
(2001) 10 AHC CK 0012
In the Allahabad High Court
Case No : C.M.W.P. No. 7631 of 1994

P.C. Chaturvedi

APPELLANT

Vs

Uttar Pradesh State Textile Corporation Ltd. and Others

RESPONDENT

Date of Decision : 10-10-2001

Acts Referred:

Constitution of India, 1950 — Article 21, 309, 311(2)
Uttar Pradesh State Transport Corporation Conductor, Control and Disciplinary Rules,
1992 — Rule 151(1), 46(3)

Citation : (2001) 4 AWC 3061 : (2002) 1 UPLBEC 84

Hon'ble Judges : Lakshmi Bihari, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Ashok Khare, R.N. Singh, Govind Kumar Singh and A.P. Sahi, for the Appellant; Krishna Murari, for the Respondent

Judgement

Binod Kumar Roy and Lakshmi Bihari, JJ.—Despite service of notice by Registered Post Respondent No. 4 Sri V.K. Sharma, the Managing Director of respondent No. 1 the U.P. State Textile Corporation Limited (hereinafter referred to as the Corporation), who was the Enquiry Officer in the disciplinary proceeding initiated against the petitioner, has not appeared, and even though this writ petition is yet to be admitted, since affidavits have been exchanged, as requested by the learned counsel for both sides during further hearing on 31.8.2001, we proceed to dispose it of on Its merit at the admission stage itself.

2. The petitioner, Manager (Electrical and Mechanical) of the Corporation, who was earlier suspended and later on dismissed, has come up with following prayers :

(i) to quash the entire departmental proceedings Initiated against him culminating in the order dated 12.7.1993 passed by respondent No. 3--the Managing Director of the Corporation (as contained in Annexure-24) dismissing the petitioner after holding in agreement with the findings of the Enquiry Officer (as contained in Annexure-21) that since very serious charges of misconduct is

proved, he is liable for major and deterrent punishment of dismissal, and the appellate order dated 31.12.1993 dismissing his appeal passed by Chairman of the Corporation (respondent No. 2) as contained in Annexure-27.

(ii) to command the Respondents to continue his functioning and to pay his regular monthly salary and allowances including arrears of salary from 1.7.1992 till date.

(iii) to award costs.

2-A. Through an application dated 18th July, 2001, he came up with a further prayer, namely, to direct the respondents in the interest of justice to consider his case for voluntary retirement as he has become about 56 years old subject to decision of the writ petition in view of the fact that the Corporation is in the process of winding up and had even closed two of its Mills at Jhansi and Sandeela, and all the employees working in its Head Office have been given an option to retire under a voluntary retirement scheme.

3. Let us start with the background of the suspension order of the petitioner. On an undated complaint made against the petitioner by one Hanuman Prasad, who had not even disclosed his designation and address therein, which was addressed to the Chief Secretary of the State with copy of the Chairman of the Corporation, the Managing Director of the Corporation Sri Radhey Shyam vide his confidential letter dated 2.5.1992 attaching its copy (Annexure-9) asked the petitioner for his comments. The petitioner submitted his comments dated 27.5.1992 (Annexure-10). Thereafter his suspension order (Annexure-11) was passed by the Managing Director on 30.6.1992 which reads thus :

Order

"Shri P.C. Chaturvedi, Manager (Electrical and Mechanical). UPSTC is hereby suspended pending enquiry with immediate effect for certain acts and omissions committed by him in discharge of his official duties in regard to electrical and mechanical work relating to VASTRA BHAWAN. The disciplinary proceedings are contemplated against on the said aspect.

Shri V.K. Sharma, Managing Director, U.P. State Yarn Co. Ltd., is appointed as Enquiry Officer to enquire into the charges for which a formal charge-sheet will follow within a week's time.

Shri P.C. Chaturvedi is hereby directed to report daily at 10.30 a.m. in the office of the Joint Managing Director, UPSTC, Shri H.N. Singh for making attendance in a separate register and receive official communication, if any, during suspension period.

During suspension period, Shri Chaturvedi will be entitled to subsistence allowance as per provisions contained in UPSTC Conduct, Control and Disciplinary Rules, 1992.

Sd/. (Radhey Shyam) Managing Director."

4. Six charges were framed against the petitioner on July 7, 1992, as is evident from Annexure-C.A.-V to the counter-affidavit.

5. Respondent No. 4, the Enquiry Officer, vide his undated Report-part of Annexure-21, held charges Nos. 1 to 4 and 6 established but charge No. 5 as not established. According to the petitioner, he had completed his enquiry in October, 1992, whereas according to respondent Nos. 1 to 3, he had given his report on 3rd February, 1993.

6. Through his application dated 5.1.1993, as contained in Annexure-25, the petitioner prayed before the Chairman to grant him subsistence allowance, which, however, was not granted.

7. By Confidential Letter dated February 16, 1993 (Annexure-21), the Managing Director of the Corporation informed the petitioner that the Enquiry Officer has completed his enquiry and has submitted his report a copy of which is being enclosed to provide him an opportunity to represent his case to reach on or before February 26.

8. The petitioner sent his representation dated 26.2.1993 (copy appended as Annexure-22) against the enquiry report.

9. On 23.6.1993 (vide Annexure-23), he moved the Chairman ventilating his grievances stating, inter alia, of non-payment of his subsistence allowance.

10. On July 12, 1993, the Managing Director passed his order dismissing the petitioner as contained in Annexure-24.

11. The petitioner filed C.M.W.P. No. 43926 of 1993 in this Court which was disposed of at the stage of admission itself vide order dated 7.10.1993 (Annexure-25) refusing to interfere on the ground of availability of remedy of appeal expecting that the appeal will be decided expeditiously after giving due reasonable opportunity in case it is filed without any loss of time.

12. The petitioner preferred his appeal before the Chairman as contained in Annexure-26.

13. Vide order dated December 31, 1993 (Annexure-27), his appeal was dismissed on merits by the Chairman of the Corporation who even disagreed with the finding of the Enquiry Officer in regard to charge No. 5 and held that charge No. 5 to the extent that the petitioner acted negligently and supplied incorrect copy of drawing to the contractor, is found proved. He, however, did not pass any order in regard to the petitioner's repeated request for payment of his subsistence allowance.

The Submissions :

14. Following submissions were made by Sri. R.N. Singh, learned senior counsel, appearing on behalf of the petitioner :

(i) Having been suspended on 30th June, 1992 and the charge-sheet issued on

7.7.1992 the petitioner through his application dated 5.1.1993 (as contained in Annexure-25) filed before respondent No. 2 the Chairman of respondent No. 1 prayed for payment of subsistence allowance as per Bye-laws Nos. 8 and 9 of the U.P. State Textile Corporation (Disciplinary Proceedings) Bye-laws. 1978 (hereinafter referred to as Disciplinary Bye-laws) which was not granted, and thereafter he repeated his prayer vide another application dated 23.6.1993 (as contained in Annexure-23) before Respondent No. 2 yet he was not paid a single penny which was also agitated in appeal stating that due to non-payment of subsistence allowance he suffered mental torture, agony, his social image tarnished and was prejudiced in defending himself during the enquiry proceedings and thus was not able to defend himself properly in the departmental proceeding (at page 206 internal page 19 of the petition of appeal (Annexure-26) which was not considered by the appellate authority in his order (Annexure-27) and thus, in view of the decisions of the Supreme Court in (a) Ghanshamdas Srivastava Vs. State of Madhya Pradesh, ; (b) Ghanshyam Das Shrivastava Vs. State of Madhya Pradesh, ; (c) M. Paul Anthony v. Bharat Gold Mines Ltd. and Ors Jagdamba Prasad Shukla v. State of U.P. AIR 2000 SC 2806, the entire enquiry proceedings and the impugned order all stand vitiated and liable to be quashed.

(ii) Even though as per Disciplinary Bye-Laws and the Note attached with Rule 46 (3) of the Conduct. Control and Disciplinary Rules, 1992, below each charge the particulars of any witness proposed to be examined in support thereof has to be mentioned, no name of any witness was mentioned in the charge-sheet and the Enquiry Officer had fixed 29.7.1992, 4.8.1992, 2.9.1992, 16.9.1992 and 23.9.1992 for taking evidence during his enquiry on which dates no evidence was led by the Presiding Officer, by examining any witness, rather on 3.10.1992 all on a sudden the Enquiry Officer informed the petitioner that 4 persons would be examined as witnesses, which was objected to by the petitioner as he was taken by surprise, yet no heed was paid to his objection and two, out of four, witnesses were examined on 3.10.1992 itself by the Enquiry Officer against which he objected by filing his protest letter dated 3.10.1992 (Annexure-19B) and on 7.10.1992 requested him not to proceed as he intends to move for his change and he also made a representation before the Chairman on 11.10.1992 for changing the Enquiry Officer and despite raising grievances in this regard before the punishing authority and the appellate authority it was not dealt with at all by them, which violates the impugned enquiry and the impugned orders.

(iii) No notice or opportunity of hearing during the enquiry proceedings subsequent to 3.10.1992 was given to the petitioner by the Enquiry Officer, who on 8.10.1992 also examined two of the remaining 4 witnesses. His representation was ultimately rejected vide order dated 1.12.1992 but in between the said period the enquiry proceeded and even concluded ex parte behind his back. Even the Presenting Officer was granted permission for filing additional documents, again behind his back. All these points were taken by him before the punishing authority as well as the appellate authority but they failed to deal with

them and hence their orders are liable to be set aside on account of flagrant violation of principles of natural justice.

(iv) Referring to various statements made in paragraphs 38 to 44, 46, 47. 59 of the writ petition. Paragraphs 42 to 48, 50. 51 and 63 of the counter-affidavit and paragraphs 35 to 41, 43, 44 and 51 of the Rejoinder, he submitted that even though the Rules required supply of copy of all documents which were to be relied upon during the course of enquiry but despite several requests made by the petitioner, copies of all the documents mentioned in the charge-sheet were neither shown to him nor were ever supplied the worst being that on 8.10.1992. Additional Written Statement was filed and even detailed documents were filed without serving their copy and relied upon the Enquiry Report which is evident from its bare perusal and hence the enquiry proceedings are vitiated and the impugned orders are liable to be quashed.

(v) The last prayer is not being pressed, but the writ petition be allowed with cost.

15. Sri Krishna Murari, learned counsel appearing on behalf of respondent Nos. 1 to 3, on the other hand in reply, contended as follows :

(i) Despite direction made during the period of suspension as per the provisions in Bye-law No. 8 of the 1978 Bye-Laws in the very suspension order dated 30.6.1992 (Annexure-11) in which itself the petitioner was held entitled to the subsistence allowance to report in the office of the Joint Managing Director of respondent No. 1 for making his attendance in a separate Register, he did not report thus the argument of Mr. Singh has got no force.

Relevant in this regard is a Division Bench decision of the Rajasthan High Court in Jagjiwanchand Bhandari v. Rajasthan High Court, Jodhpur 1990 L&IC 1634, whereas the cases relied upon by Mr. Singh are clearly distinguishable as the enquiry was conducted at Kanpur itself where the petitioner was residing whereas in the cases relied upon by Mr. Singh the enquiry was conducted at a far flung area, therefore, the petitioner cannot be said to have been prejudiced on account of non-payment of subsistence allowance. No specific plea has been taken explaining the manner of his prejudice either before the authorities or even before this Court. Thus, his plea be not accepted rather rejected.

(ii) Since the petitioner was afforded full opportunity to cross-examine the four witnesses, whose names were not mentioned in the charge sheet therefore, it cannot be said that he has been prejudiced due to examination of the witnesses.

(iii) From 3.10.1992, the petitioner left attending the enquiry proceedings without any rhyme or reason and had full knowledge of the continuance of the proceedings, and thus it cannot be said that the enquiry proceeding had proceeded illegally ex parte.

(iv) The last submission of Mr. Singh is also liable to be rejected in view of the fact that the petitioner was supplied documents running upto 215 pages, besides

permitted inspection of the entire documents. There is no specific pleading pointing out that any relevant single document was not supplied to the petitioner due to which he was prejudiced. As laid down by the Supreme Court in (a) Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), It was not necessary to supply every document asked for rather the obligation was only to supply material and relevant documents only. Thus, the enquiry proceedings had not vitiated for non-supply of irrelevant documents.

(v) In this backdrop the writ petition is liable to be dismissed.

16. Both learned counsel also filed their notes of written submissions, which are on the record.

Our Findings :

17. Let us firstly consider submission No. (I) of Mr. Singh.

18. Article 21 of the Constitution of India reads as follows :

"21. Protection of life and personal liberty.--No person shall be deprived of his life or personal liberty except according to procedure established by law."

19. The relevant part of Article 311(2) of the Constitution of India reads as follows :

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges :

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed....."

20. Chapter II of the Bye-laws 1978 of the Corporation dealing with the relevant provision concerning suspension of its employees reads as follows :

"5. Suspension.--(1) The appointing authority may place an employee under suspension :

(a) Where a disciplinary proceeding against him is contemplated or is pending,
or.....

* * *

8. Subsistence allowance during suspension.--An employee under suspension shall be entitled to draw subsistence allowance equal to 50 per cent of his basic pay, provided that the disciplinary authority is satisfied that the employee is not engaged in any other employment or business or profession or vocation. In addition, he shall be entitled to dearness allowance admissible on such

subsistence allowance and to any other compensatory allowance of which he was in receipt on the date of suspension, provided that the suspending authority is satisfied that the employee continues to meet the expenditure for which the allowance was granted.

9. Variation in amount of subsistence allowance.--Where the period of suspension exceeds six months, the authority which made or is deemed to have made the order of suspension, shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first six months as follows :

(a) the amount may be increased upto 75 per cent of basic pay and allowance thereon if, in the opinion of the said authority, the period of suspension has been prolonged for reasons, to be recorded, not directly attributable to the suspended employee :

(b) the amount may be reduced upto 25 per cent of basic pay and allowances thereon if, in the opinion of the said authority, the period of suspension has been prolonged due to the reasons, to be recorded, directly attributable to the suspended employee."

21. Let us also notice the case laws cited by Mr. Singh dealing with effect of non-payment of subsistence allowance to a suspended employee.

22. In Ghanshyam Das Shrivastava Vs. State of Madhya Pradesh, when the delinquent Forest Ranger failed to attend the departmental enquiry due to paucity of funds resulting from non-payment of subsistence allowance, the 5 Judges Constitution Bench quashed the order of the Government dismissing him from service though giving liberty to the Government to start a fresh enquiry in accordance with law against him, observing as follows :

"5.....As he did not receive subsistence allowance till March 20, 1965, he could not, in our opinion, attend the enquiry. The first payment of subsistence allowance was made to him on March 20, 1965, after a part of the evidence had already been recorded on February 9, 10 and 11, 1965. The enquiry proceedings during those days are vitiated accordingly. The report of the Enquiry Officer based on that evidence is infected with the same defect. Accordingly, the order of the Government dismissing him from service cannot stand. It was passed in violation of the provisions of Article 311(2) of the Constitution for appellant did not receive a reasonable opportunity of defending himself in the enquiry proceedings."

23. In State of Maharashtra v. Chandrabhan Tale, the Supreme Court held the second proviso to Rule 151 (1)(ii)(b) as unreasonable and void being violative of Article 256(1) of the Constitution of India providing payment of allowance of only Rupee 1/- per month to a suspended Government servant holding that normal subsistence allowance must be paid during the pendency of the trial of the criminal proceedings, appeal and even appeal before the Supreme Court, which

is evident from Paragraph 23 of the judgment which reads as follows :

"Any departmental enquiry made without payment of subsistence allowance contrary to the provision for its payment, is violative of Article 256(1) of the Constitution as has been held by this Court in the above decision. Similarly, any criminal trial of a civil servant under suspension without payment of the normal subsistence allowance payable to him under the rule would be violative of that Article. Payment of subsistence allowance at the normal rate pending the appeal filed against the conviction of a civil servant under suspension is a step that makes the right of appeal fruitful and it is therefore, obligatory. Reduction of the normal subsistence allowance to the nominal sum of Re. 1 per month on conviction of a civil servant under suspension in a criminal case pending his appeal filed against that conviction, whether the civil servant is on bail or has been lodged in prison on conviction pending consideration of his appeal, is an action which stultifies the right of appeal and is consequently unfair and unconstitutional just as it would be impossible for a civil servant under suspension who has no other means of subsistence to defend himself effectively in the trial court without the normal subsistence allowance - there is nothing on record in these cases to show that the civil servants concerned in these cases have any other means of subsistence - it would be impossible for such civil servant suspended to prosecute his appeal against his conviction fruitfully without payment of the normal subsistence allowance pending his appeal. Therefore, Baban's contention in the writ petition that the subsistence allowance is required to support the civil servant and his family not only during the trial of the criminal case started against him but also during the pendency of the appeal filed in the High Court or this Court against his conviction is correct. If any provision in any rule framed under Article 309 of the Constitution is illusory or unreasonable, it is certainly open to the civil servant concerned to seek the aid of the Court for declaring that provision to be void. In these circumstances. I hold that the second proviso is unreasonable and void and that a civil servant under suspension is entitled to the normal subsistence allowance even after his conviction by the trial court pending consideration of his appeal filed against his conviction until the appeal is disposed of finally one way or the other, whether he is on bail or lodged in prison on conviction by the trial court."

24. In *Fakirbhai Fulabhai Solanki v. Presiding Officer* it was held as follows :

"Denial of payment of atleast a small amount by way of subsistence allowance would amount to gross unfairness and violative of principles of natural justice." (Paragraphs 8 and 9)

25. In *Captain M. Paul Anthony (supra)* the Supreme Court had held as follows :

"29.Suspension notwithstanding, non-payment of subsistence allowance is an Inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nick name of "subsistence

allowance", so that the employee may sustain himself. This Court in *O.P. Gupta v. Union of India and Ors* made the following observations with regard to subsistence allowance :

"An order of suspension of a Government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in *Khem Chand v. Union of India*, is that he continues to be a member of the Government service but is not permitted to work and further during the period of suspension he is paid only some allowance-generally called subsistence allowance-which is normally less than the salary. Instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a Government servant injuriously. The very expression "subsistence allowance" has an undeniable penal significance. The dictionary meaning of the word "subsist" as given in *Shorter Oxford English Dictionary*, Vol. II at p. 2171 is "to remain alive as on food: to continue to exist". "Subsistence" means--means of supporting life, especially a minimum livelihood."

30. If, therefore, even that amount is not paid, then the very object of paying the reduced salary to the employee during the period of suspension would be frustrated. The act of nonpayment of subsistence allowance can be likened to slow-poisoning as the employee: if not permitted to sustain himself on account of non-payment of subsistence allowance, would gradually starve himself to death.

31. On joining Government service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Government. The Government, only because it has the power to appoint, does not become the master of the body and soul of the employee. The Government by providing job opportunities to its citizens only fulfils its obligations under the Constitution, including the Directive Principles of the State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employer, like Instrumentalities of the Government or Statutory or Autonomous Corporations etc., is regulated by the terms of contract of service or Service Rules made by the Central or the State Government. Under the proviso to Article 309 of the Constitution or other Statutory Rules including Certified Standing Orders. The fundamental rights, including the Right to Life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. The provision for payment of subsistence allowance made in the Service Rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in *State of Maharashtra v. Chanderbhan* struck down a Service Rule which provided for payment of a nominal amount of rupee one as subsistence allowance to an employee placed under suspension. This decision was followed in *Fakirbhai Fulabhai Solanki v.*

Presiding Officer and another JT 1986 SC 394, and it was held in that case that if an employee could not attend the departmental proceeding on account of financial stringencies caused by non-payment of subsistence allowance, and thereby could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated. For this purpose, reliance was also placed on an earlier decision in Ghanshyam Das Srivastava v. State of Madhya Pradesh 32. The question whether the appellant was unable to go to Kolar Gold Fields to participate in the inquiry proceedings on account of non-payment of subsistence allowance may not have been raised before the Inquiry Officer, but it was positively raised before the High Court and has also been raised before us. Since it is not disputed that the subsistence allowance was not paid to the appellant during the pendency of the departmental proceedings, we have to take strong notice of it, particularly as it is not suggested by the respondents that the appellant had any other source of income.

33. Since in the instant case the appellant was not provided any subsistence allowance during the period of suspension and the adjournment prayed for by him on account of his illness, duly supported by medical certificates, was refused resulting in ex parte proceedings against him, we are of the opinion that the appellant has been punished in total violation of the principles of natural Justice and he was liberally not afforded any opportunity of hearing. Moreover, as pleaded by the appellant before the High Court as also before us that on account of his penury occasioned by nonpayment of Subsistence Allowance, he could not undertake a journey to attend the disciplinary proceedings, the findings recorded by the Inquiry Officer at such proceedings, which were held ex parte, stand vitiated."

26. In Jagdamba Prasad Shukla supra, when our Allahabad High Court rejected the prayer for quashing departmental proceedings on account of non-payment of Subsistence Allowance, on the ground that it was not taken in the claim petition filed before the Tribunal and it has been taken for the first time, after pointing out that despite repeated request the subsistence allowance was not paid till his removal, it was held as follows :

"8. The payment of subsistence allowance, in accordance with the Rules, to an employee under suspension is not a bounty. It is a right. An employee is entitled to be paid the subsistence allowance. No justifiable ground has been made out for non-payment of the subsistence allowance all through the period of suspension, i.e., from suspension till removal. One of the reasons for not appearing in enquiry as intimated to the authorities was the financial crunch on account of nonpayment of subsistence allowance and the other was the illness of the appellant. The appellant in reply to show cause notice stated that even if he was to appear in enquiry against medical advice, he was unable to appear for want of funds on account of nonpayment of subsistence allowance. It is a clear case of breach of principles of natural justice on account of the denial of

reasonable opportunity to the appellant to defend himself in the departmental enquiry. Thus, the departmental enquiry and the consequent order of removal from service are quashed."

27. Now let us see the requests made by the petitioner in this regard before the authorities themselves.

28. Firstly the petitioner's representation dated 5.1.1993 (Annexure-25) made before the Chairman (italicised by us) which reads as follows :

"Shri J.L. Bajaj Chairman U.P. State Textile Corporation Ltd. B-2, Sarvodaya Nagar Kanpur.

Sub. : Prayer for payment of subsistence allowance

Respected Sir,

I beg to submit that then M.D. Shri Radhey Shyam issued the suspension order No. 551/STC/MDC/VB/92, dated 30.6.1992 and got a departmental enquiry started against me vide charge-sheet No. 551-55/STC/MDC/VB/92, dated 7.7.1992. Ever since my appointment as Electrical and Mechanical Engineer (Projects) on 26.9.1975 by U.P. State Textile Corporation, I as head of department was neither required to sign nor signed the attendance register. But in order to humiliate me Shri Radhey Shyam went beyond his powers to direct me to sign the attendance register. However, I continued to come at office/place of work everyday. Shri Radhey Shyam was not satisfied with his prejudiced action, ordered to lock my office room.

The last para of suspension order reads "during Suspension period. Shri Chaturvedi will be entitled to subsistence allowance as per provisions contained in the UPSTC Conduct, Control and Disciplinary Rules, 1992. In terms of UPSTC Conduct, Control and Disciplinary Rules, 1992, Para 41 (1) Corporation should have paid me subsistence allowance @ 50% of salary along with allowances every month. Further, in terms of para 41 (2), where the suspension period exceeds six months, the amount of subsistence allowance should be increased to 75% of salary along with allowances. But ever since my suspension for last six months, Corporation did (not) pay me subsistence allowance, I do not know under what pretext. There is no other source of income to meet my/family expenses. Therefore, this biased action of Corporation has created financial crisis for me/family, when my both son and daughter are studying. I am, therefore, finding great difficulty and harassment to meet my family expenses.

I beg to further submit that I do not commit any impropriety, what to say of dishonesty, fraud, disobedience, negligence and so many other adjectives against me. But such an extreme action was taken against me after having served the Corporation for such a long period with full devotion, sincerity and honesty, on the basis of unanimous complaint of a unknown Hanuman Prasad. It is pertinent to mention that how an outside person could come to know of confidential facts without unauthorised communication or information by some Senior Officer/s of

Corporation is a matter of probe and investigation. I therefore, pray your goodself to kindly intervene in the matter and order for payment of subsistence allowances with effect from July, 1992 @ 50% of salary along with allowances and @ 75% of salary along with allowances w.e.f. January, 1993.

With kind regards.

Yours faithfully. (P.C. Chaturvedi) 117-K-74, Sarvodaya Nagar, Kanpur 5.1.1993."

29. Secondly, the petitioner's application dated 23.6.1993 (Annexure-23) filed before the Chairman with underlining by us reads thus :

"In last 4 months no action has been taken in the matter nor I am being paid the subsistence allowance since beginning @ 50% for first six months and @ 75% thereafter, which is causing great financial hardship and humiliation to my family."

30. Thirdly, in his appeal (Annexure-26) he stated, (underlining by us) as follows :

"The entire proceedings have been held in gross violation of the principle of natural justice. I was not paid any subsistence allowance whatsoever from 1.7.1992 till date, which caused mental torture, agony, tarnishing of social image and was prejudiced in defending myself during enquiry proceedings,"

31. The relevant pleadings in this regard in this writ proceedings are as under.

32. Paragraphs 61, 62, 78 and 79 of the writ petition read as follows :

"61. That during the pendency of the passing of the final orders in pursuance to the notice dated 16.2.1993 referred to above, the petitioner filed an appeal/representation before the Chairman on 23.6.1993 praying for being afforded an oral hearing by the Chairman prior to the finalisation of any orders against the petitioner. A true copy of the representation appeal of the petitioner dated 23.6.1993 is being enclosed herewith and marked as Annexure-23 to this writ petition.

62. That no orders whatsoever was passed on the said appeal of the petitioner and the same remained pending.

* * * 78. That even though the petitioner was placed under suspension on 1.7.1992 the petitioner was not paid any subsistence allowance whatsoever from 1.7.1992 till date. This nonpayment of subsistence allowance was despite a specific demand in this regard. True copies of the representation of the petitioner pertaining to the non-payment of subsistence allowance dated 5.1.1993 is being enclosed herewith and marked as Annexure-23 to this writ petition.

79. That the petitioner was further prejudiced in defending himself during the enquiry proceedings as no subsistence allowance whatsoever was paid to the petitioner during the course of the said enquiry proceedings and even subsequent right from the date of the petitioner placing under suspension."

33. The reply of respondent Nos. 1 to 3 in paragraph Nos. 65, 66, 82 and 83 of the counter-affidavit read as follows :

"65. That the contents of para 61 of the writ petition as stated are incorrect, hence denied. In fact, no appeal was filed before the Chairman on 23.6.1993. In fact the petitioner simply wrote a letter on 23.6.1993 requesting the Chairman to give some time to listen the petitioner lonely and personally. But as the matter was already pending with the Managing Director of the respondent No. 1, therefore, at that stage the Chairman of the respondent No. 1 did not feel it proper to interfere in the matter.

66. That the contents of para 62 of the writ petition, as stated are incorrect, hence denied. No appeal was filed before the Chairman as such the Chairman is not required to pass any order on the letter dated 23.6.1993. In the said letter only a request is made for personal meeting. Hence it is wholly incorrect to say that the said appeal is still pending.

* * * 82. That the contents of para 78 of the writ petition stated are incorrect, hence denied. The petitioner vide order dated 30.6.1992 specifically directed to report daily at 10.30 a.m. in the office of J.T.M.D. UPSTC Ltd., Sri H.N. Singh for marking attendance in a separate register and receive official communication if any, during suspension period. A photocopy of the order dated 30.6.1992 is being filed herewith and is marked as Annexure-CA VII to this counter-affidavit. The petitioner in utter disregard to the aforesaid order did not report in the office for marking his attendance and receiving official communication despite repeated requests and reminders made by respondent No. 1. As such, he was not treated on duty hence the subsistence allowance was not paid to him, as per the bye-laws of respondent No. 1.

83. That the contents of para 79 of the writ petition as stated are incorrect, hence denied. In fact, due to petitioner's own act of disobedience of the order the substantial allowance was not paid to him."

The counter-affidavit has been sworn by D.N. Misra, the Company Secretary, according to whose affidavit the statements aforesaid are true on the basis of the information based on the records.

34. The rejoinder of the petitioner as contained in paragraphs 58, 59, 73 and 74 read as follows :

"58. That paragraph 65 of the counter-affidavit is incorrect and is denied and in reply thereto the contents of paragraph 61 of the writ petition are reiterated. It is incorrect to assert that no such representation/appeal was filed by the petitioner before the Chairman.

59. That paragraph 66 of the counter-affidavit is incorrect and is denied and in reply thereto the contents of paragraph 62 of the writ petition are reiterated.

* * * 73. That paragraph 82 of the counter-affidavit is incorrect and is denied

and in reply thereto the contents of paragraph 78 of the writ petition is reiterated. It is stated that since the petitioner had been placed under suspension the respondents authorities should pay subsistence allowance to the petitioner.

74. That paragraph 83 of the counter-affidavit is incorrect and is denied and in reply thereto the contents of paragraph 79 of the writ petition are reiterated. There existed no justifiable ground for withholding the subsistence allowance to the petitioner."

35. The representation before the Chairman, as contained in Annexure-25, who was the highest authority of respondent No. 1, clearly shows making of grievance of non-payment of subsistence allowance. This supports his stand made in paragraph 61. Yet the respondent Nos. 1 to 3 in paragraph 65 dub them to be incorrect. The prayer in the representation is crystal clear and the suggestion made in 2nd sentence of paragraph 61 is also incorrect. The stand taken in the 3rd sentence of paragraph 61 and paragraph 62 are wholly misplaced and has been made for the first time in this Court. The Chairman being the highest authority was required to pass orders one way or the other and the statement made by the petitioner in paragraph 62 is correct whereas the statements made in paragraph 66 of the counter-affidavit are unfortunate.

It is an admitted position that the subsistence allowance was not at all paid to the petitioner nor his prayer made through his petition, representations and appeal (as contained in Annexures-25, 23 and 26 respectively) was at all considered rather a defence has been taken for the first time in the counter-affidavit that since he did not sign the attendance register as per the direction contained in the suspension order, hence the subsistence allowance was not paid. Records have not been produced along with the counter affidavit by the respondents. Further, nothing has been stated by the deponent, or produced by him that he had made enquiries from the Joint Managing Director of the Corporation Sri H.N. Singh before whom the petitioner was to report daily at 10.30 a.m. for marking attendance in a separate register and receive official communication, if any, during his suspension period. No register has been produced by the respondents showing that it was that register which was required to be signed by the petitioner and that due to his non attending the office he was marked absent. Thus, an adverse inference is drawn up against the respondents.

In Capt. M. Paul Anthony, relied upon by Sri Singh, a pleading in regard to non-payment of subsistence allowance was taken in the High Court and even before the Supreme Court, which was allowed.

Reliance in this regard was also placed by Mr. Murari on Bye-law No. 8 of U.P. State Textile Corporation (Conduct and Control) Bye Laws. Bye-law No. 8 which required compliance with the instructions relating to recording of time of arrival for working and departure from the place of working, period of duty hours of

work and the like, as notified from time to time, and marking of the attendance in the prescribed register. The explanation given in last sentence of paragraph 82 are apparently after thought inasmuch as no material has been provided by the respondents that the petitioner was not treated to be on duty. The case of prejudice set up by the petitioner in paragraph 79 has been dubbed as incorrect and denied by the respondents in paragraph 83. The judgments were sought to be distinguished by Sri Krishna Murari on the ground of non-signing the attendance register despite a categorical direction made in the suspension order and Bye-law No. 8 of 1978 of Bye-laws and in that view of the matter, he was not paid the subsistence allowance. He also referred to a Division Bench judgment of Rajasthan High Court in Jagiwanchand Bhandari v. Rajasthan High Court, Jodhpur 1990 L&IC 1634.

36. Bye-law No. 8 does not require signing of attendance register by a suspended employee. In the Division Bench judgment in Jagjiwanchand Bhandari, supra, it was held that when the petitioner was directed to mark his attendance but had failed to comply with the directions issued in that regard, it was held that he was guilty of misconduct. Then the petitioner was not under suspension. Such is not the case here inasmuch as the petitioner has not been charged of misconduct on that score. The other judgment in Khem Chand Vs. Union of India (UOI), , relied upon by Sri Murari is of no help since it holds that the real effect of the suspension order is that he is not permitted to work.

37. No order has also been brought in the counter-affidavit showing disposal of the petitioner's prayer made for grant of subsistence allowance. Not a single reminder, allegedly issued in that regard, as claimed in paragraph 82 of the counter-affidavit, has been brought on record. The Constitution Bench decision relied upon by Sri Singh, was not explained away by the Rajasthan High Court and is in the peculiar facts and circumstances, binding on us.

38. It has also been emphasised by Mr. Murari that since the enquiry was conducted at Kanpur itself where the petitioner was residing, therefore, he was not entitled to grant of subsistence allowance and thus rightly not given. We are conscious that in the decisions relied upon by Mr. Singh, the patent difficulty in attending the enquiry, which was conducted at a distant place, was also taken in account but here the Bye-laws of respondent No. 1 does not make any difference whatsoever in regard to non-payment of subsistence allowance on account of any distance between the place of residence of the suspended employee and the place of enquiry. In his representation, he has also stated that there was no other source of his income to meet the expenses of his and his family members. Admittedly there was no source of income of the petitioner except his salary. His family admittedly consisted of his son and daughter who were students. The financial stringencies were thus apparently caused due to nonpayment of subsistence allowance. Prima facie, it appears to us that no suspended employee who will go to office will commit a folly in refusing to sign the attendance register which will result in denial of his subsistence allowance. Accordingly, the reason

for non-signing of the attendance register that since he had become the head of the department he was not signing attendance register and, therefore, was not required to sign the attendance register appears to be a valid ground in the backdrop that it is not the case of the respondents that the claim of the petitioner that as a Head of the Department, he was never signing the attendance register, is incorrect.

39. His defence that his office room was ordered to be locked was required to be considered by the authorities. The fact stated in the representation that he continuously used to come at his office/place of work every day has not been disputed at the Bar by Mr. Murari in the absence of any pleading. Thus, the non-signing of the attendance register by the petitioner was not of much significance or in any event a bona fide lapse. The prejudice of the petitioner on account of non-payment of the subsistence allowance is writ large. It cannot be held that simply the enquiry was being conducted at Kanpur, where the petitioner was residing during the period of his suspension, it can stand in his way of his constitutional safeguard provided under Articles 21 and 256(1) of the Constitution of India.

40. In view of the discussions aforesaid, we hold that due to nonpayment of subsistence allowance, the inquiry, the punishment of dismissal of the petitioner and dismissal of his appeal, all are void and liable to be quashed by this Court by grant of a writ of certiorari.

41. Now we proceed to consider submission Nos. (II) and (III) of Mr. Singh, together which pertain to the violation of principles of natural justice during the enquiry as they are inter-linked.

42. On 3.10.1992, the petitioner filed his letter before the Enquiry Officer, which reads as follows :

"P.C. Chaturvedi 3.10.1992 Manager (E & M)

Sri V. K. Sharma,

Managing Director & Enquiry Officer

U.P. State Yarn Company Ltd.

B-15, Sarvodaya Nagar

Kanpur.

Sir,

Kindly refer to the orders passed by the Hon"ble Enquiry Officer during the presentation of my case on 23.9.1992 in connection with the demand of "Presiding Officer" to present two witnesses for charge No. 1.

It is to submit that the disciplinary authority while framing the charge-sheet No. 554-55/STC/MDC/UB/90, dated 7th July, 1992 has only relied upon certain

documents that have been mentioned under each charges specifically. The disciplinary authority did not mention in the charge-sheet any name of the witnesses to be produced before the Hon"ble Enquiry Officer during the hearing of the case. As such the demand of the "Presiding Officer" at this stage is against the provisions of the Rule.

The text of the relevant rule of the Conduct, Control and Disciplinary Rule, 1992, Chapter III, Part 46 (3) is reproduced below for your kind perusal :

"Where it is proposed to hold such enquiry, specified charges, on the basis of the allegations against the employee shall be framed. The charges together with the said allegations, shall be communicated in writing to the employee. The charge sheet shall be accompanied by copies of any statement made previously in any informal and confidential enquiry into the allegations against the employee. Further below each charge shall be listed the documents and proofs proposed to be taken into account at the enquiry and the particulars of any witnesses proposed to be examined in support of each charges."

Therefore, the orders passed by the Hon"ble Enquiry Officer allowing the "Presenting Officer" to produce the two witnesses, i.e., Sri. P.C. Maheshwari, Chief Controller (Finance) and Sri L.C. Sharma or his representative in connection with charge No. 1 is clearly the violation of the above Rule, to which I strongly object. In fact, I am very much pained by the orders passed by the Hon"ble Enquiry Officer allowing at this stage the prosecution of oral evidence/ witnesses not mentioned in the charge-sheet as per Rule 46 (3).

I would, therefore, humbly once again request the Hon"ble Enquiry Officer to kindly pass orders disallowing prosecution of any oral evidence/witness not mentioned in the charge-sheet. I would, further like to submit that, it will not be possible to participate in the proceedings unless necessary orders are passed disallowing any oral evidence/witness to be produced by the "Presenting Officer".

Yours faithfully Sd/. (P.C. Chaturvedi)"

43. On 7.10.1992 the petitioner moved the Enquiry Officer, vide Annexure-20, to stay his hands till decision of Chairman of the Corporation is taken on his application for his charge on the ground that he has lost faith in his independence.

44. Vide letter dated 11.10.1992, the petitioner moved the Chairman of the Corporation to change the Enquiry Officer as evident from his Representation dated 26.2.1993 (Annexure-22 at page 159).

45. Annexure-CA-VI to the counter-affidavit is the order dated 1.12.1992 passed by the Chairman of the Corporation rejecting the request of the petitioner made through his letter dated 11.10.1992, the relevant part of which reads as follows :

"8. On 3.10.1992, Shri Chaturvedi was allowed to engage the services of Shri S.N.R.S. Sinha, Sr. Accountant. UPSTC for assisting him during the proceedings.

9. On 3.10.1992, the presenting officer requested for oral evidences of certain persons, Shri Chaturvedi protested but his objection was overruled in the interest of fair presentation by the management. However, keeping in view the principles of natural justice. Shri Chaturvedi was allowed to cross-examine the witnesses who were intended to be produced during the enquiry. Other allegations in Shri Chaturvedi's letter are baseless and mischievous.

After having considered the allegations contained in Shri Chaturvedi's letter comments of enquiry officer and also after perusal of the enquiry file, I do not find any bias on the part of the enquiry officer who in my opinion has given full opportunity of hearing and there is no violation or denial of the rules of natural justice while conducting the enquiry by the enquiry officer. Hence, I have come to the conclusion that there are not adequate grounds at this stage to change the enquiry officer. The request of Shri Chaturvedi, Manager (Electrical and Mechanical), UPSTC (under suspension), as contained in his letter dated 11.10.1992, is hereby rejected."

46. It is necessary, to look at the relevant part of the Enquiry Report touching these aspects, which read as follows :

"The presenting officer requested for oral evidence of Sri P.C. Maheshwari and Sri Kuldeep Singh. Sri Chaturvedi raised the objection that presenting officer should confine to the evidence listed in the charge-sheet only.

After hearing both the parties, the presenting officer was allowed to produce oral evidence of Sri Kuldeep Singh and Sri P.C. Maheshwari affording him a fair opportunity to present the case. Sri Chaturvedi was also allowed to cross-examine the witnesses. He, however, was not satisfied with orders and started arguing on the issue. Eventually, he along with Mr. Sinha staged a walkout. Thereafter, the case was allowed to proceed ex parte.

Accordingly, the presenting officer presented Sri Kuldeep Singh, Sr. Engineer Civil. Chief Representative of M/s. G.C. Sharma and Sons for his oral evidence. The evidence is recorded from page 10-14 at Enquiry File Vol. II.

The presenting officer also got the oral evidence recorded of Sri P.C. Maheshwari, C.C.(F), UPSTC which is available from page 15-22 at Enquiry Pile Vol. II. On 8.10.1992 presenting officer attended the hearing. He got the statement of Sri A.K. Pandey, Dy. Manager (E & M), UPSSC recorded. His statement is available from pages 25-28 at Enquiry File Vol. II.

The presenting officer also filed a written statement which is available on pages 23 & 24 on Enquiry File Vol. II. He also sought permission for filing additional documents. Permission were granted. The following document was filed. (1) List of documents and papers which are still to be handed over to Sri R.K. Bansal/Sri. A.K. Pandey (Enquiry File Vol. I from page Nos. 80-84).

Sri P.C. Chaturvedi sent a letter dated 7.10.1992 which is kept at Sl. No. 78 on Vol. I of the enquiry file. Thereafter, Chairman, UPSTC sent a letter dated

11.10.1992 from Sri Chaturvedi for comments. Comments were sent vide note dated 23.10.1992.

Vide Chairman UPSTC's order No. CH/91/010/728, dated December 1, 1992 the request of Sri Chaturvedi as contained in his letter dated 7.10.1992 was rejected (Sl. 93-95 Vol. I)."

47. This aspect of the matter was specifically taken by the petitioner in his Representation dated 26.2.1993 (Annexure-22) in following words :

"11. The statement of successor "Presenting Officer" in respect of charge No. 1 was recorded on 23.9.1992. The "Presenting Officer" demanded to present two witnesses Sri P.C. Maheshwari, C.C. (F) and Sri L.C. Sharnia or his representative in the next evidence fixed on 3.10.1992. Since the name of any evidences have not been mentioned in the charge-sheet, no evidences should be allowed at this stage. But Enquiry Officer turned down my objections. In the next evidence held on 3.10.1992, three "Presenting Officers" were allowed to present the case and in place of two evidences demanded on 23.9.1992, four evidences namely Sri P.C. Maheshwari, CCF, Sri Kuldeep Singh, representative of Architect, Sri Khan. Site Engineer of Architect and Sri A.K. Pandey Dy. M. (E/M) (who is one of the three "Presenting Officer" were presented. My two letters dated 3.10.1992 appealing against above were turned down by the Enquiry Officer, without assigning any reason. They tried to cook up the false stories and manufacture the evidence, which is not permissible. In any case, it was not done in good faith and with impartial attitude. This clearly showed the bias and prejudiced action of the Enquiry Officer. I was left with no alternative but to submit the Enquiry Officer that I have lost faith in the independence of Enquiry Officer and I feel that I will not get justice. Therefore, I moved to the Chairman for changing the Enquiry Officer. Hence, it was requested to kindly stop all the evidence including that to be held on 3.10.1992 until the orders on my application by Chairman.

12. The Enquiry Officer had not completed the enquiry by that time, when I requested to stop the evidences and prayed the Chairman vide letter dated 11.10.1992, to kindly change the Enquiry Officer, as he is seriously biased and prejudiced against me, and I have lost faith/trust in him. In departmental enquiries, investigation should be done into the charges in accordance with principles of natural justice. If, there is real likelihood of bias on the part of Enquiry Officer, he should not conduct the enquiry himself and more so under such representations. The Enquiry Officer's refusal for providing me complete and accurate copies of the documents, allowing three "Presenting Officers" and allowing several witnesses not mentioned in the charge-sheet, were clear indications of his negative attitude already framed against me. The due procedure was not adopted. The principles of natural justice was also set aside in so much so that enquiry officer went astray in deciding the enquiry ex parte. The enquiry officer even did not wait for the decision of Chairman.

13. Chairman's order No. CH/91/010/728, dated December 1, 1992, was

delivered to me on 2nd December, 1992, supporting the views of Enquiry Officer and rejecting my appeal even without giving me a chance to hear, so that I could explain my point of view for the change of the Enquiry Officer. I am sure that my representation on my having lost faith/trust in the Enquiry Officer and my feeling that I will not get justice was not at all considered. Thereafter, I had no communication from the Enquiry Officer, regarding dates further for proceeding. I am surprised that the enquiry report was completed without any intimation to me and without my participation. It is illegal and invalid."

48. The petitioner reiterated his grievance in this regard even before the Chairman vide his letter dated 23.6.1993 (Annexure-23) which read as follows :

"Chairman

U.P. State Textile Corporation Ltd., B-2, Sarvodaya Nagar , Kanpur-208005

Respected Sir,

I would like to draw his kind attention that I was suspended vide office order No. 551/STC/MDC/VB/92, dated 30.6.1992, followed by a false, baseless and fabricated charge-sheet (18 pages) No. B54-55/STC/MDC/VB/92, dated 7.7.1992 without any supporting documents relied upon by the management. MDSTC Sri V.K. Sharma was appointed Enquiry Officer. I found that Enquiry Officer was biased and was functioning with predetermined mind. Enquiry Officer did not provide me all the documents relied upon by the management for my defence. Moreover he allowed a few witnesses whose names were not mentioned in the charge-sheet.

Under such circumstances I had no alternative but to appeal before the Chairman to change the Enquiry Officer. Thereafter, I had no communication from Enquiry Officer. Until I received the enquiry report conducted ex parte vide MDSTC Sri N.S. Napalchyal Letter No. 1088/STC/VB/ Enquiry/93, dated 16th February 1993, to represent my case by 26th February, 1993. In absence of proper documents, I prepared my representation based upon memory. In last 4 months no action has been taken in the matter nor I am being paid the subsistence allowance since beginning @ 50% for first six months and @ 75% thereafter, which is causing great financial hardship and humiliation to my family.

I, therefore, appeal before your goodself to kindly give me some of your valuable time to listen to me lonely and personally and take decision in my case on merits."

49. However, as already stated, his representation was rejected vide order dated 12.7.1993 of the Managing Director as contained in Annexure-24, the relevant part of which in this context reads as follows :

"(i) There is nothing in the representation which repudiates the report of the Enquiry Officer. (At page 180).

(ii) On due consideration of enquiry report, evidence on record, representation of

Shri Chaturvedi and other relevant facts I agree with the findings of the Enquiry Officer (At page 183)."

50. The petitioner also raised this significant aspect of the matter in his appeal (Annexure-26) at two places in following words :

"(i) Initially Enquiry Officer allowed two presenting officers as against one, on my protest three presenting officers, were allowed including one with legal background and allowing oral evidences not mentioned in charge sheet. Since Enquiry Officer was biased and functioning with predetermined mind, enquiry was requested to be stopped and an appeal was made before Chairman for change of Enquiry Officer. Instead Enquiry Officer hurriedly completed the enquiry ex parte without any intimation to me on the subject in October, 1992 under the influence of Mr. Radhey Shyam. (Vide Paragraph 16 page 193).

(ii) The entire proceedings have been held in gross violation of principles of natural justice." (Vide Page 206).

51. Surprisingly, the Chairman (the appellate authority) nowhere in his order (Annexure-27) considered this significant aspect of the matter despite noting it in the following manner :

"..... the enquiry was completed ex parte in October, 1992, without providing him opportunity."

52. Now let us revert to the relevant pleadings in this writ petition.

Paragraphs 53 to 57, 59 and 72 of the writ petition read as follows :

"53. That on 3.10.1992, the presenting officer wanted to lead the oral testimony of four witnesses. The petitioner, however, objected against the same in view of the fact that as not even a single witness has been specified as required to be examined against the petitioner in the charge-sheet Issued to the petitioner. Despite the aforesaid objections the enquiry officer was proceeding in a totally partisan manner to carry on further proceedings.

54. That the entire sequence of event and in the manner in which the enquiry officer was proceeding in the proceedings made it apparent that the enquiry officer was totally biased against the petitioner was not acting in an impartial manner and paying no heed to the valid grievance of the petitioner. In view of the aforesaid the petitioner was left with no alternative but to lodge a strong protest on 3.10.1992. A true copy of the protest letter dated 3.10.1992 is being enclosed herewith and marked as Annexure-19B to this writ petition.

55. That simultaneously the petitioner filed an appeal before the Chairman of the respondent company praying for the Enquiry Officer being changed. Intimation of the filing of this appeal was also given to the Enquiry Officer with further request of keeping the enquiry proceedings in abeyance till the decision of the appeal. A true copy of this communication dated 7.10.1992 is being enclosed herewith and marked as Annexure-20 to this writ petition.

56. That the appeal preferred by the petitioner before the Chairman was decided by means of an order dated 1.12.1992 whereby the appeal of the petitioner was rejected. A true copy of the order of the Chairman shall be produced at the time of hearing.

57. That it transpires that in the interregnum during the pendency of the said appeal and despite the request of the petitioner for keeping the enquiry proceedings in abeyance the enquiry officer proceeded to conclude the enquiry proceedings ex parte against the petitioner and submitted an undated enquiry report.

* * * 59. That it is further pertinent to point out that neither the proceedings of the Enquiry Officer conducted between 3.10.1992 till the conclusion of the enquiry proceedings nor the statement of the witnesses referred by the enquiry officer during this period ex parte against the petitioner, nor any other documents was supplied to the petitioner along with the notice dated 16.2.1993.

* * * 72. That the principle of natural justice stood further violated on account of the fact that the entire proceedings from 3.10.1992 till the conclusion of the proceedings were held ex parte against the petitioner. It was in the proceedings held during this period that the witnesses were examined ex parte against the petitioner and without affording any opportunity to the petitioner to cross-examine the same."

53. The aforementioned paragraphs have been replied in paragraphs 57 to 61, 63 and 76 of the counter-affidavit, which read as follows :

"57, That the contents of para 53 of the writ petition as stated are incorrect, hence denied. The Presenting Officer has examined only 2 witnesses on 3.10.1992. The allegation against the Enquiry Officer are false, incorrect and baseless, hence denied.

58. That the contents of para 54 of the writ petition as stated are incorrect, hence denied. The allegations made against the Enquiry Officer are completely false, concocted and baseless and are not admitted. The Enquiry Officer has acted strictly in accordance with the bye-laws of the company and had given full opportunity to the petitioner in the natural justice. The petitioner had no justified grievances. But he was in the habit of moving one or two applications on each and every date only with intent to delay the enquiry proceedings. It is pertinent to mention here that the contents of protest letter given by the petitioner were duly considered by the Enquiry Officer on the same day and the petitioner was afforded full opportunity to cross-examine the witnesses of respondent No. 1.

59. That with reference to para 55 of the writ petition only this much is admitted that an appeal was filed before the Chairman of respondent company by the petitioner for change of Enquiry Officer. The allegations made against the Enquiry Officer in the said appeal were completely false, concocted and baseless. However, during pendency of the appeal the Enquiry Officer had not proceeded

with the enquiry proceedings.

60. That the contents of para 56 of the writ petition are not denied. The Chairman has considered the appeal at length and passed the order on 1.12.1992. The photocopy of the order dated 1.12.1992 passed by the Chairman is being filed and is marked as counter-affidavit VI to this counter-affidavit. Reference would be craved on the contents of the order at the time of argument.

61. That contents of para 57 of the writ petition, as stated are incorrect, hence denied. In fact, the petitioner preferred an appeal before the Chairman on 11.10.1992, and the said appeal was decided by the Chairman on 1.12.1992 and during the said period the Enquiry Officer neither fixed any date for enquiry proceedings nor conducted the enquiry. The enquiry report was given by the Enquiry Officer on 3rd February. 1993, hence it is wholly incorrect to say that the Enquiry Officer proceeded the enquiry proceedings and concluded the enquiry proceedings ex parte and submitted undated enquiry report. However, full opportunity of hearing to put the defence was afforded to the petitioner in accordance with the principles of natural justice.

* * * 63. That the contents of para 59 of the writ petition as stated are incorrect, hence denied. The petitioner at his own accord deliberately escaped from the enquiry proceedings and did not attend the same despite the notices sent by the Enquiry Officer. Hence the Enquiry Officer had no alternative except to proceed with the enquiry proceedings in the absence of the petitioner. However, it is pertinent to mention here that the enquiry report was submitted after considering the reply submitted by the petitioner and the evidence produced by the Presenting Officer. There was no necessity of supplying any other document along with notice dated 16.2.1993. Only the enquiry report was required to be sent to the petitioner calling upon his explanation upon the enquiry report so as to provide one more opportunity to represent his case, if any, with the directions that the said representation must reach to the Managing Director on or before 26th February, 1993.

* * * 76. That the contents of para 72 of the writ petition as stated are incorrect, hence denied. There was no violation of the principles of natural justice while conducting the enquiry proceedings. The enquiry proceedings were not held ex parte, but the petitioner had participated in the enquiry proceedings upto 3rd of October, 1992 and thereafter he himself deliberately escaped from the enquiry proceedings. The enquiry report was given after considering the reply submitted by the petitioner. As such, the enquiry proceedings were not held ex parte."

54. The aforesaid paragraphs have been answered by the petitioner in paragraphs 50 to 54, 56 and 67 of his rejoinder, which read as follows :

"50. That in reply to paragraph 57 of the counter-affidavit, it is reasserted that the petitioner had taken objection against the oral testimony being recorded. As no point of the petitioner was given any notice to such oral testimony being recorded.

51. That the contents of paragraph 58 of the counter-affidavit the contents of paragraph 54 of the writ petition are reiterated. It is false to aver that the enquiry officer has proceeded in accordance with the bye-laws and principle of natural justice. It is incorrect to assert that petitioner has no justifiable grievance as is detailed in the writ petition. It is incorrect to assert that the applications taking objection were filed by the petitioner merely to delay the enquiry proceeding. It is false to aver that the petitioner was afforded any opportunity to cross-examine the witnesses. Assertion to the contrary are incorrect and are denied.

52. That in reply to paragraph 59 of the counter-affidavit, the contents of paragraph 55 of the writ petition are reiterated. It is incorrect to assert that the allegation levelled against the enquiry officer in the memo of appeal were baseless and concocted.

53. That in reply to paragraph 60 of the counter-affidavit it is stated that the order dated 1.12.1992 passed by the Chairman rejecting the appeal of the petitioner is erroneous. The Enquiry Officer submitted an undated enquiry report against the petitioner.

54. That the contents of paragraph 61 of the counter-affidavit are incorrect and are denied and in reply thereto the contents of paragraph 57 of the writ petition are reiterated. To the best of the information of the petitioner the proceedings were proceeded ex parte and concluded even while the appeal is pending before the Chairman. In so far as the copy of the enquiry report which were supplied to the petitioner is undated. To the best of the information of the petitioner this enquiry report is submitted prior to 1.12.1992. No information was given to the petitioner subsequent to 1.12.1992 with regard to any date fixed for the enquiry proceedings by the enquiry officer. It is false to aver that the proceedings were conducted with full conformity of principles of natural justice.

* * * 56. That the contents of paragraph 63 of the counter-affidavit is incorrect and is denied and in reply thereto the contents of paragraph 59 of the writ petition are reiterated. It is false to aver that the petitioner escaped from the enquiry proceedings. It is incorrect to assert that there exist no occasion for supplying a copy of the documents referred to in the para under reply.

* * * 67. That paragraph 76 of the counter-affidavit are incorrect and are denied in reply thereto the contents of paragraph 72 of the writ petition are reiterated. It is reasserted that the entire proceedings against the petitioner were contrary and against the principles of natural justice."

55. Undisputedly, four witnesses were examined by the Enquiry Officer to support the charges between 3.10.1992 and completion of enquiry which according to the petitioner was considered in October, 1992, Itself. Undisputedly, the petitioner did not attend the enquiry after 3.10.1992. On 8.10.1992, even the Presenting Officer also filed written statement and sought permission for filing additional documents which was granted by the Enquiry Officer and filed

(which is clear from his report Annexure-21 at pages 143-44) behind the back of the petitioner and without serving copies thereof even upto the stage of his representation or appeal. It would have been fair for the Enquiry Officer to have waited of the outcome of the petitioner's representation for his change as prayed for by him on 7.10.1992 and 11.10.1992. He should not have rushed to proceed with his enquiry. All was behind the back of the petitioner. Even additional written statement and additional documents were filed by the Presenting Officer during the enquiry or serving their copy along with the undated report of the Enquiry Officer which itself was served on the petitioner in February, 1993. No notice has been brought on the record by the respondents to show that after 3.10.1992, the petitioner was informed of the next date, etc. of the enquiry as claimed in paragraph 63 of the counter-affidavit. According to the petitioner, as urged in his appeal copy of the evidence adduced and papers filed in the enquiry on 3.10.1992 and afterwards were also not handed over to him along with the Enquiry Report. Surprisingly, the report of the Enquiry Officer is undated for obvious reasons. We do not attach any significance to the statement made in paragraph 61 of the counter-affidavit that the enquiry report was given by the Enquiry Officer on 3rd February, 1993, which is not supported by bringing any additional document on the record. The petitioner's request for change of the Enquiry Officer was rejected on 1.12.1993 which is evident from Annexure-CA-VI, i.e., to say after the completion Of the enquiry according to the petitioner. Even if it is assumed that the Enquiry Report was given on 3rd February, 1993, the legal position is not altered in regard to violation of the principles of "fair play" and "natural justice" in regard to the conduct of the enquiry.

56. In our view, the Managing Director and the Chairman both had failed to notice that principles of "fair play" and "natural justice" required the Enquiry Officer to stay continuance of his enquiry till adjudication of the representation for his change, which was undisputedly pending and that in proceeding further with his enquiry from 8.10.1992 without any Intimation to the petitioner, the Enquiry Officer has apparently breached these two sacred principles.

57. Having regard to the apparent facts and circumstances aforementioned, we hold that the enquiry was concluded violating at least from 8.10.1992 till its conclusion (in October, 1992 according to the petitioner) non-observance of the principles of "fair play" and "natural justice" and consequently the enquiry report and the impugned orders all are liable to be quashed.

58. Now, we come to the fourth submission of Mr. Singh.

59. We have perused the relevant pleadings, the various annexures including the Enquiry Report. Unfortunately, the Enquiry Officer, respondent No. 4, despite service of notice has not appeared so that we could have the advantage of his comments. Unfortunately, respondent Nos. 1 to 3 who are in custody of the entire documents pertaining to the enquiry have not produced the Order-sheet of the Enquiry Officer as to on what date, his enquiry was concluded and he had prepared his undated report. The deponent of the counter-affidavit of

Respondent Nos. 1 to 3 apparently has not contacted Respondent No. 4 before making the relevant statements occurring in Paragraphs 42 to 48, 50, 51 and 63 of the counter-affidavit which according to the deposition of the deponent "are true on the basis of information based on records". From the Enquiry Report, extracted in paragraph 34 earlier, it is clear that the documents were allowed by the Enquiry Officer to be brought on the records of the enquiry after written Intimation by the petitioner to the Enquiry Officer on 7.10.1992 that he intends to move the Chairman for his change on 8.10.1992 but without supplying them to the petitioner on the basis of which also the Enquiry Officer has recorded his findings in his report or even before the opportunity given to the petitioner to make his representation, which he made on 26.2.1993. Thus, the prejudice to the writ petitioner is also writ large. For this reason also the Enquiry Report is vitiated and so are the impugned orders.

60. Now we come to prayer No. (iv). During his last submissions made on 31.8.2001, Mr. Singh himself gave up prayer No. (iv) and thus it is rejected as not pressed.

Our Conclusion :

61. In view of our findings recorded earlier, we are of the view that the petitioner is entitled to grant of relief Nos. (i), (ii) and (iii) claimed by him.

The result :

62. Consequently, we quash the impugned Enquiry Report as well as the impugned orders and allow this writ petition to the extent indicated as above with cost, however, with liberty to respondent No. 1 to start de novo disciplinary proceedings against the petitioner in accordance with law or if it so likes, proceed with the Enquiry from the stage as it was on 3rd October, 1992.

63. Let a writ of certiorari quashing the enquiry report and the Impugned orders and mandamus for payment of his salary and admissible allowances as prayed for, issue accordingly.

64. Let a copy of this judgment be handed over to Sri Krishna Murari, learned counsel for the respondent Nos. 1 to 3, within one week for a follow-up action.