

(1999) 02 KAR CK 0053
In the Karnataka High Court
Case No : Writ Petition No. 33657 of 1994

H.P. Srinivas

APPELLANT

Vs

Mysore Minerals Limited, Bangalore and Another

RESPONDENT

Date of Decision : 04-02-1999

Acts Referred:

Central Civil Services (Classification, Control and Appeals) Rules, 1965 — Rule 22 (2),
27 (2)
Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 12, 14, 16, 19, 21

Citation : (1999) ILR (Kar) 1685 : (1999) 5 KarLJ 442

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Sri H. Subramanya Jois, for Sri D. Leela Krishnan, for the Appellant;
Sriyuths K. Lakshminarayana Rao and R.V. Goulay, for the Respondent

Judgement

1. The petitioner in this case seeks for issue of a writ of certiorari to quash the order dated 9-6-1994 passed by the first respondent, who was the Disciplinary Authority and the endorsement bearing No. PER:35:ENQ:94-95:5405, dated 3-11-1994 issued by the second respondent, the Appellate Authority herein and further sought for issue of a writ of mandamus to declare the orders passed by the respondents as illegal and further sought for issue of a writ of mandamus, directing the respondents to reinstate the petitioner in his post by granting the salary and consequential benefits, including the continuity of service, urging various legal contentions.

2. The brief facts of the case are stated hereunder to appreciate the rival contentions urged by the learned Counsel appearing on behalf of the parties.

The first respondent is a "Government Company" (in short, "the company") within the meaning of Section 617 of the Companies Act, 1956. Therefore, it is an authority within the meaning of Article 12 of the Constitution of India, which is amenable to the writ jurisdiction of this Court and further Parts III and IV of the

Constitution of India, are applicable to the officers and employees who are working in the said Company. The first respondent as a measure of disciplinary proceedings passed an order of suspension dated 17-6-1990 against the petitioner, wherein it has been stated that the Board of Directors of the Company on examination of the case in its meeting held on 18-6-1990 the investigation report submitted by its Company Secretary with regard to the various allegations that were made against the petitioner who was working as Chief Administrative Officer in the Company, wherein certain alleged omissions and commissions have been made by him during the period from 1981-82 to 1989, with regard to appointment of certain persons in various posts in the Company. In the suspension order the reference is made with regard to 36 files relating to the alleged illegal-irregular appointments, were sent to him along with the notice under the signature of the then Chairman-cum-Managing Director, asking him to submit his explanation. He had failed to submit the explanation, therefore the order of suspension was passed by the Company, keeping him under suspension pending enquiry. That was followed by issuance of Articles of charges dated 1-8-1990, making various allegations with regard to the omissions and commissions without list of documents and list of witnesses. It is pertinent to state at this stage that the alleged acts of misconduct was for the period 1981-82 till 1989 with regard to appointments of several persons, which have been done by the petitioner on the basis of notings of the Chairman-cum-Managing Director of the Company.

3. The initiation of disciplinary proceedings in the year 1990, the Company has not explained the delay, which is an important aspect of the matter required to be considered by this Court. After receipt of the Memorandum of Articles of Charges, the petitioner has submitted his detailed explanation dated 8-8-1990 explaining the circumstances under which the allegations made against him for the Articles of Charges do not constitute an act of misconduct and he has not committed any act of misconduct and he has categorically explained that various relevant facts with regard to appointment of certain persons as daily rated or casual or temporary basis. Further, he has taken a definite stand in his explanation that on the basis of the orders passed by the Chairman and Managing Director, Technical Director-Executive Director of the Company on the respective personal files of the respective candidates, orders have been issued by the said officers and by him on their advise and instructions. Those records pertaining to the candidates who are appointed during the said period as either casual or daily rated or temporary employees would conclusively prove the facts stated by him in his explanation.

4. After receipt of the explanation from the petitioner, the Additional Memorandum of Articles of Charges dated 6-2-1991 was served on the petitioner alleging that he had taken the Departmental Promotion Committee files of two volumes on 18-6-1990 from the staff of the personnel section. Same was not returned to the said section. Therefore, he has committed an act of misconduct. To the said additional Articles of charges, the petitioner has submitted another

explanation dated 2-3-1991 denying the said charges. That was followed by an another additional Articles of charge dated 16/25-5-1992, wherein it has been stated that the evidence of the Management witnesses have been recorded in the meanwhile. It came to know after, receipt of the legal opinion on 22-4-1992 on filing of the complaint with the police for theft against the petitioner. He had submitted the representation dated 22-4-1992 requesting for search for the files in the Chambers of the Vigilance and Chief Administrative Officer, Company Secretary and Personnel Section. On 25-4-1992, the petitioner went and searched for the files in the Chambers of the Company Secretary and the petitioner traced the files lying in the midst of Committee Annual Reports. Therefore, the said subsequent events referred to above would lead to the holding against him that he has manipulated and manoeuvred in bringing back the files into Company premises and kept them in the chambers of the Company Secretary deliberately with an intention to cloud the issue with a view to avoid police complaint against him with regard to the charge of theft. The said act of the petitioner amounts to subversive of discipline and fraud against the company. The said additional charge does not bear a memo of imputation and the list of documents, particularly list of witnesses. The said charges were also denied by the petitioner by his letter dated 10-7-1992.

5. The respondent 1 has not accepted the explanation submitted by the petitioner to the Articles of Charges and the enquiry was conducted to prove the charges made against the petitioner. It is alleged in the petition that company had examined only seven witnesses in support of the charges. Although it had mentioned the former Chairman-cum-Man-aging Director, Technical Director and Executive Director of the Company, whose names were listed in the list of witnesses furnished by it to the Enquiry Officer. One Sri T. Narayan, former Technical Director, had appeared before the Enquiry Officer and he had given his statement of evidence supporting the case of the petitioner with reference to the documentary evidence, his evidence was recorded in the examination-in-chief, cross-examination by the petitioner's Advocate, after cross-examination and re-examination of the Company's representative requested the Enquiry Officer to treat him as hostile witness and he was allowed to cross-examine by the Company's representative further as per Annexure - L. The petitioner has also given his statement of evidence.

6. The Enquiry Officer by his letter dated 3-2-1994 called upon the petitioner to submit his representation with regard to the findings submitted by him for which he has submitted a detailed representation stating that the findings recorded by the Enquiry Officer is not based on material evidence on record. Therefore, the charges were not proved and the findings are perverse in law. Not accepting his explanation the first respondent without applying his mind independently to the facts of the case, material evidence on record and without taking into consideration the materials and exhibits placed on record, he had accepted the findings recorded by the Enquiry Officer and passed the impugned order of dismissal, dismissing the petitioner from his services. An appeal was failed

against that order. The same was not considered properly in exercise of the Appellate jurisdiction by it, but it has issued the endorsement, which is a cryptic order. As the said authority was required to strictly follow the statutory procedure as contemplated under the Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules of 1991 (in short, the "Rules"), which have come into force with effect from 1-4-1991, the Appellate Authority under the said rules and schedule framed under Rule 32 was required to consider the following aspects, namely.-

"Consideration of appeals.-

1. In the case of an appeal against an order imposing any of the penalties specified in Rule 28, the Appellate Authority shall consider.-

(a) whether the procedure prescribed in these rules has been complied with;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate and shall pass orders;

(i) setting aside, reducing, confirming or enhancing the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction " as it may deem fit to make".

7. After considering the appeal and examining the case, the Appellate Authority has to record its reasons. But it was required to state that as to whether the order appealed is either required to be set aside or punishment to be reduced or confirm the order. By perusing the impugned order passed by the second respondent none of the statutory requirements had been complied with by it.

8. The learned Counsel appearing on behalf of the respondent Mr. Goulay, at the time of addressing the arguments in this case has failed a memo with a xerox copy of the extract of the resolution passed by the second respondent at agenda item No. 21, about the appeal filed by the petitioner. This order is dated 20-11-1998 and signed by the Company Secretary, Mr. Anil B. Shedbal. No material is placed in this behalf to show that the order passed by the 2nd respondent was communicated to the petitioner and served upon him. Not even an affidavit was sworn to by the respondent to show that order was served on the petitioner is called by the Competent Authority, namely, the Managing Director of the Company.

9. Learned Senior Counsel for the petitioner Sri Subramanya Jois, assisted by Mr. D. Leela Krishnan, submitted that the impugned order passed by the first respondent is in contravention of the principles of natural justice and law laid down by the Apex Court and this Court and further the Disciplinary Authority has not discharged his statutory duty while exercising his power, keeping in view namely to consider the gravity of misconduct proved against the petitioner in the enquiry and any other circumstances. Therefore, the first respondent has not

complied with the law and the principles of natural justice at the time of awarding the punishment on the petitioner as he has failed to take into consideration the gravity of the alleged acts of misconduct proved as per the Enquiry Officer and the aggravating or extenuating circumstances that were existed at the time of passing the impugned order against the petitioner and further the Appellate Authority has failed to comply with the Schedule under Rule 32 of the Rules under the heading consideration of appeals. Clauses (1)(a), (b) and (c) of the rules with reference to the order of dismissal passed by the first respondent and therefore non-consideration of the appeal filed by the petitioner by the Appellate Authority has rendered the impugned endorsement issued by the 2nd respondent is bad in law. The learned Senior Counsel for the petitioner further elaborates his submission vehemently contending that the exercise of power by the second respondent without discharging its statutory duty which is mandatory on its part has rendered the order bad in law. Therefore, the fundamental rights guaranteed to the petitioner under Part III of the Constitution and also under Articles 14, 16, 19 and 21 and the statutory rights conferred upon the petitioner under Service Rules have been blatantly violated, hence on this ground the impugned orders are liable to be quashed.

10. The learned Counsel for the respondent, Mr. R.U. Goulay, would submit that the Disciplinary Authority has after affording the adequate and sufficient opportunity to the petitioner by issuing the charge-sheet and he has submitted his explanation the same was not acceptable to the Disciplinary Authority, therefore he has conducted a proper, legal and valid enquiry against the petitioner by the Company's Vigilance Officer and the then Administrative Officer. The petitioner was defended by his legal practitioner in compliance with the principles of natural justice and therefore he submits that the order of dismissal, which is impugned in this writ petition was preceded by a legal, valid enquiry conducted in compliance of the principles of natural justice. On the basis of the material evidence on record the Enquiry Officer being the authority has submitted his findings against the petitioner holding that the charges were proved and he was given an opportunity to submit his representation with regard to the findings and further the petitioner was given an opportunity to submit his explanation to the findings before passing an order of dismissal. The impugned order of dismissal was passed against the petitioner having regard to the seriousness of the charges levelled against the petitioner, which were proved against him by the Disciplinary Authority in the enquiry conducted against him. Therefore, it is submitted that the order impugned herein passed by the Appellate Authority after proper consideration of the appeal of the petitioner after affording an opportunity to the petitioner. The learned Counsel for the respondents submits that by reading the explanation to the first Article of charge-sheet dated 1-8-1990, the petitioner has admitted the misconduct alleged against him. Therefore, it is not a fit case for this Court to interfere with the impugned orders passed by the Disciplinary Authority, which order was rightly confirmed by the Appellate Authority in exercise of this Court's discretionary

power under Article 226 of the Constitution of India.

11. With reference to the rival legal contentions urged by the learned Counsel appearing for the parties the following points that would arise for consideration of this Court.

(1) Whether the order of dismissal passed by the first respondent is legal and valid in law?

(2) Whether the impugned order of the second respondent is in accordance with the service rules by issuing the impugned endorsement at Annexure-U, dated 3-11-1994?

(3) What order/relief the petitioner is entitled to?

Reasons on the Point No. 1 framed by this Court:

12. To appreciate the first point formulated by me, I have perused the Articles of charge-sheets, the explanation submitted by the petitioner and the report of the Enquiry Officer dated 21-2-1994 and the order of dismissal at Annexure-Q passed by the first respondent. As per the articles of charge, there were 5 charges which are made against the petitioner in the first charge-sheet and each one of the charge is inter related with each other. The findings of the Enquiry Officer on the charges made in the additional charge-sheet were not proved, which findings are accepted by the Disciplinary Authority.

13. In the impugned order of dismissal at Annexure-Q passed by the first respondent, he has stated that he has gone through the representation of the petitioner to the Enquiry Report of the Enquiry Officer. With reference to each one of the charge, he has recorded his reasons in the impugned order. In the impugned order of dismissal, while considering the charge 1, with reference to the explanation submitted by the petitioner he has stated thus:

"No conclusive evidence has been adduced by Sri H.P. Srinivasa to prove that the Chairman and Managing Director or the Executive Director had issued any instructions for him to issue endorsements for effecting appointments".

And further, he has recorded his reasons in respect of the said charge that he had no reason to differ from the conclusions of the Enquiry Officer as the petitioner had issued endorsement for appointments.

14. In respect of the other charge Nos. 2, 3 and 4 the explanation submitted by the petitioner to the show-cause notice has not been considered by the first respondent. Further, he has referred to the allegations made against the petitioner with reference to each one of the charges but the explanation given by the petitioner to the findings recorded against him, on these charges are not considered by him and he has not recorded his own reasons for having accepted the findings of the Enquiry Officer. Therefore, the first respondent being the Disciplinary Authority except accepting the findings of the Enquiry Officer, he has not considered the case of the petitioner in respect of each one of the findings on

each one of the charges, considering the explanation submitted by the petitioner. It is a well established principle of law that either by the Enquiry Officer or by the Disciplinary Authority at the time of submitting the findings or at the time of considering the representation to the findings, it is their statutory duty to record valid and cogent reasons in support of their conclusions with reference to each one of the charges while considering the case of the officer. In this case, as could be noticed from the report of the Enquiry Officer and the impugned order passed by the first respondent for not considering the case of the petitioner, no reasons are assigned as required in law laid down by the Apex Court in the case of Anil Kumar v Presiding Officer and Others. The relevant paragraph at page 5 is extracted as hereunder:

"We have extracted the charges framed against the appellant. We have also pointed out in clear terms the report of the Enquiry Officer. It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not creditworthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a sneaking order in the sense that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. In *Madhya Pradesh Industries Limited v Union of India*, this Court observed that a speaking order will at best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this lonely safeguard. Similarly, in *M/s. Mahabir Prasad Santosh Kumar v State of Uttar Pradesh*, this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non-application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a more gross case of non-application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court".

15. It is well-settled position of law that a disciplinary action shall be quashed if the enquiry held by the Enquiry Officer is not in accordance with the principles of natural justice and the Enquiry Officer has a duty to act fairly. The Enquiry Officer did not apply his mind to the facts and evidence on record in this case and further the enquiry conducted by the first respondent is a quasi-judicial enquiry,

therefore he must show the reasons for the conclusions, it cannot be ipse dixit of the Enquiry Officer, it has to be a speaking order in the sense that the conclusions must be supported by reasons. This is a well-settled principle of law laid down by the Apex Court in the case referred to above, following earlier decisions.

16. Keeping in view the law laid down in the aforesaid case by the Apex Court, I have carefully gone through the report of the Enquiry Officer and the impugned order of dismissal passed by the first respondent with reference to the charges and the material evidence on record in support of the charges, only for the limited purpose to consider the submission on behalf of the petitioner to find out as to whether the findings of the Enquiry Officer and the Disciplinary Authority are in conformity with the law declared by the Apex Court in the case referred to above. The Enquiry Officer has made reference in his report with regard to the documents produced before him and the evidence of the witnesses who are examined on behalf of the Disciplinary Authority. With reference to each one of the charges, the Enquiry Officer has not considered the evidence of both the parties to appreciate the same and not assigned the valid and cogent reasons in support of his conclusions in his report except making stray references with regard to certain documents and without discussing the contents of those documents, the evidentiary value of those documents with reference to each one of the charges levelled against the petitioner and further he has not considered the explanation and the defence evidence placed in this regard by the petitioner and he has not recorded as to why he has not accepted the evidence of the petitioner and preferred to accept the evidence of the Disciplinary Authority by assigning valid and cogent reasons and further it is pertinent to state at this stage that MW-5 who was the Technical Director examined on behalf of the first respondent, wherein he has stated that from 1981 he had worked as a Technical Director and he has explained the procedure adopted by the Board for considering the applications and appointing persons either on temporary basis or as casual employees. He has stated himself and the, then Chairman and Managing Directors who were on tour, they used to receive the applications and other papers and they used to bring them and handover to the petitioner who was in-charge of administration. He had further stated that he had no power of appointment of workers. He has further stated in his evidence, concerned Directors used to instruct him to appoint a particular person. The instructions were oral in nature. On their specific instructions, the petitioner used to take action. He has further stated that they used to write on the application. One such endorsement Exs. M-81 and M-81A was shown. Further, Exs. M-1 to M-207 he has been cross-examined and in his cross-examination he has admitted that the appointments were made during the relevant period only for a period of 90 days. After expiry of 90 days, they used to be continued in employment of the company. Many of the appointments were made prior to 1-1-1989, who have been continued in service even after the amendments to the C and R Rules which came into force w.e.f. 1-1-1982. He has further admitted that he cannot say that

the appointment made in these cases are illegal or irregular since he has processed the same and signed. The Enquiry Officer has very strangely contrary to the substantive rules of Evidence Act and in violation of the principles of natural justice has permitted the first respondent's Counsel to further re-examine and cross-examine this witness after his cross-examination by the defence Counsel, which is not permissible in law. Even after re-examination and cross-examination he has testified to his statement of evidence. At the request of the first respondent's Counsel he was treated as hostile, which is not permissible in law. Despite such re-examination and cross-examination of MW-5 by the learned Counsel for the Disciplinary Authority, the material evidence of the MW-5 which is in favour of the petitioner has not been considered by the Enquiry Officer, even though he has made a reference in his report. With regard to the re-examination portion, stating that MW-5 did not speak truth and he had given varying version, therefore he was permitted to cross-examine by the Disciplinary Authority's Counsel. The fact remains that the evidence of MW-5 has not been considered by the Enquiry Officer and the Disciplinary Authority. The evidence of MW-5 should have been considered by the Enquiry Officer and the Disciplinary Authority as it is an important, substantive positive piece of evidence on record in favour of the petitioner. The Enquiry Officer and the Disciplinary Authority having not considered the important and substantive positive evidence of MW-5, which is on record in favour of the petitioner, the Enquiry Officer on relevant ground without recording valid reasons the findings recorded against the petitioner which findings of the Enquiry Officer have been "accepted by the Disciplinary Authority without applying his mind. Therefore, the enquiry report and the order of dismissal are vitiated in law, the same are erroneous in law for the reason that the findings are contrary to the legal evidence on record.

17. I have extracted some of the portions of the evidence of MW-5 in this order not with a view to reappraise the evidence on record in exercise of this Court's power under Article 226 of the Constitution of India. The positive and substantive evidence on record is extracted in this order to show that the report of the Enquiry Officer was not based on evidence on record and to record a finding on the legal contention urged by the learned Senior Counsel appearing on behalf of the petitioner, that the findings of the Enquiry Officer are erroneous in law or not.

18. This important aspect of the matter has not been taken into consideration by the first respondent though it was brought to his notice by the petitioner in his representation seriously challenging the evidence recorded by the Enquiry Officer. He has not considered the same. In the report, the Enquiry Officer has proceeded to state certain reasons with regard to the non-examination of the previous Technical Directors, Executive Directors, Chairman and Managing Director stating that the first respondent did not choose to examine them, after examining the Technical Director as MW-5. The Enquiry Officer, very strangely in his report has stated the relevant reasons for non-examination of the witnesses of the management whose names were cited in the list of witnesses before him, he had attributed the blame upon the petitioner for non-examination of the said

witnesses by them stating in the report having examined them by stating in the report of the Enquiry Officer, the relevant portion is extracted as hereunder:

"Whatever be the reasons for not examining them, it was up to the CSO to call them and examine those authorities to discharge the burden of proving that he had authority or instructions from them to issue endorsements or slips. The CSO has not made any attempts to get them. Hence, in my opinion, the CSO failed to establish instructions from ED, C and Md, MD to cause the endorsements or slips. The endorsements issued or made in the name of Technical Director stand on different footing".

19. The findings recorded by the Enquiry Officer in his report is based on the evidence placed on record by the witnesses of the Disciplinary Authority to prove the charges. The Enquiry Officer contrary to the well established principle of law in conducting an enquiry against the delinquent officer and proving the charges levelled against such officer, he has recorded his findings holding the charges are proved, deliberately ignoring positive evidence in favour of the petitioner by assigning relevant reasons in considering the same and further the Enquiry Officer has blamed the petitioner in not examining the witnesses of the Disciplinary Authority instead of drawing an adverse inference by him for the non-examination of its witnesses, who were cited to be examined in the enquiry proceedings. The charges were made against the petitioner with regard to the alleged illegal and irregular appointment said to have been made by him. These charges have been emphatically denied by the petitioner. In support of the charges, the said witnesses were cited on behalf of the Disciplinary Authority. After examining MW-5-Technical Director of the Company, without any valid reason or cause those witnesses were given up by the first respondent. The reasons assigned by the Enquiry Officer for non-examination of those witnesses is contrary to law. The non-consideration of MW-5's evidence by the Enquiry Officer placing reliance u/s 154 of the Evidence Act is not tenable in law. The Enquiry Officer should not have permitted the first respondent's Counsel in the enquiry to re-examine the MW-5 and to further cross-examine him after having recorded his evidence in the examination-in-chief and he was cross-examined by the defence Counsel in the enquiry as he was examined by the Disciplinary Authority to prove the charges levelled against the officer. The reasons assigned by the Enquiry Officer in the statement of evidence of MW-5, in permitting him to re-examine and cross-examine him, after the said witness was cross-examined by the defence Counsel are not tenable in law, this procedure adopted by the Enquiry Officer is not only illegal but great prejudice has been caused to the case of the petitioner. The Enquiry Officer has stated in his report that both the parties can rely upon such evidence, placing reliance on the judgment of the Supreme Court reported in the case of Bhagwan Singh v State of Haryana, treating the said witness as hostile and his evidence has not been taken into consideration is wholly untenable in law, the said case has no application to this case. Therefore, the reasons assigned by the Enquiry Officer in not taking into consideration of the material and positive evidence on record in support of the petitioner while

recording his findings. Therefore, the findings of the enquiry are erroneous in law, the findings were accepted by the Disciplinary Authority thereby the impugned order of dismissal is also vitiated in law.

20. Further, the Enquiry Officer has placed reliance on the evidence of MW-1 to establish other 72 cases of appointment in this regard. The explanation of the petitioner was that those appointments have been made as per the advice and oral instructions given by the then Chairman and Managing Directors and Executive Directors and Technical Directors given to the petitioner discarding his explanation and evidence placed on record. No reasons are assigned by the Enquiry Officer by the first respondent, the relevant important aspect of the matter namely, those persons who were appointed during the relevant period by the company and those appointments have been regularised and absorbed them as permanent employees and continued them in their services of the company. This undisputed important aspect of the matter has not been considered by the Enquiry Officer and no reasons are given in this regard in the enquiry report and the same was also not considered by the first respondent, therefore, the impugned order passed by him is not only contrary to the material evidence on record but also the charges made against the petitioner, are not tenable in law.

21. For the reasons stated above, the finding has to be recorded by this Court with reference to the evidence on record and the findings of the Enquiry Officer that the charges 1 to 5 in the first charge-sheet are proved against the petitioner are erroneous in law for the reason of non-consideration of positive and substantive evidence in favour of the employee and the relevant admitted facts regarding the absorption of the employees. The erroneous findings recorded by the Enquiry Officer has not been considered at all by the Disciplinary Authority even though it was brought to his notice with reference to each one of the charges in the representation submitted by the petitioner to the findings, thereby the Disciplinary Authority has miserably failed to discharge his statutory duty while accepting the findings of the Enquiry Officer and exercising his power and passing an order of dismissal against the petitioner, which entails serious civil consequences upon him and his family members' livelihood.

22. In my considered view, I am satisfied that after having gone through the relevant papers in this case, that the Disciplinary Authority has not applied his mind to the facts of the case and evidence on record. Therefore, there is blatant violation of the principles of natural justice committed by the first respondent in this case. Added to this, the Disciplinary Authority has not taken into consideration the extenuating the mitigating circumstances into consideration and the gravity of the charges levelled against the petitioner at the time of passing an order of dismissal against him. Having regard to the relevant facts that the persons who are employed either as casual employees or temporary employees, their services have been regularised!"" absorbed and continued them in the services of the company, the first respondent has failed to discharge his statutory duty while exercising his disciplinary power at the time of passing the

order of dismissal against the petitioner. For this reason also, the impugned order is bad in law, hence, the same cannot be allowed to sustain. Hence, the impugned order is liable to be quashed.

Reasons with regard to Point No. 2:

23. Admittedly, as on the date of impugned endorsement was issued, the disciplinary proceedings, service rules have come into force. Therefore, the petitioner has filed an appeal invoking his right under Rule 32 of the rules. To consider this point, I have perused the impugned order at Annexure-Q and also perused the xerox copy of the extract of the resolution of the second respondent-Board dated 14-9-1994 at agenda item 21, which document was placed on record by the learned Counsel for the respondents by filing a memo dated 15-12-1998. As per the said rule, the Appellate Authority, the 2nd respondent herein should have considered the grounds urged in the appeal submitted by the petitioner with reference to the enquiry records as to whether enquiry conducted by the first respondent was in compliance with the principles of natural justice or not and the findings recorded by the Enquiry Officer were justified or not, the penalty imposed upon the petitioner was either excessive or adequate or inadequate should have been recorded. The second respondent-Board should have recorded its findings on the relevant aspects of the case as it is the statutory duty cast upon the Appellate Authority at the time of exercising its power under the rules. In this background, I have examined Annexure-U, dated 3-11-1994 wherein the impugned endorsement reads thus:

"Your appeal to the Board of Directors dated 17-6-1994 against the order of dismissal dated 9-6-1994 has been rejected".

24. In the said endorsement, the appeal of the petitioner to the Board of Directors has been rejected. The second respondent has not communicated the copy of the said resolution of the Board referred to in the endorsement along with the said endorsement. The respondents have not produced acknowledgement in this case to show that copy of the extract of the resolution passed by the 2nd respondent on the appeal of the petitioner was communicated and served upon the petitioner. The original documents and concerned file were also not produced before this Court by the respondents and no affidavit of the Managing Director of the company is filed before this Court to substantiate this contention. Therefore, it has to be stated that the endorsement issued at Annexure-U is not in conformity with the statutory compliance of the consideration of the appeal under the schedule of the Rule 32 of the rules. The xerox copy of the extract of the resolution of the Board on the appeal of the petitioner was not communicated to the petitioner, despite the fact that the same was not served on the petitioner, the xerox copy of the resolution is also examined by this Court to find out as to whether it is in conformity with the schedule of Rule 32 of the rules or not. After having gone through the said document carefully, I have to record a finding that the said resolution is also not in conformity with the schedule of the Rule 32 of the rules. Therefore, the

resolution and the endorsement issued by the 2nd respondent has to be held that the same is bad in law in view of the law laid down by the Apex Court in the case of Ram Chander v Union of India, the order of the Appellate Authority should be a considered order. The Apex Court has enunciated the law after interpreting the word "consider" occurred in the Rule 22(2) of the Railway Servants Service and Disciplinary Authority Rules, in the context in which it appears to mean an objective consideration by the Railway Board after due application of mind which implies giving of reasons for its decisions. The relevant paragraph at para 9 of the judgment is extracted as hereunder:

"These authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty cast on an Appellate Authority to give reasons where the order is one of affirmance. Here, Rule 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Rule 22(2) provides that in the case of an appeal against an order imposing any of the penalties specified" in Rule 6 or enhancing any penalty imposed under the said rule, the Appellate Authority shall "consider" as to the matters indicated therein. The word "consider" has different shades of meaning and must in Rule 22(2) in the context in which it appears to mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision".

25. In view of the law declared by the Apex Court in the said case and further the said case with all force applicable to the present case of the petitioner. Therefore, I have to record a finding that the impugned endorsement and the resolution dated 14-9-1994 passed by the second respondent is not in conformity with the law laid down by the Apex Court, as the Board has not considered the case of the petitioner with reference to the legal contentions and in conformity with the rules. Therefore, the impugned endorsement and resolution dated 14-9-1994 are liable to be quashed.

26. Having answered the Points 1 and 2 framed by this Court against the respondent and in favour of the petitioner, the last point for my consideration is for what relief the petitioner is entitled in this case is the question to be considered by this Court. This Court has answered the Points 1 and 2 against the respondents and further this Court has recorded a finding on the Point 1 that the Enquiry Officer and the Disciplinary Authority's findings are erroneous in law for the reasons recorded by this Court and further all the persons, who were appointed during the relevant period by the Board, their services have been regularised and absorbed as permanent employees of the company. In the absence of the material evidence on record in support of the charges the finding against the petitioner that the charges are proved are erroneous in law, but on the other hand there is evidence to show that the petitioner is not responsible for such appointments. Therefore, the findings recorded by them holding that the

charges were proved is not correct as the same are erroneous in law, on the other hand, in view of the positive and substantive evidence on record, the charges are not proved against the petitioner.

27. In my considered view, this is a proper and fit case for granting the reliefs sought for by the petitioner namely to quash the impugned order and endorsement and to further direct the respondents to reinstate him in his original post. For the reasons recorded above by me holding that the petitioner is entitled for reinstatement and normal rule of awarding consequential benefits of awarding back salary and other consequential benefits must follow in this case as the respondents have not placed any material to show that the petitioner was gainfully employed from the date of illegal dismissal order till this date.

28. Therefore, the normal rule of awarding full salary and all other consequential benefits must be granted in favour of the petitioner in view of the law laid down by the Apex Court. It is also relevant to state in this order that the petitioner's services were terminated at the age of 45, which is an important stage of a life of a person in his life time, thereby the petitioner and his family members including his school going children might have been suffered and they must have been undergone great hardship during this period. Therefore, it is a proper, fit and an appropriate case for this Court to award the full salary, that having regard to the facts and circumstances of this case and in the interest of justice, the first respondent being a public limited company owned by the State Government, it would be a proper, fit and an appropriate case for this Court to award 75% of the back salary. Hence, the petitioner must succeed in this case and accordingly, I pass the following order.

29. The writ petition is allowed. Rule made absolute. The impugned orders at Annexure-Q and U and the extract of the resolution dated 14-9-1994 of the respondents are hereby quashed. The respondents are hereby further directed to reinstate the petitioner in his original post of which he was holding at the time of dismissal order with 75% of his back salary from the date of dismissal till this date and grant him all other consequential benefits. This order must be complied with within two months from the date of receipt of this order.