
(1992) 10 RAJ CK 0007
In the Rajasthan High Court
Case No : ICivil Writ Petition No. 1372 of 1984

Vijai Singh

APPELLANT

Vs

Rajasthan State Road Transport Corpn. Ltd.

RESPONDENT

Date of Decision : 07-10-1992

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 16(1), 19(1)
Contract Act, 1872 — Section 23
Income Tax Act, 1961 — Section 127
Mineral Concession Rules, 1960 — Rule 55
Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 16, 16(10), 16(12)

Citation : (1994) 1 LLJ 1038 : (1993) 1 WLC 577

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : Babulal Sharma, for the Appellant; Ashok Choudhary, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Challenge in this writ petition has been made to an order dated April 8, 1983 (Annexure-4) passed by the Regional Manager, Rajasthan State Road Transport Corporation, Ajmer for termination of the service of petitioner on the basis of departmental inquiry held against him.

2. The facts of the case lie in a very narrow compass. The petitioner who was serving as a conductor in the service of the Rajasthan State Road Transport Corporation (for short "the Corporation") was suspended on July 9, 1982. A charge sheet dated July 9, 1982 was served upon him for a departmental inquiry. By an order dated August 20, 1982 of the Regional Manager, Ajmer, Regional Depot Manager was appointed as Inquiry Officer. Inquiry proceedings were fixed on September 21, 1982, October 7, 1982, October 20, 1982, November 6, 1982, November 19, 1982, December 10, 1982, December 23, 1982, January 17, 1983, February 4, 1983 and February 14, 1983. The petitioner attended the

inquiry on February 14, 1983 also. According to him he was told by the Inquiry Officer that no proceeding will be taken on that day and he will be intimated of the next date. No further date was however intimated to the petitioner. Instead, he was served with the order dated April 8, 1983. In between this period the petitioner had been reinstated on February 3, 1983. The petitioner has stated that he was never served with a copy of the inquiry report either before passing of the order of punishment or after communication of it. He was not given any notice of the inquiry report nor any show cause notice proposing the penalty of removal from service was given to him. The petitioner's assertion is that the inquiry officer had made a false note about his absence on February 14, 1983 and submitted his report.

3. No reply to the writ petition has been filed by the respondent-Corporation even though the writ petition remained pending before the Court for over eight years. Shri Ashok Choudhary, learned counsel for non-petitioner has however produced before me the inquiry file. The proceedings of the inquiry file show that the petitioner was present on October 7, 1982, October 22, 1982, December 10, 1982, December 23, 1982, January 17, 1983 and February 4, 1983. On February 14, 1983 he has been shown to be absent. In the order sheet of January 17, 1983 although the signatures of the petitioner appear but he has been marked as absent. Along with the writ petition the petitioner has produced Annexure-3 to show that he was present during the inquiry proceedings on February 14, 1983 and that a certificate to this effect was given by the inquiry officer himself. When attention of Shri Ashok Choudhary, learned counsel for respondent-Corporation, was drawn to the signatures of the inquiry officer on Annexure-3, he admitted that the inquiry officer had signed the said document showing the presence of the petitioner. That document in fact contains the following note:

"Attended DE on February 14, 1983"

Below this note the inquiry officer has appended his signatures. Therefore the petitioner's assertion that he had in fact attended the inquiry proceeding on February 14, 1983 has to be accepted as correct, particularly when no reply has been filed by the non-petitioner to controvert this specific assertion of the petitioner.

4. On February 14, 1983 the inquiry officer recorded that the Conductor has not been attending the proceedings even after noting the same and even after issue of summons. The complainant is not appearing deliberately and the Conductor has also not filed his reply deliberately. He, therefore, recorded the inquiry proceedings are closed and ex-parte report is submitted to the disciplinary authority. From the record of inquiry it is also borne out that on November 6, 1982 statement of three persons namely, Shri P.C. Mathur, Shri Sangram Singh and Shri Vankar Raman Singh were recorded even though the petitioner had submitted an application for adjournment of the proceedings on medical grounds and had submitted medical certificate of the doctor. The inquiry report is said to have been prepared on February 14, 1983 although it does not bear any

particular date. On the basis of the inquiry report the Regional Manager passed the impugned order dated April 8, 1983.

5. Ordinarily the writ petition could have been disposed of only on the ground that the inquiry officer did not give a reasonable opportunity of defence to the petitioner and he made a wrong recording of the proceedings dated February 14, 1983 by showing the petitioner to be absent even though he had in fact attended the inquiry proceedings and also that on November 6, 1982 the inquiry officer had recorded the evidence behind the back of the petitioner. The inquiry proceeding held against the petitioner is also liable to be quashed on the ground that on November 6, 1982 the inquiry officer has taken note of the medical certificate produced by the petitioner and he adjourned the proceedings for November 19, 1982 but he apparently proceeded to record the statement of these three witnesses and finally relied upon them for holding the petitioner guilty of charges No. 1, 2 and 3. Another serious infirmity with which the inquiry report suffers is that even in respect of charge No. 4 the petitioner has been found guilty, though no evidence was recorded in support of that charge because even in the order sheet dated February 14, 1983 it has been recorded that the complainant is not appearing deliberately. It is, therefore, reasonable to conclude that the inquiry proceedings were held in total disregard Of the principles of natural justice and on that ground the inquiry proceedings as well as the order of punishment are liable to be quashed.

6. However, a more fundamental question which arises for determination in this writ petition is as to whether it is obligatory for the employer, namely, the Corporation to furnish a copy of inquiry report to the delinquent before passing an order of punishment and even though a learned Single Judge of this Court in *Ramsingh Rathore v. Rajastnan State Road Transport Corporation* 1986 (1) Judicial Surveyer 129 has held that principles of natural justice warrant that copy of inquiry report be made available to the delinquent before passing of the order of punishment and even though in the cases of Government servants and other employees a large number of decisions have been given by this Court on the same issue, learned counsel for the Corporation argued that supply of copy of inquiry report is not necessary in the scheme of the R.S.R.T.C. Workers and Workshop Employees Standing Orders 1965 (for short the Standing Orders).

7. The question as to whether the R.S.R.T.C. is an agency or instrumentality of the State and, therefore, falls within the ambit of the phrase "other authorities" under Article 12 of the Constitution of India is no more open to debate in view of the decision of a Full Bench of this Court in *Bhanwarlal and Others Vs. Rajasthan State Road Transport Corporation and Others*, . Likewise the question as to whether the standing orders framed by the respondent-Corporation have the force of law is also not open to debate in view of the Full Bench decision in *Bhanwarlal's case* (supra). In the said case majority of the Full Bench consisting of G.M. Lodha. J. and N.M. Kasliwal, J. (as they were then) made a reference to the decisions of the Supreme Court in *S.R. Tewari Vs. District Board Agra* and

Another, Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another, and a large number of other decisions of the Supreme Court and held that the service of the employees of the Corporation is not at the pleasure of the Corporation but such employee enjoys status under the relevant rules, regulations and statute governing the Corporation and its employees and relationship between the employee and the Corporation is governed by status in contrast to a contract. N.M. Kasliwal, J. also relied on the decisions of the Supreme Court in The Bagalkot Cement Co. Ltd. Vs. R.K. Pathan and Others, Workmen of Dewan Tea Estate and Others Vs. The Management, and decision of the Orissa High Court in Biswanath Das and Others Vs. Ramesh Chandra Patnaik and Others, for holding that standing orders framed under the Industrial Employment (Standing Orders) Act, 1946 have the force of law.

8. That being the status of the Corporation and the state of relationship between the Corporation and its employees, I find little difficulty in holding that the Corporation is bound to act in conformity with the constitutional provisions contained in various parts of the Constitution except Article 31 Inapplicability of which is restricted to the holders of civil posts. The exercise of powers of the Corporation and its functionaries is to be governed by the same very limitations which are applicable to the exercise of powers by the State and its functionaries. The theory of laissez faire has not been accepted as governing the relationship of master and servant so far as state, its agencies and instrumentalities are concerned. An employee cannot be bound down by the conditions contained in the contract of employment merely because he accepts those conditions without objection or protest. An argument of similar nature was categorically rejected by the Supreme Court in The Manager, Government Branch Press and Another Vs. D.B. Belliappa, . Therein a temporary employee had challenged the termination of his service on the ground of violation of the constitutional provisions contained in Articles 14 and 16. An argument was raised on behalf of the employer that the conditions of service of temporary employee were governed by the contract of service voluntarily entered by him and if the said terms of service contain a clause that his service was purely temporary and is liable to termination at the will and pleasure of the appointing authority without reason and without notice, the employee cannot complain against the termination of service. Their Lordships firmly rejected the aforesaid contention by describing it as wholly misconceived. The Court proceeded to observe (pp. 161-162):

"It is borrowed from the archaic common law concepts that employment was a matter between the master and servant only. In the first place, this rule in its original absolute form is not applicable to government servants. Secondly, even with regard to private employment, much of it has passed into the fossils of time. This rule held the field at the time when the master and servant were taken more literally than they are now and when, as in early Roman Law, the rights of the servant, like the rights of any other member of the household, were not his own, but those of his "pater familias". The overtones of this ancient doctrine are discernible in the Anglo-American jurisprudence of the 18th century

and the first half of the 20th century, which rationalised the employer's absolute right to discharge the employee. "Such a philosophy", as pointed out by K.K. Mathew, J. (vide his treatise: "Democracy, Equality and Freedom", page 326), "of the employer's dominion over his employee may have been in tune with the rustic simplicity of bygone days. But that philosophy is incompatible with these days of large, impersonal, corporate employers". To bring it in tune with vastly changed and changing socio-economic conditions and more so of the day, much of this old, antiquated and unjust doctrine has been eroded by judicial decisions and legislation, particularly in its application to persons in public employment, to whom the Constitutional protection of Articles 14, 15, 16 and 311 is available."

9. In *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, a new dimension has been added to the ever-growing administrative law in this country. The Court declared that a contract of employment can be castigated by the court as arbitrary, unconscionable and opposed to public policy and it can be quashed on the ground of violation of Section 23 of the Contract Act or Article 14 of the Constitution.

10. The distinction between the government and its Corporation came to be virtually obliterated in the decision of the Supreme Court in *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, . In the said case Chinnappa Reddy, J. (in his concurring judgment) observed: (pp. 229-230)

"I find it very hard indeed to discover any distinction on principle, between a person directly under the employment of the Government and a person under the employment of an agency or instrumentality of the Government or a Corporation, set up under a statute or incorporated but wholly owned by the Government. It is self evident and trite to say that the function of the State has long since ceased to be confined to the preservation of the public peace, the exaction of taxes and the defence of its frontiers. It is now the function of the State to secure "social, economic and political justice", to preserve "liberty of thought, expression, belief, faith and worship", and to ensure "equality of status and of opportunity". That is the proclamation of the people in the Preamble to the constitution. The desire to attain these objectives has necessarily resulted in intense Government activity in manifold ways. Legislative and executive activity have reached very far and have touched very many aspects of a citizen's life. The Government, directly or through the Corporation set up by it or owned by it, now owns or manages a large number of industries and institutions. It is the biggest builder in the country. Mammoth and minor irrigation projects, heavy and light engineering projects, projects of various kinds are undertaken by the Government. The Government is also the biggest trader in the country. The State and the multitudinous agencies and Corporations set up by it are the principal purchasers of the produce and the products of our country and they control a vast and complex machinery of distribution. The Government, its agencies and instrumentalities, Corporations set up by the Government under statutes and

Corporations incorporated under the Companies Act but owned by the Government have thus become the biggest employers in the country. There is no good reason why a Government is bound to observe the equality clauses of the Constitution in the matter of employment and in its dealings with the employees, the Corporations set up or owned by the Government should not be equally bound and why, instead, such Corporations could become citadels of patronage and arbitrary action. In a country like ours which teems with population, where the State, its agencies, its instrumentalities and its Corporations are the biggest employers and where millions seek employment and security, to confine the applicability of the equality clauses of the Constitution in relation to matters of employment, strictly to direct employment under the Government is perhaps to mock at the Constitution and the people. Some element of public employment is all that is necessary to take the employee beyond the reach of the rule which denies him access to a court to enforce a contract of employment and denies him the protection of Articles 14 and 16 of the Constitution. After all, employment in the public sector has grown to vast dimensions and employees in the public sector often discharge as onerous duties as civil servants and participate in activities vital to our country's economy. In growing realisation of the importance of employment in the public sector the Parliament and the Legislatures of the States have declared persons in the services of local authorities, Government companies and statutory corporations as public servants and extended to them by express enactment the protection usually extended to civil servants from suits and prosecution. It is, therefore, but right that the independent and integrity of those employed in the public sector should be secured as much as the independence and integrity of civil servants."

11. In *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, the aforesaid observations of Chinnappa, Reddy, J. have been approved. After making a reference to the observations of Chinnappa Reddy, J. in *U.P. Warehousing case* (supra), the Supreme Court held that although the employees of the Corporation were not governed by Part XIV of the Constitution but it could not be said that the protection that was conferred on such employee by Part III of the Constitution was comparatively less effective than the one conferred by Part XIV and that the distinction sought to be drawn between the protection provided by Part XIV of the Constitution and Part III of the Constitution has no consequence.

12. These very principles have been followed by S.C. Agarwal, J. (as he then was) in *S.L. Soni v. RSMDC Ltd.*, Jaipur 1985 RLR 857.

13. The Standing Orders framed by the Corporation apply to all the Motor Transport and Factory Workers of the respondent Corporation in terms of Clause (3). Clause (34) of the Standing Orders defines the acts and omissions which shall be treated as misconduct Standing Order No. 35 speaks of suspension of the employee, service of charge sheet containing specific charges, holding of a summary inquiry, giving of opportunity to the worker to cross examine the

witnesses called. The employer has a power to pass an order of punishment. Provision for appeal has also been made in this standing order. Standing Order No. 36 lays down that any one or more of the penalties specified may be imposed on a worker by a competent authority for good and sufficient reasons. Since Standing Order Nos. 35 and 36 have got direct bearing on the question which is being examined in this writ petition and which arises in large number of petitions filed by the employees of the Corporation, I deem it proper to quote them. These standing orders are:

"35. (i) Competent authority may suspend a worker for any act or omission of misconduct as described in standing order No. 35 by an order in writing and serve the worker with a charge sheet containing specific charges on which each charge is based and asking him to state whether he desires to be heard in person.

(ii) A worker shall be required to submit his explanation in writing within a week from the date of service of charge sheet and if he desires to be heard in person his summary inquiry shall be held.

(iii) During summary inquiry the suspended worker shall be given an opportunity to cross examine witnesses or to have such witnesses called as he may wish or to explain circumstances alleged against him.

(iv) An order in writing referred to in Clause (i) above shall take effect immediately on delivery to worker, and in the event of refusal by the worker to accept delivery of the said ; order served on him, the affixing of the same on a notice board at the place of his posting will be deemed to be a sufficient service on him.

(v) Deleted.

(vi) (a) Where on a complaint of misconduct against a workman, disciplinary proceedings against him are contemplated or are pending or where a case against him in respect of any criminal offence is under investigation or trial and the employer is satisfied that it is necessary or desirable to place the workman under suspension, he may do so by serving on the workman an order in writing to that effect. Such an order shall take effect immediately on delivery to the workman. It shall be accompanied by a charge sheet explaining in detail the reasons for such suspension and the workman shall be given an opportunity for defending himself.

(b) The workman, who is placed under suspension, shall, during the period of such suspension, be paid subsistence allowance at the following rates:

(i) Where the enquiry is departmental, the subsistence allowance shall be equal to 1/2 of his wages as defined in the Payment of Wages Act, 1936 (Central Act 4 of 1936), for the first 90 days. If the departmental enquiry gets prolonged and the workman continues to be under suspension for a period exceeding 90 days, the subsistence allowance shall be paid at the rate of 3/4 of the wages but if the

enquiry is delayed beyond 90 days due to reasons directly attributable to the workman, the subsistence allowance shall be reduced to 1/4 of the wages.

(ii) Where the enquiry is by an outside agency or as the case may be, where any criminal charge against the workman is under investigation or trial, the subsistence allowance shall be equal to 1/2 of his wages as defined in the Payment of Wages Act, 1936 (Central Act 4 of 1936) for the first 180 days. If such an enquiry gets prolonged and the workman continues to be under suspension for a period exceeding 180 days, the subsistence allowance shall be paid at the rate of 3/4 of the wages. But if the reasons for the delay are directly attributable to the workman the subsistence allowance be reduced to 1/4 of the wages.

(c) If on conclusion of the enquiry, or as the case may be, of the criminal proceedings, the workman has been found guilty of the charge and it is considered that an order of dismissal may meet the ends of justice, the employer shall pass orders accordingly. When such orders are passed the workman shall be deemed to have been absent from duty during the period of such suspension and shall not be entitled to any remuneration for such period but the subsistence allowance already paid to him shall not be recovered.

Provided that in case of a workman to whom the provisions of Clause (2) of Article 311 of the Constitution of India apply the provisions of the Article shall be complied with.

(d) If, on conclusion of the enquiry or as the case may be, of the criminal proceedings, the workman has been found not guilty of the charge, he shall be deemed to have been on duty during the period of such suspension and shall be entitled to the same wages as he would have received as if he had not been suspended, after deducting subsistence allowance paid to him for such period.

(e) The payment of subsistence allowance shall, however, be subject to the workman concerned not taking any employment during the period of his suspension.

(vii) An appeal against an appealable punishment imposed shall lie to the next higher authority and shall be preferred within 15 days of the passing of the order. Decision of the next higher authority shall be final.

36. One or more of the following penalties may, for good and sufficient reasons, be imposed on a worker by a competent authority; penalties from (v) to (viii) shall be appealable

(i) Censure:- Three censures in a period of one year will involve withholding of one increment.

(ii) Withholding of increments or promotion.

(iii) Recovery from pay/wages of the whole or part of any pecuniary loss caused to the employer by negligence or breach of any law.

- (iv) Fine upto 2% of worker's wages.
- (v) Forfeiture of wages during the period or of suspension.
- (vi) Reduction to a lower post or grade.
- (vii) Termination of service, which shall not be a disqualification for future employment.
- (viii) Dismissal from service which shall be disqualification for future employment."

14. A cumulative reading of the two Standing Orders shows that one or more of the penalties specified in Standing Order No. 36 can be imposed by the competent authority. However, for imposing such penalty there must exist good and sufficient reasons. Existence of good and sufficient reasons, therefore, constitutes a condition precedent before an order of punishment can be passed by a competent authority against a worker. Standing Order No, 35 envisages suspension of the worker at the discretion of the competent authority, service of a charge sheet on the worker containing specific charges, the worker is required to submit his explanation in writing and in case he wants hearing in person, summary inquiry is to be held. In such inquiry the worker is required to be given an opportunity to cross examine witnesses or to call witnesses as he may wish or to explain circumstances alleged against him. On the conclusion of the inquiry the employer is entitled to pass an order of dismissal in case it is considered that an order of dismissal may meet the ends of justice. In case he is not found guilty, the workman is to be treated on duty with all consequential benefits. Against an order of punishment the worker has a right to file an appeal to appellate authority. The scheme of Standing Order Nos. 35 and 36 shows that principles of natural justice are required to be complied with before an order of punishment can be passed by the competent authority. The competent authority is required to apply its mind to the material which is collected during the course of inquiry. It has to consider whether punishment of dismissal or any other punishment is warranted in the facts of a particular case. The application of mind by the competent authority has to be reflected in the form of reasons which must not only be good but be sufficient. These Standing Orders do not in turn speak of appointment of inquiry officer or of production of documentary evidence. Nor do they speak of giving of a copy of inquiry report or a show cause notice to the worker before passing an order of punishment. They also do not in turn specify that good and sufficient reasons should be communicated to the worker. Can it, therefore, be said that the appointment of inquiry officer by the disciplinary authority, receipt of the documentary evidence by the inquiry officer, furnishing of copy of inquiry report or passing of speaking order by the competent authority are all foreign to the scheme of the Standing Orders or that these are all implied requirements of natural justice which must be complied with for a valid order of punishment.

15. In administrative law, the "rules of natural justice" have traditionally been

regarded as comprising the rules *audi alteram partem* and *nemo iudex in causa sua*. The first rule requires the maker of a decision to give prior notice of the decision to persons affected by it, and an opportunity for those persons to make representations. The second rule disqualifies a person from judging a cause if he has direct pecuniary or proprietary interest, or he might otherwise be biased. The first principle is of far reaching importance because it embraces within itself every question of fair procedure or due process. Generally speaking, notion of a fair hearing extends to the right to have notice of the other side's case, the right to bring evidence and the right to argue. The right to fair hearing has been used by the courts for nullifying administrative acts. The premise on which the courts extended their jurisdiction against the administrative acts was that the duty to give every victim a fair hearing was as much a principle of good administration as of good legal procedure. Under the European Convention on Human Rights and Fundamental Freedoms of 1950, it is provided that:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The rule of *audi alteram partem* has been recognised as early as in 1723 in *R. v. University of Cambridge* (1723) 1 Str. 557, where the University of Cambridge had deprived Bentley, a scholar, of his degrees on account of his misconduct in insulting the Vice-Chancellor's Court. The action was nullified by the court of King's Bench on the ground that deprivation was unjustifiable and that, in any case, he should have received notice so that he could make his defence. In the said decision it has been noted that the first hearing in human history was given in the Garden of Eden, in the following words:

"I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence. "Adam", says God, "where art thou? Hast thou not eaten of the tree, whereof I commanded thee that thou shouldst not eat?" And the same question was put to Eve also."

16. In *Capel v. Child* (1832) 2 C & J 558 the Court of Exchequer gave a lucid exposition to the rule of *audi alteram partem*. That was a case in which a Bishop had appointed a Curate, at the Vicar's expense, to perform the duties of the Vicar whom the Bishop considered to be negligent. Statute empowered this to be done "whenever it shall appear to the satisfaction of any Bishop, either of his own knowledge, or upon proof by affidavit laid before him", that the incumbent was neglecting his duties. Bayley J. said:

"When the Bishop proceeds on his own knowledge I am of the opinion also that it cannot possibly, and within the meaning of this Act, appear to the satisfaction of the Bishop, and of his knowledge, unless he gives the party an opportunity of being heard, in answer to that which the Bishop states on his own knowledge to be the foundation on which he proceeds."

The same principle was extended beyond the sphere of administrative law to such bodies and societies and clubs. It was held to be an implied term of each member's contract of membership that he could not be expelled without a fair hearing. In a case where a member of mutual insurance society was purportedly expelled for suspicious conduct, but without hearing, it was held that the expulsion was absolutely void: *Wood v. Wood* (1874) ELR 190.

17. In *Cooper v. Wandsworth Board of Works* (1863) 14 CB (NS) 180 action of the local board of works in demolishing a building raised by a builder was declared to be void for want of hearing, where the builder has raised construction without notice to the local board and the board had in exercise of its power under the Act, demolished the construction. The board contested the action by claiming it to be a purely administrative action. Erle CJ said:

"I think the board ought to have given notice to the plaintiff and to have allowed him to be heard. The default in sending notice to the board of the intention to build, is a default which may be explained. There may be a great many excuses for the apparent default. The party may have intended to conform to the law. He may have actually conformed..... though by accident his notice may have miscarried....I cannot conceive any harm that could happen to the district board from hearing the party before they subjected him to a loss so serious as the demolition of his house; but I can conceive a great many advantages which might arise in the way of public order, in the way of fulfilling the purposes of the statute, by the restriction which we put upon them, that they should hear the party before they inflict upon him such a heavy loss. I fully agree that the legislature intended to give the district board very large powers indeed: but the qualification I speak of is one which has been recognised to the full extent. It has been said that the principle.....is limited to a judicial proceeding, and that a district board ordering a house to be pulled down cannot be said to be doing a judicial act.....I do not quite agree with that;I think the appeal clause would evidently indicate that many exercises of the power of a district board would be in the nature of judicial proceedings."

Then Willes J said:

"I am of the same opinion, I apprehend that a tribunal which is by law invested with power to affect the property of one of Her Majesty's subject, is bound to give such subject an opportunity of being heard before it proceeds: and that the rule is of universal application, and founded on the plainest principles of justice. How, is the board in the present case such a tribunal? I apprehend it clearly is....."

And Byles J said:

"It seems to me that the board are wrong whether they acted judicially or ministerially. I conceive they acted judicially, because they had to determine the offence, and they had to apportion the punishment as well as the remedy. That being so, a long course of decisions beginning with *Dr. Bentley's* case, and

ending with some very recent cases, establish that, although there are no positive words in a statute, requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature."

18. The same principles were applied in *Smith v. R.* (1878) 3 AC 614 involving cancellation of a Crown lease in *Queensl* and *Hall v. Manchester Cpn.* (1915) 84 LJ Ch. 732 involving condemnation of a house in Manchester as unfit for human habitation.

19. In *Board of Education v. Rice* (1911) AC 179 the question which arose for consideration before the House of Lords was as to whether the Board of Education properly determined a dispute between a body of school managers and the local education authority of Swansea. The local authority had refused to pay teachers in church schools at the same rate as teachers in the authority's own schools. The teachers gave notice to leave, and the managers complained that the local authority were failing to keep the schools efficient, as the Education Act required. A public inquiry was held before a barrister who made a report in favour of the managers, but the Board of Education decided in favour of the local authority. The Court of Appeal upheld the award of certiorari and mandamus to quash the decision of the Board of Education. House of Lords confirmed the decision of the Court of Appeal. Lord Loreburn observed that although the action of the Board of Education might be administrative but in such cases the Board of Education will have to ascertain the law and also to ascertain the facts and even though the Board may not be required to act judicially and it was free to obtain information in any manner it liked, what was necessary for it was to give a fair opportunity to those who are parties to the controversy for correcting or contradicting anything prejudicial to their view.

20. In *Errington v. Minister of Health* (1935) 1 KB 249 the Jarrow Corporation made a clearance order under the Housing Act, 1930 in respect of an area which included the properties owned by the appellants. This order was objected to by the owners on the ground that the houses in question were fit for human habitation. The Minister held a public inquiry. After the conclusion of the inquiry some more information was sent by the Corporation to the Minister. The owners were not heard thereafter and were not invited in the discussion between the Ministry deputation and the Council representatives. Thereafter the order was confirmed by the Minister. Application filed by the appellants was dismissed. The Court of Appeal reversed the decision. Greer L.J. observed:

"I am satisfied that there was nothing wrong in the Minister receiving those communications from the Council. It was a matter on which the Council were entitled to stress the view that was already implied in the clearance order that they had made in the first instance, but I think it would have been a wise precaution on the part of the Minister when he received those further communications from the Council pressing for the confirmation of the order to communicate those letters or verbal persuasions to the other side, the objectors, and ask whether they had anything further to say on the matter. The Ministry

were acting in a quasi-judicial capacity they were doing what a semi-judicial body cannot do, namely, hearing evidence from one side in the absence of the other side, and viewing the property and forming their own views about the property without giving the owners of the property the opportunity of arguing that the views which the Ministry were inclined to take were such as could be readily dealt with by means of repairs and alterations to the buildings."

Similar views have been expressed in a later decision by the House of Lords in *Fairmount Investments Ltd. v. Secretary of State for the Environment* (1976) 2 ALLER 865.

21. In *Ridge v. Baldwin and Ors.* (1964) AC 40 the Chief Constable of Brighton had been tried and acquitted on a criminal charge of conspiracy to obstruct the course of justice. Two other police officers were convicted, and the judge twice took opportunities to comment adversely on the Chief Constable's leadership of the force. Thereupon the Brighton Watch Committee, without giving any notice of offering any hearing to the Chief Constable, unanimously dismissed him from office. He filed an appeal which was dismissed. His claim against the dismissal was disallowed by the High Court and the Court of Appeal. The House of Lords however allowed the appeal. Lord Reid made the leading speech and observed:

"The mere fact that the power affects rights or interests is what makes it "judicial", and so subject to the procedures required by natural justice. In other words, a power which affects rights must be exercised "judicially", i.e. fairly, and the fact that the power is administrative does not make it any the less "judicial" for this purpose."

In *A.G. v. Ryan* (1980) AC 718 the Privy Council said:

".....the Minister was a person having legal authority to determine a question affecting the rights of individuals. This being so it is a necessary implication that he is required to observe the principles of natural justice when exercising that authority ; and if he fails to do so, his purported decision is a nullity."

22. In *R. v. Commission for Racial Equality* LBC (1982) AC 779 Lord Diplock observed:

"Where an Act of Parliament confers upon an administrative body functions which involve its making decisions which affect to their detriment the rights of other persons or curtail their liberty to do as they please, intended that the administrative body should act fairly towards those persons who will be affected by their decisions."

23. The rule of "audi alteram partem" has been extended further by the Judge-made law. It has been held that a proper hearing must always include a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view, in *Kanda v. Government of Malaya* (1962) AC 322 Lord Denning observed:

"If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them."

24. In *Chief Constable of North Wales Police v. Evans* (1982) 1 WLC 1155 a police probationer was removed by the Chief Constable on account of allegations about his private life but he was not given any fair opportunity to refute the material collected against him. House of Lords granted the remedy against the unlawful dismissal.

25. In *R. v. Assistant Metropolitan Police Commissioner* (1986) RLR 52 refusal to renew licence of a taxi driver on the ground of an adverse medical report was quashed only because the medical report was not disclosed to him.

26. In *Kanda v. Government of Malaya* (supra), the dismissal of the police officer was declared as void because the adjudicating officer was in possession of a report of a board of inquiry which made charges of misconduct but which was not available to the police officer.

27. In *Shareef v. Commissioner for Registration of Indian and Pakistani Residents* (1966) AC 47 a decision of Industrial Injuries Commissioner was set aside because he had relied on some report which was not available to the parties and about which no opportunity was available to the party to offer its comment on the report, before the decision was taken. The same view has been expressed in *Taylor v. National Union of Seamen* (1967) 1 WLC 532 *Maradana Mosque Trustees v. Mahmud* (1967) 1 AC 13.

28. The question as to whether even in the absence of statutory provisions requiring compliance of natural justice or where the statutory provisions do not contain a particular procedure, whether the principles of natural justice are applicable has been answered in positive in *Wiseman v. Borneman* (1971) AC 297 Lord Reid said:

"For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose. But before this unusual kind of power is exercised it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation."

In *Lloyd v. McMohan* (1987) 2 WLC 821 Lord Bridge said:

"In particular, it is well-established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."

29. In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , their Lordships of the Supreme Court declared that the dividing line between the administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. Hegde, J., who spoke for the court observed:

"The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like ours it is inevitable that the organ of the State under our Constitution is regulated and controlled by the rule of law. In a Welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate, if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power...."

30. In *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, wherein a question which arose for consideration related to the change of date of birth of an employee, the Supreme Court observed: (at p. 270):

"We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State.

31. In *Sayeedur Rehman Vs. The State of Bihar and Others*, , their Lordships of the Supreme Court were considering a case in which the Board of Secondary Education had set aside the order of dismissal of a teacher of a school and also ordered payment of full salary and allowances. Subsequently, the Board reviewed the order in so far as it related to the grant of the benefit of pay and allowances. The appellant complained of violation of natural justice. Having remained unsuccessful in a writ petition filed before the Patna High Court he successfully appealed to the Supreme Court. While allowing his appeal the Court held:

"This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side

of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties. The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering an order is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties."

32. In *Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, , Beg, J.*, in his concurring judgment quoted with approval the following observations from the earlier decision of the Supreme Court in *State of Orissa* case (*supra*):

"The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies a like to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

He then proceeded to point out that there was no breach of any statutory provision in the earlier case of *Indian Airlines Corporation Vs. Sukhdeo Rai*, and *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, ,* and observed:

"Although *Indian Airlines Corporation Vs. Sukhdeo Rai*, which was cited on behalf of the appellant, could perhaps be distinguished on facts, I am unable to reconcile the decision of this court in the case of *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, with our view in the case before us. In *Tyagi's* case (*supra*) as in the case before us, no express statutory provision was contravened by the impugned dismissal, but a rule, made under powers conferred by statute, which protects the servant concerned from punishment by way of dismissal contrary to rules of natural justice, was violated. If a guaranteed "statutory status" means only an express statutory protection such as the case found in Art. 311 of the Constitution, and a rule made under a statutory power is not enough to confer it, there was none either in *Tyagi's* case (*supra*) or in the case before us. An express statutory provision or guarantee is not the only basis of a mandatory duty or obligation. It can be imposed either by a rule made in exercise of statutory power or it may arise by implication when exercising a quasi-judicial function."

33. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, a seven Judges Bench of the Supreme Court held:

"Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of *audi alteram partem*, which mandates that no one shall be condemned unheard, is part of the rules of natural justice."

"Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must always be: Does fairness in action demand that an opportunity to be heard should be given to the person affected?"

34. In *Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors.* AIR 1970 SC 851 a Constitution Bench of the Supreme Court observed that:

"Fair hearing is a postulate of decision making, cancelling a poll, although a fair abridgment of that process is permissible. It can be fair without the rules of evidence or form of trial. It cannot be fair if apprising the affected and appraising the representatives is absent. The philosophy behind natural justice is, in no sense, participatory justice in the process of democratic rule of law. The silence of a statute has no exclusionary effect except where it flows from necessary implication."

35. In *Union of India and Another Vs. Tulsiram Patel and Others*, a Constitution Bench of the Supreme Court through Justice Madon considered the various facets of the principles of natural justice and application of the same in the context of Article 14 and observed that "the principles of natural justice are not the creation of Article 14. Article 14 is not their begetter but their constitutional guardian. The principles of natural justice apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter. In such a case the principles of natural justice require that it must decide such matter fairly and impartially."

36. Having discussed the general principles evolved by the courts, in England and India during last number of years, I may now refer to some cases which specifically deal with the question of furnishing of copy of inquiry report to the delinquent. A large number of cases relate to the dismissal or removal of the Government servants or the employees of the public authorities. The phrase "reasonable opportunity of being heard" is used in Article 311 and in the various service rules framed under proviso to Article 309 of the Constitution or under the laws enacted by the Parliament and the State Legislatures. Till 42nd Amendment of the Constitution, the requirement of issue of a charge sheet, holding of a departmental inquiry, giving of opportunity to the employee to defend himself during the course of inquiry by cross examination of the witnesses and by

leading his own evidence, issue of a show cause notice as a prelude to the passing of final order and giving of copy of report as well as giving of opportunity against the proposed punishment constituted an integral part of the concept of reasonable opportunity. In this context it is sufficient to make reference to the decision of the Supreme Court in *Khem Chand Vs. The Union of India (UOI) and Others*, and *State of Mysore Vs. K. Manche Gowda*, . In *Khem Chand's* case, their Lordships explained the phrase "reasonable opportunity" and observed: (p. 175):

"The reasonable opportunity envisaged to the Government servant by the provision contained in Article 311(2) includes (a) an opportunity to deny his guilt and establish his innocence, which he can do if he is told what the charges levelled against him are and the allegations on which such charges are based; (b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant, tentatively proposes to inflict one of the three punishments and communicates the same to the government servant....."

These principles have been reiterated and followed in almost all cases decided subsequently.

37. In *the Managing Director, U.P. Warehousing Corporation and Ors. v. Vijay Narayan Vajpayee* (supra) their Lordships of the Supreme Court examined the scope of applicability of the principles of natural justice in the cases of employment under public bodies and held that even in the absence of any statutory rules or regulations these rules are to be followed. Sarkaria, J., speaking for the court observed: (p. 227):

"Even if at the time of dismissal of respondent-employee of U.P. State Warehousing Corporation, the statutory regulations had not been framed or had not come into force, then also, the employment of the respondents was public employment and the statutory body, the employer, could not terminate the services of its employee without due enquiry in accordance with the statutory Regulations, if any in force, or in the absence of such Regulations, in accordance with the rules of natural justice. Such an enquiry into the conduct of a public employee is of a quasi-judicial character. The Court would, therefore, presume the existence of a duty on the part of the dismissing authority to observe the rules of natural justice, and to act in accordance; with the spirit of Regulation 16, which was then on the anvil and came into force shortly after the impugned dismissal. The rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross-examine the witnesses relied upon by the appellate-

Corporation and an opportunity to lead evidence in defence of the charge as also a show cause notice for the proposed punishment."

38. The aforesaid principle has been followed by this Court in *S.L. Soni v. R.S.M.D.C. Ltd.*, Jaipur 1985 RLR 857.

39. So far as the R.S.R.T.C is concerned a learned Single Judge of this Court has in unequivocal terms laid down in *Ram Singh Rathore v. R.S.R.T.C.* 1986 (1) Judicial Surveyor 129 that even though there is no specific provision in the standing orders for supply of copy of inquiry report, it is an implicit requirement of the principles of natural justice which has to be complied with by the employer before terminating the service of an employee of R.S.R.T.C.

40. A lot of controversy has cropped up after the amendment of Article 311 of the Constitution of India by virtue of 42nd Constitution Amendment. As it stood prior to 42nd Constitution Amendment, Article 311(2) read as under:-

"No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed after such inquiry to impose upon him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of evidence adduced during such inquiry."

After 42nd Amendment Article 311(2) reads as under:-

No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed."

The unamended Article 311 had been considered by the Supreme Court in *Union of India (UOI) Vs. H.C. Goel*, by a Constitution Bench; *Avtar Singh v. The Inspector General* 1968 SLR 131 and *State of Maharashtra Vs. Bhaishankar Avalram Joshi and Another*, and in all those decisions it has been held that the competent authority must furnish a copy of the inquiry report and the non-supply of the copy of such report amounts to denial of reasonable opportunity contemplated by Article 311(2). In *Avtar Singh's* case the Constitution Bench specifically observed that every public servant, howsoever bad he may be, is entitled to have the whole matter brought to his notice before being punished.

41. What has been done by 42nd Amendment in the Constitution is that the delinquent is now not entitled for a reasonable opportunity to make representation on the penalty proposed. The amendment made in Article 311(2)

does not in any way affect the right of the delinquent employee to a reasonable opportunity of being heard. The words "no such person as aforesaid shall be dismissed, removed or reduced, in rank" have to be read in the context of the power available to the authority by which he was appointed. The power of imposing punishment of dismissal or removal or reduction in rank has to be exercised by the authority which appointed the holder of the civil post. Even in respect of persons to whom Article 311 is not applicable, order of such punishment can be passed only by the appointing authority or the disciplinary authority. Inquiry proceedings are normally not held by the disciplinary authority or the appointing authority but by a third agency known as the inquiry authority. Therefore, before a decision is taken by the disciplinary authority, appointing authority or the authority which appointed the employee, reasonable opportunity of being heard is to be afforded by such authority. What has been excluded by the Legislature is only the requirement of giving a notice to the concerned employee by the competent authority in respect of the punishment which is proposed to be imposed on him and the opportunity which the employee had before 42nd Amendment to make his representation against the proposed punishment. The Parliament has not chosen to amend or modify the scope of the phrase "reasonable opportunity of being heard" as used in the first part of Article 311(2). What meaning should be ascribed to the term "reasonable opportunity of being heard" and what is the extent and scope of it is the moot question. The report of the inquiry office constitutes an important material on which the ultimate findings of the disciplinary authority rest. The inquiry officer inquires into the charges and records evidence. The charging officer is permitted to produce witnesses, cross-examine the witnesses of the employer and show that the evidence produced by the employer is not sufficient for holding him guilty. However, the inquiry does not conclude at that stage. The inquiry concludes only after the material is considered by the disciplinary authority. This material includes the charges levelled against the employee, evidences recorded during the course of the inquiry, evaluation of the evidence recorded by the inquiring authority, its findings on the various charges and reasons given by it for arriving at such findings. If the disciplinary authority disagrees with the report of the inquiring authority, it has to record its reasons for such disagreement. If the inquiring authority records its conclusions to the effect that the charges are not proved and the disciplinary authority agrees with it, nothing more is required to be done so far as the delinquent employee is concerned. However if the inquiring authority exonerates the delinquent employee and the disciplinary authority disagrees with the conclusions and findings of the inquiring authority and wants to act upon its own independent appraisal and wants to punish the employee, it must communicate to the employee its reasons for disagreement with the findings of the inquiring authority and give him opportunity of making his representation against the findings recorded by the disciplinary authority. Likewise, if the inquiring authority holds the employee guilty of the charges and the disciplinary authority after making an evaluation of the record of inquiry comes to the same conclusion and wants to punish the employee on the basis of

the adverse findings, then too it must communicate to the employee the findings recorded by the inquiring authority together with its own evaluation and give him an opportunity of making representation. At times the disciplinary authority may simply record its agreement with the findings of the inquiry authority and the reasons given by it and act upon the same. Before the disciplinary authority finally takes a decision on the basis of such findings together with reasons, the adverse material which is available with it in the form of report of the inquiry officer has to be made available to the delinquent. Only when such an opportunity is given to the employee concerned that he can satisfy the disciplinary authority that the inquiry officer's report does not contain proper appreciation of evidence or that he has ignored the material evidence or that the factors which are favourable to him have not been considered or that the conclusions drawn by the inquiry officer about the charges are not correct. Even if the report is favourable it must bring out all points. At times the inquiry officer may ignore the material points supporting the delinquent. The disciplinary authority itself may not be in a position to fully appreciate such points unless opportunity is given to the delinquent to make his submissions on the findings of the inquiring authority. This will certainly result in serious prejudice to the employee.

42. Once it is held that aforesaid is the scope of the phrase "reasonable opportunity of being heard" there is every justification for holding that non supply of copy of the report will offend the principles of natural justice which constitute an integral part of the concept of rule of law.

43. Having regard to the above discussion, I am clearly of the opinion that the amendment made in Article 311(2) does not in any way affect the requirement of the principles of natural justice, namely, that the delinquent is entitled to the copy of the report of the inquiry officer and also reasons for disagreement recorded by the disciplinary authority, if any, and is entitled to an opportunity to make representation before the disciplinary authority/competent authority takes a final decision in the matter. The theory of implied exclusion of the principles of natural justice is not at all attracted. Rather, the principles laid down in Smt. Menaka Gandhi's case (supra), Mohinder Singh Gill's case (supra) and large number of other decisions regarding applicability of the principles of natural justice even in the absence of requirements of the statutes, rules or regulations are attracted in such cases.

44. This Court has examined the question relating to supply of copy of inquiry report after 42nd Amendment of Article 311. In *M.K. Soni v. State of Rajasthan* 1991 WLC 229 Calla, J. held that requirement of supply of copy of inquiry report is implicit requirement of the principles of natural justice which has to be complied with even after the 42nd Amendment of the Constitution. In *S.B. Civil Writ Petition No. 1285/85 Tej Karan Jain v. State of Rajasthan*, decided on February 8 1991 (1) WLC 102 I had an occasion to discuss the entire scheme of Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules,

1958. After analysing Rule 16 and in particular Rules 16(10) and 16(12), I have held that it is obligatory for the disciplinary authority to supply a copy of the inquiry report to the delinquent and to give him an opportunity of making representation. Same view has been reiterated by me in *Chandmal Saraswat v. State of Rajasthan* 1991 (2) WLC 75. In *L.R. Pitti v. State of Rajasthan* (1992) WLC 44 Mathur, J. has also taken the same view. In *Dr. Hari Krishan Ratveshwar v. State of Rajasthan* 1992 WLC 196 Saxena, J. has also taken the same view. In *B.K. Pareek v. New Bank of India* 1992(2) WLC 353 Bhargava, J. has held that in case of a Bank Employee also requirement of supply of inquiry report before imposition of punishment is an implicit requirement of the principles of natural justice which has to be followed by the Bank while holding disciplinary inquiry against its employees and an order of punishment passed without supply of copy of inquiry report is liable to be quashed on the ground of violation of principles of natural justice.

45. In *Union of India and others Vs. Mohd. Ramzan Khan*, scope of Article 311, as it stands after amendment, has been examined by a three Judges Bench of the Supreme Court and it has been held that supply of copy of inquiry report is necessary before an order of punishment can be passed against a delinquent employee and that 42nd Amendment of the Constitution does not have the effect of dispensing with the requirement of furnishing a copy of the inquiry report to the delinquent.

The question relating to supply of copy of inquiry report has been examined by a Constitution Bench in *Mrs. Sarojini Ramaswami v. Union of India and Ors.* JT 1992 (5) C 1. The question which arose for examination by the Supreme Court relates to an inquiry being held by a committee headed by a sitting Supreme Court Judge on the basis of a motion admitted by 9th Lok Sabha for removal from office of Mr. Justice V. Ramaswami, a sitting Judge of the Supreme Court. The inquiry relates to certain allegations of financial improprieties and irregularities allegedly committed during the tenure of Mr. Justice V. Ramaswami as the Chief Justice of Punjab & Haryana High Court. The petitioner claimed that the remedy of judicial review is available to the concerned judge against the findings, if any, recorded by the inquiring committee that the learned Judge is guilty of mis-behaviour, even prior to the submission of the report of the committee to the Speaker in accordance with Section 4(2) of the Judges (Inquiry) Act, 1968 or latest till it is laid before the Parliament as required by Section 4(3) of the Act but not thereafter and, therefore, a copy of the report should be furnished to the Judge concerned before it is submitted to the Speaker.

46. By a majority of 4:1, the Constitution Bench of the Supreme Court held that the claim of the petitioner that the copy of the report be made available before its submission to the Speaker is not tenable. The court held that if the finding of not guilty is recorded by the committee or a majority of it, nothing more is required to be done and the concerned Judge cannot be aggrieved by a finding of "not guilty" in his favour. After making a detailed reference to its decision in Sub-

Committee on Judicial Accountability v. Union of India and Ors. JT 1991 (6) C 184 the majority held that if a finding of guilt is recorded by the committee or by a majority of it and the Parliament considers the motion for removal of the Judge, it is free not to adopt the motion for removal of the Judge. It is at this stage that the Parliament should also have the benefit of the comments, if any, of the concerned Judge on the finding of "guilty" recorded by the inquiry committee. To enable the concerned Judge to effectively exercise his right to show cause against the finding of guilt made in the report, it is the obligation of the Speaker/Chairman to supply copy of the inquiry committee's report to the concerned Judge while causing it to be laid before the Parliament u/s 4(3). The concerned Judge will then have an opportunity to place his point of view and offer his comments on the finding of guilt against him made by the committee. The Supreme Court held:

"We are therefore of the opinion that in the constitutional scheme in India envisaged and reflected by the constitutional provisions and the law enacted thereunder for the removal of a Judge it is implicit that such an opportunity be given to the concerned Judge when the Parliament takes up the motion for his removal for consideration along with the Committee's report and other relevant materials...."

This decision of the Constitution Bench of the Supreme Court shows that their Lordships have again reiterated the well recognized principle of natural justice that before decision is taken by a competent body/authority, the adverse material must be made available to the person concerned and he must be given an opportunity to make his representation.

47. A Division Bench of Rajasthan High Court has considered the question relating to supply of inquiry report etc. and recording of findings of the disciplinary authority in Nathulal Vs. The State, . Jagat Narayan J., as he then was, who spoke for the Bench, referred to the decision of the Privy Council in AIR 1948 121 (Privy Council) , and observed:

(7) "Punishment is imposed on the civil servant when some charges are proved against him. These charges constitute the "acts or omissions on his part" for which punishment is proposed. The reasoning by which it is held that the charge or charges have been proved against the civil servant constitute the "grounds on which it is proposed to take action" against him.

An opportunity of showing cause is to be given not only against the quantum of punishment but also against the grounds on which the proposed action is based, that is against the reasoning by which the authority concerned comes to a finding that the charges have been proved.

(8) In a case in which the enquiring officer is different from the punishing authority the procedure which should be adopted is this The punishing authority should apply its mind to the report of the enquiring officer and see whether it agrees with it wholly or in part. If it agrees with it wholly, that is, if it agrees both

with the findings and the reasoning given for arriving at the conclusions, the punishing authority should say so specifically in its order under which it issues notice of the proposed punishment which it thinks suitable in the circumstances of the case.

A copy of the report of the enquiring officer containing the reasoning by which he arrives at the conclusion that the charges have been proved should be handed over to the civil servant so that he has an opportunity of showing cause against the reasoning. Where the punishing authority agrees with part of the findings and disagrees with the rest it should again say so specifically in its order under which it issues notice of the proposed punishment.

If the authority comes to the conclusion that certain charges which in the opinion of the enquiring officer have not been proved, have also been substantiated then the authority should give its reasoning in support of this finding. A copy of the findings of the enquiry officer on the charges held by him to have been proved together with a copy of the findings of the punishing authority holding the other charges to have been substantiated should be handed over to the civil servant in order to afford him an opportunity of making representation against the accuracy of facts found by the punishing authority.

(9) Where the punishing authority itself holds the enquiry, there also it should arrive at tentative findings of fact and should give a copy of those findings to the civil servant so that he may have an adequate opportunity of making representations against the accuracy of findings of fact arrived at by it."

48. Another equally important question which requires consideration is as to whether it is obligatory for the disciplinary authority to record reasons and communicate the same to the delinquent in the order of punishment. In this regard it is important to mention that so far as respondent Corporation is concerned, Clause 36 of the Standing Orders framed by it begins with the following expression:

"One or more of the following penalties may, for good and sufficient reasons, be imposed...."

It is also to be noted that under Clause 36(vii) of the Standing Orders an appeal lies against the order of punishment imposed by the competent authority. An employee can effectively challenge the order of punishment before the appellate authority then, and then only, when he knows the reasons on the basis of which order of punishment has been passed. The appellate authority can go into the validity and sufficiency of the reasons only when reasons are set out in the order of punishment. The employee has a right to challenge the order of punishment in a court of law. He can also approach the High Court for the purpose of judicial review of the order of punishment. The court cannot properly adjudicate upon illegality of the order when it does not know the reasons which prevailed with the competent authority to impose a particular penalty. The disciplinary authority cannot stultify the right of the employee to file appeal or to seek judicial review

of the order of punishment simply by refraining from recording reasons in support of the order of punishment and communicating the same to the concerned employee. When the statutory provisions contemplate that penalty can be imposed only for good and sufficient reasons, the inescapable conclusion is that recording of good and sufficient reasons constitute a condition precedent for imposing any of the penalties specified in Clause 36 of the Standing Orders. Requirement of recording of reasons is a requirement of the principles of natural justice and a non-speaking order is liable to be declared as void on the ground of violation of principles of natural justice.

49. The extent and scope of this branch of the principles of natural justice has been discussed by the Appex Court and various other High Courts in a series of decisions. In *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, , a Constitution Bench ; of the Supreme Court while dealing with an order passed by the Central Government, in exercise of its appellate powers u/s 111(3) of the Companies Act, 1956, quashed the appellate order of the Central Government and observed:

"If the Central Government acts as a tribunal exercising judicial powers and the exercise of that power is subject to the jurisdiction of this Court under Article 136 of the Constitution, we fail to see how the power of this Court can be effectively exercised if reasons are not given by the Central Government in support of its order."

50. In *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, , Subba Rao J., recorded his dissenting views in the following words:

"In the context of a welfare State, administrative tribunals have come to stay. Indeed, they are the necessary concomitants of a welfare State. But arbitrariness in their functioning destroys the concept of a welfare State itself. Self-discipline and supervision exclude or at any rate minimise arbitrariness. The least a tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness; it gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory court to keep the tribunals within bounds. A reasoned order is a desirable condition of judicial disposal."

"...If tribunals can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuses of power. But, if reasons for an order are given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard."

"....There is an essential distinction between a court and an administrative tribunal. A Judge is trained to look at things objectively, uninfluenced by

considerations of policy or expediency; but, an executive officer generally looks at things from the standpoint of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties; and the least they should do is to give reasons for their orders. Even in the case of appellate courts invariably reasons are given, except when they dismiss an appeal or revision in limine and that is because the appellate or revisional court agrees with the reasoned judgment of the subordinate court or there are no legally permissible grounds to interfere with it. But the same reasoning cannot apply to an appellate tribunal, for, as often as not the order of the first tribunal is laconic and does not give any reasons."

51. In *Bhagat Raja v. Union of India* AIR 1967 SC 1607 a Constitution Bench of the Supreme Court reiterated what was in the form of dissenting opinion of Subba Rao J. in the case of *Madhya Pradesh Industries Ltd. case* (supra). In *Travancore Rayon Ltd. v. Union of India* (1969) III SCC 868 the Supreme Court observed:

"The court insists upon disclosure of reasons in support of the order on two grounds: one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power."

52. In *M Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, , the Supreme Court laid down the following proposition:

"Opportunity to a party interested in the dispute to present his case on questions of law as well as fact, ascertainment of fact from materials before the Tribunal after disclosing the materials to the party against whom it is intended to use them, and adjudication by a reasoned judgment upon a finding of the facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him; it must appear that he has reached a conclusion which is according to law and just, and for ensuring that, he must record the ultimate mental process leading from the dispute to its solution. Satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appeal to the authority. Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it

may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just.

53. In *Woolcombers of India Ltd. Vs. Woolcombers Workers Union and Another*, while dealing with the award of the Industrial Tribunal, the Supreme Court observed (p.141):

"The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also appearance of justice. Third, it should be remembered that an appeal generally lies from the decision of judicial and quasi-judicial authorities to this court by special leave granted under Article 136. A judgment which does not disclose the reasons will be of little assistance to the court."

54. In *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, , their Lordships of the Supreme Court referred to an unreported decision in Civil Appeal No. 245/70 N.M. Desai v. Testeels Ltd. decided on December 17, 1975 and observed that:

"The administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their order and give sufficiently clear and explicit reasons in support of the orders made by them. The rule requiring reasons to be given in support of an order is like the principle of *amī alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

55. In *Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others*, , their Lordships referred to the provisions of Section 127 of the Income Tax Act, 1961, and observed: ;

"When law requires reasons to be recorded in a particular order affecting prejudicially the interests of any person who can challenge the order in court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reasons is not expiated."

In the decision, reference has also been made to another unreported order of the Supreme Court in *Shri Pragdas Umer Vaishya v. Union of India* (printed in 1967

Jab LJ 817) wherein the Apex Court held that under Rule 55 of the Mineral Concession Rules, 1960, the Central Government in disposing of the revision application must record its reasons and communicate these reasons to the parties affected thereby. It was further held that the reasons could not be gathered from the notings in the files of the Central Government. Recording of reasons and disclosure thereof is not a mere formality.

56. In *Mahindra & Mahindra Ltd. v. Union of India* AIR 1979 SC 798 their Lordships of the Supreme Court held that an order which does not contain reasons is clearly vitiated by error of law apparent on the face of the record, and mere recording of final and operative order is not sufficient.

57. In *Rama Varma Bharathan Thampuram Vs. State of Kerala and Others*, , the Supreme Court held that the administrative bodies having quasi-judicial power must comply with natural justice and record reasons for their conclusions.

58. In *S.N. Mukherjee Vs. Union of India*, , a Constitution Bench of the Supreme Court referred to large number of decisions of the English Courts, American Courts and Australian Courts, and then summed up in the following words:

"Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

59. A Full Bench of Gujarat High Court made an extremely lucid analysis of need for passing of reasoned orders by quasi-judicial authorities in *Testeels Ltd. Vs. Desai (N.M.) (Conciliation Officer) and Another*, and concluded with following

observation (p. 214):

"The administrative authorities having a duty to act judicially cannot, therefore, decide on considerations of policy or expediency. They must decide the matter solely on the facts of the particular case, solely on the material before them and apart from any extraneous considerations by applying pre-existing legal norms of factual situations. Now, the necessity of giving reasons is an important safeguard to ensure observance of the duty to act judicially. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and excludes or at any rate, minimises arbitrariness in the decision making process."

"Another reason which compels making of such an order is based on the power of judicial review which is possessed by the High Court under Article 226 and the Supreme Court under Article 32 of the Constitution. These courts have the power under the said provisions to quash by certiorari a quasi-judicial order made by an Administrative Officer and this power of review can be effectively exercised only if the order is a speaking order. In the absence of any reasons in support of the order, the said courts cannot examine the correctness of the order under review."

60. This Court has in large number of decided cases held that in disciplinary matters the quasi-judicial authorities must record reasons and if order of punishment is a non-speaking order, it is liable to be declared as void on the ground of violation of the principles of natural justice. This view has been taken in *The Union of India (UOI) Vs. Ramgopal Tanwar*, . C.B. Bhargava J., observed thus:

"The punishing authority must give reasons in support of the order of punishment which would show that the authority has considered the explanation given by the delinquent servant in reply to the show cause notice proposing punishment."

61. In *Kuldeep Singh v. Union of India* RLW 1974 171 a Division Bench held that disciplinary authority should pass a speaking order and not merely an order containing conclusions.

62. In *Vedpal Krishna Dheer v. State of Rajasthan* 1977 WLN (UC) 397, D.P. Gupta, J. as he then was, held that even when a minor punishment is imposed on a delinquent government servant under Rule 17 of Rajasthan Civil Services (Classification Control & Appeal) Rules, 1958, the order of punishment must be reasoned one.

63. In *Phool Chand v. State of Rajasthan* 1980 WLN (UC) 311C Agarwal, J. as he then was, reiterated the necessity of passing of a speaking order by disciplinary authority as well as the appellate authority.

64. In *State of Rajasthan v. Amolak Chand Sanghi* 1983 RLR 246 a Division Bench of this Court has after making reference to the various decisions of the Supreme Court held that the disciplinary authority should record reasons in support of it so that the court may be able to examine its correctness and if the

reasons are not given in the order, the order of punishment is liable to be quashed.

65. Widening of the horizons of the scope of judicial review which started with Menaka Gandhi's case (supra) and continued with Mohinder Singh Gill's case (supra), Mahindra & Mahindra Ltd. (supra) R Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, , reached its new height in Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, , Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, and finally in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , wherein J.S. Verma, J., speaking for the Court observed:

"In view of the wide ranging and, in essence, all pervading sphere of State activities in discharge of its welfare functions, the question assumes considerable importance and cannot be shelved. The basic requirement of Article 14 is fairness in action by the State and we find it difficult to accept that the State can be permitted to act otherwise in any field of its activity, irrespective of the nature of its functions, when it has the upper duty to be governed by the rule of law. Non-arbitrariness, in substance, is only fair play in action. We have no doubt that this obvious requirement must be satisfied by every action of the State or its instrumentality in order to satisfy the test of validity."

66. Administrative functionaries of the Government, its agencies and its instrumentalities and some others feel that compliance of the principles of natural justice is an unnecessary burden and the specious plea and hollow slogans of public interest, are pressed into service for defending and upholding actions which are per se violative of the rules of natural justice and strike at the basics of the rule of law, which permeate our Constitutional set up. All these persons deserve to be reminded what the Apex Court has said in the The Board of High School and Inter-mediate Education, U.P. and Others Vs. Kumari Chitra Srivastava and Others, where while up-holding the decision of Allahabad High Court, which had declared the action of the Board of cancelling the examination of the respondent as illegal on the ground of violation of the principles of natural justice, their Lordships took notice of the argument that requirement of issue of show cause notice to the candidate before cancellation of examination would cause undue burden on the Board and observed:

"The learned counsel urges that this would be causing a heavy burden on the Board. Principles of natural justice are to some minds burdensome but this price-a small price in-deed-has to be paid if we desire a society governed by the rule of law."

67. A somewhat similar argument was advanced in support of a rule warranting removal of a permanent employee without any notice and without reasons in Central Inland Water Transport's case (supra). The rule was struck down by the

Supreme Court in its land- mark decision where the court declared that any contract of service which is unconscionable, arbitrary or opposed to public policy is liable to be quashed or declared unenforceable on the ground of violation of Article 14 and Section 23 of the Contract Act. The same question came to be referred to a Constitution Bench and in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, the Constitution Bench by a majority of 4:1 held that Central Inland Water Transport's case (supra) was correctly decided. In his judgment B.C. Ray, J. observed (p. 453):

"The Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedurally. Rule of law posits that the power is to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination.

Further, the "audi alterant partem" rule, which, in essence, enforces the quality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations."

P.B. Sawant, J. in his concurring judgment observed (p. 459):

"The right of life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights call ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them."

K. Ramaswamy, J. made the following observations regarding principles of natural justice (pp. 484, 482):

"The principles of natural justice are an integral part of the guarantee of equality assured by Article 14. Article 14 read with Article 16(1) accords right to an equality or an equal treatment consistent with the principles of natural justice. Any law made or action taken by the employer, corporate statutory or instrumentality under Article 12 must act fairly, justly and reasonably. Right to fair treatment is an essential inbuilt of; natural justice. Whenever there is arbitrariness in State action-whether it be of the legislature or of the executive or of an authority under Article 12, Articles 14 and 21 spring into action and strike down such an action. The concept of reasonableness and non-arbitrariness pervades the entire constitutional spectrum and is a golden thread which runs through the whole fabric of the Constitution. Therefore, the provision of the statute, the regulation or the rule which empowers an employer to terminate the services of an employee whose service is of an indefinite period till he attains the age of superannuation, by serving a notice or pay in lieu thereof must be

conformable to the mandates of Articles 14, 19(1)(g) and 21."

68. In *State of West Bengal v. Atul Krishna Shaw and Anr.* 1991 (1) SCC 414 the Supreme Court held:

".....A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the Tribunal itself. Therefore, statement of reasons is one of the essentials of justice."

69. These decisions must be sufficient to dispel any doubt in the minds of the administrative authorities and others that principles of natural justice will have to be complied with in order to maintain the rule of law and the constitutional system. The Courts which owe a duty to uphold the Constitution will be failing in their duty if any compromise is made in the field of application of principles of natural justice by accepting the specious pleas of administrative convenience and unnecessary burden. It must be remembered that if the rule of law is not upheld by the Courts, there is every danger of the entire system being destroyed. A good number of people who belong to the category of "haves" in the society, have started adopting extraneous means for achieving their objectives and for vindication of their rights instead of availing remedies in the Courts. Likewise in the matter of rent and eviction people have started adopting extra legal means for vacation of premises because of the thinking that the courts have failed them. Let it not pervade other walks of life in the society.

70. From the above discussion the following conclusions emerge:

1. The rules of natural justice, unless they are excluded by provisions contained in the Act, Regulations or Rules, must be complied in departmental inquiries held against civil servants and employees of agencies and the instrumentalities of the State. Rules of natural justice require that before an order is passed for punishing an employee, entire adverse material including a copy of the inquiry report, which may be used against him by the disciplinary authority/employer, must be made available to him. If the employee is not made aware of the adverse material, the punishment order is liable to be declared as illegal and void on account of violation of the principles of natural justice.

2. Even after amendment of Article 311(2) of the Constitution of India the requirement of "reasonable opportunity of being heard" implies that before a decision is taken by the disciplinary authority to punish the employee, copy of inquiry report must be made available to the delinquent and he should be given an opportunity of making representation against the adverse findings.

3. If the inquiring officer records a finding of "not guilty" and the disciplinary authority disagrees with the findings of the inquiring officer, then too, the disciplinary authority must give a copy of the report of inquiring officer along with its reasons for disagreement with those findings to the delinquent employee and give an opportunity to the delinquent employee to submit his representation.

4. The Judgment of A.K. Mathur, J. in Ram Singh v. R.S.R.T.C. 1986 (1) Judl. Surveyor 129 (para 4), reflects the correct position of law on the requirement of supply of copy of inquiry report to the delinquent before an order of punishment is passed under the provisions of the Standing Orders of 1965.

5. The order of punishment passed by a disciplinary authority must contain reasons in it. It must be a speaking order and mere recording of conclusions does not satisfy the requirement of passing of a speaking order which is a part and parcel of the principles of natural justice. Reasons cannot be gathered from the official notings or files for sustaining a non-speaking order.

6. In terms of Clause 36 of the Standing Orders of 1965, the disciplinary authority is under a statutory obligation to record good and sufficient reasons for imposing a particular penalty. Such reasons must be communicated to the delinquent employee.

71. In the present case the order passed by the disciplinary authority has been so passed in total disregard of the principles of natural justice inasmuch as the inquiry was held behind the back of the petitioner. He was not given an opportunity of defence. He was not given copy of the inquiry report and was also not given opportunity of making a representation against the findings of the disciplinary authority. The order of punishment is a non-speaking order and is, therefore, contrary to Clause 36 of the Standing Orders.

72. For the reasons mentioned above, the writ petition is allowed. Order dated April 8, 1983 is declared illegal and it is hereby quashed. The petitioner should be reinstated in service with all consequential benefits except the actual wages for the period between April 8, 1983 to the date of this order. For the wages of this period the petitioner shall be free to avail remedy u/s 33C(2) of the Act of 1947. If any such application is filed by the petitioner, the respondent shall be free to plead and prove that the petitioner was gainfully employed and is, therefore, not entitled to whole or part of the wages. Costs made easy.