
(1994) 08 GUJ CK 0016

In the Gujarat High Court

Case No : Special Civil Application No. 4618 of 1993

J.K. Raval

APPELLANT

Vs

Dena Bank, Palanpur and Others

RESPONDENT

Date of Decision : 09-08-1994

Acts Referred:

Bombay General Clauses Act, 1904 — Section 21
Bombay Police Act, 1951 — Section 25, 25(1), 25(2), 4

Citation : (1994) 08 GUJ CK 0016

Hon'ble Judges : H.L. Gokhale, J

Bench : Single Bench

Judgement

H.L. Gokhale, J.—The petitioner herein is working in the clerical cadre under the first respondent-Bank. The petitioner was chargesheeted in a departmental enquiry for making certain allegations against the Regional Manager of the first responded-Bank working at Palanpur. A departmental inquiry was conducted against the petitioner and a report was obtained. Thereafter instead of proceeding further to take the appropriate action, the first respondent served the petitioner with another chargesheet superseding the first one, though containing the same charges. That led to the second enquiry report. By order dated 2 November 1992 the disciplinary authority accepted the report of the second enquiry and directed that the petitioner be reduced in salary to the next lower state for a period of two years. The petitioner carried the said matter in a departmental appeal, wherein amongst others, he pointed out that holding of the second inquiry on the same charges was untenable but the appellate officer rejected the appeal as well as this contention by his order dated 10 April 1993. Through this petition, the petitioner seeks to challenge this order dated 10 April 1993 rejecting his appeal and whereby the order of punishment dated 2 November 1992 has come to be confirmed. This punishment, led to further adverse consequences. The petitioner, being in clerical cadre, was eligible to appear for the Junior Management Grade-I Examination. By letter dated 19 April 1993 the petitioner was informed by the respondents that the cannot appear for

the said examination in view of the provisions of the Bank rules whereunder appearing for such an examination was impermissible for a period of three years from the date of a punishment. The petitioner has sought to challenge this order dated 19 April 1993 also through his added prayer (AA).

2. When the petition came up for preliminary consideration before a learned single Judge (R. K. Abichandani, J.) on 7 May 1993, by way of interim arrangement the following order was passed.

"By way of interim arrangement the petitioner may be permitted to appear at the examinations scheduled to be held on 9-5-1993. His result will not be declared. This interim arrangement has no bring on the merits of the matter and is subject to the contentions that may be canvassed on behalf of the bank including the contention regarding 2(p) settlement. Appearing at this examination will not be so construed as to create any right whatsoever in favour of the petitioner. D. S. Permitted."

The respondent Bank filed Letters Patent Appeal No. 259 of 1993 against the said order. The Division bench comprising the Hon'ble the then Chief Justice, S. Nainar Sundaram, and Justice S. D. Dave, by its order dated 22nd June 1993 dismissed the said appeal. The only submission pressed into service in appeal was that the order of the learned Single Judge may not be quoted as a precedent and the Appeal Bench accepted the said submission by observing that the order of the leaned single Judge may not necessarily form a precedent on the question before the Court.

3. As a result of the order passed by the learned single Judge on 7th May 1993, the petitioner was allowed to appear for the promotional examination. However, the result thereof has not been declared. Therefore, when the matter reached before me in the regular course for consideration for admission, it was canvassed on behalf of the petitioner that since the petitioner has been allowed to appear for the examination and since his result has been withheld, it will be desirable that the matter be heard finally at the earliest. Since the learned advocate for the respondents had no objection to this course of action, it was decided to hear the matter finally at this stage itself. Hence, Rule is issued. The same is made returnable forthwith by consent and the learned Advocate, Mr. A. K. Clerk, for the petitioner and Mr. Prashant G. Desai for the respondents are heard.

4. Although various contentions are raised in the petition, the main submission advanced by Mr. Clerk, the learned advocate for the petitioner, before me is that once the inquiry officer had given his report on the chargesheet, it was not open for the management to issue a fresh chargesheet on the same set of fact particularly when the relevant service of facts particularly when the relevant service rules do not permit the same. After the inquiry report was received, it was for the management either to accept the same or to reject it and thereafter to decide what appropriate punishment to be given. It is Mr. Clerk's submission that inasmuch as a second chargesheet is given, admittedly, the report on the

first chargesheet is given a go-by. In fact, the second chargesheet dated 27th July 1991, in terms says that it is in supersession of the earlier chargesheet dated 17 August 1989. That being the position, the report on the first chargesheet is dropped by the management, and in his submission the initiation of the second inquiry on the basis of the second chargesheet on the same set of fact is itself impermissible and hence all subsequent actions and orders are also bad in law. As against that it is the submission of Mr. Desai, learned advocate for the respondents, that the management was fully entitled to hold a second inquiry inasmuch as it has found that the first chargesheet was defective.

5. To understand the rival contentions properly it is necessary to refer to some of the facts in detail. The first chargesheet dated 17 August, 1989 contained the following three allegations :-

"1. You have sent one Registered Post letter dated 19-5-1989 wherein you have wrongfully alleged Dy. Regional Manager and the undersigned. The referred allegations made by you are baseless and mischievous in nature. Neither our Dy. Regional Manager has threatened you nor any bribe was demanded by the undersigned.

2. Vide our letter No. PRO/PER/1247/89 dated 24-5-1989 we advised Branch Manager-Vadgam to contact you and to obtain your confirmation as to whether you have written aforesaid letter dated 19-5-1989 we advised Branch Manager-Vadgam to contact you and to obtain your confirmation as to whether you have written aforesaid letter dated 19-5-1989 and were aware of the contents or not. We have been informed by Branch Manager-Vadgam vide his letter No. nil dated 29-5-1989 that you have neither given him in writing nor replied orally about your confirmation or denial of referred letter.

3. Vide our letter No. PRO/PER/1311/89 dated 3-6-1989, we have informed you to confirm as to whether you have written/sent and were aware of the contents or a to whether you have not sent and not aware of the contents of your letter dated 19-5-1989. In the referred letter, we have also informed that in case you will not reply within two days, it will be presumed that you have confirmed of having writing the said letter dated 19-5-1989 and were fully aware of the contents, to which also, you have not replied. In this connection, Show Cause Notice No. PRO/PER/1630/89 dated 17-7-1989 was issued to you. Vide your letter dated 20-7-1989 submitted explanation in the matter of aforesaid show cause notice dated 17-7-1989 which has not been found satisfactory."

The petitioner was thereafter told in the chargesheet that if the aforesaid acts are proved, they will constitute misconduct of (a) disorderly and/or indecent behaviour, or (b) willful attempt to cause damage to the officers, or (c) committing nuisance, or (d) failing to show proper consideration or courtesy, or (d) doing an act prejudicial to the interest of the Bank.

6. Thereafter when the inquiry started, during the course of the enquiry it was pointed out by the petitioner that the three allegations were with respect to a

certain letter dated 19-5-1989, alleged to have been sent by him to the Deputy Regional Manager and the then Regional Manager, one Mr. Oza. The allegation in the chargesheet state that the said letter contained certain serious allegations against the Deputy Regional Manager and the Regional Manager, Mr. Oza, and the same were baseless and mischievous. Now it is relevant to note that this chargesheet dated 17 August 1989 to investigate into these charges has been issued by the Regional Manager, Mr. Oza, himself. Thereafter during the course of the enquiry, on 22 March 1991 by way of written arguments, a specific plea was raised by the petitioner in para 4 thereof as follows :

"..... The Regional Manager is a person interested in the matter and it is elementary that he cannot issue showcause notice and a chargesheet in a matter in which he is personally interested. The showcause notice and chargesheet are therefore biased and void ab initio. All further actions taken by the bank pursuant to the same are also illegal and void. "

7. The findings of the enquiry officer on the said chargesheet dated 17 August 1989 containing reference to the aforesaid submission were brought to my notice by Mr. Clerk judging the course of the arguments, inasmuch as the same have not been fully reproduced in the petition, although the concluding part thereof with respect to findings on the various charges had been annexed as Annexure-B to the petition. The authenticity of the copy of the findings relied upon by Mr. Clerk is not disputed by Mr. Desai. The copy of the findings which was been read out by him is on the Dena Bank letter head and signed by the officer concerned. Thus, it is clear that this particular plea was specifically raised during the enquiry and the same is a valid plea. Thus, this is a case where the Regional Manager feels that the petitioner had made baseless allegations against him through a letter. What was therefore expected to the Regional Manager was that he should have forwarded the papers to an officer higher to him in rank and he should have looked into the correspondence and then decided what to do further. Instead of that, the Regional Manager concerned, namely, Mr. Oza, has himself issued the chargesheet dated 17 August 1989.

8. As noted hereinabove, the validity of the chargesheet was specifically objected to during the inquiry contending that the chargesheet is biased and void ab initio. Now, the findings of the enquiry officer on this objection are interesting. The officer observes with regard to the said objection as under :

"I would like to clarify that the said objection is not tenable. The Disciplinary Authority for the members of award staff i.e. Clerks and Subordinates is the Regional Manager. The Show Cause Notice and the Chargesheet are issued in the capacity of a Disciplinary Authority. Here, I concur with the views expressed by Presenting Officer during the course of inquiry that it is upon the concerned higher authorities to get fully satisfied before allowing the Disciplinary Authority for proceeding against chargesheeted employee. Further, I also concur with the views expressed by Presenting Officer during the course of inquiry that as the allegations made vide ME-4 against the Dy. Regional Manager and Regional

Manager were personal in nature, they have given their comments on the overleaf of ME-4 which are very important."

Thus, as is seen from the above observations, the inquiry officer has noted that the allegations made against the Regional Manager were personal in nature. He has also noted that it is for the concerned higher authorities to get fully satisfied before allowing the disciplinary authority to proceed against the chargesheeted employee. He has however not made any enquiry to find out as to whether any authority higher to the Regional Manager has arrived at the decision to chargesheet the petitioner. On enquiries I am told that it is not so. That apart, when the enquiry officer has noticed that the allegations were personal in nature, the grievance of bias made by the petitioner gets a support. In view of this objection, it was expected of the enquiry officer that instead of proceeding further, he should have forwarded the papers to the disciplinary authority giving his opinion at that very point of time.

9. What has however happened thereafter is that the enquiry officer has proceeded to give his findings on 27-3-1991 and has finally held that out of the five misconducts alleged against the petitioner, misconducts (a), (b) and (c) were not proved whereas misconducts (d) and (e) were proved. The bank neither accepted the report nor rejected it. What has happened thereafter is rather peculiar. The bank, by its letter dated 27 July 1991, gave another chargesheet to the petitioner wherein the circumstances narrated therein against the petitioner are as follows :

"1. You have sent one Registered Post Letter dated 19-5-1989 wherein you have alleged against the then Regional Manager -Palanpur Region that for forwarding your housing loan proposal to our zonal Officer, Rs. 500/- was demanded from you.

2. Vide our letter No. PRO/PER/1247/89 dated 24-5-1989 we advised Branch Manager-Vadgam to contact you and to obtain your confirmation as to whether you have written aforesaid letter dated 19-5-1989 and were aware of the contents or not. We have been informed by Branch manager-Vadgam vide his letter No. nil dated 29-5-1989 that you have neither given him in writing nor replied orally about your confirmation or denial of referred letter.

3. Vide our letter No. PRO/PER/1311/89 dated 3-6-1989, we have informed you to confirm as to whether you have written/sent and were aware of the contents or as to whether you have not sent and not aware of the contents of your letter dated 19-5-1989. In the referred letter, we have also informed that in case you will not reply within two days, it will be presumed that you have confirmed of having written the said letter dated 19-5-1989 and were fully aware of the contents, to which also, you have not replied."

Now it is very clear that what is narrated in this chargesheet dated 27 July, 1991 is the same set of allegations that were ether in the earlier chargesheet dated 17-8-1989. There is nothing new on the allegations except their working. The

only difference is that instead of the five misconducts alleged against the petitioner in the earlier chargesheet, only two are alleged in the present one, namely, misconducts (d) and (e) of earlier chargesheet and which were held to have been proved as per the earlier enquiry. The petitioner is told in this new chargesheet that the aforesaid three charges against him will constitute the aforesaid two misconducts. This chargesheet states at the bottom thereof as follows :

"This is in supersession to the earlier chargesheet No. PRO/PER/1905/89 dated August 17, 1989."

Thereafter an enquiry was held against the petitioner into this second chargesheet. It was held at the end of it that the said two misconducts were established and then the petitioner was given a showcause notice with respect to punishment that may be imposed upon him. Thereafter by an order dated 2 November 1992 his pay was directed to be reduced to the next lower stage for a period of two years.

10. The petitioner carried this order in appeal. In appeal, a specific contention was raised in paras 4, 5 and 6 of the appeal memo which is produced in the appeal order as follows :

"Inquiry into the chargesheet dated 17-8-1989 was commenced for the same chargesheet dated 17-8-1989 after a period of 2 years and 2 months. In support of this, case law has been cited. No such power is conferred on Disciplinary Authority. It is null and void."

On this objection, all that the appellate officer says in his order is as follows :

"It is after his objection that the person concerned Shri J. P. Oza had issued chargesheet to him, the chargesheet was substituted by another Regional Manager."

No service rule has been relied upon to show that the management had the power to issue the second chargesheet and to reopen to inquiry after receiving the inquiry report. The appeal came to be rejected by order dated 10 April 1993 which was communicated to the petitioner by letter dated 15 April 1993. Hence this petition.

11. On behalf of the petitioner, Mr. Clerk, the learned advocate, has submitted that on the earlier chargesheet dated 17th August 1989 a fullfledged enquiry had been held. For reasons which were not disclosed to the petitioner, the management did not take any action on the report given by the enquiry officer. Again, for reasons not disclosed to the petitioner, the management superseded the said chargesheet and issued another chargesheet on 27th July 1991 containing the same allegations. Now, admittedly, one investigation had preceded into these very allegations and the result-thereof, though available to the management, was given a go-by. This being the position, Mr. Clerk contended that there was no power in the management to chargesheet the

employee again and to make him suffer one more enquiry for the same set of allegations. It is quite clear from the record of the enquiry that although the petitioner had very much contended during the first enquiry that the entire action initiated against him was illegal on account of bias, the respondents never informed the petitioner as to whether they were accepting this plea. They have not said so even while superseding the earlier chargesheet. The petitioner had no occasion to know as to what for he was again being proceeded with the same allegations for which the findings were already available with the management. He was also not informed that this course of action was under the authority of which service rules. He has therefore raised this plea in appeal against the order after the second enquiry was conducted. It is for the first time in the appellate order, as pointed out above, that it is stated that it is due to the objection of the petitioner that instead of Mr. J. P. Oza, another Regional Manager has issued the second chargesheet. Now, as can be seen, the petitioner had objected to the very issuance of the chargesheet itself and to the entire disciplinary proceedings. he had said before the first enquiry officer that the Regional Manager is a person interested in the matter and hence any showcause notice and chargesheet issued by him will be considered as biased and void ab initio. The enquiry officer has himself in the para quoted earlier observed (and that too, concurring with the views of the presenting officer) that it is on the concerned higher authorities to get fully satisfied before allowing the disciplinary authority for proceeding against the chargesheeted employee. Hence, in the instant case what was expected was that some officer higher than the Regional Manager ought to have looked into the papers before deciding upon issuing the chargesheet. In the instant case that is clearly absent. A mere substitution of the earlier Regional Manager by another Regional Manager and issuance of another Regional Manager and issuance of another chargesheet cannot cure this defect which is very fatal to the chargesheet.

12. It was pointed out by Mr. Desai, learned advocate for the respondents, that what the management has done is to issue the second chargesheet only for those charges which have already have been proved before the earlier enquiry officer and not for those from which the petitioner is exonerated. The point is not that. The point is that whether the relevant service rules permitted that and whether in their absence an employee can be subjected to a second investigation because it dawns upon the management at a later point of time that perhaps the finding of the first enquiry would be vitiated. This is because if this is permitted, the management will keep on improving every time a defect is noted subsequently and the employee will be subjected to investigations one after another. In any case, Mr. Desai had not shown any rule empowering the bank to issue a second chargesheet and to hold a second inquiry after the report of the first inquiry is received. An affidavit-in-reply is filed on behalf of the respondents by one Yogeshbhai Joshi who is Senior Manager (Personnel) of the respondent Bank. He has stated in para 10 as follows :

"I say that another chargesheet dated 27-7-1991 was issued to the petitioner for

the said allegations keeping in view that the earlier Regional Manager, Shri J. P. Oza was interested party."

Firstly if a reply was to be filed on behalf of the bank it should have been filed by some officer who was incharge of the disciplinary proceeding or some authority higher to the position of the Regional Manager in case he has taken the decision to issue the second chargesheet. This reply does not state anywhere as to who has taken this decision and when it was taken and under which service rules. This reply also does not state anywhere that the papers in this ask were placed before and considered by an officer higher than that of a Regional Manager. Since any such assertion is lacking, a mere substitution of one Regional manager by another Regional manager cannot do away the defect which existed in the first chargesheet, and therefore the second chargesheet is also defective. Mr. Desai submitted that a regional manager was the authority competent to issue a chargesheet to an employee in clerical cadre. However, when a regional manager is himself a person interested in the inquiry, it was expected that a person higher to his status ought to have taken the decision in this behalf. That decision ought to have been taken right at the outset. In the instant case it was not so taken. Even at a later stage when this objection was raised during the inquiry, the inquiry officer could have instead of completing the inquiry, returned the papers to the disciplinary authority after noticing that the chargesheet was issued by an interested person. At that stage the management could have withdrawn the chargesheet reserving in itself the liberty to issue the fresh chargesheet after the papers were examined by an authority higher to the regional manager provided the rules permitted such a course of action. However, this cannot be permitted to be done after the first inquiry is concluded and the report containing findings at the end of it is submitted to the bank. Thereafter the management can reject a report or record contrary findings. But, it is not one to it to order fresh inquiry to fill up a basic lacuna. Incidentally, in the instant case even after the second chargesheet, the basic defect has continued to remain uncured. Hence, if the right of the management as submitted by Mr. Desai is accepted, it may perhaps lead to a third chargesheet now by an officer higher to regional manager and a third investigation.

13. As stated above, the petitioner has specifically made an allegation of bias. This defect, as stated above, cannot be cured by issuance of any such second chargesheet by another regional manager. As stated earlier this could have been done, if at a proper stage the papers were placed before the officer higher than Regional Manager and he had arrived at an independent view that it was necessary to chargesheet the petitioner. After the first enquiry was completed and the report was received, it appears that, the management felt that the report of the enquiry officer will not stand the scrutiny of the Court of law and therefore they substituted the chargesheet of one Regional Manager by another Regional Manager. Hence, the defect is two-fold. Firstly, there is no application of mind by a proper officer and secondly there is a technical substitution thinking that it will cure the defect. apart therefrom Mr. Clerk has rightly submitted that

under the relevant bank rules there is no power to reopen a concluded inquiry and in the absence of that, the second inquiry was in any case impermissible and bad in law.

14. Mr. Clerk took me through various authorities in support of his submission. Firstly, he drew my attention to the judgment of a single Judge my attention to the judgment of a single Judge of Karnataka High Court in the case of Kamath Vs. Karnataka State Road Transport Corporation, , where in a departmental enquiry against an employee of the State Road Transport Corporation, the question came up before the Court as to whether the same charge can be reopened in a fresh departmental enquiry. The learned judge went through the relevant regulations and held that :

"In the absence of conferment of specific power for reopening the inquiry and on specified grounds a second enquiry is without the authority of law."

Shri Clerk then drew my attention to the Division Bench judgment of Bombay High Court delivered in the case of Suryabhan Baburao Patil v. The State of Maharashtra & Ors. reported in 1989 1 CLR 395 where the Court (per Pendse, J.) held that "It is not open to order fresh enquiry only to fill up the lacuna noted in the first enquiry." In that case the facts were by and large similar. A report of an enquiry against a teacher working in the Nasik Zilla Parishad was received by the disciplinary authority. The disciplinary authority could have accepted the same or rejected it. However, instead of recording a contrary conclusion the disciplinary authority cancelled the appointment of the earlier enquiry officer and appointed a fresh enquiry officer and directed a de novo enquiry. The Court went through the relevant service rules and found that the fresh inquiry was not permitted thereunder. The Court observed that it was obvious that the disciplinary authority realised that material on record was not enough to hold that the charges against the delinquent were proved and therefore a fresh enquiry was ordered. In para 4 of the judgment the Court observed as under :

"It was open for the Disciplinary Authority either to accept the report or to reject it and record a contrary finding. It is well settled that the report of an enquiry officer is merely recommendatory and is not binding on the Disciplinary Authority. Instead of recording a contrary conclusion the Disciplinary Authority found out a novel method and cancelled the appointment of the enquiry officer and appointed a fresh enquiry officer and directed a de novo enquiry. This was clearly impermissible. It is not open to order fresh enquiry only to fill up the lacuna noted in the first enquiry."

Similar is the view taken by another Division Bench of Bombay High Court in V. Arvindaksan v. C. T. Thakur & Ors. reported in 1989 2 CLR 703 . In that case, after the report was received, the disciplinary authority of a Bank in exercise of its power of review ordered fresh enquiry. After going through the relevant rules, the Division Bench (Per Bharucha, J.) held that thereunder it was not open for

the reviewing authority to pass such an order when there was no material on record to review, because, the bank has not produced the evidence. The Court therefore set aside the order passed after review and also the fresh enquiry. Similar views have been expressed by two single Judges of Delhi High Court and Allahabad High Court in their judgments reported in Chander Singh Vs. Delhi Development Authority and Another, respectively. In the first case, that is, Chandersingh v. D. D. A., the learned Judge of the Delhi High Court, after considering the relevant regulations of DDA, held that successive domestic enquiries in respect of same charges were not permissible. In the second case, the learned single Judge in the case of Awdesh Rai v. Regional Manager, UPSRTC also after examining the relevant rules held that there was no provision for holding fresh enquiry after one enquiry report is received.

15. Apart from the aforesaid judgments the observations of Justice R. C. Mankad (as he then was) in Hiralal K. Joshi Vs. State of Gujarat and Another, are relevant for our purpose. That was a case where some circle inspectors and clerks were proceeded in a departmental enquiry alongwith a Taluka Development Officer from Baroda for granting non-agricultural permissions in violation of the guidelines in that behalf. A joint enquiry was conducted against them under the provisions of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971. The enquiry officer held that the charges were proved against the Taluka Development Officer but, as far as the others were concerned, he held that, the charges were not proved. The State Government accepted the report for the reasons that in its review the charges were not proved since they were not framed with care. Therefore, the State Government directed issuance of second chargesheet. The learned Judge went through the relevant service rules. He found that the charges which were first framed against the petitioner and which were subsequently framed by another officer were substantially the same. If that was so, the learned Judge held that, if in the view of the State Government the charges were not properly framed on an earlier occasion, the State Government was expected to give the reasons in that behalf. The learned Judge observed in para 10 of the Judgment as follows :

"The defects, if any, in the charges framed against the petitioners, as already discussed above, must have come to the notice of the State Government when it directed to hold joint enquiry against the petitioners and the Taluka Development Officers. However, no attempt was made to remove these defects and to make the charges more specific by giving particulars and removing the vagueness, if any."

Again as held by the learned Judge, "It is only after the submission of the Special Enquiry Officer's report that the wisdom dawned on the State Government that the charges were not carefully framed and it was necessary to hold fresh enquiry after reforming of the charges. " The learned Judges, after going through the relevant rules, held that the decision of the State Government to hold fresh enquiry including the framing of charges or the subsequent chargesheet was bad

in law and he set aside the same along with, the report of the enquiry officer.

16. The ratio of the aforesaid cases is very clear that a second enquiry into the same set of charges is normally impermissible after the submission of the inquiry report. Such a provision has to be specifically there in the rules of the concerned authority and in the absence thereof such power cannot be implied. As stated earlier, in the instant case no such power has been pointed out by the respondents.

17. Mr. Desai, the learned advocates for the respondents, has relied upon various authorities in defence. Firstly, he has relied upon a judgment of Andhra Pradesh High Court delivered in the case of J.V. Prasada Rao Vs. District Traffic Superintendent, South Eastern Railway, Waltair and Another, . In that case, an Assistant Station Master at Waltair Railway Station was proceeded in a departmental enquiry on account of a head on collision between two goods trains. After the enquiry report was received, the petitioner was given a notice to show-cause as required by Article 311 of the Constitution of India as to why he should not be reduced in rank. After the petitioner gave his written explanation, a fresh notice was given to the petitioner to show cause as to why he should not be removed from service. Consequent upon his reply, he came to be removed from the service. In petition before the Andhra Pradesh High Court a submission was advanced that issuance of the second showcause notice was bad. The Division Bench dismissed the said petition and amongst others observed, "It is not shown that a show cause notice issued by the competent authority cannot be cancelled nor is it shown that the authority is precluded from issuing a fresh notice. " This is a case where the employee concerned was given a second showcause notice after considering the gravity of the situation as contained in the same inquiry report. This was not a case where a de novo second inquiry was held in its entirety. The second showcause notice was given before a decision was taken on the first showcause notice based on the same report. I do not understand how this authority can help the respondents.

18. The second judgment relied upon by the learned advocate for the respondents is Vinod Chandra v. Union of India reported in 1960 (Punjab) 147. In that case during the course of a departmental inquiry being conducted against the petitioner, in view of an investigation by the police into the allegations against the petitioner the departmental inquiry was kept in abeyance for some time. Thereafter a second set of charges became necessary. This was not a case where the first enquiry was concluded and report obtained. The additional charges had become necessary due to fresh material becoming available. Hence, the factual and legal position become quite different. The learned single Judge of Punjab High Court has observed as under :

"It is not comprehensible how the disciplinary authority is debarred in the absence of any express provisions to that effect from dropping any charges that it may have considered fit to frame in the first instance and to frame fresh charges which may on further consideration appears to be appropriate charges

for being preferred. For instance, in the present case it has been suggested on behalf of the Government that the second set of charges became necessary after there had been investigation by the police into the allegations against the petitioner. I can see no reason or justification for the Disciplinary Authority not being competent to prefer a fresh charge-sheet after superseding the first one."

The third authority relied upon by the learned advocate for the respondents is that of Hon"ble Supreme Court in the case of Union of India v. M. B. Patnaik reported in 1981 (1) SLR 377. In that case what had happened was that a supplementary enquiry had come to be conducted by different officers since in the meanwhile the earlier officers were not available either on account of retirement or otherwise. That was a case where the enquiry was held by two sets of enquiry officers. The Court held that the said enquiry to be valid. The relevant observations of the Supreme Court in para 7 of the said judgment are as follows :

"7. It would appear from the above extract that it is not at all necessary that the enquiry which has been held in part by more than one enquiry officers should be continued by the same enquiry officers until the end. The post which the members of the Inquiry Committee held originally might have been ceased to exist at a later stage, or one or more of the members of the Inquiry Committee may no longer be available either on account of retirement or due to any other cause. For that reason, it could not be held that the enquiry could not be continued to all. Therefore, there could be no valid objection to the supplementary enquiry being continued by the very two individuals even after they had ceased to hold their respective offices which they held at the time of the original enquiry."

Even this judgment will also not help the respondents for the reason that the same enquiry was conducted by different sets of officers in view of the change of circumstances as stated above. That does not amount to conducting a fresh enquiry after the report is received from the earlier enquiry officer as is done in the present case.

19. The last judgment relied upon by the learned advocate for the respondents was delivered by a division bench in the case of State of Bombay Vs. Ganpat Dhondiba Sawant, . That was a case where a person was found in an unconscious condition in the area of a police station in Pune. The said body was subsequently found to be removed to the area of another police station and the person subsequently died. The respondent in that matter was initially proceeded in a criminal prosecution and subsequently in a departmental enquiry by the Assistant Superintendent of Police. He was acquitted and exonerated in both the proceedings. However, having regard to the opinion expressed by the R. L. A. in connection with the above enquiry proceedings that the State Government decided to hold fresh enquiry against all police officers and men concerned with the particular police station. That was objected to on the ground that the respondent was being subjected to second enquiry. The said departmental enquiry and the decision thereon was upheld by relying upon the provisions of

section 4 and section 25 of the Bombay Police Act, 1951. The Court observed in para 23 as follows :

"The language of section 4 is clear and unambiguous. Obviously, under that section the State Government is vested with power of Superintendence over the Police Force throughout the State. Having regard to the clear language of the section, it would not be wrong to hold that as regards each and all the matters pertaining to the Police Force throughout the State, the State Government has absolute powers to deal with them in the best interests of Police Force as the State Government deems fit. Nothing has been pointed out from the contents of the Act to show that this general power of superintendence vested in the State Government was intended to be curtailed in any manner whatsoever. The contention that the power vested in the State Government u/s 4 appearing under Chapter II was not intended to overlap in connection with matters of discipline of the Police Force provided for u/s 25 appearing under Chapter III of the Act appears to be unwarranted. In fact, the heading of Chapter II contains the phrase".... control... ... of the Police Force. " Similar in the position in heading of Chapter III. Chapter III does not purport to deal with the matter of the power of Superintendence that is dealt with under Chapter II. There is nothing in Section 25 to indicate that the power of Superintendence that is conferred u/s 4 in the state Government is in any manner curtailed by reason of the provisions in that section relating to punishments of the members of the subordinate ranks of the Police Force departmentally for neglect of duty and other misconduct. It appears to us that in connection with powers given under sub-section (2) of Section 25 to various officers to award punishments against members of the subordinate ranks of Police Force, the power of superintendence vested in the State Government u/s 4 of the Act would always be a available."

20. The Court thus held that there is nothing in section 25 to indicate that the power of Superintendence that is conferred u/s 4 in the state Government is in any manner curtailed. What are relevant are the observations of the Court in para 26 where the attention of the Court was drawn to the reported decisions of the different High Court where in connection with future fresh enquiries in respect of charges whereby police officers are first exonerated, the Courts had come to the conclusion that on principle of justice, equity and common conscience it was wrong in the absence of the provisions in service rules in that connection to permit such further departmental enquiries. The Division Bench of the Bombay High Court observed, "We find it unnecessary to go into the details of all those cases because it has appeared to us that the provision in section 4 and sub-section (1) of section 25 in this case confer clear unobstructed powers on the State Government to order fresh enquiry in cases in which according to the State Government the facts involved warrant such direction. " Thus, the judgment is clearly on the powers under the said Act.

21. Mr. Desai also submitted that analogous to section 21 of the Bombay General Clauses Act, 1904, the respondents had a power to rescind or supersede a

chargesheet issued earlier. He submitted that the power to issue a chargesheet included a power to rescind the same. Now in this connection, section 21 applies to powers given under Statutes and the orders, rules, bylaws, or notifications thereunder and the same will have no application to the present case, Mr. Desai submitted that after the second chargesheet was given at that stage itself the petitioner should have challenged the same. The petitioner being an employee preferred to raise the objection during the second enquiry and in the appeal and thought that at least the appellate officer will see the reason. The petitioner cannot be faulted for participating in the enquiry and when finally the officers of the respondent failed to see the reasons, he had no other option but to file the present petition.

22. Thus, none of these authorities advance the case of the respondents any further. I have therefore to hold that the second chargesheet, the enquiry based thereon, the report arrived thereafter and the punishment inflicted are all bad in law. The order dated 2 November 1992 reducing the petitioner to a lower stage for two years and the appellate order dated 10 April 1993 confirming the same are both quashed and set aside. Consequently, the letter/order dated 19 April 1993, issued to the petitioner stating that he cannot appear in the promotional examination is also bad in law and is quashed and set aside. The letter was issued on the footing that the petitioner cannot appear in the examination since more than three years had not been completed from the date of punishment. When the punishment goes, the embargo has also to go. This being the position, the Rule is made absolute in terms of prayer "A" and added prayer clause "AA". There will be no order as to costs. The notice stands discharged. Before I conclude, I would like to mention the since the above submission goes to the root of the matter, Mr. Clerk has not been required to address me on other submissions which were otherwise available to him.

23. The petitioner has been permitted to appear in the departmental promotion examination and the result whereof was directed not to be declared. Since the petitioner has succeeded in the present petition, the result will have to be declared and the respondents are directed to declare the same. The respondents are also directed to pay the petitioner the arrears of his pay which have been wrongly deducted on the basis of the impugned order.

24. Mr. Desai, learned advocate for the respondents applies for stay of this order. This order will remain stayed for a period of eight weeks hereof.