

(2002) 09 DEL CK 0109
In the Delhi High Court
Case No : L.P.A. No. 635 of 2002

Sudhanshu Ojha

APPELLANT

Vs

The Directorate General, C.R.P.F. and Others

RESPONDENT

Date of Decision : 21-09-2002

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Act — Section 17(3)
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 3(1)
Constitution of India, 1950 — Article 309, 311(2)

Citation : (2002) 09 DEL CK 0109

Hon'ble Judges : S.B. Sinha, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : Santosh Kumar, for the Appellant; Pinky Anand and Meenakshi Dogra, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—This Letters Patent Appeal is directed against a judgment and order dated 15.04.2002 passed by a learned Single Judge of this Court in C.W.P. No. 1972 of 2002 whereby and whereunder the writ petition filed by the appellant herein questioning an order of the disciplinary authority dated 06.12.2001 was dismissed.

2. The basic fact of the matter is not in dispute. The appellant herein was appointed as an Assistant Commandant in the Central Reserve Police Force (in short, "CRPF") in the year 1994. A disciplinary proceeding was initiated against the appellant herein by a Presidential Memorandum dated 08.06.1999, which was issued in terms of Rule 14 of the Central Civil Services (Classification, Control And Appeal) Rules, 1965 (in short, "CCS (CCA) Rules, 1965") whereby and whereunder the appellant herein was called upon the disciplinary authority answer the following articles of charge:-

"ARTICLE NO.1

Shri S.K. Ojha, Asstt. Comdt. 76 BN, CRPF (now posted to 12 BN CRPF) while posted and functioning as Sector Commander, Merapani (Assam) during 1997 committed an act of serious misconduct in that in his capacity as Sector Commander was actively involved in illegal and corrupt activities like collection of money/extortion from truck drivers, timber smugglers, hooch peddlers and local shopkeepers, thereby tarnished the image and reputation of the Force. Thus, the said Shri. S.K.Ojha failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant and thereby violated the provisions contained in Rule 3 (1)(I)(ii) and (iii) of CCS (Conduct) Rules, 1965.

ARTICLE NO. II

That the said Shri. S.K. Ojha while posted and functioning in the aforesaid BN and in the aforesaid capacity, during the aforesaid period committed a serious misconduct in that by misusing his official position and utilizing the services of his subordinates No. 820700371 L/NK Baljinder Singh C/76 Bn. 921290088 CT Jiva Bhai, C/76 B.N. 903051897 CT Mohd. Rafiq Ahmed Sheikh C/76 Bn., 941175105 CT. Deepak Biswas, C/76 Bn and No. 910960015 Ct. Mukesh Kumar, D/76 Bn. CRPF extorted money by detailing them to go to local villages to bring the identified personnel before him to collect/extort money through corrupt practices. Thus, the said Shri. S.K. Ojha failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions contained in Rule 3(1)(I)(ii) and (iii) of CCS (Conduct) Rules, 1965.

ARTICLES NO. III

That the said Shri, S.K. Ojha while posted and functioning in the aforesaid Bn. And in the aforesaid capacity during the aforesaid period committed a serious misconduct in that he tried to bring influence to bear upon his superior authority to further his interest by making local people/petty politicians submit public representation/petition against his transfer from his place of duty. Thus, the said Shri. S.K. Ojha failed to maintain devotion to duty and acted in manner unbecoming of a Govt. servant and thereby violated the provisions contained in Rule 3 (1)(ii)(iii) of CCS (Conduct) Rules, 1965."

In the said proceeding, the Enquiry Officer was appointed on 02.09.1999. By a report dated 08.06.2000, the Enquiry Officer inter alia held that Articles II and III of the charges were not proved any only Article I thereof stood partially proved. The appellant herein was not served with a copy of the said report dated 02.09.1999.

The disciplinary authority, however, did not agree with the findings of the Enquiry Officer as regard Article I of the charges and held that the same had fully been proved allegedly on the ground that the prosecution witness Nos. 3, 17, 18, 19, 20 and 21 categorically proved the illegal gratification by the appellant herein from the villagers and truck drivers, etc.

By a notice dated 06.07.2000, the appellant herein was asked to show-cause as to why the penalty shall not be imposed upon him. Pursuant to or in furtherance of the said notice, the appellant herein filed a representation before the disciplinary authority on 02.08.2000. By reason of an order dated 06.12.2001, the appellant herein was inflicted with a major penalty. Prior thereto, an advice of the Union Public Service Commission (in short, "UPSC") was also sought for and the UPSC vide its advice dated 02.11.2001 had also made recommendations for infliction of the said punishment. By an order dated 15.12.2001, the appellant's name was struck off from the strength of the unit of CRPF.

The appellant herein filed a representation before the President of India against the said order dated 15.12.2001 in February, 2002, which has since been dismissed.

3. In the aforementioned situation, the appellant herein challenging the orders dated 06.12.2001 and 15.12.2001 filed the aforesaid writ petition, which was registered as C.W.P. No. 1972 of 2002.

The learned Single Judge of this Court by reason of the impugned judgment and order dated 15.04.2002, while holding that the requirement of law had been satisfied as the petitioner therein had been served with a show-cause notice, disposed of the writ petition directing that necessary steps be taken by the respondents for disposal of the appeal filed by the petitioner therein within a period of three months from date.

4. Mr. Santosh Kumar, the learned counsel appearing on behalf of the appellant, would inter alia submit that the learned Single Judge of this Court committed a serious error in passing the impugned order insofar as it failed to take into consideration that from the show-cause notice dated 06.07.2000, it would appear that the disciplinary authority had pre-judged the entire issue.

The learned counsel would contend that prior to issuance of the said notice dated 06.07.2000 a copy of the enquiry report was also not supplied, which is in violation of the principles of natural justice. In any event, the learned counsel would contend that the disciplinary authority misdirected itself in law insofar as it consulted the UPSC on the merit of the proceedings. According to the learned counsel, as there has been violation of mandatory provisions of law, the consequences thereof would be that the appellant herein should be reinstated in service.

5. Ms. Pinkey Anand, the learned counsel appearing on behalf of the respondents, on the other hand, would contend that having regard to the fact that the appellant herein had been served with a show-cause notice and, thus, it is not a case where the appellant herein had not been served with a notice to show-cause as to why the punishment shall not be inflicted as was the case in *Yoginath D. Bagde Vs. State of Maharashtra and Another*, .

The learned counsel would contend that from the materials on record, it would

appear that the disciplinary authority had taken into consideration not only his tentative finding, but also the report of the Enquiry Officer as also his representation before passing the impugned order of dismissal.

6. The Enquiry Officer in his report dated 08.06.2000 considered the matter in great details and inter alia framed the following questions:-

1: Whether the six civilian witnesses (i.e., SW-17, 18, 19, 20 & SW- 21 whose statements were kept as exhibits (S-I to S-8) can be summoned for deposing in DE or not as their names do not exist in the list of the witnesses annexure-IV?

2. Whether the video cassette recorded by Shri V.P. Rao, Commandant(Staff) (Ex. S-10) is authentic or not and can be taken as evidence?

3. Whether the delinquent was actively involved in illegal and corrupt activities of collection of money from civilians or not, thereby tarnished the image of Force?

4. Whether the delinquent misused his official position and utilized his subordinates for extortion of money?

5. Whether the delinquent tried to bring influence on superior authority through local people for his retention in the area?

6. Whether the statements of civilian witnesses as recorded in FE and DE can be relied upon in view of the evidence of DW-3 and DW-4?

He analysed the evidences brought on record on each of the three charges separately and arrived at the following conclusion:-

"After going through the statements of prosecution witnesses, defense witnesses, documents on record, defense statement of the delinquent, written briefs of defense and production and evidence on record and in view of the reasons mentioned in on going paras, I hold that the article of charge - I leveled against Shri S.K. Ojha, Assistant Commandant is partially proved. The articles of charge - II and III are not proved."

7. The disciplinary authority, however, in his notice dated 06.07.2000 while issuing the show-cause notice inter alia observed:-

"A departmental enquiry was conducted against you by Shri. H.R. Banga, Commandant, CRPF. The report of the Inquiry Officer is enclosed. The Inquiry Officer in his report has held Article -I of the charge as partially proved and Article -II and III as not proved.

The disciplinary authority does not agree with the findings of the Inquiry Officer with regard to Article -I of the charge and hold Article-I of the charge as fully proved due to the reasons that prosecution witnesses -3, 17, 18, 19, 20 and 21 have categorically brought out about taking illegal gratification by you from the villagers and truck drivers etc. You have not been able to disprove their statement during the course of enquiry. Further, prosecution exhibits No. 10 also corroborate the fact of taking illegal gratification by you. Your submission that

the civilian witnesses are not reliable being bad characters has no substance as during the course of enquire you have not been able to substantiate the facts. You have even declined to cross examine the PWs 19 (Shri Hemu Saikia). PW-20 (Shri. Sato, Saikia), PW- 21 (Shri. Kalia Saikia) who have categorically stated that they had paid illegal gratification to you. defense exhibits in the form of affidavit in respect of Shri. P.T. Hazarika and Shri. Prashant Bor Patra Gohain produce by you have no weight as you were given ample opportunity to cross examine the prosecution witnesses and in case they were telling a lie, you should have cross examined them and brought out the factual position rather than obtaining affidavits from others after recording their statement.

Further you have obtained certain applications from the villagers and produced them as defense exhibits in your support rather than producing these personnel as your defense witness to establish your innocence. As these persons have not been examined, their applications Therefore do not have any credibility or relevance in the proceedings. Therefore, the disciplinary authority holds Article-I of the charge leveled against you as fully proved.

2. The disciplinary authority will take suitable decision after considering the report of the Inquiry Officer, and reasons for disagreement with findings of the IO as stated above, and your representation if any. If you wish to make a representation or submission, you may do so in writing to the disciplinary authority within 15 days of receipt of this letter."

However, the appellant herein in his reply to show-cause not only met with the reasons assigned by the disciplinary authority disagreeing with the findings of the Enquiry officer, but also questioned that part of the finding of the Enquiry Officer in terms whereof a part of the charges are said to have been proved. The show-cause filed by the appellant herein run into about 18 pages.

The UPSC also in terms of its letter dated 02.11.2001 went through the materials on record and arrived at a finding that Article I of the charges was substantially proved. It gave an advice to the disciplinary authority that the ends of justice would be met, if the penalty of dismissal from service be imposed upon the petitioner. The disciplinary authority by reason of the impugned order dated 06.12.2001 merely reproduced the charge and held:-

"iv) Both Kulai Saikia DW 4 and Anil Saikia has not spoken good of PW 19 (Hemu Saikia) and moreover the discrepancy in the statement of Hemu Saikia attached as prosecution exhibit and the deposition during the DE has been reflected in para 3(I) above. Once the inconsistency in both the statements is proven, the question of cross examination is immaterial.

v) The discrepancy in the statement of PW 20 given during PE and taken as prosecution exhibit and the DE has been covered in detail at para 3(I). Even the person i.e. DW 3 Lotha whose name PW 20 has taken, that he had brought the money from his house and gave to CO has categorically been refuted by DW 3 Lotha. Hence the statement of PW 20 no credibility.

vi) The discrepancy in the statements of Kalia Saikia has also been, explained at para 3(m) above and hence loses its credibility."

The said order is, thus, not a reasoned order. There is no material on record to show that the contentions raised by the appellant herein had been taken into consideration. The appellant herein had also not been served with a copy of the advice rendered by the UPSC. The Disciplinary Authority, in our opinion, committed an illegality insofar as it placed the materials before the UPSC on the merit of the matter and obtained its advice before it itself took a decision.

8. In Yoginath D. Bagde's case (Supra), it has been held:-

"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 leveled 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 favor 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 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 Article 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 Article 309 of the Constitution.

36. Along with the show-cause notice, a copy of the finding 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 favor 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 the a Three-Judge Bench of this Court in *Punjab National Bank and Others Vs. Sh. Kunj Behari Misra*, , 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 leveled 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 and Others Vs. Sh. Kunj Behari Misra*, 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."

9. In *Punjab National Bank and Others Vs. Sh. Kunj Behari Misra*, the Apex Court observed:-

"16. In *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, , 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 1993 4 SCC 721 : 1994 AIR SCW 1050 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 arrived 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 AIR SCW 1070:

"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."

10. In Ram Kishan Vs. Union of India and others, the Apex Court held:-

"10. The next question is whether the show-cause notice is valid in law. It is true, as rightly contended by the counsel for the appellant, that the show-cause notice does not indicate the reasons on the basis of which the disciplinary authority proposed to disagree with the conclusions reached by the inquiry officer. The purpose of the inquiry officer is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the inquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the finding by the inquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the inquiry officer. In the absence of any ground or reason in the show-cause notice it amounts to an empty formality, which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect. But, on the facts in this case the only charge, which was found to have been accepted is that the appellant had used abusive language on the superior authority. Since the disciplinary authority has said that it has agreed partly to that charge, the provisional conclusion reached by the disciplinary authority in that behalf even in the show- cause notice, cannot be said to be vague. Therefore, we do not find any justification to hold that the show-cause notice is vitiated by an error of law, on the facts in this case."

11. In *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, the Apex Court observed:-

"26. The objection on the ground of bias would have been excluded if the statute had expressed itself to the contrary. But nowhere do we find in the act any evidence to establish such exclusion. It is true that by virtue of Section 17(3) it is obligatory that the Disciplinary Committee should be composed of the President and the Vice-President of the Council and three other members of the Council. while that is so, there is nothing in the Act to suggest that no meetings of the Council must always be presided over by the President or the Vice-President, and that no meeting can be held in their absence. We find that Regulation 140 framed under the Act contemplates that the Council may meet in the absence of the President and the Vice-President, and provides that in their absence a member elected from among the members who are present should preside. There is an element of flexibility, which makes it possible for the Council to consider the report of the Disciplinary Committee without the participation of the members of the Committee. Because of the "flexibility" potential in the scheme, the doctrine of necessity, to which reference has been made on behalf of the Institute, cannot come into play. We must admit that it does appear anomalous that the President and the Vice- President of the Council should be disabled from participating in a meeting of the Council because they are bound by statute to

function as the Chairman and the Vice-Chairman of the Disciplinary committee, and were it not for the factor of flexibility which we see in the scheme, we would have been compelled to the conclusion that the Act implies an exclusion of the doctrine of bias. But as we have observed, no such exclusion is implied by the scheme of the Act on its policy. We suggest the removal of the anomaly by suitable legislative amendment of Section 17(3) of the Act so that the constitution of the Disciplinary Committee should not necessarily include the President and the Vice-President of the Council. It is only appropriate that due recognition should be given to the fundamental principles and accepted axioms of laws."

12. A bare perusal of the order passed by the disciplinary authority dated 06.12.2001 leaves no manner of doubt that while purporting to disagree with the findings of the Enquiry Officer, he on the basis of materials on record unilaterally arrived at his own finding. He proceeded to judge the matter with a closed mind. Such an approach with a closed mind would amount to a bias as regards the subject matter.

It may be true as was submitted by Ms. Pinky Anand that the requirement of law would be met when a show-cause notice is issued, but when such a show-cause notice is issued with a closed mind, which would depict bias, the entire proceedings would be vitiated in law.

13. An opportunity of hearing is required to be given before final determination of the matter. The disciplinary authority, while pointing out the grounds upon which he disagreed with the findings of the Enquiry Officer, was required to show that he had an open mind. The expressions used in the notice to show-cause leave no manner of doubt that he proceeded with a closed mind and not an open mind.

The right to be heard as available to the delinquent up to the final stage, as has been held by the Apex Court in Yoginath D. Bagde's case (supra) and such a right must be held to be denied when the disciplinary authority proceeds to examine the matter with a closed mind.

14. In K.I. Shephard and Others Vs. Union of India (UOI) and Others, it was observed:-

"16. We may now point out that the learned single Judge of the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand the normal rule should apply. It was also contended on behalf of the respondents that the excluded employers could now represent and their cases could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then given them an opportunity of representation when

the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose."

15. A disciplinary authority while disagreeing with the findings of the Enquiry Officer must arrive at a decision in good faith. It while disagreeing with the findings of the Enquiry Officer, was required to state his reasons for such disagreement but such a decision was required to be tentative one and not a final one. A disciplinary authority at that stage could not have pre-determined the issue nor could arrive at a final finding. The records clearly suggest that he had arrived at a conclusion and not a tentative finding. He proceeded in the matter with a closed mind. An authority, which proceeds in the matter of his nature with a pre-determined mind, cannot be expected to act fairly and impartially.

In the instant case, the UPSC while giving its advice to the disciplinary authority set as the appellate authority over the report of Enquiry Officer. There is nothing on record to show that the UPSC had before it the representation, which was filed by the appellant herein.

16. In the case at hand, the copy of the report of the Enquiry Officer was served upon the appellant herein on 06.07.2001, although a part of the charge had been held to be proved. The matter would have been different if on the basis of the report of the Enquiry Officer, no action was required to be taken by the disciplinary authority at all. As a part of Article 1 of the charges was proved, the appellant herein was liable to be furnished and in that view of the matter before imposition of the punishment, he should have been given a copy of the report of the Enquiry Officer.

Furthermore, it will bear repetition to state that the President in his impugned order did not assign any reason to show application of mind on his part, which would demonstrate that the representation of the appellant herein had been taken into consideration.

17. We may at this juncture observe that using of the expression that "the delinquent officer is guilty of the charges" at the stage of framing of the charges may amount to pre-judging the issue inasmuch as the disciplinary authority would be required to take a final decision after the parties adduced evidence and the Enquiry Officer submits its report. In a case of this nature, the entire materials were before the disciplinary authority and if the disciplinary authority intends to disagree with the findings of the Enquiry Officer, it must not only state the reasons therefore, but also may point out the same to the delinquent officer so as to enable him to file an effective representation and such disagreement must also be tentative in nature and not a final one like in the present case.

18. Even in *State Bank of Patiala and others Vs. S.K. Sharma*, the Apex Court observed:-

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

... ..

(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 there from, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment take a case where there is a provision expressly providing that after the evidence of the employer / government is over, the employee shall be given an opportunity to lead defense in his evidence, and in an given case, the enquiry officer does not give that opportunity in spite of the delinquent officer / employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e. whether the person has received a fair hearing considered 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) herein below is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

... ..

(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 proceeding 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."

As indicated therein, the said principle No. 5 will not apply in a case of rule against bias.

19. The proposition that the principles of natural justice must be complied with at every stage, in view of the aforementioned authoritative pronouncements of the Apex Court, is no longer *res integra*.

20. In *Mohan Lal Goenka and Another Vs. The State of West Bengal*, the Apex Court observed:-

"The first question Therefore which falls for consideration is whether any duty is cast on the Committee under the Act and Regulations to act judicially and Therefore it is a quash-judicial body. What constitutes "a quasi-judicial act" was discussed in the *Province of Bombay Vs. Kusaldas S. Advani and Others*, . The principles have been summarized by Das, J. (as he was then), in these words:-

"The principles, as I apprehend them are:

(i) That if a statute empowers an authority, not being a court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a *lis* and *prima facie* and in the absence of any thing in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quash-judicial act; and

(ii) That if a statutory Authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

In other words, while the presence of two parties besides the deciding authority will *prima facie* and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially."

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These principles have been acted upon by this Court in latter cases: see Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others, , Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, and Shivji Nathubhai Vs. Union of India (UOI) and Others, . Now it may be mentioned that the statute is not likely to provide in so many words that the authority passing the order is required to act judicially; that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided the objective criterion if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively : (vide observations of Parker, J. in R. v. Manchester Legal Aid Committee, (1952) 2 Q.B. 413.)"

21. For the reasons aforementioned, we are of the opinion that the impugned judgment of the learned Single Judge of this Court cannot be upheld, which is set aside and the matter is remitted back to the disciplinary authority for consideration of the matter afresh in the light of the report of the Enquiry Officer.

This appeal is accordingly allowed. However in the facts and circumstances of the case, there shall be no order as to costs.