

(1997) 05 GAU CK 0012
In the Gauhati High Court
Case No : C.R. No. 1211 of 1990

Monisikha Barua

APPELLANT

Vs

Hindustan Fertilizer Corpn. Ltd. and Others

RESPONDENT

Date of Decision : 09-05-1997

Acts Referred:

Constitution of India, 1950 — Article 14
Evidence Act, 1872 — Section 10, 12, 16, 18, 25
Penal Code, 1860 (IPC) — Section 120B, 468, 471
Prevention of Corruption Act, 1988 — Section 5(1)(C), 5(2)

Citation : (1998) 2 LLJ 405

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : A.K. Bhattacharjee, K. Agarwal and M. Buzarbarua, for the Appellant; A.R. Borthakur, P. Borthakur and B. Acharyya, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—This Writ application originally was filed by one Suresh Chandra Barua with the prayer that the impugned order dated December 23, 1989, order dated November 26, 1989 and resolution communicated vide letter dated June 25/26, 1990 be quashed.

2. During the pendency of this Civil Rule the original Writ Petitioner died and his wife has been substituted in his place.

3. The brief facts are as follows:

On January 27, 1973 the original petitioner (hereinafter called the petitioner) was appointed as Accounts Assistant in the Hindustan Fertilizer Corporation of India Limited. In the year 1978 and 1980 the petitioner was promoted to the post of Assistant Accountant and Junior Accounts Officer. In the year 1987 the petitioner was promoted to Accounts Officer, Grade-1 and he was transferred from Guwahati to Bhopal. On June 13, 1988 the petitioner while working at

Bhopal was placed under suspension on certain allegations. On August 8, 1988 the petitioner was served with the memorandum containing number of allegations, but no document in support thereof was furnished. On the basis of these allegations a disciplinary proceeding was initiated against the petitioner. The petitioner submitted show cause denying the allegations. The Inquiry was accordingly conducted and thereafter the petitioner was found guilty and he was dismissed from service. It is mis dismissal from service which is challenged in this writ application.

4. I have heard Shri A.K. Bhattacharjee, learned Advocate for the petitioner and Shri A.R. Borthakur, learned Advocate for the Respondents. An affidavit-in-opposition was filed and record was also produced. Shri Bhattacharjee made the following submissions:

(i) Non-framing of charges and furnishing of charge sheet to the petitioner - No enquiry started - Non-framing of charges and non-furnishing of charges together with statement of allegations to the petitioner violates mandatory provisions of Rule 26 (i) of the Hindustan Fertilizer Corporation Ltd. Employees (Conduct, Discipline and Appeal) Rules, 1981-prejudice caused to the petitioner - violative of principle of Natural Justice.

(ii) No enquiry in accordance with procedure prescribed-no evidence recorded and allegations not proved in accordance with law -Violation of mandatory provisions of Services Rules - Violation of principles of Natural Justice.

(iii) Oral evidence cannot be dispensed with.

(iv) Vague and indefinite allegations - prejudice caused to the petitioner-violation of principles of Natural Justice.

(v) Article 21 is applicable in Departmental Proceedings.

(vi) Statements, documents and report in respect of Preliminary Enquiry not furnished to the petitioner but relied on by the Respondents - Violation of principles of Natural Justice - Prejudice caused to the petitioner in defending his case.

(vii) List of documents and list of Witnesses not furnished - copies of documents and other papers relied on by the Disciplinary Authority not furnished - not allowed to be inspected - before submitting show cause reply as well as during enquiry- prejudice caused to the petitioner - violation of principles of natural justice."

5. With the memorandum of charge, the statements of imputations misconduct in support of, the articles of charges framed against the petitioner were furnished and these imputations are 25 in number. In the affidavit-in-opposition it is stated, inter alia, as follows:

"(i) The charges together with the statement of allegations on which they were based were communicated in writing to the petitioner and all the documents

upon which the Management relied at the time of inquiry were produced before the petitioner and he inspected the same and no grievance was made on this count by the petitioner in the written statement filed by him.

(ii) The Enquiry was conducted in a fair manner and the impugned order was passed by applying mind.

(iii) That there was no violation of principle of natural justice and as a matter of fact a case was instituted against the petitioner and others u/s 120B/468/471 of the Indian Penal Code and Section 5(2) read with Section 5(1)(C) of the Prevention of Corruption Act and that case is pending being R.C.16(A)/89-SHG."

6. The case as against the petitioner has abated because of his death.

7. Before we proceed further let us look at the Rule under which the present enquiry was conducted against the petitioner, live Rule is known as Employees (Conduct, Discipline And Appeal) Rules, 1981. Rules 26, 27, 28, 29 and 30 relevant for the purpose of this case are quoted below;

"26. Procedure for Imposing Major Penal-j ties:

i) When an employee is charged with misconduct which may lead to the imposition of a major penalty, the Disciplinary Authority shall frame definite charges on the basis of the allegations against him. The charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), written statement of his defence.

ii) On receipt of the written statement of the employee, or if no such statement is received within the time specified an enquiry may be held by the Disciplinary Authority itself, or by an officer or Committee appointed for the purpose (hereinafter called the Inquiring Authority) by the Disciplinary Authority.

iii) Where the disciplinary authority itself inquires into any articles of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order appoint an employee of the Corporation, or a legal practitioner to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

iv) The employee may take the assistance of any other employee of the Corporation who does not have two pending disciplinary cases on hand in which he has to function as Defence Assistant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the "Presenting Officer" appointed by the disciplinary authority is a legal practitioner or the disciplinary authority having regard to the circumstances of the case, so permits.

v) At the conclusion of the enquiry, the Inquiring Authority shall prepare a report of the enquiry recording its findings on each of the charges, together with the reasons therefor.

27. The Record of the Enquiry in such Cases shall include:

- i) the charges framed against the employee and the statement of allegations furnished to him under Sub-rule (i) or Rule 26.
- ii) his written statement of defence, if any.
- iii) the oral and or documentary evidence, if any, considered in the course of the enquiry, and
- iv) the findings on each charge and the reasons therefor.

28. The Disciplinary Authority shall consider the record of the enquiry, record its conclusions on each charge and pass appropriate orders.

29. The pay and allowances of an employee who is dismissed or removed from service shall cease from the date of his dismissal or removal from service.

30. Joint Enquiry:

Where two or more employees are concerned in any case, the authority competent to impose a major penalty on all such employees may make an order directing that disciplinary action against all of them may be taken in a common proceeding and specifying the authority which may function as the Disciplinary Authority for the purpose of such common proceedings."

8. A large number of cases were cited at the bar by the Advocates of the parties, I only list below the cases. But I am not discussing all the cases cited at the bar as I do not feel necessary to discuss all of them for the disposal and decision of this case, The cases cited on behalf of the petitioner are as follows:

- (1) 1980 S.C.C. 840 (U.P. Ware House Corporation v. Bijoy Narayan) (Paragraph-14).
- (2) 1971 LLJ 293 (SC) (Surath Chandra Chakravarty v. State of West Bengal) (Paragraph-4).
- (3) 1971 LLJ 407 (SC) (Bareilly Electricity Supply Co. Ltd. v. The Workmen and Ors.,) (Paragraph-14).
- (4) 1978 LLJ 84 (SC) (Nanda Kishore Prasad v. State of Bihar and Ors.) (Paragraphs-18 and 24).
- (5) 1983 GHC 52 (Rajyamalla Buzar-barua v. The Assam Administrative Tribunal and Ors.)
- (6) 1995 (2) G.L.R. 383 (Jalaluddin Laskar v. The State of Assam and Ors.) (Paragraph-9).
- (7) 1996 LLJ 740 (Gau) (Shri Jagadish Chandra Mandoloi v. O.N.G.C.).
- (8) 1966 LLJ 595 (The State of Bombay v. Nurul Latif Khan).

- (9) 1982 LLJ 180 (State of U.P. v. Md. Sarif) (Paragraph-3).
- (10) 1986 LLJ 256 (Sawai Singh v. State of Rajasthan).
- (11) Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, (Paragraphs-2,9 and 10)
- (12) 1996 LLJ 288 (State Bank of Bikaner & Jaipur and Ors. v. Prabhu Dayal Grover).
- (13) 1996 LLJ 296 (SC) (State Bank of Patiala and Ors. v. Shri S.K. Sarma).
- (14) 1988 LLJ 256 (SC) (Ranjit Thakur v. Union of India),
- (15) S.L. Kapoor Vs. Jagmohan and Others,
- (16) 1983 LLJ 1 (The Board of Trustees of the Port of Bombay v. Dilip Ku-mar Raghavendra Nadkarni).
- (17) 1991 LLJ 607 (Delhi Transport Corporation v. D.T.C. Majdoor Congress).
- (18) 1984 (1) GLR 40 (Lal Duala v. Union Territory of Mizoram).
- (19) Kashinath Dikshita Vs. Union of India (UOI)and Others,
- (20) AIR 1961 S.C. 1623 (State of M.P. v. C.S. Waishampayan).

9. On the other hand on behalf of the Respondents the following cases have been relied on:

- (1) 1996 LLJ 288 (State Bank of Bikaner & Jaipur v. Prabhu Dayal Grover) (supra).
- (2) 1996 LLJ 799 (State of Tamil Nadu v. Thiru K. V. Perumal and Ors.).
- (3) 1996 LLJ 636 (State of Punjab and Ors. v. Dr. H.S. Greasy).
- (4) 1996 LLJ 296 (Supra) (The case which has been relied on by the petitioner).
- (5) 1996 LLJ 672 (SC) (State of U.P. and Ors. v. Nanda Kishore Shukla and Anr.),
- (6) 1996 (3) G.L.T. 36 (B.C. Mishra Bhagabati v. State of Assam).

10. Let us take up the first contention of Shri Bhattacharjee. Shri Bhattacharjee submits that Rule 26 itself provides that the Disciplinary Authority must name definite charges on the basis of the allegations made against him and they must be communicated in writing to the delinquent officer to enable him to reply to those charges. He submits that in this particular case that was not done. So the initiation of the enquiry itself is in violation of Rule 26, quoted above and he submits for this that prejudice was caused to the petitioner. What may be stated with regard to this submission is that the petitioner submitted his written statement and denied all the charges, so the question of prejudice on this count does not arise. The learned Advocate for the petitioner relied on the following decisions in support of his contention:

(1) 1971 LLJ 293 (Supra). He relies on Paragraph-4. In that case a charge was drawn and therefore the charges are narrated in Paragraph-2 of the Judgment. In Paragraph-3 of the Judgment it is pointed out that the statement of allegations on which each charge was based was never sent to the delinquent Officer. That was a case under the Civil Services (Classification, Control and Appeal) Rules and the allegation was that the charges were not supplied inspite of the repeated objections and the further allegation was that the charges were vague and indefinite. The Supreme Court in paragraph-4 (Page-756) pointed out, inter alia, as follows:

(a) The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This Rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending on self. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.

(b) The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence.

(c) We have no manner of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations containing the material facts and particulars not having been supplied to him. In this situation, for the above reason alone, the trial Judge was fully justified in decreeing the suit."

This case does not help the petitioner inasmuch as in the instant case the materials were supplied to the petitioner along with memorandum whether they are vague or indefinite that will be considered at a later point of time. But the broad contentions made by Shri Bhattacharjee that no materials were furnished to the petitioner to put forward his defence cannot be accepted. This contention fails.

11. The next submission of Shri Bhattacharjee is that there was no enquiry in accordance with the procedure prescribed. No evidence was recorded and the allegations were not proved in accordance with law. Shri Bhattacharjee relies on a number of decisions in support of the contention. But it is not necessary to consider all of them. I shall only consider the relevant decisions. Before I go to that aspect of the matter let us have a look at the way the enquiry was conducted. The proceeding dated January 20, 1989 is quoted below:

"Regarding the temporary accommodation of Rs. 2288/- Shri S.C. Barooah accepts the charges as levelled against him.

Both the cheques in question have been issued to the outside parties as a bearer cheque and signature of the fictitious party was attested by Shri S.C. Barooah, Accounts Officer and Shri N.C. Barkakti, Area Manager (Agro). Shri S.C. Barooah accepts the charge of issuing a bearer cheque and the fraudulent payment as levelled against him."

That was with regard to the charges at serial numbers 24 and 25. On the very same date the Enquiry Officer arrived at the following findings:

"Shri S.C. Barooah does not have any point to defend the case of having not followed the proper procedure for this payment. However while examining Sri. N.C. Barkakati as agreed by Sri S.C. Barooah and N.C. Barkakati, Sri Barkakati stated that the payment was genuine for Rs. 3390/- against a proper supply and he would link up all the missing papers in this regard, and Sri Barooah would reply to this point later on. However, Sri S.C. Barooah accepts the charges of excess payment of Rs.600/- to the party as levelled against him."

12. No doubt this was signed by the employee. In the same sitting Charge No. 20 was considered and the Enquiry Officer arrived at the following findings on the same date itself: "Both the cheques in question have been issued to the outside parties as a bearer cheque and signature of the fictitious party was attested by Sri S.C. Barooah, Accounts Officer and Sri N.C. Borkakati, Area Manager (Agro). Sri S.C. Barooah accepts the charge of issuing a bearer cheque and the fraudulent payment as levelled against him."

13. With regard to Charge No. 18 on the date of the enquiry itself, the Enquiry Officer arrived at the following findings:" Regarding the temporary accommodation of Rs. 2288/- Shri S.C. Barooah accepts the charges as levelled against him."

14. On January 19, 1989 the Enquiry Officer considered Charge at Serial No. 15 and he arrived at the following findings:

"Regarding charge at SI. No. 15 levelled against Sri S.C. Barooah the document exhibited is a copy of Cheque No. 720359 dt. June 26, 1987 for Rs. 10,000/- in favour of "ourselves" signed by Sri S.C. Barooah and Sri N.C. Barkakati. Money was drawn by Sri. S.C. Barooah. The charge as levelled against Sri. S.C. Barooah for mis-appropriation of Rs. 10,000/- is accepted by Sri S.C. Barooah."

15. On the same date Charge at Serial No. 14 was considered and the Enquiry Officer arrived at the following findings:

"As stated by Sri R.C. Baruah and Sri S.C. Barooah the money was drawn from bank by Shri R.C. Baruah and deposited in cash, Since cash is being handled both by Sri S.C. Barooah and Sri R.C. Baruah and cash book was not maintained on a daily basis the responsibility for mis-appropriation for the amount of Rs.

10,000/- has been accepted by Shri S.C. Barooah and Sri R.C. Baruah."

16. With regard to Charge at Serial No. 12 the Enquiry Officer arrived at the following findings:

"However on checking the papers it has been found that docket entry number 573 dt. March 31, 1987 is actually for Rs.400/- not for Rs. 4000/- as charged. So actual amount involved in total number of 26 docket entry is Rs. 28,390.75 against Rs. 31,990.75 as charged. On checking the docket entries it has been revealed all have been prepared by Sri R.C. Baruah and certified for adjustment by Sri S.C. Barooah. However, both Sri S.C. Barooah and R.C. Baruah have stated these are the fictitious adjustments for that entire amount of Rs. 28,390.75. They have accepted the responsibilities of mis-appropriation of the entire amount."

17. The whole enquiry was conducted in this fashion and manner by the Enquiry Officer. No doubt all the statements recorded by the Enquiry Officer have been signed by the petitioner, but the question is that is it a procedure for conducting an enquiry? Though it is mentioned in the findings recorded that some persons were examined the record does not show any statement of such person nor any such signed statement is available in the record. The Enquiry Officer is not expected to chalk out a method of enquiry unknown in service jurisprudence. An enquiry against an employee is neither made solely to establish a charge nor to impose a penalty. The basic object and scope of the enquiry are to find out the truth. It is also well established that a departmental enquiry cannot be equated with the proceedings of a Court. It is the basic and fundamental aim of an enquiry that there must be fair-play action. There must be investigation consistent with the requirement of the situation and adherence to the principle of natural justice. Concept of fair-play action based on the principle of natural justice depends upon the particular lis of the parties. It is also submitted that a regular departmental enquiry commences or takes place after charge-sheet is drawn, the delinquent officer shall be served of the same and the explanation of the delinquent officer is obtained. Where no enquiry is held or conducted as required, if dismissal orders are passed by way of summary procedure, such an order of dismissal cannot stand the scrutiny of the Court. On the commencement of the enquiry the evidence of both documentary and oral may be led by the department and the delinquent officer is offered a reasonable opportunity to cross-examine the witnesses tendered against him and is given reasonable opportunity to defend himself by adducing evidence if he likes to do so. Here is a case where no oral "evidence was adduced by the department and no documents were presented and introduced by the presenting Officer and it appears that the Enquiry Officer makes the statement at the end of each day with each charge as accepted by the petitioner. The relevant portion of it has already been quoted. In the proceedings of different dates it has been stated that either the employees accepted the charges and it is also noted that some of the witnesses have denied the receipt of payment. That will be evident from the proceedings dated January

18, 1989 whereas it has been recorded that one Chakravarty has denied receipt of the money. But in the record there is no such statement of Shri Chakravarty. That is the tenor on the proceedings of all the dates. No statement of any witness was recorded. It may be stated herein that in the same proceeding, the following persons have been proceeded with:

1. Shri S.C. Barooah (the present petitioner).
2. Shri K.C. Kalita,
3. Shri R.C. Baruah,
4. Shri M.N.Baruah, 5.Shri P.K. Phookan.

As required Under Rule 30 quoted above, disciplinary action against all of them may be taken specifying the authority which may function as the Disciplinary Authority for the purpose of such common proceeding.

18. In enquiry report in page 33 of the Writ Application (Annexure-B) it is mentioned that "During regular hearing all the "accused" were examined separately or jointly depending on their involvement in the particular Charge as aggrieved by them."

19. In Page-37 it has also been stated that "As and when required both were examined jointly to find out the truth."

20. At Page-37 it has been stated that "So while taking the statement during the examination of Sri S.C. Barooah, as and when required other "accused" connected with specific charges were also examined" Nowhere in the record there is any statement either of Shri S.C. Barooah or the other "accused" stated to be examined by the enquiry officer. The enquiry officer failed to bear in mind the age old principle no man can be compelled to criminate himself. The person charged cannot be compelled to enter/depose against his will. That will amount to putting the cart before the horse.

21. In the instant case as will be evident from the record at the earliest point of time an objection was taken that no such common enquiry order directing joint enquiry against all the employees were passed. That was also highlighted in the written brief submitted by Sri S.C. Barooah under Rule 26 of the Rules on April 29, 1989. On March 30, 1989 the Enquiry Authority passed an order that "Joint Enquiry will be done against 8 persons" so this is clearly violative of Rule 30 of the Rules as quoted above and on this short ground alone the impugned order of dismissal is liable to be quashed.

22. The enquiry was done by the authority by adopting a novel method. In doing so if the principle of natural justice is adhered to or no prejudice is caused that may be a valid enquiry. But one should remember that the maxim "every innovation occasions more harm by its novelties than benefit by its utility."

23. The procedure adopted by the Enquiry Officer appears to be absurd and

unjust. It is not the established procedure in the domain of departmental enquiry. Innovation on settled procedure is to be avoided as far as possible if it brings into existence a topsy turvy state of affairs.

24. Next let us see whether this order of dismissal can stand the test of scrutiny on the ground of admission as strenuously submitted by the learned counsel for the Respondents. The learned counsel for the Respondents makes the submission on the ground that the record of the enquiry will show that the charges were accepted by the employees. But as indicated above a written statement was filed wherein the charges were denied. Thereafter a written brief was filed where also these were denied. But the so-called admission only finds place at the time of recording of the evidence by the Enquiry Officer on different dates (some of these have been quoted earlier and the others are also on the same tenor).

25. Let us first see what is meant by admission. The word "Admission" is a noun and the Dictionary meaning of the Word is "admit", acknowledge, etc. In Black's-law Dictionary, the word "Admission" has been given the-following meanings:-

(1) A voluntary acknowledgement made by the party about existence of the truth of certain facts which are inconsistent with his claims in an action. An admission is not limited to words, but may also enquire the demeanour valid and acts of person charged with certain facts.

(2) Any statement made by or attributable to a party to an action which constitutes admission against his interest intends to establish or has disproved any material fact in the case.

(3) Admission by silence:-

If a Statement is made by another person in presence of a party to an action containing assertion of facts which if untrue, the party would under all the circumstances naturally be expected to any, has failed to speak this is traditionally been receivable as an admission.

(4) Adoptive Admission:-

Action by a party in which he proves statement of one for whom he is responsible thereby accepting truth of statement silence action or statement which manifests assent to the statement of another person, such thing may be received into evidence as an admission if it can be shown that the person adopted the statement as his own.

26. Regarding admissibility of evidence, the Evidence Act lays down in Sections 5 to 55 that certain facts alone as being admissible in judicial proceedings as matters from which the Court may deduce evidentiary value. These facts are called facts in issue and facts that are relevant to facts in issue. Any other factor will not be allowed to be led in Court by a party for the sake of proof. In general, admissibility of evidence means the quality of evidence which will lead the Court in an appropriate matter for coming to a determination of the fact of a dispute.

The word "Admission" is well known in legal parlance and has gained a definite connotation which is not inconsistent with its ordinary meaning. An admission must be a conscious and deliberate act and not something which is not intended to be so. Admission is a conscious or voluntary acknowledgement made by a party or someone identified with him in legal interest of the existence of certain facts which are competent or relevant to an issue in the case. Whatever standard may be applied to the facts of the case in hand it will appear that there was no admission as required by law, even in departmental proceedings, though as indicated above the strict rules of evidences may not apply to such proceedings. The record further reveals that there were some under-hand dealings in the matter and the Enquiry Officer was in confabulation with the delinquent employees and directed them to do certain things in a certain manner, This is also highly irregular. In *State of Punjab and Ors. v. Dr. H.S. Greasy* (supra) wherein the doctor already retired from service, and the Supreme Court pointed out that no useful purpose will be served in directing to conduct enquiry afresh holding earlier enquiry to be faulty. That was a case where departmental proceeding was initiated against a doctor on the ground of absence of duty in the emergency or attending on the flood victims between July 18, 1995 and July 21, 1995. He was further charged for other dereliction of duty. A departmental proceeding was initiated. The Enquiry officer submitted report holding that the doctor admitted that he was having private practice at Moga at that time. The report was submitted on the basis of the so-called admission of the doctor. But a written statement was filed wherein it was denied and further the so-called admissions were not taken by the Enquiry Officer in writing. The Supreme Court pointed out that as against the denial of the employee the Court before it had only the statement of the Enquiry Officer and that was not supported by any statement in writing from the employee and on the basis of it Supreme Court found the enquiry to be faulty.

27. The Enquiry Officer and the Presenting Officer were made party in the Writ Application as Respondents No. 4 and 5. The name of Respondent No.4 was struck off vide order dated February 16, 1996 as in the mean time he retired from service. Though allegations were made against both of them they did not file any affidavit to controvert the allegations. Further from the affidavit-in-opposition filed on behalf of Respondent it is seen that it was filed by the Regional Chief Agronomist, Assam Region of the Corporation and he verified this Affidavit only from information derived from record. But the record does not show that the allegations which were made are not true rather the record is silent with regard to the allegations levelled. In Writ application it has been stated, inter-alia, as follows: The Presenting Officer by hook or crook victimized the petitioner, collected some false and fabricated documents and submitted the same before the Enquiry Officer even after the enquiry was over which the petitioner had no opportunity to visualise the same. The Enquiry Officer committed great error of law in relying upon the written statement filed by some other officer against whom also the departmental enquiry was proceeding. The

entire proceeding before the enquiry officer has been vitiated inasmuch as no order from the competent authority was ever issued to initiate or hold joint enquiries with other employees involved in the proceeding. The enquiry officer did not at all record any evidence either from the petitioner's side or from the Management. In the entire proceeding there were as many as 8 persons including the petitioner involved.

28. From the decided cases what can be gathered regarding disciplinary enquiry are as follows:

1. The object to initiate/conduct the enquiry is to collect the materials in accordance with the prescribed procedure to enable the competent authority to come to the conclusion of guilt and on the penalty by way of punishment and of penalties prescribed by the procedure.

2. The departmental enquiry is not a criminal trial for the imposition of punishment. Nor it is a proceeding in a Court of law. It is not even a lis between the two parties which is being decided by a third person. It is only a proceeding instituted by the authority in its capacity as the employer against its employee in his capacity as the employer for the satisfaction of the mind of the authority as to whether the employee is guilty of the charges of mis-conduct brought against the concerned employee. Such mis-conduct is merely relevant to the contract of service between the parties.

3. Enquiries which were considered administrative at one point of time are now being considered as quasi-judicial in character. Even an administrative order which involves civil consequences must be made consistent with the rules of Natural justice.

4. There is no set form of disciplinary enquiries. In some cases oral evidence may have to be adduced when witnesses are called to give evidence and thereafter offered for cross-examination but in other cases that may not be the appropriate mode of enquiry. Where an Income Tax Officer was charged on the basis of the assessment order, the various clauses were pointed out to him, his answers were recorded and opportunities were given to explain the circumstances as against him, it was held that there can be no complaint on this score that there was no personal hearing or that reasonable opportunity was not given to defend himself (See Krishna Chandra Tandon Vs. The Union of India (UOI),

5. Executive instructions regarding departmental enquiries are not mandatory but regulatory. Usually breach of this is not justifiable but, at the same time, one must bear in mind that if the instructions are issued to attain the goal of a fair procedure, the authority is bound to adhere to them.

6. Evidence Act is not applicable to the enquiries conducted by the domestic authority. Technicalities of criminal law cannot be invoked and strict mode of proof prescribed by the Evidence Act cannot be applied with equal vigour but at the same time the charges framed against the public servant must be held to be

proved by applying the standard of a reasonable man before any punishment can be imposed on him. All materials which are logically probative for a prudent mind are permissible. There is no allergy to here say evidence, provided it has reasonable nexus and credibility (See *State of Haryana v. Ratan*) 1982 LLJ 46 (SC).

7. If Enquiry Officer adopts a procedure which is contrary to the rules of natural justice, the ultimate decision based on the report of the enquiry is liable to be quashed (See *State of U.P. v. Md. Nooh* AIR 1958 SC 86 and *S. Parthasarathi v. State of A.P.* 1973 LLJ 473(SC) .

8. Another principle which has emerged is that as the disciplinary proceedings are quasi- judicial in nature, it must be held in good faith, without bias not arbitrarily or unreason- ably.

9. Rules of natural justice are not embodied rules nor they can be elevated to the position of fundamental rights. Their aim is to secure justice or to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. (See *Union of India v. Col. J.N. Sinha and Anr.*) 1970 LLJ 284 (SC).

10. The Court can only look to procedural irregularity. If the enquiry is not vitiated on the ground of any procedural irregularity, the Court is not concerned to decide whether the evidence justifies the order, neither the High Court nor the Supreme Court can re-examine and re-assess the evidence in such proceedings.

11. The departmental enquiry is not an empty formality to be completed, but it is a serious proceeding to give the public servant a chance to meet the charges and to prove his innocence. A departmental proceeding is two sided proceeding, both the parties must co-operate in it and must make an attempt to enable the authority to arrive at the truth.

12. In AIR 1969 Assam 99 (*Anil Ku-mar Das v. Superintendent of Post Office*), this Court pointed out that procedure of enquiry itself warrants the maintenance of order sheet showing the various orders passed from time to time. In the absence of an order sheet it is difficult to know whether at various stages the enquiry officer or the disciplinary authority has followed the procedure without prejudice to any of the rights of the employees.

13. In *Krishna Chandra Tandon Vs. The Union of India (UOI)*, where the charge sheet was described as a memo and it was established that it was a memo issued in connection with the disciplinary action, charges were formally framed and the annexure gave detailed particulars in support of the charges, the memo required the employee to snow cause in writing and he was asked to produce evidence etc. it was held that there is hardly any doubt about the nature of the disciplinary action intended to be taken. The Supreme Court repelled the contention that there is no charge sheet issued. The Supreme Court further pointed out that there is no magic in the word charge sheet.

14. The Enquiry Officer must act with a detachment since he is professing to exercise a dignified function and open mind should be kept with regard to the charges made against the employee, until the charges are proved, the Enquiry Officer is not expected to cross-examine the defence witnesses though no doubt he can put certain questions by way of explanation when the case or charge is sought to be proved. It is expected that the Enquiry Officer must record the admission of the employee and the statement of the Enquiry Officer in his findings that the charge was admitted is not sufficient. A person who admits the fact and does not wish to cross-examine any witnesses or lead evidence on his behalf may lead to an inference that the person is admittedly guilty in so far as the fact in which the enquiry was held (See Channabasappa Basappa Happali Vs. The State of Mysore, But the admission amounting to admission of charge cannot be split. An admission must be used either as a whole or not at all. The record of the enquiry must show that the officer admitted the charge as a whole. A mere statement of the Enquiry Officer is not sufficient. The Admission made by the person must be recorded and his signature obtained. It must be voluntary.

15. The Enquiry Officer is not the prosecutor in the case. It is not his duty to somehow prove the charge. It is not for him to assume that the delinquent officer is guilty and try to bring out admission from him so that the charge as against him may be proved. Such an approach apparently will be a bias on the part of the Enquiry Officer and so must be avoided. When the Enquiry Officer plays this role instead of putting the question with a view to elucidate the officer for proper understanding of the facts before him but resorts to searching cross examination, the object of which is apparently evident, his role to be an Enquiry Officer and his action is liable to be challenged on the ground of prejudice and the enquiry will be vitiated on the ground of violation of principle of fairness. When the employee is examined at the commencement of the enquiry and several times thereafter, it must be held that the enquiry was not fair as the initial burden to establish the charge is always on the authority and the employee can be called upon only after the completion of the evidence of the authority.

16. The minimum requirement of the rules of natural justice is that the authority should arrive at its conclusion on the basis of some evidence, that is evidential materials which with some degree of definiteness, points to the guilt of the employee in support of the charge against him. Suspicion cannot be allowed to take the place of evidence in such enquiry.

17. The Court is not to play the role of a crusader to quash an enquiry and an order imposing punishment for each and every violation/infracton of procedure/procedural rules, but must find out whether such a thing has caused prejudice to the employee. The measuring rod/barometer/thermometer by whatever name you may call it is to measure the prejudice, the wholesome approach is to adhere to the test of prejudice. The Court in exercise of power of judicial review can scrutinise decision making process.

18. Though generally speaking awarding of punishment is a matter for the

employer, yet in certain cases the Court may interfere if the punishment is unduly harsh, severe, unconscionable or shockingly disproportionate to the gravity of offence/charge. That is on the anvil (sic) of Article 14 of the Constitution of India.

29. Accordingly I find as follows:

That there was violation of the procedural safeguard available to the petitioner and because of this violation prejudice was caused to the petitioner and as such the enquiry proceeding as well as the order of dismissal dated November 26, 1989 (Annexure-B) shall stand quashed. After quashing it, the next question comes that whether a fresh enquiry can be made. As indicated above this is impossible inasmuch as the petitioner is now dead and that aspect of the matter also taken into consideration by the Supreme Court in 1996 LLJ 636 (SC) wherein the doctor already retired from service and the Supreme Court pointed out that no useful purpose will be served directing to conduct enquiry afresh. Accordingly this Writ application is allowed quashing the order of dismissal. The substituted writ petitioner(Wife) shall be paid all the service benefits due to the petitioner till the death of the petitioner and thereafter all the retirement I benefits as may be due should be paid to the wife.