
(1998) 05 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4929 of 1986

Ram Niwas Bansal

APPELLANT

Vs

State Bank of Patiala and another

RESPONDENT

Date of Decision : 22-05-1998

Acts Referred:

State Bank of Patiala (Officers) Service Regulations, 1979 — Regulation 70

Citation : (1998) 2 ILR (P&H) 205 : (1999) 2 LLJ 126 : (1998) 119 PLR 768

Hon'ble Judges : Swatanter Kumar, J;K.S. Kumaran, J;Harphul Singh Brar, J

Bench : Full Bench

Judgement

Swatanter Kumar, J.—Whether, in absence of a specific provision in Regulation 70 of the State Bank of Patiala (Officers) Service Regulations, 1979, granting right of personal hearing to a delinquent officer before the Appellate Authority in departmental proceedings, the Court would read into such rule and provide right of such hearing on the application of maxim audi alteram partem, is the precise question that falls for consideration of the Full Bench in this writ petition.

2. Reference to basic facts would be, necessary before we advert to answer the afore-stated question. The petitioner joined the service as a clerk in the State Bank of Patiala in the year 1962; was promoted as Grade-II Officer in 1971 and Grade-I Officer in the year 1977. On October 20, 1980 when the petitioner was working as Accountant at Narwhal, charge-sheet dated October 20, 1980 was served upon the petitioner and it was followed by the supplementary charge sheets dated January 15, 1981 and January 8, 1982. The petitioner submitted his replies to the charge-sheets. One Shri Dev Raj Verma was appointed as enquiry officer on January 21, 1981. The enquiry was completed and enquiry officer submitted his report to the disciplinary authority. The petitioner claims that enquiry officer did not give adequate opportunity to the petitioner to address arguments in writing or orally upon conclusion of the enquiry proceedings. Thus, there was violation of the principles of natural justice. The enquiry officer submitted his report finding the petitioner guilty of the charges. The General

Manager (Operations) informed the petitioner along with the copy of the order dated April 23, 1985 about the order passed by the Managing Director imposing the penalty of removal from service against the petitioner. Under Regulation 70 of the Punjab National Bank Officers' Employees (Discipline and Appeal) Regulations, 1977, hereinafter referred to as the Regulations, the petitioner preferred appeal to the appellate authority against the impugned order, which was also rejected resulting in the filing of the present writ petition.

3. The main grievance of the petitioner, inter alia is that the copy of the enquiry report was not communicated to the petitioner prior to the passing of the impugned order of punishment. Further it is alleged that the appellate authority did not provide hearing to the petitioner inspite of the fact that there was a specific request made by him for this purpose. Thus, it was contended that the impugned orders are liable to be set aside on these grounds alone. Various other grounds have also been raised to state that the order was non-speaking and cryptic one, there is violation of principles of natural justice and the enquiry officer has not conducted the enquiry in accordance with rules and principles of natural justice.

4. Reply was filed by the respondents wherein it has been alleged that the enquiry has been conducted strictly in accordance with the rules and principles of natural justice. It was stated that the charges against the petitioner related to financial irregularities and were of a very serious nature and as such the order of punishment is not liable to be interfered with. A preliminary objection was also taken that the petitioner has the alternative remedy under law available to him of filing review application before the reviewing authority i.e. the Board of Directors and as such alternative remedy is available.

5. It is not disputed in the reply that copy of the enquiry report was not furnished to the petitioner before passing of the impugned order of punishment and that hearing was not granted to the petitioner by the appellate authority. It was stated that the provisions of Regulation 70 of the Regulations do not postulate any right of hearing to the petitioner, and as such no violation has been committed by the respondents.

6. Based upon the above pleadings Hon"ble Mr. Justice V. K. BALI, while hearing the matter found a conflict of judicial opinion in the pronouncements of this Court and vide order dated October 1, 1993 referred the matter to a larger Bench while passing the following order :-

"As there is apparent conflict in the two judgments rendered by Division Bench with regard to opinion expressed regarding the necessity of hearing in a statutory appeal, the matter requires to be adjudicated upon by a Larger Bench. In S. L. Loona v. The Punjab National Bank and another 1992 (1) S L R 250, the Division Bench after noticing the contention of Mr. Nijjar who was appearing in that case for the respondents that under Regulation 17 of the Punjab National Bank Officers' Employees (Discipline and Appeal) Regulations, 1979, no

opportunity of personal hearing is required to be given, it was observed by the Bench that the said contention was not correct. While holding so, reliance was placed upon a judgment of Supreme Court in Union of India and Another Vs. Tulsiram Patel and Others, . In M. S. Chauhan v. State Bank of India and others, 1985 (1) SLR 684 which again is a judgment by a Division Bench of this Court, after noticing the contention of the counsel that a personal hearing is envisaged under sub-rule(2) of Rule 51 by the Appellate Authority, it was held that the language of the Rule did not indicate that the Appellate Authority was required to give a personal hearing to an employee who has filed the appeal. As observed earlier, there is a direct conflict between the two Judgments. The papers of this case be sent to Hon"ble the Chief Justice for constituting a Larger Bench."

7. This case has been placed before the Full Bench for decision including the question that emerges for consideration from the afore-stated order of reference. Before we advert ourselves to the merits of the present case, we firstly, would proceed to decide the basic question that falls for consideration as a principle of law. Wherever a rule enabling the delinquent officer to prefer an appeal itself postulates that the delinquent officer shall be given a right of hearing by the appellate, authority, the authorities are obviously obliged to give the opportunity of hearing to the delinquent officer in law. However, the conflict of opinion between the different judgments for this Court relates to the case where the rule does not specifically provide for a right of hearing to be given to the delinquent officer before the appellate authority disposes of the appeal on merits.

8. At the outset it may be necessary for us to refer to Regulation 70 of the State Bank of Patiala Officers" Service Regulations, 1979, which reads as under :

"70(1) An officer may appeal to the Appellate Authority against an order imposing upon him any of the penalties specified in Regulation 67 against the order of suspension referred to in Regulation 69.

(2) An appeal shall be preferred within 45, days from the date of receipt of the order appealed against. The appeal shall be addressed to the Appellate Authority and submitted to the authority whose order is appealed against. The officer may, if he so desires, submit an advance copy to the Appellate Authority. The Appellate Authority shall consider whether the findings are justified and/or whether the penalty is excessive or inadequate and pass appropriate orders. The Appellate Authority may pass an order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any authority with such directions as it deems fit in the circumstances of the case.

Provided that :

(i) if the enhanced penalty which the Appellate Authority proposes to impose is a major penalty specified in Clauses (e), (f), (g) and (h) of Regulation 67 and an enquiry as provided in sub-regulation (2) of Regulation 68 has not already been held in the case, the Appellate Authority shall direct that such an enquiry be held

in accordance with the provisions of sub-regulation (2) of Regulation 68 and thereafter consider the records of the inquiry and pass such orders as it may deem proper :

(ii) if the Appellate Authority decides to enhance the punishment but enquiry has already been held as provided in sub-regulation (2) of Regulation 68, the Appellate Authority shall give a show-cause notice to the officer as to why the enhanced penalty should not be imposed upon him and shall pass final order after taking into account the representation, if any, submitted by the officer :

(iii) Where the enhanced penalty proposed to be imposed is a major penalty specified in Clauses (e), (f), (g) and (h) of regulation 67 and the Appellate Authority is not of the same rank as or higher than the Appointing Authority in respect of the category of the officers to which the officer belongs, it shall submit to the Appointing Authority the record of the proceedings together with its recommendations and the Appointing Authority shall pass such final orders on the appeal as it may deem appropriate.

(3) Notwithstanding anything contained in this Section, the Reviewing Authority may call for the record of the case within six months of the date of the final order and, after reviewing the case pass such orders thereon as it may deem fit.

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9. Of course, there is no challenge to the vires of Regulation 70 before us in this petition, but the conflicting view expressed by various Hon'ble Benches of this Court, in regard to the interpretation of this rule or such similar rules in other cases, give rise to a question of some public importance. So, to answer the question and to resolve the divergent judicial opinion, referred to above, we have to examine whether such right of hearing would be treated as indispensable and read into the rule, keeping in view the language of Regulation 70.

10. The right to hearing before a decision is made by an authority affecting the rights of an individual basically emerges from the principles of natural justice. The history relating to the wide concept and connotation of natural justice has in no indefinite terms accepted the right to hearing as an extended principle of natural justice. Natural justice as understood in its common parlance stands for fundamental equality and fairness which should be adopted in any action. The soul of natural justice is a fair play in action. To give a concise or a precise definition to the concept of natural justice would be endeavourance towards futility. Natural justice necessarily cannot be equated to natural law. The principles of natural justice must be understood in contrast to the formal or technical rule, of law or procedure. This was indicated by Lord WRIGHT in the case of General Medical Council v. Spackman 1943 App Cas 627. One finds a fine distinction, of natural justice and legal justice clarified by TAPASH GAN CHOUDHURY in his book "PENUMBRA OF NATURAL JUSTICE" in the following words :-

5. Natural justice and legal justice - correlation :-

Natural justice when authoritatively formulated by law becomes legal justice. The expression "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both and whenever legal justice fails to achieve that solemn purpose, natural justice is called in aid of legal justice and in that event it relieves legal justice from unnecessary technicality and logical prevarication and supplies the omissions of a formulated law".

11. The Supreme Court of India in the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, defined the natural justice as a facet of fair play and defined it as "quintessence of the process of justice inspired and guided by fair play in action; while in, another situation it can be described "as a distillate of due Process of law". Thus, the expression natural justice has been always understood and given wider meaning to achieve the ends of justice rather than permit the principles of law or procedure or to decimate the spirit behind the principles of natural justice, which would ultimately hamper proper administration of justice. Whenever a delinquent officer prefers an appeal against any order imposing penalty upon him, and such an appeal is a statutory appeal, then such appeal must be heard and decided in consonance with the settled principles of natural justice. Various judgments of the Hon"ble Supreme Court of India and for that matter in other various legal systems over the world have accepted the application of principles of natural justice to domestic administrative tribunals and specially the authorities which are discharging quasi-judicial functions. Adherence to the principles of natural justice by the appellate authority would normally have to keep three ingredients in mind when an appeal is preferred before such authority :-

a) There should be proper application of mind scrutiny of the records before it, by the appellate authority to enable it to record its satisfaction in terms of the rules.

b) It should pass a speaking order which would atleast prima-facie show that the authority concerned has applied its mind to the various contentions or points of determination raised before it. Further that it has particularly examined whether the penalty imposed is excessive and/or inadequate.

c) The scope of applicability of the maxim Audi Alteram Partem before the appellate authority depending upon the language of relevant regulation/rule.

12. As far as the first two ingredients are concerned, they are well settled through various pronouncements. They do not arise for determination directly in the present case. Therefore, we do not find the need to discuss them in any further elucidation. It is the third ingredient and its applicability which is the pertinent question falling for determination. The maxim Audi Alteram Partem means hear the other side; hear both sides. In other words the authority hearing the matter must be afforded hearing to the party who is likely to be affected by

its decision. The right to be heard has been accepted by all civilized countries as part of due process of law where questions affecting rights, privileges or claims of the persons are considered or adjudicated.

13. It is not necessary that the duty to adhere to this principle always and necessarily must emerge from the statutory provisions, but can also be inferred from the provisions, the scheme of the legislation, the attendant circumstances like the nature of the proceedings and its likely effect on the delinquent etc. In some places where the statute does not provide for such a right by use of positive words, the principles of natural justice would supply such omission. To grant hearing may be an obligation of the statute while in other case the duty to hear may arise as an obligation of natural justice. The right of hearing to explain his position by a delinquent officer in regard to the alleged misconduct, the conclusions arrived at by the disciplinary authority/inquiry officer, insufficiency of material, and punishment being excessive are the factors, amongst others, which the delinquent officer may like to voice before the appellate authority, while addressing the authority in person. The rule of Audi Alteram Partem is the more far-reaching of the principles of natural justice since it can embrace almost every question of fair procedure or due process. Exclusion of the applicability of this basic principle should arise from a patent negative intention on the part of the legislature or where it is excluded on the ground of urgency in the facts peculiar to that situation. The need to hear has been held to be indispensable at the initial stage and extension of such a principle at the appellate stage would also be a proper application of the principles of natural justice.

14. Under Regulation 70 of the Regulations wide power and discretion has been vested in the appellate authority. The appellate authority is under obligation to consider

- a) Whether the findings are Justified or not;
- b) Whether the penalty is excessive or inadequate; and
- c) It may pass any order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority, which imposed the punishment, or any other authority, as it may deem fit in the circumstances of the case.

15. The regulation further lays certain restrictions in the event of imposition of major penalty or enhancement of penalty. The magnitude of the discretion vested in the appellate authority could easily be equated to the Court of first appeal exercising its jurisdiction under the Code of Civil Procedure. In other words, the appellate authority is an authority of fact and law with wide discretion to interfere with the quantum of punishment even.

16. It is undoubtedly true that the authority concerned has before it the grounds : memorandum of appeal or may be the records which were before the disciplinary authority. To expect the appellate authority to scrutinise such records with such precision and thoroughness that it should obviate the obligation of

hearing the delinquent officer, does not only appear to be improbable, but even impermissible. It must be tested from the touch-stone of substantial compliance of principles of natural justice which alone would substantially meet the ends of justice. It is a fair protection available to the delinquent officer to present his case before the appellate authority and to bring to its notice the various pros and cons arising from the facts and circumstances of that case. The right of hearing can find no substitute and it is an obligation, which if not fulfilled, would have the effect of impairing the spirit of Justice and fairness in action. The power of the appellate authority to adjudicate upon the findings being justified or not has far reaching consequences. In other words, the appellate authority has to re-appreciate the entire evidence to see whether the findings arrived at by the authorities concerned are justified or not. The necessity for hearing appears to be the demand of the rules rather than its negation.

17. Another ancillary corollary to the above is that in the recent judgment the Hon"ble Supreme Court of India has expressed in unambiguous terms that even the Court should be reluctant to interfere in the findings arrived at by the departmental authorities and the punishment imposed thereupon, unless and until such findings are totally perverse or the punishment imposed is on the face of it so unreasonable and unfair that it pricks the judicial conscience of the Court. This is indicative of the restrictions sought to be imposed by the highest Court of the land upon, the scope of judicial review of such administrative action. In this regard reference can be made to the cases of *N. Rajarathinam Vs. State of T.N. and Another*, ; *B.C. Chaturvedi Vs. Union of India and others*, and *Rae Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh and other*, . These enunciated principles indicate the extent of finality intended to be provided to the orders passed by the disciplinary or appellate authority in departmental proceedings. The benefit accruing to the departmental authority from the afore-stated law laid down by the Hon"ble Apex Court, presupposes and imposes corresponding obligation upon the departmental authority to act with greater caution and care, with due regard and adherence to the principles of natural justice. Exercise of power by the Authority concerned must be in harmony with the true spirit and substance of principles of natural justice.

18. Permissible and pervasive exercise of power by its essential implication take unto itself the obligation to discharge functions with greater responsibility, luminous precepts to meet the ends of justice and to do substantial justice to its own employees. To read and imply prohibition in the above rules does not go in conformity either with the legislative intent of the scheme of these provisions and more so with the law of the land. The rule at best could be stretched to say that where the authority exercises its power under proviso (ii) and (iii) of sub-rule (2) of Regulation 70, a statutory obligation is placed upon the authority to serve notice upon the delinquent officer, but while exercising powers under sub-rule (2), the obligation to permit personal hearing if demanded by the employee is the obligation of the appellate authority arising out of principles of natural justice.

19. Fairness in departmental disciplinary actions must be understood in its correct perspective keeping in view the language of the rule. It is difficult for us to come to the conclusion that any principle of interpretation would justify denial of hearing. Denial of hearing can never be said to be fair because it would per se be prejudicial to the employees concerned. At this stage it may be appropriate to refer to the judgment of the Supreme Court predicated an immutable point of view enunciating the above principles. In the case of Chintapalli Agency Taluk Arrack Sales Cooperative Society Ltd. and Others Vs. Secretary (Food and Agriculture) Government of Andhra Pradesh and Others, , the Hon"ble Supreme Court held as under :-

"Even though the appellant had filed some representations in respect of the matter, it would not absolve the Government from giving notice to the appellant to make the representation against the claim of the respondents. The minimal requirement under Sec. 77(2) is a notice informing the opponent about the application and affording him an opportunity to make his representation against whatever has been alleged in his petition. It is true that a personal hearing is not obligatory but the minimal requirement of the principles of natural Justice which are ingrained in Sec. 77(2) is that the party whose rights are going to be affected and against whom some allegations are made and some prejudicial orders are claimed should have a written notice of the proceedings from the authority disclosing the grounds of complaint or other objection preferably by furnishing a copy of the petition on which action is contemplated in order that a proper and effective representation may be made".

20. In the case of Smt. Maneka Gandhi v. Union of India and another, (supra) the Hon"ble Supreme Court of India upon consideration of the fact that the principles of audi alteram partem would have application even where no positive words are used in the statute, observed as under :

"Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of audi alteram partem, which mandates that no one shall be condemned unheard is part of the rules of natural justice.

Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must, always be : does fairness in action demand that an opportunity to be heard should be given to the person affected ?

The law must now be taken to be well settled that even in an administrative proceedings, which involves civil consequences, the doctrine of natural justice must be held applicable."

21. Still in the case of Swadeshi Cotton Mills Vs. Union of India (UOI), the Hon"ble Apex Court while considering the possibility of exclusion of the concept of hearing by necessary implication observed that :

"Section 18-AA, does not expressly in unmistakable and unequivocal terms exclude the application of the audi alteram partem rule at the pre-decisional stage. The phrase "that immediate action is necessary" in Section 18-AA(a) does not exclude absolutely, by inevitable implication, the application of this cardinal canon of fair play in all cases where Sec. 18-AA(1)(a) may be invoked. Section 18-F has also not the effect of excluding the rules of natural justice relating to prior hearing".

"..... In short, this rule of fairplay must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The Court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modification. But the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise".

22. In the case of Union of India and Another Vs. Tulsiram Patel and Others, , the Hon'ble Apex Court while answering the principle controversy in that case, held that the principle of audi alteram partem would have no application in face of the doctrine of pleasure embodied under Arts. 310 and 311 of the Constitution of India and more particularly in view of the second proviso of Clause C of Art. 311(2) of the Constitution. Still the view expressed and observations made by the Hon'ble Apex Court in regard to the need for applying this maxim to such actions and its significance emerging from the principles of natural justice, is worth-referring.

"The principles of natural justice have come to be recognised as being a part of the guarantee contained in Art. 14 because of the new and dynamic interpretation given by the Supreme Court to the concept of equality which is the subject matter of that Article. A violation of a principle of natural justice by a State action is a violation of Art. 14. Though the two rules of natural justice, namely, nemo judex in causa sua and audi alteram partem, have now a definite meaning and connotation in law and their content and implication are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations".

23. The need for adherence to the application of this maxim, which is one of the essentials of the basic rule of law, does not admit a meaning or interpretation as suggested by the learned counsel for the respondents. Grant of reasonable opportunity is the very substance and would be essential to meet the ends of justice. The reasonable opportunity would include the right of hearing unless the statute by specific expression excludes such right. No doubt appeal is the creation of the statute but Regulation 70 is not worded in a way so as to essentially exclude this valuable and basic right protected under the well established canons of service jurisprudence. The authority concerned has been vested with the duty of arriving at satisfaction with regard to the findings being justified, punishment being reasonable and well founded on the basis of the record. This satisfaction has to be recorded objectively and the very basis of

objectivity shall stand impaired if everything was to be left to the authority alone and the employee would have to be denied the right of hearing before the Appellate Authority. This well founded obligation arising out of the principles of natural justice within the benevolence of the, authority to grant opportunity of hearing to the employee to explain matters against him appears to be imperative. It will be more so where the consequence which are to befall on the employee as a result of such exercise of power by the authority are of the kind of termination or removal from service.

24. No doubt, the remedy under this maxim depends upon the desire of the employee to avail of such benefits. Where the statutes or the rules framed thereunder are silent on the point of grant of hearing, it is difficult to construe this rule to mean that it excludes such a right by necessary implication. The right of hearing is necessary for pacifying the principles. of natural justice as violation thereof would infringe any action. Without compliance of the principles of natural justice it is even primarily impossible to explain the rule of law. At this stage it may be appropriate to refer to the observations of the Full Bench of this Court in the case of *Hamek Singh and another v. The State of Punjab and others* 1972 74 P.L.R. 127 (F.B.), where the Court held as under :-

"... that even if the statute and the rules framed thereunder are silent on the point, it appears to us to be necessary for satisfying the principles of natural justice, without which it is impossible to maintain the rule of law, to give an adequate opportunity to a transferee to safeguard his interest in proceedings which can possibly culminate in a decision prejudicially affecting him and his property rights".

"In *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, it was held that even administrative order which involves civil consequences must be made consistent with the rules of natural justice after informing the person concerned of the case against him, the evidence in support thereof, and after giving such person an opportunity of being heard and of meeting or explaining the evidence. It was further observed that a decision arrived at without conforming to the above principles would be contrary to the basic concept of justice and cannot have any value. It is beyond doubt that the proceedings under the Act with which we are concerned are unquestionably quasi-judicial".

25. Fairness in administrative action has been enunciated as an absolute rule without exceptions. Must the authority take unto itself the responsibility of attaching finality as to a matter of fact of evidence and punishment, would ipso facto impose upon it the responsibility of a higher degree to do substantial justice. A pragmatic approach in consonance with the principles of natural justice cannot exclude the rule of hearing of the appellant.

26. An objective analysis of the law as declared by the Highest Court of the land in the afore-stated judgment amply justifies the view that the right of hearing before the Appellate Authority would be an essential feature of principle of

natural justice. Unless the right to such hearing is specifically excluded by use of unambiguous language or such inference is inevitable on the principle of necessary implication, while viewed from any settled principles of interpretation of statutes. Either of them are predominantly absent in Regulation 70. Denial of such right would obviously affect the result of such proceedings and order passed thereupon. Certainly the extent of such effect and consequences flowing therefrom, would depend upon the facts of each case. This view can be fortified by reference to the judgment of the Supreme Court in the case of Ram Chander Vs. Union of India (UOI) and Others, . The Court upheld the applicability of maxim audi alteram partem before the Appellate Authority even in the absence of specific rule granting such protection.

27. In the case of Ram Chander v. Union of India (supra) considering the implication and interpretation of Rule 22(2) of the Railway Servant Rules which was worded somewhat in similar language as Regulation 70 of the present case, the Court stressed the need for passing of speaking orders upon due application of mind, and commented that, mere reproduction of phraseology was not sufficient to specify this requirement. The Hon"ble Court further in no indefinite terms laid down the law that personal hearing would be a necessary facet of the, principle of natural justice before the Appellate Authority. The observations read as follows :-

"23. There has been considerable fluctuation of judicial opinion in England as to whether a right of appeal is really a substitute for the insistence upon the requirement of a fair hearing or the observance of natural justice which implies the duty to act judicially. Natural Justice, does not require that there should be a right of appeal from any decision. This is an inevitable corollary of the fact that there is no right of appeal against a statutory authority unless the statute so provides. Professor H.W.R. WADE in his ADMINISTRATIVE LAW, 5th Edn. at P. 487 observes :

"Whether a hearing given on appeal is an, acceptable substitute for a hearing not given, or not properly given before the initial decision is "m some case an arguable question. In principle there ought to be an observance of natural Justice equally at both stage If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a correct initial hearing instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial".

After referring to MEGARRY, J."s dictum in a trade Union expulsion case holding that, as a general rule, a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in the appellate body, the learned authority observes :

"Nevertheless it is always possible that some statutory scheme may imply that the "appeal" is to be the only hearing necessary".

24. Such being the legal position, it is of utmost importance after the Forty

Second Amendment as interpreted by the majority in Tulsiram Patel's case (supra) that the Appellate Authority must not only give a hearing to Government Servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given".

28. The Hon'ble Apex Court accepted the appeal with the above decision, and set aside the judgment of the High Court as admittedly no hearing was given to the concerned employee at the appellate stage. We must note here that no judgment of the Hon'ble Supreme Court of India has been brought to our notice which has either overruled the view taken in Ram Chander's case, (supra), or has taken a different view than the one expressed in this case. The contention of the learned counsel for the respondents has been that the decision of the Supreme Court in Ram Chander's case, (supra), stands diluted if not overruled by the Hon'ble Supreme Court in the case of State of Punjab and others v. S. K. Sharma J.T. 1996 S.C. 722

29. Thus, now we proceed to discuss merits of this submission made by the learned counsel for the respondents. At the outset it needs to be noticed that their Lordships of the Supreme Court in the case of S. K. Sharma, (supra) neither referred nor commented upon the correctness or otherwise of the case of Ram Chander (supra). Secondly, in the case of S. K. Sharma, their Lordships basically were concerned with the consequences arising from violation of specific regulations, and breach of procedural provisions, which were of a fundamental nature and consequences arising therefrom. Each of these classes was dealt with in paragraph No. 34 of the judgment. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed except the cases falling under no notice, no opportunity and no hearing categories. Their Lordships further commented that the categories specified in the judgment were by no means intended to be exhaustive. Their Lordships also accepted the principle that in some cases the prejudice resulting from such violation would be self-evident and no proof of prejudice as such needs to be called for in such cases. One of the cases indicated under this head was a case where a person was stated to have not received a fair hearing. Their Lordships concluded to say that rule of Audi Alteram Partem was applicable. Further they held that the violation of the procedural provisions would have to be tested from the touch stone of prejudice. This is the pith and substance of the law laid down by their Lordships of the Supreme Court in the case of S. K. Sharma, (supra). We are unable to see any cogent reasoning in the submission of the learned counsel for the respondents that their Lordships over-ruled or watered down the judgment of the earlier equi-Bench in the case of Ram Chander (supra). On the contrary, we find that in the case of Managing Director, ECIL, Hyderabad, Vs.

Karunakar, etc. etc., a Constitution Bench of the Supreme Court had referred specifically to the case of Ram Chander (*supra*), though in a different context.

30. The denial of adherence to the rule of Audi Alteram Partem at the appellate stage before departmental authorities by itself would show element of prejudice. The denial of hearing would per se cause prejudice to the delinquent officer. The principles of fairness would demand such a hearing because the records before the appellate authority could be voluminous, number of witnesses have been examined by either side in the departmental proceedings and the delinquent officer may be able to explain his version of the case and his stand to the appellate authority in a much better and effective manner if he was granted the hearing. To imagine that the appellate authority by itself would be able to critically examine the entire evidence and the record would be a view which could be more than imaginative than practical or pragmatic. To expect the appellate authority to minutely and critically examine the entire record without any proper assistance would be apparently a view which is more imaginative than practical or pragmatic.

31. The various pronouncements of the Hon''ble Supreme Court of India as well as the High Courts have time and again lamented the need for compliance of such obligations arising out of principles of natural justice even in the absence of specific stipulation in the statutory provisions. It is the bounden duty of the appellate authority to give complete and effective decision in a judicious manner and upon proper application of mind. We are of the considered view that such hearing is bound to render assistance to the authority concerned without causing any prejudice to the other side.

32. To provide an opportunity to the delinquent officer to ventilate his views before the appellate authority and to satisfy the conscience of the authority in relation to the findings arrived at and the punishment imposed by the disciplinary authority, would be in consonance with the basic rule of law and principles of natural justice. To hold that the above stated Regulation excluded such hearing by necessary implication would be a view contrary to these essential ingredients of administration of justice. The authority vested with the power to adjudicate upon matters involving civil consequences to individuals and more so an appellate authority would, in the interest of fairness, which is the soul of administrative actions, must hear the parties concerned, where the party so demands. Lord DENNING, M.R. in the case of *R. v. Secretary of State for the Environment Ex.P. Norwhich City Council*, 1982 (2) W.L.R. 580 at P. 590 observed that whenever the wording of the statute permits the Court and read into it a provision without default, power should not be exercised except in accordance with rules of natural justice.

33. Specific language of the statute may exclude application of this principle or very hard and compelling reasons upon strict construction of the rules would justify its exclusion, but on the principle of absolute and necessary implication. This onus, to say the least, could not be discharged by the respondents at all. No

reasons whatsoever, was put forward for our consideration which could support the plea taken by the respondents. Normally, it would have to be treated as an essential attribute of a quasi-judicial action because in absence thereof it would cease to be fair.

34. Fair hearing is a postulate of decision making process by an authority and more particularly statutory authorities exercising quasi-judicial powers. The maxim audi alteram partem has many facets but two are well accepted, one notice to the affected party of the case to be met and opportunity to explain his own version. The view of the Court while determining the possibility of maxim audi alteram partem or exclusion thereof, amongst others, may be guided or regulated by the following salient features.

i) Ambit and scope of scrutiny;

ii) Obligation of the Authority to determine the various questions arising for determination;

iii) What is the extent of power exerciseable by such Authority including the extend of penalty or likely justice or injustice resulting from adherence or otherwise of this maxim would be considerations for the Court to apply this maxim or exclude its application to such proceedings.

The above are the well accepted canons of administrative jurisprudence. The ability to understand the application of this maxim obviously would include a persuasive (sic) and eloquent presentation of a submission to bring home the point of view of delinquent officer. To truncate the process of departmental decision at the cost of exclusion of this maxim can neither be reasoned nor justified on any well founded principles. On the one hand, it would be violation of the principles of natural justice and on the other hand, the law regulating the interpretation of statutes on the principle of necessary implication would make it impermissible in the facts and circumstances of the present case.

35. The provisions of Regulation 70 seen in the scheme of the rules is not suggestive that legislative intent is tilted towards exclusion. Admittedly, there is no specific exclusion by use of proper language. The extent of power exercisable by the authority, the extent of power vested in the appellate authority and the scope of discretion exercisable by the disciplinary authority under this Regulation by any standard is of a wide magnitude. It has serious consequences on the delinquent officer. The authority concerned can convert penalty of dismissal to that of reinstatement and vice versa. The participation by the delinquent officer in this decision making process by getting a chance to put forward his case would not only provide the satisfaction of having been heard to such delinquent officer, but would satisfy the basic principle of fairness in such action. The invisible but definite element of lack of confidence would stand eliminated. It further would have a dual advantage to the entire process of administration of justice in such proceedings (i) that the authority concerned would be better exposed to appreciate and determine the niceties of the case and would give adequate

reasons in support of its conclusions. (ii) This obviously would benefit the process and curtail unnecessary controversies being raised ultimately before the Court of competent jurisdiction.

36. Mere appreciation and scrutiny of record without any assistance of the same with assistance and argumentative submissions based on record are likely to have totally a different impact on the mind of the authority and may be on its ultimate result. Dismissal or removal from service is the harshest punishment which the disciplinary authority can impose. Thus, its scrutiny by the appellate authority must pass through hard tests of law, and fairness. In the facts and circumstances of given case, the mere argument of inconvenience and harsh realities resulting from imposition of such punishment may effect the mind of the authority concerned and show, that punishment sought to be inflicted or inflicted upon, is unguided for the reasons and fairness and is arbitrary. If the facts and circumstances of the case permit, the law would aid to avoid such result rather than permit the same. The arguments advanced during the personal hearing can bring hidden and obscure things to the light of reason, render them clearer and help determination in consonance with justice and fair play. Such an approach is in no way innovative and had been accepted long back in the maxim arguments *ignota et obscura ad lucem rationis proferunt et reddunt splendida* : (Arguments bring things hidden and obscure to the light of reason and render them, clear).

37. Another reason is that the appellate authorities in the present day are the fora which are doing quasi-judicial functions and thus, must perform their duties with adherence to the principles of natural justice. The administrators attempt to find what is more expedient and desirable solution in public interest and what could be said to be in public interest more than acting in consonance to the concept of fairness. The authority concerned is sure to make a decision in respect of the matters which are bound to affect the delinquent officer seriously and would vest him even with civil consequences. The delinquent officer would be justified in demanding the right to be heard on the obligation arising from the principles of natural justice protected by the maxim of *Audi Alteram Partem*. The intrinsic value of the right to be heard is that it gives opportunity to individual or group against whom the decision is to be taken by the authorities by which dignity of their status is expressed. The instrumental facet of this right is that it assures the maintenance of public rules of conduct which result in benefit and prejudices alike and they are accurately and consistently followed.

38. Before the punishment awarded to him is affirmed or modified against the delinquent officer to grant him a hearing would be the minimum that the benevolent State needs to sanction. In relation to the question of prejudice the consistent position of law is that denial of shearing *ipso facto* results in prejudice to the person concerned against whom the order is likely to be passed. In the case of *S.L. Kapoor Vs. Jagmohan and Others*, , the element of prejudice in cases of violation of maxim of *audi Alteram Partem* was held to be one which does not need any further proof of prejudice. While expressing their views their Lordships

of the Supreme Court held as under :-

"The principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It will come from a person who has denied justice that the person who has been denied justice is not prejudiced".

39. Even in the case of S. K. Sharma (supra) their Lordships had accepted the principle that the category of no hearing would fall in violation of procedural law which would demand no proof of prejudice. In other words denial of right of hearing in all cases is bound to result in definite prejudice to the delinquent officer. The element of prejudice would automatically get traced because there cannot be two cases in this category, one where prejudice could be caused and the other where no prejudice could be caused. In every case the appellate authority is bound to have records, comments of the disciplinary authority and probably the grounds of appeal. The basic requirement is of application of mind with assistance from both sides or without such assistance. As we have already held that the authorities are required to give a hearing to the delinquent officer because such embodiment of principles of natural justice would have to be read into Regulation 70. Denial thereof would be violation of principle of maxim of audi alteram partem and ipso facto would amount to causing prejudice to the delinquent officer.

40. Compliance with the provisions of principles of natural justice acts as a, linchpin to keep the wheel of administrative decisions moving in line with the basic rule of law. Right 1 to punish places a heavy burden on the - authorities concerned to have a homogeneous approach to the basic principles governing the administration of justice, in discharge of its quasi-judicial functions. To truncate the disciplinary proceedings before the appellate authority by genuine participation of the delinquent officer and to hear him would amount to decimate not only the principles of natural justice but would destroy the harmonious relationship of the employer like the State and its employees. It would give rise to dissatisfaction and element of suspicion which may render the functioning of such authorities or tribunals disfunctional and also distort the montageous and healthy picture of fairness in State or administrative action.

41. To read principles of natural justice into such statutory provisions is the basic need of the day because the principles of natural justice are primarily intended to promote justice and prevent injustice in any administrative or quasi-judicial decisions. Balance of equities and test of prejudice both tilt in favour of an employee and such statutory provisions must be read and construed in conformity to the basic rule of law.

42. Another reason which would clearly indicate that the view expressed by us is in consonance with settled principle of law is that in the case of B. Karunakar

(supra) the Hon"ble Apex Court while considering whether copy of the report of the enquiry officer should or should not be furnished to an employee even where the statutory rules laying down the procedure for holding the disciplinary enquiry are silent and do not indicate that there is an obligation on the part of the disciplinary authority held as under :-

"Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject".

43. At this point of time we may also notice the observations of a Division Bench of Orissa High Court in the case of Narayan Chandra Jena Vs. State Transport Authority and Others, , as under :-

"It is true that Sec. 50 in terms does not provide for granting an opportunity to be heard. But the audi alteram partem rule is of universal application and law is well settled that when a statute is silent regarding observance of the principles of natural justice, the rule shall be read into the statute as an inbuilt provision. The rule must be held to be a necessary postulate in all cases where a decision is to be taken affecting a person's rights or interest unless such rule is specifically excluded by the relevant statute. It is also well settled that failure to observe natural justice cannot be justified merely because the authority vested with the powers to decide is of the opinion that granting of such opportunity would be an exercise in futility since the person to be condemned can have nothing more to add. Non-observance of natural justice is itself a prejudice and independent proof of prejudice due to denial of natural justice is unnecessary."

44. In the case of S. L. Loona v. The Punjab National Bank and another 1992(2) S.L.R. 250, a Division Bench of this Court while interpreting somewhat similar rule (Regulation 17) of the Punjab National Bank. Officers Employees" (Discipline and Appeal) Regulations 1977 accepted that the appellate authority was obliged to grant hearing to the delinquent officer. Similar view was taken in State Bank of Patiala v. Ram Gopal Gupta and others ILR 1998 P & H 219. The need for reading the maxim of Audi Alteram Partem into such provisions was upheld in another judgment of this Court in the case of S. C. Girotra v. United Commercial Bank 1995 P.L.R. 381 as well as by a Division Bench of Himachal Pradesh High Court in a very recently pronounced Judgment titled as S. L. Thakur v. Punjab National Bank and others 1998 (1) S.L.R. 271.

45. On the other hand, the view expressed by the Hon"ble Division Bench of this Court in the case of M. S. Chauhan v. State Bank of India 1985(1) S.L.R. 684, is that a delinquent officer was not entitled to personal hearing at : the appellate stage in view of Rule 51(2) of the State Bank of India Supervising Staff Service Rules, 1975. But this view apparently is not in line with the judgment of the

Supreme Court in the case of Ram Chander (supra). Secondly, no reasons whatsoever, have been given for arriving at the conclusion except the view expressed by the Bench in paragraph No. 10 of the judgment. In fact the Bench did not come to the conclusion that by necessary implication, the right of hearing was excluded. It only said that the subrule does not indicate that appellate authority is bound to grant personal hearing to the delinquent. Reliance was also placed by the learned counsel appearing for the respondents, on the case of Executive Engineer v. Rangadhar Malik, 1993 I.S.J. (Banking) 101 to argue that it was not necessary to grant hearing for which no statutory provisions had been provided. Rejecting a representation for correction of date of birth cannot be equated with imposition of penalty of dismissal or removal from service in departmental proceedings, but their Lordships had passed the order in the facts of the case because their Lordships were of the view that even if date of birth of the respondent in appeal was assumed to be November 27, 1938, even then he would be over age by five years at the time of joining of service and he cannot take advantage of his own wrong and no prejudice was caused to him.

46. For the reasons afore-stated we are of the considered view that the law laid down by the Hon"ble Supreme Court of India in the case of Ram Chander (supra) still holds the field. Further, we are of the view that on the language of Regulation 70, as above noticed, the delinquent officer would have a right to ask for the hearing at the appellate stage. Such right accrues to the applicant from the principles of natural justice. Non-adherence to the maxim of audi alteram partem where it is deemed by the delinquent officer would per se be prejudicial to the case of the delinquent officer and would affect the order of the appellate authority exercising such wide powers and discretion adversely.

47. Having answered the afore-stated pertinent question of law now we revert back to the facts of the present case. The order of penalty removing the petitioner from service was passed on April 24, 1985 and appeal against this order was dismissed by the appellate authority admittedly without hearing the appellant on July 18, 1986. In the reply filed on behalf of the respondents and even during the course of arguments it was conceded by the learned counsel for the respondents that the copy of the report of the enquiry officer which runs into 68 pages was not furnished to the delinquent officer along with the order of removal from service dated April 25, 1985. In the grounds of appeal preferred by the officer concerned a specific prayer for personal hearing was made by the appellant. It is also not disputed that no personal hearing was granted nor the impugned appellate order gives any reason for denying the request. It is clear from the admitted facts that the petitioner was denied the benefit of knowing the contents of the report and submitting his version in regard to the appreciation of evidence, correctness of the findings of the enquiry officer and in regard to quantum of punishment. In these circumstances, we have no doubt in our mind in holding that a definite prejudice was caused to the appellant by denial of right of hearing at the appellate stage and more particularly in the facts and circumstances of the case.

48. The learned counsel for the petitioner relying upon the case of Union of India and others Vs. Mohd. Ramzan Khan, and Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., argued that non-supply of the report of enquiry officer prior to the passing of order of penalty by itself alone and inevitably should result in setting aside of the impugned order and reinstatement of the petitioner with back wages. We cannot accept this contention of the learned counsel for the petitioner because the case of Mohammed Ramzan (supra) was held to be prospective in its operation. This principle was reiterated by the Hon''ble Supreme Court of India in the case of B. Karunakar (supra). Further, the Hon''ble Court while holding that denial of report of enquiry officer would amount to denial of reasonable opportunity and would be the breach of principles of natural justice stated that Ramzan Khan's case (supra) was prospective in its operation and was applicable to the orders passed after November 20, 1990. This applicability and grant of relief to the cases prior to the period of pronouncement in the case of Ramzan Khan was held to be per se per incuriam. Their Lordships also laid down the law that it would not be very proper for the Courts to set aside the orders of dismissal in a mechanical manner without going into the question of prejudice in the cases of non-supply of the copy of the report.

49. We do not find it necessary to discuss this issue with any further elucidation for the reason that admittedly copy of the enquiry report was not supplied to the petitioner before passing the order of penalty. Secondly, when it was supplied, again admittedly, no opportunity of personal hearing was granted even before the appellate authority. We have no doubt in our mind that it has caused definite prejudice to the case of the petitioner, as already noticed.

50. The contention raised on behalf of the petitioner that pre Mohammad Ramzah Khan's period would in any case be squarely covered by the case of Ram Chander (supra) deserves to be accepted consequently entitling the petitioner to the relief claimed. Non-adherence to the principles of natural justice would normally vitiate the impugned order. In any case there would be no aspect where the delinquent officer has suffered prejudice but would depend on the facts of each case. In the present case admittedly right of hearing was denied and the delinquent officer has also suffered prejudice. In fact it is a prejudice of the kind which needs no further proof as already noticed by us above. Reliance placed by the learned counsel for the petitioner in this regard upon the case of Amarjit Singh v. Punjab Warehousing Corporation 1991(1) S.L.R. 31, is well founded. Ram Chander's case (supra) fully holds the field today and as a matter of fact has neither been over-ruled nor the principles enunciated in the judgment and their applicability significantly diluted. In any case, the denial of hearing and non-supply of the copy of the report of the enquiry officer at appropriate stage has caused serious prejudice to the petitioner, thus, violating the basic principles of natural justice, rendering the impugned order liable for interference by this Court.

51. We must also notice that the impugned order of punishment passed by the

Managing Director on April 23, 1995 not only makes a reference but apparently shows that recommendation of the General Manager (Operations) were duly taken into consideration. In this regard relevant portion of the impugned order reads as under :-

"I have also considered the recommendations of the General Manager (Operations), Disciplinary Authority, in this case. The charges which have been held as proved/partly proved against Shri Bansal in the enquiry are of grave nature and he has forfeited the confidence of the management and he does not deserve to be kept in the Bank's service. After applying my mind dispassionately to the entire case, I have decided to impose on Shri Ram Niwas Bansal the penalty of removal from Bank's service in terms of Regulation 67(g) of the State Bank of Patiala (Officers) Service Regulations, 1979. Accordingly, I hereby pass orders and remove Shri Bansal from the service of the Bank in terms of the aforesaid regulation with immediate effect. A copy of the orders be supplied to Shri Bansal".

52. It is not disputed before us that the copy of the comments of General Manager as afore referred were never furnished to the delinquent officer as such, he never had the occasion to see this document which apparently has been taken into effective consideration by the authorities concerned. The impugned order is the cumulative result of all the 3 charge-sheets and the comments of the General Manager obviously related to the matter in issue. Non-furnishing of such material document to the petitioner is also a flagrant violation of the principles of natural justice. By no stretch of imagination, it could be accepted that a document prepared at the back of the petitioner, copy of which was admittedly not furnished to him, can be permitted to be a foundation of the order of punishment. Such an action would certainly be contrary to fair play. This question is no more res integra and has been concluded by the judgment of Hon"ble Supreme Court of India in the case of State Bank of India and others Vs. D.C. Aggarwal and another, where the Court held as under :

"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 enquiry 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.

53. Non-supply of this document certainly caused definite prejudice to the case of the petitioner. The petitioner had every right to comment or meet the points raised in the recommendation of the General Manager. Thus, there is denial of fair and reasonable opportunity to the delinquent officer in the present case. The

delinquent officer was not even aware as to what case he was to meet as projected in the report of recommendations of the General Manager which were considered by the authorities while imposing punishment upon him.

54. The cumulative effect of our above discussion is that the impugned orders of punishment dated April 25, 1985 and dated July 18, 1986 are liable to be quashed, which we do hereby quash without any hesitation. However, we would further direct the disciplinary authority to grant opportunity to the petitioner to reply to the enquiry report and pass appropriate order after granting personal hearing to the petitioner in accordance with law. The petition is accordingly allowed to that extent but without any order as to costs.