

(2000) 06 CAL CK 0040

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction F.M.A. No. 84 of 1993

State of West Bengal and Others

APPELLANT

Vs

Nripendra Nath Biswas and Others

RESPONDENT

Date of Decision : 23-06-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226, 49
West Bengal Government Servants Conduct Rules, 1959 — Rule 3, 4
West Bengal Services (Classification, Control and Appeal) Rules, 1971 — Rule 10(5)

Citation : (2001) 1 CALLT 17 : (2000) 2 CHN 257 : (2000) 2 ILR (Cal) 260 :
(2001) 1 LLJ 260

Hon'ble Judges : Ashok Kumar Mathur, C.J.;Ranjan Kumar Mazumder, J

Bench : Division Bench

Advocate : Mr. Milan Bhattacharjee and Mr. Keshab Bhattacharjee, for the Appellant; Mr. Ranjan Bachwat, Mr. Samrat Sen, Mr. Sakya Sen and Mr. P.C. Pal Chowdhury, for the Respondent

Final Decision : Allowed

Judgement

A.K. Mathur, C.J.—This is an appeal directed against the order dated 27th July, 1968 passed by the learned single Judge whereby he has allowed the writ petition and quashed the order of the petitioner's dismissal and directed his reinstatement with full back wages. Aggrieved against this order the State of West Bengal has preferred the the present appeal.

2. The brief facts which are necessary for disposal of this appeal are that the petitioner joined the service of the Co-operative Directorate in the year 1963. In the year 1970 the petitioner was deputed as Executive Officer of the Hill Marketing Co-operative Agricultural Society Limited. The petitioner was placed under suspension on 11th May, 1980 and thereafter a charge sheet was served on the petitioner. The Commission of Departmental Inquiry (in the rank of a District Judge) was appointed as Inquiry Officer to inquire into the charges against the petitioner. The Joint Registrar of Co-operative Societies, Administration was appointed as Presenting Officer. An application was made by

the petitioner for assistance of a lawyer. That prayer was not accepted. The evidence was recorded on various dates. About 17 witnesses were examined on behalf of the petitioner and the petitioner submitted a written statement of defence denying these charges. After the inquiry, the petitioner was found guilty of the charges. The Inquiry Officer submitted his report on 15th July, 1977 and the Registrar of the Co-operative Society accepted the inquiry report and issued a second show cause notice on 29th September, 1980. The Registrar of Co-operative Society passed an order of removal from service on 12th December, 1980. The petitioner filed an appeal against the said order of removal dated 12th December, 1980. The appellate authority set aside the order of the Disciplinary Authority holding that the second show cause notice was not valid and revoked the removal order but directed the petitioner to continue to remain under suspension. The Disciplinary Authority was further directed to pass a fresh order after issuing a second show cause notice. Thereafter the second show cause notice was issued and after receiving reply from the petitioner finally on 2nd July, 1984 the order of removal from service was passed. Hence the petitioner filed the present writ petition challenging the order of dismissal.

3. While petitioner was working as an Executive officer of the Hill Marketing Co-operative Agricultural Society Limited in March, 1974 some anonymous mass complaints were received by the Vigilance Commission of certain omission and commission committed by the petitioner alleging therein that the petitioner has utilised the fund of the society for his personal use. An inquiry was conducted by the Vigilance Commission and they came to a prima facie conclusion that the matter requires to be inquired into. On the basis of the so called preliminary inquiry the petitioner was served with a charge sheet by the Disciplinary Authority and a departmental inquiry was initiated against him. The charges were also referred to by the Vigilance Commission for necessary advise. Thereafter on 10th February, 1976 the Registrar, Co-operative Society (Disciplinary Authority) served a charge sheet and Mr. D.K. Mitra, Deputy Superintendent of Vigilance Commission was appointed as Presenting Officer. Sri R. Banerjee was appointed as the Commissioner of Departmental Inquiry as Presiding Officer. Thereafter the Commissioner of Departmental Inquiry suggested that Sri J.P. Roy from Co-operative Department should be appointed as Presenting Officer, in place of D.K. Mitra, a police officer that request was acceded and Mr. Roy was appointed as Presenting Officer. An inquiry was conducted by the Commissioner of Departmental Inquiry which ultimately found the charges proved against the petitioner. The following articles of charges were framed against the petitioner, which reads as under :

"Article of Charge I : That the said Sri Nripendra Nath Biswas while functioning as Executive Officer, Hill Agricultural Co-operative Marketing Society Ltd. during the period from 1970 to 15.5.71 realised a sum of Rs. 500/- (Rupees five hundred) only on 29.6.70 from the Gangarampur Agricultural Co-operative Marketing Society Ltd. on behalf of the Hill Agricultural Co-operative Marketing Society Ltd. against the Money Receipt No. 106 dated 29.6.70 of the Hill

Agricultural Co-operative Society Ltd. nor was it entered in the cash book of the society and thus it prima facie appears that Sri Biswas misappropriated the said amount. Subsequently he deposited a sum of Rs. 500/- as on 16.2.74 with the Balurghat Central Co-operative Bank Ltd. by a challan in the name of Hill Agricultural Co-operative Marketing Society Ltd. Such conduct of Sri Biswas is improper and unbecoming of a public servant and also derogatory to the prestige of the Government and as such was violative of Rules 3 and 4 of the West Bengal Servants' Conduct Rules, 1959.

Article of Charge II : That the said Sri Nripendra Nath Biswas while functioning as above had on 22.6.70 realised a sum of Rs. 550/- (Rupees five hundred and fifty) only on behalf of the Hill Agricultural Co-operative Marketing Society Ltd. from Dharampur Samabaya Krishi Unnayan Samity Ltd. though the claim of Hill Agricultural Co-operative Marketing Society Ltd. was for Rs. 497.80 and thus Rs. 52.20 was realised by Sri Biswas in excess of the claim of the said Hill Agricultural Society. Moreover, neither the said amount of Rs. 550/- was deposited by Sri Biswas to the Society nor it was entered in the cash book. Thus it prima facie appears that Sri Biswas misappropriated the amount of Rs. 550/-. Such conduct of Sri Biswas is improper and unbecoming of a public servant and also derogatory to the prestige of the Government and as such was violative of Rules 3 and 4 of the West Bengal Government Servants' Conduct Rules, 1959.

Article of Charge III: That the said Nripendra Nath Biswas after making over the charge of the Hill Agricultural Co-operative Marketing Society Ltd. to his successor on 15.5.71, approached Sri Kartick Chandra Adhikary, the Branch Manager of Kamarpara Depot, a Branch office under the said Hill Co-operative Society, on 18.5.71 and induced him to accept a sum of Rs. 450/- in cash, through a cash/credit memo, from Sri Biswas and also induced him to show a deposit of the said amount in the name of Dharampur Samabay Krishi Unnayan Samity Ltd. in the cash book against a back date, being dated 16.5.71. Sri Biswas is doing the same, induced the said Branch Manager to make necessary corrections and entries to the above effect in the cash book by striking out the closing balance already drawn on 16.5.71 to accommodate the said deposit. From the above facts, it prima facie appears that Sri Biswas got the said cash book illegally adjusted to his advantage by that Branch Manager exercising under influence upon him. Sri Biswas, thus, acted in a manner which is unbecoming and improper of a public servant and also derogatory to the prestige of the Government and as such was violative of Rules 3 and 4 of the West Bengal Servants' Conduct Rules, 1959.

Article of Charge IV : That the said Niripendra Nath Biswas, while making over charge at the Hill Agricultural Co-operative Marketing Society Ltd. handed over to his successor along with other articles 49 quintal, 77 kg. of the rice which transpired to have been purchased without authority and without issuing any receipt to the sellers. After making over the charge Sri Biswas approached Sri Braja Rakhal Majumder, the then Secretary of the Hill Agricultural Co-operative

Marketing Society Ltd. and Sri Basanta Kumar Sarkar, the then Manager of the Hill Agricultural Co-operative Marketing Society Ltd. to regularise the said unauthorised purchase of rice by showing the stock of the rice under DPA/cs. of the FCI and by taking undue advantage of his previous official position as the Executive Officer of the said Society, threatened them to the effect that serious consequences would follow if his instructions were not complied with. Under the aforesaid threat and pressure Sri Basanta Kumar Sarkar, the then Manager of the Hill Agricultural Co-operative Marketing Society Ltd. transferred the said rice stock from the agricultural commodities A/c to the DP A/c on 19.5.71 with the permission of the said Secretary of the Society who gave such permission under the threat and pressure as mentioned above and for doing the same false, and fictitious purchase receipts were prepared as per direction of the said Sri Biswas. Sri Biswas thus acted in a manner which was improper and unbecoming of a public servant and also derogatory to the prestige of the Government and as such was violative of Rules 3 and 4 of the West Bengal Servants' Conduct Rules, 1959.

Article of Charge V : That the said Sri Nripendra Nath Biswas while functioning as the Executive Officer. Hill Agricultural Co-operative Marketing Society Ltd. during the period from 1970 to 15.5.71 did not maintain proper and accurate records and accounts of the working of the society and did not sign the cash book regularly sometimes for months together, thus he violated the provisions of Clause (IV) of Rule No. 48 of the Bengal Co-operative Societies Rules, 1942."

4. All the charges were found to be proved in the Departmental inquiry and the Commissioner of Inquiry dealt with all the charges exhaustively in his detailed report and ultimately he came to the conclusion that all the charges are proved. Accordingly the report of the Inquiry Officer was forwarded to the Disciplinary Authority for taking action. The Disciplinary authority before taking any action sought advise of the Vigilance Commission also and served second show cause notice to the delinquent. After going through the report of the inquiry Officer and reply filed by the petitioner found the petitioner guilty and ordered his removal from service by the order dated 12th December, 1980. Aggrieved against that order the petitioner filed an appeal. The appellate authority set aside the order and remanded the matter to the Disciplinary authority. The Disciplinary Authority gave second show cause notice and copy of the report of inquiry authority. The petitioner filed the reply to that second show cause notice and thereafter the Disciplinary Authority after perusing the same passed the order of removal dated 2nd July, 1984. Aggrieved against the said order the petitioner filed the present writ petition. The writ petition was opposed by the State and all the materials was placed before the learned single Judge including the original file. The learned single Judge after digging into various correspondences pertaining to this incumbent found that the inquiry stands vitiated on account of breach of principles of natural justice. One of the reason given by the learned single Judge was that the petitioner was not given the facility of a lawyer, therefore the inquiry stands vitiated. It was observed by the learned single Judge that the

petitioner joined the service in 1968 and he was placed under suspension in 1974, therefore he had a very little period of service and as such the petitioner should have been allowed to be represented by a lawyer and since this was not done, therefore it was a breach of principles of natural justice. It was held by the learned single Judge that the inquiry was initiated in 1974 for charges for the period 1970-71. This delay in initiating the proceeding and completing the inquiry is also in breach of principles of natural justice. It was also held by the learned single Judge that advise of the Vigilance Commission was sought therefore the whole inquiry stands vitiated on that account. It was also held by the learned single Judge that in reply to the second show cause notice the disciplinary authority did not apply its mind to the fact and did not record any finding for approving the finding of the inquiry authority. He also found that the punishment is dis-proportionate to the offence charged as the petitioner sought to have defalcated a party sum of Rs. 500/- and he observed that a minor punishment could have served the ends of justice. Therefore on this basis the learned Judge felt persuaded to set aside the order of removal of the petitioner and he quashed all the proceeding of departmental inquiry.

5. We have heard the learned counsel for the parties and perused the records. The breach of principles of natural justice depends upon case to case and no hard and fast rule can be laid down. The learned single Judge found a breach of principles of natural justice primarily on the ground that the petitioner was not provided with the assistance of a lawyer, that the Vigilance Commission was consulted in the matter and the Disciplinary Authority acted under the dictates of the vigilance Commission and therefore the decision to punish the petitioner is at the instance of the Vigilance Commission, that the Disciplinary Authority has not applied its mind therefore the whole punishment passed by the Disciplinary Authority stands vitiated because there is no independent application of mind by the Disciplinary Authority. Lastly, the learned single Judge also found that the delinquency in defalcation of Rs. 500/- was too paltry therefore minor punishment would have met the ends of justice.

6. It may be mentioned at the outset that in a disciplinary proceeding providing the assistance of the lawyer depends upon case to case. It is not necessary that in all cases the facility of a lawyer should be provided to the incumbent. The petitioner did make a request for appointment of lawyer but that request was rejected by the inquiry authority for a good reason that the department has not engaged any lawyer and even they had removed the police officer and appointed a person from the Co-operative Department. Therefore by not providing assistance of a lawyer to the petitioner it cannot be said that the whole conduct of the inquiry stands vitiated. According to Rule 10(5) (ii) of the West Bengal Service (Classification, Control and Appeal) Rules, 1971 which reads as under :

"The Government servant against whom department proceedings have been instituted may take the assistance of any other Government servant to present the case on his behalf, but may not engage a legal practitioner for the purpose

unless the Presenting Officer appointed by the disciplinary is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, permits to do so."

7. According to this rule in departmental proceeding the assistance of a Government servant on behalf of the delinquent is permissible and engagement of a lawyer has been strictly prohibited unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, permits to do so. In the present case the Deputy Superintendent was also appointed as Presenting Officer but he was withdrawn and thereafter an officer from the Co-operative Department was appointed as presenting Officer. The petitioner has examined no less than 17 witnesses and given his written statement of defence in detail which has been exhaustively dealt with by the inquiry authority. Therefore to say that the petitioner was not permitted to have the assistance of the lawyer which resulted in breach of principles of natural justice is absolutely wrong. The matter was also not that complicated involving legal intricacy in the matter. The petitioner was appointed in 1968 and soon thereafter he started indulging in activities which are not becoming of the Government servant and the same was detected and therefore the preliminary inquiry was held. He was served with a charge sheet. He effectively represented the matter, examined a large number of witnesses and given his statement of defence and he also cross examined the department witnesses at length. Therefore, in the present circumstances of the case we are satisfied that there is no breach of the principles of natural justice on account of not providing the petitioner the service of a lawyer. However, the learned counsel for the petitioner/respondent has invited our attention to various cases namely, C.L. Subramaniam Vs. Collector of Customs, Cochin, , J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others, , Board of Trustees, Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, , and Dadadhar Rambhadrani v. Food Corporation of India : 1989 (2) CLJ 86. In the case of G.L. Subramaniam v. Collector of Customs (supra) the Government appointed a trained prosecutor to present its case against the Government servant and refused to permit the Government servant to engage a legal practitioner, therefore it was found that since the petitioner was not provided the assistance of a lawyer because the presenting officer happens to be a trained prosecutor this vitiated the whole inquiry proceeding. It is true that once a trained prosecutor or a lawyer is being appointed as presenting officer and the delinquent is not given equal facility of a lawyer then it certainly causes prejudice to the other side and therefore in such a situation it can be said to be in breach of principles of natural justice but that is not the case here, as pointed out above in the present case the presenting officer was an officer of the Co-operative Department and therefore it cannot be said that he was a trained prosecutor or a lawyer appearing on behalf of the department and that has caused a prejudice during the inquiry. In the present case we are of the opinion that by not providing assistance of lawyer to the petitioner has not caused any prejudice to

the petitioner. In this connection reference may also be made to *J.K. Agarwal v. Haryana Seeds Development Corporation* (supra). In that case their Lordships observed that the presenting officer was a person with legal attainments and experience and by not providing the facility of lawyer to the delinquent has resulted in miscarriage of justice. But in the present case as already mentioned above the presiding officer was not a man of legal attainment, he was also an officer from the Government, therefore the balance was not tilted in favour of the department so as to cause any prejudice to the petitioner. No useful purpose would be further served to refer to the decisions cited by the learned counsel, suffice it to say it depends upon each case. If the presenting officer is a person legally trained and if the same facility of a legally trained officer is not provided to the defence then this may cause prejudice but that is not the case here. Factually, as already mentioned above the presenting officer was a person from the Co-operative Department and not a legally trained person. Therefore, the view taken by the learned single Judge does not appear to be justified.

8. The learned single Judge has also further tried to make much out of the consultation of the department to the Vigilance Commission and has drawn an inference on the basis of the correspondences" which transpired between the department and the Vigilance Commission to show that the disciplinary authority was acting at the instance of the Vigilance Commission. The inference drawn by the learned single judge is totally erroneous. The Vigilance Commission being the department which was entrusted with the job of keeping corruption in check and the reports were received by the Vigilance Commission about the petitioner and therefore the matter was initiated from the Vigilance Commission and therefore the Vigilance Commission was time to time informed about the whole progress of the case that should not be treated to mean that the disciplinary authority was working at the dictates of the Vigilance Commission. We have also gone through the correspondences and the order passed by the disciplinary authority. The disciplinary authority has categorically recorded that it has gone through the report of the inquiry officer and after due application of mind accepted the report of the Commissioner of Departmental Inquiry and found the petitioner guilty of all charges therefore the disciplinary authority was acting on the basis of the report which has been submitted by the Commissioner of Departmental Inquiry and passed the order of removal. It is far from correct to read in the correspondences transpired between the Vigilance Commission and the Co-operative Department to mean that the disciplinary authority was acting at the behest of the Vigilance Commission. There was so many things which transpires between one department and another department and sometimes advise is also sought from the law department as the disciplinary authority is not supposed to be so well trained in such departmental inquiry. Therefore seeking certain advise on the matter should not be treated to mean that the disciplinary authority has delegated its discretion in favour of the Vigilance Commission and acted on their advise alone. We have gone through the report of the inquiry officer and we are satisfied that the charges have been rightly found to be proved by the

Commissioner of Departmental Inquiries and there was no scope to take any different view of the matter. The Commissioner of Departmental Inquiries has exhaustively dealt with the charges and has taken into consideration the detailed evidence led by the department as well as by the delinquent, and has also considered the written submission made by the delinquent after taking into consideration all the material, the Commissioner of Departmental Inquiries has found the petitioner guilty and finding of fact does not stand vitiated by any other reason. Once the incumbent has been found guilty in the departmental inquiry and the petitioner has not been able to challenge the finding given therein, the same was accepted by the disciplinary authority then the result follows in terms of punishment. It is a different matter that what punishment should be imposed but just because certain advice has been sought from the Vigilance Commission that should not be construed to mean that the Disciplinary Authority has acted or subjugated its discretion in favour of the Vigilance Commission. The practice of calling Government file and trying to fish out some material so as to find fault with the inquiry proceeding was not warranted in the present case. The learned counsel for the respondent has submitted that the whole action has been taken at the instance of the Vigilance Commission and such action on the part of the Disciplinary Authority vitiates the punishment. In that connection the learned counsel has invited our attention to case of State Bank of India and others Vs. D.C. Aggarwal and another, . In this case the inquiry officer found the delinquent not guilty and exonerated. The matter was sent to the Central Vigilance Commission and the Central Vigilance Commission disagreed with the inquiry report and recorded its finding of guilty and recommended imposition of major penalty for removal. Copy of the recommendation was not given to the delinquent and a privilege was sought and the disciplinary authority punished the petitioner. Therefore their Lordship held that by not sending the reasons for disagreement recorded by the Vigilance Commission against the finding of exoneration recorded by the inquiry officer has resulted in breach of principle of natural justice. This case is wholly distinguishable on facts as it appears that the inquiry officer has exonerated the incumbent but the Central Vigilance Commission has found the incumbent guilty but no reason were communicated to the petitioner. Therefore the petitioner had no opportunity to meet this diverse finding recorded by the Central Vigilance Commission and this has caused prejudice to the petitioner. Here the inquiry officer has already found the petitioner guilty, therefore there was no disagreement by any authority. As such this case is of no assistance to the petitioner. Our attention was also invited to the case of Mohd. Quaramuddin (Dead) by Lrs. Vs. State of A.P., . In this case on merit the Tribunal found that the report of the Vigilance Commission formed a part of the record of the inquiry material which the disciplinary authority had taken into consideration and the same was not supplied to the incumbent. Therefore the whole inquiry proceeding stands vitiated but that is not the case here. No report of the Vigilance Commission was sought, only paper were sent to the Vigilance Commission and it was returned back. It is not the case that the Vigilance Commission has

separately recorded a finding on the inquiry report. The inquiry record only contained the report of the inquiry officer and the statement of witnesses and exhibits during the inquiry. Simply because that papers were also sent to Vigilance Commission that does not vitiate the whole inquiry. All the correspondences which has been reproduced also does not show any adverse report of the Vigilance Commission was used against the delinquent. Only it says that the Vigilance Commission also advised to take serious action into the matter, that does not mean that there is a separate report of the Vigilance Commission and copy thereof has not been supplied to the incumbent. Thus this case also does not help the petitioner in any manner. Our attention was also invited to the decision of Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another, . In this case the punishment of compulsory retirement was found to be initiated on account of non application of mind by the disciplinary authority because the disciplinary authority mechanically accepted the Central Vigilance Commission's recommendation without considering whether punishment was commensurate with the gravity of the misconduct or not. In the present case the petitioner has been found guilty of retaining money which has been recovered and it was not deposit in the Society. It cannot be said that the petitioner was not guilty of serious misconduct. Therefore, this case also is of no assistance to the petitioner. As a result of the above discussion we are of the opinion that simply because the Vigilance Commission has been consulted there was no reason to hold that the whole inquiry stands vitiated. After going through the records we are satisfied that the disciplinary authority has rightly come to the conclusion on the basis of the report of the inquiry officer that the petitioner is guilty of serious misconduct and accordingly imposed the punishment. There is no reason to draw an interference that the disciplinary authority has subjected or mortgaged its discretion in favour of the Vigilance Commission or that it has acted at the dictates of the Commission.

9. It is also submitted by the learned counsel for the petitioner/ respondent that the statement of witnesses were not furnished. No such grievance appears to have been made before the learned single Judge that the statement of some of the witnesses has not been furnished to the petitioner. More so, the petitioner has cross examined all the witnesses and there is nothing on the record to show that any such request was made and the same was denied and the same has caused any prejudice. In an inquiry proceeding the question is that what prejudice has been caused to the delinquent. Since the petitioner has in effect cross examined the witnesses, therefore it cannot be said that even if the statement of witnesses has not been supplied to him has resulted in any miscarriage of justice. In the present case no such argument has been raised before the learned single Judge and no such prejudice has been shown to have been caused in the present case. It may also be relevant to mention that in the matter of disciplinary inquiries Courts shall be slow in interfering unless the Courts come to a definite conclusion that a serious prejudice has been caused or resulted in any miscarriage of justice. The apex Court has time and again

emphasis that the disciplinary inquiry should not be lightly interfered. In the case of Sunil Kumar Banerjee Vs. State of West Bengal and Others, their Lordships held that a finding and decision cannot be said to be tainted in an illegality merely because of consulting the Vigilance Commission and obtaining its views on the same material. A Bench of three Judges presided over by V.R. Krishna Iyer, J. found that such technicalities should not be construed to vitiate the whole inquiry if the inquiry has been otherwise held lawful. Recently in the case of High Court of Judicature at The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, their Lordships held that in departmental inquiries the settled legal position is that if there is some legal evidence on which the finding can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution. In this case the inquiry officer has exhaustively dealt within the charges and found the petitioner guilty and there was no breach of principles of natural justice involved in the matter. Hence the interference by the learned single Judge, in our opinion, was not warranted.

10. Next coming to the question of imposition of punishment suffice it to say that it is within the domain of the authorities that what shall be the punishment commensurate to the guilt and Courts cannot sit as a Court of appeal to judge what punishment should be imposed. The learned single Judge held that punishment of minor penalty for the charges would have met the ends of justice, this is not for the Courts to lay down but for the appropriate authority. In this connection our attention was invited to the case of Union of India (UOI) Vs. Parma Nanda, where their Lordships held that Tribunal cannot interfere with the punishment on the ground that was not commensurate with the delinquency of the employee except where the person is dismissed without inquiry or reduced in the rank solely on the basis of conviction by a criminal Court. The tribunal may examine the adequacy of the penalty imposed in the light of the conviction and sentence inflicted on the person if the penalty imposed is apparently unreasonable or uncalled for. Therefore their lordships found that the tribunal should remit the matter to the competent authority for reconsideration of by self substituting the previous penalty. Therefore the finding given by the learned single Judge that in the present case minor punishment would have met the ends of justice is wrong. This was not the jurisdiction of the learned single Judge. This was not normally given to Courts except in exceptional circumstances where punishment is grossly dis-proportionate. None of such exceptional circumstance exists in the present case. The learned single Judge having found that even in the present case minor punishment would have met the ends of justice still he exercised his discretion to set aside the whole of the punishment which was not warranted. Therefore, on this aspect also the learned single Judge has gone wrong. The learned counsel for the appellant has also invited our attention to the pleadings and submitted that there was no prayer made by the petitioner in his petition for quashing the whole inquiry proceeding except the setting aside of the order of removal dated 2nd July, 1984 but the learned single Judge has quashed

the whole inquiry proceeding which was not warranted. In that connection the learned counsel for the appellant has invited our attention to the decision of Apex Court in *Bharat Singh and Others Vs. State of Haryana and Others*, and *Municipal Corporation of The City of Jabalpur Vs. State of Madhya Pradesh*, to show that when there was no pleading or the reliefs sought then the Courts should not have gone beyond those pleadings and grant relief. This is true that in the present case there was not prayer for quashing of the whole inquiry proceeding, however, the learned single Judge after calling the file and trying to fish out the material on the departmental inquiry has quashed the whole of the proceedings. The approach of the learned single Judge was not strictly warranted. However, we have already examined the matter in detail and we are of the opinion that the departmental inquiry is not vitiated on any of the grounds raised by the petitioner. Therefore the view taken by the learned single Judge is not been affirmed by us.

11. The learned counsel for the appellant also submitted that the petitioner filed the writ challenging the order of removal without approaching the appellate authority against the order of removal. It is true that when the petitioner was first removed he had filed an appeal against that order and then the appellate authority set aside the order and remanded the matter back to the disciplinary authority and the disciplinary authority again issued a second show cause notice and passed the order of removal which is the impugned order in the present writ petition. Technically the petitioner should have filed an appeal against this order before the appellate authority before approaching this Court. However, the matter was entertained by the learned single Judge and this plea was not specifically raised by the appellant before the learned single Judge, therefore at this distance of time this plea cannot be sustained.

Hence we are of the view that the view taken by the learned single Judge does not appear to be well founded and we set aside the order passed by the learned single Judge and dismiss the writ petition and allow the appeal. No order as to costs.

R. K. Mazumder, J

12. I agree.

13. Appeal allowed