

(1985) 08 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 27 of 1985

H.L. Sethi

APPELLANT

Vs

Municipal Corporation and Others

RESPONDENT

Date of Decision : 06-08-1985

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14(11), 14(15), 14(4), 5, 7
Himachal Pradesh Municipalities Servants (Punishment, Removal, Suspension and Appeal) Rules, 1971 — Rule 15

Citation : (1985) 14 ILR HP 737

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

Advocate : A.K. Goel, for the Appellant; Harish Behal, Kedar Ishwar, for Respondents No. 1 and 2 and P.N. Nag, General, for the Respondent

Judgement

P.D. Desai, C.J.—The petition involves one more round of litigation for the Petitioner concerning a disciplinary inquiry, which initially commenced with the service of a charge-sheet on or about September 3, 1970, in respect of certain alleged acts of commission and/or omission on his part during the period 1969-70. The disciplinary inquiry resulted in an order of dismissal passed against the Petitioner on August 10, 1973. The Petitioner challenged his dismissal in Civil Writ Petition No. 60 of 1976, which was decided on August 2, 1982. the order of dismissal was quashed and set aside for non-compliance of Rule 14(4), (11) and (15) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and for violation of the rules of natural justice (See : H.L. Sethi v. M.C. Shimla and Ors. ILR 1982 HP 573). The Petitioner was reinstated in service, consequent upon the said decision, on and with effect from August 2, 1982.

2. On September 1, 1982, the predecessor-in-office of the second Respondent (Municipal Commissioner, Shimla) passed an order, Annexure-PA, directing the holding of a de novo inquiry against the Petitioner on the same charges on which the penalty of dismissal was imposed upon him earlier. The second Respondent

also passed Anr. order, Annexure-PB, on the same day placing the Petitioner under suspension with immediate effect. On November 2, 1982, a charge-sheet, Annexure-PC, was issued containing four heads of charges alleging, inter alia, that the Petitioner was guilty of: (i) failure to maintain absolute devotion to duty and integrity, (ii) temporary embezzlement and (iii) taking of undue advantage of his official position. The charge-sheet was accompanied by the statement of allegations, list of witnesses and list of documents by which the articles of charges were sought to be proved against the Petitioner.

3. It appears that the inquiry failed to make any substantial progress for quite some time and that gave rise to Civil Writ Petition No. 232 of 1984, instituted by the Petitioner seeking the relief, inter alia, that the charge-sheet be quashed. At the hearing of the said writ petition, which took place on June 25, 1984, certain statements were made on behalf of the Respondent-Corporation vide Annexure-PD. It was, inter alia, stated on its behalf that: (i) the order of suspension, Annexure-PB, had been withdrawn and that the Petitioner had been permitted to join duty on and with effect from June 23, 1984 and (ii) that the pending departmental inquiry against him would be concluded on or before October 31, 1984. On October 22, 1984, the Inquiry Officer submitted his report, Annexure-PM, to the second Respondent exonerating the Petitioner of all the articles of charges save and except one, namely, charge No. 2. The substance of the charge accordingly held proved concerned the alleged irregularity and temporary embezzlement on the part of the Petitioner of a sum of Rs. 54/-, which was drawn by the municipal office and handed over to him on May 6, 1970, for being paid to one Tarsem son of Bhola Ram, who was employed as a part-time member of the Safai staff, as his pay for the period from April 13 to 30, 1970 and which the Petitioner neither paid to the said employee nor refunded to the office but deposited in the Treasury on June 18, 1970 by a challan. By a communication dated November 21, 1984, Annexure-PJ, the second Respondent remanded the inquiry to the Inquiry Officer seeking clarification on two specific points which had a bearing on articles of charge Nos. 1 and 2. Be it stated, at this stage, that the allegation covered by charge No. 1 was that the Petitioner, while he was entrusted with the Slaughter House Work, failed to issue Slaughter House Payment Receipts (Slaughter House Tickets) against the payments received from various butchers on different dates in the month of December, 1969 although the counterfoils were duly filled up in order to complete the record and that he thereby failed to maintain absolute devotion to duty and integrity. The Inquiry Officer submitted his supplementary report to the second Respondent, Annexure-PM/I, on December 26, 1984, reiterating his earlier findings in respect of all the charges. In other words, the Petitioner was once again found guilty only of the misconduct which formed the subject-matter of the article of Charge No. 2.

4, It is pertinent to point out at this stage that while the inquiry was pending before the Inquiry Officer the second Respondent procured the opinion of the Government Examiner of Questioned Documents concerning the handwriting suspected to be of the Petitioner on the Slaughter House Tickets/Foils as well as

on the challan by means of which the sum of Rs. 54/-was deposited back in the Treasury on June 18, 1970. Be it stated that for the purposes of the comparison of handwriting, the Government Examiner of Questioned Documents was supplied certain applications from the personal file of the Petitioner as well as other admitted handwritings of the Petitioner. The Government Examiner of Questioned Documents vide his report, Annexure-PN, dated November 13, 1984, opined that the handwriting on the documents which were referred to him for opinion were of the same person who had written the documents supplied to him for comparison. In other words, the opinion of the Government Examiner of Questioned Documents was that the handwriting on the Slaughter House Tickets/ Foils as well as on the challan were of the Petitioner. Be it stated that the expert opinion, Annexure-PN, is not a reasoned one and that it contains no discussion in support of the findings therein recorded. Besides, the Government Examiner of Questioned Documents was not examined as a departmental witness either before the Inquiry Officer or before the second Respondent nor was he offered for cross-examination to the Petitioner. Only a copy of his opinion, Annexure-PN, was served upon the Petitioner along with the show-cause notice to which reference will be presently made.

5. Upon the receipt of the supplementary report, Annexure-PM/1, of the Inquiry Officer, the second Respondent issued a show-cause notice, Annexure-PL, on December 29/31, 1984 to the Petitioner stating that he proposed to inflict the penalty of dismissal from service on him and also of recovery of interest at the rate of five per cent per annum on the sum of Rs. 54/-for the period during which the said sum remained "embezzled temporarily" from June 1, 1970 to June 18, 1970. A copy each of the reports, Annexures PM and PM/1, submitted by the Inquiry Officer, in addition to a copy of the opinion of the Government Examiner of Questioned Documents, Annexure-PN, accompanied the show-cause notice.

6. The show-cause notice, Annexure-PL, is an elaborate document setting out in detail the tentative conclusions reached by the second Respondent on the basis of the opinion of the Government Examiner of Questioned Documents as well as of the record of the inquiry together with the reasoning in support of such conclusions. The second Respondent affirmed the findings of the Inquiry Officer insofar as the articles of Charge Nos. 3 and 4 were concerned and held that those charges were not proved. He also agreed with the finding of the Inquiry Officer that the article of Charge No. 2 was duly proved. However, so far as the article of Charge No. 1 is concerned, the second Respondent did not wholly concur in the findings recorded by the Inquiry Officer in respect of the said charge and held that the said charge was also proved against the Petitioner beyond reasonable doubt. A bare perusal of the show-cause notice reveals that in reaching the aforesaid conclusions as to proof of articles of Charge Nos. 1 and 2, the second, Respondent relied heavily upon the opinion of the Government Examiner of Questioned Documents, Annexure-PN. A few of the observations made by the second Respondent in the show-cause notice are relevant from the aforesaid view point and they are, therefore, extracted charge-wise herein below:

Re: Charge No. 1.

Since no witness deposed to this aspect I found it necessary to call for the expert opinion about the handwriting which I shall be discussing in detail later on in the following paragraphs on account of which I am not in agreement in entirety with the findings of the Inquiry Officer to that aspect.

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I referred the case to Shri B. Lal, Government Examiner of Questioned Documents where I specifically enquired that slaughter house tickets which have been marked now by the Government Examiner of Questioned Documents as "Q 2, Q 3 is the handwriting of Mr. H. L Sethi and for this we supplied from his personal file the applications and other admitted handwritings of Shri H.L. Sethi. Vide his letter No. BX-31/84/3998, dated 20-11-1984, the expert opined that the person who wrote the red-enclosed writings stamped and marked "A 1 to A 16", which was from the personal file admitted handwritings of Shri H.L. Sethi also wrote the red-enclosed writings similarly stamped and marked Q 1, Q 2 and Q 3. I can certainly say that he was holding the charge of slaughter house. The foils and coupons of receipt No. 235 etc. Exh. PW-1/1 which ought to have been filled up similarly are blank which clearly shows that he was negligent and careless in his work to that extent whereby charge No. 1 stands proved.

Re: Charge No. 2.

That is why at this stage again I made up my mind to have the expert opinion of the Government Examiner of Questioned Documents regarding the handwriting in the challan mark "A", vide which Rs. 54/- were deposited back into the treasury. This has been marked as "Q. 1" by the Government Examiner of Questioned Documents. It was also necessary since Dr. Ghosh who was MOH at that time inspite of repeated requests did not appear in this departmental enquiry.

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Regarding charge No. 2 as discussed above and as also opined by the Government Examiner of Questioned Documents the challan through which Rs. 54/- have been deposited back into the treasury on 17/ 18-6-1970 has proved that Rs. 54/- remained with Mr. Sethi throughout this period which as per the rule quoted above should have been short drawn in the next month's salary thereby the charge No. 2 has also been proved beyond any speck of doubt and but for his handing over the charge of his ward on 17-6-1970, this money would have never been deposited in treasury on account of bad intentions of Shri H.L. Sethi.

These observations leave no room for doubt that the expert opinion, Annexure-PN, was heavily drawn upon to hold the relevant charges tentatively proved.

7. It would be pertinent to point out at this stage that as regards the article of

charge No. 1, one of the essential matters in issue was whether the Petitioner was entrusted with the additional charge of the Slaughter House and was in possession of its records at the material time. The Petitioner did not admit the entrustment of the Slaughter House work to him and denied his handwriting on any of the material documents relied against him. There was no direct evidence on the record of the inquiry in proof of the entrustment of the charge of the Slaughter House to him or his handwriting on the counterfoils etc. Having regard to the state of evidence on record, the Inquiry Officer, in the course of his first report, Annexure-PM, held that in view of the denial of the Petitioner as regards his handwriting on the counterfoils of the disputed receipts and the failure of the department to produce an office order entrusting the charge of the work of the Slaughter House to him or to produce any oral evidence to that effect, the article of charge No. 1 was not proved. After remand, however, witnesses were examined before the Inquiry Officer by the department with a view to "proving Municipal Resolution No. 54 passed on July 28, 1973, which is stated to contain an admission of the Petitioner in the form of a statement made by him before the General Body of the Municipal Corporation to the effect that on account of the additional charge (of the Slaughter House), he was overburdened with work. In the course of his supplementary report, however, the Inquiry Officer found that the witnesses examined before him after remand had not deposed that the Petitioner was heard before the admission was recorded in the resolution and that he had made any admission as regards article of charge-No. 1 in their presence. Besides, an ordinary paper was used for recording the relevant resolution whereas all other resolutions passed at the meeting were duly cycle styled. Moreover, in the original minute book, Resolution No. 54 was not shown to have been signed by any person although all other resolutions passed on that day were signed by the then Executive Officer. Having regard to the aforesaid circumstances, the Inquiry Officer declined to rely on the resolution in question and reaffirmed his findings on the article of charge No. 1, even while submitting his supplementary report. It is against the aforesaid background that the extracted portions of the show-cause notice pertaining to article of charge No. 1 become relevant. The extracted portions clearly show that the second Respondent has substantially, if not wholly, relied upon the expert opinion of the Government Examiner of Questioned Documents for the proof of the said charge. Even as regards the proof of article of charge No. 2, the extracted portions of the show-cause notice show that the expert opinion of the Government Examiner of Questioned Documents relating to the handwriting of the Petitioner on the challan, whereby the sum of Rs. 54/- was deposited in the Treasury, has been heavily relied upon by the second Respondent as corroborative, if not primary, evidence in support of the proof of the said charge.

8. The Petitioner showed cause vide his reply dated January 7, 1985, Annexure-PO. Several objections were therein raised against the imposition of the proposed penalty and the procedure adopted at the enquiry and one of them related to the collection of evidence behind the back of the Petitioner. In terms the Petitioner

stated in the course of his reply as follows:

...That new evidence which was neither mentioned in the charge-sheet nor enlisted in the list of witnesses and list of documents was sought to be produced with a view to fill up the gaps in the evidence to see that somehow or other the charges should be proved. This was all devoid of legal force and was opposed to the principles of natural justice..... The show-cause notice is based on conjectures and surmises and is based on no-evidence. Extraneous matters which were never disclosed to me have been relied upon to prove the chargesThe extraneous matters such as the so called expert opinion of the Hand Writing Expert to which I was never associated nor the report disclosed to me have been relied upon to hold me guilty of the charges. The reliance placed on such documents is devoid of legal forceThe enquiry proceedings and your findings so far as the same disagree with the findings recorded therein on the basis of extraneous matters are, tainted with illegality and as such are bad in law.

9. The second Respondent rejected the explanation furnished by the Petitioner and under the memorandum dated January 16, 1985, Annexure-PR, dismissed the Petitioner from service on the ground of the establishment of the articles of charge Nos. 1 and 2 and further ordered recovery of interest at the rate of 5 per cent per annum on the sum of Rs. 54/- for the period during which the said sum remained "embezzled temporarily" from June 1, 1970 to June 18, 1970. The memorandum, Annexure-PR, is again a document containing reasons. The second Respondent has asserted, in the course of the memorandum, that a reasonable opportunity of defence was afforded to the Petitioner and that the points of disagreement with the Inquiry Officer were substantiated by detailed reasons. As regards the grievance of the Petitioner concerning the collection of evidence in the shape of the opinion of the Government Examiner of Questioned Documents behind his back, the second Respondent made the following pertinent observations:

As far as the expert opinion of handwriting expert is concerned there was no need to associate you since the record on which expert opinion was called for you had already inspected/had liberty to inspect at any time and I am very much well within the law to call for the expert opinion on the documents in the interest of justice.

The second Respondent ultimately rejected the various objections of the Petitioner raised in reply to the show-cause notice in the following words:

So I have considered your representation in detail and I found you have nowhere depended upon the actual evidence which has gone against you and I had discussed in detail in my letter No. MCS/Com/ PA/84r266, dated 31-12-1984. You have only tried to raise unnecessary, uncalled for points of prejudice, bias etc. which is basically just a presumption and illusion.

10. On January 22, 1985, the Petitioner preferred an appeal against the aforesaid order of penalty under Rule 15 of the Himachal Pradesh Municipalities

Servants (Punishment, Removal, Suspension and Appeal) Rules, 1971 (hereinafter referred to as "the Punishment Rules"). In the memorandum of appeal, Annexure PS, the Petitioner once again raised the question relating to the legality and propriety of obtaining the opinion of Government Examiner of Questioned Documents behind his back and using it as evidence in the course of the disciplinary proceedings. The following excerpts from the memorandum of appeal clearly ventilate his grievance in that regard:

It will be seen that in the show cause notice dated 31-12-84, the Commissioner has referred to the so-called report of Hand Writing Expert, copy whereof was supplied to the Appellant for the first time with the show-cause notice. The Appellant submits that on this ground also the order contained in the show cause notice and the dismissal order dated 16-1-85 (received by the Appellant on 17/18 January, 1985) is not sustainable and in this behalf it is further submitted that certain other documents which were neither shown to the Appellant during the course of enquiry nor were relied upon have been taken into account and which in fact are the very foundation of the show cause notice and the impugned order of dismissal dated 16-1-85. In this view of the matter, it will be seen that on the face of it, orders contained in the impugned order is opposed to the principles of natural justice, equity and good conscience because the materials which were taken note of by the Commissioner, while passing the impugned order are irrelevant, extraneous and as such it will tantamount to condemn the Appellant unheard to his prejudice, behind his back without affording him a reasonable opportunity of being hearing.....The findings of the Commissioner as contained in the show cause notice are similarly creation of his fancy, based on no-evidence and rests on conjectures and surmises. His disagreeing with the findings of the Enquiry Officer are based on extraneous consideration such as Hand Writing Expert's Report, the so-called admitted hand writing etc. which were neither relied upon in the charge sheet nor disclosed to the Appellant to associate him before relying upon such extraneous matters. The findings of the Commissioner is entirely rest on conjectures, presumptions and surmises, which cannot be sustainedThe admission on the part of the Commissioner as contained in para 15 of the impugned order Annexure G whereby he himself contended that there is no need to associate the Appellant with the expert opinion of the Hand Writing Expert goes to prove that the Appellant was condemned unheard on the point since the extraneous material which was neither relied upon in the charge sheet nor disclosed at any point of time, has been relied upon by the Commissioner to sustain the charges. On this ground alone the entire proceedings leading to passing of the impugned order of dismissal are liable to be struck down in view of the judgment in *HL Sethi v. M.C. Shimla and Ors.* in CWP 60/76, reported in ILR 1982 573.

11. The appeal was heard and decided by Financial Commissioner (Development)-cum-Secretary (LSG) vide his order dated February 2, 1985, Annexure PT. The objection of the Petitioner, inter alia, against the admission into evidence of and the placing of reliance upon the opinion of the Government Examiner of

Questioned Documents was rejected by the Appellate Authority in the following words:

I also do not see any force in the contention put forth by Shri Sethi that he should have been associated while documents were sent to the Government Examiner of questioned documents. The relevant documents alongwith such applications from the personal file of the Appellant, such as, leave application etc. were sent to the Government Examiner of questioned documents who unambiguously opined that the alleged documents carry the signatures of Shri Sethi and none else. Experts have to give their views and there is no question of delinquent officer being associated when documents were sent to the Government Examiner of questioned documents.

After dealing with the other grounds raised in the memorandum of appeal, the Appellate Authority rejected the appeal so far as the findings of guilt in respect of articles of Charge Nos. 1 and 2 were concerned but granted partial relief in the matter of penalty by converting the order of dismissal into that of removal.

12. Feeling aggrieved by the penalty as aforesaid imposed upon him, the Petitioner has instituted the present petition. The Petitioner has raised several grounds in support of his challenge to the impugned order. At present, however, it is not necessary to examine the validity of all those grounds since, in our opinion, the Petitioner is straightaway entitled to succeed on one of them. The ground on which the Petitioner is entitled to succeed centres around the legality and validity of the procedure adopted by the second Respondent in calling for and relying upon the report of Government Examiner of Questioned Documents, Annexure PN, in arriving at the findings of guilt on articles of Charge Nos. 1 and 2.

13. It is not in dispute that the Punishment Rules govern the disciplinary proceedings instituted against an employee of the Respondent-Corporation. Part III of the Punishment Rules is entitled "Penalties and Disciplinary Authorities". Rule 5 therein contained prescribes the penalties imposable on a municipal servant, for good and sufficient reasons, in the manner laid down in the succeeding rules. The minor penalties are prescribed in clauses (i) to (iv) and major penalties in clauses (v) to (ix). Dismissal from service is a major penalty prescribed in clause (ix). Part IV of the Punishment Rules is entitled "Procedure For Imposing Penalties". Rules 7 and 8 contained in the said part lay down the procedure for imposing major penalties. Rule 8, which is material for the present purposes, deals with the action to be taken by the disciplinary authority on the enquiry report. The material portion of the said rule is extracted hereinbelow:

8. Action on the inquiry report -(1) The competent authority if it is not itself the enquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 7 as far as may be

(2) The competent authority shall, if it disagrees with the findings of the inquiring authority on any articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the "evidence on record is sufficient for the purpose.

(3) xx xx xx xx

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(4) (i) If the competent authority having regard to its findings on all or any of the articles of charge, is of the opinion, that any of the penalties specified in clauses (v) to (ix) of Rule 5 should be imposed on the servant, it shall-

(a) furnish to the servant a copy of the report of the inquiry held by it and its findings on each article of charge, or, where the inquiry has been held by an inquiring authority, appointed by it, copy of the report of such authority and a statement of its findings on each article of charge together with brief reasons for its disagreement, if any, the findings of the inquiring authority;

(b) give the servant a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under Rule 7.

(ii) The competent authority shall after considering the representation, if any, made by the servant determine what penalty, if any, should be imposed on him and make such order as it may deem fit:

Provided that in every case in which it is necessary to obtain previous sanction of the Government the record of the inquiry with copy of the notice given under Clause (i) and the representation made in pursuance of such notice, if any, shall be forwarded by the competent authority to the local self-Government Department of Himachal Pradesh Government for the sanction of the Government and in case any directions are issued by the Government in the case, the same will be taken into consideration before passing any order imposing any penalty on the servant.

(Underlining supplied)

On a bare perusal of the extracted portion of Rule 8, it is clear that upon the submission of the enquiry report by the inquiring authority to the disciplinary authority, it is competent to the disciplinary authority: (i) to concur in the findings recorded by the inquiring authority, (ii) to remit the case to the inquiring authority for further enquiry and report for reasons to recorded in writing, or (iii) to record its reasons for the disagreement, if any, with the findings of the inquiring authority on any articles of charge and to record its own findings on such charge if the evidence on record is sufficient for the purpose. The procedure

accordingly prescribed does not authorise the disciplinary authority to call for or record additional evidence in order to record its own findings on any one or more of the "articles of charge in the event of its disagreeing with the findings of the inquiring authority on such article(s). In case of disagreement with the findings of the inquiring authority on any one or more of the articles of charge, the disciplinary authority can record its own findings on the article(s) only on the basis of the evidence on record, if such evidence is sufficient for the purpose. In view of the aforesaid legal position, it is apparent that the second Respondent acted wholly without power, authority and jurisdiction in calling for the opinion of the Government Examiner of Questioned Documents and in relying upon the same for the proof of articles of charge Nos. 1 and 2 and, more particularly, in proof of article of charge No. 1 on which there was disagreement between the inquiring authority and him.

14. The question may be examined from a different angle. Even assuming, without conceding, that the second Respondent could have called for the opinion of the Government Examiner of Questioned Documents and taken the same on record, two connected issues would still survive for consideration; first, whether the expert opinion in the form in which it is given could at all have been relied upon in proof of articles of charge No. 1 and 2 and, second, whether the Petitioner was required to be afforded a reasonable opportunity of correcting and/or controverting the expert opinion before it could be used against him for the purposes of the proof of those articles of charge.

15. The science of comparison of handwriting is intricate and complex. Judgment on the resemblance or difference of the writing has to be arrived at with respect to the general character of the writing, the forms of the letters and relative number of diversified forms of each letter, the use of capitals, abbreviations, stops and paragraphs, the mode of effecting erasures, or of inserting interlineation of corrections, the adoption of peculiar expressions, the orthography of words, the grammatical construction of the sentences and the style of composition, and also on the fact of one or more of the documents being written in a feigned hand. (See Sarkar on Evidence, Thirteenth Edition, page 707). It is for these reasons that it has been held time and again that there is a need for care and caution in judging and utilising the testimony of handwriting experts. The worth of the opinion of the handwriting expert must be tested by the reasons given by him in support of his opinion. The opinion cannot be accepted at its face value on the basis of the bare conclusions of the expert. It is not the apparent qualifications of the handwriting expert which ought to determine the value of the evidence given by him, but the soundness of the reasons advanced by him in support of his opinion. The Court or the authority before whom the handwriting expert's opinion is produced must satisfy itself as to the value of the evidence in the same way as it must satisfy itself of the value of any other evidence. The Court or authority cannot act like an automaton accepting without scrutiny an expert's opinion as infallible. The opinion of a handwriting expert unsupported by any reasons cannot be considered as worthy

of any reliance. (See: Haji Mohammad Ekramul Haq Vs. The State of West Bengal, .

16. Against the aforesaid legal background, it is manifest that the opinion of the Government Examiner of Questioned Documents, Annexure PN, could not have been relied upon as a piece of evidence against the Petitioner in proof of the articles of charge No. 1 and 2. The opinion merely sets out the conclusions of the expert and it is not supported by any reasons.

In the absence of reasons by reference to which the expert's conclusions could have been tested, no reliance could have been placed thereon. The second Respondent, therefore, materially erred in law not only in invoking in aid but heavily and substantially relying upon the opinion of the Government Examiner of Questioned Documents for the proof of articles of charge No. 1 and 2.

17. The grievance of the Petitioner before the second Respondent as well as before the Appellate Authority was that the opinion of the Government Examiner of Questioned Documents could not have been relied against him without affording him a reasonable opportunity of correcting and/or controverting the same. This grievance was brushed aside by the second Respondent on the ground that "there was no need to associate you since the record on which the expert opinion was called for you had already inspected/had liberty to inspect at any time and I am very much well within the law to call for the expert opinion on the documents in the interest of justice." The Appellate Authority too held that: "...The relevant documents alongwith such applications from the personal file of the Appellant, such as, leave application etc. were sent to the Government Examiner of questioned documents who unambiguously opined that the alleged documents carry the signatures of Shri Sethi and none else. Experts have to give their views and there is no question of delinquent officer being associated when documents were sent to the Government Examiner of Questioned documents". The findings as aforesaid recorded by the second Respondent and the Appellate Authority are wholly unsustainable in light of the provisions of Rule 8(4) of the Punishment Rules and they are also against the elementary rules of natural justice. Rule 8(4) embodies the basic principles of natural justice-audi alteram partem-no person shall be condemned unheard. The requirement of the said rule is not satisfied by an apparent compliance but by a real attempt to afford a reasonable opportunity of meeting with the material which is sought to be relied against a person. The duty cast upon the disciplinary authority under Rule 8(4) is, therefore, not merely a public relations exercise. Simply forwarding of a copy of the opinion of the Government Examiner of Questioned Documents without affording to the Petitioner a real and substantial opportunity of correcting and/or controverting the said opinion, if necessary even by summoning the expert for cross-examination, especially when the evidence was called and taken on record at the stage of the issue of show-cause notice, would not amount to sufficient compliance with the requirement of Rule 8(4) and with the rules of natural justice. The loud protest raised by the Petitioner against the opinion of the expert

being taken on record and being relied against him without affording him a reasonable opportunity of correcting and/or controverting the same was, therefore, wholly justified and it has been brushed aside on grounds which are wholly unsustainable.

18. The question then is as to the relief to which the Petitioner is entitled herein. As found earlier, the second Respondent has substantially, if not wholly, relied upon the opinion of the Government Examiner of Questioned Documents for the proof of articles of charge No. 1 and 2. On reading the impugned order of dismissal, Annexure PR, as well as the decision of the Appellate Authority, Annexure PT, it is not possible to arrive at the conclusion that the order of dismissal would have been passed by the second Respondent or maintained by the Appellate Authority in the absence of the opinion of the Government Examiner of Questioned Documents. Under the circumstances, there is no option but to quash and set aside the impugned order, Annexure PR, and the appellate decision, Annexure PT and they are accordingly quashed and set aside.

19. With the grant of the relief aforesaid, the Petitioner would ordinarily be entitled to all the consequential benefits, such as, reinstatement in service, payment of back wages etc. in accordance with law, with liberty reserved to the first and second Respondents to commence the enquiry afresh from the stage at which it is found to have been vitiated on account of the infirmity aforementioned. Having anxiously considered whether or not the matter should be permitted to take its natural course as hereinabove indicated, the Court has come to the conclusion that the consequential relief in the instant case is required to be moulded in light of the peculiar facts and circumstances of the case.

20. The disciplinary enquiry which, in the instant case, initially commenced as far back as on September 3, 1970, in respect of certain alleged acts of commission and/or omission on the part of the Petitioner during the period 1969-70, has twice met with its Waterloo on legal grounds on account of the procedural infirmities going to the root of the case. The time has not arrived to ensure, in the first place, that a final decision therein is reached, once and for all, by the competent authority within a reasonable time-limit to be fixed by the Court with liberty reserved to the Petitioner to challenge such decision, if he feels aggrieved by the same, by instituting a writ petition in this Court without his being required to exhaust the alternative remedy available under the Punishment Rules. In the next place, it appears to be just and proper to make the Petitioner's actual reinstatement in service dependant upon the final outcome of such proceedings. The aforesaid course of action would strike a just balance between the two competing claims, namely, the claim of the administration to have one more opportunity to deal with the case of the Petitioner on merits in disciplinary jurisdiction for his alleged acts of commission and/or omission, if duly proved, without his being required to be actually reinstated in service meanwhile, and the claim of the Petitioner to be left in peace by the final determination of the

disciplinary action initiated against him in respect of incident(s) which took place a decade and half back. Under the circumstances, the Court issues the following directions consequential to the quashing and setting aside of the impugned order of dismissal, Annexure PR, and the appellate decision, Annexure PT:

(1) Within a period of three weeks from the date of the delivery of the certified copy of this judgment, the second Respondent will review the case of the Petitioner and decide whether or not the disciplinary enquiry against him is required to be continued in accordance with law and in light of the observations made hereinabove from the stage of the submission of the report of the Inquiry Officer.

(2) If the second Respondent arrives at an affirmative decision in this behalf, the disciplinary enquiry shall be continued from the stage of the submission of the report of the Inquiry Officer onwards and a final decision in accordance with law and in light of the observations made hereinabove will be reached therein within a period of six weeks from the date of the delivery of the certified copy of this judgment.

(3) In case the Petitioner is aggrieved by the decision recorded afresh by the disciplinary authority pursuant to these orders, he will be at liberty to challenge such decision by the institution of a writ petition in this Court and he will not be required to exhaust the alternative remedy available to him under the Punishment Rules.

(4) The disciplinary enquiry which concludes accordingly will be the final round of disciplinary action against the Petitioner in respect of the concerned articles of charge and its outcome, subject to the judicial adjudication, will once and for all, terminate the disciplinary proceedings; in other words, if the disciplinary proceedings finally terminate, on what ever ground, in favour of the Petitioner, he will not be subjected to a fresh bout of disciplinary proceedings in regard to the same articles of charge.

(5) The Petitioner will not be required to be reinstated in service till the disciplinary authority arrives at an appropriate decision and records its decision within the time-limit afore-mentioned; in case the disciplinary authority decides to drop the enquiry or exonerates the Petitioner at the end of the enquiry, as the case may be, the Petitioner will be reinstated in service forthwith thereafter and in such an event the Petitioner will be entitled to all the consequential benefits including the payment of back wages from the date- of the impugned order of dismissal; in case the disciplinary enquiry results in a decision adverse to the Petitioner, the Court will decide whether or not to grant him any appropriate interim relief in the course of the judicial proceeding which he may institute to challenge the adverse decision and, in any case, the Petitioner's rights in this behalf will be ultimately determined at the conclusion of the judicial proceedings.

21. Rule made absolute in the aforesaid terms with no order as to costs.