

(2014) 11 AHC CK 0185

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 53909 of 2003

Madhav Prasad Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Constitution of India, 1950 — Article 20(2), 311(2)

Citation : (2015) 5 ALJ 536 : (2015) 1 UPLBEC 116

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : R.N. Tripathi and Ekta Kaur, Advocates for the Appellant

Judgement

B. Amit Sthalekar, J.—This writ petition has come up before this Court upon remission from the Supreme Court in terms of its judgment and order dated 10.1.2011. Briefly stated the facts of the case are that the petitioner was appointed as Constable in the Civil Police, Aligarh on 1.2.1978. At the time of the incident which is relevant for the purposes of the case he was posted in the Police Station Sikandarpur Vaishya. On 19.10.2001 he is stated to have gone on his official duty to the office of the Circle Officer, City Office, Agra but he fell ill and instead went to his house. According to him he informed the respondents about his illness by U.P.C. dated 25.10.2001 alongwith an application requesting that medical leave be sanctioned to him. He is stated to have recovered his health and thereafter reported for joining his duties on 28.1.2002 alongwith medical certificate as well as fitness certificate and medical prescriptions and receipts of the medical stores. Treating this period from 19.10.2001 to 28.1.2002 as unauthorized absence from service, the petitioner was issued a charge sheet on 23.3.2002. He submitted his reply to the charge sheet on 2.9.2002 denying the charges. The departmental proceedings were held against the petitioner and the enquiry officer submitted his report on 9.10.2002 as the petitioner is stated to have been ill from 11.5.2002 upto 9.6.2002 and again from 11.6.2002 upto 1.8.2002. Two show cause notices were issued to the petitioner both dated

25.10.2002 one with regard to treating the period of unauthorized absence from duty as without pay and the other being a recommendation of the enquiry officer that he be dismissed from service. The petitioner submitted his reply on 16.11.2002 and thereafter two orders both dated 23.11.2002 (Annexure 13 and 14 to the writ petition) were passed; by one order, the period of unauthorized absence of 101 days from duty was treated as leave without pay and by the second order dated 23.11.2002, the punishment of dismissal from service was awarded to the petitioner. The petitioner filed a departmental appeal before the Dy. Inspector General of Police, Agra on 23.12.2002 against the order of dismissal and another appeal dated 24.12.2002 against the order for treating his period of unauthorized absence as leave without pay. The said appeals were dismissed by the appellate authority by the order dated 27.2.2003.

2. Earlier this writ petition had been allowed by order dated 17.9.2008 by a learned Single Judge of this Court on the ground that two punishments on one charge cannot be imposed as the petitioner's services had already been regularized by sanctioning the leave without pay and as such the order of dismissal dated 23.11.2002 cannot be sustained. Aggrieved the State of U.P. filed Special Leave Petition (C) No. 31461 of 2009 on which leave being granted and was converted to Civil Appeal No. 242 of 2011. The Supreme Court set aside the order of the learned Single Judge holding that the doctrine of double jeopardy enshrined in Article 20(2) of the Constitution of India has no application in the event of there being only one punishment awarded to the respondent under the Rules on charges being proved during the course of disciplinary enquiry. Relying on the decision of the Supreme Court reported in (2002) 3 SCC 464 Maan Singh v. Union of India as well as in the case reported in (1969) 3 SLR 274 (SC) State of U.P. v. Hari Har Gopal and others, the Supreme Court held that the conclusion of the learned Single Judge that the delinquent has suffered two punishments cannot be sustained inasmuch as in Hari Har Gopal (supra) it has been held that in the absence of regularization of unauthorized absence it may not be possible for the employer to continue with the disciplinary proceedings as there would be a break in service and thus regularization of such absence even without pay is justified in order to continue with the disciplinary proceedings. The Supreme Court thereupon remitted the matter to the High Court for fresh disposal.

3. I have heard Shri R.N. Tripathi, learned Counsel for the petitioner and Shri Mata Prasad, learned Addl. Chief Standing Counsel for the respondents.

4. Learned Counsel for the petitioner has submitted that the period from 19.10.2001 to 28.1.2002 during which the petitioner was absent from duty cannot be said to be unauthorized absence as such absence was not willful and during this period the petitioner had taken ill and has also submitted his medical certificate. The second limb of the submission of the learned Counsel for the petitioner is that the period of absence had already been regularized by the disciplinary authority by order dated 23.11.2002 and therefore in any case the said period from 19.10.2001 to 28.1.2002 could not have been treated as

unauthorized absence and no charge sheet could have been issued to the petitioner on this ground. The third limb of the submission of the learned Counsel for the petitioner is that in the penalty order the disciplinary authority has referred to the previous proceedings held against the petitioner for unauthorized absence for which punishments were given to the petitioner and therefore the previous proceedings not being the subject matter of the present charge sheet, the same could not have been taken into effect while passing the impugned order dismissing the petitioner from service.

5. So far as the first submission of the learned Counsel for the petitioner that the period of absence cannot be said to be unauthorized, it is noticed that the petitioner had submitted a medical certificate dated Nill copy of which has been filed as Annexure-6 to the writ petition, wherein he is stated to be under treatment of one Dr. Hari Om Sharma, Gautam Budh Nagar from 11.5.2002 to 9.6.2002 in the OPD. The cause of illness is stated to be hepatitis. Certain medical reports and doctor's prescriptions as well as receipts issued by the Chemist have been filed collectively as Annexure-2 to the writ petition. The first document at page 19 of the writ petition is dated 23.11, no year is mentioned nor the cause of ailment is mentioned. The clinical note mentions "Hbs Ag". The next document at page 20 of the writ petition is a medical certificate of the PHC (Primary Health Centre) Jewar, Gautam Budh Nagar dated 4.5.2000 and mentions the illness of the petitioner as Hepatitis. The next document is at page 21 of the writ petition, which is a reference note issued by the K.M. Jain Charitable Hospital, Jewar, G.B. Nagar which only refers the petitioner to a higher Centre for treatment. The date of admission is mentioned as 25.9.2000 and date of discharge as 28.9.2000 and the diagnosis is mentioned as Hepatitis and malaria. The next document is at page 23 of the writ petition, which is a chemist's receipt issued by Jain Medicose which is also dated 28.9.00 mentioning certain medicines sold but to whom is not legible. The next document is at page 24 of the writ petition, which is again a medical receipt of Jain Medicose dated 26.9.00 showing the sale of medicines to Madhav Prasad Sharma. The next document at page 25 of the writ petition is also a receipt issued by the Jain Medicose dated 27.9.00 issued to the petitioner. The next document at page 26 of the writ petition is a pathology report issued by the Department of Pathology & Microbiology, K.M. Jain Charitable Hospital, Jewar which is dated 27.9.2000. The next document at page 27 of the writ petition is also a pathology report of the Department of Pathology & Microbiology, K.M. Jain Charitable Hospital, Jewar which is also dated 27.9.2000. The next document at page 28 of the writ petition is a medical certificate for officers recommended for leave or extension or commutation of leave issued by the Safdarjang Hospital, New Delhi issued to the petitioner which is dated 23.2.2001 which shows the absence from duty as 5 days w.e.f. 29.1.2001. The next document at page 29 of the writ petition is also a medical certificate issued by the Safdarjang Hospital, which is the photo copy of the same document which has been filed at page 28 of the writ petition. The next document at page 30 of the writ petition is a receipt

issued by the South Delhi Medicos dated 29.9.2000 for Rs. 1,198/- for medicines sold. This document does not mention to whom the medicines have been sold. The next document at page 31 is the photo copy of the same receipt which has been filed at page 30 of the writ petition. The next document at page 32 of the writ petition is a receipt No. 41668 issued by the South Delhi Medicos, the date on which is not legible, neither the name of the patient is mentioned therein. The next document at page 33 is again the receipt No. 41118 issued by the South Delhi Medicos which is dated 3.10.2000 in the name of the petitioner. The next document at page 34 of the writ petition is a receipt issued by the Super Bazar Cooperative Store Ltd. Medical and Surgical Equipment Department in the name of Madhav Prasad dated 1.10.2000. The next document at page 35 is a prescription issued by the Doctor of Safdarjang Hospital in the name of the petitioner wherein the date is mentioned as 23/4 but the year is not mentioned. The next document at page 36 of the writ petition is also a prescription issued by the doctor of the Safdarjang Hospital, New Delhi on which the date is mentioned as 23.2.2001. The next document at page 37 of the writ petition is a fitness certificate issued by the Medical Officer, Incharge, PHC Jewar declaring the petitioner fit to resume his duties w.e.f. 23.1.2002 but which mentions that he was under treatment from 25.10.2001 for infective Hepatitis. The next document at page 38 of the writ petition is also a medical certificate issued by the medical officer PHC dated 25.10.2001 advising complete rest for Ninety (90) days w.e.f. 25.10.2001 and rest recommended up to 22.1.2002.

6. Thus from the documents available on record of the writ petition it is noticed that all the documents prior to page 36 of the writ petition and which have been mentioned above are for the period prior to 19.10.2001 and are therefore not relevant for the purposes of the present case, for the reason that the petitioner has been charged for unauthorized absence from duty for the period from 19.10.2001 to 28.1.2002. There are only two documents one dated 25.10.2001 at page 38 of the writ petition by which the petitioner has been advised complete rest for 90 days w.e.f. 25.10.2001 upto 22.1.2002 and the second document is the fitness certificate dated 22.1.2002 issued by the Medical Officer, Jewar declaring the petitioner fit to resume duties w.e.f. 23.1.2002. Therefore it is only these two documents which are relevant for purposes of the present case. The petitioner in paragraph 4 of his writ petition has stated that he informed the respondents about his illness through UPC dated 25.10.2001. The medical certificate as well as fitness certificate are stated to have been submitted by him alongwith his joining on 28.1.2002. So far as communicating information through UPC, the Supreme Court in Gadakh Yashwantrao Kankarrao Vs. E.V. alias Balasaheb Vikhe Patil and Others, has held that the certificate of posting is easy to procure but does not inspire confidence. The relevant paragraph 61 of the said judgment reads as under:

"61. Gadakh's version that he sent the letter dated 16.5.1991 (Ex. Q) under certificate of posting is unbelievable. A certificate of posting is easy to procure and does not inspire confidence. Moreover, the circumstances belie his version.

With his considerable means and past experience of elections, he would have sent such a letter by registered post to ensure its delivery and create cogent evidence of its despatch. Moreover, he would not merely send such a letter but have his denial published in newspapers because of its significance during elections. We have no doubt that Gadakh's conduct belies his belated denial at the trial."

7. Therefore in view of the law enunciated by the Supreme Court the UPC submitted by the petitioner and copy of which has been filed as Annexure-1 to the writ petition cannot be said to inspire confidence with regard to communication of information about the petitioner's illness to the respondents. It is also surprising that so far as the medical certificates filed at pages 37 and 38 of the writ petition are concerned, they have been issued by the Medical Officer at the Primary Health Center, Jewar and if the petitioner was infact suffering from infective Hepatitis as mentioned in the certificate, for which he had earlier been referred by the K.M. Jain Charitable Hospital, Jewar to a higher centre for treatment and the petitioner was shown as undergoing treatment in the Safdarjang Hospital in the OPD Department, why did he not report either to a Government Hospital having a full fledged department for treatment of infective Hepatitis at Aligarh itself and why did he not report to Safdarjang Hospital itself and why was he undergoing treatment at the PHC Jewar which cannot be said to be adequately equipped for long term treatment of infective Hepatitis. Primary Health Centres are essentially established for first aid or elementary primary treatment in the rural areas and therefore these two certificates do not inspire confidence, so far as their veracity and genuineness are concerned.

8. The enquiry officer in his enquiry report has also noted the fact that the petitioner had not submitted any application seeking relief prior to leaving station. The enquiry officer has also noted that the petitioner in his support produced his wife and his nephew as witnesses but did not produce the concerned Medical Officer of the PHC, Jewar, Dr. Praveen Kumar who has issued the certificate so that the genuineness of the certificates could have been established. When the petitioner was asked as to why he has not produced the said Medical Officer, he stated that he will not be able to produce him. This itself makes the conduct of the petitioner extremely suspicious and unreliable inasmuch as the testimony of his wife and nephew cannot be believed as they were interested witnesses and in any case they were not the authority to give expert evidence about the medical condition of the petitioner and it is only the Medical Officer of the PHC Jewar, Dr. Praveen Kumar, who could have verified his own signature on the medical certificates regarding complete bed rest for a period of 90 days from 25.10.2001 to 22.1.2002 and also the fitness certificate dated 22.1.2002.

9. Besides, one more reason why the medical certificate dated 25.10.2001 at page 38 of the writ petition does not inspire confidence is that the Doctor on 25.10.2001 advises the petitioner complete bed rest for 90 days upto 22.1.2001

and on 22.1.2002 at page 37 of the writ petition he issues a fitness certificate declaring that the petitioner is now fit to resume his duties w.e.f. 23.1.2002. The question is how could the Medical Officer know on 25.10.2001 that the petitioner would necessarily be fit precisely on 22.1.2002 itself as even the best of the Doctors cannot predict the medical conditions with such precision as to the point of a specific date as to when a patient can be declared as completely fit from the illness of Hepatitis.

10. For the reasons aforesaid, the two medical certificates dated 22.1.2002 and 25.10.2001 at page 37 and 38 of the writ petition do not inspire confidence at all.

11. So far as the second submission that since the period of absence from duty has been regularized therefore no charge sheet could have been issued to the petitioner for unauthorized absence, this submission, in view of the judgment of the Supreme Court in the case of Maori Singh (supra) and Hari Har Gopal has no legs to stand and infact the remission order dated 10.1.2011 of the Supreme Court has itself rejected this plea of the petitioner.

12. So far as the third submission of the petitioner that the petitioner's earlier punishment could not have been taken into consideration, the petitioner has placed reliance upon the decision of the Supreme Court in the case reported in State of Mysore Vs. K. Manche Gowda, and the judgment of the learned Single Judge of this Court report in Jiya Lal Pandey Vs. Commandant, R.P.F., N.R., Lucknow and Others, .

13. In the case of K. Manche Gowda (supra) the Constitution Bench of the Supreme Court in paragraph 7 has held that a Government servant must have reasonable opportunity not only to prove that he is not guilty of the charges levelled against him but also to establish that the punishment proposed to be imposed is either not called for or excessive. If the proposed punishment was mainly passed upon the previous record of a Government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the Government servant. It would be not necessary to suggest that every Government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew his past records.

Paragraph 7 of the judgment reads as under:

"Under Article 311(2) of the Constitution, as interpreted by this Court, a Government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the Government servant must be told of the grounds on which it is proposed to take such action: see the decision of this Court in the State of Assam and

Another Vs. Bimal Kumar Pandit, If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment: he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment was mainly based upon the previous record of a Government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the Government servant. It would be no answer to suggest that every Government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. This contention misses the real point, namely, that what the Government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer (1) [1964] 2 S.C.R. 1. 548 for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. Even if the authority concerned took into consideration only the facts for which he was punished, it would be open to him to put forward before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that subsequent to the punishments he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his explanation would be acceptable, but whether he has been given an Opportunity to give his explanation. We cannot accept the doctrine of "presumptive knowledge" or that of "purposeless enquiry", as their acceptance will be subversive of the principle of "reasonable opportunity". We, therefore, hold that it is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation."

14. In case of Jiya Lal Pandey (supra) the learned Counsel appearing for the respondent department sought to justify the order of penalty by submitting that the petitioner was earlier punished by the superior officer. The learned single Judge however held that the submission of the learned Counsel for the respondents is a circumstance to be considered in awarding punishment but cannot be a ground in support of proof of charge against the petitioner.

15. So far as the judgment in the case of K. Manche Gowda (supra) is concerned,

the said judgment was prior in point of time to the judgment of the Supreme Court in the case of Union of India and others Vs. Mohd. Ramzan Khan, wherein the Supreme Court propounded the principle that after the enquiry officer submits its report the disciplinary authority before passing the order of punishment must communicate the enquiry report to the delinquent employee and call for his explanation on the same and only thereafter, after considering the reply submitted by the delinquent employee, if any, proceed to pass the penalty order.

16. In Mohd. Yunus Khan Vs. State of U.P. and Others, , in paragraph 34 and 35 the Supreme Court has considering K. Manche Gowda (supra) held that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof. Paragraphs 34 and 35 read as under:

"34. The Courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he should be informed of the same at the stage of the show-cause notice, before imposing the punishment.

35. This Court in Union of India v. Bishamber Das Dogra considered the earlier judgments of this Court in State of Assam v. Bimal Kumar Pandit, India Marine Service (P) Ltd. v. Workmen, State of Mysore v. K. Manche Gowda, Colour-Chem Ltd. v. A.L. Alaspurkar, DG, RPF v. Sai Babu, Bharat Forge Co. Ltd. v. Uttam Manohar Nakate and Govt. of A.P. v. Mohd. Taher Ali and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the delinquent for "adding the weight to the decision of imposing the punishment if the fact of the case so required."

17. In the present case it is not in dispute between the parties that the copy of the enquiry report dated 9.10.2002 was communicated to the petitioner on 25.10.2002 (Annexure-10) before the disciplinary authority proceeded to pass the penalty order and that the petitioner had also submitted his reply to the show cause notice on 16.11.2002 as admitted by him in dates and events chart of the writ petition at item No. 11 and which is also referred to and considered in the order of the disciplinary authority. Therefore in my opinion the judgment of the Constitution Bench in K. Manche Gowda does not favour the petitioner at all.

18. In the case of Mohd. Ramzan Khan (supra) the Supreme Court has held that even though the second stage of the enquiry in Article 311(2) of the Constitution has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of

the charges are established and holding the delinquent guilty of such charges.

19. In the case of Jiya Lal Pandey (supra) the learned Single Judge of the High Court held that the submission of the learned Counsel for the respondents that the petitioner was earlier punished seven times by the Superior Officer is a circumstance to be considered in awarding punishment, but cannot be a ground in support of proof of charge against the petitioner. Para 12 of the judgment reads as follows:

"The submission of Sri Lalji Sinha, learned Counsel for the respondents, that the petitioner was earlier punished seven times by the superior officer is a circumstance to be considered in awarding punishment, but cannot be a ground in support of proof of charge against the petitioner in the instant case. In this case, the charge against the petitioner was not substantially proved by any evidence or material on record. In the circumstances, the order of punishment suffers from gross errors of law."

20. In the present case it is to be noted that the enquiry officer at the conclusion of the enquiry proceedings has observed that earlier also the petitioner was punished 22 times for unauthorised absent from duty a total of 2830 days which was treated as leave without pay and in 1985 for one year and in 1986, 1996 and 2001 for the same he was awarded punishment of reduction in the scale. It is only thereafter that the enquiry officer has recommended to the competent authority that the petitioner is not fit for retention in service and should be dismissed from service. This reference to the earlier punishments given to the petitioner, it is to be noted not the foundation for arriving at the findings of guilt of the petitioner with respect to the present charge sheet but rather it is the circumstance for awarding punishment to the petitioner.

21. Reliance has also been made to Regulation 14 of the U.P. Police Officer of Subordinate Ranks (Punishment and Appeal) Rules, 1991. Sub-section 1 of Regulation 14 provides that subject to the provisions contained in these Rules, the departmental proceedings in the cases referred to in sub-Rule (1) of Rule 5 against the Police Officers may be conducted in accordance with the procedure laid down in Appendix (1) Regulation 14(1) reads as under:

"14. Procedure for conducting departmental proceedings.--(1) subject to the provisions contained in these Rules, the departmental proceedings in the cases referred to in sub-Rule (1) of Rule 5 against the Police Officers may be conducted in accordance with the procedure laid down in Appendix (1)."

Appendix-I reads under:-

"PROCEDURE RELATING TO THE CONDUCT OF DEPARTMENTAL PROCEEDINGS AGAINST POLICE OFFICER

[(See RULE 14(1))

Upon institution of a formal enquiry such Police Officer against whom the inquiry

has been instituted shall be informed in writing of the grounds on which was proposed to take action and shall be afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be used in the form of a definite charge or charges as in Form 1 appended to these Rules which shall be communicated to the charged Police Officer and which shall be so clear and precise as to give sufficient indication to the charged Police Officer, of the facts and circumstances against him. He shall be required, within a reasonable time, to put in, in a written statement of his defence and to state, whether he desires to be heard in person. If he so desires, or if the Inquiry Officer so directs an oral enquiry shall be held in respect of such of the allegation as are not admitted. At that enquiry such oral evidence will be recorded as the Inquiry Officer considers necessary. The charge Police Officer shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called as he may wish:

Provided that the Inquiry Officer may for sufficient reasons to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the finding and the ground thereof. The Inquiry Officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged Police Officer."

22. Thus from a perusal of the provisions of Appendix (1) it would be clear that the enquiry officer has been empowered to make his own recommendation regarding punishment to be imposed on the charged Police Officer.

23. In the present case merely because the Inquiry Officer has not recorded his opinion as to the punishment required to be imposed against the petitioner on a separate sheets, in my opinion, would not vitiate the enquiry proceedings or the order of the disciplinary authority who has imposed the punishment after a detailed discussion of the entire facts and merits of the case of the petitioner and therefore, it cannot be said that the order of the disciplinary authority is without application of mind.

24. In quite similar circumstances in State of Gujarat Vs. R.G. Teredesai and Another, , the Supreme Court in the facts of that case has held that though the enquiry officer is under no obligation or duty to make any recommendations in the matter of punishment to be imposed on the government servant against whom the departmental enquiry is held, and his function merely is to conduct the enquiry in accordance with law and to submit the record along with his findings or conclusions on the various charges but if the Enquiry Officer proceeds to recommend that a particular penalty or punishment should be imposed in the light of his findings or conclusions since such recommendations form part of the record and constitute appropriate materiel for consideration of the Government, the requirement of a reasonable opportunity would not be satisfied unless the entire report of the Enquiry Officer including his views in the matter of punishment are disclosed to the delinquent servant. Paragraph 5 of the said

judgment reads as under:

5. In *Union of India v. H.C. Goel*, it has been observed that unless the statutory rules or the specific order under which an officer is appointed to hold an inquiry so requires the Enquiry Officer need not make any recommendations as to the punishment which may be imposed on the delinquent officer in case the charges framed against him are held proved at the enquiry; if however, the Enquiry Officer makes any recommendations the said recommendations, like his findings on the merits, are intended merely to supply appropriate material for the consideration of the Government. Neither the findings, nor the recommendations are binding on the Government. Now although it is correct that the Enquiry Officer is under no obligation or duty to make any recommendations in the matter of punishment to be imposed on the servant against whom the departmental enquiry is held, and his function merely is to conduct the enquiry in accordance with law and to submit the record along with his findings or conclusions on the various charges which have been preferred against the delinquent servant. But if the Enquiry Officer proceeds to recommend that a particular penalty or punishment should be imposed in the light of his findings or conclusions the question is whether the officer concerned should be informed about his recommendations. In other words since such recommendations form part of the record and constitute appropriate material for consideration of the Government it would be essential that that material should not be withheld from him so that he could, while showing cause against the proposed, punishment, make a proper representation. The entire object of supplying a copy of the report of the Enquiry Officer is to enable the delinquent officer to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved the punishment proposed to be inflicted is unduly severe. If the Enquiry Officer has also made recommendations in the matter of punishment that is likely to affect the mind of the punishing authority even with regard to penalty or punishment to be imposed on such officer. The requirement of a reasonable opportunity, therefore, would not be satisfied unless the entire report of the Enquiry Officer including his views in the matter of punishment are disclosed to the delinquent servant.

25. In *Maharashtra State Seeds Corpn. Ltd Vs. Haridas and Another*, , the Supreme Court on the facts of the case held that although the enquiry officer has no jurisdiction to recommend any punishment to be imposed on the respondent by the disciplinary authority, nevertheless second show cause notice having been given to the delinquent officer the principles of natural justice admittedly had been complied with. Paragraph 21 of the judgment reads as under:

"21. As the Enquiry Officer had no jurisdiction to recommend any punishment to be imposed on the respondent by the disciplinary authority, he although acted thereupon at the first instance, could have corrected his mistake as the same was apparent on the face of the record. He, therefore, did not commit any illegality in issuing the second show cause notice as Enquiry Officer had no

jurisdiction in that behalf. See M. Ahammedkutty Haji Vs. Tahsildar, Kozhikode, Kerala and Others, . Mistake furthermore, may either be of law or fact. By reason of mistake on the part of the Enquiry Officer, the respondent could not have been inflicted with a minor penalty although he deserved a major penalty. If in law the quantum of punishment to be imposed upon a delinquent officer is within the exclusive domain of the disciplinary authority, unless otherwise delegated to any other authority, he alone could exercise the said jurisdiction and determine the same having regard the nature and guilty of the misconduct on the part of the delinquent officer as the Enquiry Officer or any other authority had no jurisdiction in relation thereto. The matter might have been different if prior to the imposition of penalty of dismissal from service against the 1st respondent, no opportunity of hearing had been given to him. Admittedly the second show cause notice was issued to him and he showed cause. It is also not contended that the order passed by the disciplinary authority suffers from the vice of non-application of mind. The principles of natural justice admittedly have been complied with."

26. In the present case as already noted above after the enquiry officer had submitted his report, a show cause notice had been given to the petitioner and a copy of the enquiry report had also been provided to the petitioner, to which the petitioner also submitted his reply which has been considered by the disciplinary authority in his order and therefore on that ground also the disciplinary proceedings cannot be said to be vitiated.

27. A perusal of the two orders of the disciplinary authority clearly demonstrate that he has applied his mind to the entire facts of the case and the evidence on record and it is only thereafter that a conscious decision has been taken by the disciplinary authority to treat the period of unauthorised absence from duty as leave without pay and that on the material on record the petitioner should be dismissed from service. The appellate order is also a detailed, well reasoned and speaking order.

28. In the facts and circumstances of the case, I do not find any illegality or infirmity in the impugned orders or in the enquiry proceedings. The writ petition fails and is accordingly dismissed.