
(2016) 05 AHC CK 0257
In the Allahabad High Court
Case No : Writ-A No. 10071 of 2011

Ram Lakhan Prajapati

APPELLANT

Vs

State Of U.P. And Others

RESPONDENT

Date of Decision : 10-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules,
1991 — Rule 14(1)

Citation : (2016) 6 ADJ 92

Hon'ble Judges : Mahesh Chandra Tripathi, J.

Bench : Single Bench

Advocate : Ajay Bhanot, Shiv Kumar Singh, Advocates, for the Appellant; C.S.C, for the Respondent

Final Decision : Allowed

Judgement

Mahesh Chandra Tripathi, J.—Heard Shri Ajay Bhanot, Senior Advocate assisted by Shri Shiv Kumar Singh, learned counsel for the petitioner and Shri H.C. Pathak, learned Standing Counsel for the respondents.

2. Ram Lakhan Prajapati is before this Court for quashing the orders dated 29.10.2009, 26.3.2010 and 1.7.2010. He has further prayed for direction commanding the respondents not to deduct/reduce his salary and to pay his regular salary along with increments.

3. As per record, this much is reflected that the petitioner was initially appointed as a Constable in Civil Police on 1.2.1978. A preliminary enquiry was initiated against him on 28.12.2008 on the allegation that the petitioner was found drunken at a motor stand in District Jhansi on 26.12.2008, and in the aforesaid preliminary enquiry, the petitioner was found guilty. He was suspended in pursuance of the aforesaid preliminary enquiry dated 28.12.2008. Thereafter, on 10.2.2009 a departmental enquiry was ordered against him under Rule 14 (1) of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991

and the charge sheet dated 24.3.2009 was served upon the petitioner. The enquiry officer submitted his enquiry report on 30.3.2009 indicting the petitioner. Thereafter a show cause notice was issued to the petitioner on 5.5.2009 to which he submitted his reply on 26.2.2009. By the impugned order dated 29.10.2009, the Senior Superintendent of Police, Jhansi imposed a major penalty upon the petitioner by which the petitioner was reduced to the lowest pay scale for a period of three years. Aggrieved with the aforesaid order, the petitioner filed an appeal before the appellate authority on 18.11.2009 and the said appeal was dismissed on 26.3.2010. Thereafter, the petitioner preferred a revision before the revisional authority and the revision was dismissed on 1.7.2010

4. Shri Ajay Bhanot, Senior Advocate appearing for the petitioner submits that the preliminary enquiry report was never served upon the petitioner nor produced and proved before the enquiry officer. In the charge sheet dated 24.3.2009, the preliminary enquiry report was not made a part of the evidence, which was to be relied upon by the department. The petitioner was not given an opportunity to cross-examine the witnesses against him and the departmental witnesses were never examined in the presence of the petitioner nor their statements were recorded in his presence. The medical examination report was not proved before the enquiry officer in accordance with law. Further the author of the aforesaid report did not appear before the enquiry officer and the petitioner was not given any opportunity to cross-examine the author of the medical report. The aforesaid medical report reveals that the petitioner was not intoxicated and the said medical report does not corroborate or support the charge against the petitioner. The petitioner was not on duty at the time of medical examination. The medical examination of the petitioner took place at 9.40 PM on 26.12.2008 much after duty hours.

5. Shri Ajay Bhanot, Senior Advocate also submits that a perusal of the charge sheet in question reveals that no misconduct is made out against the petitioner and as such, the departmental enquiry proceeding was illegal and void ab initio. The petitioner was not aware of the material particulars of the charge against which he was to defend himself and further he was also not aware of the adverse material against him. The charge sheet lacks material particulars. The enquiry officer did not follow the procedures while conducting the aforesaid enquiry. The petitioner was not served copies of the adverse material relied upon by the enquiry officer and further the aforesaid adverse material was never produced and proved before the enquiry officer during the course of enquiry proceedings.

6. It has been submitted by Shri Ajay Bhanot, Senior Advocate that the impugned order was in violation of the principle of natural justice and as such, the order impugned fails to redeem the illegalities committed by the enquiry officer while conducting the departmental enquiry. The petitioner filed an appeal before the appellate authority against the punishment order and the appellate authority has dismissed the appeal in arbitrary and illegal manner. The same was also passed in violation of the principle of natural justice. The appellate order

was also assailed by means of revision, which was also dismissed.

7. Shri Ajay Bhanot, Senior Advocate submits that the enquiry has not been conducted in accordance with law. In support of his submissions, he has placed reliance in *State of Uttaranchal & Ors. v. Kharak Singh* [(2008) 8 SCC 236, wherein it is observed that the enquiry should not be an empty formality. A witness should not be the enquiry officer. The departmental evidence should be led in the first instance and in the presence of charged employee, thereafter, copy of enquiry along with material relied on should be furnished to charged employee. If these requirements are not fulfilled, the enquiry cannot be held proper. For ready reference the relevant paragraph is reproduced hereunder:-

"From the above decisions, the following principles would emerge:

- 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 the enquiry or if the 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 the appointment of the 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 the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.
- iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

On the other hand, one Mr. P.C. Lohani, Dy. Divisional Forest Officer, Nadhor acting as an enquiry officer after putting certain questions and securing answers submitted a report on 16.11.1985. No witnesses were examined. Apparently there was not even a presenting officer. A perusal of the report shows that the enquiry officer himself inspected the areas in the forest and after taking note of certain alleged deficiencies secured some answers from the delinquent by putting some questions. It is clear that the Enquiry Officer himself has acted on the Investigator, Prosecutor and Judge. Such a procedure is opposed to principles of natural justice and has been frowned upon by this Court."

8. In *Sur Enamel and Stamping World v. Workmen*, AIR 1963 (SC) 1914, reiterating the aforesaid principles, it was observed as under:-

"In support of the appeal against this order Mr. Sen Gupta has urged that it was not open to the Industrial Tribunal to go behind the finding arrived at by the

domestic" tribunal. He contended that the Tribunal was wrong in thinking that the rules of natural justice were not followed. It appears that a joint enquiry was held against Manik and one Birinchi. Nobody was examined at this enquiry to prove the charges. Only Manik and Birinchi were examined. They were., confronted with the reports of the supervisor and other persons made behind their backs and were simply asked why these persons would be making the reports against them falsely. It is not clear whether what they said was recorded. According to the inquiring authority they were "unable to explain as to why these persons would be making the reports against them falsely." In our opinion, it would be a misuse of the words to say that this amounted to holding of proper enquiry it has been laid down by this Court in a series of decisions that if an industrial employee's services are terminated after a proper domestic enquiry held in accordance with the rules of natural justice and the conclusions reached at the enquiry are not perverse the industrial tribunal is not entitled to consider the propriety or the correctness of the said conclusions. In a number of cases which have come to this Court in recent months, we find that some employers have misunderstood the decisions of this Court to mean that the mere form of an enquiry would satisfy the requirements of industrial law and would protect the disciplinary action taken by them from challenge. This attitude is wholly misconceived. An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined--ordinarily in the presence of the employee--in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report. In the present case the persons whose statements made behind the backs of the employees were used by the enquiring authority were not made available for cross-examination but it would appear that they were not even present at the enquiry. It does not even appear that these reports were made available to the employee at any time before the enquiry was held. Even if the persons who made the reports had been present and the employee given an opportunity to cross examine them, it would have been difficult to say in these circumstances that was a fair and sufficient opportunity. But in this case it appears that the persons who made the reports did not attend the enquiry at all. From whatever aspect the matter is examined it is clear that there was no enquiry worth the name and the Tribunal was justified in entirely ignoring the conclusion reached by the domestic Tribunal."

9. Shri Ajay Bhanot, Senior Advocate submits that the author of the medical report was not produced during the proceedings and as such, the petitioner was not able to cross examine him. Therefore, the absence of cross-examination of the material witnesses by the petitioner has also vitiated the enquiry. In support of this submission, he has placed reliance in *Hardwari Lal v. State of U.P. & Ors.* [(1999) 8 SCC 582], the relevant paragraph of which is reproduced as under:-

"Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant."

10. On the other hand, Shri H.C. Pathak, learned Standing Counsel submits that the orders impugned have been passed strictly in accordance with law after giving fullest opportunity to the petitioner and there is no infirmity in the impugned orders. He further submits that the petitioner belongs to disciplined force and there is no illegality or infirmity in the orders impugned. Time to time notices had been served to the petitioner and full opportunity had been afforded to him and as such, there is no violation of principle of natural justice in the matter. Even the appeal and revision have also been considered thoroughly by the appellate and revisional authority and as such, the order impugned is sustainable and no violation of principle of natural justice has been made in the matter.

11. Heard rival submissions and perused the record.

12. It is relevant to indicate here that after the charge-sheet is given to the charged employee, an oral enquiry is a must, whether the employee requests for it or not. Hence a notice should be issued to him indicating him the date, time and place of the enquiry. On that date the oral and documentary evidence against the employee should first be led in his presence. In certain exceptional cases the employee may be asked to lead evidence first but ordinarily the rule is that first the employer must adduce his evidence. The reason for this principle is that the charge sheeted employee should not only know the charges against him but should also know the evidence against him so that he can properly reply to the same. Where no witnesses were examined and no exhibit or record is made but straight away the employees was asked to produce his evidence and document in support of his case, it is illegal vide *P.C. Thomas v. Mutholi Cooperative Society Ltd.*, 1978 LIC 1428 (Ker.) and *Meenglas Tea Estate v. Their Workmen*, AIR 1963 SC 1719. Ordinarily the statement of all the witnesses of the employer should be recorded in presence of the employee unless there are compelling reasons to act otherwise. If the witnesses are examined in the absence of the employee and their recorded statements were also not supplied to him, this procedure is illegal vide *Tata Oil Mills Co. Ltd. v. Their Workmen*, 1963

(II) LLJ 78.

13. In *Radhey Kant Khare v. U.P. Cooperative Sugar Factories Federation Ltd.* (2003) 1 ESC 427, it was observed that when no enquiry was held to establish the charges by examining the witnesses and affording opportunity of hearing to the petitioner to cross-examine and the petitioner was not allowed to see any papers, which he could use in his defence and when no oral evidence recorded at all by enquiry officer, the same would be violative of principles of natural justice and dismissal order passed against the petitioner is wholly illegal. The relevant paragraphs of the judgment are reproduced as under:-

"After a charge-sheet is given to the employee, an oral enquiry is a must, whether the employee requests for it or not. Hence, a notice should be issued to him indicating him the date, time and place of the enquiry. On that date the oral and documentary evidence against the employee should first be led in his presence vide, *A.C.C. Ltd. v. Their Workmen*, (1963) U LLJ 396 (SC). Ordinarily, if the employee is examined first, it is illegal vide *Anand Joshi v. M.S.F.C.*, 1991 LIC 1666 (Bom); *S. D. Sharma v. Trade Fair Authority of India*, (1985) II LLJ 193 and *Central Railway v. Raghubir Saran*, (1983) II LLJ 26. No doubt, in certain exceptional cases, the employee may be asked to lead evidence first, vide *Firestone Tyre and Rubber Co. Ltd. v. Their Workmen*, AIR 1968 SC 236, but ordinarily the rule is that first the employer must adduce his evidence. The reason for this principle is that the charge-sheeted employee should not only know the charges against him but should also know the evidence against him so that he can properly reply to the same. Where no witnesses were examined and no exhibit or record is made but straightaway the employee was asked to produce his evidence and documents in support of his case it is Illegal vide *P. C. Thomas v. Mutholi Co-operative Society Ltd.* 1978 LIC 1428 (Ker) and *Meengles Tea Estate v. Their Workmen*, AIR 1963 SC 1719.

It is also necessary that ordinarily the statement of all the witnesses of the employer should be recorded in presence of the employee unless there are compelling reasons to act otherwise vide *Kesoram Cotton Mills v. Gangadhar*, AIR 1964 SC 708 and *Central Bank of India v. Prakash Chand*, AIR 1969 SC 983, etc. If the witnesses are examined in the absence of the employee and their recorded statements were also not supplied to him this procedure is illegal vide *Tata Oil Mills Co. Ltd. v. Their Workmen*, (1963) II LLJ 78 ; *India General Navigation and Rly. Co. Ltd. v. Its Employees*, (1961) II LLJ 372 (SC) ; *Bharat Sugar Mills Co. Ltd. v. Jai Singh*, (1961) II LLJ 644 (SC) : *Sur Enamel and Stamping Works Ltd. v. Their Workmen*. AIR 1963 SC 1914 and *Vysya Bank v. N. M. Pat*, 1994 LIC 1429 (Kant) etc.

In *Meenglas Tea Estate v. Their Workmen*. AIR 1963 SC 1719, the Supreme Court observed "It is an elementary principle that a person who is required to answer the charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of

cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled if the result of the enquiry can be accepted.

In *S.C. Girotra v. United Commercial Bank*, 1995 (Supp) 3 SCC 212. the Supreme Court set aside the dismissal order which was passed without giving the employee an opportunity of cross-examination. In *State of U.P. v. C.S. Sharma*. AIR 1968 SC 158, the Supreme Court held that omission to give opportunity to an employee to produce his witnesses and lead evidence in his defence vitiates the proceedings. The Court also held that in the enquiry, the witnesses have to be examined in support of the allegations, and opportunity has to be given to the delinquent to cross examine those witnesses and to lead evidence in his defence. In *Punjab National Bank v. A.I.P.N.B.E. Federation*, AIR 1960 SC 160 (vide paragraph 66), the Supreme Court held that in such enquiries evidence must be recorded in presence of the charge-sheeted employee and he must be given opportunity to rebut such evidence.

In *Subhash Chandra Sharma's case* (Supra), it was held that a dismissal order has serious consequence and should be passed only after complying with the rules of the natural justice as mentioned above. Against that decision an S.L.P. was filed which was dismissed.

The events thereafter have to be carefully examined for the purpose of determining whether there was a proper enquiry and whether the dismissal order was valid.

In paragraph 19 of the writ petition, it is stated that the petitioner submitted his reply to the show cause notice in which he specifically contended that no enquiry was held to establish the charges by examining the witnesses and affording opportunity of hearing to the petitioner to cross examine and the petitioner was not allowed to see any paper which he could use in his defence and thus there was utter violation of the principles of natural justice. In paragraph 25 of the writ petition. It is alleged that no oral evidence was recorded at all by the enquiry officer and the petitioner was not afforded any opportunity of cross-examination. In paragraph 27 of the writ petition, it is alleged that the petitioner was not supplied copy of the report of Najib Ahmad dated 30.1.1985. In paragraph 29, it is alleged that no copy of the enquiry was given to the petitioner along with the show cause notice to enable him to know the reasons and grounds given by the enquiry officer. In paragraph 30, it is alleged that the petitioner was not given opportunity to cross-examine Hanuman Saran, driver. In paragraph 31, it is alleged that besides the enquiry report the punishing authority considered other documents, behind the back of the petitioner.

The learned single Judge whose judgment is under challenge before us has, in our opinion, wrongly observed that the enquiry officer recorded the statement of the witnesses and opportunity was afforded to the petitioner to adduce evidence.

With great respect to the learned single Judge, he has not noticed the decisions of the Supreme Court and of this Court referred to above. In fact the learned single Judge has held that the petitioner was not found guilty of misappropriation or theft, but was only guilty of negligence in delivering the keys of the cash room to Najib Ahmad. However, the learned single Judge has not considered the defence of the appellant which has been referred to in paragraphs 6 to 9 of the writ petition. Without referring to these averments, the learned single Judge has held that the appellant was guilty of negligence. In our opinion, the defence of the appellant even on the question of negligence should have been considered by the learned single Judge, but that has not been done.

Learned counsel for the respondent has urged that the petitioner has admitted his guilt. We do not agree. The petitioner has nowhere accepted his guilt. Annexure-4 to the special appeal does not show that the petitioner accepted guilt, rather the petitioner has stated therein that the guilt was of Najib Ahmad. Hence this letter dated 9.2.1985 cannot be regarded as admission of guilt.

In our opinion, the appellant was not given proper opportunity of hearing and no oral enquiry as required by law was held. Hence the dismissal order dated 26.7.1985, is wholly illegal and is hereby quashed. The Judgment of the learned single Judge dated 11.10.1999, is also set aside. The petition is allowed. The petitioner shall be reinstated forthwith. The normal rule is that when the dismissal order is set aside reinstatement with full back wages has to be granted vide *Kesoram Cotton Mills v. Gangadhar*, (1963) II LLJ 371 (SC) ; *Hindustan Tin Works Put. Ltd. v. Its Employees*, 1978 L/C 1667 (SC) and *M.L. Bose v. Its Employees*, AIR 1961 SC 1178, etc. We direct that the petitioner shall be reinstated within a month of production of a certified copy of this order before the authority concerned, and he must be given full back wages from 26.7.1985, i.e., the date of dismissal to the date of reinstatement within 2 months from today along with interest at 10% per annum."

14. In *State of U.P. v. Shatrughan Lal & Anr.* (Supra) it was held that non-supply of copies of the documents relied on in the charge sheet to the charged employee would vitiate the enquiry. The relevant paragraphs of the judgment are reproduced as under:-

"This paragraph of the written statement contains an admission of the appellant that copies of the documents specified in the charge sheet were not supplied to the respondent as the respondent had every right to inspect them at any time. This assertion clearly indicates that although it is admitted that the copies of the documents were not supplied to the respondent and although he had the right to inspect those documents, neither were the copies given to him nor were the records made available to him for inspection. If the appellant did not intend to give copies of the documents to the respondent, it should have been indicated to the respondent in writing that he may inspect those documents. Merely saying that the respondent could have inspected the documents at any time is not enough he has to be informed that the documents, of which the copies were

asked for by him may be inspected. The access to record must be assured to him.

It has also been found that during the course of the preliminary enquiry, a number of witnesses were examined against the respondent in his absence, and rightly so, as the delinquents are not associated in the preliminary enquiry, and thereafter the charge sheet was drawn up. The copies of those statements, though asked for by the respondent, were not supplied to him. Since there was a failure on the part of the appellant in this regard too, the principles of natural justice were violated and the respondent was not afforded an effective opportunity of hearing, particularly as the appellant failed to establish that non-supply of the copies of statements recorded during preliminary enquiry had not caused any prejudice to the respondent in defending himself."

15. In *Mohd. Quaramuddin v. State of A.P.*, (1994) 5 SCC 118, reiterating the aforesaid principles, it was held as under:-

"On merits the tribunal came to the conclusion that the principle of natural justice had been violated in that the delinquent was not supplied a copy of the Vigilance Commission Report although it formed part of the record of the enquiry and material which the disciplinary authority had taken into consideration. The tribunal observed that where such a material which the disciplinary authority relies on is not disclosed to the delinquent it must be held that he was denied the opportunity of being heard, meaning thereby that the audi alteram partem rule had been violated. In the present case the tribunal found that the directions to this effect found in the Government Memorandum No. 821/Services-C/69-8 dated 30-3-1971 had not been adhered to. Had the tribunal not come to the conclusion that the suit was barred by limitation, it would have allowed the appeal preferred by the delinquent."

16. In *State Bank of India & Ors. v. D.C. Aggarwal & Anr.*, (1993) 1 SCC 13, Hon"ble the Supreme Court reiterating the same view observed in para 5 as under:-

"Reliance was placed on Sub-rule 5 of Rule 50 which reads as under:

(5) Orders made by the Disciplinary Authority or the Appointing Authority as the case may be under Sub-rules (3) and (4) shall be communicated to the employee concerned, who shall also be supplied with a copy of the report of inquiry, if any.

It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed the Court was not justified in misinterpreting the rule. The learned Counsel urged that the Bank was very fair to the respondent and the Disciplinary Authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasised that if the

exercise would have been mechanical the Disciplinary Authority would not have disagreed with CVC recommendations on punishment. Learned Counsel submitted that, in any case, the Disciplinary Authority having passed detailed order discussing every material on record and the respondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of Rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as, "The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation to the CVC which is considered sufficient". Taking action against as employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be coincidental that the reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. No supply of the Vigilance report was one of the ground taken in appeal. But that was so because the respondent prior to service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. The submission of the learned Addl. Solicitor General that CVC recommendations are confidential copy, of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different that CVC recommendation which was the basis of the order passed by the Disciplinary Authority."

17. In *Dina Nath Chauve v. Central Bank of India & Ors.*, 2011 (5) ADJ 534 (DB) (LB), it was observed as under:-

"It is also settled proposition of law that non-furnishing of material documents and that too like the preliminary enquiry report vitiates the enquiry proceedings."

18. It is also relevant to indicate that non-examination of material witnesses vitiates the enquiry. In support of this argument, learned counsel for the petitioner has placed reliance in *Hardwari Lal v. State of U.P. & Ors.*, 1999(8) SCC

582, the relevant paragraphs of which are reproduced as under:-

"Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant.

In the circumstances, we are satisfied that there was no proper enquiry held by the authorities and on this short ground we quash the order of dismissal passed against the appellant by setting aside the order made by the High Court affirming the order of the Tribunal and direct that the appellant be reinstated in service. Considering the fact of long lapse of time before the date of dismissal and reinstatement, and no blame can be put only on the door of the respondents, we think it appropriate to award 50 per cent of the back salary being payable to the appellant. We thus allow the appeal filed by the appellant. However, there shall be no order as to costs."

19. In view of the aforesaid facts and circumstances, it is apparent that the enquiry has not been conducted in accordance with the settled principles of law. The petitioner was not afforded proper opportunity to defend himself and refute the charges efficiently. As per the law laid down by the Courts as indicated above, the enquiry is vitiated and is not sustainable in the eyes of law. Accordingly, the orders impugned are wholly illegal and are hereby quashed.

20. Consequently, the writ petition is allowed and the petitioner shall be entitled for all consequential benefits.

21. However, this order shall not preclude the disciplinary authority to proceed in accordance with law to hold a fresh enquiry against the petitioner from the stage of submission of charge sheet dated 24.3.2009.