
(1991) 04 OHC CK 0033
In the Orissa High Court
Case No : O.J.C. No. 3669 of 1986

Harekrishna Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-04-1991

Acts Referred:

Major Port Trusts Act, 1963 — Section 123, 125
Paradip Port Employees (Classification, Control and Appeal) Regulations, 1967 —
Regulation 10

Citation : (1993) 1 LLJ 20

Hon'ble Judges : L. Rath, J; Jagadeb Roy, J

Bench : Division Bench

Advocate : B.B. Ratho and B. Senapati, for the Appellant; B.M. Patnaik, S.C. Lal, P.K. Choudhary and Ashok Mohanty, S.C., for the Respondent

Final Decision : Dismissed

Judgement

L. Rath, J.—The petitioner who was an Overseer (Electrical) under the Paradip Port Trust having been dismissed from service and his departmental appeal against the dismissal having failed, has come before this Court seeking redress. The petitioner faced a disciplinary proceeding initiated on charges as per Annexure-1 issued on June 29, 1983 on two counts, that firstly, while functioning as Overseer (Electrical) in Building Construction Division during the period from April 14, 1982 till June 29, 1983 he had submitted improper and fictitious records to the verification committee constituted on December 18, 1982 in connivance with one R.K. Sarangi, Assistant Engineer (Electrical) and at no time had submitted proper or up-to-date site accounts in time to the Division Office during his incumbency in the Building Construction Division, and secondly, that he had concealed during the same period huge quantities of costly electrical materials of the Port Trust in connivance with the same Assistant Engineer in Shop No. 2 of Madhuban Market Complex and in a Type "A" quarters in Block No. 18 at Madhuban. So far as the first count was concerned he was alleged to have exhibited negligence and dereliction of duty unbecoming of a public servant and

as regards the second, he was charged of being guilty of lack of integrity and conduct unbecoming of a public servant and having violated under both the counts Rule 3 of the Central Civil Services (Conduct) Rules. Along with the charges, the petitioner was supplied with the statements of imputation of misconduct or misbehaviour in support to both the charges, a list of documents by which the charges were to be sustained and a list of witnesses in support of the charges. The petitioner was called upon to submit his written statement of defence and to state whether he desired to be heard in person. The petitioner did not submit his written statement which he complains was not possible to be submitted since he had been harassed and the necessary documents had not been supplied to him. An inquiry officer was appointed to hold the inquiry who after inquiry submitted a report to the disciplinary authority finding the petitioner guilty of both the charges. The disciplinary authority dismissed the petitioner from service on March 12, 1985. The petitioner preferred an appeal to the Government of India against the order of his dismissal but it was rejected on September 23, 1985.

2. A counter-affidavit has been filed by opposite parties 2 and 3 to which the petitioner has also filed two affidavits in rejoinder. In the counter-affidavit the opposite parties have disputed the stand of reasonable opportunity having not been afforded and contended that the petitioner had deliberately not filed the written statement of defence even though all documents had been supplied to him. It is their further case that the inquiry had been conducted in fair manner but that the petitioner did not deliberately participate in the same, that it was not necessary to supply a copy of the inquiry report to him and that he had never made any application to the disciplinary authority for change of the inquiring officer.

3. Mr. B.B. Ratho, learned counsel for the petitioner, has made the submissions, assailing the order of dismissal and the appellate order, that:

(1) The petitioner was entitled to be supplied with separate lists of witnesses and documents in respect of each charge and that having not been done, the proceeding was bad.

(2) No inquiring authority could have been appointed prior to receipt of the written statement of defence of the petitioner.

(3) The petitioner was not afforded reasonable opportunity to defend himself, inasmuch as neither the documents as per the list enclosed to the charges nor the statements of the witnesses purported to have been examined in support of the charges were supplied to him in time, nor the documents sought for by the petitioner before submission of his written statement of defence were also supplied to him in time and that some of the documents desired by the petitioner were never supplied.

(4) Since the petitioner had made a representation to the disciplinary authority for change of the inquiring authority alleging bias and such representation was

never disposed of and yet the inquiry proceeded and was completed and the disciplinary authority also passed the order of dismissal, the whole proceeding had become vitiated.

(5) The petitioner was not supplied with a copy of the inquiry report prior to the order of dismissal being passed, and

(6) the appeal was disposed of by a non-speaking order.

4. The submissions of Mr. Ratho may be taken up seriatim.

5. The first submission is based upon Regulation 10(4) of the Paradip Port Employees (Classification, Control and Appeal) Regulations, 1967 (for brevity "the Regulations") which deals with the procedure for imposing major penalties and provides that the disciplinary authority shall deliver or cause to be delivered to the employee a copy of the articles of charge, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained. It is the submission of Mr. Ratho that the regulation requires the disciplinary authority to supply not only separate statements of misconduct or misbehaviour with regard to each charge but also separate lists of documents and witnesses as relating to each independent article of charge. But as the lists supplied to the petitioner did not so specify which documents or which witnesses related to which item of charge, the proceeding was bad. The submission is wholly without substance since on one hand no such objection was raised by the petitioner at any time and secondly I also do not think, on a reading of the regulation, that it is amenable to such a meaning. All that it requires is that the delinquent officer is to be supplied with the lists of documents and witnesses by which the articles of charges are required to be proved. Since the officer is also allowed opportunity to inspect the documents and has also the right to inspect the statements of the witnesses recorded, he obviously has the knowledge as to which documents or witnesses bear upon what charge. This submission of Mr. Ratho must accordingly fail.

6. The second and third submissions of Mr. Ratho may be taken up together. It is urged that since the petitioner was not supplied with the documents in time, he was unable to submit his written statement of defence and that because such statement had not been submitted, no inquiring officer could have been appointed to inquire into the charges. It is a fact that the inquiring officer was appointed by the disciplinary authority on September 7, 1983 by which date the petitioner had not filed the written statement of defence. It is however the case of the opposite parties that the petitioner had been afforded repeated opportunities to file the written statement and that all the documents sought for by him had been supplied to him except only those which were either not existent or to which he was not entitled. It is also submitted that at any rate the submission of written statement of defence is not a condition precedent for appointment of the inquiring officer,

7. The argument that no inquiring authority in the proceeding can be appointed

unless written statement of defence is filed stems from the wordings of Regulation 10(5) (a) which is to the following effect:-

"On receipt of the written statement of defence, the disciplinary authority may itself inquire into each of the articles of charge as are not admitted or if it considers it necessary so to do, appoint, under sub-regulation (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the employee in his written statement of defence, the disciplinary authority shall record its findings on such charge after taking such evidence as it may think fit and shall act in the manner laid down in Regulation 11."

Since it is said that the disciplinary authority may either inquire into the charges itself or appoint an inquiring authority for the purpose on receipt of the written statement of defence, it is submitted by the learned counsel that the very jurisdiction to appoint the inquiring authority becomes available to be exercised only after the written statement has been filed. In support of the submission, reliance has been placed on ILR (1975) Cut 357 (Rabindranath Mohanty v. Govt. of Orissa) dealing with the All India Services (Discipline & Appeal) Rules 1969 and 1978 LabIC 1530 (Nilamadhab Sahu v. Registrar of Co-operative Societies) as well as (1979) LabIC 24 (Jagannath Mohapatra v. Utkal University) interpreting the provisions of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962. In the first case it was held, interpreting the provisions of sub-rules (5) and (6) of R.8 of the AH India Rules which are similar to Regulations 10(4) and 10(5) (a) and (b), that the rules stipulated appointment of an inquiring authority after submission of the written statement of defence and that such appointment before the submission of the written statement simultaneously with the framing of charges is not permissible. The latter two cases were on interpretation of Rule 15(4) of the Orissa Rules which is in the similar vein as that of Rule 8(6) of the All India Rules. Broadly speaking, the substance of these rules is that the delinquent officer is to be delivered with the charges calling upon him to file his written statement of defence and that on such statement being filed or if no such statement is filed by the time specified, the charges will be inquired into by the disciplinary authority himself or by the inquiring authority appointed by him for the purpose. The reason to hold that the appointment of the inquiring authority must be after the submission of the written statement of defence is that the disciplinary authority has the option either to proceed with the inquiry or drop the same after perusal of the written statement of defence and that in suitable cases it may be possible for the authority to decide not to proceed with the inquiry.

In 1977 LabIC 94 (Sridhar Chand v. State of Orissa) it was observed:

"....There may be instances where the charges would be admitted and no enquiry at all would be necessary. Similarly, the written statement of defence may indicate a set of facts which may lead the disciplinary authority to hold that the enquiry need not be conducted. Some charges may be admitted and some others may be refuted which may lead the disciplinary authority to decide that

the enquiry need not be conducted by himself and may be entrusted to an enquiring officer. Similarly, the written statement of defence may indicate certain aspects which might persuade the disciplinary authority to handle the enquiry himself...."

The appointment of an inquiring authority prior to receipt of the written statement of defence would also disclose a pre-conceived opinion of the disciplinary authority to compulsorily pursue the charges even though the delinquent might be able to make out in the written statement a case of the charges being not worthwhile. It is however the submission of Mr. Pat-naik, learned counsel for the opposite parties, that the regulations reveal a different scheme from the All India Rules and the Orissa Rules and that under the regulations it is possible to appoint an inquiring authority even prior to receipt of the written statement of defence since while Regulation 10(5) shows that the inquiring authority is to be appointed on receipt of the written statement of defence, yet Rule 10(9) permits the delinquent to appear before the inquiring authority even while he has not submitted any written statement of defence and that such provision would show that an inquiring authority is contemplated to be appointed even when no written statement of defence has been filed. This submission in no way shows the decisions of the Court to be inapplicable. All the rules specifically make provision for appointment of the inquiring authority when no written statement of defence has been filed. It is not open to a delinquent officer to play truant and avoid filing of the written statement and yet claim that the inquiring authority cannot be appointed until he has filed his written statement. All that Regulation 10(9) provides is that even when the delinquent has failed to submit his written statement and as a consequence the inquiring authority has been appointed, yet he is not deprived of the opportunity to appear before the inquiring authority and participate in the inquiry and is to be afforded opportunity to state his defence. It is to be noted that Rule 8(12) of the All India Service (Discipline and Appeal) Rules, 1969 makes the same provision as in Regulation 10(9),. It is not that the Court while deciding the case of Rabindranath Mohanty (supra) was oblivious of the significance of R.8 (12) of the Rules concerned. If however it is shown that the inquiring authority has been appointed either simultaneously with the issue of charges or without affording any reasonable opportunity to the delinquent to submit his written statement of defence, such appointment of inquiring authority must be held to be vitiated as it deprives the delinquent to submit his defence for consideration of the disciplinary authority and to persuade it to drop the charges. The proposition however is not an absolute one and is subject to waiver by the delinquent officer either by express words or by his implied conduct of participation in the inquiry without raising any protest against the appointment of the inquiring authority before his written statement of defence has been filed or if the written statement of defence is not filed unjustifiably. Absence of protest at the stage of the appointment or acceptance would show no prejudice to have been caused and the inquiry would not be liable to be called in question on that count alone at an

advanced stage or at the conclusion thereof.

8. As a necessary consequence corollary, the question arises whether under the Regulations an employee has the right to ask for inspection of the documents of which list has been supplied along with the charges and the statements of the witnesses recorded as also inspection of the additional documents which he may wish to see before filing the written statement. It is the submission of Mr. Patnaik that under the scheme of the Regulations no inspection of documents is called for for the purpose of filing of written statements of defence and that in such statement the employee is only to indicate whether he accepts the charges or not, and that the stage of inspection of documents comes later on when the inquiry is taken up by the inquiring authority. At that stage under Regulation 10(11) the inquiring authority has a duty to adjourn the case affording opportunity to the employee to inspect his documents the list of which has been supplied under sub-regulation (3) and also to supply a list of witnesses to be examined on his behalf for the purpose of preparing his defence. The procedure outlined in Regulation 10 is almost the same as provided for in Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1955. For such reason, Mr. Patnaik in support of his contention has placed reliance on the letter No. 4/42/73-R. dated the September 19, 1973 of the G.I., Central Vigilance Commissioner, an extract of which is reproduced in Swamy's Compilation of OCS (CCA) Rules. The communication states that the scheme of the Control Rules as regards the statements of defence is that it is limited to admitting or denying the charges and for such purpose, inspection of the documents is not necessary. On the basis of such stand, it is also stated that if the delinquent officer does not submit the statement of defence within the prescribed time, the disciplinary authority may proceed with the appointment of inquiring authority explaining to the officer that he would get full opportunity to inspect the documents as per the list during the course of inquiry. Countering such stand, reliance is placed by Mr. Ratho on the Government of India, Ministry of Home Affairs O.M. Nos. 110-12/2/79-Estt. (A) dated the March 12, 1981 and 110-12/8/82-Estt.(A) dated the December 8, 1982, the gists of which have been extracted in the same Swamy's Compilation and is to the effect that the disciplinary authority has the inherent power to review or modify the charges or drop some of the charges or all of them after receipt of the written statement of defence and that the disciplinary authority is not bound to appoint an inquiring authority for conducting the inquiry into the charges which are not admitted by the officer, but about which the authority is satisfied on the written statement of defence that there is no further cause to proceed with it. The executive decision taken by the Government as regards the procedure to be adopted under the rules or regulations while are not admissible for interpretation of the rules or regulations, yet they are of assistance to the extent of revealing the stand of the executive authority in relation to the rules/regulations and its own understanding of the same. The view expressed in the Office Memorandum of 1981 and 1982 are the same as the conclusion reached by me earlier regarding the option available to

the disciplinary authority to drop the charges on perusal of the written statement of defence. If that is so, it can hardly be accepted that the written statement shall consist of merely an aye or no since such a written statement would offer no explanation to all and can never have the persuasive effect to make the disciplinary authority see the charges being not worthwhile to be proceeded with. It is thus in the very nature of things contemplated that the delinquent has the right to submit a detailed statement of defence to avail the opportunity to mould the opinion of the disciplinary authority of the charges being not worth proceeded with. The procedures adopted under the regulations or the Central Rules are nothing but principles of codified natural justice in the matter of conduct of inquiry and as is well settled, wherever the principles of natural justice are wanting, such principles are to be read into the provisions unless their applicability has been expressly ruled out or impliedly inconsistent. The opportunity to inspect the documents, the list of which is supplied under Regulation 3, as also the statements of witnesses or the additional documents which the delinquent might need to prepare his statement, is a facet of the some principles of natural justice. There is nothing in Regulation 10(11) which either rules out the grant of inspection, either expressly or impliedly. As a matter of fact, sub-regulation (11) comes into play at a different stage altogether. It is to be marked that the opportunity afforded under sub-regulation (11) is not for submission of written statement of defence but for repairing the defence. The opportunity is given to an employee who has either failed to appear within the specified time under sub-regulation (7) or sub-regulation (9) or even if appears, either refuses to plead guilty or omits to plead guilty for which reason the enquiry becomes necessary. The scheme of the regulations reveals a compulsory inquiry to be held even if no written statement of defence is submitted. The disciplinary authority appoints an inquiring authority and under sub-regulation (7) the employee is to appear before the authority. Under sub-regulation (9) if the employee appears before the inquiring authority and either submits his written statement of defence denying the charges or does not submit any written statement of defence, the inquiring authority is to ask him whether he pleads guilty and depending upon his entering the plea of guilty, is to record the same. Where, however, he does not so plead guilty or does not appear, the opportunity is to be afforded to him under sub-regulation (11) to prepare his defence. This applies to both the occasions where the written statement has been filed or not. It is thus clear that the opportunity granted for preparing the defence is different from the opportunity necessary to be afforded, as a principle of natural justice, for preparing the written statement of defence. This view taken by me is more fortified from the very provision made in sub-regulation (11) as it provides only for inspection of documents as are specified in the list referred to in sub-regulation (3). This would obviously exclude the opportunity of inspection of either any additional document that may be desired by the employee for the purpose of his defence or even the statement of witnesses whose list is supplied under sub-regulation (3). Sub-regulation (3)(ii)(b) refers to both the list of documents by which the charges are to be proved as also the list of witnesses by

whom such charges are to be proved. While sub-regulation (11) allows inspection of documents, it is silent about the statement of witnesses. If sub-regulation (11) is the only stage at which the documents can be inspected, it would be a logical conclusion to hold that the regulations prohibit inspection of either the statement of witnesses referred to in sub-regulation (3) and inspection of any additional document that may be necessary for the employee for effective establishment of his innocence. Such an interpretation is hardly acceptable as it runs wholly counter to the concept of reasonable opportunity necessary to be afforded in the enquiry to a delinquent officer. In that view of the matter, the inescapable conclusion is that the charged officer has a right to inspect the documents as are referred to in the list supplied under sub-regulation (3) and the statements of the witnesses referred to therein. For the same reason, the delinquent officer would have also the right to call upon the disciplinary authority to provide him opportunity to inspect the additional documents which he may feel necessary to consult before he files his written statement of defence though of course it is equally dear that asking for such inspection cannot in reality be only a fishing or random inquiry of irrelevant documents and that unless the relevance of such documents is justified, the disciplinary authority would be well within its right to refuse the same.

9. Even though such is the position of law, yet the petitioner can hardly complain of the illegality in the appointment of the inquiring officer prior to affording him opportunity to inspect the documents. There was absolutely no protest by the petitioner to the appointment of the inquiring authority at any point of time and on the contrary as the very facts reveal, it is seen that he accepted the appointment of the inquiring authority and submitted himself to his jurisdiction and fully participated in the inquiry by moving before him from time to time for grant of opportunity to inspect the documents, the statements of the witnesses as also the additional documents. Even in the appeal memo, presented as against the order of dismissal, he also never raised objection to the appointment of the inquiring authority on that count and neither has such question been raised in the writ petition. Thus it is to be held that the petitioner has agreed to the appointment of the inquiring authority and hence cannot be permitted to raise such objection now, a conclusion which is supported also by (1977) LabIC 94 (supra).

10. Next is the question as to whether the petitioner had any justifiable reason not to submit his written statement of defence even before the inquiring authority and whether reasonable opportunity had not been granted to him for inspection of the documents at that stage.

11. Unquestionably an employee who has not submitted written statement of defence earlier would have a right to submit the same before the inquiring authority after inspection of the documents and if such statement is submitted, it can be hardly refused by the inquiring authority on the ground of having not been submitted within the time allowed to the employee. Mr. Ratho has also not

advanced any such contention. It is the very case of the petitioner that the inquiring officer passed orders on October 3, 1983 permitting him to inspect the documents desired to be inspected by him in the office of the Vigilance Officer and that during the period of October 20, 1983 to November 25, 1983 he inspected all the documents except the documents as per Items 7 and 12 of the list in Annexure 3 to the charges. The petitioner made complaint before the inquiring officer on several dates of having not been allowed to inspect the documents as per Items 7 and 12 and ultimately on July 3/4, 1984 he was allowed to inspect these documents also. Thereafter, the petitioner on December 16, 1983 asked to inspect the statements of the witnesses as per Annexure 4 to the charges. On July 3/4, 1984 he was also permitted to inspect the statements of two witnesses, Shri K.C. Baral and Shri A.C. Panigrahi. As regards statements of the other witnesses, it is stated in the counter-affidavit that the statements of such witnesses were not recorded since they were only witnesses to the seizure. As such their statements could not have been made available. The petitioner had also been granted opportunity to inspect the seizure lists and had taken down extracts therefrom and hence the question of inspection of their statements did not arise. On August 13, 1984 the petitioner sought for inspection of additional thirteen documents as per list submitted. On August 16, 1984 the inquiring authority while communicating to the petitioner that the statements of the other five witnesses did not exist, also intimated that out of the additional documents desired, Item No. 1, which was an F.I.R., did not exist and that inspection of Item No. 2, the preliminary enquiry report, Could not be permitted as the list of witnesses and the documents in support of the charges had already been mentioned. The existence of the documents as per the Item No.3, the report of the technical expert/head, was denied and as regards Item No.4, the letter/order issued by the competent authority authorising the Vigilance Officer to record the statement of the petitioner, it was stated that the Vigilance Officer was competent to carry on preliminary investigation with regard to the complaint received by him and that he did not require anybody's authority for the purpose. Item Nos. 5,6 and 7 were allowed to be inspected whereas Item Nos. 9, 10 and 11 were stated to have been already inspected by the petitioner. Item No. 12 of the additional list was the specific letter/circular issued to the petitioner prescribing the manner, procedure, guidelines, etc. for issuing the materials to electrical contractors and his authorised agents for contract works under the Paradip Port Trust. The petitioner was asked in that communication to refer to Memo No. 2575-/FA, PPT, dated May 2, 1975 at page 706 of the Hand Book of Important Circulars and Orders in the office of the Executive Engineer, Port Electrical Division (Projects). At SI. No. 13 of the list, the petitioner had listed various files to be inspected. The inquiring authority desired the petitioner to indicate by August 17, 1984 the relevance of each of the files with respect to the imputation of misconduct. On the petitioner's indicating the relevance on August 21, 1984, the inquiring authority by his letter of August 22, 1984 allowed inspection of all the files. As regards Item No. 8 of the additional list of documents, i.e. the letter of the competent authority directing the petitioner to

submit site account to the Division Office, the inquiring authority intimated in the very same letter that if any such order was issued or there was any other general order, the same can be seen in the office of the Executive Engineer, Port Electrical Division (Projects) on August 23, 1984. Thus it would be seen that almost all the documents sought for by the petitioner were allowed by the inquiring authority to be inspected. No inspection could have been allowed to the petitioner of the documents which did not exist, like the statements of witnesses or the F.I.R. The petitioner had no right to inspect the preliminary inquiry report since it was not a document on which the department was to rely and that the evidence and documents through which the charges were to be sustained had already been allowed to be inspected by him. I have thus no hesitation to hold that the petitioner was in possession of all the relevant materials for his effective defence and submission of written statement of defence. The petitioner had also been categorically told by the inquiring authority in the very same letter of August 22, 1984 that there should not be any further request for further inspection of documents. It appears from the counter-affidavit of opposite parties 2 and 3 that the petitioner was given notice on September 6, 1984 of fixation of the date of enquiry to September 11, 1984. The petitioner appeared before the inquiring authority on September 11, 1984 and handed over a letter dated September 10, 1984 repeating his claim for copies of the statements of the remaining five witnesses and copies of the additional documents. The petitioner left the office of the inquiring authority after handing over the letter and did not participate in the inquiry. The inquiring officer recorded order on that date of the petitioner having come to his office and handing over him a petition of September 10, 1984. He was asked to remain in the inquiry on both the dates but he refused and for that reason the inquiry was conducted *ex parte*. The petitioner was also issued a communication on September 12, 1984 to the same effect. It is seen that the petitioner was merely repeating his claim regarding inspection of documents even though by then inspection of all the documents had been allowed to him. He was merely asserting to inspect documents which were not existent and the documents to which he was not entitled. On the next day, i.e. September 13, 1984, the petitioner informed the inquiring authority of his being unable to take part in the inquiry because of denial of reasonable opportunity to him to inspect the documents. Again on September 14, 1984 he demanded inspection of the documents in spite of it being clarified to him that the inquiry would continue and that the position regarding inspection of documents had already been clarified to him earlier. The inquiry continued on September 11, 12, 13, 14, 17 and 18, 1984. From a resume of the facts, it is revealed that the petitioner was adopting a stubborn attitude regarding his participation in the inquiry and his intention was not to attend the inquiry but to stall the same. It is as if the petitioner was actually intending to utilise the scope of inspection of the documents as a lever to postpone his participation in the inquiry. In that view of the matter, it cannot be said that the petitioner had any justifiable reason either for not submitting written statement of defence before the inquiring authority or not participating in the inquiry. As a matter of fact, the

petitioner never wanted any time for his written statement of defence because he had not moved the inquiring authority for the purpose and was all along representing that he could not prepare his defence unless the documents were shown to him.

12. As regards point No. 4 i.e. the enquiry having been affected there being reasonable apprehension in the mind of the petitioner of his not being given fair justice by the inquiring authority and of his having made a demand for him being changed, it is seen that the petitioner represented on October 16, 1984 to "the Hon"ble Disciplinary Authority Md. Akhalaque," Chief Electrical and Mechanical Engineer, Paradip Port Trust, for change of the inquiring authority. It is his case that no action was taken on his application and no communication was made to him either on acceptance or rejection of his request and even though he intimated the inquiring authority on the very same date of having filed a petition before the higher authority seeking his replacement and requested stay of the inquiry till a new officer was appointed, yet the inquiring authority continued with the inquiry and submitted his report which was accepted by the disciplinary authority and the punishment was imposed. Mr. Ratho has placed reliance on the extract of the C.S. (Department of Personnel) S.M. No. 39/40/70-Ext.(A) dated November 9, 1972 which has been reproduced in the very same Swamy's Compilation of C.C.S. (CCA) Rules which show that the instructions of the Department of Personnel are that wherever an application is moved, by a Government servant facing a disciplinary proceeding, against an inquiring authority on ground of bias, the proceeding should be stayed and the application is to be referred along with the relevant materials to the appropriate reviewing authority for its consideration and passing of appropriate orders. It is on such basis Mr. Ratho urges that since the petitioner had made an application for change of the inquiring authority and had remained under expectation of receiving orders on the same, and it was incumbent on the inquiring authority to have stayed the inquiry, the petitioner could not participate in the inquiry and instead it was conducted illegally exparte.

13. A request for change of the inquiring authority is to be decided not from the point of view of the disciplinary authority but from the angle of the employee concerned as to whether on the facts and circumstances of the case it could be said that it was possible for him to develop a reasonable apprehension of bias in the inquiring authority against him. It is not the requirement of law that such a bias must be actually present in the inquiring authority and it is not equally true that a mere fanciful or imaginary claim or bias would not sustain the plea for change of the inquiring authority. All that is necessary is that whether the employee could contend of a reasonable apprehension in mind regarding the impartiality of the inquiring authority. In other words, the test is as to whether a man of reasonable prudence, if placed in the similar circumstances as that of the employee, would have thought the inquiring authority to be biased against him. It is to be seen whether in such background of law the petitioner could be said to have any reasonable apprehension of bias against the inquiring authority.

14. A reference to the facts as discussed earlier relating to the conduct of inquiry shows that on no single occasion the inquiring authority refused the prayer of the petitioner for inspection of documents. The grounds made out in the petition of October 15, 1984 for change of the inquiring authority centres around the fact of the petitioner having not been afforded opportunity for inspection of documents. The only denial of the inquiring authority was as regards the documents which were not existent and the preliminary inquiry report to which the petitioner was not entitled. The inquiring authority had never proceeded with the inquiry prior to inspection of the documents and only when the inspection was over and the petitioner was merely repeating his plea of inspection of nonexistent documents that he was told not to press the matter further and to participate in the inquiry. Even on the September 11, 1984 when the inquiry commenced and the petitioner appeared before the inquiring authority to file the petition dated September 10, 1984 the inquiring authority requested the petitioner to participate in the inquiry as is revealed from the order sheets maintained for that day but the petitioner was not willing to participate. Under such circumstances, there was no way of developing a reasonable apprehension of bias in the inquiring authority since he never acted contrary to the interest of the petitioner. Merely because a few documents regarding which it had been already explained to him by the inquiring authority that those were not available and the preliminary inquiry report which was not a document to be inspected were not shown to him, it could not be said that a reasonable man would have been threatened with apprehension of bias in mind. It was on the other hand as if the petitioner had the single objective of avoiding the inquiry. There was as such no justification for the demand for change of the inquiring authority.

15. As a matter of fact there was also no such demand properly in law. It was very much to the knowledge of the petitioner that Md. Akhlaque was not the disciplinary authority. Yet the petition was addressed to him though he had no function in the matter. The petitioner had been specifically informed of the office order of September 7, 1983 wherein in view of the joint inquiry conducted against Shri R.K. Sarangi, Assistant Engineer and the petitioner, orders had been passed by the Chairman under sub-regulations (1) and (2) of Regulation 14 of himself functioning as the disciplinary authority (Annexure K) in the proceeding. His intimation to the inquiring authority as at Annexure P shows of his having informed him only that he had made a petition to the higher authority to change him. There was no specific intimation of the petition having been made to the disciplinary authority. It is argued by Mr. Ratho that a copy of the petition dated October 15, 1984 had been forwarded to the disciplinary authority and hence it was incumbent on the part of the disciplinary authority to have taken action on the same and to have intimated the inquiring authority to stay his hands. The submission is hardly acceptable as the disciplinary authority is the Chairman, Paradip Port Trust and being the highest executive of the Port Trust cannot be found fault with if he had not attended to the application submitted to a different authority with a copy forwarded to him. This submission of the petitioner must

also accordingly fail.

16. The punishment is also challenged on account of the copy of the inquiry report having not been supplied to the petitioner reliance for which has been placed by Mr. Ratho in *Union of India (UOI) and Ors Vs. E. Bashyan, , State of Gujarat Vs. R.G. Teredesai and Another, and State of Maharashtra Vs. Bhaishankar Avalram Joshi and Another, .* Developing the submission, it is contended that even though the earlier Regulation 11(4) (i) (a) providing for furnishing copy of the inquiry report was substituted by way of amendment on December 19, 1984 doing away with the express provision regarding supply of the enquiry report and providing that it is not necessary to give the employee an opportunity to make representation on the proposed penalty, yet supply of the inquiry report to the delinquent officer is a requirement of the principles of natural justice which has not been done away with. *Union of India (UOI) and Ors Vs. E. Bashyan,* is a decision directly on the question supporting the contention of Mr. Ratho. However the citation is not a final pronouncement of the apex Court but is one only referring the question to a larger Bench. In making the reference their Lordships were of the view that the inquiry report forms the basic material which the disciplinary authority takes into consideration for holding the delinquent guilty and hence if it is not made available to him till the axe falls, it could not be said to be in furtherance of the principles of natural justice. Drawing support from two other citation (supra) *State of Gujarat Vs. R.G. Teredesai and Another, and State of Maharashtra Vs. Bhaishankar Avalram Joshi and Another, ,* it is contended that the purpose of supply of the inquiry report is not merely to show cause against a proposed punishment but also to become aware of the factors which may influence the mind of the disciplinary authority and that the object of supplying copy of a report is twofold, namely (i) to persuade the disciplinary authority to agree that he is innocent of the charges; and (li) that if the charges are held to be proved, the punishment proposed is unduly severe and hence even if under the Regulations the second opportunity to show cause against the proposed punishment is no longer available, yet the other substantive right of the delinquent officer to justify his innocence before the disciplinary authority is a part of natural justice of which he cannot be deprived. The submission of Mr. Ratho has great substance and has been upheld by the Supreme Court in a recent decision of it in 1991 ILU 29 (*Union of India v. Md. Ramzan Khan*) where the very same conclusions have been reached making it mandatory, in a disciplinary inquiry conducted by an inquiring authority, to supply the delinquent officer a copy of the inquiry report. But however the decision, as would appear in paragraph 17 thereof, has been expressly made prospective specifically ruling that no punishment which has already been imposed will be open to challenge on that ground. The law declared by the Supreme Court being the law of the land, it must hence be taken that the requirement of furnishing copy of the inquiry report would be effective only since the date of its judgment (November 20, 1990) (reported in *Union of India and others Vs. Mohd. Ramzan Khan,)* and that punishment imposed earlier would not

be liable to be called in question merely because the copy of the inquiry report had not been supplied to the delinquent officer. This submission of Mr. Ratho must accordingly fail. The last submission on behalf of the petitioner is non-disposal of the appeal preferred by a speaking order. Such charge of the petitioner is correct as the appellate order merely states of the appeal having been dismissed on careful consideration. It is the settled position of law that the appellate authority in a disciplinary proceeding is a quasi-judicial authority and hence the order passed by it has to be reasoned one showing his application of mind to the questions raised by the appellant and if that is not done, the order becomes vitiated. Even so the defect in the appellate order is hardly of any help to the petitioner since even though we suggested to the learned counsel appearing for the petitioner to set aside the appellate order and to remand it for re-disposal by the appellate authority, yet he declined and instead strenuously pressed for a disposal of the case on all submissions made by him. In that view of the matter, since all the questions raised by the petitioner in the appeal were canvassed here and are found to have no substance, no useful purpose would be served to remand the case for re-disposal by the appellate authority.

17. In the result, the writ petition has no merit and is dismissed, but in the circumstances there shall be no order as to costs.

K.C. Jagadeb Roy, J.

18. I agree.