enquiry report was furnished to the petitioner only after imposition of penalty. The enquiry report has already been discussed above. The enquiry report suffers from gross procedural infirmities striking at the very foundation of the findings recorded. Had the copy of the enquiry report been furnished to the petitioner prior to passing of the order of penalty, the petitioner could have certainly brought these aspects to the notice of the Disciplinary Authority. But the same could not be done because of non-supply of the enquiry report. To that extent, the petitioner has suffered great prejudice.

28. No doubt the charge against the petitioner is quite serious, but at the same time, it must also be recognized that the petitioner is entitled to a fair hearing, which is manifest under Rule 9 of the 1964 Rules and as per law laid down in the decisions of the Apex Court. The departmental proceeding drawn up against the petitioner was required to be conducted in accordance with law which unfortunately had not been done in the present case. The impugned order has been passed in gross violation of the principles of natural justice and also in violation of the procedure laid down under Rule 9 of the 1964 Rules. The same is, therefore, wholly untenable and calls for interference. In the normal course, after setting aside the order of penalty, Court would have given liberty to the Disciplinary Authority to commence the disciplinary proceeding *denovo*. But since the petitioner had attained the age of superannuation in the interregnum, at this point of time, Court is of the view that it would neither be appropriate nor desirable to permit holding of departmental proceeding against the petitioner afresh.

29. Accordingly and having regard to the discussions made above, writ petition is allowed. Impugned order dated 27.07.2012, is hereby set aside and quashed. Consequently, the petitioner shall be deemed to have been in service till his superannuation and would be entitled to all consequential benefits. No cost.