
(2007) 03 AHC CK 0061
In the Allahabad High Court

R.N. Chaturvedi

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:

Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 — Rule 7(iv)

Citation : (2007) 4 ADJ 497 : (2007) 7 AWC 7246 : (2008) 1 SLJ 508 : (2007) 3 UPLBEC 90

Hon'ble Judges : Sabhajeet Yadav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sabhajeet Yadav, J.—By this petition, petitioner has challenged the order dated 4.1.1997 passed by respondent No. 4 and order dated 15.11.1997 passed by respondent No. 2 communicated to the petitioner vide letter dated 23.9.1998 issued by Secretary/General Manager Etawah Unit contained in Annexure-9 and 15 respectively to writ petition. Vide order dated 4.1.1997 while working on the post of store incharge in U.P. Cooperative Spinning Mills Ltd. Etawah the petitioner has been dismissed from service and vide order dated 15.11.1997 the appeal preferred against the order of dismissal has been dismissed by respondent No. 2 and vide communication letter dated 23.9.1998 the aforesaid order passed in appeal of the petitioner has been communicated to him.

2. The brief facts leading to the case are that the petitioner was appointed as store incharge in U.P. Cooperative Spinning Mills Federation Ltd., Etawah in pursuance of appointment letter dated 25.8.1982. It is stated that 11 Cooperative Spinning Mills including the Cooperative Spinning Mills Federation Ltd., Etawah is affiliated with U.P. Cooperative Spinning Mills Federation Limited, Kanpur which is an Apex Society and its area of operation is extended to whole Uttar Pradesh. It is also stated that the work and conduct of the petitioner was quite satisfactory, therefore, he was confirmed on the post of Store Incharge vide a letter dated 26.11.1983. In para 8 of the writ petition it is stated that when the

present Managing Director Sri Vijai Shanker Pandey, an I.A.S. Officer took over the charge of the Federation from very inception he started harassing in order to mount pressure to get illegal benefit from the Mills and officers/employees who does not succumb to his illegal desire were subjected to torture and humiliation on the basis of concocted and fabricated vague charges and in pursuance thereof the petitioner was served an order dated 9.11.1996 issued by Managing Director of Federation and Chairman of the Mills namely Sri Vijai Shanker Pandey himself appointing inquiry officer and disclosing therein that a disciplinary proceeding is pending against the petitioner. A copy of which is on record as Annexure-3 of the writ petition. The aforesaid order was followed by a charge sheet dated 15.11.1996 issued by respondent No. 3, whereby three charges were levelled against the petitioner that (1) the petitioner did not supply demanded experience certificate produced at the time of his appointment (2) the petitioner went on leave and started submitting medical certificate to the authority concerned and (3) the petitioner did not turned up for medical check up on 29th July 1996 in spite of information sent by telegraph. A copy of charge sheet is on record as Annexure-4 of the writ petition. In response to the aforesaid charge sheet, the petitioner submitted his reply before the authority concerned on 2.12.1996 refuting the charges levelled against him. A true copy of the reply of charge sheet dated 2nd December 1996 is on record as Annexure-5 of the writ petition.

3. In para 11 of the writ petition it is stated that having submitted reply to the charge sheet the petitioner waited for some favourable response from the inquiry officer in case he was satisfied with the petitioner's stands, otherwise there was no way out except to participate in departmental inquiry as per direction of inquiry officer but the petitioner was neither informed by inquiry officer about any date for commencement of the departmental inquiry nor was allowed to explain his stand during the inquiry in defence of his case and in para 12 of the writ petition, it is stated that the inquiry officer without affording any opportunity of hearing to the petitioner submitted his inquiry report only on the basis of petitioner's reply to the charge sheet in a most illegal and arbitrary manner at the instigation of respondent No. 2. In para 13 of the writ petition it is further stated that the inquiry report submitted by inquiry officer is not in accordance with law as the petitioner was neither informed about the date of commencement of inquiry nor was afforded any opportunity of hearing, cross-examining and producing own witnesses in defence of his case. In para 14 of the writ petition it is stated that surprisingly enough the petitioner was served with a show cause notice dated 4/5.2.1997 along with copy of inquiry report without disclosing the nature of punishment. A true copy of inquiry report and show cause notice dated 15.2.1997 are on record as Annexures-6 and 7 of the writ petition. On receipt of the aforesaid show cause notice, the petitioner has submitted his reply on 4.3.1997 assailing the findings recorded by inquiry officer. A true copy of reply of show cause notice dated 4.3.1997 sent to the authority concerned through registered post is on record as Annexure-8 of the writ petition. Thereafter the petitioner was served with order of dismissal from service

dated 1.4.1997 passed by respondent No. 4 without considering the reply of show cause notice submitted by the petitioner. A copy of order of dismissal dated 1.4.1997 is on record as Annexure-9 of the writ petition. Feeling aggrieved against which, the petitioner preferred an appeal, in that regard he was informed by a registered letter dated 23.9.1998 issued by respondent No. 4 that his appeal has been rejected by respondent No. 2 i.e. Mr. Vijai Shanker Pandey in the meeting of Committee of Management dated 15.11.1997. A true copy of the order dated 15.11.1997 is on record and Annexure-15 of the writ petition. Hence this writ petition.

4. In reply to the averments contained in various paragraphs of the writ petition a detail counter affidavit has been filed on behalf of respondents sworn by Sri Narottame Patel, wherein the impugned action taken against the petitioner has been sought to be justified by the respondents, the details of which shall be given hereinafter at relevant place, wherever it would be needed.

5. Heard Sri T.P. Singh, learned Senior Counsel assisted by Sri Ajay Shanker Advocate for the petitioner and Sri Dhananjay Awasthi, learned Counsel for the respondents.

6. In view of various assertions made in the writ petition Sri T.P. Singh, learned Senior Counsel appearing for the petitioner has submitted that the disciplinary inquiry held against the petitioner is farce exercise as after reply to the charge sheet submitted by petitioner no disciplinary inquiry has at all been held against him. While elaborating his arguments, the learned Counsel for the petitioner has urged that in respect of said disciplinary inquiry neither any date and place of inquiry has been intimated to the petitioner nor the inquiry has been held in his presence nor any witness has been examined in support of the charges nor the petitioner was given any opportunity to cross examine any such witness and given further opportunity to lead his oral and documentary evidence in support of his defence. As a matter of fact the inquiry officer without holding any disciplinary inquiry against the petitioner has strait way proceeded to prepare an inquiry report whereby the charges were found proved against him and submitted the same to the disciplinary authority, where upon a show cause notice has been given to the petitioner and the petitioner has replied the same but even reply of show cause notice has not been considered by disciplinary authority wrongly saying that petitioner did not reply the show cause notice and impugned order dated 4.1.97 has been passed dismissing the petitioner from service, against which the petitioner has filed appeal but the appeal was also dismissed. Thus the entire disciplinary inquiry held against the petitioner is vitiated under law on account of utter violation of principles of natural justice and fair play, thus the petitioner has been denied opportunity of hearing to have his say in the matter prior to the impugned order has been passed against him. In support of his submission learned Counsel for petitioner has placed reliance upon several decisions of this court and Hon'ble Apex Court, which shall be referred herein after at appropriate places.

7. In this connection it is necessary to point out that the aforesaid facts have been specifically stated in para 11, 12 and 13 of the writ petition. The reply of which have been given in para 30,31 and 32 of the counter affidavit. The fact that any date or place of holding disciplinary inquiry was not intimated to the petitioner has not been denied and further any witness were not examined in support of the charges before inquiry officer in presence of the petitioner and the petitioner has neither been given opportunity to cross-examine any such witness nor adduce his defence evidence have also not been denied. Besides this from the perusal of inquiry report also there is nothing to indicate that the procedure for holding full fledged inquiry for imposing major penalties has been followed by inquiry officer while holding disciplinary inquiry, no material has been brought on record showing that the date and place of inquiry was intimated to the petitioner and any witness was examined in support of the charges, thereupon the petitioner was asked to cross-examine such witness and adduce his own defence evidence. In view of these facts and circumstances of the case the submission of learned Counsel for the petitioner appears to be correct. Therefore, the question arises for consideration that, what would be its effect?

8. In this connection a reference can be made to a Division Bench decision of this Court rendered. In *Gopal Chandra Sinha v. State of U.P. and Ors.* 2005 ESC 2899 , wherein while interpreting the provisions of Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 and Civil Services (Classification, Control and Appeal) Rules 1930 pertaining to the procedure for disciplinary inquiry for imposing major penalties has been given in para 16,17,18,18-A and 19 of the decision as under:

16. From a joint reading of the aforesaid Clauses of Rule 7 of new Rules 1999 it is dear that if the charges levelled in the charge sheet are not admitted by the delinquent employee the Inquiry Officer is required to hold inquiry for proving the charges levelled in the charge sheet. For that purpose the Inquiry Officer is required to call the witness proposed in the charge sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross examine such witnesses after recording aforesaid evidence the Inquiry Officer shall call and record the oral evidence which the delinquent Government servant desires in his written statement to be produced in his defence. In other words, the aforesaid provisions make it clear that where the charges levelled in the charge sheet is either not admitted or denied by the delinquent employee it is bounden duty of the Inquiry Officer to hold the inquiry for proving the aforesaid charges by documentary and oral evidence in presence of the delinquent employee and by asking him to cross examine the witnesses if he so desires and adduce his own oral and documentary evidence in his defence. Thus from the reading of the new and old rule both referred to above it leaves no room for doubt to hold that where a delinquent employee either does not admit or denied the charges levelled in the charge sheet, the enquiry officer is required to hold the inquiry for proving the charges in the manner indicated herein above and he cannot straightaway without holding such

enquiry submit any inquiry report holding the delinquent employee guilty of the charges levelled in the charge sheet. It is only in case where the delinquent employee appears before the Inquiry Officer and admits the charges levelled against him in that situation alone Inquiry Officer need not to hold inquiry and can submit inquiry report directly and straight-way on the basis of such admission holding the delinquent government servant guilty of such charges levelled against him and in no other situation.

17. From a plain reading of Clause (iv) of Rule 7 of 1999 Rules it is clear that the charged Government servant shall be required to put in a written statement of his defence in person within a period specified in the charge sheet which shall be not less than 15 days from the date of issue of charge sheet. In such a written statement or reply of charge sheet the delinquent employee has to state as to whether he desires to cross examine any witness mentioned in the charge sheet and as to whether he desires to produce evidence in his defence. The delinquent employee shall also be informed that in case he does not appear or file written statement/reply on the specified date it will be presumed that he has none to furnish and Inquiry Officer shall proceed to complete the inquiry exparte. Clause (x) of the aforesaid Rules provides that where a charged Government servant failed to appear on the date fixed in the enquiry or at any stage of proceeding inspite of service of notice on him or having knowledge of the date the Inquiry Officer shall proceed with the enquiry exparte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge sheet in the absence of Government servant.

18. Thus from the aforesaid provisions it is clear that Inquiry Officer can hold the enquiry exparte in two situations. Firstly inspite of service of charge sheet the delinquent employee does not reply the charge sheet within time stipulated in the charge sheet which shall not be less than 15 days from the date of issue of charge sheet and in such situation it shall be presumed that delinquent employee has nothing to say in respect of the charges levelled against him and Inquiry Officer shall proceed to complete the enquiry exparte and secondly where the charged Government servant does not appear on the date fixed in the enquiry or at any stage of proceeding inspite of service of notice on him or having knowledge of the date the Inquiry Officer shall proceed with the enquiry exparte. In such situation the Inquiry Officer shall record the statements of witnesses mentioned in the charge-sheet in the absence of charged Government servant. The aforesaid provisions clearly indicate that even if the charge sheet has not been replied by the delinquent employee or the delinquent employee does not appear in the inquiry proceedings despite notice of the date fixed for such inquiry, the Inquiry Officer can proceed to hold only exparte enquiry even in the absence of delinquent employee on the basis of documentary and oral evidence mentioned in the charge sheet but he cannot escape from holding such exparte enquiry even in the absence of delinquent employee and straight-way submit an inquiry report holding the delinquent employee guilty of the charges without holding such ex-parte inquiry meaning thereby the Inquiry Officer cannot submit

inquiry report straight-way holding the charged employee guilty of the charges levelled in the charge-sheet either without holding formal full fledged inquiry or without holding exparte inquiry in the manner indicated herein before.

18-A. Thus refusal to reply the charge-sheet by the charged government servant despite service of charge-sheet upon him/her no doubt permits the inquiry officer to presume that the delinquent employee has nothing to say about it but it does not permit to presume that the delinquent employee has admitted the charges levelled in the charge-sheet. Similarly failure or refusal to participate in inquiry despite notice or knowledge of date fixed for such inquiry also does not permit the inquiry officer to raise any presumption of admission of guilt by delinquent employee rather the inquiry officer is required to hold ex-parte inquiry from the aforesaid stage because of the simple reason that in both the situations relevant rules do not admit any ambiguity and clearly indicates the necessary consequence flowing there from for holding ex-parte inquiry. It is only in a situation contemplated under Clause (vi) of Rule 7 of the Rules alone the inquiry officer can straight-way submit a report to Disciplinary Authority without holding any formal inquiry, where the charges are admitted by charged government servant and in no other situation. The ex-parte inquiry should not be confused and equated with no formal inquiry accordingly would not permit the Inquiry Officer to submit inquiry report finding the charged employee guilty of the charges levelled against him without holding any such formal disciplinary inquiry. Therefore a distinction has to be always borne in mind in the aforesaid two categories of cases, i.e. (i) based on admission and (ii) situations warranting an exparte inquiry. The aforesaid principle shall also apply with necessary modifications where the inquiry is held by Disciplinary Authority.

19. Under the Old Rules of 1930, also similar provisions were made without heavily wording the same, wherein Inquiry Officer was liable to hold formal inquiry in respect of the charges not admitted by the delinquent Government servant of the charges levelled in the charge-sheet. The requirement of the applicability of Rules 55(i) of the rules was excluded in cases of an order based on facts which has led to the conviction of delinquent employee in a criminal court or by court martial, and to the extent indicated in Clause (4) of Rule 55 of 1930 Rules only in the situations visualized there under in the manner indicated therein and no other situation therefore under old rule also the exparte inquiry could be held in the situations warranting for holding such ex-parte inquiry.

In this connection a reference can be made to *Imperial Tobacco Co. Ltd. v. Its Workmen* AIR 1962 SC 1349, wherein the Hon'ble Apex Court has held even if an employee refuses to participate in the inquiry the employer cannot straightway dismiss him but he must hold an exparte enquiry where the evidence must be led to prove charges levelled against him.

9. Again a Division Bench in *Shiv Shanker Saxena v. State of U.P. and Ors.* 2006(3) A.D.J. 572 (All) (DB) has reiterated the same principles enunciated in *Gopal Chandra Sinha's* case. Earlier to it, in *Radhey Kant Khare v. U.P. Co-*

operative Sugar Factories Federation Ltd. 2003 (1) E.S.C. 427 (DB) (Alld) after referring various decisions of Hon''ble Apex Court in para 20 to 24 of the decision a Division Bench of this Court has held as under:

20. It is alleged in paragraph 17 of the writ petition that on 12.6.1985 the enquiry officer called the petitioner for personal hearing without examining the administrative officer who had lodged the F.I.R. And other witnesses. It appears that the statement of Hanuman Saran, driver was recorded behind the back of the petitioner and this statement was not shown to the petitioner and the petitioner was not allowed to inspect the written report dated 30.1.1985 of Sri Najib Ahmad.

21. 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 this 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.

22. A counter affidavit has been filed to the writ petition and we have carefully examined the same. In paragraph 19 of the counter affidavit it is alleged that on 12.6.1985 the petitioner was given an opportunity of personal hearing by the enquiry officer. However, the allegation that the petitioner was not given opportunity to cross-examine Hanuman Saran, driver and other witnesses are not denied in the counter affidavit. As regards the complaint that the petitioner was not allowed to inspect the report of Najib Ahmad dated 30.1.1985 it is alleged that the petitioner never made any complaint in this regard. In paragraph 26 it is alleged that the petitioner was afforded opportunity of personal hearing. In paragraph 32 it is stated that the petitioner never made any request to examine Hanuman Saran as his defence witness during the course of the enquiry.

23. From the above facts it appears to us that an illegal procedure was followed by the enquiry officer inasmuch as on 12.6.1985 he called the petitioner for giving his statement without first examining the witnesses against the petitioner in his presence. As mentioned in the decisions already referred to above, ordinarily the witnesses against the charge-sheeted employee must be examined first in his presence and it is illegal to straightway ask the employee to lead his

evidence first. This procedure itself is violative of the principles of natural justice. Moreover, it appears from the above facts that no witness against the petitioner was examined in his presence nor was he given opportunity of cross-examining them. All that was done that the petitioner was called on 12.10.1985 to give his statement. It is also evident that the report of Najib Ahmad dated 30.1.1985 was not supplied to the petitioner, which also violates the principles of natural justice.

24. In our opinion, there was total violation of the principles of natural justice in the alleged enquiry held on 12.6.1985 and hence it was not a valid enquiry at all in view of the decisions of the Supreme Court and this Court referred to above. Since a major punishment was being imposed on the petitioner there should have been a proper oral enquiry before taking the action against the petitioner, but this was evidently not done.

10. Thus, in view of legal position enunciated herein before, in given facts and circumstances of the case, I am of the considered opinion that as a matter of fact no disciplinary inquiry in the manner indicated herein before against the petitioner has been held at all. Even in the ex-parte disciplinary inquiry the inquiry officer is required to hold inquiry wherein he is to require the employer to prove the charges in absence of delinquent employee but he cannot escape from holding any such inquiry and prepare the inquiry report straight way without holding any such inquiry, thus as distinguished from ex-parte inquiry it is a case of no inquiry and the petitioner has been denied opportunity of hearing to have his say in the matter and inquiry report straight way prepared and submitted by the inquiry officer without holding any inquiry is no inquiry report in the eye of law, as such could not be acted upon by disciplinary authority and impugned order of dismissal could not be passed on that basis, therefore, the impugned order of dismissal dated 4.1.1997 passed by respondents has to be held arbitrary, illegal and in utter violation of principles of natural justice and fair play and cannot be sustained.

11. Now further question arises for consideration that what would be effect and impact of such disciplinary inquiry? In this connection it would be useful to refer the decision of Hon''ble Apex Court, in State Bank of Patiala and others Vs. S.K. Sharma, wherein while considering the impact and effect of non-observance or infraction of various facets of principles of natural justice and statutory rules of disciplinary inquiry, the Hon''ble Apex Court has recorded its concluded opinion in para 32 of the decision as under:

32. We may summarize the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary inquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/ statutory provisions governing such enquiries should not be set aside automatically. The

Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provision are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under "no notice", "no opportunity", "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted there from, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the Inquiry Officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i./e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) here in below is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the stand point of substantial compliance. Be that as it may, the order-passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public-interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it then the order of punishment cannot be set aside on the ground of said

violation. If on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar AIR 1994 SCW 1050. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice--or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action--the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e. between "no notice"/"no hearing" and "no fair hearing." (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e. in accordance with the said rule (audi alteram partem) has to be examined from the stand-point of prejudice, in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.)

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing or the rule of audi alteram partem. In such situations the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.

12. Thus from a careful consideration of the aforesaid observation of Hon''ble Apex Court it is clear that while explaining the effect of infraction of rules regarding the disciplinary inquiry in sub-para 32 (3) of the decision Hon''ble Apex Court has enter-alia held that there are certain procedural provisions which are of a fundamental character, whose violation by itself is proof of prejudice. The court may not insist on proof of prejudice in such cases. As explained in the body of aforesaid judgment, for example, where there is provision expressly providing that after evidence of employer/government is over, the employee shall be given

an opportunity to lead evidence in his defence and in a given case the inquiry officer does not give that opportunity in spite of the delinquent employee asking for it, the prejudice is self evident. No proof of prejudice as such need be called for in such a case. Although the procedural provisions is meant for providing reasonable and fair opportunity of hearing to employees, but except in the cases of no notice and no opportunity and no hearing the infraction of rules does not vitiate the disciplinary proceeding automatically and proof of prejudice is necessary, whereas while dealing with the impact of violation of any facets of principles of natural justice in para 32 (5) of the decision, the Hon''ble Apex Court has held that except, the rule against bias, what the court or tribunal in substance has to see is whether in totality of circumstances, the delinquent employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. Therefore, in view of aforesaid legal position, there can be a little scope for doubt to hold that in given facts and circumstances of the case, it cannot be held at all that in said disciplinary inquiry the petitioner has been given fair hearing before imposing upon him major penalty of dismissal from service. In my opinion, the petitioner has been denied fair opportunity of hearing in said disciplinary inquiry, therefore, the disciplinary inquiry held against him is vitiated on account of utter violation of principles of natural justice and fair play, accordingly cannot be sustained and impugned order of dismissal from service of petitioner dated 4.1.1997 and order dismissing the appeal of petitioner dated 15.11.1997 are hereby quashed, in the result the petitioner is reinstated in the service.

13. Now further question arises for consideration in given facts and circumstances of the case, what relief can be given to the petitioner In this connection, it is pointed out that this court is conscious about the law laid down by Hon''ble Apex Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., wherein it has been held that where the disciplinary inquiry is found faulty, afresh inquiry should be directed from the stage it was found faulty after setting aside the order of punishment and reinstating the employee for limited purpose of holding fresh inquiry but there is another line of cases decided by the Hon''ble Apex Court, where the charges are old and stale and pendency of disciplinary inquiry for unduly long time was found against the interest of administration and prejudicial to the interest of delinquent employee, in such a situation appropriate relief had been given to the employees either by quashing the charge memo or by making appropriate direction in the matter.

14. In this connection it would be useful to refer the decision of Hon''ble Apex Court rendered in State of Andhra Pradesh Vs. N. Radhakishan, In this case, the decision of tribunal under challenged before the Hon''ble Apex Court quashing the charge-memo and directing the state to promote the respondent as per recommendation of D.P.C. ignoring the charge-memo was upheld by the Hon''ble Apex Court. The pertinent observations made in para 18 and 19 of the decision are extracted as under:

18. In *State of Punjab and Others Vs. Chaman Lal Goyal*, state of Punjab was aggrieved by the order of the High Court of Punjab and Haryana quashing memo of charges against Goyal and also the order appointing Inquiry Officer to inquire into those charges. In this case the incident, which was the subject matter of charge, happened in December, 1986 and in early January, 1987, when Goyal was working as Supdt. of Nabha High Security Jail. It was only on July 9, 1992 that Memo of charges was issued to Goyal. He submitted his explanation on January 4, 1993 denying the charges. Inquiry Officer was appointed on July 20, 1993 and soon thereafter Goyal filed writ petition in the High Court on August 24, 1993. The High Court quashed the memo of charges on the principal ground of delay of five and a half years in serving the memo of charges for which there was no acceptable explanation. This Court examined the factual position as to how the delay occurred and if Goyal had been prejudiced in any way on account of delay. This Court relied on the principles laid down in *Abdul Rehman Antulay Vs. R.S. Nayak* and another etc. etc., and said that though that case pertained to criminal prosecution the principles enunciated therein were broadly applicable to the plea of delay in taking the disciplinary proceedings as well. Referring to decision in *A. R. Antulay* case this Court said:

In paragraph 86 of the judgment, this Court mentioned the propositions emerging from the several decisions considered therein and observed that "ultimately the Court has to balance and weigh the several relevant factors--balancing test or balancing process-- and determine in each case whether the right to speedy trial has been denied in a given case ". It has also been held that ordinarily speaking, where the Court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges, or the conviction, as the case may be, will be quashed. At the same time, it has been observed that that is not the only course open to the Court and that in a given case, the nature of the offence and other circumstances may be such that quashing the proceedings may not be in the interest of justice. In such a case, it has been observed, it is open to the Court to make such other appropriate order as it finds just and equitable in the circumstance of the case.

In that case this Court said that it was more appropriate and in interest of justice as well as in the interest of administration that inquiry which had proceeded to a large extent be allowed to be completed. At the same time the Court directed that Goyal should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the inquiry, if he is found fit for promotion.

19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all relevant factors and to balance-and weigh them to determine if it is in the

interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations.

15. In *P.V. Mahadevan v. M.D., Tamil Nadu Housing Board* 2005 (106) F.L.R. 1003 : (2005) 6 S.C.C. 636 the disciplinary inquiry initiated after 10 years of the incident without convincing explanation for delay in inquiry in circumstances of the case Hon'ble Apex Court has held that allowing the respondent to proceed further with the departmental proceedings at this distance of time would be prejudicial to the appellant. The appellant has already suffered enough and more on account of disciplinary proceedings hence charge memo issued against him was quashed and departmental inquiry has been put up to an end. For ready reference the observation made in para 15 of the decision is extracted as under:

15. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a Government employee should, therefore, be avoided not only in the interests of inspiring confidence in the minds of the Government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

16. In *M.V. Bijlani Vs. Union of India (UOI) and Others*, , the delay in initiation of disciplinary proceeding after 6 years of incident and continuance thereof for further period of 7 years was found prejudicial to the delinquent officer. In aforesaid situation after quashing the order of punishment, since it was an old matter of 36 years by that time, therefore, it was found not proper to remit the matter for holding fresh inquiry, Hon''ble Apex Court has directed the reinstatement of employee along with 50% back wages if the employee had not reached the age of superannuation. The pertinent observation made by the Hon''ble Apex Court in paras 16 and 28 of the decision are extracted as under:

16. The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and they continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer.

28. The appeal is, therefore, allowed. The consequence of the said order would have been to remit the matter back to the disciplinary authority. We, however, do not intend to do so as the charges relate to the year 1969-70. The appellant, clue to pendency of these proceedings, has suffered a lot. He is, therefore, directed to be reinstated in service, if he has not reached the age of superannuation. However, keeping in view the fact that he has not worked for a long time, we direct that he may only be paid 50% of the back wages. He is also entitled to costs of this appeal. Counsel's fee assessed at Rs. 5000.

17. From a close analysis of observations made by Hon''ble Apex Court in aforesaid cases, it is clear that Hon''ble Apex Court has held that it is not possible to lay down any pre-determined principle applicable to all cases and in all situations where there is delay in concluding disciplinary proceedings whether on that ground disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances in that case. The essence of matter is that the Court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate on account of delay particularly when the delay is abnormal and there is no explanation for such delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when the proceedings are unnecessarily prolonged without any fault on his part in delaying the proceedings. In case whether the delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. Normally disciplinary proceedings should be allowed to take its course as per rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for delay or is there a proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court has to balance these two diverse

considerations.

18. Although from the aforesaid discussion it is clear that the aforesaid principles have been enunciated by Hon''ble Apex Court in context of disciplinary proceedings either initiated after long lapse of time from the date of incidents or unduly prolonging without any justification therefore, whereas the case in question does not involve initiation of any fresh disciplinary inquiry, rather herein the Court is concern about the feasibility of holding fresh disciplinary inquiry de-novo, from the stage from which it was found faulty on account of quashing of faulty disciplinary proceedings and pursuant disciplinary action taken against the petitioner, thus the instant case is distinguishable on facts but from the perusal of observations made by Hon''ble Apex Court in para 18 of the decision in N. Radha Krishnan's case (supra) it appears that the Hon''ble Apex Court has taken note of earlier decision rendered in State of Punjab and Others Vs. Chaman Lal Goyal, wherein the Hon''ble Apex Court has relied on the principle laid down in the case of Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., which was a case pertaining to criminal prosecution and has imported the principle applicable therein to the plea of delay in taking disciplinary proceedings as well, therefore, I do not find any justification to ignore the aforesaid broad principle which can be imported and applied equally in given facts and circumstances of the instant case as well.

19. Now applying the aforesaid settled legal position in given facts and circumstances of the case I find that charge sheet dated 15.11.96 issued to the petitioner contains three charges. Charge No. 1 pertains to the non-supply of experience certificate by the petitioner, the particulars of which alleged to have been given by the petitioner to his appointing authority at the time of his appointment in the year 1982 but the same was not supplied by the petitioner when asked for by the Secretary/General Manager, Co-operative Spinning Mills Ltd., Etawah vide his letter dated 5.12.1990, as such he deceived the Management while securing his appointment. A copy of letter dated 5.12.1990 is on record along with reply of charge sheet dated 2.12.96 submitted by the petitioner as enclosure 1 to the said reply. A bare perusal of letter dated 5.12.90 sent to the petitioner by Secretary/General Manager of U.P. Cooperative Spinning Mills Ltd., Etawah it indicates that the petitioner has given particulars of his working in different institutions as Store Incharge and disclosed that he had experience for the post but he did not supply the experience certificate till the date of the said letter, as such he was asked to supply the same within a period of 7 days, failing which disciplinary action was intended to be taken against him by the Management. In reply to the aforesaid letter the petitioner has sent a letter to the Manager of the Mill, Etawah which is enclosed as Annexure-2 of the reply of charge sheet submitted by the petitioner, wherein the petitioner has stated that while interview at Head Office of the Federation Kanpur the petitioner has submitted all certificates and requested that the same may be summoned from the Head Office Kanpur and may be placed in personal file of the petitioner. Not only this but in reply to the charge sheet in respect of the aforesaid charge,

the petitioner has reiterated the same stand stating therein that the experience certificate produced at the time of interview was not returned back to him in spite of his repeated request. Moreover the petitioner sent a photostate copy of experience certificate dated 15th July 1990 for kind consideration and perusal of the authorities concerned in compliance of letter dated 5/15.12.1990 issued by the respondent and in reply of charge No. 1 the petitioner has again sent reply dated 24.12.1990 through registered post by reiterating his earlier stand.

20. Admittedly, the petitioner was appointed on the post in question on 25.8.1982 and after lapse of 8 years it is first time the experience certificate was asked by the Management in the year 1990 through a letter dated 5.12.1990 and on reply sent by the petitioner vide his letter dated 24.12.90 referred hereinbefore, the Management remained quiet and calm for another period of 6 years and then started the disciplinary proceedings in respect of the aforesaid incident of year 1982 after lapse of about 14 years in the year 1996, since then a further period of more than 11 years have passed, thus it would come to about 25-26 years by now. In this connection, it is necessary to point out that in case the petitioner's reply was not acceptable to the Management, the Management would have immediately insisted upon the petitioner to submit the aforesaid experience certificate, the particulars of which the petitioner has provided at the time of his selection/appointment if at all it was found necessary by the Management as essential qualification for the appointment on the post in question, but if the Management did not insist upon the aforesaid experience certificate for more than 14 years, in that event of the matter it is not open for the Management to ask for such experience certificate after lapse of about 14 years of initial appointment of the petitioner and take disciplinary action in this regard. It is no doubt true that non supply of such experience certificate would have been the cause of cancellation of his appointment, if it was included in essential qualification for his appointment provided also action would have been taken promptly in this regard but same could not be a case of misconduct of the petitioner warranting any disciplinary proceeding as the same cannot be regarded as his conduct after entry into service. However, even if a person has been appointed otherwise eligible and qualified for the post and permitted to continue on said post for considerably long time upto 14 and 15 years, his initial appointment cannot be found to be faulty and on that count cannot be cancelled subsequently after such a long time merely on account of fact that he lacks requisite experience for the post upon which he is working for considerably long time upto 14 and 15 years, the contrary approach of Management in this regard appears to be contrary to the basic principles of service law jurisprudence, therefore, such action of the respondents- authorities does not appear to be fair and bonafide rather in my opinion, appears to be based on some ulterior motives and actuated by malice, thus has to be held as malafide or malice in law.

21: Besides this the Mill has also been closed down and official liquidator has been appointed, therefore, it would not be feasible for the inquiry officer to collect the material in support of the charges and examine any witness in support

thereof, inasmuch as it would also not be feasible and possible to the petitioner to cross-examine any such witness and adduce his defence evidence and examine any witness in defence of his case. Thus, in my opinion on account of lapse of time the charges have been rendered old and stale and fresh disciplinary inquiry in the matter would not be feasible in the interest of administration, and the petitioner's case shall also be prejudiced in that eventuality. Since the petitioner has already suffered a lot during the pendency of disciplinary inquiry inasmuch as during litigation, therefore, on this count also it is not desirable in given facts and circumstances of the case to direct fresh inquiry de-novo from the stage from which it was found faulty by this Court as indicated hereinbefore.

22. Now coming to the merits of the case it is to be seen that it is also not the case of Management that photostat copy of experience certificate supplied by the petitioner is false and fake document after due verification and inquiry of such photostat copy of experience certificate, therefore, in absence of such inquiry it cannot be held at all that the aforesaid photostat copy in respect of experience certificate supplied by the petitioner was forged or fake document and petitioner can be proceeded for disciplinary action in that regard. Thus, the findings "of inquiry officer appears to be perverse and based on conjectures and surmises and without any material on record in the sense no reasonable person can come to such conclusion as drawn by inquiry officer, hence has to be rejected and reply of petitioner deserves acceptance of this court.

23. So far as charge No. 2 is concerned, a bare reading of which it indicates that it is not the case of respondents that medical certificates sent by the petitioner were forged and manipulated documents and the petitioner after any inquiry was found not suffering from heart disease. In absence of such charges found proved against the petitioner, the charge No. 2, contained in the charge sheet found proved by inquiry officer that the petitioner has abandoned the services and started sending medical certificate for medical leave is misconceived. It is well common for an employee suffering from heart disease to get medical check-up available at place and send medical certificate for leave. It is also not the charge that medical leave was not admissible or has been rejected. Thus, the findings of inquiry officer on the charge No. 2 are perverse as no reasonable person can arrive at the conclusion drawn by inquiry officer. So far as the findings recorded by inquiry officer on charge No. 3 is concerned, no material has been relied upon whereby it can be held that despite notice upon the petitioner, he did not appear for medical check up as directed by the respondents on the date and place in question, therefore, the findings recorded by inquiry officer appears to be based on conjectures and surmises and without materials on record, thus held to be perverse in given facts and circumstances of the case.

24. Even if assuming for the sake of arguments, the charges levelled against the petitioner are found to be proved even then major penalty of dismissal, removal or reduction in rank could not be imposed by disciplinary authority on such charges. At the most any minor penalty could be imposed against him. Thus in

my opinion, besides findings of inquiry officer are not sustainable in the eye of law, the quantum of punishment awarded against the petitioner is also highly irrational and disproportionate to the gravity of charges levelled against him; as such shocking to the conscience of this court, therefore, quantum of punishment awarded to the petitioner are held to be arbitrary, irrational and disproportionate to the gravity of charges levelled and/or found proved against him and can not be sustained hence is liable to be quashed by this court. Thus in view of the aforesaid discussion the findings of inquiry officer and the impugned order of dismissal of petitioner from service dated 4.1.1997, contained in Annexure-9 of the writ petition based upon such findings and order dated 15.11.1997 (Annexure-15 of the writ petition) dismissing the appeal of petitioner are not sustainable and are hereby quashed and petitioner is reinstated in the service.

25. Now further question arises for consideration that what further consequential relief can be granted to the petitioner along with his reinstatement into service? In this connection, it is also necessary to point out that since the Mill in question has been closed and wound-up and official liquidator has been appointed by the Government for determination of assets and liabilities of Mill, therefore, it would be appropriate to direct the petitioner's reinstatement along with continuity of service and back wages only for the purpose of seeking his voluntary retirement from the service as the Mill is permitting voluntary retirement of its employees. The official liquidator has also been impleaded as necessary party in the writ petition, therefore, the petitioner is reinstated along with continuity in service with back wages only for limited purpose of seeking voluntary retirement from the service. At this juncture, it is to be pointed out that there is no material on record that from the date of his dismissal till the date the petitioner has been engaged in some gainful employment else where but at the same times it can not be said that he was without employment, as for sustaining his family, his some employment even on daily wage basis/casual basis cannot be ruled out, therefore, in given facts and circumstances of the case, a writ of mandamus is issued directing the respondents to reinstate the petitioner with continuity of service from the date of his dismissal till the date of his reinstatement for aforesaid purpose and he shall be paid 50% salary as back wages during the period he was out of employment due to aforesaid dismissal from service. However, for the purpose of computing the post retiral dues and pensionary benefits his whole salary on notional basis for the aforesaid period also shall be computed as revised from time to time. The petitioner shall be reinstated in service within a period of two months from the date of production of certified copy of the order passed by this court before respondents concerned and the respondents concerned are directed to grant arrears of salary as back wages to the petitioner and other post retiral benefits of service by permitting his voluntary retirement as in case of other employees of Mills within a period of two months as indicated herein above.

26. In view of forgoing observations and directions, the writ petition succeeds and stands allowed.