

(2024) 04 GUJ CK 0002

In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 1249 Of 2022 In R/Special Civil
Application No. 17159 Of 2007

State Of Gujarat & Anr

APPELLANT

Vs

H.C. Mody

RESPONDENT

Date of Decision : 02-04-2024

Acts Referred:

Constitution Of India, 1950 — Article 32, 226, 309, 311, 311(2)
Gujarat Civil Services (Discipline And Appeal) Rules, 1971 — Rule 18, 26
Maharashtra Civil Services (Discipline And Appeal) Rules, 1979 — Rule 5, 5(1)(ix),
9(2), 9(4)(i)(a), 9(4)(i)(b)

Citation : (2024) 04 GUJ CK 0002

Hon'ble Judges : Biren Vaishnav, J;Pranav Trivedi, J

Bench : Division Bench

Advocate : Shruti Dhruve, Shalin Mehta

Final Decision : Dismissed

Judgement

Biren Vaishnav, J

1. The State of Gujarat has filed this appeal challenging the oral judgement dated 28.03.2018 passed in Special Civil Application No. 17159 of 2007. The respondent was the original petitioner therein who had preferred the petition seeking to challenge GPSC's order dated 8. 06.2007 whereby the pay of the petitioner/respondent herein was reduced by two stages for five years without future effect with a further stipulation that during that period the petitioner would not earn increment. The learned Single Judge by an extensive consideration of facts and various case laws held that the order of punishment was illegal and the same was therefore quashed and set aside directing the State to pay all consequential benefits.

2. The factual scenario as set out by the learned Single Judge reads as under:

"2. The facts in the capsulized form leading to the present petition are as under:

2.1 The petitioner, after clearing combined competitive examination conducted by the Gujarat Public Service Commission ('the GPSC' hereinafter) for various posts, was selected for Class I post, on the post of Gujarat Administrative Service (Class I) ('the GAS' hereinafter) from December, 1989 and his first appointment directly was on the post of Deputy Collector.

2.2 The petitioner worked as an Assistant Commissioner from June, 1992 to April 1994 with Sardar Sarovar Rehabilitation Agency (Sardar Sarovar Punahvasvat Agency as is known as 'SSPA') at Vadodara.

2.3 It is the case of the petitioner that in connection with the land, which was acquired by the Special Land Acquisition Officer and given to the SSPA, the question arose with regard to the counting of the trees and paying of compensation. The owner of the land had disputed the compensation on the ground of existence of more trees. The directions also came to be issued by the High Court in Special Civil Application Nos.2421, 2420 and 2418 of 1993. As request was for grant of compensation of the trees as per the panchnama made at the time of taking possession, on seeking instructions the learned Assistant Government Pleader for the State has stated that necessary fund would be released by the Nigam for payment to the petitioner.

2.4 On April 19, 1993, prior to that on December 14, 1992 in the meeting held at the office Executive Director, SSPA, it was decided that the Gujarat State Forest Development Corporation would be asked to cross check the number of trees as the difference was huge in the total number of the trees present and those mentioned in the panchnama.

2.5 It is the case of the petitioner that in the said matter of payment to the original land owner, Shri P.M.Vakil, the Special Land Acquisition Officer as well as the present petitioner, who was working as acquiring body were issued the chargesheet by the Government. The Superior Officer of Shri P.M.Vakil, Shri M.F.Parmar was also chargesheeted. The petitioner was given a chargesheet on April 06, 1999 and subsequent corrigendum on June 06, 2002.

2.6 The detailed defence statement was submitted on October 18, 1999. After fullfledge inquiry, the Inquiry Officer on October 11, 2004 concluded that charges against the petitioner have not been proved. When sent to the Disciplinary Authority on April 01, 2005, it recorded its note of disagreement.

2.7 On April 26, 2005, the petitioner filed his representation to the show cause notice issued by the Disciplinary Authority, certain clarifications were sought by the GAD from the Commissioner and Chief Executive Officer, SSPA, which were furnished on February 07, 2006. The Revenue Department's opinion was also sought for the petitioner being in the cadre of Deputy Collector and the matter was also referred to the Revenue Department.

2.8 On August 18, 2006, the Revenue Department opined with regard to the quantum of penalty and accordingly, the matter was submitted to the State

Government for consideration and approval of the proposal regarding imposition of penalty on petitioner and another delinquent.

2.9 A reference was made to the GPSC seeking consultation on October 04, 2006 and the GPSC concurred with the decision of the State Government on April 30, 2007. Therefore, the State Government passed an order imposing penalty of stoppage of two increments of the petitioner for a period of five years without future effect as mentioned herein above on June 08, 2007."

3. Ms. Shruti Dhruve, learned AGP appearing for the appellant State assailing the order of the learned Single Judge would make the following submissions:

3.1 That the order of punishment was dated 08.06.2007. The policy prevailing at that time, namely Rule 26 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971 (for short 'the Rules') mandated to provide a copy of the opinion with the order of penalty and when the appellants had followed such a procedure prescribed under the Rules, the learned Single Judge could not have quashed the order on the ground that the GPSC report which was relied upon was not supplied to the respondent petitioner before passing of the order of termination. Even otherwise, if the document i.e. the GPSC letter is read, there was no new material fact which weighed with the disciplinary authority warranting a service of the letter.

3.2 That the learned Single Judge had held that non supply of the opinion of the GPSC is in violation of principles of natural justice in light of the decision rendered in Union of India vs. S.K. Kapoor (2011) 14 SCC 589. She submitted that the learned Single Judge ought to have appreciated that as per the law laid down in Union of India vs. T.V. Patel (2007) 4 SCC 785, it was not mandatory to provide an opinion of the commission. At the time of passing of the order on 08.06.2007, the decision in the case of the T.V. Patel (supra) was good law and therefore the learned Single Judge relying on the decision in the case of S.K. Kapoor (supra) was bad.

3.3 Relying on the decisions in the cases of Chairman, LIC Of India vs. A. Masilamani [(2013) 6 SCC 530] and Union of India vs. R.P. Singh [(2014) 7 SCC

340], she would submit that once an order of punishment is set aside on the grounds of violation of principles of nature justice, the court ought not to have reinstated the employee or quash the order of punishment and give consequential benefits as was done in the present case but remit the case to the disciplinary authority from the point it stood vitiated. Reliance was also placed on the decision in the case of State Bank of India vs. Mohammade Badruddin [(2019) 16 SCC 69]. She would therefore submit that in view of this legal position, once the learned Single Judge found that there was violation of principles of natural justice, the learned Single Judge ought to have remanded the matter to the disciplinary authority for alternatively granted post-decisional hearing instead of quashing of the order.

3.4 That the original petitioner – appellant herein did not avail alternative remedy under Rule 18 of the Rules and therefore the order of the learned Single Judge quashing the penalty order was bad.

4. Mr. Shalin Mehta, learned Senior Advocate appearing with Mr. Vaibhav Vyas, learned advocate for the respondent would support the order of the learned Single Judge. He would make the following submissions:

4.1 That, on merits when the charge-sheet is seen, which was read before us, the allegation against the respondent was that he had committed a procedural lapse in the process of payment of amount of compensation towards trees. Essentially, it was the case of the employer that though respondent was present in the meeting held on 14.12.1992, he did not take any consequential action pursuant to the said decision. Taking us through the inquiry officer's report as far as this allegation is concerned, Mr. Mehta would submit that based on the proceedings, the Inquiry Officer had found that the respondent did not have any role to play in awarding compensation for trees as the award was published by the Special Land Acquisition Officer. The respondent herein was only the representative of the acquiring body. That the award was published on 30.04.1993, much after the meeting of 14.12.1992, which was received by the office of the Special Land Acquisition Officer on 15.01.1993. The Special Land Acquisition Officer was well aware of the discussion in the meeting.

4.2 Taking us through the disagreement note recorded by the disciplinary authority holding that it disagreed with the findings that the charge was not proved, he submitted that the disagreement recorded was perverse, based on irrelevant considerations and therefore was not legally acceptable.

4.3 That the disciplinary authority did not at all take into consideration the findings of the Inquiry Officer. That if the disagreement report is seen, the disciplinary authority had positively recorded a finding that the charges are proved without even calling for a response from the respondent – original petitioner when such a finding is recorded without affording sufficient opportunity to the petitioner to persuade the disciplinary authority to accept the findings of the inquiry officer, the penalty order based on such disagreement was bad.

4.4 Reliance was placed on decisions of the Apex Court in the cases of *Yoginath D. Bagde vs. State of Maharashtra* [AIR 1999 SC 3734] and *Punjab National Bank and Others vs. Sh. Kunj Behari Mishra* [AIR 1998 SC 2713] and also Judgment and order dated 15.12.2021 passed by this court in LPA No. 706 of 2021 in the case of *State of Gujarat vs. Kalavatiben Ratanlal Joshi*.

4.5 That the learned Single Judge committed no error in holding that the advice of GPSC was not supplied to the respondent original petitioner in advance. In the case of *S.K. Kapoor (supra)* and in the case of *B.J. Jadav vs. State of Gujarat* [2005 (2) GLH 334] it was held that it was necessary for the authority to supply copy of the report of GPSC before ordering punishment.

4.6 On the argument of learned AGP that the law on the date of the order of penalty was the law in the case of T.V. Patel (supra), Mr. Mehta would submit that there are judgments on doctrine of prospective over ruling and therefore the law in the case of S.K. Kapoor (supra) would prevail. In support of his submission, he would rely on the following decisions:

(a) Manoj Parihar vs. State of Jammu & Kashmir reported in 2022(14) SCC 72;

(b) P.V. George vs. State of Kerala reported in 2007(3) SCC 557.

4.7 Mr. Mehta would also support the order of the learned Single Judge by which rather than remitting the case order of penalty was quashed because it was found that there was not only a delay in initiation but delay in continuation and conclusion of the departmental inquiry which prejudiced the original petitioner. The case of misconduct alleged was of the year 1992-93, charge-sheet was issued on 06.04.1999, after a period of three years a corrigendum was issued to the charge-sheet on 07.06.2002. It took approximately more than 2 years to furnish a report of the inquiry officer on 11.10.2004 and the penalty order was passed on 08.06.2007. In other words, even if the process from the date of charge-sheet is taken, the entire episode was kept hanging for more than 9 years which resulted in deprivation of service benefits prejudicing the career of the respondent. He would rely on a decision in the case of State of Andhra Pradesh vs. N. Radhakishan reported in AIR 1998 SC 1833.

5. Having considered the submissions made by learned counsels for the respective parties and having perused the order of the learned Single Judge, it is evident that the learned Single Judge allowed the petition mainly on three counts. First ground being that no case was made out on merits. For the purposes of holding that no case was made out on merits, the learned Single Judge held as under:

"28. In the wake of the above cited decisions, which have been discussed hereinabove, this Court deems it fit to undertake the journey of testing the findings of the disciplinary authority, more particularly, when it has chosen to disregard certain requirements of law. Independently examining some of the issues, which have been raised, this Court notices that the queries were also raised during the course of hearing as to whether the Gujarat Government Rules of Business would be applicable to the SSPA and as to who was the final authority in favour of the claimant and what was the procedure to be followed and whether he was entitled to mark the file to the higher authority; and whether the Deputy Executive Engineer was bound by the order dated May 26, 1993, passed by the Assistant Commissioner, SSPA, directing him to make payment of compensation in favour of the claimant.

29. Two aspects mainly are raised and harped upon against the present petitioner, viz. (i) that his presence as marked hereinabove during the meeting also did not disown him from giving an undertaking before the Court and (ii) also signing the document which eventually led to payment of huge amount of

Rs.1.90 crore without the actual recounting of trees at the land which was acquired by the Special Land Acquisition Officer. As can be also noticed from the further affidavit filed before this Court by the respondent No.1, the Government of Gujarat Rules of Business, 1990, are not applicable to the SSPA for the same being an independent authority constituted vide Government Resolution dated December 05, 1992, exercising powers of the State Government. It further says that the SSNNL was in charge of the rehabilitation of the victims, however, owing to certain difficulties with a view to see that the project is implemented smoothly, the State Government in its Narmada, Water Resources and Kalpasar Department, issued Government Resolution dated December 05, 1992, whereby the SSPA came to be constituted. Vide another Government Resolution of the even date, the provisions were made with respect to the administration and financial matters and the Commissioner (Rehabilitation) and Chief Executive Officer (CEO) were conferred with all the financial powers as were available to the Head of the Department of the rank of the Secretary to the State Government. Thus, it makes it clear that it was the Commissioner and CEO of the SSPA, who would have final financial powers, which are parimateria to the powers enjoyed by the Head of the Department i.e. Secretary to the State Government. The Assistant Commissioner, as per the said affidavit and even without there being anything contrary on record, is bound by the authority of the Commissioner and the CEO. With regard to the disbursement by the Deputy Executive Engineer, it is through a separate channel, according to the respondent No.1, the Deputy Executive Engineer could not have gone beyond the order of the Assistant Commissioner, SSPA. He had marked a copy of the order dated May 26, 1993 to the Deputy Executive Engineer for information and implementation.

30. At this stage, it has been explained by Ms.Sangeeta Vishen, learned Assistant Government Pleader, that though the total amount of award is around Rs.1.92 crore, in the account of individual each one would be getting around Rs.2.50 lakh and, it was not just one family which was getting substantial amount. She also attempted to point out to this Court that it was under the signature of the petitioner that the disbursement was made. Along with this, she has urged that the Deputy Commissioner Shri G.S. Rao and the Special Land Acquisition Officer Shri Vakil, both had faced the inquiry.

31. All these details make the scenario extremely clear that the amount of award which had been finalised by the Special Land Acquisition Officer was not challenged by the State and as the said amount was not being disbursed on the ground of necessity of recounting of trees, the challenge was made before this Court. The learned counsel for the SSNNL in the said matter had ensured the Court the disbursement of amount within a specified time limit and it was incidentally at that stage the petitioner was present."

5.1 On the second ground on which the learned Single Judge allowed the petition was that rather than recording 'tentative' findings on the disagreement note, it was found that a positive finding that the charges are held to be proved was

recorded in the disagreement note which was in violation of principles of natural justice in light of the decision in the case of Yoginath Bagde (supra). The learned Single Judge while doing so recorded as under:

"16. If one looks at the disagreement note, the findings given by the disciplinary authority are of tentative nature. It is recorded that : (i) in the meeting dated December 14, 1992, the petitioner was present and the decision was taken by the acquiring body for recounting of the trees and yet, he has not brought these facts to his superior; (ii) before the High Court, he was present for and on behalf of the SSNNL and it was his duty to apprise the learned Government Pleader of all true and correct facts. The decision of recounting of trees has also not been conveyed to the High Court; (iii) his argument that the High Court had directed to make payment as per the counting done by Shri Valand, Deputy Mamlatdar, is also incorrect as the High Court had merely recorded the submissions of the learned advocate for the petitioner. There is no order as such; (iv) the entire procedure adopted for making payment of amount indicated in the award is after the award was made. Voluntarily the SSNNL officers had given such an undertaking although the High Court had not asked for it. There was no necessity for giving such assurance because as per the rules, after once the award is published, the payment is to be made within a period of two years. The award in the present case is published on July 18, 1992 and, hence, there was sufficient time upto November 03, 1994, and yet the undertaking given to make the payment within a very short duration without seeking any prior permission of the superior or of the highest authority has caused heavily to the SSNNL at an economic front. It should be hearing and when the undertaking was furnished the petitioner was present before this Court; (v) the arguments of the petitioner misdirect everyone that the award was published pursuant to the Arbitration Award of the Hon'ble Mr.Justice Diwan and as per the direction of this Court. As there is no award nor any direction by the High Court in the award passed by the Hon'ble Mr.Justice Diwan had fixed the value of the land and not of the trees.

17. When the file was moved on May 27, 1993, before the Deputy Commissioner, he made no attempt to bring the same to the notice of the Commissioner and the Executive Director of the SSNNL. He did not mark the file for superior officer's perusal and thus, the making of the payment on imminent basis discloses his illintention. None of the above, procedures have been followed. On the contrary, he was in a hurry to make payment to the original owners. These details conclude the evidence against him and his guilt is said to have been proved fully and totally, in these findings of the disciplinary authority.

18. This, in the opinion of this Court, is in complete contravention of the decision of the Apex Court in the case of Yoginath Bagde (supra), which insists for preliminary or tentative findings to be given to the delinquent along with the show cause notice and then he has to reply to the show cause notice and final decision is to be taken by the authority concerned.

19. Referring once again to the decision of the Apex Court in the case of Yoginath

Bagde (supra), wherein also in a case of disciplinary actions against an officer of Subordinate Judiciary by a resolution in the meeting of the Full Court of the High Court, the Hon'ble the Chief Justice was authorised to constitute the disciplinary committee, which was authorised to take decision qua the punishment to be inflicted upon the delinquent officer. The disciplinary authority when disagreed with the findings recorded by the Inquiry Officer in favour of the delinquent officer, along with the show cause notice, the findings of the inquiry officer and reasons by the disciplinary authority for its disagreement were also communicated to the petitioner. The Apex Court held that if the rules in this regard of giving opportunity to the officer are silent, an opportunity of hearing may have to be read in rules by which the procedure for dealing with the inquiry officer's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be 'not guilty' by the Inquiring Authority, is found 'guilty' without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of 'not guilty' has already been recorded. The Court also held that the Disciplinary Authority disagreed with the findings recorded by the enquiry officer in favour of the officer of subordinate judiciary and came to the conclusion that the charges against the officer were proved and then merely issued show cause notice to the officer as to why he should not be dismissed from service, without providing any opportunity of hearing, the subsequent order of dismissal of officer would be invalid as being violative of principles of natural justice. The right to be heard as assured by the Apex Court cannot be taken away by attending to the empty formality.

20. At this stage, it would also be necessary to make a mention that after the written submissions were made by the petitioner in reply to the notice issued by the disciplinary authority calling upon him to make his submissions, the findings, sent along with such a notice as mentioned hereinabove, were eventually the final findings and after accepting the written submissions of the petitioner what it followed was the imposition of penalty.”

5.2 On the third ground i.e. non supply of advice of GPSC, the learned Single Judge in paras 21-24 held as under:

“21. Apt would be also to refer to the fact that GPSC was consulted by the disciplinary authority. The report of the GPSC has not been furnished to the present petitioner prior to passing the impugned order. This Court is conscious of the fact that reliance is placed on the decision of the Apex Court in the case of T.V. Patel (supra), which in the subsequent decision of the Apex Court in the case of S.K. Kapoor (supra) has been held to be per incuriam. On the ground that the decision of the Apex Court in the case of S.N. Narula (supra), was not considered in it.

22. The vital issue which was considered by this Court (Coram : Akil A. Kureshi, J.) in the case of B.J. Jadav (supra), was after 42nd Amendment in the Constitution of India and particularly Article 311 of the Constitution of India, was

it necessary to supply a copy of the advice of the GPSC to the petitioner or whether the punishment could have been imposed upon the petitioner without supplying him a copy of the advice of the GPSC on the strength of which the Government endorsed the punishment.

The Apex Court observed and held that the Government when seeks and obtains advice of the GPSC with respect to the punishment upon the petitioner and taking into account such advice when the Government acts upon the same for enhancement of the punishment, the question that would arise is as to whether under Article 311 of the Constitution of India, it was must for the authority to provide the delinquent the copy of the advice.

It would be apt to regurgitate the relevant observations of this Court in the said decision, which read as under :

"18. From the above judicial pronouncement, it can be seen that though after the Constitution Fortysecond Amendment, the delinquent Government servant no longer has a right to make a representation with respect to the proposed punishment, his right of representation before the Disciplinary Authority concludes the issue of his guilt and imposes suitable punishment is not taken away. The right of the delinquent Government servant to make his representation with respect to the charges levelled against him as well as punishment to be imposed upon him as one single integrated exercise is still available and not altered in any manner by the constitutional changes in Article 311 of the Constitution. Prior to Fortysecond Amendment in the Constitution, the delinquent Government servant had the right to make a representation on the proposed punishment before the Disciplinary Authority could conclude the issue of quantum of punishment also.

After the Fortysecond Amendment, this right has been taken away. Does that mean, however, that the Government can seek and take into account some other material not disclosed to the delinquent Government servant and decide the quantum of punishment to be imposed upon him? As noted earlier, Article 311(2) after its amendment pursuant to the Forty-second Amendment Act provides that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed. The advice of the the GPSC therefore would be evidence adduced during such inquiry and if penalty is imposed on the basis of such evidence, it must be disclosed to the Government servant before the same can be relied upon."

It is, thus, concluded that the advice of the GPSC forms a vital material which the Government takes into consideration before imposition of the punishment. Withholding of such an advice from the delinquent Government servant can be countenanced. The advice of the GPSC would carry formidable weight with the Government. This Court further held that a grave error as committed by the

Government without in passing the impugned order without supplying a copy of the advice of the GPSC and taking the same into consideration and thereby, denying the petitioner the opportunity to meet with the issue arising therefrom.

23. In the present case, admittedly the advice of the GPSC sought for by the State has not been supplied to the petitioner prior to imposition of the punishment upon him. Therefore, there was no question of the petitioner making any representation, which would amount to denying an opportunity to the petitioner, which otherwise is contemplated. This Court needs to remember at this stage that the inquiry officer had held and concluded that none of the charges levelled against the petitioner had been proved and the disciplinary authority having held against the petitioner had sought for advice of the GPSC and the advice is reflected from the communication dated April 30, 2007, whereby the petitioner's pay has been reduced by two stages for five years without future effect and with further stipulation that he would not earn increments during this period of five years.

This Court notices major breaches on the part of the State Government i.e. as discussed hereinabove, the disciplinary authority having already arrived at a final conclusion before receiving any representation from the petitioner. Thus, the show cause notice issued was with the conclusions which were not tentative but were final.

24. If one looks at the final order which has been passed by the disciplinary authority, except opining briefly and indicating the contentions raised by the petitioner in his representation in reply to the show cause notice, all the findings have remained verbatim the same as otherwise given along with the show cause notice dated April 01, 2005. This Court also notices that in the final order of imposition of punishment, while referring to the representation of the petitioner, not a whisper about the findings given by the Inquiry Officer who by a detailed discussion had held in favour of the present petitioner. Nonsupply of the advice of the GPSC before passing of the final order in the wake of the decision of the Apex Court, as discussed hereinabove also, is one of the grounds where this Court finds that the authority concerned ought not to have violated the well laid down principles of law."

6. Based on the arguments advanced by the learned advocates for the respective parties, we have on our own considered the issue. Perusal of the charge-sheet would indicate that it was the case of the disciplinary authority that though the respondent was present at the meeting of 14.12.1992, he did not inform the authority of the discrepancies in the number of trees which ought to be taken for counting and assessment of compensation and though he had remained present before the High Court, the fact was not brought to the notice of the court when the petition was disposed of. Having perused the charge-sheet, it will be in the fitness of things that we reproduce the relevant findings of the inquiry officer which exonerated the respondent herein of the two charges and held that they were not proved.

"On the basis of the complete record, written communication, oral submissions and total evidence presented before me on record that the charges levelled against Shri Modi in the above departmental inquiry vide charge sheet dated 6.4.1992 and later amended on 7.6.2002 are decided as follows:

Charge (1) : Not proved

Charge (2) : Not proved

Reasons

The provisions of the land acquisition act are prima facie so clear that it is not understood how the delinquent officer was expected to, with reference to charge no. 1, to act in a manner different from what happened. As per the land acquisition act Shri Modi, the delinquent officer, was represented the acquiring body. There is no provision in the law which gives any role to the acquiring body in the matter of deciding the amount of compensation which is announced by the land acquisition officer in his award.

I am inclined to agree with the delinquent officer's contention that under section 9(3) and 9(4) the acquiring body has no role for making any representation before the land acquisition officer. Therefore it is unfair to allege that he could have interceded with the land acquisition officer at the stage of section 9 proceedings. In any case the acquiring body is not supposed to be in the know of what final decision will be taken by the land acquisition office the award is published/announced.

Whereas it is true that Shri Modi was present in the meeting of 14.12.92 held in the room of the Executive Director, SSNL wherein it was minuted that the Gujarat State Forest Development Corporation would be asked to cross check the number of trees, it is clear from the record that this duty was not cast upon Shri Modi. The proceedings clearly show that the general manager of Sardar Sarovar Rehabilitation Agency, Baroda was entrusted with this responsibility. It is also very clear that the land acquisition officer does not function under the acquiring body, but functions independently. Therefore, to expect the assistant commissioner level officer of the Sardar Sarovar Rehabilitation Agency to exercise control over all the details the land acquisition officer would take into account for the purpose of deciding compensation is extremely optimistic.

Moreover, once the award has been announced under section 11(2), the government has no recourse to any appeal or court reference as per law.

It is also seen from the record that Shri Modi does not appear to have acted in any stage in isolation, without reference to his seniors who were kept informed. In fact the compensation amount was not released at the level of Shri Modi. Therefore to substantiate a charge against him of colluding and getting mixed up with the land losers to cause wrongful loss to Sardar Sarovar Rehabilitation been proved then contention that the Agency has also not precluded when the wrong number of trees were used for A purpose of calculation of compensation

by the land acquisition officer appears misplaced.

The presenting officer, to support the charges, has also relied upon some arguments like the delinquent officer should not have agreed to the time limit fixed by the Hon'ble High Court and that there was no hurry for declaring the award. The presenting officer also states that the High Court should have been informed of the new procedure decided in the meeting of 14.12.1992 for counting the trees which still not been completed and he failed to brief the Sardar Sarovar Narmada Nigam and Government advocates properly.. The presenting officer further states that the panchnama drawn up by Shri Valand, Deputy Mamlatdar in 1991 regarding the number of trees was not in the interest of the Sardar Sarovar Narmada Nigam and Shri Modi should have intervened to protect the interest of his organization. Finally the presenting officer states that Shri Modi's note of 27.5.1993 recommending payment of the compensation amount to the Deputy Commissioner should also have been marked to the Commissioner and Chief Executive Officer drawing his attention to the fact that the award was not based on decision of 14.12.1992.

I am not able to agree with the opinions expressed by the presenting officer as mentioned in the para above. Just because the delinquent officer recommended a course of action to his deputy commissioner that did not shut option of the deputy commissioner who was his supervisor officer from sending the file onwards to the commissioner and CEO if he so desired and obviously the deputy commissioner was also aware of the minutes of the meeting dated 14.12.1992 and did not think it necessary to seek any further instructions from the higher authorities. It is not that the delinquent officer had blanked out the recommendation of his deputy Mamlatdar asking for advice whether this file needs to be referred to higher authorities or not. Therefore to accuse the delinquent officer of taking this decision at his level is not only unfair but contradictory to record.

To sum up, in my considered opinion, no charge is established against Shri Harshvardhan C Modi, the then assistant commissioner of the Sardar Sarovar Rehabilitation Agency and therefore I do not consider any charge which has been levelled against him to be satisfactorily proved."

6.1 From considering the entire issue and perusal of the charge-sheet what is evident is that the main charge against the respondent was that he had committed procedural lapse in the process of payment of compensation towards trees as per the award passed by the Special Land Acquisition Officer. Payment of compensation was made on the basis of a panchnama prepared by the Mamlatdar which recorded that the number of trees was 2,47,742 despite the counting of the trees which was undertaken by the Gujarat Forest Development Corporation which marked the number of trees as 68,770. This had resulted in a financial loss to the Corporation as more compensation was paid. What is evident on reading the inquiry officer's report is that the respondent had no role to play in awarding compensation for trees. He was an officer of the acquiring body who

had nothing to do with the declaration and publication of the award. The Special Land Acquisition Officer was also an officer aware of the meeting and the decision taking of recounting of trees is evident from the date of meeting which was 14.12.1992 which the office of the Special Land Acquisition received on 15.01.1993 after which the award was published on 30.04.1993.

7. Perusal of the order of the learned Single Judge would also indicate that while undertaking the journey of testing the findings of the disciplinary authority, the learned Single Judge came to the conclusion based on queries that it was the SSNL who was incharge of rehabilitation. The final financial powers were enjoyed by the head of department i.e. The Secretary to the State. The disbursement had to be done through a channel that is separate. What the learned Single Judge observed and what is germane to the issue is that though the total amount of the award was around Rs.1.92 crores and may be just one family was getting the substantial amount, the award of the Special Land Acquisition Officer who faced an inquiry too was not challenged and the amount was disbursed.

8. On the question of the order of penalty being bad on the ground of disagreement, the issue would no longer hold us for long. Perusal of the order of the learned Single Judge and relevant paragraphs which we have reproduced hereinabove would indicate that the learned Single Judge has considered the decision in the case of Yoginath Bagde (supra). What is evident is that when the inquiry officer had specifically recorded that the respondent was not guilty, the disciplinary authority in its show cause notice had recorded a positive finding of the charge being proved without providing an opportunity of hearing and in light of the law laid down in the case of Yoginath Bagde (supra), the order could not be faulted. The learned Single Judge had reproduced relevant paragraphs of the decision of the Apex Court in the case of Yoginath Bagde (supra) and we tend to reproduce the following paragraphs of the decision in the case of Yoginath Bagde (supra) and Sh. Kunj Behari Mishra (supra).

Yoginath D. Bagde vs. State of Maharashtra

"28. In view of the provisions contained in the statutory Rule extracted above, it is open to the Disciplinary Authority either to agree with the findings recorded by the Inquiring Authority or disagree with those findings. If it does not agree with the findings of the Inquiring Authority, it may record its own findings. Where the Inquiring Authority has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings, there would arise no difficulty. So also, if the Inquiring Authority has held the charges proved, but the Disciplinary Authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the Inquiring Authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the

question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the Rules made under Art. 309 of the Constitution or the Disciplinary Authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent, and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the Inquiring Authority that the charges were established, "an opportunity of hearing" may have to be read into the Rule by which the procedure for dealing with the Inquiring Authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be 'not guilty' by the Inquiring Authority, is found 'guilty' without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded.

29. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 which enables the Disciplinary Authority to disagree with the findings of the Inquiring Authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The Rule does not specifically provide that before recording its own findings, the Disciplinary Authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before Disciplinary Authority finally disagrees with the findings of the Inquiring Authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the Inquiring Authority do not suffer from any error and that there was no occasion to take a different view. The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with.

33. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the

Enquiry Officer. This is in consonance with the requirement of Art. 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away in any legislative enactment or Service Rule including Rules made under Art. 309 of the Constitution.

34. Applying the above principles to the facts of this case, it would be noticed that in the instant case the District Judge (Enquiry Officer) had recorded the findings that the charges were not proved. These findings were submitted to the Disciplinary Committee which disagreed with those findings and issued a notice to the appellant requiring him to show-cause why he should not be dismissed from service. It is true that along with the show-cause notice, the reasons on the basis of which the Disciplinary Committee had disagreed with the findings of the District Judge were communicated to the appellant but the Disciplinary Committee instead of forming a tentative opinion had come to a final conclusion that the charges against the appellant were established. The Disciplinary Committee, in fact, had acted in accordance with the statutory provisions contained in Rule 9(4)(i)(a) & (b). He was called upon to show-cause against the proposed punishment of dismissal as will be evident from the minutes of the Disciplinary Committee dated 21.06.1993 which provide as under :-

"Decision :Discussed.

For the reasons recorded in Annexure "A" hereto, the Committee disagrees with the finding of the Enquiry Officer and finds that the charges levelled against the delinquent Judicial Officer have been proved.

It was, therefore, tentatively decided to impose upon the Judicial Officer penalty of dismissal from service.

Let notice, therefore, issued to the delinquent Judicial Officer calling upon him to show cause why penalty of dismissal from service as prescribed in Rule 5(1)(ix) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 should not be imposed upon him.

Show cause notice will be accompanied by a copy of the Report of the Inquiring Authority and the reasons recorded by this Committee."

These minutes were recorded after the Disciplinary Committee had considered

the Enquiry Report and differed with the findings and recorded its final opinion in para 10 of the reasons as under :-

"10. The Disciplinary Committee is of the opinion that the findings recorded by the Enquiry Officer on both the charges cannot be sustained. The Committee, after going through the oral and documentary evidence on record, is of the opinion that both the charges against the delinquent are proved. The delinquent is a Judicial Officer who has failed to maintain the absolute integrity in discharge of his judicial duties."

36. Along with the show-cause notice, a copy of the findings recorded by the Enquiry Officer as also the reasons recorded by the Disciplinary Committee for disagreeing with those findings were communicated to the appellant but it was immaterial as he was required to show-cause only against the punishment proposed by the Disciplinary Committee which had already taken a final decision that the charges against the appellant were proved. It was not indicated to him that the Disciplinary Committee had come only to a "tentative" decision and that he could show cause against that too. It was for this reason that the reply submitted by the appellant failed to find favour with the Disciplinary Committee.

37. Since the Disciplinary Committee did not give any opportunity of hearing to the appellant before taking a final decision in the matter relating to findings on the two charges framed against him, the principles of natural justice, as laid down by a Three-Judge Bench of this Court in *Punjab National Bank V/s. Kunj Behari Mishra* (1998) 7 SCC 84 : AIR 1998 SC 2713 : (1998 AIR(SCW) 2762 : 1998 Lab IC 3012 : 1998 All LJ 2009), referred to above, were violated.

39. The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned counsel is that a final decision with regard to the charges levelled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show-cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of *Punjab National Bank* (1998 AIR(SCW) 2762 : AIR 1998 SC 2713 : 1998 Lab IC 3012 : 1998 All LJ 2009) (supra) in which it had been categorically provided, following earlier decisions, that if the Disciplinary Authority does not agree with the findings of the Enquiry Officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the Disciplinary Authority that the findings already recorded by the Enquiry Officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case.

41. We may now examine the reasons on the basis of which the Disciplinary

Committee has disagreed with the findings of exoneration recorded by the Enquiry Officer.

52. Having regard to the circumstances of this case, we are of the view that the Disciplinary Committee was wholly in error in disagreeing with the findings recorded by the Enquiry Officer and the charges levied against the appellant were not established.

53. It was lastly contended by Mr. Harish N. Salve that this Court cannot reappraise the evidence\ which has already been scrutinised by the Enquiry Officer as also by the Disciplinary Committee. It is contended that the High Court or this Court cannot, in exercise of its jurisdiction under Art. 226 or 32 of the Constitution, act as the Appellate Authority in the domestic enquiry or trial and it is not open to this Court to reappraise the evidence. The proposition as put forward by Mr. Salve is in very broad terms and cannot be accepted. The law is well-settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter. In *Kuldeep Singh V/s. The Commissioner of Police* (1998) 8 JT (SC) 603 : (1992) 2 SCC 10 : (1999 AIR(SCW) 129 : AIR 1999 SC 677 : 1999 Lab IC 437), this Court, relying upon the earlier decisions in *Nand Kishore V/s. State of Bihar*, AIR 1978 SC 1277 : (1978) 3 SCC 366 : (1978) 3 SCR 708 : (1978 Lab IC 1106); *State of Andhra Pradesh V/s. Sree Rama Rao*, AIR 1963 SC 1723 : (1964) 3 SCR 25; *Central Bank of India V/s. Prakash Chand Jain*, AIR 1969 SC 983 : (1969 Lab IC 1880); *Bharat Iron Works V/s. Bhagubhai Balubhai Patel*, AIR 1976 SC 98 : (1976) 2 SCR 280\ : (1976) 1 SCC 518 : (1976 Lab IC 4) as also *Rajinder Kumar Kindra V/ s. Delhi Administration through Secretary (Labour)* AIR 1984 SC 1805 : (1985) 1 SCR 866 : (1984) 4 SCC 635 : (1986 Lab IC 374), laid down that although the Court cannot sit in appeal over the findings recorded by the Disciplinary Authority or the Enquiry Officer in a departmental enquiry, it does not mean that in no circumstance can the Court interfere. It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the Courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse."

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"16. In *Karunakar's* case the question arose whether after the 42nd Amendment of the Constitution, when the inquiry officer was other than a disciplinary authority, was the delinquent employee entitled to a copy of the inquiry report of the inquiry officer before the disciplinary authority takes decision on the question of guilt of the delinquent. It was sought to be contended in that case that as the right to show cause against the penalty proposed to be levied had been taken away by the 42nd Amendment, therefore, there was no necessity to give to the

delinquent a copy of the inquiry report before the disciplinary authority took the final decision as to whether to impose a penalty or not. Explaining the effect of 42nd Amendment the Constitution Bench : observed that "All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges." The Court explained that the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, inquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. It is the second right which was taken away by the 42nd Amendment but the right of the charged officer to receive the report of the inquiry officer was an essential part of the first stage itself. This was expressed by the Court in the following words :

"The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute an additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into

consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."

17. These observations are clearly in tune with the observations in Bimal Kumar Pandit's case quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar's case the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the finding of the disciplinary authority.

18. Under Regulation 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not to be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary

Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case.

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer."

9. On the question of an error pointed out by learned AGP considering the law in light of the date of order of penalty and the judgement applicable according to learned AGP of T.V. Patel (supra), considering the decision in the case of Manoj Parihar (supra) of which paragraphs 26 & 27 are reproduced as under and in case of P.V. George (supra) paragraphs 21, 22, 26 27 29 of which are also reproduced hereinbelow, it is evident that as held by the Apex Court that the law declared by it has a retrospective effect unless specifically stated otherwise, it is not the case of the applicability in the judgment of S.K. Kapoor (supra). The judgments on the case of supplying the advice of GPSC/UPSC do not specifically state that they would apply prospectively and in light of the decision in the case of Manoj Parihar (supra) and P.V. George (supra) it has to be held that the law laid down by decision in the case of S.K. Kapoor (supra) was good law especially when the ratio laid down does not say that it would have a prospective operation. Manoj Parihar Versus State Of Jammu & Kashmir

"26. What was done in Bimlesh Tanwar (supra) was actually a declaration of law. Therefore, the same will have retrospective effect. In P.V. George v. State of Kerala, (2007) 3 SCC 557, this Court held that "the law declared by a court will have retrospective effect, if not otherwise stated to be so specifically".

27. This Court was conscious of the fact, as could be seen from paragraph 19 of the report in P.V. George (supra), that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. But still this Court held that the power to apply the doctrine of prospective overruling (so as to remove the adverse effect) must be exercised in the clearest possible term."

P.V.George Versus State Of Kerala

"21. The ratio laid down by this Court, as noticed hereinafter, categorically shows

the effect of a decision which had not been directed to have a prospective operation. The legal position in clear and unequivocal term was stated by a Division Bench of this Court in M.A. Murthy V/s. State of Karnataka & Others, 2003 7 SCC 517 in the following terms :

"Learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective over-ruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in L.C. Golak Nath and Ors. V/s. State of Punjab and Anr. In Managing Director, ECIL, Hyderabad and Ors., V/s. B. Karunakar and Ors., the view was adopted. Prospective over-ruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. See Ashok Kumar Gupta V/ s. State of U.P. and Baburam V/s. C.C. Jacob. It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective over-ruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective over-ruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in Ashok Kumar Sharma's casa No. II. All the more so when the subsequent judgment is by way of Review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set, aside.

22. The effect of declaration of law, the rue of stare decisis and the consequences flowing from a departure from an earlier decision has been considered in great details by the House of Lords in National Westminster Bank plc V/s. Spectrum Plus Limited and Others, 2005 0 UKHL 41, opining :

"8. People generally conduct their affairs on the basis of what they understand the law to be. This 'retrospective' effect of a change in the law of this nature can

have disruptive and seemingly unfair consequences. 'Prospective overruling', sometimes described as 'non-retroactive overruling', is a judicial tool fashioned to mitigate these adverse consequences. It is a shorthand description for court rulings on points of law which, to greater or lesser extent, are designed not to have the normal retrospective effect of judicial decisions.

9. Prospective overruling takes several different forms. In its simplest form prospective overruling involves a court giving a ruling of the character sought by the bank in the present case. Overruling of this simple or 'pure' type has the effect that the court ruling has an exclusively prospective effect. The ruling applies only to transactions or happenings occurring after the date of the court decision. All transactions entered into, or events occurring, before that date continue to be governed by the law as it was conceived to be before the court gave its ruling.

10. Other forms of prospective overruling are more limited and 'selective' in their departure from the normal effect of court decisions. The ruling in its operation may be prospective and, additionally, retrospective in its effect as between the parties to the case in which the ruling is given. Or the ruling may be prospective and, additionally, retrospective as between the parties in the case in which the ruling was given and also as between the parties in any other cases already pending before the courts. There are other variations on the same theme.

11. Recently Advocate General Jacobs suggested an even more radical form of prospective overruling. He suggested that the retrospective and prospective effect of a ruling of the European Court of Justice might be subject to a temporal limitation that the ruling should not take effect until a future date, namely, when the State had had a reasonable opportunity to introduce new legislation: *Banco Popolare di Cremona V/s. Agenzia Entrate Ufficio Cremona* (Case C-475/03, 17.03.2005), paras 72-88."

See also Lord Rodger of Earsferry - 'A Time for Everything under the Law : Some Reflections on Retrospectivity', 2005 121 LQR 55.

26. We are not oblivious that in *Union of India V/s. Madras Telephone SC & ST Social Welfare Association*, 2006 9 SCALE 626, this Court observed that where the rights had been determined in favour of some employees in a duly constituted proceeding, which determination had attained finality, a subsequent judgment of a Court or Tribunal taking a contrary view would not adversely affect the applicants in whose cases the orders had attained finality.

27. The rights of the appellants were not determined in the earlier proceedings. According to them, merely a law was declared which was prevailing at that point of time; but the appellants were not parties therein. Thus, no decision was rendered in their favour nor any right accrued thereby.

29. Moreover, the judgment of the Full Bench has attained finality. The special leave petition has been dismissed. The subsequent Division Bench, therefore,

could not have said as to whether the law declared by the Full Bench would have a prospective operation or not. The law declared by a court will have a retrospective effect if not otherwise stated to be so specifically. The Full Bench having not said so, the subsequent Division Bench did not have the jurisdiction in that behalf.”

10. On the aspect of whether the learned Single Judge was right in quashing the orders rather than remitting the matter to a stage of holding a fresh inquiry from that stage we are obviously in agreement with the learned Single Judge that looking to the entire situation, when the charge-sheet was issued in the year 1999 for an incident of 1992-93 and the disciplinary authority at every stage was guilty of delay and laches inasmuch as a corrigendum to the charge-sheet was issued three years after the charge-sheet on 07.06.2002, the report was issued thereafter on 11.10.2004 and it took further three years to issue an order of penalty on 08.06.2007, we do not find fault with the learned Single Judge’s observation that there was breach of a Government Resolution dated 20.07.1993 which had substantially prejudiced the career of the petitioner – respondent herein. Perusal of the extensive reasons set out by the learned Single Judge, we find no reason to upset the order of the learned Single Judge and therefore the appeal deserves to be dismissed.

11. Accordingly, appeal stands dismissed. No costs.