

(2013) 07 GUJ CK 0010
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1748 of 2010 in Spl.C.A. No. 10751 of 1994

Jasubhai S. Parmar

APPELLANT

Vs

Dist. Superintendent of Police and Others

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Citation : (2013) 3 GLR 2729

Hon'ble Judges : Bhaskar Bhattacharya, C.J.;J.B. Pardiwala, J

Bench : Division Bench

Advocate : Ashish B. Desai, for the Appellant; Vacha Desai, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, C.J.—This Letters Patent Appeal under Clause 15 of the Letters Patent is at the instance of an unsuccessful applicant under Art. 226 of the Constitution of India and is directed against an order dated 5th March, 2010 in Special Civil Application No. 10751 of 1994 passed by a learned Single Judge of this Court, thereby dismissing the writ-application in which the appellant challenged the order dated 26th December, 1990 passed by the respondent No. 1-District Superintendent of Police, the order dated 28th August, 1991 passed by the respondent No. 2-Deputy Inspector General of Police, the order dated 9th June, 1993 passed by the respondent No. 3-Inspector General of Police and the order dated 13th January, 1994 passed by the Home Department, Government of Gujarat. The facts giving rise to the filing of the Special Civil Application, out of which the present appeal arises, may be summed up thus:

1.1. The appellant joined services with the respondents as an unarmed Police Constable on 18th June, 1978.

1.2. A criminal case being Sessions Case No. 104 of 1987 was filed against the appellant for an offence punishable under Sec. 302 of the Indian Penal Code. After trial, the learned Additional Sessions Judge, Nadiad acquitted the appellant

from the offence punishable under Sec. 302 of the Indian Penal Code by order dated 10th November, 1987.

1.3. After such acquittal, the employer served upon the appellant a charge-sheet dated 16th May, 1988 whereby the following two charges were leveled against the appellant:

(1) That though the petitioner's duty was from 23-00 hours to 5-00 hours on 30-6-1986, the petitioner remained absent from duty and committed an offence for which I-CR 30 of 1986 was filed at Anand Railway Police Station for an offence punishable under Sec. 302 of the Indian Penal Code;

(2) Though, the petitioner was legally married with one Pushpaben, the petitioner was residing with one Savitaben @ Shardaben, wife of Dhanjibhai Darabhai, by inducing her since about one year.

1.4. The appellant denied all the charges levelled against him, and thereafter, a departmental inquiry was initiated against the appellant by the respondent No. 1. In the departmental inquiry, the Inquiry Officer came to the conclusion that the charge against the appellant for remaining absent on 30th June, 1986 from 23-00 hours to 5-00 hours of the next day had been proved. As regards the charge regarding involvement in the criminal case for an offence punishable under Sec. 302 is concerned, the Inquiry Officer came to the conclusion that the same was not proved. As regards the allegation of illicit relation with one Savitaben was concerned, the Inquiry Officer found that such charge was not proved.

1.5. On the basis of the report of the Inquiry Officer, a show-cause notice dated 5th November, 1990 was served upon the appellant along with report of the inquiry, asking him to show cause as to why the punishment of stoppage of one increment without future effect and suspension period to be treated as such should not be inflicted upon him.

1.6. The appellant replied to the said show-cause notice in detail and denied the charges levelled against him and requested the District Superintendent of Police to acquit him of all the charges.

1.7. The District Superintendent of Police, by order dated 26th December, 1990 inflicted punishment of withholding one increment without future effect and treated the period of suspension as not on duty.

1.8. Being dissatisfied with the said punishment imposed upon the appellant, he preferred an appeal before the Deputy Inspector General of Police on 20th January, 1991. By order dated 6th May, 1991, the Deputy Inspector General of Police treated the period of suspension as on duty for all purposes, but at the same time on the same day, he also issued a show-cause notice as to why the appellant should not be dismissed from service and the suspension period should not be treated as such.

1.9. The appellant thereafter filed reply dated 20th June, 1991 before the Deputy Inspector General of Police and requested not only to reduce the punishment but also not to dismiss him from service.

1.10. The Deputy Inspector General of Police disagreed with the report of the Inquiry Officer as well the order passed by the District Superintendent of Police and enhanced the punishment of withholding of one increment to one of dismissal from service.

1.11. The appellant preferred an appeal before the Inspector General of Police on 9th June, 1993 against the order of the Deputy Inspector General of Police, and thereafter, a Revision Application before the Home Department on 1st September, 1993. Both the appeal before the Inspector General of Police as well as the Revision before the Home Department were dismissed.

1.12. It appears from the records that the Deputy Inspector General of Police came to the conclusion that the second allegation, viz., illicit relation with Savitaben was proved, and in arriving at such conclusion, the Deputy Inspector General of Police relied upon the statements recorded in the criminal trial.

1.13. Being dissatisfied, the appellant filed the aforesaid Special Civil Application and the learned Single Judge, as indicated earlier, by the order impugned herein, has dismissed the writ application by affirming the orders passed by the appellate as well as the revisional authority.

2. Being dissatisfied, the appellant has come up with the present Letters Patent Appeal.

3. Mr. Desai, the learned Advocate appearing on behalf of the appellant, at the very outset, strenuously contended before us that the Deputy Inspector General of Police has acted beyond his jurisdiction as appellate authority in issuing the notice of enhancement of punishment based not on the charge proved but on a charge which was not proved. According to Mr. Desai, the appellate authority has the right to enhance the punishment inflicted by the disciplinary authority on the basis of a charge proved, but the appellate authority has no right to propose enhancement of punishment on the basis of a charge which has not been proved. According to Mr. Desai, assuming for the sake of argument that even if the appellate authority is vested with such power, it must in advance record an order of disagreement with the findings of the Inquiring Authority and first issue a notice to show-cause why the charge which was not proved before the Inquiry Authority should not be held to be proved and after hearing the delinquent, it must come to a conclusion that the charge which was not held to be proved by the Inquiring Authority, has in fact, been proved and then issue a notice for enhancement of punishment.

3.1. Mr. Desai, by referring to Sec. 27 of the Bombay Police Act, 1951 ("the Act" hereafter) contends that such power can be exercised only by the revisional authority and not by the appellate authority, and that too, can be passed only

when either no appeal has been preferred or the appeal is disposed.

3.2. Mr. Desai, therefore, contends that the enhancement of punishment passed on charge No. 2 was illegal and the revisional authority as well as the State Government totally ignored the aforesaid provisions of law. Mr. Desai, therefore, prays for setting aside the order of enhancement and also for setting the original punishment inflicted by the disciplinary authority.

4. Ms. Vacha Desai, the learned Assistant Government Pleader appearing for the State, on the other hand, has opposed the aforesaid contentions of Mr. Desai and has submitted that having regard to the conduct of the delinquent, the learned Single Judge rightly affirmed the order of dismissal and we should not interfere with such order passed by the learned Single Judge in this Letters Patent Appeal. Ms. Desai contends that by giving notice of enhancement, the appellate authority has also given opportunity of hearing to the appellant on the 2nd charge which was found to be not proved by the inquiring authority.

5. Therefore, the only question that arises for determination in this appeal is whether the learned Single Judge was justified in affirming the order of dismissal passed by the authorities below.

6. In order to appreciate the question raised by Mr. Desai, it would be profitable to refer to the provisions contained in Sec. 27 and Sec. 27A of the Act and Rule 15 of the Bombay Police (Punishment and Appellate) Rules, 1956, which are quoted below:

Sec. 27. Appeals from orders of punishment:

An appeal against any order passed against a Police Constable under Sec. 25 or the Rules or Orders thereunder shall be to the State Government itself or to such office as the State Government may by general or special order specify. Such appeal shall be filed within a period of sixty days from the date of the order appealed against.

Sec. 27A. Revisional powers of the State Government, Inspector General and Deputy Inspector General:

The State Government, the Inspector General or a Deputy Inspector General may, suo motu or on an application made to him within the prescribed period in this behalf, call for and examine the record of any inquiry or proceedings of any subordinate police officer under this Chapter, for the purpose of satisfying itself himself, as the case may be, as to the legality or propriety of any decision or order passed by and as to the regularity of the proceedings of such officer and may, at any time,-

(a) confirm, modify or reverse any such order.

(b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by such order.

(c) direct that further inquiry may be held, or

(d) make such other order, as in the circumstances of the case, it or he may deem fit:

Provided that an order in revision imposing or enhancing penalty shall not be passed unless the police officer affected thereby has been given a reasonable opportunity of being heard:

Provided further that no order in revision shall be passed-

(i) in a case where an appeal against the decision or order passed in such inquiry or proceeding has been filed, when such appeal is pending;

(ii) in a case where an appeal against such decision or order has not been filed, before the expiry of the period provided for filing such appeal, and

(iii) in a case after the expiry of a period of three years from the date of the decision or order sought to be revised.

Rule 15:

The appellate authority shall consider-

(a) whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient ground for inflicting punishment;

(c) whether the penalty is excessive, adequate or inadequate

and if it thinks necessary may require the authority passing the order to make further inquiry on any point or points specified and shall then pass such orders as it thinks just and proper, including the enhancement of any punishment given, or the awarding of a more severe punishment:

Provided that such punishment shall not be enhanced, or a more severe punishment awarded, in appeal, unless notice to show-cause against such enhancement, or as the case may be, more severe punishment, as been given, and any cause shown thereon considered.

7. After going through the aforesaid provisions, we find that once the delinquent employee being dissatisfied with an order of punishment inflicted by the disciplinary authority prefers an appeal before the appellate authority in terms of Sec. 27 of the Act, the jurisdiction of the appellate authority is limited to the following questions:

(i) whether the facts on which the order was based have been established;

(ii) whether the facts established afford sufficient ground for inflicting punishment;

(iii) whether the penalty is excessive, adequate or inadequate.

7.1. The aforesaid rule further envisages the appellate authority to remand the matter back to the authority passing the order to make a further inquiry on any point or points specified and after such inquiry when the report comes back, it may then pass such order as it thinks just and proper, including the enhancement of any punishment given, or the awarding of a more severe punishment.

8. In the case before us, as pointed out earlier, only part of issue No. 1 was proved regarding absence from duty, but the other part, viz. committing of murder was not proved and the second charge, which according to the Inquiry Authority was the third charge, was not at all proved. The finding of the Inquiry Authority is quoted below:

On the basis of the deposition given by the above-stated witnesses and the documentary evidence, Part I of the charge-sheet given to the delinquent that on 30-1-1986 the delinquent along with unarmed Chotabhai Dayabhai B. No. T, although was having night duty from 23:00 hours to 5:00 hours, he remained absent, which issue is believed to be proved.

As regards charge No. 2 that the delinquent committed offence punishable under Sec. 302 of the Indian Penal Code as per Anand Railway Police Station C.R. No. 30/81 as there is no eye-witnesses that the delinquent and the deceased Savitaben @ Shardaben went to Vasad and the delinquent committed murder of Savitaben @ Shardaben, benefit of doubt is given to him.

As regards charge No. 3 it is not proved that, even though the delinquent was legally married to one Pushpaben d/o. Naranbhai Gabadbhai Vankar, he was keeping Savitaben @ Shardaben W/o. Dhanjibhai Darabhai as his wife and was having illicit relationship for about one year.

Overall and at the end of full-fledged departmental inquiry, the charge against the delinquent is partly proved.

9. The disciplinary authority, as indicated earlier, did not disagree with such findings and decided to inflict punishment only a part of the charge proved in charge No. 1.

10. The delinquent preferred an appeal before the appellate authority, and therefore, in such circumstances, the duty of the appellate authority was restricted to the question whether the facts on which the order was based have been established, whether the facts established afford sufficient ground for inflicting punishment, and whether the penalty is excessive, adequate or inadequate on the basis of the charge proved. In such an appeal, there was no scope of inquiring whether the charge No. 2 was really proved when the disciplinary authority has decided not to disagree with the findings of the Inquiry Officer.

11. It may not be out of place to note here that the appellate authority did not ask the disciplinary authority to make further inquiry but straightaway arrived at

a conclusion that the second charge was also proved, and then gave a notice of enhancement of punishment based on the second charge. Therefore, before arriving at the conclusion that the second charge was also proved, no notice was given to show-cause and the notice that was issued was only for enhancement of punishment, and that too, based on a charge which was not proved. The finding in this regard by the appellate authority is quoted below:

As the Government witnesses have stated the aforesaid facts in the departmental inquiry, I consider the aforesaid issue No. 3 to have been proved beyond doubt, which the District Superintendent of Police has considered to have not been proved. Out of the aforesaid three charges levelled against the appellant in the charge-sheet, I consider charge Nos. 1 and 3 as having been proved. Even though, the wife of the appellant was alive, he was keeping with him another persons wife as concubine, and thereby, it is proved beyond doubt that he has committed grave breach of the provisions of Rule 3(1)(3) of the Gujarat Police Services Rules, 1971.

12. In our opinion, in exercise of appellate power under Sec. 27 of the Act, there was no scope of giving a proposal of enhancement of punishment based on a charge not proved and such power of reopening the charge not proved can be exercised only under Sec. 27A of the Act, by the revisional authority. However, as provided in the proviso to Sec. 27A, such power of reopening the charge not proved can be exercised only when the appeal preferred against the punishment has been disposed of or no appeal has at all been filed within the period of limitation.

13. In the case before us, we are convinced that the appellate authority did not possess such power as has been exercised in the present case and the revisional authority and the Director General of Police and the State Government totally ignored the aforesaid aspect.

14. Even if we assume for the sake of argument that the appellate authority had the power of reopening the charge not proved before the inquiring authority and passing enhanced punishment by holding that the charge not proved was in fact proved, even then, the procedure adopted by the authority in this case cannot be supported. At this juncture, we may profitably refer to the decision of the Supreme Court in the case of Yoginath D. Bagde Vs. State of Maharashtra and Another, , where the Supreme Court, in the light of Rule 9 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, made the following observations:

What action would be taken on this report and in what manner will this report be dealt with is indicated in Rule 9. Relevant portions of this Rule are quoted below:

9. Action on the inquiry report:- (1) The disciplinary authority, if it is not itself the inquiring 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 8 of these rules as far as may be.

(2) The disciplinary authority shall if it is not the inquiring authority, consider the record of the inquiry and record its findings on each charge. If it disagrees with the findings of the inquiring authority on any article of charge, it shall record its reasons for such disagreement.

(3)

(4) (i) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the major penalties should be imposed on the Government servant, it shall--

(a) furnish to the Government 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, a copy of the report of such authority and a statement of its findings on each article of charge expressly stating whether or not it agrees with the findings of the inquiry authority, together with brief reasons for its disagreement, if any, with the findings of the inquiring authority; and

(b) give to the Government 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 8 of these Rules.

(ii) (a)

(b)

(iii) Where it is not necessary to consult the Commission, the disciplinary authority shall consider the representation, if any, made by the Government servant in pursuance of the notice given to him under clause (i)(b) of this sub-rule and determine what penalty, if any, should be imposed on him on the basis of the evidence adduced during the inquiry held under Rule 8 and make such order as it may deem fit.

28. In view of the provisions contained in the statutory Rule extracted above, it is open to the Disciplinary Authority either to agree with the findings recorded by the Inquiring Authority or disagree with those findings. If it does not agree with the findings of the inquiring authority, it may record its own findings. Where the inquiring authority has found the delinquent officer guilty of the charges framed against him and the disciplinary authority agrees with those findings, there would arise no difficulty. So also, if the inquiring authority has held the charges proved, but the disciplinary authority disagrees and records a finding that the charges were not established, there would arise no difficulty of difficulties have arisen in all those cases in which the inquiring authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the disciplinary authority disagreed with

those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the Rules made under Art. 309 of the Constitution or the disciplinary authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the disciplinary authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the Inquiring Authority that the charges were established, "an opportunity of hearing" may have to be read into the Rule by which the procedure for dealing with the inquiring authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be "not guilty" by the inquiring authority, is found "guilty" without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded.

29. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which enables the Disciplinary Authority to disagree with the findings of the Inquiring Authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The Rule does not specifically provide that before recording its own findings, the Disciplinary Authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before Disciplinary Authority finally disagrees with the findings of the Inquiring Authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the Inquiring Authority do not suffer from any error and that there was no occasion to take a different view. The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the "Tentative" reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with.

30. Recently, a three-Judge Bench of this Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , relying upon the earlier decisions of this Court in State of Assam and Another Vs. Bimal Kumar Pandit, ; Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, as also the Constitution Bench decision in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and the decision in Ram Kishan Vs. Union of India and others, , has held that:

It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the Disciplinary Authority then no

opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the Enquiring Officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the Disciplinary Authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the Disciplinary Authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the Disciplinary Authority.

31. The Court further observed as under:

When the enquiry is conducted by the Enquiry Officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the Enquiry Officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the Enquiry Officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the Enquiry Officer, they are deprived of representing to the disciplinary authority before that authority differs with the Enquiry Officer's report, and while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed.

32. The Court further held that the contrary view expressed by this Court in *State Bank of India v. S.S. Koshal*, : 1994 Supp. (2) SCC 468 and *State of Rajasthan Vs. M.C. Saxena*, was not correct.

33. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which

the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Art. 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Art. 309 of the Constitution.

34. Applying the above principles to the facts of this case, it would be noticed that in the instant case, the District Judge (Enquiry Officer) had recorded the findings that the charges were not proved. These findings were submitted to the Disciplinary Committee which disagreed with those findings and issued a notice to the appellant requiring him to show-cause why he should not be dismissed from service. It is true that along with the show-cause notice, the reasons on the basis of which the Disciplinary Committee had disagreed with the findings of the District Judge were communicated to the appellant, but the Disciplinary Committee instead of forming a tentative opinion had come to a final conclusion that the charges against the appellant were established. The Disciplinary Committee, in fact, had acted in accordance with the statutory provisions contained in Rules 9(4)(i)(a) and (b). He was called upon to show cause against the proposed punishment of dismissal as will be evident from the minutes of the Disciplinary Committee dated 21st June, 1993 which provide as under:

Decision: Discussed. For the reasons recorded in Annexure "A" hereto, the Committee disagrees with the finding of the Enquiry Officer and finds that the charges levelled against the delinquent Judicial Officer have been proved.

It was, therefore, tentatively decided to impose upon the Judicial Officer penalty of dismissal from service.

Let notice, therefore, issue to the delinquent Judicial Officer calling upon him to show cause why penalty of dismissal from service as prescribed in Rule 5(1)(ix) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 should not be imposed upon him.

Show cause notice will be accompanied by a copy of the report of the inquiring authority and the reasons recorded by this Committee.

These minutes were recorded after the disciplinary committee had considered the Enquiry Report and differed with the findings and recorded its final opinion in

Para. 10 of its reasons as under:

10. The Disciplinary Committee is of the opinion that the findings recorded by the Enquiry Officer on both the charges cannot be sustained. The committee, after going through the oral and documentary evidence on record, is of the opinion that both the charges against the delinquent are proved. The delinquent is a Judicial Officer who has failed to maintain the absolute integrity in discharge of his judicial duties.

35. Pursuant to the above minutes, a notice dated 24-6-1993 was issued to the appellant which after reproducing the minutes of the meeting of the Disciplinary Committee proceeded to say as under:-

As required by the Disciplinary Committee, I issue this notice calling upon you to show-cause why the penalty of dismissal from service should not be imposed upon you in view of the charges held established. Time of 15 days, from the date of receipt of this notice, is given to you for submitting your reply, failing which it shall be presumed that you do not wish to make any representation regarding the penalty.

A copy of the report of the Enquiry Officer dated 21-12-1992 and a copy of Annexure "A" are enclosed herewith for ready reference.

Yours faithfully, Sd/- Registrar

36. Along with the show-cause notice, a copy of the findings recorded by the Enquiry Officer as also the reasons recorded by the Disciplinary Committee for disagreeing with those findings were communicated to the appellant but it was immaterial as he was required to show-cause only against the punishment proposed by the Disciplinary Committee which had already taken a final decision that the charges against the appellant were proved. It was not indicated to him that the Disciplinary Committee had come only to a tentative decision and that he could show-cause against that too. It was for this reason that the reply submitted by the appellant failed to find favour with the Disciplinary Committee.

37. Since, the Disciplinary Committee did not give any opportunity of hearing to the appellant before taking a final decision in the matter relating to findings on the two charges framed against him, the principles of natural justice, as laid down by a Three-Judge Bench of this Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , referred to above, were violated.

(Emphasis supplied by us)

15. Applying the above principle to the facts of the present case, it is apparent that the appellate authority not having formed a tentative opinion regarding its findings disclosing reasons for disagreement with the view adopted by the inquiring authority on the charge No. 2 and having simply issued a notice to show-cause why the delinquent should not be dismissed from service, on the basis of such show-cause notice, the appellant cannot be dismissed from service.

16. Although, Ms. Desai, the learned Assistant Government Pleader appearing on behalf of the State, contended before that we should not consider this question in this appeal as the same was not raised before the learned Single Judge, we are afraid, we are not impressed by such submission as the question is a pure question of law and such plea is available even in appeal before this Bench. It appears that the learned Single Judge was influenced by the fact that though the appellant was acquitted in the criminal case of murder, he merely got benefit of doubt. The learned Single Judge also took into consideration the earlier conduct of the appellant.

17. We, thus, find that in this case, in an appeal preferred by the delinquent against punishment imposed on the charge of absence from duty, the appellate authority illegally imposed punishment on an unproved charge and such course was not permissible at the instance of the appellate authority. On the above ground alone, we set aside the order of dismissal.

18. Although, Mr. Desai, the learned Advocate for the appellant, tried to convince us that we should also set aside the order of punishment of stoppage of increment, we do not find any reason to interfere with the concurrent findings recorded by the authorities below.

19. We, thus, set aside the order passed by the appellate authority and confirmed by the revisional authority and restore the punishment order passed by the District Superintendent of Police with all consequential benefits. The appeal is allowed accordingly. In the facts of the case, there will be, however, no order as to costs.