
(2009) 04 RAJ CK 0094
In the Rajasthan High Court

Ram Kishor Meena

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2010) 1 RLW 189

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—Pitted against the colossal power of the State, the petitioner has sought the refuge of this Court for a number of reliefs. He has not just challenged the order dated 16.07.1994 whereby his pay-scale was suddenly reduced, not just challenged the order dated 11.08.1994 whereby the recovery order was passed, but most importantly he has challenged the suspension order dated 21.07.1994, the charge-sheet dated 25.07.1994, the dismissal order dated 27.04.1995 and ultimately, the order dated 01.05.1995 whereby the dismissal order was confirmed.

2. This case has had a chequered history which is as under:

According to the petitioner, on 20.01.1979, he was appointed as a Welfare Officer in the Central Social Welfare Board (hereinafter referred to as "the Central Board", for short). He continued to work on the said post till 04.03.1986. Vide order dated 05.03.1986, he was promoted to the post of Assistant Project Officer and continued to hold the said post till 01.11.1988. In November, 1988 he was sent on deputation from the Central Board to the Rajasthan State Social Welfare Board (hereinafter referred as "the State Board", for short) as the Secretary of the State Board. Vide order dated 16.02.1991, he was absorbed as the Secretary of the State Board in the pay-scale of Rs. 3, 000-4, 500/-. This absorption was done after due consultation with the Central Board. From 1991 till 1993, the

petitioner discharged his functions satisfactorily. There were no complaints about his work. However, according to him, after the appointment of respondent No. 6, Smt. Sariya Khan, on 26.03.1993, as the Chairperson of the State Board, troubles began for him.

3. Further, it is the case of the petitioner that vide order dated 31.03.1993, the State empowered the Secretary to work as the Treasurer of the State Board. Thus, after 31.03.1993, the petitioner was working both as the Secretary and as the Treasurer of the State Board. During his tenure as the Treasurer, Smt. Sariya Khan wanted the petitioner to approve grant of one voluntary organization, namely Ravindra Tagore Vidhyala Samiti situated in Rawatsar, Distt. Ganganagar for the establishment of the Family Counseling Centre. However, as there were complaints against the said voluntary organization for having misused the grant given earlier by the State Board, the petitioner refused to tow her line. Because of his refusal, Smt. Sariya Khan started bearing a grudge against him. Thus, began his victimization.

4. On 31.03.1994, Smt. Sariya Khan sought six explanations in a single day from the petitioner. These explanations were offered by him vide his reply dated 25.05.1994. Consequently, vide order dated 16.07.1994, without giving him an opportunity of hearing, the petitioner's pay-scale was suddenly reduced from Rs. 3000-4500/- to Rs. 2500-4250/-. On 21.07.1994, the petitioner was suspended; on 11.08.1994 an order of recovery of Rs. 49,773/- was passed. Since the petitioner was suspended and since subsistence allowances was being paid, surprisingly, the order dated 11.08.1994 directed the recovery from his subsistence allowances. Lastly, on 25.07.1994, the petitioner was given a memo of charge-sheet containing eight charges. These charges related either to the petitioner's recommendation for grant of money to different institutions, or for retaining files by him.

5. On 06.08.1994, while submitting his interim reply, the petitioner reserved his right to file a detailed reply. According to the charge-sheet, the Board wanted to rely upon fifty-seven documents. On 19.08.1994, the petitioner requested the State Board to give him copies of the documents as the copies of the said documents were not given to him along with the charge-sheet. Vide letter dated 07.09.1994, the respondents gave copies of only forty documents out of fifty-seven documents relied upon by them for the purpose of carrying out the departmental inquiry. Since only some documents had been supplied, while the others were retained, vide letter dated 16.09.1994, the petitioner clearly pointed out that complete set of documents has not been supplied to him. He further pointed out that even the right to inspect the remaining documents has not been given to him. In reply to the petitioner's letter dated 16.09.1994, vide letter dated 20.09.1994, petitioner was informed that almost all documents have already been given to him. Therefore, he was directed to submit his detailed reply by 27.09.1994. But even before the petitioner could submit his detailed reply, vide order dated 20.09.1994, the State Board appointed an inquiry officer.

Again, vide letter dated 29.09.1994, the petitioner pointed out that copies of certain documents had yet to be supplied to him. He also requested that he should be permitted to engage the service of a legal practitioner in order to plead his case before the inquiry officer. However, the State Board did not respond to the said request.

6. The inquiry commenced on 14.10.1994. However, according to the petitioner, he never received any intimation about the commencement of the said inquiry. Similarly, according to him, he never received any information about the next date, namely 20.10.1994. But he did receive information, through a public notice published in the local newspaper, that the inquiry is scheduled to be held on 15.11.1994. But due to his own illness, he requested that the inquiry be postponed. He submitted a medical certificate showing the fact that he was not keeping well. But notwithstanding his request, the inquiry officer decided to proceed ex-parte against the petitioner. On 28.11.1994, the petitioner submitted an application for setting aside the ex-parte order. But the said application was never dealt with by the inquiry officer. Thus, the proceedings continued to be ex-parte. Even on the next date i.e. 03.12.1994, due to the illness of his wife, the petitioner again requested for the adjournment of the inquiry proceeding. Upon his request, the inquiry was postponed till 12.12.1994. But, as the petitioner again fell ill on 12.12.1994, he again requested for adjournment of the inquiry proceeding. Again he submitted a medical certificate showing the fact that he is ill. Despite his request, the statements of two witnesses, namely Nanak Chand and Hanuman Singh were recorded by the inquiry officer. The inquiry officer also noted that the petitioner shall not be informed about the future dates of the inquiry and it is upto him to find out the future dates. Thus, according to the petitioner, he had no notice of the future dates. Moreover, whenever he did attend the inquiry on the future dates, he was not permitted to participate or to cross-examine the witness as he was orally told that the proceeding is ex-parte. It is further the case of the petitioner that on 17.12.1994, the Department had completed the deposition of its witnesses. After the witnesses of the Department were examined, the proceedings were closed. According to the order-sheet dated 17.12.1994, the inquiry officer clearly recorded that "since the Department has completed its evidence, the inquiry report shall be prepared and submitted".

7. Vide notice dated 25.03.1995, the petitioner was informed that the inquiry has been completed; he was given a copy of the inquiry report. However, as the inquiry had proceeded ex-parte, vide letter dated 10.04.1995, the petitioner raised his objections and clearly pointed out that the inquiry report was not accompanied by the statements of eleven witnesses and sixty documents on which the inquiry officer had relied upon while giving his finding. He, therefore, requested that the statement of eleven witnesses and the copies of sixty documents should be furnished to him. Despite his request, the State Board did not accede to the said request. Therefore, on 19.04.1995, in the absence of the complete record, the petitioner filed the reply. On 05.01.1995, the State Board was informed that the departmental inquiry against the petitioner was over. Vide

resolution dated 05.01.1995, the Board authorised the Chairperson to take necessary action against the petitioner after due consultation with the inquiry officer and the Central Board. However, without consulting the Central Board, vide order dated 27.04.1995, the Chairperson dismissed the petitioner from the service. On 01.05.1995, the said order was placed before the State Board for confirmation. The State Board confirmed the dismissal order dated 27.04.1995. Hence, this writ petition before this Court.

8. Vide order dated 22.08.1996, this Court had dismissed the writ petition ostensibly on the ground that the writ petition is not maintainable. According to the notification dated 20.04.1987, service matters of the Central Board were amenable to the jurisdiction of the Central Administrative Tribunal. According to this Court, since the petitioner has arrayed the Central Board as a respondent party, he had an alternate remedy of approaching the Central Administrative Tribunal. Hence, this petition was deemed to be not maintainable. The petitioner challenged the said order before the Division Bench of this Court. Vide judgment dated 15th September, 2001, the learned Division Bench not only quashed and set aside the order dated 22.08.1996, but also set aside the order of dismissal passed by the State Board. Since the Board was aggrieved by the said judgment, it filed a SLP before the Hon"ble Supreme Court. Vide judgment dated 18.02.2002, the Hon"ble Supreme Court while setting aside the judgment dated 15th September, 2001 directed that "the writ petition may be taken up for hearing by the learned Single Bench on merits, who shall examine the legality of the order of dismissal and pass appropriate orders in accordance with law." Hence, this petition has travelled back to this Court.

9. Mr. Praveen Balwada, the learned Counsel for the State Board, has raised two preliminary objections with regard to the maintainability of this petition. Firstly, according to the learned Counsel, the State Board is neither a "State" within Article 12 of the Constitution of India, nor "an instrumentality of the State" within Article 226 of the Constitution of India. Therefore, it is not amenable to the writ jurisdiction of this Court. According to him, the State Board is merely an agency of the Central Board. But, it does not have an independent existence. Thus, according to him while the Central Board, the master in this case, is amenable to the writ jurisdiction, the State Board, the agent in this case, is not amenable to the writ jurisdiction.

10. Secondly, the writ petition has been filed against the Central Board arrayed as respondent No. 3 in this petition. Therefore, u/s 29 of the Administrative Tribunals Act, 1985, this petition, in fact, should have been transferred to the Central Administrative Tribunal. According to the learned Counsel, the single judge had dismissed this petition, vide order dated 22.08.1996, on this ground alone.

11. In reply to these two preliminary objections, Mr. Marudhar Mridul, the Senior Advocate, has contended that the Central Board and the State Government have a pervasive administrative and financial control over the State Board. Therefore,

the State Board is nothing but "an instrumentality of the State". Thus, it is amenable to the writ jurisdiction under Article 226 of the Constitution of India. Moreover, the issue whether this writ petition is maintainable was already raised before the Division Bench and the Division Bench had set aside the judgment dated 22.08.1996. Furthermore, the Hon"ble Supreme Court vide its judgment dated 18.02.2002 has already directed the learned Single Judge to examine the legality of the order of dismissal and to pass appropriate order in accordance with law. Therefore, the second preliminary objection no longer survives in light of the clear cut direction issued by the Apex Court.

13. In order to appreciate the first preliminary objections raised by Mr. Praveen Balwada, it is imperative to turn to the Rules governing the composition and functions of the State Social Welfare Board. Rule 2(iv) of the Rules defines the word "Government" as meaning the "State Government/Union territory". Rule 3 of the Rules deals with the composition of State Board. According to Rule 3(i) of the Rules, "the Board shall consist of such members as may be decided by consultation between the State Government/Union Territory and the Central Social Welfare Board from time to time." Therefore, the Board is to be constituted only after due consultation between the State Government and the Central Board. According to Rule 3(iv) of the Rules, "the State Board shall be constituted by the State Government through a government order/notification in consultation with the Central social Welfare Board." According to Rule 3 (v) of the Rules, "the Chairman shall be appointed by a mutual agreement between Chairman, Central Social welfare Board and the State Government." According to Rule 3 (vi) of the Rules, "half of the members, excluding the Chairman, shall be nominated by the State Government." Thus, the Chairman is appointed by the State Government after mutual consultation with the Central Board; half of the members of the Board are also nominated by the State Government. In fact the State Board is constituted only after issuance of a Government order, or a notification to that effect. Further according to Rule 6 of the Rules, if a nominee of the State Government wishes to resign, then the resignation letter is to be sent to the State Government. In case, the Chairman were to resign the resignation letter is to be accepted by the Chairman of the Central Board after holding due consultation with the State Government. In case of any vacancy in the Board, the vacancy is to be filled by the authority which nominated the outgoing member. Thus, in filling the vacancy of those outgoing members appointed by the State Government, the State Government plays a pivotal role.

14. According to Rule 7 of the Rules, which defines the functions of the Board, one of the functions of the Board is to coordinate the welfare and development activities undertaken by various departments of the State Government. Another function of the Board is to administer the programmes of Social welfare in rural areas either sponsored by the Central Social Welfare Board or jointly initiated with the corporation of the State Governments. The State Board is also to stimulate effective co-ordination among voluntary welfare agencies at the State and local levels. It is also to assist the Central Social Welfare Board and the State

Government in further developing the welfare services. Thus, the very function of the Board is to carry out work for the good of the people and to discharge a public function.

15. As far as the financial aspect is concerned, according to Rule 12 of the Rules, the expenditure incurred on the establishment of the office of the State Board would be shared equally by the Central Board and the State Government. As far as the other budgeting is concerned, the State Board shall submit its budget to the Central Social Welfare Board. The Board is even subjected to having its accounts audited by the State Accountant General or other auditors appointed by the State Government in consultation with the Central Board.

16. A bare perusal of all these provisions clearly prove the fact that the State Government has a pervasive control over the administration and the finances of the Board. Therefore, this Court has no hesitation in holding the State Board as "an instrumentality of the State". Therefore, the State Board is amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. Hence, the first preliminary objection raised by Mr. Praveen Balwada is, hereby, rejected.

17. As far as the second preliminary objection is concerned, the said preliminary objection is no longer debatable. For, vide judgment dated 18.02.2002, the Hon"ble Supreme Court has directed a Single Bench of this Court to decide the case on merits and in accordance with law. In the light of the unequivocal direction, this Court has to decide the case on its merit and in accordance with law.

18. Mr. Marudhar Mridul has raised plethora of contentions based both on facts and law: firstly, he has drawn the attention of this Court to the Rules governing the composition and functions of the State Board. Rule 2(i) of the Rules defines "the Board" as meaning the "State Social welfare Advisory Board". Rule 3(i) of the Rules, dealing with the composition of the State Board, states that "the Board shall consist of such members as may be decided by consultation between the State Government/Union Territory and the Central Social welfare Board from time to time". According to Rule 3 (vi) of the Rules, half the members, excluding the Chairman, shall be nominated by the Central Social welfare Board and the other half by the State Government. Thus, the Board consist of nominated members from the Central Board and of others who are appointed by the State Government. According to the learned Counsel, the State Board was constituted on 26.03.1993. But, at that time the Board consisted of members appointed only by the State Government; the Board did not have any members nominated of the Central Board. The said nomination was made by the Central Board on 31.01.1995. Therefore, between 26.03.1993 and 31.01.1995, the State Board was not even validly constituted in accordance with the Rules. Hence, according to the learned Counsel, any action taken by the State Board between 26.03.1993 to 31.01.1995 is void-ab-initio.

19. Secondly, the trouble started for the petitioner after the appointment of Smt. Sariya Khan as the Chairperson of the State Board. As stated above, because the petitioner refused to tow her line and to give into her illegal and unreasonable request, she started bearing a grudge against the petitioner. Her mala fide intention is clear from the fact that on 31.03.1994, just in one day, she sought six explanations from the petitioner. Moreover, vide order dated 16.07.1994, without giving him an opportunity of hearing, his pay-scale was suddenly reduced. Subsequently, vide order dated 21.07.1994, he was suspended. To add insult to injury, vide order dated 11.08.1994, the recovery was to be made from the subsistence allowances being given to the petitioner during his period of suspension. According to the learned Counsel, these facts clearly prove the mala fide on the part of the Chairperson.

20. Thirdly, the learned Counsel has frontally attacked and has challenged the procedure adopted by the Board for conducting the Departmental inquiry. According to Rule 2 (vi) of the Rules, the "Secretary" means "the Secretary of the Board appointed by the Board in consultation with the Central Social Welfare Board." Therefore, the appointing authority is the Board and not the Chairperson of the State Board. According to Rule 10(ii) of the Rules, "the authority competent to promote, degrade or dismiss an officer or servant of the Board shall be the authority empowered to appoint such officer or servant." Therefore, the power to dismiss or even to initiate a departmental inquiry lies with the Board, and not with the Chairperson. However, in the present case, the departmental inquiry has been initiated by the Chairperson, namely Smt. Sariya Khan. Therefore, the very commencement of the departmental inquiry is contrary to the Rules.

21. Fourthly, the petitioner was not given the documents while giving him the copy of the charge-sheet on 25.07.1994. According to the charge-sheet, the Board relied upon fifty-seven documents. Even after the petitioner had requested that copies of all the documents be given, vide letter dated 07.09.1994, only forty documents were supplied to him. But de facto, only thirty-three documents were supplied to him. The discrepancy of number arises from the fact that according to the charge-sheet, document No. 41 consisted of a single unit, yet in the list of documents given to the petitioner on 07.9.1994, document No. 41 has been trifurcated into three different parts. These kinds of example can be multiplied further in order to prove numerical discrepancy. Thus, in reality only thirty-three documents have been supplied to the petitioner. The remaining documents were neither supplied, nor the petitioner was given a chance to inspect the same. Vide letters dated 16.09.1994 and dated 29.09.1994, the petitioner pointed out that complete set of documents have not been supplied; he further requested that a large number of documents should be given to him, so that he can build up his defence against the charges levelled against him. However, even these two letters went unheeded. In the absence of the necessary documents, the petitioner has been denied the right of a fair departmental inquiry.

22. Fifthly, vide letter dated 20.09.1994, the petitioner was granted fifteen days time to submit his reply. Yet, on the very same day, i.e. 20.09.1994, the inquiry officer was appointed. According to the learned Counsel, such an appointment of the inquiry officer is contrary to Rule 16(iv) of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as "the CCA Rules", for short).

23. Sixthly, initially the petitioner did not receive any intimation about the future dates on which the departmental inquiry was held, namely 14.10.1994 and 29.10.1994. He came to know about the next date of the inquiry i.e. 15.11.1994 through a public notice published in the local newspaper. On 15.11.1995, because of his illness, he sought an adjournment of the inquiry proceeding. In order to substantiate his case that he was actually ill, he submitted a medical certificate along with the application. But notwithstanding his request, notwithstanding the existence of a medical certificate, the inquiry officer decided to proceed ex-parte against the petitioner. Subsequently, after 12.12.1994, the petitioner was not even permitted to participate in the inquiry proceeding. Thus, the petitioner was denied the right to cross-examine the witnesses.

24. Seventhly, according to Rule 16(6)(a) of the CCA Rules, once the department completes its evidence, the inquiry officer is to issue a show-cause notice to the delinquent officer directing him to produce his witnesses and documentary evidence, if any. However, according to the order-sheet dated 17.12.1994, after the Board had completed its evidence, no notice was issued to the petitioner to produce his witnesses or to submit the documentary evidence in order to buttress his defence against the charges levelled against him. Therefore, a valuable right of presenting his side of story has been denied to the petitioner. According to the learned Counsel this is a blatant violation of the principles of natural justice.

25. Eighthly, since the proceedings were held ex-parte, while issuing the second show-cause notice accompanied with the inquiry report, it was incumbent for the Board to send copies of the statements of the eleven witnesses examined by the Board, and the sixty documents relied upon by the Board against the petitioner. However, the same was never done. In fact, vide notice dated 25.03.1995, merely the inquiry report had been sent unaccompanied by the relevant record. Hence, the petitioner has been denied the right of submitting a substantial reply to the second show-cause notice sent by the Board.

26. Ninthly, according to Rule 10 (vii) of the Rules, the Board is empowered to delegate its powers to the Chairperson. In the meeting on 05.01.1995, the Board had delegated the power to the Chairperson to decide and to act upon the inquiry report provided that the chairperson consults with the inquiry officer and with the Central Board before taking her decision. According to the learned Counsel, although the power of deciding the fate of the petitioner was delegated to Smt. Sariya Khan, but such a delegation was a conditional one. According to the resolution dated 05.01.1995, she was required to consult with the Central

Board prior to making any decision with regard to the petitioner. Yet, there is not an iota of evidence available on record showing any consultation between the Chairperson and the Central Board prior to passing of the dismissal order dated 27.04.1995. Therefore, the dismissal order is absolutely illegal.

27. Tenthly, according to the learned Counsel, Smt. Sariya Khan chaired the Board meeting held on 01.05.1995, where the dismissal order passed by her was to be confirmed. According to the learned Counsel, considering the allegation of mala fide, considering the real bias which existed in the mind of Smt. Sariya Khan, her very presence in the Board meeting on 01.05.1995 vitiates the resolution passed by the Board. In order to substantiate this contention, the learned Counsel has relied upon the case of Cantonment Executive Officer and Another Vs. Vijay D. Wani and Others,

28. Moreover, although the dismissal order dated 27.04.1995 was confirmed by the Board, but such a confirmation cannot correct the defect in the order dated 27.04.1995. Therefore, even the decision dated 01.05.1995 is legally untenable. In order to support this contention, the learned Counsel has relied upon the case of V.C., Banaras Hindu University and Others Vs. Shrikant, .

29. Lastly, according to the learned Counsel, although the petitioner was suspended on 21.07.1994, yet, he was not granted any subsistence allowance for the month of July and August, 1994. Although, a registered letter was sent to the petitioner on 29.09.1994, but it did not contain any cheques. It contained only a covering letter. Thus, no cheque was sent to him for the amount of Rs. 639/-, as subsistence allowance for July 1994, and for Rs. 2,427/-, as subsistence allowance for August 1994, as claimed by the respondents. In fact, according to the learned Counsel, the cheque dated 07.10.1994 was tendered to the petitioner only after the present petition had been admitted by this Court. Since the petitioner was denied the subsistence allowances, according to the learned Counsel, the entire departmental inquiry proceedings stands vitiated. In order to support this contention, the learned Counsel has relied upon the cases of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, and Jagdamba Prasad Jagdamba Prasad Shukla Vs. State of U.P. and Others,

30. On the other hand, Mr. Praveen Balwada has strenuously argued that although mala fide has been alleged against the Chairperson, the same has not been proven by the petitioner.

31. Secondly, the petitioner's pay-scale was reduced not because of any mala fide intention on the part of the Chairperson, but because of certain audit objection taken by the auditors. According to the appointment letter dated 16.02.1991, the petitioner was entitled to the pay-scale which was equivalent to the pay-scale of the Assistant Secretary of the Government of Rajasthan. Although, the appointment order inadvertently mentioned the pay-scale of Rs. 3,000-4,500/-, but the fact remains that the pay-scale of Assistant Secretary of the Government of Rajasthan was only Rs. 2,500-4,250/-. Therefore, the order

dated 16.07.1994 was passed reducing the pay-scale from Rs. 3,000-4,500/- to Rs. 2,500-4,250/-.

32. Thirdly, vide letter dated 07.09.1994, all the documents were supplied to the petitioner. Therefore, the petitioner cannot claim that the documents were not made available to him.

33. Fourthly, that the petitioner himself was not interested in participating in the department inquiry as is apparent from the fact that on every date of inquiry either the petitioner, or his wife would fall ill. Since the petitioner was not participating in the departmental inquiry, the inquiry office had no other option, but to proceed ex-parte against the petitioner. Moreover, once the proceeding is ordered to be ex-parte, then the petitioner cannot participate in the proceedings. Thus, the inquiry officer was justified in denying him the right to participate in the proceedings.

34. Fifthly, there is no requirement under the CCA Rules that in case the departmental inquiry were to proceed ex-parte, then while issuing the second show cause notice, the complete documents or the complete record of the inquiry proceedings have to be given to the delinquent officer along with the inquiry report. Therefore, the State Board is justified in not giving copies of the testimonies of eleven witnesses and the sixty documents relied upon by the inquiry officer while giving his finding.

35. Sixthly, that according to Rule 10 (vii) of the Rules, the Board is empowered to delegate its powers to the Chairperson. The only rider is that the action taken by the Chairperson would be submitted for confirmation at the next meeting of the Board. In accordance with Rule 10 (vii) of the Rules, in the meeting held on 05.01.1995, the Board had delegated its power to the Chairperson to decide and to act upon the inquiry report. Once the dismissal order was passed by the Chairperson on 27.04.1995, the same was placed for confirmation before the Board on 01.05.1995. Hence, the requirement of Rule 10 (vii) was clearly fulfilled.

36. Lastly, once the order of dismissal has been confirmed by the Board, then the order of dismissal passed by the Chairperson merges with the order of confirmation. Therefore, the order dated 27.04.1995 has merged with the decision of the Board dated 01.05.1995. Hence, there is no illegality committed by the Chairperson while passing the order dated 27.04.1995 or by the Board while passing its resolution on 01.05.1995. Hence, the learned Counsel has supported the impugned orders.

37. We have heard the learned Counsel for the parties, have perused the impugned orders and have examined the record which has been placed before this Court.

38. The relationship between the State and the people is a sacred one; it is created and bound, prescribed and proscribed by the Constitution of India. The

Constitution is a document that "We the people" have given to ourselves which contains our dreams and expectations for an ideal State. The ideal State is to grow and prosper till eternity. The very Preamble of the Constitution contains the vision of our dreams and expectations. The Preamble speaks not only about the equality before the law, but also speaks of economic justice. The elements contained in the Preamble are further expanded and elaborated upon in Parts III and IV of the Constitution of India. Part III, containing the fundamental rights, is the heart of the constitution. For, while Part III bestows inalienable rights on the people, it cribs, cabins and confines the power of the State. It defines and circumscribes the power of the State. Therefore, it is like a clearing in the rain forest of the State power. Since the limits have been defined by the Constitution, they are, in jurisprudential term, "the grundnorm", The State can never overstep the jurisdiction prescribed by the Constitution. If the State were to overstep the limits, then the State acts unjustly and unfairly, unreasonably and unconstitutionally.

39. Article 21 of the Constitution of India is the soul of the Constitution. Although, worded in the negative, it contains the most positive right that every person is endowed with. It proclaims that the "life" and "personal liberty" of a person shall not be denied by the State without following a procedure established by law. The word "life" has been interpreted to include "the right to livelihood". Therefore, before "the right to livelihood" can be deprived by the State, the procedure established by law, necessarily, has to be followed. In case, the procedure established by law is disregarded, such an action or omission would tantamount to violation of Article 21 of Constitution of India. Although, Article 21 uses the words "procedure established by law", but through judicial interpretation the entire concept and doctrine of "due process of law" has been incorporated into the said Article. Therefore, while examining the validity of an executive action, the Courts are duty bound to consider, if the due process established by law has been followed or not. In case, the process has not been followed, then the action or omission would tantamount to an arbitrary action. It is too well settled by now that any action which is arbitrary, unreasonable, unjust, or unfair, it would be an anathema to the very concept of equality enshrined in Article 14 of the Constitution of India. Such an action would, thus, be violative of both Article 14 and Article 21 of the Constitution of India.

40. Besides, the pervasiveness of the Constitutional mandate, there is also the supremacy of certain principles of law, which derive their validity from Natural Law. Derived from Natural Law, the principles of natural justice are omnipresent in Law. Therefore, while deciding the action of the Executive, one would have to test the action on the touchstone of the principles of natural justice. Any action which contravenes the principles of natural justice would have to be held as legally unsustainable. Principles of natural justice consists of two rules: firstly, that a person cannot be a judge in his own case (*Nemo debet esse iudex in propria causa*) . This rule has been accepted universally throughout Common Law countries. This rule tries to exclude the very element of bias while deciding a

issue. It is, indeed, trite to state that a Judge has to be objective in his assessment, and impartial in his behavior when he adjudicates any legal issue.

41. Similarly, the second rule of principles of natural justice is that "hear the other side"-(audi alteram partem) , or "no one shall be condemned unheard." This Rule emanates from the first principle of Common Law that every person is presumed to be innocent till proven guilty. Therefore, the burden lies on the State or on the instrumentality of the State to prove the guilt of the person. Before a person can be pronounced guilty or innocent, his side of the story not only has to be heard, it also needs to be examined meticulously by the appropriate authority. Both these rules permeate the Constitution of India. Under Article 21 of the Constitution of India every person has right to a fair trial; likewise, an employee has the right to a fair departmental inquiry.

42. We no longer live under the British Raj, we no longer exist under the despotic feudal political system; we thrive and prosper under a democratic Constitution. Under the Constitution, the State is a welfare State. If democracy is by the people, of the people, necessarily, it has to be for the people. Hence, the well developed concept of "the welfare state". This concept of welfare State has accelerated since the 20th Century. Therefore, the State, as an employer, is required to be "an ideal employer", and not an exploitative one. The State cannot act like Shylock towards its employees. Afterall, the very Preamble of the Constitution proclaims this country to be "a socialist democratic republic". Being a welfare State and being an ideal employer, the State has to be extra-sensitive to its role and to its responsibility towards its employees. The State, thus, cannot deprive an employee of his right to livelihood in a callus and casual manner. The State is bound to follow the law and to observe the spirit of the law while taking any disciplinary action against its employee. It is precisely to limit the power of the State that the CCA Rules prescribe a detailed procedure for the State to follow. It is, indeed, a settled principle of law that once the law prescribes a procedure for any authority, the authority is bound to follow the said procedure. In case the authority were to deviate from the procedure, its action would be illegal and, thus, questionable.

43. The present case would have to be decided keeping in mind the principles of natural justice, the constitutional mandate, and the statutory rules.

44. The petitioner has alleged mala fide against Smt. Sariya Khan, the respondent No. 6. According to him, his troubles started when he did not yield to her unreasonable demand of granting finances to a particular voluntary agency. Her mala fide intention is writ large in the sudden reduction of his pay-scale, in his suspension, in non-supply of documents, in ex-parte proceeding, in non-compliance of the delegated power, in the passing of the dismissal order, in the confirmation of the dismissal order by the Board where respondent No. 6 had presided. Despite the service of notice on respondent No. 6, she has chosen not to appear to counter these allegations. In her absence, this Court has no other option but to accept the allegations made by the petitioner against her.

45. In the case of S. Pratap Singh Vs. The State of Punjab, and in the case of C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, the Hon"ble Supreme Court had clearly held that where allegations of mala fide have not been countered by the concerned person, the allegations should be taken as proved. Hence, in the present case, since the petitioner has alleged mala fide against Smt. Sariya Khan, and since she has not denied the same, the allegations are deemed to be proved.

46. The petitioner has challenged the order dated 16.07.1994 whereby his pay-scale was suddenly reduced. According to the order dated 16.02.1991, whereby the petitioner was permanently absorbed by the State Board, his pay-scale was shown to be Rs. 3,000-100-3500-125-4500/-. It was also held out that his pay-scale would be equivalent to the Assistant Secretary of the Government of Rajasthan. There is not an iota of evidence available in the record to show that prior to passing the order dated 16.07.1994, the petitioner was given any notice. According to Mr. Balwada, the order was passed due to certain audit objections raised by the Accountant General of Rajasthan, and after due consultation with the Central Board. But it is, indeed, a settled principle of law that before an adverse order can be passed affecting the civil rights of a person, the person has to be given a right of hearing. Since the order dated 16.07.1994 adversely affects the petitioners' income, he should have been given a show-cause notice prior to the passing of the impugned order. Surprisingly, the impugned order has been passed in utter violation of the principles of natural justice. Interestingly, the impugned order has been passed by none other than the respondent No. 6 herself. Moreover, the recovery has been ordered without giving an opportunity of hearing to the petitioner. Curiously, even after passing the impugned order, no post-decisional opportunity of hearing was given to the petitioner. The passing of such an arbitrary order can also be seen as a mala fide act on behalf of respondent No. 6 against the petitioner. Influenced by ulterior motive, suffering from colorable exercise of power, violative of principles of natural justice, the impugned order dated 16.07.1994 is unsustainable in the eyes of law. It is, hereby, set aside.

47. The tussle between the petitioner and respondent No. 6 took an ugly turn after the petitioner was suspended on 21.07.1994. On the one hand, according to the petitioner, he was not paid the subsistence allowance for the months of July and August, 1994. Yet, on the other hand, vide order dated 21.07.1994, the recovery of money was directed to be made from the subsistence allowance. Hence, the petitioner was doubly jeopardised. This was but a facet of victimization to which the petitioner was subjected to.

48. According to the petitioner, he was never paid the subsistence allowance for the month of July and August, 1994. Yet, according to respondent No. 4 two cheques were issued, one for Rs. 639/- as the subsistence allowance for the month of July, and the other for Rs. 2,427/- as the subsistence allowance for the month of August. In order to substantiate its case, the respondents have

submitted an affidavit of Uma Kant Sharma, who claims to be the Dispatch clerk. According to him, on 20.09.1994, he dispatched both the cheques through a registered letter addressed to the petitioner.

49. However, curiously the State Board has nowhere stated the name of the Bank on which the cheque was drawn, nor has indicated the cheque number, nor has indicated the date of the cheque. Moreover, there is no explanation offered by the Board for sending cheque of subsistence allowances of the month of July and August, 1994 in the month of September, 1994. Furthermore, when the petitioner informed the Chairperson that he had received merely the covering letter and not the two cheques allegedly sent to him, he was asked to submit "a non-payment certificate". In case, the respondents had actually sent the cheques, there was no reason for them to ask for "a non-payment certificate" from the petitioner. The lack of details in the affidavit along with the act of asking him for "a non-payment certificate" proves the petitioners' allegation that, in fact, no cheque was ever sent to him for subsistence allowances of July and August, 1994. It was only after the writ petition was admitted that the cheque dated 07.10.1994 was handed-over to the petitioner. The non-payment of subsistence allowances to the petitioner further points to his victimisation.

50. Mr. Marudhar Mridul has strenuously argued that the non-payment of subsistence allowances would vitiate the entire inquiry proceeding. In order to substantiate this contention, he has relied upon the case of Capt. M. Paul Anthony (*supra*) and on the case of Jagdamba Prasad Shukla (*supra*). However, a bare perusal of both these cases reveal that the delinquent officers, in both these cases, could not participate in the inquiry proceedings because they were not paid the subsistence allowances during the suspension period. Since they were financially crippled, they were prevented from participating in the inquiry proceedings. Thus, because of the non-payment of subsistence allowances, they challenged the validity of the departmental inquiry before the Apex Court. Therefore, in both the cases, the Hon'ble Supreme Court was of the opinion that the inquiry proceedings were vitiated due to non-payment of subsistence allowance during the suspension period.

51. However, in the present case, it is not the case of the petitioner that because he was not paid subsistence allowances for the months of July and August 1994, he could not attend the inquiry proceedings. In fact, the petitioner has taken the plea that initially he was unable to attend the inquiry proceedings as he had no information about the dates of the inquiry proceedings. Later on, he could not attend the inquiry proceedings either because of his own ill health, or because of his wives' illness. Lastly, he could not "attend" as he was prevented from participating in the inquiry proceedings. Thus, the reason for his non-participation in the inquiry proceedings was not the non-payment of the subsistence allowances. Therefore, the case law cited at the Bar do not come to the rescue of the petitioner. Hence, this contention raised by the learned Counsel for the petitioner is, hereby, rejected.

53. Rule 16 of the CCA Rules lays down an elaborate procedure for conducting the inquiry which is as under:

16. Procedure for imposing major penalties: (1) Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850 no order imposing on a Government Servant any of the penalties specified in Clauses (iv) to (vii) of rule 14 shall be passed except after an inquiry held as far as may be in the manner hereinafter provided.

(2) The Disciplinary Authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges together with a statement of the allegations on which they are based, shall be communicated in writing to the Government servant, and he shall be required to submit, within such time as may be specified by the Disciplinary Authority, a written statement indicating whether he admits the truth of all or any of the charges, what explanation or defence, if any, he has to offer and whether he desires to be heard in person:

Provided that it shall not be necessary to frame any additional charges when it is proposed to take action in respect of any statement or allegation made by the person charged in the course of his defence.

Explanation: In this sub-rule and in Sub-rule (3) the expression "the Disciplinary Authority" shall include the authority competent under these rules to impose upon the Government servant any of the penalties, specified in Clause (i) to (iii) of rule 14.

(3) The Government servant shall, for the purpose of preparing his defence, be permitted to inspect and take extracts from such official records as he may specify provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Disciplinary Authority such records are not relevant for the purpose or it is against the public interest to allow him access thereto.

(4) On receipt of the written statement of defence, or if no such statement is received within the time specified, the disciplinary authority may itself enquire into such of the charges, as are not admitted or if, it considers it necessary so to do, appoint a Board of Inquiry or an Inquiring Authority for the purpose, and where all the articles of charges have been admitted by the Government servant in his written statement of defence, the Disciplinary Authority shall record its findings on each charge.

(4A.) If the Government servant who has not admitted any of the articles of charge in the written statement of defence or has not submitted any written statement of defence appears before the Inquiring Authority, such Authority shall ask him whether he is guilty to any of the articles of charge, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the Government servant thereon.

The Inquiring Authority shall return a finding of guilt in respect of those articles of charge which the Government servant pleads guilty.

(5) The disciplinary authority may nominate any person to present the case in support of the charges before the authority inquiring into charge (hereinafter referred to as the Inquiring Authority). The Government servant may present his case with the assistance of any other Government servant or retired Government servant approved by the Disciplinary Authority, but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case, so permits.

(i) Provided that no Government servant shall be entitled to take up more than one case at a time. At the time of appearance before the Inquiring Officer the retired Government servant should certify that he has only one case on hand at that time.

(ii) Provided further that if the retired Government servant is also a legal practitioner, the restrictions on engaging a legal practitioner by a delinquent Government servant to present the case on his behalf, would apply.

Explanation: For the purpose of this sub-rule, a Public Prosecutor, Prosecuting Inspector or a Prosecuting Sub-Inspector shall be deemed to be a legal practitioner.

(6) (a) Where the Government servant has pleaded not guilty to the charges, at the commencement of the enquiry, the Inquiring Authority shall ask the Presenting Officer appearing on behalf of the Disciplinary Authority to submit the list of witnesses and documents within 10 days, who shall also simultaneously send a copy to the Government servant. Delinquent officer, within ten days of the receipt of the list of prosecution witnesses and documents, shall submit the list of documents required by him for this defence. The Inquiring Authority shall then summon the documents of both sides and ask the parties to admit or deny them. It shall then summon such evidence as is necessary, giving opportunity to the presenting officer for examination-in-chief and also to the Government servant or his assisting officer, whosoever may be present, for cross-examination. The Presenting Officer shall be entitled to re-examine the witnesses on any point on which they have been cross-examined but not on any new matter, without the leave of the Inquiring Authority. After the close of the prosecution evidence the Government servant shall be called upon to submit the list of the witnesses within 10 days which he would like to produce in his defence. The Inquiring Authority after considering the relevancy of the witnesses and the documents shall summon only the relevant witnesses and the documents and record the evidence thereof, while giving opportunity of Examination-in-Chief and cross-examination/"re-examination to the parties and then close the evidence. The Inquiring Authority shall consider the relevancy of the witnesses and the documents called for by both the parties and in case of his refusal to summon

any witnesses or documents, he shall record the reasons in writing. The Inquiring Authority may also put such questions to the witnesses of the parties, as it thinks fit, in the interest of justice. An opportunity for hearing the argument shall be given to the parties.

Note: If the Government servant applied orally or in writing for the supply of copies of the statement of witnesses mentioned in the list referred to in Sub-rule (6) (a) , the Inquiring Authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement to the examination of the witnesses on behalf of the Disciplinary Authority.

(6)(a-1). The Evidence of any person which is of a formal character may be given by affidavit and may, subject to all just exceptions, be accepted in evidence in departmental proceedings. Where the enquiry officer thinks fit that the person should be summoned and examined personally, or if either party, namely the presenting officer or the delinquent officer insists on the personal attendance of the witness arrangements should be made for the personal attendance of such witness.

(6)(b) The Enquiring Authority may, for good and sufficient reasons to be recorded in writing, recall witnesses for examination in part-heard cases being conducted by him.

(6)(c) The Inquiring Authority shall give a notice within 10 days of the order or within such further time not exceeding 10 days as the Enquiring Authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in Sub-rule (6) (a).

Note: The Government servant shall indicate the relevancy of the documents required by him to be discovered or produced by the Government.

The Inquiring Authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the Authority in whose custody or possession the documents are kept, with a requisition for the production of the document by such date as may be specified in such requisition:

Provided that the Enquiring Authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are in its opinion, not relevant to the case.

On receipt of the requisition, every authority having the custody or possession of the requisitioned documents shall produce the same before the Inquiring Authority:

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or, any of such documents would be against the public interest or security of the State, it shall inform the Inquiring Authority accordingly and the Inquiring Authority shall, on being so informed, communicate

the information to the Government servant and withdraw the requisition made by it for the production or discovery of such documents.

(6)(d) In case of joint departmental enquiry under rule 18 or in the case of enquiry under rule 16 of these rules, the Government servant/s fail/fails to appear without sufficient cause on the date fixed for the hearing of which he had the notice, the Inquiring Authority may proceed with the enquiry in the absence of such Government servant(s).

(6-A). If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not including in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the Inquiry for three clear days before the production of such new evidence, exclusive of the days of adjournment and the day to which the inquiry is adjourned. The Inquiring Authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The Inquiring Authority may also allow the Government servant to produce new evidence, if it is of the opinion that production of such evidence is necessary in the interest of justice.

Note: New evidence shall not be permitted or called for or, any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(6-B).(a) Where a disciplinary authority competent to impose any of the penalties specified in Clauses (i) to (iii) of Rule 14, but not competent to impose any of the penalties specified in Clauses (iv) to (vii) of Rule 14, has itself inquired into or caused to be inquired into articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings or any inquiring authority appointed by it, is of the opinion that the penalties specified in Clauses (iv) to (vii) of Rule 14 should be imposed on the Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any witnesses is necessary in the interest of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the Government servant such penalty as it may deem fit in accordance with the rules.

(7) At the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons therefor. If in the opinion of such authority the proceedings of the inquiry

establish charges different from those originally framed it may record findings on such charges provided that findings on such charges shall not be recorded unless the Government servant has admitted the facts constituting them or has had an opportunity of defending himself against them.

(8) The record of the inquiry shall include:

(i) the charges framed against the Government servant and the statement of allegations furnished to him under Sub-rule (2);

(ii) his written statement of defence, if any;

(iii) the oral evidence taken in the course of the enquiry;

(iv) the documentary evidence considered in the course of the enquiry;

(v) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to inquiry, and

(vi) a report setting out the findings on each charge and the reasons therefor.

(9) The Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the inquiry and record its findings on each charge.

The Disciplinary Authority may while considering the report of the Enquiring Authority for just and sufficient reasons to be recorded in writing remand the case for further/de-novo enquiry, in case it has reason to believe that the enquiry already conducted has been laconic in some respect or the other.

(10) If the Disciplinary Authority having regard to its findings on the charges is of the opinion that any of the penalties specified in Clauses (iv) to (vii) of rule 14 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case in which it is necessary to consult the Commission the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advise and such advise shall be taken into consideration before making an order imposing such penalty on the Government servant.

(11) If the Disciplinary Authority having regard to its findings is of the opinion that any of the penalties specified in Clauses (i) to (iii) of rule 14 should be imposed, it shall pass appropriate orders in the case:

Provided that in every case in which it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice taken into consideration before passing the orders.

(12) Orders passed by the Disciplinary Authority shall be communicated to the Government servant who shall also be supplied with a copy of the report of the

Inquiring Authority and where the Disciplinary Authority is not the Inquiring Authority, a statement of its findings together with brief reasons of disagreement, if any, with the findings of the Inquiring Authority, unless they have already been supplied to him, and also a copy of the advice, if any, given by the Commission and, where the Disciplinary Authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance.

It will however, not be necessary to furnish a copy of the report of the Enquiry Officer in the case where any of penalties specified in Clauses (i) to (iii) of the rule 14 is imposed on the Government servant.

53. Rule 16 is, therefore, the procedure established by law. Since a procedure has been established by law, the authority is duty bound to adhere to the said procedure. Rule 16(iv) of the CCA Rules prescribes that on the receipt of the written statement of defence, or if no such statement is received within the time specified, the disciplinary authority may itself enquire into such of the charges, as are not admitted or if, it considers it is necessary so to do, appoint an inquiring authority. Thus, the Disciplinary authority once having given a time frame for the submission of the written statement, should wait till the time frame expires before appointing the inquiry officer.

54. In the present case, vide order dated 20.09.1994 the petitioner was granted fifteen days time to file the written statement. But without waiting for the period of fifteen days to be over, simultaneously by another order, dated 20.09.1994, Shri Magan Lal Vyas, a retired District Judge was appointed as the inquiry officer. Once a time frame was given by the State Board, the State Board is expected to wait till the said time frame is over. The hot-haste in which the inquiry officer was appointed creates doubt about the bona fide intention of the State Board.

55. According to Rule 2(vi) of the Ruls "secretary" means "the Secretary of the Board appointed by the Board in consultation with the Central Social welfare Board." Furthermore, according to Rule 10 (i) of the Rules the secretary of the Board shall be appointed by the Board in consultation with the Central Board. Thus, clearly both according to the definition clause as well as the Rule 10(i), dealing with the powers of the Board, the appointing authority of the Secretary is the Board itself. Moreover, according to Rule 10 (ii) of the Rules, the authority competent to promote, degrade or dismiss an officer or servant of the Board shall be the authority empowered to appoint such officer or servant. Thus, clearly the inquiry could be initiated only by the appointing authority and by none else. Although, Mr. Praveen Balwada has argued that the Board has the power to delegate its power to the chairman, but, there is nothing on record to show that the Board had delegated its power to initiate the inquiry against the petitioner to the Chairperson. Curiously, the petitioner was suspended vide order dated 21.07.1994 and the order was passed by the Chairperson. Moreover, the charge-sheet was issued by the Chairperson. Even the order appointing the inquiry officer dated 20.09.1994 was passed by the Chairperson. Thus, the entire inquiry

was initiated by the Chairperson - a person who does not have the power to initiate the departmental inquiry. Hence, the very initiation of the inquiry is devoid by any legal basis.

56. The charge-sheet dated 25.07.1994 contained a list of fifty-seven documents on which the Board proposed to rely upon in order to prove its case against the petitioner. While the charge-sheet was given to the petitioner, the documents were not. Therefore, vide letter dated 06.08.1994, the petitioner pointed out that he has not been given the copies of the documents. Vide letter dated 11.08.1994, the petitioner was asked to give a list of documents which he required within a period of three days. On 19.08.1994, the petitioner replied to the said letter. Consequently, vide letter dated 07.09.1994 the Board sent copies of forty documents to the petitioner. Interestingly, the letter dated 07.09.1994 claims that U;kf;d n`f"V ls mfpr le>rs gq, vkidks fn;s x;s vkjksi i= ds laca/k esa lEcU/kr lHkh fjdkM+Z dh lR;kfir QksVks izfr;ka miyC/k djokbZ tk jgh gS A (In the interest of justice with regard to the charge-sheet served upon you the copies of all the documents are being sent to you). (English translation). Curiously, according to the charge-sheet, the State Board was relying upon fifty-seven documents, yet according to the letter dated 07.09.1994 copies of only forty documents were sent to the petitioner. Vide letter dated 16.09.1994, the petitioner pointed out the discrepancy in the number of the documents. In response there to, vide letter 20.09.1994, the State Board informed the petitioner that "the true copies of almost all the documents have already been give to him." With the use of the word "almost", this letter is a clear cut admission by the State Board that in fact, "all the documents" have not been given to the petitioner. It clearly substantiates the case of the petitioner that he was denied access to all the documents. According to the petitioner, document number 41 in the charge-sheet was shown as a single document. Yet, according to the letter dated 07.09.1994, in the list of documents, the said document has been trifurcated into three parts. Hence, according to the petitioner in reality, he was given only thirty-three documents, instead of forty documents as claimed by the State Board. According to CCA Rules, the petitioner is entitled to copies of the documents and is also entitled to inspect the documents, if necessary. But in the present case, neither the copies of the documents, nor the right to inspect the document has been given to the petitioner. Thus, a valuable right of the petitioner has been violated.

57. Vide letter dated 29.09.1994, the petitioner sent a list of fifty-nine documents that he required for building up his defence against the State Board. However, the State Board never replied to the said letter. There is no evidence on record to show that the fifty-nine documents, requested by the petitioner, were ever given or shown to the petitioner. It is, indeed, trite to state that a delinquent officer has the right to seek copies of those documents or to inspect those documents which are in his favour. Such a right is contained in Rule 16(3) of the CCA Rules. Such a right also emanates from Article 21 of the Constitution of India. Like the right to a fair trial, the delinquent officer has the right to a fair

departmental inquiry. Moreover, such a right also emanates from the principle of natural justice. When it is said "to hear the other side", it also means that the other side should be given sufficient opportunity to build up its defence. The right to defend is a substantive right and not an illusory one. Hence, the State Board was under a constitutional obligation and a statutory duty to supply the documents as requested by the petitioner; a duty the State Board failed to discharge.

58. Interestingly, both the Chairperson in her dismissal order, and the learned Counsel for the State Board have claimed that the petitioner never asked for any specific documents to be supplied to him. Such an observation made by the Chairperson in the dismissal order, and such a contention raised by the learned Counsel for the State Board are clearly belied by the record available before this Court. The letters dated 16.09.1994 and 29.09.1994 clearly establish that repeatedly the petitioner had sought the copies of all the documents on which the State Board wanted to rely upon as well as the copies of those documents on which the petitioner wished to rely upon in order to construct his defence. The record also proves that the State Board gave copies of neither of these documents. Thus, a vital right of the petitioner has been violated by the State Board. Hence, the stand taken by the State Board that the documents were not supplied to the petitioner as the petitioner failed to request for them is without any force. Thus, instead of conducting a fair departmental inquiry, an unfair departmental inquiry has been carried out.

59. "Justice hurried is justice buried" is a oft quoted legal proverb. An adjudicator should be patient in his personality, and objective in his conduct. A proceeding, whether Judicial or quasi-Judicial, when done in hot-haste is likely to derail the course of justice. Moreover, a quick fix job creates the impression that justice has neither been done, nor seen to be done. Such a course not only leaves a bad taste in the mouth of the delinquent officer/litigant, but also undermines the faith of the people in the judicial process. Such a course also shakes the faith of the people in the Rule of Law, in particular, and in democracy, in general. The dissatisfaction may emerge at the individual level, but like a cancerous growth, they fester and grow in the public at large. Thus, such an action weakens the foundation of the State. Therefore, it is imperative that patience and objectivity should be strictly observed by the Inquiry Officer/quasi-judicial officer/judicial officer.

60. In the present case, although the inquiry officer was a retired District Judge, unfortunately, he has displayed neither patience, nor objectivity. The inquiry proceedings began on 14.10.1994. According to the petitioner, he had no information about the commencement of the inquiry on 14.10.1994. Similarly, even about the next date i.e. 29.10.1994, according to the petitioner, he had no information about it. This fact has also been noticed by the inquiry officer in the order-sheet dated 29.10.1994, when he noted that "although registered A.D. letters were sent by the State Board, yet the acknowledgment receipts have not

been received by the board." On 29.10.1994, the inquiry officer also directed that a public notice be published in the local newspaper informing the petitioner about the next date of the inquiry. The inquiry was adjourned till 15.11.1994. On 15.11.1994, the inquiry officer has noted that all the registered letters sent on three different address of the petitioner have come back. Although, the registered notice were received back, the inquiry officer concluded that the petitioner is trying to evade the inquiry. Therefore, without awaiting any further for the petitioner to appear before him, the inquiry officer passed an ex-parte order against the petitioner. The inquiry was subsequently fixed for 03.12.1994. On 03.12.1994, the petitioner informed the inquiry officer that because of his wife's sudden illness, he is unable to attend the inquiry. Thus, the petitioner prayed that the inquiry proceeding be adjourned. In order to prove the bona fide of his plea, the petitioner submitted a medical certificate with regard to his wife's illness. The inquiry officer adjourned the proceedings till 12.12.1994. On 12.12.1994, the petitioner sent an application along with his medical certificate claiming that since he was ill, therefore, he could not attend the proceedings. Despite the said information, and the application praying for adjournment, the inquiry officer proceeded to record the testimony of two witnesses. Most surprisingly, the inquiry officer noted in the order-sheet that "it is not for the Board to inform the petitioner about the proceeding and about the future dates." On 13.12.1994, the petitioner claimed that he presented himself before the inquiry officer, but he was verbally told that since an ex-parte order has been passed against him, he cannot participate in the inquiry proceedings. Therefore, his presence was not shown in the order-sheet. Moreover, he was not permitted to cross-examine the two witnesses whose testimonies were recorded on that day. The petitioner claims that he had filed an application for setting aside the ex-parte order. But the inquiry officer did not pass any order on the said application. Instead, on 14.12.1994, again the petitioner was not permitted to participate, although he claims that he was physically present. The testimony of another witness was recorded, but the petitioner was not given a chance to cross-examine him. Similar was the case on 15.12.1994 and 16.12.1994: according to the petitioner, he was present but he was not permitted to participate and it was recorded that he is absent from the proceeding. In the order-sheet dated 17.12.1994, the inquiry officer noted that "the evidence on behalf of the Board is over. As soon as the Inquiry report is ready, the same shall be submitted."

61. A bare perusal of the facts, narrated above, clearly reveal that even after noting the fact that all the registered letters have returned unserved, and just on the first occasion, after the paper publication of the notice, the inquiry officer proceeded ex-parte against the petitioner. Without any basis the inquiry officer concluded that the petitioner is evading the notice and is not willing to cooperate in the inquiry proceeding. Such a conclusion is not warranted by the evidence available on record. Instead of proceeding ex-parte the inquiry officer should have waited for the petitioner to appear before him. Moreover, once the petitioner had submitted an application for setting aside the exp-parte order, the

inquiry officer should not have ignored the said application. Furthermore, on 12.12.1994, the petitioner sent an application along with the medical certificate with regard to his own illness, yet the inquiry officer proceeded to record the evidence of two witnesses behind his back. This action proves the hot-haste in which the inquiry was proceeding.

62. Surprisingly, in the order-sheet dated 12.12.1994, the inquiry officer observed that "it is not the duty of the Board to send a copy of the proceeding or to inform the delinquent officer about the next date." Such an observation is clearly against the principles of natural justice. For, it is the duty of the Department to inform the delinquent officer about the proceedings and to inform him about the next date of the inquiry. Although, such a duty may not emanate from the statute, but such a duty certainly exists under the principles of natural justice. Afterall, the delinquent officer has to be informed about the proceedings, which occurred behind his back and has to be given a chance to be heard. In case, he is not informed about the proceedings, he is purposefully kept in the dark. In case, he is not informed about the next date, then his right to be heard is denied to him. Therefore, the observation made by the inquiry officer that, too, by a former District Judge, is most surprising. Such an observation reveals the non-objectivity and the lack of patience in the inquiry officer.

63. In the case of Union of India Vs. I.S. Singh, 1994 Supp (2) SCC 518 the Apex Court was of the opinion that when a medical certificate is submitted along with an application requesting for an adjournment, the inquiry officer can neither ignore the request, nor proceed ex-parte. Even in a case where the medical certificate has not been submitted, the inquiry officer should call upon the delinquent officer to submit the medical certificate or should direct that the delinquent officer be examined by a specified medical officer. Even in a situation where the medical certificate is missing, ordinarily the inquiry officer should not proceed ex-parte. Similarly in the present case, once an application for adjournment was accompanied by the medical certificate, the inquiry officer should not have proceeded ex-parte against the petitioner.

64. There seems to be a some confusion in the mind of the inquiry officer about the meaning of the expression "ex-parte proceeding." As mentioned above on 15.11.1994, the inquiry officer decided to proceed ex-parte against the petitioner ostensibly on the ground that the petitioner was not cooperating with the inquiry proceeding. However, on 28.11.1994, the petitioner filed an application for setting aside the ex-parte order. Surprisingly, the inquiry officer ignored the said application. According to the petitioner, whenever he attended the proceedings on future dates, he was prevented from participating in the proceedings on the ground that the proceedings were being held ex-parte against him. Thus, the order-sheets beginning from 03.12.1994 till 17.12.1994 continued to record his absence. In his rejoinder, he has clearly stated that he had attended and tried to participate in the subsequent proceedings, but was prevented from doing so. Therefore, the issue is what is the meaning of "an ex-parte proceeding" ?

65. It is, indeed, trite to state that the procedural law is enacted in order to ensure justice to the people. Procedural laws are not penal enactment for punishment and penalties. They are designed to facilitate justice and further its ends. A distinction has to be made between "an ex-parte proceeding" and "an ex-parte order". The word "ex-parte" comes from Latin meaning "from the part." According to the Black's Laws Dictionary ex-parte means "done or made at the instance and for the benefit of one party only and without notice to, or argument by, any person adversely interested". The term "ex-parte proceeding" means "a proceeding in which not all the parties are present or given the opportunity to be heard". "An ex-parte order" means "An order made by the Court upon the application of one party to an action without notice to the other". It also means an order made by the Court in the absence of the other party. When a case is listed for hearing and the defendant (or the delinquent officer in the case of departmental inquiry) fails to appear before the Court (or the inquiry officer in case of a departmental inquiry) the Court/inquiry officer has the power to proceed ex-parte against the defendant/delinquent officer. Of course, the order-sheets would record the fact that the proceedings would be held ex-parte, but merely by recording this fact the order does not become "an ex-parte order". It merely records a statement of fact and is not made in the sense of "ex-parte decree" or other ex-parte order. Merely because a proceeding is said to be ex-parte does not mean that the delinquent officer is prevented from participating in the proceedings in future, simply because he did not appear on the first date of hearing or on some other date of hearing. Thus, he has the right to rejoin the proceeding and to participate in future. In case he were to show sufficient cause for his non-appearance on the previous dates, the inquiry officer should generally set aside the ex-parte order. In case the ex-parte order is set aside, the delinquent officer would have the right to re-examine those witnesses who were examined as witness for the department prior to his rejoin the proceeding. However, in case he cannot show sufficient cause for his non-appearance, he cannot put the clock back and has to accept whatever was recorded prior to his rejoining the proceeding. But under no circumstances can he be prevented from participating in the proceeding in future once he has rejoined the proceeding. Thus, he has to be given a right to cross-examine the witnesses who are examined as departmental witnesses after he has rejoined the proceeding.

66. In the case of Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, the Apex Court had an occasion to discuss the entire concept of ex-parte proceeding as contained in Order 9 of C.P.C. It is true that the rigors of CPC do not apply to a departmental inquiry, But nonetheless, Order 9 C.P.C. does provide some guidelines to be adopted in a departmental inquiry. In the aforementioned case, the Hon'ble Supreme Court had observed that the defendant is not precluded from participating in the proceeding after he has rejoined the proceeding. In case he cannot show sufficient cause for his non-appearance on the previous dates, he cannot turn the clock back and has to accept whatever was done before. However, the right to cross-examine the

witness subsequent to his rejoining the proceeding is his. Similar views were expressed by this Court in the case of Ram Pal v. Chandu Ram 2000 WLC(Raj.) UC 579.

67. Dealing with a case where "the defence was struck off", in Modula India Vs. Kamakshya Singh Deo, the Apex Court observed as under:

Even in a case where the defence against delivery of possession of a tenant is struck off u/s 17(4) of the Act, the defendant, subject to the exercise of an appropriate discretion by the Court on the facts of a particular case, would generally be entitled:

(a) to cross-examine the plaintiff's witnesses; and

(b) to address argument on the basis of the plaintiff's case.

We would like to make it clear that the defendant would not be entitled to lead any evidence of his own nor can his cross-examination be permitted to travel beyond the very limited objective of pointing out the falsity or weaknesses of the plaintiff's case. In no circumstances should the cross-examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses.

68. In the present case, the petitioner filed an application on 28.11.1994 for setting aside the ex-parte order. However, the said application was never considered by the inquiry officer. When the petitioner wanted to participate in the proceedings from 13.12.1994 to 17.12.1994, he was precluded from doing so ostensibly on the ground that the proceedings were ordered to be ex-parte. Thus, he was not permitted to cross-examine the witnesses. Interestingly, most of the witnesses were examined after he had rejoined the proceeding. But he could not cross-examine any one of them. It was the duty of the inquiry officer to pass an order on the application filed by the petitioner for setting aside the ex-parte order. The inquiry officer should also have realised that the petitioner has a right to cross-examine a witness after he has rejoined the proceeding. However, the inquiry officer has ignored both these aspects of the case. Thus, petitioner's valuable right to cross-examine and to demolish the testimonies of the witnesses has been denied to him. Therefore, a fair departmental inquiry has not been conducted.

69. According to Rule 16(6) (a) of the CCA Rules that "after close of the prosecution evidence the government servant shall be called upon to submit the list of witnesses within ten days which he would like to produce in his defence. The Inquiring Authority after considering the relevancy of the witnesses and the documents shall summon only the relevant witnesses and documents and record the evidence thereof, while giving opportunity of Examination-in-chief and cross-examination/re-examination to the parties and then closed the evidence." Since the present case is not of "striking off of defence", this procedure should have

been followed by the inquiry officer. On 17.12.1994, the inquiry officer observed that the evidence on part of the State Board has been completed. However, instead of calling upon the petitioner to submit his list of witnesses, the inquiry officer observed that "the inquiry report shall be prepared and shall be submitted as soon as it is ready." Therefore, he has totally denied the petitioner his right to produce his witnesses in his defence. Such a right could be denied if and only if the petitioner's defence were struck off. However, in the instant case, the proceedings was conducted ex-parte only because the petitioner failed to appear on a particular date of hearing. It is not a case of the defence being struck off. Thus, the inquiry officer should have followed the procedure prescribed under Rule 16(6) (a) of the CCA Rules. Such a denial is clearly in violation of Rule 16 (6) (a) of the CCA Rules and in violation of the principles of natural justice. Such a denial is also in violation of Article 21 of the constitution of India as the petitioners' right to a fair departmental inquiry has been violated.

70. In the case of Union of India and others Vs. Mohd. Ramzan Khan, the Hon'ble Supreme Court observed that a delinquent officer has to be given a second show cause notice before punishment can be imposed upon him. The purpose of giving second show cause notice was to permit the delinquent officer to question the validity, and legality of the inquiry report. His right to question the inquiry report is a substantive right. A complete opportunity has to be given to the delinquent officer to pick holes in the inquiry report. Where the delinquent officer fully participates in the inquiry proceedings, in such a case the copy of the inquiry report may be sufficient for him to point out the shortcomings in the inquiry report. But, in a case where the proceeding is ex-parte, or in a case where the delinquent officer is prevented from cross-examining the witnesses, in such a case it is imperative that the statement of the witnesses, copies of the documents and other relevant documents should be given to the delinquent officer along with the inquiry report. If the testimony of the witnesses and the copies of the documents were not given to the delinquent officer, then he is prevented from pointing out the lacunae in the inquiry report. Afterall, only a truncate view of the evidence and of the entire proceeding has been given to him. Such procedure, if followed, would violate the right to a fair hearing. Thus, it is a constitutional mandate, under Article 21 of the Constitution of India, that in case of ex-parte proceedings along with the inquiry report the statement of the witnesses and the documents relied upon by the inquiry officer, for drawing his or her adverse conclusion against the delinquent officer, should be supplied to the delinquent officer.

71. In the case of State of Uttaranchal and Others Vs. Kharak Singh, the Hon'ble Supreme Court delineated the basic principle regarding conducting of the departmental inquiry as under:

The following are some of the basic principles regarding conducting of departmental enquiries: (i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities; (ii) If

an officer is a witness to any of the incidents which is the subject-matter of enquiry or if enquiry was initiated on a report of an officer, then in all fairness he should not be the enquiry officer. If the said position becomes known after appointment of enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer; (iii) In an enquiry, the employer/department should take steps first to lead evidence against workman/delinquent charges and give an opportunity to him to cross-examine witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give an explanation about the evidence led against him; (iv) On receipt of enquiry report, before proceeding further, it is incumbent on the part of disciplinary/punishing authority to supply a copy of enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his view, if any.

(Emphasis added).

72. In the present case, despite the request of the petitioner that he be supplied with copies of the deposition of the eleven witnesses and copies of the documents relied upon by the inquiry officer, the said plea was totally ignored. Instead, the petitioner was asked to submit his reply to the second show cause notice. The omission on part of the State Board to supply copies of the deposition and copies of the documents, clearly violated the petitioner's right of fair hearing. Thus, the procedure adopted by the State Board is in violation of Article 14 and 21 of the Constitution of India.

73. According to Rule 10(vii) of the Rules, the Board has sufficient power to delegate its powers, for the conduct of the business, to the Chairperson subject to the condition that the action taken by the Chairperson under the powers delegated to him shall be reported for confirmation at the next meeting of the Board. In light of the said powers contained in Rule 10(vii) of the Rules, vide resolution dated 05.01.1995, the Board authorized the Chairperson to proceed against the petitioner on the basis of the inquiry report and to pass the necessary orders after consultation with the inquiry officer and the Central Board. Hence, while delegating the power to proceed and to decide the case against the petitioner, two conditions had been imposed, namely consultation with the inquiry officer and secondly consultation with the Central Board. Therefore, the Chairperson could not have passed any order against the petitioner without fulfilling both the conditions imposed by the Board. However, there is no evidence available on record to show the fact that the Chairperson had, indeed, consulted the inquiry officer and the Central Board prior to passing the dismissal order on 27.04.1995. Therefore, the said order is clearly in violation of the resolution dated 05.01.1995 passed by the Board.

74. The Chairperson should have realised that she is not acting in her official capacity as the Chairman, but is acting as a delegatee of the Board. But, it seems that although, she was not authorised to act in such a manner, the Chairperson usurped the power to take a suo-moto decision while ignoring the

directions of the Board. Hence, the Chairperson has overstepped the jurisdiction vested in her by the Board. Therefore, the dismissal order dated 27.04.1995 passed by the Chairman is void-ab-initio.

75. A bare perusal of the resolution dated 01.05.1995, passed by the State Board clearly reveals that the Board meeting was presided by the Chairperson. The meeting was to confirm the dismissal order passed by the Chairperson herself. This is, indeed, a curious state of affairs. The Chairperson who passed the dismissal order presides over the Board meeting confirming her order. In such a scenario, the Chairperson would ensure that the dismissal order is confirmed. The bias of the Chairperson would permeate the Board meeting. The element of bias is real and substantial. Moreover, in such a circumstance the State Board would not be in a position to objectively assess the inquiry report & the dismissal order. Thus, the resolution dated 01.05.1995 is vitiated by bias. It is, thus, legally untenable.

76. In the case of Vijay D. Wani and Ors. (supra) the Apex Court dealt with a case where three persons who conducted the inquiry against the respondent, Vijay D. Wani, were also members of the Cantonment Board. The Cantonment Board accepted the inquiry report and dismissed the respondent. The Hon'ble Supreme Court held as under:

The question of a bias is always the (sic) question of fact. The courts has to be vigilant while applying the principles of bias as it primarily depends on the facts of each case. The court should only act on real bias not merely on likelihood of bias. In the present case, so far as the members of the committee who conducted a disciplinary inquiry was (sic) also the members of the Cantonment Board where the report was to be considered, decided and whether to accept it or not & finding the respondent (herein) guilty or not. The very fact that these three persons who conducted inquiry were also the members of the Board and that Board was to take a decision in the matter whether the report submitted by the Enquiry Committee should be accepted or not. Therefore, the participation of these three members in the committee is (sic) given a real apprehension in the mind of the respondent that he will not get a fair justice in the matter because of the three members who submitted the report would be interested to see that their report should be accepted. This bias in this case cannot be said to be unreal (sic) it is very much real and substantial one that the respondent is not likely to get a fair deal by such disciplinary committee.

It further observed as under:

Judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment (sic) the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.

77. It is a settled principle of law that where an order is illegal, it cannot be transformed into a legal one by an approval of a higher authority. Such a metamorphosis is unknown to legal jurisprudence. In the case of V.C. Banaras Hindu University and Ors. (supra), the Vice-Chancellor of the University had terminated the services of the respondent. However, the Vice-Chancellor had overstepped his jurisdiction. Even after the said dismissal order was approved by the Executive Council, the Hon'ble Supreme Court observed that "As the initial order passed by the vice-chancellor was wholly without jurisdiction, the same was nullity and, thus, the purported approval thereof, by the Executive Council would not cure the defect." Similarly, in the present case, since the dismissal order passed by the Chairperson was beyond her jurisdiction, the approval by the Board in its meeting on 01.05.1995 would not cure the inherent defect. Therefore, neither the dismissal order dated 27.04.1995, nor the decision of the Board dated 01.05.1995 are sustainable in the eyes of the law.

78. This Court is of the opinion that firstly the inquiry proceedings have been conducted in violation of not only the CCA Rules, but also in utter disregard to the Constitutional mandate and the principles of natural justice. Secondly, that the dismissal order dated 27.04.1995 and the decision of the Board dated 01.05.1995 are unsustainable. This Court has also been informed that the petitioner has attained the age of superannuation. Therefore, he cannot be reinstated. This Court is also aware of the fact that since 1993, the petitioner has been facing an up-hill task within the department. It seems that he has been victimized by the respondent No. 6. After a lapse of almost sixteen years, it would be unjust and unfair to direct a de-novo inquiry against the petitioner. For, during this period of decade and a half, the witnesses in his defence, if any, may have disbursed, or may have expired or their memory may have faded. Moreover, even the documentary evidence, if any, both in favour of the State Board and in favour of the petitioner may no longer be readily available. Thus, a de-novo inquiry might be an attempt in futility. Hence, it would be unjust.

79. Since this Court is of the opinion that the petitioner has been denied his right to livelihood as guaranteed under Article 21 of the Constitution of India, the question of back wages arises before this Court. Since the petitioner has been harassed, has had his fundamental rights violated, right, left, and center while facing the departmental inquiry, it would be just and fair that he be paid 75% of the back wages by the State Board. This Court directs the payment of 75% of the Back wages considering the fact that there is no provision for payment of pension in the State Board. Thus, the only financial oxygen available to the petitioner for survival are his back wages. Hence, in the opinion of this Court payment of 75% of back wages is just, fair and reasonable. Since this Court has already declared the order dated 16.07.1994, whereby the petitioner's pay-scale was reduced, as unsustainable, the back wages should be calculated on the basis of his last pay cheque prior to the order dated 16.07.1994. The said payment shall be made within a period of two months from the date of receipt of the certified copy of this judgment. In case, the payment is not made within the

stipulated period, the State Board shall pay an interest at the rate of 9% per annum till realisation of back wages.

80. For the reasons stated above, and with the observations made above, this writ petition is, hereby, allowed and the orders dated 16.07.1994, 11.08.1994, 21.07.1994, the Charge-sheet dated 25.7.1994, the dismissal order dated 27.04.1995 and the decision of the Board dated 01.05.1995 are, hereby, quashed and set aside. There shall be no order as to cost.