

(1999) 09 MAD CK 0042

In the Madras High Court

Case No : W.P.No. 14454 of 1999 and W.M.P.No. 20913 of 1999

M. Natanam

APPELLANT

Vs

The Assistant Commissioner Hindu Religious and Charitable
Endowments and Fit Person Arulmighu Thillai Kallamman
Thirukovil Chidambaram and another

RESPONDENT

Date of Decision : 22-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 56(1),
56(2)

Citation : (1999) 3 CTC 657

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Mr. T.S. Sivagnanam, for the Appellant; Mr. R. Balasubramanian,
Special Government Pleader, for the Respondent

Judgement

1. In this writ petition the petitioner, an employee of Arumighu Thillai Kalliamman Thirukovil prays for the issue of writ of certiorarified mandamus

calling for the records relating to the order to the first respondent in N.Ka.No.47 of 1998 Ai, dated 16.8.1999, quash the same and forbear the

respondents from in any manner interfering with the functioning of the petitioner as clerk in the said temple.

2. As the contentions raised in the writ petition is covered by the various pronouncements of the Apex Court as well as this Court and as the writ

petition lies in a narrow compass, this court directed the counsel for the petitioner to serve notice on Mr.R. Balasubramanian, Special Government

Pleader (HR & CE). Accordingly the Special Government Pleader who had been served with the notice had entered appearance and also filed

counter on behalf of the respondents. With the consent of the learned counsel for either side, the writ petition itself is taken up for final disposal.

3. Heard Mr. T.S. Sivagnanam, learned counsel for the petitioner and Mr. R. Balasubramanian, Special Government Pleader appearing for the respondents.

4. The second respondent is the Executive Officer of Arulmighu Thillai Kalamman Thirukovil, Chidambaram while the first respondent is the fit

person appointed for the said temple. There is some controversy with respect to the very status of the writ petitioner as a clerk in the said Thillai

Kalamman Thirukovil, hereinafter referred to as the "temple" for brevity. However, this Court need not go into the said aspect of the matter in the present writ petition.

5. The first respondent framed as many as Twelve charges against the writ petitioner in exercise of power conferred u/s 56(1) of the Tamil Nadu

Hindu Religious and Charitable Endowments Act, hereinafter referred to as the "Act". The petitioner was also placed under suspension. The

petitioner submitted his explanation denying the charges. The explanation submitted by the petitioner was not acceptable and hence the second

respondent had chosen to appoint himself as the Enquiry Officer which was objected to by the writ petitioner on the ground that it would amount

to the second respondent judging his own cause. Hence after considering the objections, the first respondent appointee as enquiry officer by

proceeding dated 23.1.1999. As no further action was being taken, the petitioner was constrained file W.P. 5567 of 1999 challenging the charge

memo, and this Court by order dated 6.4.1999 directed that the first respondent to proceed further with the disciplinary proceedings and

adjudicate the same within four months from the date of communication of the order. The petitioner also states that he had not been paid

subsistence allowance and hence he had to move a contempt application.

6. Subsequently pursuant to the directions issued in the Contempt proceedings as well as the directions made in W.P.No.5667 of 1999, it is

alleged that the first respondent had purposely anti dated the final order on 16.8.99 as it had been posted only on 23.8.1999 with a view to get

over the contempt application. By the impugned order dated 16.8.1999, the first respondent imposed the penalty of removal from service. Being

aggrieved the present writ petition has been filed challenging the said penalty of removal from service imposed by the first respondent on 16.8.1999.

7. As seen from the impugned proceedings the enquiry officer had submitted his report dated 13.8.1999 and the impugned order has been passed within three days i.e., on 16.8.1999 imposing the penalty of removal from service. The first respondent had not only accepted the findings reported by the Enquiry Officer, but also accepted the penalty proposed by the enquiry officer and by the impugned order imposed the penalty of removal from service.

8. Normally this court would have directed the writ petitioner to prefer an appeal as a statutory appeal is provided against such proceedings imposing the penalty. But on the admitted facts, this Court is of the view that the impugned proceedings not only suffer with illegality but also in violation of principles of natural justice and being non est could be decided in this writ petition, instead of directing the writ petitioner to move an appeal and await the appellate order.

9. A counter affidavit has been filed by the second respondent the Executive Officer. It is not necessary to refer to the various averments set out in the counter affidavit as this Court has only extracted the uncontroverted facts for the purposes of this writ petition.

10. Mr. T. Sivagnanam, learned counsel for the petitioner raised the following two contentions:

(i) The report of the Enquiry Officer had not been communicated to the petitioner and the petitioner had not been given an opportunity to state his objections with respect to the enquiry report and the same vitiates the impugned proceedings.

(ii) The action of the enquiry officer in proposing a penalty of removal from service and the acceptance of the same is illegal and the same vitiates the impugned proceedings?

11. In respect of the above two contentions arguments were advanced on three different dates. Though this court expressed the view that the two contentions raised by the petitioner is covered by various pronouncements of the Supreme Court, however Mr. R. Balasubramanian, learned Special Government Pleader made his submissions with reference to the rules

framed under the H.R.& C.E. Act and contented that the enquiry report need not be communicated to the petitioner, that no prejudice has been caused by the non communication of the said report and that the punishment proposed by the enquiry officer in no way vitiates the proceedings. The learned Special Government Pleader also sought to rely upon certain earlier decision in support of his contention.

12. The first point raised by Mr.T.S. Sivagnanam, learned counsel for the petitioner is a well settled proposition. Their Lordships of the Apex Court, a Division Bench of this court and I have myself also had occasion to consider the identical contention has been upheld.

13. Before taking up the contentions, it is relevant to refer to the statutory rule which governs the framing of charges as well as imposing of penalties on the writ petitioner a servant of the temple. Section 56 of the Act provides that all officer holders, servants attached to religious institutions shall be controlled by the trustee and the trustee may after following the procedure prescribed fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of order, neglect of duty, misconduct or other sufficient causes. Subsection (2) of section 56 provides for an appeal against the punishment imposed u/s (1) of section 56.

14. Rules have been framed as early as 1960 called as "" the punishment of office holders and servants of Religious Institutions (other than Maths and specific Endowments attached thereto) rules. ""Rule (2)(a) provides that no order imposing any punishment other than a fine under Sub Section (1) of Section 56 shall be made against any servant unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. Such grounds shall be reduced to the form of a definite charge or charges which shall be communicated to the delinquent together with statement of allegations on which each charge is based. The delinquent shall be required to put in a written statement of the defence and to state whether he desires an oral enquiry or only to be heard in person. An oral enquiry shall be held if such an enquiry is decided by the person charged or is decided upon by the trustee. At that enquiry oral evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross examine the witnesses, to give evidence in person

and to have such witnesses called as he may wish. After the enquiry has been completed, the person charged shall be entitled to put in, if he so desires, any further written statement of his defence. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof. Every order of suspension, removal or dismissal shall state the charges, the explanation and the finding on each charge with the reasons there for.

15. Thus an elaborate procedure has been prescribed by the rules. The rules do provide for compliance with the principles of natural justice and provides for sufficient opportunity to defend to the delinquent. It cannot even be suggested that the said Statutory rule excludes the principles of natural justice in any manner. It is the contention of Mr. T.S. Sivagnanam, learned counsel for the petitioner that on the face of the said statutory rule the failure to communicate a copy of the report, call for objections of the petitioner, on the findings reported by the enquiry officer, violates the principles of natural justice and this goes to the root o the proceedings and that the impugned proceedings is liable to be quashed by this Court on that score.

16. The learned counsel for the writ petitioner relied upon the decision of the Apex Court in Managing Director, ECIL, Hyderabad, Vs.

Karunakar, etc. etc., , wherein it has been authoritatively held that the delinquent employees is entitled to a copy of the enquiry officer's report and

such a right is a part of the employee's right to defend himself against the charges levelled against him and a denial of such a report is a breach of

the principles of natural justice. The Apex Court after considering the earlier case law including the ratio in Union of India and others Vs. Mohd.

Ramzan Khan, held thus:-

In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to

influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not

constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry

Officer goes further and records his findings, as stated above. Which may or may not be based on the evidence on record or are contrary to the

same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary

authority which arriving at its conclusion. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore,

require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the

Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the

representation of the employee against it.

It will thus be seen that where the Inquiry Officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The

first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence. Inquiry Officer's report and the delinquent

employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the

disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached- The employee's right to receive the

report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect

denied the right to defend himself and to prove his innocence in the disciplinary proceedings.

Hence, it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee, has right to receive a copy of the

Inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard

to the charges levelled against him. The right is a part of the employee's right to defend himself against the charges levelled against him. A denial of

the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee

to prove his innocence and is a breach of the principles of natural justice.

Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded, and when the Inquiry Officer is not the disciplinary

authority the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment.

(iii) Since it is the right of the employee to have the report to defend himself

effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

(iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right. It is only appropriate that the law laid down in *Union of India and others Vs. Mohd. Ramzan Khan*, should apply to employees in all establishments whether Government or, non-Government, public or private. This will be the case whether, there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

17. In the present case the proceedings started after the decision of the Apex Court in *Union of India and others Vs. Mohd. Ramzan Khan*, as well as *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, . While considering the scope of the earlier pronouncement in *Union of India and others Vs. Mohd. Ramzan Khan*, and its prospective operation, the Apex Court held thus:

8. The need to make the law laid down in *Union of India and others Vs. Mohd. Ramzan Khan*, prospective in operation requires no emphasis. As pointed out above, in view of the unsettled position of the law on the subject, the authorities/managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the Inquiry Officer to the delinquent employee, and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in courts at different stage. In many of the cases, the misconduct has been grave and in others the denial on the part of the

management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now

would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and

public interests do not, therefore, require that the orders of punishment passed prior to the decision in Union of India and others Vs. Mohd.

Ramzan Khan, without furnishing the report of the Inquiry Officer should be disturbed and the disciplinary proceedings which gave rise to the said

orders should be reopened on that account. Hence, we hold as above.

18. In State Bank of Patiala and others Vs. S.K. Sharma, after analysing the earlier pronouncement including Union of India and others Vs. Mohd.

Ramzan Khan, , Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , Gowtham's Case, it has been held thus:-

32. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved

keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regula-

tions/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the

provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of

prejudice would not be applicable in such a case.

(3) In the case of valuation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and

adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and even

procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except case falling under "no notice", "no oppor-

tunity, and no hearing" categories the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz.,

whether such violation has prejudiced the delinquent officer/employee in

defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self/evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e. whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions. If one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in interest of the person proceeded against or in public interest. If it is found to be the former then it must be seen whether the delinquent officer has waived the Said requirement either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment),

keeping in mind the approach adopted by the Constitution Bench in B. Karunakar case, AIR 1994 SCW 1050. The ultimate test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice-or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action-the Court or the

Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule.,

as explained in the body of the judgment. In other words, a distinction must be made between ""no opportunity"" and no adequate opportunity i.e.,

between ""no notice""/ ""no hearing"" and ""no fair hearing"". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it

void"" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to

law., i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi

alteram partem) has to be examined from the stand point of prejudice: in other words, what the court or tribunal has to see is whether in the totality

of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the order to be made shall depend upon the answer to

the said query. (It is made clear that this principle (No.5) does not apply in the case of rule against bias, the test in which behalf are laid down

elsewhere)

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind

the ultimate and overriding objective underlying the said rule viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this

objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. In such

situations, the court may have to balance public/state interest with the requirement of natural justice and arrive at an appropriate decision.

19. In Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, the same

principle had been reiterated by three judges bench, B.N.Kirpal .J

speaking for the Bench held thus:-

16. In Karunakar's case, AIR 1994 SCW 1050 the question arose whether after the 42nd amendment of the constitution , when the inquiry

officer was other than a disciplinary authority, was the delinquent employee entitled to a copy of the inquiry report of the inquiry officer before the

disciplinary authority takes decision on the question of guilt of the delinquent. It was sought to be contented in the case that has right to show cause

against the penalty proposed to be levied has been taken away by the 42nd amendment, therefore, there was no necessity to give to the delinquent

a copy of the inquiry report before the disciplinary authority took the final decision as to whether to impose a penalty or not. Explaining the effect

of 42nd amendment the Constitution Bench observed that ""All that has happened after the forty-second Amendment of the constitution is to

advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the

disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt

or innocence of the charges"". The court explained that the disciplinary proceedings break into two stages. The first stage ends when the disciplinary

authority arrives at its conclusions on the basis of the evidence. Inquiry Officer's report and the delinquent employee's reply to it. The second

stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. Its is the second right which was taken away

by the 42nd amendment but the right of the charged officer to receive the report of the inquiry officer was an essential part of the first stage itself.

This was expressed by the court in the following words:

The reason why the right to receive the report of the enquiry office is considered an essential part of the reasonable opportunity at the first stage

and also a principle of natural justice is that findings recorded by the enquiry officer from an important material before the disciplinary authority

which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said

findings including the punishment, if any recommended in the report would influence the disciplinary authority while drawing its conclusions. The

findings further might have been recorded without considering the relevant evidence on record, or misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusion. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it.

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its

findings. The report of the inquiry officer containing its findings will have an opportunity to persuade the disciplinary authority to accept the conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has taken a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

20. In the light of the said catena of decisions the contentions raised by the writ petitioner deserve acceptance, it is not the contention of the Special

Government Pleader appearing for the respondents that no prejudice has been estopped by non disclosure of the report. In the present case

obviously the first respondent-disciplinary authority relies upon the enquiry officer's report in toto, accepts the findings reported by the enquiry

officer, finds the delinquent guilty of the charges. This has resulted in definite prejudice and at the earlier opportunity the petitioner had rushed to

this Court. The first respondent has passed the impugned order of removal from service. The non disclosure of the enquiry report has caused

serious prejudice to the writ petitioner and the prejudice stares at the proceedings.

21. Further, it is not in controversy that the, enquiry officer who had submitted his report had recommended or proposed the punishment of

removal from service and the same had been accepted by the first respondent, disciplinary authority. The, statutory rules had merely provided for

the appointment of the enquiry officer, examination of witnesses as well as cross examination and submitting a report. The rule does not

contemplate or provide for enquiry officer proposing or suggesting a punishment in his report.

22. Further on the facts of the present case it is clear that the very recommendation of the punishment by the enquiry officer had been accepted by

the disciplinary authority without further discussion or considering the reasons for imposition of such punishment as seen from the impugned

proceedings and it is not as if the first respondent had applied its mind independently dehors the recommendation as to the punishment suggested

by the enquiry officer as seen from the facts of the case.

23. It is also to be pointed out that on the facts of the present case the enquiry

officer had proposed the penalty of removal from service and the disciplinary authority had without further application of mind had accepted the said proposal. It is well settled that the Enquiry Officer being a fact finding authority and not being a disciplinary authority has no jurisdiction to propose or suggest penalty. Further as of fact it has to be pointed out that the enquiry Officer had reported that eight charges out of 12 charges have been substantiated. But the Disciplinary Authority had proceeded as if all the 12 charges are proved. Thus it is evident that the disciplinary authority had taken a different view with the findings of the enquiry officer at least in respect of four charges and before taking a different view the Disciplinary Authority had not afforded an opportunity. This failure also vitiates the impugned proceedings.

24. In *Punjab National Bank and Others Vs. Sh. Kunj Behari Misra*, , it has been held thus:-

..... When the disciplinary authority differs with the view of the inquiry officer and with the view of the inquiry 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 inquiry officer they are deprived of representing to the disciplinary authority before that authority differs

with the inquiry 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 corded and

punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in *Managing Director, ECIL, Hyderabad, Vs.*

Karunakar, etc. etc., .

This decision squarely applies to the present case.

25. In *State of Gujarat v. R.G. Teradesai*, AIR 1969 SC 1295 it has been held that an enquiry officer need not make any recommendation as to

punishment in his report, but however any recommendation is made as to punishment by the enquiry officer that is likely to affect the mind of the

Disciplinary Authority, a copy of the enquiry report and the recommendation must be disclosed to the petitioner. Thus in the present case not only

the enquiry report has been furnished and an opportunity had not been afforded,

but also the recommendation of punishment had also not been disclosed to the petitioner before imposing the penalty of removal from service.

26. Mr. R. Balasubramanian, learned Special Government Pleader though sought to advance a contention that the rules do not provide for

communication of enquiry report, ultimately had to give up the said stand in view of the binding pronouncements. Hence in the circumstances both

the contentions raised by the counsel for the writ petitioner deserve to be sustained on the facts of the present case.

27. Though Mr. R. Balasubramanian, learned Special Government Pleader contended that the petitioner had rushed to this Court without

exhausting the statutory remedy of appeal, it has been repeatedly held that when there is failure of principles of natural justice, and when the

contention goes not only to the root of the matter but also renders the proceedings a nullity or non est, it is not necessary for the writ petitioner to

prefer an appeal and thereafter approach of this Court. As the failure of principles of natural justice is evident on the face of the record, this Court

is well justified in entertaining the writ petition and deciding the two contentions raised by the writ petitioner.

28. It follows that the impugned proceedings has to be quashed and the first respondent, Disciplinary Authority is directed to proceed further

communicating the enquiry officer's report, inviting objections and thereafter pass orders on merits and according to law after considering the

objections raised by the writ petitioner.

29. Merely because enquiry report had not been communicated, the same will not result in the entire Disciplinary proceedings being quashed, nor it

would enable the writ petitioner to seek for a de nov proceedings. Such a request advanced by the petitioner cannot be sustained.

30. The writ petition is allowed. The impugned proceedings is quashed and the respondents are directed to proceed from the stage of furnishing a

copy of the enquiry officer's report invite objections as to the findings reported by the enquiry officer and thereafter proceed further according to

law. Both the parties shall bear their respective costs. Consequently, the connected W.M.P. is closed.