

(2008) 10 MAD CK 0051

In the Madras High Court

Case No : Writ Petition No. 1587 of 2001

M.G. Vajravelu

APPELLANT

Vs

The Chief Engineer, (Distribution) Coimbatore Region and The
Superintending Engineer Coimbatore Electricity Distribution

RESPONDENT

Date of Decision : 29-10-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226, 311(2)

State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 50(3)

Citation : (2008) 10 MAD CK 0051

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : D. Hariparanthaman, for the Appellant; B. Sekar, (TNEB), for the Respondent

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

2. It has been stated that the petitioner is working as an Assistant Executive Engineer, Moyar Camp, Niligris Electricity Distribution Circle, under

the Tamilnadu Electricity Board. When the petitioner was working as an Assistant Engineer, Palathurai, from 22.2.93 to 26.8.95, a charge memo,

dated 27.2.96, had been issued by the second respondent, alleging that he had gone to the farm house of one Chinna Kuppammal of chockanur

Village, along with one Santha Kumar, the Commercial Assistant, during the month of February, 1995 and demanded a bribe of Rs. 1500/- for

speeding up the extension work for effecting an agricultural service connection. It was further alleged that Chinnakuppammal, along with her son

Selvaraj, had visited Palathurai Section Office after three days and gave Rs. 200/- to the petitioner as bribe, constituting a grave misconduct, as

per the Regulations of the Tamil Nadu Electricity Board. The petitioner was asked to submit an explanation for the charges levelled against him.

Thereafter, the petitioner had submitted a letter to the second respondent, on 13.5.96, requesting the second respondent furnish a copy of the

complaint given by Chinnakuppammal, and a copy of the report of the Vigilance Inspector and the statement given by the Commercial Assistant,

Santha Kumar. The second respondent had sent a letter, dated 16.7.96, stating that a copy of the complaint and the statement given by Santha

Kumar could be verified by the petitioner at the time of the enquiry and that the copy of the vigilance report cannot be given to him.

3. It has been further stated that without receiving the explanation from the petitioner and without furnishing the documents requested by him, the

second respondent had ordered for an enquiry, vide letter, dated 20.7.96. The petitioner had submitted his defence statement, on 7.11.96, denying

the charges. Thereafter, an enquiry had been held and a copy of the report of the Enquiry Officer was forwarded to the second respondent. After

more than seven and half months, the second respondent had sent to the petitioner a memo, dated 19.6.97, enclosing a copy of the report of the

Enquiry Officer, disagreeing with the findings of the Enquiry Officer and holding that the charges levelled against the petitioner were proved. The

petitioner was called upon to submit his explanation, within seven days from the date of receipt of the memo. The petitioner had submitted his

explanation, on 5.7.97. The second respondent, by an order, dated 20.9.97, had imposed the punishment of `Postponement of his next increment

for one year, with cumulative effect, including the period, if any, spent on leave". As against the final order passed by the second respondent, the

petitioner had preferred an appeal to the first respondent, on 30.12.97. The first respondent, without assigning any reason, rejected the appeal by

an order, dated 19.2.98, which was communicated to the petitioner, on 29.5.99. Aggrieved by the orders of the second respondent dated 20.9.97

and the order of the first respondent, dated 19.2.98, the petitioner has preferred the present writ petition, under Article 226 of the Constitution of

India.

4. A counter affidavit has been filed on behalf of the respondents denying the averments made by the petitioner. It has been stated that the

petitioner has filed the writ petition challenging the order of the first respondent, dated 19.2.98, and the order of the second respondent, dated 20.9.97, belatedly. It has been further stated that necessary action has been taken against the petitioner for receiving a bribe for effecting an agricultural service connection in favour of one Chinnakuppammal, the Wife of Venkatachala Gounder. It has been further submitted that the investigation reports of the investigating agency do not form part of the records of the disciplinary proceedings. However, the copies of the statements given by the parties were shown to the petitioner at the time of the oral enquiry conducted on 18.9.96 and 30.10.96. Even though the enquiry officer had found that the charges levelled against the petitioner were not proved beyond doubt, the second respondent disciplinary authority had disagreed with the findings of the enquiry officer, on various grounds. The second respondent had found that during the enquiry, Chinnakuppammal and her son V. Selvaraj, had deposed that they gave Rs. 200 as bribe to the petitioner for effecting an agricultural service connection in the name of Chinnakuppammal. However, they could not specify the correct date and month when the petitioner had visited their farm house. Further, they could not say the registration number of the motorcycle in which the petitioner has visited the farm house, nor could they remember the number of the currency notes which were given to the petitioner as bribe, since they were illiterate. The second respondent had come to the conclusion that there were sufficient reasons to believe that the petitioner could have visited the farm house of Chinnakuppammal prior to 8.2.95 or after 15.2.95.

5. It has been further stated that only on application of mind and on considering the gravity of the misconduct committed by the petitioner, the second respondent had come to the conclusion that the petitioner should be imposed with the punishment of stoppage of increment for one year, with cumulative effect. There is no violation of the principles of natural justice, as contended by the petitioner. The enquiry was conducted following the procedures established by the rules and the regulations of the Tamilnadu Electricity Board. The petitioner was given sufficient opportunity to defend himself during the enquiry. The first respondent Appellate Authority, had confirmed the order passed by the second respondent, since he

found no reason to interfere with the punishment imposed on the petitioner. Therefore, the writ petition is liable to be dismissed.

6. The learned Counsel appearing on behalf of the petitioner had submitted that the impugned order of the second respondent, dated 20.9.97,

imposing the punishment of stoppage of increment for one year, with cumulative effect, on the petitioner and the order of the first respondent, dated

19.2.98, confirming the said order of punishment are arbitrary, illegal and contrary to the law laid down by the Supreme Court. The impugned

orders are in violation of the principles enshrined in Articles 14 and 21 of the Constitution of India. The disciplinary authority, before disagreeing

with the findings recorded by the enquiry officer, ought to have given an opportunity to the petitioner to represent his case on the findings of the

Enquiry Officer.

7. It has been further stated that the impugned order of punishment issued by the second respondent is vitiated since the principles of natural justice

have been violated. The petitioner was not given the copy of the complaint made by Chinnakkuppammal, which is the basis for the departmental

enquiry. The second respondent, in his letter, dated 16.7.96, had informed the petitioner that the documents required by him can be verified during

the enquiry. However, during the enquiry, no documents were furnished to the petitioner as seen from the Enquiry Officer's report, dated 9.4.97.

The enquiry officer has recorded that the documents were not available in the case filed and therefore, they could not be shown to the petitioner. It

was also stated that Chinnakuppammal had met the petitioner in the Tamil month of `Masi'', having corresponding english calendar dates as

13.2.95 to 14.3.95. However, it could be seen from the records that the petitioner had joined duty only on 23.3.95, after having been on medical

leave from 9.2.95 to 22.3.95, due to an accident. The enquiry officer had given a categorical finding that the petitioner did not visit the farm house

during the month of February, 1995 and that the petitioner had demanded bribe from Chinnakuppammal has not been substantiated. The second

respondent had issued a memo, dated 19.6.97, merely on certain assumptions and he had imposed the punishment of stoppage of increment for

one year, with cumulative effect, without having sufficient evidence on record to prove the allegations made against the petitioner. Therefore, the

conclusion arrived at by the second respondent is without evidence and perverse.

8. The Enquiry Officer had given a clear finding that the evidence adduced by the prosecution witnesses, with regard to the date, month and the year of the delinquent's visit to the farm house is contrary in nature. The Enquiry Officer had further noted that the commercial Assistant Shantha Kumar had deposed that he did not visit the farm house of Chinnakuppammal, along with the petitioner. The copy of the complaint said to have been lodged by Chinnakuppammal had not been furnished to the petitioner at any stage of the proceedings, in spite of the specific request made by the petitioner. Since the relevant records relating to the enquiry was not furnished to the petitioner, the petitioner has not been in a position to put forth his case, effectively, during the enquiry. Hence, the entire proceedings against the petitioner is vitiated. In such circumstances, the impugned orders of the first and second respondents are liable to be set aside.

9. The learned Counsel for the petitioner had further submitted that before the final order was passed by the second respondent, imposing the punishment of stoppage of increment for one year, with cumulative effect, a show cause notice ought to have been issued to the petitioner, giving him an opportunity to put forth his case. However, since the second respondent, had not followed the said procedure, his order, dated 20.9.97, imposing the punishment on the petitioner, cannot be sustained in the eye of law. The second show cause notice ought to have been issued to the petitioner by the second respondent before he had made up his mind to impose the punishment of stoppage of increment on the petitioner. It would not be sufficient for the second respondent to issue the show cause notice after he had come to the final conclusion that the petitioner is guilty of the charges levelled against him. Unless, sufficient materials were available before the second respondent to rebut the findings of the Enquiry Officer, the second respondent could not have passed the impugned order, imposing the punishment on the petitioner, merely, on certain presumptions and assumptions. No additional materials were available before the second respondent for him to differ from the findings of the enquiry officer. Further, the first respondent appellate authority had confirmed the order of the second respondent, without giving reasons for his decision. The order of the appellate authority, dated 19.2.98, is a non-speaking order and therefore, it is

liable to be set aside.

10. The learned Counsel for the petitioner had relied on the following decisions in support of his contentions:

10.1. In Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , the Supreme Court had held as follows:

15. At this stage it will be appropriate to refer to the case of State of Assam and Another Vs. Bimal Kumar Pandit, decided by a Constitution

Bench of this Court. A question arose regarding the contents of the second show cause notice when the Government accepts, rejects or partly

accepts or partly rejects the findings of the Enquiry Officer. Even though that case relates to Article 311(2) before its deletion by the 42nd

Amendment, the principle laid down therein, at page 10 of the report, when read along with the decision of this Court in Karunkar's case (supra)

will clearly apply here. The Court observed as follows:

We ought, however, to add that if the dismissing authority differs from the findings recorded in the enquiry report, it is necessary that its provisional

conclusions in that behalf should be specified in the second notice. It may be that the report makes findings in favour of the delinquent officer, but

the dismissing authority disagrees with the said findings and proceeds to issue the notice under Article 311(2). In such a case, it would obviously be

necessary that the dismissing authority should expressly state that it differs from the findings recorded in the enquiry report and then indicate the

nature of the action proposed to be taken against the delinquent officer. Without such an express statement in the notice, it would be impossible to

issue the notice at all. There may also be cases in which the enquiry report may make findings in favour of the delinquent officer on some issues and

against him on some other issues. That is precisely what has happened in the present case. If the dismissing authority accepts all the said findings in

their entirety, it is another matter; but if the dismissing authority accepts the findings recorded against the delinquent officer and differs from some or

all of those recorded in his favour and proceeds to specify the nature of the action proposed to be taken on its own conclusions, it would be

necessary that the said conclusions should be briefly indicated in the notice. In this category of cases, the action proposed to be taken could be

based not only on the findings recorded against the delinquent officer in the

enquiry report, but also on the view of the dismissing authority that the other charges not held proved by the enquiring officer are, according to the dismissing authority, proved. In order to give the delinquent officer a reasonable opportunity to show cause under Article 311(2), it is essential that the conclusions provisionally reached by the dismissing authority must, in such cases, be specified in the notice. But whether the dismissing authority purports to proceed to issue the notice against the delinquent officer after accepting the enquiry report in its entirety, it cannot be said that it is essential that the dismissing authority must say that it has so accepted the report. As we have already indicated, it is desirable that even in such cases a statement to that effect should be made. But we do not think that the words used in Article 311(2) justify the view that the failure to make such a statement amounts to contravention of Article 311(2). In dealing with this point, we must bear in mind the fact that a copy of the enquiry report had been enclosed with the notice, and so, reading the notice in common sense manner, the respondent could not have found any difficulty in realising that the action proposed to be taken against him proceeded on the basis that the appellants had accepted the conclusions of the enquiring officer in their entirety.

...

17. These observations are clearly in tune with the observations in Bimal Kumar Pandit's case (*supra*) quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar's case (*supra*) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved

then that report has to be given to the delinquent officer who can make representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the finding of the disciplinary authority.

18. Under Regulation 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs 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 the final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case (supra).

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 to be

conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take 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.

10.2. In (2003) 1 L.L.N 839 (State Bank of India v. K.P. Narayanan Kutty), it has been held as follows:

4. When asked, learned senior counsel for the appellants submitted that Regulation 7(2) of the Punjab National Bank Officer Employees"

(Discipline and Appeal) Regulations, 1977, referred to in the Punjab National Bank case is *pari materia* to the Rule 50(3)(ii) of State Bank of India

Supervising Staff) Service Rules governing the facts of the present case with which we are concerned. The contentions advanced by the learned

senior counsel for the appellant before us are almost similar to the contentions advanced in the case of Punjab National Bank aforementioned. In

the case of Punjab National Bank also similar contentions were urged that the Punjab National Bank Officer Employees" (Discipline and Appeal)

Regulations, 1977, did not require that an opportunity of being heard be given to the delinquent officers when the disciplinary authority disagreed

with the finding of the enquiring authority; once the enquiring authority had given hearing to them and if the decision was before Ramzan Khan case

1991 (1) LLN 380 (vide supra), the disciplinary authority was not required to give the copy of the enquiry report to the delinquent officer. In that

view, it was not necessary to give a hearing to the case where disciplinary authority differs from the enquiry report. A Bench of learned three-

Judges in the said case has specifically noticed in Para.11 as to the controversy that was required to be resolved in that case. The controversy in

that case also related to the case where the disciplinary authority disagreed with the findings of the enquiring authority and Regulation 7(2) does not

expressly state that when the disciplinary authority disagrees with the findings of the enquiring authority an opportunity is to be given. After referring

to various decisions including the decisions relied on behalf of the bank, this Court has clearly held that where the disciplinary authority disagrees

with the report of the enquiring authority in regard to certain charges, providing of an opportunity is necessary to satisfy the principle of natural

Justice. Paragraph 19 of the said judgment reads thus:

... 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 enquiry 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 enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to

persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already

observed, require the authority which has to take 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.

....

6. It was also contended on behalf of the appellants that the High Court committed an error in setting aside the order of dismissal when it was not

shown that any prejudice was caused to the respondent by not giving an opportunity to him by the disciplinary authority. In this regard the learned

Counsel cited a decision of this Court in *Union Bank of India v. Vishwa Mohan* 1998 3 LLN 90. As already noticed above, before the High Court

both the parties concentrated only on one point, namely, the effect of not providing an opportunity by the disciplinary authority when the

disciplinary authority disagreed with some finding of the enquiry officer. It was also not shown by the appellants before the High Court that no

prejudice was caused to the respondent in the absence of providing any opportunity by the disciplinary authority. The aforementioned case of

Vishwa Mohan is of no help to the appellants. The learned Counsel invited our attention to Para.9 of the said judgment. As is evident from the said

paragraph this Court having regard to the facts of that case, taking note of the various acts of serious misconduct, found that no prejudice was

caused to the delinquent officer. In Para, 19 of the judgment in *Punjab National*

Bank case, extracted above, when it is clearly stated that the principles of natural justice have to be read into Regulation 7(2) (Rule 50(3)(ii) of State Bank of India (Supervising Staff) Service Rules, is identical in terms applicable to the present case) and the delinquent officer will have to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer, we find it difficult to accept the contention advanced on behalf of the appellants that unless. It is shown that some prejudice was caused to the respondent, the order of dismissal could not be set aside by the High Court.

10.3. In *Director (Marketing) Indian Oil Corpn. Ltd. and Another Vs. Santosh Kumar*, it has been held as follows:

It is seen from the impugned order passed by the High Court that the Judges were satisfied that no reasons whatever had been recorded in either

not accepting the issues raised by the respondent in response to the show cause notice nor had the claim of the respondent made in the various

grounds raised by him in his Appeal been considered. The learned Judge of the Division Bench felt that the orders of punishment dated

30.12.1999 as well as the order dated 15.5.2000 by which the respondent's Appeal had been rejected are cryptic and non-speaking orders and,

therefore, the orders passed by the Disciplinary Authority and Appellate Authority are liable to be set aside on the ground of non-application of

mind. The High Court also held that the action taken by the authorities is arbitrary.

....

.... A close scrutiny of both the orders would only go to show that the Appellate Authority has simply adopted the language employed by the

Disciplinary Authority and inflicted the punishment of dismissal on the respondent herein.

10.4. In 2007 I LLJ 223 (*Lav Nigam v. Chairman & MD., ITI Ltd.*), it has been held as follows:

10. The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the

view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the

appellant that the disciplinary authority would at all arrive at a final finding of

guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.

11. In Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, a Bench of this Court considered Regulation 7(2) of the Punjab National Bank Officer Employees" (Discipline and Appeal) Regulations, 1977. the Regulation itself did not provide for the giving of any notice before the disciplinary authority differed with the view of the enquiry officer. This Court held at p.818 of LLJ;

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 enquiry 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 enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take 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.

12. This view has been reiterated in Yoginath D. Bagde Vs. State of Maharashtra and Another, . In this case also Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 did not specifically provide for a disciplinary authority to give an opportunity of hearing to the delinquent officer before differing with the view of the enquiry officer. The Court said:

But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary

authority, at the same time, has to communicate to the delinquent officer the "tentative" reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of "not guilty" already recorded by the enquiring authority was not liable to be interfered with.

(See also State Bank of India and Others Vs. K.P. Narayanan Kutty,).

13. We have already quoted the extracts from the show-cause notice issued by the disciplinary authority. It is clear that no notice at all was given before the disciplinary authority recorded its final conclusions differing with the finding of fact of the inquiry officer. The notice to show cause was merely a show-cause against the proposed punishment. In view of the long line of authorities, the decision of the High Court cannot be sustained.

The appeal is accordingly allowed and the decision of the High Court is set aside.

14. The proceedings may be recommenced from the stage of issuance of a fresh show-cause notice by the disciplinary authority to the appellant

indicating his tentative disagreement with the findings of the inquiry officer.

10.5. In A.V. Krishnamurthy Vs. Govt. of Tamilnadu and Others, , it has been held as follows:

Coming to the other Departmental Enquiry, D.E.N.10 of 1997, the charge levelled against the petitioner is that actuated by corrupt motive while

reviewing the revised lay-outs, as detailed in as many as nine instances mentioned in the memorandum of charge, the petitioner justified the action

of the other officer, Sabapathi. The lay-outs were sanctioned long prior to the petitioner taking the post in question. We find that Padmanabhan, J.,

has not adverted to the gravamen of the charge levelled against the petitioner, viz., that the petitioner was actuated by corrupt motive. Here again,

we find a case where there is total lack of acceptable evidence on the charge levelled against the petitioner that he was actuated by corrupt motive.

At the risk of repetition, we must point out that the cases are those where the findings of the second respondent must be held to be perverse and

unsupported by acceptable evidence. The second respondent assessed the evidence in common not only with reference to the petitioner but also

others and in a sweeping manner, without adverting to the gravamen of the

charge, viz., corrupt motive, levelled against the petitioner held that the charges against the petitioner have also been proved. These conclusions are mostly surmises and not the result of appraisal of any concrete and positive evidence. It is well settled that disciplinary proceedings before a Departmental Tribunal are quasi-judicial in character and any conclusion to be reached by such Tribunal must be on the basis of acceptable evidence. Such evidence must have some degree of definiteness. It is true that the enquiry held by the Departmental Tribunal is not governed by the strict and technical rules of evidence. But, if the Departmental Tribunal has rendered a finding based on no acceptable evidence, that could be regarded as an error of law to be corrected by a writ of certiorari. Suspicion, inference, assumption and presumption cannot take the place of proof by means of acceptable evidence in disciplinary proceedings before a Departmental Tribunal. Though this Court shall not interfere in writ jurisdiction assessing the factual materials once again as if it is an appellate court, yet, if this Court finds that there is a breach of the well accepted principle governing departmental enquiry, it can definitely interfere. This Court under Article 226 of the Constitution of India, has jurisdiction to enquire as to whether the conclusion of the Departmental Tribunal is not supported by any acceptable evidence at all. The facts disclosed before us clearly established that the second respondent arrived at the conclusions against the petitioner without acceptable evidence, acting only on presumptions and assumptions and hence, his findings must be held to be per se perverse and they cannot form the basis for the further action leading to dismissal of the petitioner. No attempt was made before us to demonstrate that there is any piece of acceptable evidence establishing the charges levelled and in particular, corrupt motive against the petitioner.

10.6. In 2008 6 MLJ 621 (T. Shanmugasundaram v. Commissioner, Pollachi Municipality), it has been held as follows:

The petitioner was charged with lapses and irregularities relating to his work as Revenue Assistant. Enquiry was held but the Enquiry Officer report was not furnished to the petitioner. The disciplinary authority differed with the Enquiry Officer's conclusions and imposed punishment on the petitioner but without giving opportunity to the petitioner before imposing punishment. The impugned order was set aside on the grounds of non-

furnishing of the Enquiry Report to the petitioner and that no opportunity was given to the petitioner before punishment was imposed on him by the disciplinary authority.

11. In *Director (Marketing) Indian Oil Corpn. Ltd. and Another Vs. Santosh Kumar*, the Supreme Court after a close scrutiny of the impugned orders, had come to the conclusion that the appellate authority had simply adopted the language employed by the disciplinary authority for confirming the punishment of dismissal imposed on the respondent therein. Therefore, it was held that the order passed by the appellate authority revealed the total non-application of mind by him. In such circumstances, the Supreme Court had set aside the impugned order passed by the disciplinary authority and the appellate authority and remitted the matter back to the disciplinary authority for fresh disposal, within a period of three months from the date of receipt of a copy of the said order, after affording sufficient opportunity to the parties concerned.

12. The learned Counsel appearing on behalf of the respondents had relied on a decision of the Supreme Court, reported in *Balbir Singh v. Punjab Roadways* (2001) 1 SCC 133, to support his contention that there was an inordinate delay on the part of the petitioner in filing the writ petition before this Court. He has stated that the second respondent had passed the impugned order, on 20.9.97, and it was confirmed by the first respondent, on 19.2.98. While so, the petitioner had preferred the writ petition only in the month of January, 2001. Since the delay has not been sufficiently explained by the petitioner, the writ petition is liable to be dismissed by this Court on the ground of laches.

13. It is seen from the facts of the above stated case that the order, withholding the increments of the petitioner, had been passed in the year, 1978 and it was sought to be set aside in the year, 1994. In such circumstances, the Supreme Court had held that the dismissal of the dispute, by the industrial Tribunal, was right in law and the order of the High Court confirming the same could not be set aside, as it did not suffer any illegality which warranted interference by the Apex Court.

14. In view of the averments made on behalf of the petitioner as well as the respondents and on a perusal of the records available, this Court is of the considered view that the impugned order, dated 20.9.97, passed by the

second respondent disciplinary authority and confirmed by the first respondent, by an order, dated 19.2.98, cannot be sustained in the eye of law. Even though the enquiry officer had found that the charges levelled against the petitioner were not proved, the second respondent disciplinary authority had differed in his views and held that the petitioner was guilty of the charges levelled against him. The second respondent ought to have issued a show cause notice to the petitioner before he had arrived at his final conclusions of imposing the punishment of stoppage of increment for one year, with cumulative effect, on the petitioner. Further, no new materials were available before the second respondent for him to come to a different conclusion from that of the enquiry officer to hold that the petitioner was guilty of certain misconduct levelled against him.

15. Once it is found that the petitioner was not given sufficient opportunity to defend his case, the impugned order of the second respondent, dated 20.9.97, imposing the punishment of stoppage of increment of one year, with cumulative effect, on the petitioner, cannot be sustained as valid.

Further, the second respondent had arrived at his conclusions merely on presumptions and assumptions.

16. At this stage of the hearing of the writ petition, the learned Counsel for the petitioner had submitted that it would suffice if this Court is pleased to set aside the impugned orders of the second respondent, dated 20.9.97 and the first respondent, dated 19.2.98, and the matter is remitted back to the second respondent disciplinary authority for fresh disposal, after giving the petitioner an opportunity to put forth his case.

17. The learned Counsel appearing on behalf of the respondents has no serious objection for this Court passing such an order.

18. In view of the submissions made by the learned Counsels appearing on behalf of the petitioner, as well as the respondents and the decisions cited before this Court and on a perusal of the records available, it is clear that the second respondent disciplinary authority had differed from the findings of the enquiry officer to hold the petitioner guilty of the charges levelled against him and to impose on the petitioner the punishment of stoppage of increment for one year, with cumulative effect.

19. It is also seen that the first respondent appellate authority had confirmed the order passed by the second respondent, without giving the reasons

for the same. Therefore, the impugned orders of the second respondent, dated 20.9.97, and that of the first respondent, dated 19.2.98, are set

aside and the matter is remitted back to the second respondent disciplinary authority for fresh disposal, after giving a reasonable opportunity to the

petitioner to put forth his case, by giving him a show cause notice setting out the tentative conclusions. The second respondent disciplinary authority

is to arrive at his final conclusions, after considering the submissions made by the petitioner by way of his explanation to the said show case notice,

without considering any additional evidence, which is not already on record. The second respondent disciplinary authority is to pass appropriate

orders based on his final conclusions, on merits, and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of

this order.

The writ petition is ordered accordingly. No costs.