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**(2010) 01 AHC CK 0157**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 2594 (SS) of 1994**

**Maresh Kumar Sharma**

**APPELLANT**

**Vs**

**Government of India and others**

**RESPONDENT**

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**Date of Decision : 05-01-2010**

**Acts Referred:**

Railway Protection Force Rules, 1987 — Rule 153, 219(1)  
Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 11

**Citation : (2010) 01 AHC CK 0157**

**Hon'ble Judges : Rajiv Sharma, J**

**Final Decision : Allowed**

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## **Judgement**

Rajiv Sharma, J.—Heard Sri Qamrul Hasan, learned Counsel for the petitioner and Sri Pratul Kumar Srivastava appearing for the Railways.

2. The facts as averred in the writ petition are that the petitioner was initially appointed on 871976 on the post of SubInspector after being found fit by the Railway Service Commission. On account of his good work and conduct he was promoted on the post of Inspector in year 1981 by the competent authority. While the petitioner was posted as Post Commander, Hardoi, a departmental enquiry was ordered for failure to exercise control over SubInspectors and other staff such as S/Shri B. S. Sharma, Trilok Nath, Sub Inspector Jagdish Mishra, ASI and Constable Brij Kumar Tripathi. After the enquiry, the Chief Security Commissioner passed the order dated 3031990, providing therein that the petitioner should be compulsorily retired from the date of receipt of this order. He also observed in the said order that the allegation of lack of control has been proved against him. Against the said order, the petitioner filed an appeal on 2841990 which was rejected by the Director General, RPF by the order dated 5101990. Aggrieved by the aforesaid orders, the petitioner filed a Revision Application as provided under Rule 219 (1) of the RPF Rules, 1987 before the Ministry of Railways, Government of India. In appeal as well as in the Revision, the appellant took specific grounds that inspite of repeated request the Inquiry Officer was not changed though the petitioner showed the reasons for bias and

prejudice mind of the Enquiry Officer against the petitioner. The Enquiry Officer was hell bent to harm the petitioner any how. Further, the copy of the enquiry report was not furnished to the petitioner which is against the principles of natural justice. Apart from other legal grounds.

3. The Revision Application preferred by the petitioner was not decided by the authority concerned inspite of considerable lapse of time as such the petitioner filed a Writ Petition No. 4306 (SS) of 1993. This Court by an order dated 2151993 while disposing of the writ petition directed the authority concerned to decide the revision expeditiously.

4. Aggrieved by the aforesaid orders and the inaction on the part of the authority concerned, the petitioner has filed the instant writ petition.

5. Learned Counsel for the petitioner harassed that neither procedure for giving three months notice on an incumbent was followed nor show cause notice which is prerequisite for imposition of penalty of holding DAR inquiries in terms of Railway Letter No. E/D A/87RG6151 dated 10111989 issued by General Manager. The natural justice also demands that the delinquent should be served copy of the report, on which reliance is placed by the disciplinary authority. Rule 11 of the Railway Servants Disciplinary and Appeal Rules 1968, no order imposing any penalty shall be made except after informing the Railway servant in writing of the proposal to the action against him and the imputation of the misconduct or misbehavior on which it is proposed to be taken.

6. While attacking the impugned orders on various grounds, learned Counsel also submitted that the SubInspectors, against whom serious charges were levelled in the disciplinary proceedings, have filed the writ petitions before this Court and the major punishment inflicted upon them had already been set aside by this Court in Writ Petition No. 3724 of 1990; Trilok Nath v. Union of India, Writ Petition No. 3732 of 1990; Bishan Swaroop Sharma v. Union of India and others, decided on 1691991. The said judgment has attained finality as the petitioners of the abovereferred writ petitions were reinstated in service. It is stated by the learned Counsel for the petitioner that the action was taken against the petitioner on the ground that he failed to exercise control over his subordinates whereas there were serious charges against the subordinate officers and they were also removed from service but their punishment order was found illegal as the copy of the inquiry report was not furnished. The case of the present petitioner is identical and as such the petitioner is also entitled for the same benefit.

7. Learned Counsel appearing for the respondents submitted that the petitioner was issued major penalty charge sheet under Rule 153 of the RPF Rules, 1987 as he failed to exercise control over his subordinate Staff and as a result thereof committed gross misconduct and negligence in discharge of duty. While defending the impugned orders, learned Counsel for the respondents candidly admitted that the copy of the enquiry report was not furnished to the petitioner. He also did not

dispute the assertions advanced by the learned Counsel for the petitioner with regard to quashing of the punishment order of removal vide judgment and order dated 16th September, 1991. However, he submitted that the opposite parties may be given liberty to proceed afresh in respect of the charge levelled against him.

8. The main thrust of the argument of the learned Counsel for the petitioner is that the disciplinary proceedings and the consequent punishment order are vitiated on account of non observance of the principles of natural justice as the copy of the enquiry report was not furnished to the delinquent. On behalf of the respondent it has been admitted that the copy of the enquiry report was supplied to the petitioner. At the out set, it may be mentioned that the petitioner has been punished for the acts and omissions committed by the subordinate Sub Inspectors. The punishment orders of the said SubInspectors have already been quashed by this Court, as indicated above.

9. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

10. Besides, natural justice is an inseparable ingredient of fairness and reasonableness. It is even said that the principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary.

11. The Hon''ble Supreme Court in umpteen cases has reiterated that a person who is put to any harm, he shall first be afforded adequate opportunity of showing cause. In O.K. Yadav v. J.M.A. Industries; (1993) 3 SCC 259, the Supreme Court while laying emphasis on affording opportunity by the authority which has the power to take punitive or damaging action held that orders affecting the civil rights or resulting civil consequences would have to answer the requirement of Article 14. The Hon''ble Apex Court concluded as under :

"The procedure prescribed for depriving a person of livelihood would be liable to be tested on the anvil of Article 14. The procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. Article 14 has a pervasive procedural potency and versatile quality, equalitarian in its soul and principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable, and not arbitrary, fanciful or oppressive."

12. At this juncture it would be relevant to produce relevant portion of paragraph 34 of the judgment rendered in State Bank of Patiala and others v. S.K. Sharma, JT 1996 (3) SC 722, the Hon''ble Apex Court has dealt with the principles of natural justice and the result if it is not followed :

"Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justiceor, 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 standpoint 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 orders 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.)

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."

13. From the above, it clearly comes out that when report of inquiry is relied upon by the authority, it should be supplied to the person, who is effected by the same. Natural justice demands that delinquent be served with the copy of the enquiry report only for the reason that he may have some opportunity to approach the punishing authority not to pass any such order for the reasons indicated therein. Therefore, it was incumbent upon the authority concerned to supply copy of the enquiry report to the petitioner so that he may be able to give effective reply to the charges levelled against him, before the impugned order of punishment was to be passed. It may be clarified that the Standing Counsel has not able to justify that nonsupply of enquiry report or has not caused any prejudice to the petitioner. Thus failure amounts to violation of Rules of natural justice.

14. For the reasons aforesaid and in view of the fact that in identical matter of the same department, this Court has quashed the punishment order on the ground of violation of the principles of natural justice and the judgment of this Court has attained finality. Here also it is an undisputed fact that the copy of the inquiry report was not furnished to the petitioner. Therefore, without entering into other grounds as advanced by the learned Counsel for the petitioner, and the facts being identical, the petitioner is also entitled for the same benefit. Consequently, the impugned orders dated 30th March, 1990 passed by the Inspector General, order dated 9th April, 1990 issued by the Divisional Security

Commissioner and the appellate order dated 5th October, 1990 are hereby quashed. The petitioner shall be treated to be in service till 30th June, 1993 i.e. the age of superannuation and shall be entitled for consequential benefits, which shall be paid to the petitioner within a maximum period of four months. It may be added that the learned Counsel for the respondents has insisted that the liberty may be given to the respondents to proceed afresh in the departmental enquiry but in my view no useful purpose would be served as the petitioner had already attained the age of superannuation. However, as prayed the liberty is given to the respondents, who may proceed strictly in accordance with law.

15. The writ petitions stands allowed in above terms.