

(2013) 05 SHI CK 0020
In the High Court Of Himachal Pradesh
Case No : CWP No. 838 of 2007

State of Himachal Pradesh

APPELLANT

Vs

Ishwar Singh Azad and Another

RESPONDENT

Date of Decision : 28-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) 05 SHI CK 0020

Hon'ble Judges : Sanjay Karol, J;Kuldip Singh, J

Bench : Division Bench

Advocate : R.K. Bawa, Mr. Jivesh Sharma and Inderjit Singh Narwal, for the Appellant; Dilip Sharma , Mr. Manish Sharma, Advocate and Mr. D.K. Khanna, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—In this petition, filed under Articles 226 and 227 of the Constitution of India, State of Himachal Pradesh is seeking a writ for quashing the order dated 28.2.2007, passed by the Himachal Pradesh Administrative Tribunal (hereinafter referred to as the Tribunal) in OA No. 2114 of 2004, titled as Ishwar Singh Azad versus State of H.P. and another. Briefly stated, facts are that on 25.10.1972 respondent Shri Ishwar Singh Azad joined as Inspector in the Department of Agriculture, Government of Himachal Pradesh. In the year 1981, he was sent on deputation as Manager (Pesticides) with the H.P. Agro Industries Corporation (hereinafter referred to as the Corporation). In 1983, the Corporation assigned him duties of Marketing Manager (Pesticides). In the year 1989, he was repatriated to his parent department. With regard to his conduct in the Corporation, certain disciplinary proceedings were initiated against him by his parent department. On 13.6.1997 (Annexure A-1), he was put under suspension, which order was subsequently revoked on 10.3.2000 (Annexure A-3/A). On 6.7.1998 (Annexure A-2), memorandum containing five Articles of Charge was issued to him. Charges No. 1, 2 and 5 pertained to the financial embezzlement/

financial loss of Rs. 17,97,277.41 caused to the Corporation. Charges No. 3 and 4 pertained to his unauthorized absence. On 20.7.1998, he filed response (Annexure A-3), which did not find favour with the Disciplinary Authority and as such an Enquiry Officer was appointed to enquire into the charges. On 28.3.2001, the Enquiry Officer furnished a report (Annexure A-5), holding the delinquent official not to be guilty of any of the charges. Disciplinary Authority sent the enquiry report to the Corporation and invited its comments. On 21.12.2002 (Annexure A-4), the Disciplinary Authority informed the delinquent official, expressing its disagreement with the findings of the Enquiry Officer, asking him to respond to the "reasons for disagreement", in relation to the Articles of Charge. Delinquent official responded to the same in February, 2003 (Annexure A-7). The explanation did not find favour and as such vide order dated 16.7.2004 (Annexure A-9), the Disciplinary Authority imposed major penalty of compulsory retirement from service and also ordered recovery of a sum of Rs. 4,01,515/- against the delinquent official.

2. Feeling aggrieved thereof, delinquent official filed an Original Application before the Tribunal, which stands decided, in terms of the impugned order.

3. The Tribunal quashed and set aside the order of penalty passed by the Disciplinary Authority and directed the State to grant all consequential benefits to the delinquent official. The Tribunal set aside the order, inter alia, for the reasons that the Disciplinary Authority had adopted a novel procedure of inviting comments from the Corporation; "Reasons for disagreement" supplied to the Officer were not of the Disciplinary Authority but that of the Corporation. Hence, principles of natural justice stood violated; the State adopted a vacillating stand on the question of "reasons for disagreement" with the findings of the Enquiry Officer. Firstly, it took a stand that reasons enclosed with the notice dated 21.12.2002 were in fact the reasons of the Disciplinary Authority, but when record of the disciplinary proceedings revealed such fact not to be true as the Disciplinary Authority had only conveyed the points of disagreement communicated by the Corporation, State took a stand that the "reasons for disagreement" were in fact incorporated in the order dated 23.6.2004, enclosed with order dated 16.7.2004 imposing major penalty. Since there were no reasons for disagreement of the Disciplinary Authority, as such while passing the order of penalty there was total non-application of mind. The Tribunal also observed that imposition of major penalty was shocking, to which no reasonable man, within his senses, could have come to such a conclusion.

4. Attacking the aforesaid findings, Mr. R.K. Bawa, learned Senior Advocate, assisted by M/s. Jivesh Sharma and Inderjeet Singh Narwal, Advocates, argued that there was proper application of mind by the Disciplinary Authority and "his" reasons for disagreement were duly communicated to the delinquent official. In the disciplinary proceedings, the delinquent official did not raise any issue of non-supply of reasons, as such, no prejudice was caused, particularly when he was afforded adequate opportunity of hearing/ representation. In the alternative, it is

contended that matter can be remanded back to the Disciplinary Authority for continuance of proceedings from the stage of disagreement with the findings of the Enquiry Officer for compliance with the principles of natural justice. In support of his contention, he has referred to and relied upon the following decisions:

1. Railway Board Representing The Union of India (UOI) Vs. Niranjana Singh,
2. U.P. State Agro Industrial Corpn. Ltd. Vs. Padam Chand Jain,
- 3 B.C. Chaturvedi Vs. Union of India and others,
4. State Bank of Patiala and others Vs. S.K. Sharma,
5. Board of Management of S.V.T. Educational Institution and another Vs. A. Raghupathy Bhat and others,
6. Bank of India and Another Vs. Degala Suryanarayana, and
7. High Court of Judicature at The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another,

5. While supporting the findings returned by the Tribunal, Mr. Dilip Sharma, learned Senior Advocate, assisted by Shri Manish Sharma, Advocate, has defended the order, contending that the Disciplinary Authority had issued communication dated 21.12.2002 with a predetermined mind of imposing major penalty of compulsory retirement. The findings of the Disciplinary Authority, being illegal, perverse and based on no evidence, the Tribunal rightly interfered. Alleged loss of a sum of Rs. 4 lacs (approximately) sought to be recovered from the delinquent official, was assessed purely on notional basis. Alternatively, with the retirement of the delinquent officials, no purpose would be served in remanding the matter back to the Disciplinary Authority. In support, he has referred to and relied upon the following decisions:

1. Punjab National Bank and Others Vs. Sh. Kunj Behari Misra,
2. Yoginath D. Bagde Vs. State of Maharashtra and Another, and
3. State Bank of India and Others Vs. K.P. Narayanan Kutty,
6. Law with regard to the scope of enquiry, under the provisions of Articles 226 and 227 of the Constitution of India, against an order passed by the State Administrative Tribunal is now well settled. In L. Chandra Kumar Vs. Union of India and others, Constitution Bench of the apex Court has observed that saving the power of judicial review under the Constitution of India, would ensure filtering of frivolous claims through the process of adjudication in the Tribunal and the High Court would be benefited with the reasoned decision on merits, in final determination of the matters before them.
7. Further, the High Court cannot sit as a Court of appeal over the findings recorded by a competent inferior Tribunal to re-appreciate the evidence for itself

or to correct an error of fact, however apparent it might be, unless it is a case of jurisdictional error, on the ground that evidence on which it was based was not satisfactory or sufficient. High Court cannot interfere with the findings of fact, based on evidence and substitute its own independent findings, unless it is a case of no evidence. Another factor, which would necessarily weigh is whether the statutory authority acted upon irrelevant considerations, neglecting to take account of relevant factors or that the decision was unreasonable that no authority would have come to such a conclusion. Against an order passed by the Administrative Tribunal, Court would not interfere unless it is shown that there is error of law apparent on the face of record.

8. The apex Court in *Yoginath D. Bagde (supra)* has held that if 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 to interfere in the matter. It further stood clarified that although the court cannot sit in an appeal over the findings recorded by the Disciplinary Authority or the Enquiry Officer in a departmental enquiry, it would not mean that in no circumstance can the court interfere. The power of judicial review available to a High 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.

9. The extant of power of judicial review by this court is now well settled.

10. Facts, as narrated herein earlier, not in dispute, we are of the considered view that it would be beneficial to extract some of the documents, as also pleadings, referred to and relied upon by the parties. It would only help in better appreciation of the issues involved.

11. Communication dated 21.12.2002 of the Disciplinary Authority, which actually is a show cause notice, conveying its reasons for disagreement, reads as under:

The Disciplinary Authority has minutely examined the inquiry report alongwith the comments thereupon and is of the considered opinion that the findings are not based upon sound reasoning and correct appreciation of the facts and documents brought out before the Enquiry Officer.

Therefore, the Disciplinary Authority disagrees with the Enquiry Officer on account of the reasons adduced above. Holding the delinquent official (Sh. I.S. Azad) guilty of the charges, the Disciplinary Authority propose to impose the following penalties.

(i) Compulsory retirement from service.

(ii) Effecting recoveries of Rs. 17,97,277.41/- loss caused to Government.

However, before the final order is issued, Sh. I.S. Azad is hereby given an opportunity to make representation if any in this regard. In case, no representation is received within 15 days of receipt of this communication, it will be presumed that the Officer has nothing more to say and the orders will be issued accordingly.

The receipt of this memorandum should be acknowledged by Sh. I.S. Azad.

Encl: A copy of Inquiry Report.

2. Reasons for disagreement of articles of charge.

(Emphasis supplied)

12. "Reasons" enclosed were eleven in number. Now significantly, there is nothing on record to show that these "reasons for disagreement" were in fact the "reasons" of the Disciplinary Authority. Record, as produced before us, reveals that upon receipt of the Enquiry Report, Disciplinary Authority simply forwarded the same to the Corporation, which furnished its comments and the reasons so conveyed are in fact the reasons of the Corporation. Also, prior to communication of the same, at no stage, Disciplinary Authority applied its mind to such reasons.

13. On the file, the only note of disagreement of the Disciplinary Authority, dated 24.11.2013 reads as under:

I have minutely examined the inquiry report alongwith the comments thereupon and am of this considered opinion that the findings are not based upon sound reasoning and correct appreciation of the facts and documents brought out before the E.O.

So, I disagree with the E.O., and on account of reasons adduced above, hold the delinquent official guilty of the charges. Before a major penalty of compulsory retirement from service alongwith recoveries as mentioned here-to-fore is imposed, a notice as per the rules be served upon him.

14. Now significantly, this note was never supplied to the delinquent official. Disciplinary Authority also did not approve the "reasons for disagreement" so furnished by the Corporation, what to talk of the same being his "tentative" "reasons for disagreement".

15. Thus, from the aforesaid note it is evident that the Disciplinary Authority had already formed an opinion about the "guilt" of the delinquent official and "decided" to impose major penalty of compulsory retirement.

16. At this juncture, it be also observed that prior to imposition of major penalty, the Disciplinary Authority itself had referred the matter to the Himachal Pradesh Public Service Commission as also the Department of Law, State of Himachal Pradesh. Significantly, Disciplinary Authority was cautioned about total non-compliance of the provisions of Rule 15(2) of the CCS (CCA) Rules, 1965, for want of supply of specific "reasons for disagreement" with respect to each of the

Articles of Charge. Despite the same, Disciplinary Authority proceeded with the enquiry and in para-3 of the reply filed before the Tribunal, State justified its action by stating that:

3. ... A copy of the enquiry report along with orders of the Disciplinary Authority was sent to the applicant. The applicant denied all the charges. After examining the reply of the applicant the disciplinary authority after taking a conscious decision has proposed the imposition of penalty, the matter was further processed and sent to the HP Public Service Commission for their approval and the Public Service Commission intimated to this Department that the provision under Rule 15(2) of the CCS(CCA) Rules, 1965 was not observed by the Disciplinary Authority by not giving the specific reasons for the disagreement in respect of each articles of charge. Hence, the proposal was not approved and the same was returned back by the Commission. The proposal was not approved by the Commission merely because the reasons for disagreement had not been recorded by the Disciplinary Authority. The non approval was in-fact not an illegality but an irregularity which had crept in the order. The provision of Rule 15 CCS (CCA) had been complied in letter and spirit before the issuance of the order of punishment. In view of the observations made by the Commission, the matter was taken up with the Law Department to seek their advice whether taking a fresh view in this case is legally tenable and sound, particularly since a new incumbent was in place as Secretary (Agriculture) i.e. the Disciplinary Authority in this instant case. The Law department advised that as per the Law laid down by the Hon"ble Supreme Court in AIR 1997 Sc 1898, it is settled general principle that where illegality is found vitiating the action, the authority who has conducted the proceedings can conduct the proceedings afresh from the stage at which illegality is found vitiating the action. On the advice of the Law Department the respondent No. 1 after following the procedure laid down under Rule 15(2) of CCS(CCA) Rules, 1965 and independent application of mind has recorded reasons for disagreement with the inquiry report. Since, earlier the reasons had not been recorded the Disciplinary Authority after recording reasons passed an order dated 23-6-2004.

(Emphasis supplied)

17. Before the Tribunal, the Public Service Commission took a specific stand that it had turned down the proposal of the Disciplinary Authority for the reason that no reasons, with regard to disagreement, were recorded by the Disciplinary Authority.

18. Noticeably, despite the advice of the Commission and officials of the Law Department the Disciplinary Authority continued with the illegality and justified its actions before the Tribunal by stating that the reasons of disagreement were in fact the order dated 23.6.2004.

19. Even the officials of the Department had observed on record that no "reasons for disagreement" were supplied to the delinquent official. In fact, it was

suggested that needful be done and disciplinary proceedings be commenced from that stage.

20. It was in this backdrop, the Tribunal in Paras 32 and 33 of the impugned order has observed that:

32. When the State was specifically asked to produce the reasons for disagreement with the inquiry report, the Ld. Counsel for the State referred to order dated 23.6.2004 and argued that in the said order the reasons for disagreement with the inquiry report were recorded. However, a perusal of order dated 23.6.2004 shows that the same is the final order holding the applicant guilty which was served on applicant alongwith order dated 16.7.2004, Annexure A-9. It has been stated in order dated 23.6.2004 that-

I am therefore, fully satisfied that there has no deliberate and palpable illegality in the process followed by the AD. However, final speaking orders of the disciplinary authority still remain to be passed. Accordingly, my findings article of charge wise, based on inquiry report and the reply submitted by the delinquent officer only are summarised below.

33. Thus it is clear that order dated 23.6.2004 is not the alleged tentative reasons for disagreement with the inquiry report, but the order passed by the disciplinary authority "based on the inquiry report and reply submitted by the delinquent officer". If order dated 23.6.2004 contained the tentative reasons of disagreement, the same would have been supplied to the applicant and his comments would have been invited on the same. But to the contrary this order says that the same is passed "based on the inquiry report and the reply submitted by the delinquent officer." When no reasons of disagreement were conveyed to the applicant, where is the question of considering his reply?

(Emphasis supplied)

21. The observations were not specifically assailed during the course of hearing.

22. We shall now consider the legal position and the bearing it shall have on the factual matrix of the case.

23. In Kunj Behari Misra (supra), the apex Court held that whenever 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.

24. It is pursuant to said decision that Rule 15(2) of the CCS (CCA) Rules, 1965 was amended, vide notification dated 2.9.2000.

25. In S.B.I. and Others Vs. Arvind K. Shukla, the apex Court has clarified that if Disciplinary Authority takes a view which is other than that of the Enquiry Officer, it has to record "tentative reasons" and supply the same to the delinquent official.

26. Here it would be appropriate to refer to the observations made by the apex Court in *Yoginath D. Bagde (supra)*, that if Disciplinary Authority takes its final decision, without giving opportunity of hearing to the delinquent official at the stage at which it proposed to differ with the findings of Enquiry Officer, the Court would be well within its right to interfere and set aside such illegality.

27. In *Canara Bank and others versus Debasis Das and others*, (2003) 4 SCC 557, elaborating the term "natural justice", the apex Court has held that the expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It further held that application of rule of nature justice is contextual in a given case and depends on the facts and circumstances of the case and the frame-work of the statute under which the enquiry is held.

28. In the very same report, the Court further held that:

Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "*nemo judex in causa sua*" or "*nemo debet esse judex in propria causa sua*", that is, "no man shall be a judge in his own cause". The second rule is "*audi alteram partem*", that is, "hear the other side". A corollary has been deduced from the above two rules and particularly the *audi alteram partem* rule, namely "*qui aliquid statuerit parte inaudita alteram actquam licet dixerit, haud acquum facerit*" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done".

29. In *S.K. Sharma (supra)*, the apex Court summarized the principles of natural justice and resultant prejudice caused to the parties and also consequences thereof, in the following terms:

(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 provisions 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" and "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 therefrom, 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 enquiry officer does not give that opportunity inspite 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) hereinbelow 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 standpoint 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. 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]. (b) But in the latter case, the effect of violation [of a facet of the rule of audi alteram partem] has to be examined from the standpoint 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 over-riding 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 of 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.

(Emphasis supplied)

30. Aforesaid principles, in our considered view, squarely applies in the instant case. Novel procedure of obtaining an extraneous material, secretly relying upon the same, while arriving at its conclusion of disagreement with the findings of the Enquiry Officer, of which delinquent official was not even aware of, itself has caused severe prejudice to him. In the given facts, it is a case of not affording opportunity, no notice or no hearing.

31. It be only observed that while passing order dated 23.6.2004, Disciplinary Authority took into account the material supplied by the Corporation, which was never supplied to the delinquent official. The Disciplinary Authority by adopting this novel procedure committed grave illegality, causing severe prejudice to the delinquent official.

32. This order was passed much after issuance of show cause notice, and without

affording opportunity of hearing/representation to the delinquent official. In fact, these are reasons for imposition of penalty. It is not the case of the State that it had adopted the procedure of post decisional hearing. Compliance of principles of natural justice stood violated. The officer was not even aware of the material procured by the Disciplinary Authority from the Corporation. Hence, the contention that the officer is precluded from raising such pleas, more so, for the fact that he did not take any such ground in his response before the Disciplinary Authority needs to be rejected. Noticeably, "reasons for disagreement" were communicated to the delinquent official vide show cause notice dated 21.12.2002 to which he responded in February, 2003 and thereafter on 25.6.2003 he again sent another representation (Annexure A-8). The Disciplinary Authority sat over the matter for more than one and half years and passed the order of penalty only in July, 2004. There is no justification on record explaining the inordinate delay in concluding the disciplinary proceedings within a time bound period.

33. Thus, we are in total agreement with the findings returned by the Tribunal that the so-called reasons for disagreement enclosed with communication dated 21.12.2002 cannot be the "tentative reasons" of the Disciplinary Authority. They are actually the "comments" of the Corporation. The Disciplinary Authority, while "assigning its reasons", in terms of order dated 23.6.2004 has taken into account extraneous material which was never supplied to the delinquent official. Under these circumstances, it also cannot be said that principles of natural justice stood complied with or that there was proper application of mind by the Disciplinary Authority in conduct of disciplinary proceedings or passing of order of penalty.

34. The material referred to and relied upon by the Disciplinary Authority while passing the order dated 23.6.2004 or enclosing "reasons for disagreement" vide notice dated 21.12.2002 are also not borne out from the record of the disciplinary proceedings.

35. As such, the Tribunal rightly interfered as principles of natural justice stood violated, causing severe prejudice to the delinquent official. In our considered view, actions of the authorities are arbitrary and capricious, and order passed is perverse as no reasonable person could act in the manner in which the Disciplinary Authority proceeded. It cannot be said that the delinquent official was afforded adequate opportunity of rebutting the material relied against him. The findings of the Disciplinary Authority are perverse.

36. A perverse finding is one which is based on no evidence or that no reasonable person can arrive at. The General Manager (P) Punjab and Sind Bank and Others Vs. Daya Singh,

37. It be reiterated that on the file, the Disciplinary Authority did not record its own reasons, even tentative in nature, while disagreeing with the findings of the Enquiry Officer, in terms of the enquiry report. Record reveals that the enquiry report was simply forwarded to the Corporation for comments, which were

received and supplied to the delinquent official.

38. Thus, the illegality caused by the Disciplinary Authority and non-compliance of principles of natural justice are in line with the decision rendered by the apex Court in Kunj Behari Mishra (*supra*).

39. We affirm, with approval, the findings of the Tribunal to the effect that the disciplinary authority acted in a mechanical way and that the decision of disciplinary authority being contrary to the findings of inquiry officer and the evidence on record vitiated the whole inquiry. The disciplinary authority also did not apply its own mind to the material and relied upon the comments of Corporation, which were not part of the inquiry and also not supplied to the delinquent official with a view to afford him an opportunity to have his say. There was no procedure in existence to call for such comments behind the back of the delinquent official and then base the same for forming its opinion by the disciplinary authority. Corporation speaks through record. There is nothing on record to show that the comments of the Corporation emerge from the material adduced in the enquiry.

40. Niranjan Singh (*supra*), simply lays down the proposition that the enquiry report is not binding upon the Disciplinary Authority and if the conclusion of the Disciplinary Authority is supported by evidence, "one which could have been reached by a reasonable man", the same would not be interfered with. The apex Court also held that even if one of the charges stands proved and is sustainable then the Court cannot interfere only for the reason that the remaining charges stood disapproved. The decision, in our considered view, is inapplicable to the given facts and circumstances. (Also: Degala Suryanarayana (*supra*) and Shashikant S. Patil (*supra*)).

41. Padam Chand Jain (*supra*) only deals with the non-supply of the enquiry report, which is not the case in hand.

42. B.C. Chaturvedi (*supra*) simply lays down the proposition that power of judicial review is meant to ensure that the individual receives fair treatment and not that the conclusions to which the authority reaches are necessarily correct in the eyes of the Court. In judicial review, the Court/ Tribunal is to determine whether the enquiry is in consonance with the Rules, including the principles of natural justice. The findings of the Enquiry Officer/Disciplinary Authority have to be based on some evidence. Neither the technical rules of evidence nor the proof of fact or evidence as defined therein would apply to disciplinary proceedings. Unlike the appellate authority, which has jurisdiction of co-extensive power to re-appreciate the evidence and the nature of the punishment, the Court/Tribunal does not have such power, but however, if it finds that the authority held the proceedings in a manner inconsistent with principles of natural justice, prescribing the mode of natural justice or that the conclusion is based on no evidence, the Court can interfere.

43. Here we may add that the decision of the Tribunal is actually in line with

these observations.

44. A. Raghupathy Bhat (supra), the Court has held that where termination is set aside on account of illegality committed during the course of disciplinary proceedings, the same can be considered afresh from the stage when such illegality was found to have been committed.

45. The decision in K.P. Narayanan Kutty (supra) is to the effect that non-compliance of principles of natural justice would be sufficient to hold the action illegal, regardless of the fact as to whether any prejudice is caused or not. The judgment was rendered in the given facts and the contention that prejudice is not to be shown, as is urged by the learned counsel for the delinquent official, is unacceptable, more so in view of the subsequent decisions of the apex Court, as noticed herein earlier.

46. At this juncture, without extensively referring the findings of the Enquiry Officer as also the Tribunal, we may only notice that the Tribunal itself observed, which fact is also evident from the record, that for the period during which the delinquent official was posted as MMP (Pesticides Division) during the years 1986-1989, he generated profits unlike his predecessors or successors. Also, Corporation was having a Pesticides manufacturing Plant at Parwanoo, which was running in losses. In the year 1988-89, the delinquent official was also given additional charge of the said unit and within the first year of his assignment he turned around the tables and generated profits.

47. As observed earlier, the Enquiry Officer, based on the material, which was placed before him, absolved the delinquent official with respect to all the charges. Significantly, the Disciplinary Authority itself, while passing order dated 23.6.2004, observed that except for the stock of secateurs (pruning scissors) valuing Rs. 16,753.90, which was found to be missing from the stocks and a sum of Rs. 41,190.55, which was paid as interest by the Corporation for the overdraft facility availed by the Corporation, the loss was only notional.

48. The delinquent official retired on 30.11.2006. Non-availability of secateurs in the stocks is explainable. The same were to be supplied, free of cost, as a matter of policy to various growers as also officials. Mr. Wagdi, who was the Managing Director of the Corporation, received some of them.

49. Even though not required, we have minutely looked into findings of the Enquiry Officer as also the order imposing penalty. We have done this only to satisfy our conscience. As against the anticipated loss of Rs. 17,97,277.41, Disciplinary Authority itself found that the actual loss was of Rs. 58,000/- (Approximately) and remaining loss of Rs. 3.40 lacs was only notional. One cannot also lose sight of the fact that the disciplinary proceedings were initiated against the delinquent official almost after a decade of his repatriation to his parent department. Enquiry pertained to the period 1984-1989 and Disciplinary proceedings were initiated against him only in the year 1997.

50. It be also noticed that with regard to Article of Charge No. 1, nine incidents of acts of omission and commission were alleged against the delinquent official. Significantly, with regard to three charges, the Disciplinary Authority itself came to the conclusion that no case was made out. The Disciplinary Authority itself observed that it was systematic mismanagement which was the reason for non-maintenance of proper accounts. A perusal of the order would only reveal that it is not a case where the delinquent official mis-appropriated Government funds. It stands observed that all payments from the vendors stood received and accounts settled. Even with regard to Point No. 1 of Article of Charge No. 3, the report is to the aforesaid effect.

51. As such, at this distance in time, it would neither be in the interest of parties nor justice to remand the matter back to the Disciplinary Authority for conclusion of proceedings, after complying with the principles of natural justice. As such, for all the aforesaid observations, we do not see any reason to interfere with the impugned order. It cannot be said that there is either any illegality or perversity in the same. Hence, the writ petition is dismissed.

Pending application (s), if any, also stand disposed of.