
(1996) 11 KL CK 0009
In the High Court Of Kerala
Case No : C.R.P. No. 1256 of 1992

Viswamithran, P.

APPELLANT

Vs

Manager, Sree Narayana College and Others

RESPONDENT

Date of Decision : 07-11-1996

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 55, 56

Citation : (1997) 1 KLJ 147

Hon'ble Judges : T.V. Ramakrishnan, J;J.B. Koshy, J

Bench : Division Bench

Advocate : M.V. Thampan, for the Appellant; V.P. Seemanthini, for 1st Respondent and P. Jayasankar, Government Pleader for 4th Respondent, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—This Revision Petition was filed challenging the correctness of the judgment of the Calicut University Appellate Tribunal in Appeal No. 6 of 1991 affirming the punishment of compulsory retirement imposed on the Petitioner. Petitioner joined the service of the 1st Respondent-College as an Attender on 15th July 1965. He was subsequently promoted to the grade of Lower Division Clerk on 1st June 1971 and to the grade of Upper Division Accountant on 3rd March 1983 and was further promoted to the grade of Head Accountant with effect from 25th September 1984. A charge memo dated 26th May 1989 was served on the Petitioner by the 1st Respondent requiring him to submit his explanation. The charges levelled against the Petitioner were as follows:

1. Fees have been collected from the students without issuing proper receipts and the collections have not been accounted properly. The relevant accounts and registers have also not been maintained up-to-date inspite of repeated instructions. Though he has been continuing in the same college as Head Accountant since 3rd March 1983, he did not care to carry out his work promptly and systematically. The above conduct of his is a clear violation of the rules and

negligence of duties and responsibilities entrusted with him.

2. A Sum of Rs. 8,258.25 (tuition fee Rs. 7,311.25 and special fee Rs. 947) collected during 1983-84, 1984-85 and 1985-86 has been remitted only in 9/1987 and 1/1988, that too, after detecting the same in internal checking. This amounts to misappropriation of Government money.

3. Tuition fee, library fine and laboratory fine amounting to Rs. 36,982.05 are seen to have been defalcated during the years 1982-83 to 1987-88 for which he also seems guilty.

4. His above said action is highly irregular and quite unbecoming on the part of a Head Accountant for which he deserves drastic disciplinary action.

He submitted an explanation stating that the charges are vague and not specific and no details have been mentioned therein. It is also stated that memo of allegations as required under the rules were not attached to the charge memo. He also denied the charges. He submitted that one Somarajan, U.D. Accountant who was also charge-sheeted was entrusted with the duty of collecting cash and he is not a party to the misappropriation. An advocate practising in Kollam was appointed as the Enquiry Officer. He has modified the charges levelled against the Petitioner as follows:

1. As the Head Accountant, you have collected the fees from the students without issuing proper receipts and the collections have not been accounted properly. The relevant records were not maintained properly.

2. A sum of Rs. 8,258.25 collected during the period 1983-84, 1984-85 and 1985-86 was misappropriated and later remitted during September 1987 and January 1988.

3. Rs. 36,982.05 collected in the account of tuition fees, library fine and laboratory fine have been defalcated during the years 1982-83 to 1987-88.

4. Your above said action, omissions and negligence are highly irregular and quite unbecoming as the Head Accountant of the college.

An enquiry was conducted. In the enquiry, the Enquiry officer found that charge Nos. 1, 2 and 4 are proved. After issuing a second show cause notice proposing punishments and after getting the explanations, punishment of compulsory retirement was imposed on him. An appeal was filed before the University Appellate Tribunal and the Tribunal dismissed the appeal. The above judgment is challenged in this Revision Petition.

2. It is submitted that the judgment of the appellate Tribunal is perverse and apparently illegal. The following grounds are urged by the Petitioner to challenge the punishment of compulsory retirement:

(i) Charges framed against him are vague and not specific;

(ii) Memo of allegations as required under the rules were not attached to the

charge sheet. Therefore details of the charge sheet were not given to him and since this is a mandatory rule, on that ground itself, the disciplinary action is liable to be set aside;

(iii) Enquiry conducted by an Advocate was not fair as the procedure adopted by him was not proper;

(iv) He was not allowed to be assisted by a legal representative even though the enquiry was conducted by a lawyer and rules allow charge-sheeted employees to be represented by a lawyer;

(v) Findings are perverse. He was charge sheeted for certain offences and found guilty of certain other offences. It was found that one Somarajan collected the fees and he later paid the amount also. He is not a party to the misappropriation;

(vi) There is no iota of evidence to find him guilty of the charges levelled against him;

(vii) Even if the misconducts proved against him are proved, the punishment imposed on him is shockingly disproportionate. He has got unblemished service for a long number of years and the punishment imposed is shockingly disproportionate and on that ground alone the punishment should have been set aside by the Tribunal;

(viii) Grounds urged were not properly considered by the Tribunal. The Tribunal ought to have set aside the punishment imposed and directed reinstatement with full attendant benefits as he has not done any misconduct.

3. First we may go through the contentions raised regarding the validity and correctness of the charge sheet. After the charge memo dated 26th May 1989 and the receipt of explanations, the enquiry officer has framed four definite charges. The relevant rules allow the enquiry officer to add, alter or modify the charges. The provisions regarding disciplinary actions against teachers as well as non-teaching staff of the private colleges are governed by the Kerala University (Conditions of Service of Teachers and Members of Non-teaching Staff) First Statutes, 1979 (hereinafter referred to as the "Statute"). Similar provisions are provided in the Calicut University First Statute also. Statute 68 provides that the provisions in the Statute except specifically mentioned as applicable to the teachers shall also be applicable to the members of the non-teaching staff of private colleges. Statute 71(4) provides as follows:

Any authority or person conducting the inquiry (hereinafter referred to as the inquiring authority) may, during the course of the inquiry if it seems necessary, add to, amend, alter, or modify the charges framed against the teacher concerned in which case the teacher shall be required to submit within a reasonable time to, be specified in that behalf any further written statement of his defence.

It is contended by the Petitioner that when the enquiry officer has framed four

charges, he was not asked to give an explanation or a written statement of his defence. On going through the charges framed by the enquiry officer, it can be seen that he has not added or altered the nature of the charge so as to get a fresh written statement. The Petitioner has already filed his written statement to the original charge memo. Therefore, merely because the enquiry officer has framed four charges, the disciplinary proceedings cannot be set aside.

4. It is contended vehemently that the charges are vague and not specific and memo of allegations as mentioned in the Statute were not attached to the charge sheet and, therefore, disciplinary proceedings taken on the basis of the above charge sheet has to be set aside. Procedure for imposing penalties is mentioned in Statute 71. Statute 71(2) provides as follows:

Whenever a complaint is received or on consideration of the report of an investigation or for other reasons, the Educational Agency is satisfied that there is a prima facie case for taking action against the teacher of a private college, such authority shall frame definite charge or charges which shall be communicated to the teacher of a private college, together with the statement of the allegations on which each charge is based, and of any other circumstances which it is proposed to take into consideration in passing orders on the case. The teacher concerned of the private college shall be required to submit within a reasonable time to be specified in that behalf a written statement of his defence and also to state whether he desires to be heard in person. The teacher of the private college may, on his request, be permitted to peruse or take extract from the records pertaining to the case for the purpose of preparing his written statement provided that the Educational Agency may, for reasons to be recorded in writing, refuse him such access if, in its opinion, such records are not strictly relevant to his case. After the written statement is received within the time allowed, the Educational Agency is satisfied that a formal inquiry shall be held into the conduct of the teacher of the private college, it may pass an order accordingly.

It is an admitted case that along with the charge sheet no memo of allegations as mentioned in Statute 71(2) were served. It is the contention of the Respondents that the charge sheet itself is clear. Allegations which led to the charges were mentioned in the charge memo itself. Therefore, it was argued that no prejudice is caused by not attaching a separate memo of allegations to the charge sheet.

5. In the decision reported in *C.I. Poulose v. Labour Court and Anr.*, 1996 (1) KLJ 515 a Division Bench of this Court of which one of us was a party (Koshy, J.) held that there is no violation of the principles of natural justice if no prejudice is caused to the parties. In that case, reliance was placed on the decision of the Supreme Court in *K.L. Tripathi Vs. State Bank of India and Others*, wherein it was held that whether a particular principle of natural justice has been violated or not has to be judged in the background of the nature of charges, the nature of the investigation conducted, in the background of relevant rules governing

enquiries, if any. The basic concept of fair play in action must depend upon the particular facts, if there be any, between the parties. In the above case, the Supreme Court held that if no prejudice is caused on the facts of the case even absence of opportunity to cross-examine will not vitiate the enquiry. The principles of natural justice will depend upon the facts and circumstances of each particular case and there is no set of abstract principles. Therefore, after complying with the provisions of the rules, if any, the enquiry is conducted without causing any prejudice to the charge sheeted employee, there is fair play and if reasonable opportunity is given to the employee, it cannot be stated that the enquiry was conducted in violation of the principles of natural justice. Here, in this case, provisions of the rules are violated. When principles of natural justice are embodied in a set of Rules, there cannot be any violation. Therefore, it is argued by the Petitioner that the mandatory rule that memo of allegations should be accompanied with the charge memo is violated and, therefore, disciplinary action based on that charge memo cannot be acted upon.

6. The Supreme Court considered almost an identical matter in *Surath Chandra Chakrabarty Vs. State of West Bengal*, . In the above case, the Appellant, who was an employee of the State Government, had received a communication containing a number of charges but no statement of allegations on which those charges were based was sent to him. In replying thereto the Appellant stated, in categorical terms, that the charges and allegations were vague, indefinite and lacking in material particulars and pointed out that "unless the charges are made specific to the point and contain full details with date, time, place and person etc. it is impossible for him to meet them properly". Without complying with such request the disciplinary authority continued with the enquiry proceeding and ultimately he was removed from service. Aggrieved thereby, he filed a suit in the High Court and in paragraph 19 of the plaint he specifically alleged that the enquiry was vitiated because under the rules and procedure for holding such an enquiry he was entitled to be furnished with definite charges but the charges and allegations made against him were vague, indefinite and lacking in material particulars and in spite of repeated requests those were neither made specific nor material particulars like date, time, place and persons were supplied. A learned Single Judge of the Court who tried the suit found that no particulars and other necessary details were given in the charges and they were vague resulting in non-compliance with Rule 55 of the Civil Services (Classification, Control and Appeal) Rules and that the necessary particulars were not supplied in spite of repeated objections of the Appellant to the charges being vague and indefinite. On the above and other findings the learned Single Judge decreed the suit of the Appellant. In appeal the Division Bench set aside the findings of the learned Single Judge and dismissed the suit but granted a certificate to move the Supreme Court. In setting aside the judgment of the Division Bench the Supreme Court first observed that if a person was not told clearly and definitely what the allegations were on which the charges preferred against him were founded, he could not possibly by projecting his own imagination, discover all the facts and

circumstances that might be in the contemplation of the authorities to be established against him. The Supreme Court further observed that the whole object of furnishing the statement of allegations was to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. The Court then illustrated the utter vagueness of the charges levelled against the Appellant therein by referring to one of them and the reply of the Appellant thereto. On such consideration the Court held that each charge was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the Appellant to defend himself. In the context of the above facts the Court then observed that the whole object of furnishing the statement of allegations under Fundamental Rule 55 was to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. The Court lastly concluded:

The entire proceedings show a complete disregard of Fundamental Rule 55 insofar as it lays down in almost mandatory terms that the charges must be accompanied by a statement of allegations. We have no manner of doubt that the Appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations containing the material facts and particulars not having been supplied to him. In this situation, for the above reason alone, the trial Judge was fully justified in decreeing the suit.

Provisions in the Fundamental Rule 55 and Statute 71(2) are almost equal regarding the accompaniment of memo of allegations along with the charge sheet. In the case under consideration by us, memo of allegations were not sent and in the explanation filed by the Petitioner, it was specifically stated that charges mentioned in the memo are not specific and they are vague. It was also stated:

I could have filed detailed explanations item by item if the charges are specific and with sufficient dates and if the copies of the letters referred to in the memo are issued to me.

Even after the receipt of the explanation, memo of allegations with details of the charges were not served on the Petitioner. Therefore, in not serving the memo of allegations along with the charge sheet, there is violation of a mandatory rule contained in Statute 71(2). Apart from the above, it cannot be stated that because memo of allegations were not given, no prejudice is caused. On a reading of the charge memo or the charges framed by the enquiry officer, it can be seen that the charges are not specific and vague. Details are not given. Therefore, real prejudice is caused to the Petitioner in giving a proper explanation with vague and unspecific charges.

7. Before proceeding with the disciplinary proceedings employee must be informed clearly and accurately the charges levelled against him. Charge sheet

should specifically state all charges which an employee is called upon to show cause and should also state all relevant particulars without which he cannot defend himself. In *Sur Enamel and Stamping Works Ltd. v. Their workmen* 1962 (II) LL.J. 367 it was held that a fair hearing presupposes that charges are clearly communicated so that the employee can understand the charges and effectively meet them. If the charges are vague and particulars of such charges are not disclosed, the enquiry will not be in conformity with the principles of natural justice. When the Rules or Standing orders prescribe a particular method of framing and issuing charge sheet, it is mandatory that the employer should follow that. In this case, the charges are vague and are not specific and the memorandum of allegations were not there. First charge says that as the Head Accountant, he collected fees from the students without issuing proper receipts. There is no definite case from which date onwards the Head Accountant started collecting fees, when the Head Accountant has collected fees, the total amount of fees collected by the Head Accountant without issuing proper receipts etc. It is also stated that relevant records were not maintained properly. What are the relevant records are not mentioned in the charges issued by the enquiry officer. In spite of the reply given by the charge-sheeted employee that the charges are vague, the Management did not disclose the detail of the charges or the nature of the records which were stated to be not maintained properly. As regards, the second charge, it is stated that an amount of Rs. 8,258.25 collected during the period 1983-84, 1984-85 and 1985-86 was misappropriated and later remitted during September, 1987 and January, 1988. Details of the amount are not mentioned. Charge No. 3 is also regarding collection of another amount for 1982-83 to 1987-88 part of which is covered in the second charge. Charges are not at all clear or specific as contended by the Petitioner. Fourth charge is based on the first three charges. So, unless the first three charges are proved, fourth charge cannot be said to be proved and since the first three charges are not specific and they are vague at least when the explanation was received, the Management should have given clearly the details of the charges and the allegations against the employee so that he can effectively prove his defence.

8. In the decision reported in *Sawai Singh v. State of Rajasthan* (1986) 3 S.S.C. 54 it was held that if charges are vague it is difficult to meet the charges fairly by any accused. Even if such a challenge was not made before the enquiry officer, it can be raised before Court. Charges involving consequences of termination of service must be specific though a departmental enquiry is not like a criminal trial. Even though there is no such rule that an offence is not established unless it is proved beyond doubt in departmental proceedings, penal consequences like loss of job which means loss of livelihood, there must be fair play in action. Beyond all rules and procedures, such fairness is the sine qua non. Here, the charges are not specific and vague and actually prejudice is caused to the employee by not attaching the statement of allegations to the memo of charges as stated in the notes. Therefore, the decision of the Supreme Court in *Surath Chandra Chakrabarty Vs. State of West Bengal*, is directly applicable in the facts of this

case. Therefore, on that count itself, the enquiry is liable to be set aside.

9. With regard to the contention that the enquiry officer was biased and the procedure adopted in the enquiry was not correct, we cannot agree. Either during the time of enquiry or before the punishment was imposed, no complaint was raised regarding the procedure in the enquiry. No complaint or bias was raised against the enquiry officer. Merely because the enquiry officer has conducted certain earlier enquiries in the college, there is no bar for him to conduct the enquiry especially when the employee did not question his competence in conducting the enquiry. It was also contended that he was not given the assistance of a legal practitioner. The proceedings show that he never requested for the assistance of legal practitioner. Therefore, the enquiry cannot be set aside on the basis of the procedure adopted by the enquiry officer.

10. With regard to the ground that the findings of the enquiry officer are perverse and misconduct alleged was one and what was proved was another needs consideration. It was held by the Supreme Court in *Laxmi Devi Sugar Mills Ltd. v. Nand Kishore Singh* 1956 (II) LL.J. 429 that the employer cannot justify his action on any grounds other than those contained in the charge sheet. Charge No. 1 assumes that the Petitioner has collected the fees from the students without issuing proper receipts. Charge No. 2 states that an amount of Rs. 8,258.25 was collected and misappropriated by the Petitioner. Third charge was held not proved by the enquiry officer himself. Fourth charge is dependant on the first two charges. Therefore, if first two charges are not proved, fourth charge cannot be said to be proved. During the enquiry the Principal of the College has stated that another person Shri K. Somarajan, U.D. Accountant was also charge-sheeted simultaneously as he collected the fees. If Shri Somarajan has collected the fees, allegation against the Petitioner that he has collected fees is clearly wrong. The assumption in the charges that the Petitioner has collected fees is disproved by the evidence adduced by the management witness. There is no evidence at all in the case to say that the Petitioner has misappropriated an amount of Rs. 8,258.25 during the period 1983-84, 1984-85 1985-86. Details of the amount were not produced even though, in the charge sheet, it is stated that the Petitioner has misappropriated the amount. At the most, what can be gathered in the enquiry proceedings that the above amount was collected by Somarajan during the above period; but, it was remitted after the enquiry. So, the first two charges said to have been proved by the enquiry officer are not proved by any evidence.

11. The fourth charge is based on the earlier charges as the charge begins with the words "your above said action". Absolutely there is no iota of evidence to show that the Petitioner has collected fees or misappropriated the amount. The Principal of the College has stated that Somarajan has collected the money. The allocation of work given to the Head Accountant and the U.D. Accountant are as follows:

Accounts Section:

Shri P. Viswamithran, Head Accountant:

(1) Maintenance of Cash Book; (2) Contingent and maintenance grant; (3) Lab and Library Grant; (4) Verification of daily fees collections with receipt books (5) Custodian responsible for all cash; (6) Annual income and expenditure statement; (7) Custodian of all cheque books and pass books of all accounts in the Banks and Treasury and Guardian Association account; (8) Audit of accounts by the departments and replies thereto; (9) To do any other works as required.

In the absence of Superintendent Shri P.V. Viswamithran, Head Accountant will be in charge of the office.

Sri K. Somarajan, L.D. Accountant:

(1) All fee collections; (2) Preparation of D.C.B. and remittance statement to accompany in salary bills; (3) Custodian of S.S.L.C. books and P.D.C. mark lists by the students and maintenance of its register; (4) Preparation of fee defaulter list and its publication; (5) Custodian of all receipt books (used and unused) and maintenance of care form register; (6) Revenue pending collections; (7) Disbursement of caution money and connected register; (8) To do any other work as required

As far as fee collection is concerned, the duty allocated to the Petitioner is only verification of daily fees collections with receipt books whereas Somarajan's duty is to collect fees. Therefore, it cannot be stated that the Petitioner has collected fees and misappropriated the same. The only piece of evidence is the sole statement at the end of cross-examination of the Principal that Head Accountant- Apart from that there is no allegation against the Petitioner regarding the misappropriation. In any event, there is no specific charge that the misappropriation had been with his knowledge. Maximum that can be gathered from the evidence is that there is dereliction of duty. If the Petitioner was vigilant in his duties he could have found out the misappropriation. So, there is dereliction of supervisory duties vested in him as the Head Accountant. When the audit found that such misappropriation has taken place Shri Somarajan has submitted letters stating that he failed to collect the amount and he may be allowed to collect the same and remit it. This was recommended by the Petitioner and the higher supervisory officers and finally approved by the Principal. If the internal audit found that there was misappropriation and amounts collected was not remitted, the Head Accountant should not have recommended the future collection from the students and payment of the same to the Department especially when most of the students might have taken T.C. and gone. But, there is no charges for the same. There is no charges against the Petitioner that the Petitioner was negligent in carrying out his supervisory duties or by his action he has helped Somarajan to commit misappropriation. Since the fees were collected by Somarajan and not by the Petitioner and there is no iota of evidence that the Petitioner has misappropriated the amount, the first two charges goes. As regards the third charge, the enquiry officer found that it is not proved. In the

above circumstances, the fourth charge is also not proved. As per the wording of the charge the fourth charge is based on the first two charges. Unfortunately, there is no charge for failure of proper supervisory duties by the Petitioner. It is not charged that if the Petitioner had taken due care and caution, Somarajan could not have committed this misconduct or that there is connivance by the Petitioner. Charges framed against the Petitioner are not proved. In effect, evidence in the enquiry and the finding of the enquiry officer show that at the maximum Petitioner is guilty of gross negligence in supervisory duties and not on the charges alleged. Therefore, what is proved is different than the charges alleged against him, apart from the fact that the charges were vague and not specific.

12. As held by the Supreme Court in the decision reported in Anil Kumar Vs. Presiding Officer and Others, . a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the enquiry officer has a duty to act judicially. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expected is that the report must be a reasoned one. In this case the enquiry officer did not consider the evidence adduced and did not correlate with the charges levelled against the employee. Charges as levelled in the charge sheet were not proved and there is no iota of evidence to prove the same. There is complete lackness. Therefore, findings of the enquiry officer is perverse. The Tribunal while considering the matter did not correctly examine the contentions raised by the Appellant. None of the documents produced or evidence adduced in the enquiry show that the Petitioner has committed misappropriation or committed acts as alleged in the charge sheet. It is stated by the Tribunal that the Petitioner has expressed regret in not maintaining proper records. No such admission is mentioned in Ext. M-8. In Ext. M-8 it is true that the Petitioner has stated that "due to heavy work in some cases I may have failed to verify the concerned records. Hence I am not responsible for the loss of the Government if it happened." This was stated after stating that he has verified the records. He also requested the Management to give details of each and every case and the amount of loss to the Government according to the inspection. This letter cannot be taken as an admission that he has not maintained the records properly. In any event the charges are misappropriation and not the one that was sought to be proved. It is further stated by the Tribunal that it was pointed out in the audit report that the Head Accountant was responsible for the misappropriation. What is stated in the audit report was that supervisory staff has not exercised due care. No omission was pointed out pinpointing to the Petitioner. In any event, lack of supervisory care is not a charge mentioned in the charge sheet. M.W. 3 did not state anything regarding collection of amounts by the Appellant. She has only stated that some of the fees collected from the students were not properly accounted. The fee collection book maintained by the Cashier is not checked by the Appellant cannot be taken as a ground for charging the Appellant for misappropriation. Even if the above allegation is correct, it only

shows that the Appellant failed in his supervisory functions or he was negligent. But, that evidence will not show that the Appellant was a party to the misappropriation. It can only be lack of supervisory functions and negligence of his duties.

13. Therefore, we are of the opinion that the misconducts as charge-sheeted were not proved. In fact, all the witnesses examined in support of the charges categorically stated that the Petitioner did not collect the amounts. Therefore, misconducts as alleged in the charge sheet were not proved and hence disciplinary proceedings cannot be sustained. It is argued by the learned advocate for the Respondents that once misconduct is proved and there is some evidence the Court should not interfere in such punishment. In the decision reported in *State of U.P. and others Vs. Ashok Kumar Singh and others*, it was held by the Supreme Court that when the High Court concurred with the findings of the Service Tribunal the Court should not have interfered with the order of removal passed after departmental enquiry and confirmed by the Tribunal. But, in that case, the High Court has agreed with the findings of the Tribunal. Here, we are of the opinion that the misconducts alleged against the employee were not at all proved. We have also found that the charges were vague and not specific and mandatory provision that statement of allegations to be attached with the memo of charges was not complied with. It is well settled that the charges should be specific, precise and intelligible. It should not be vague and clear facts should be set out. Management cannot escape the obligation on the contention that the delinquent knows all about the charge. It should not be left to the employees to find out or imagine what are the exact charges levelled against them. Obligation to inform the delinquent specific charges is part of the "Audi Alteram Partem" rule that "no man should be condemned without being heard". According to Lord Denning in *R v. Life Assurance Unit Trust R.O.L.* 1993 Q.B. 17. "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 the case which is made against him." Here charge-sheet was not specific and statement of allegations as provided in the rules were not served on him. Further, the misconduct in the charge sheet and misconducts sought to be proved were also different. Nobody can dispute the proposition that an employee charged with one misconduct cannot be punished for another misconduct even if that misconduct is proved in the course of enquiry proceedings. The charges as alleged were not proved and findings to the contrary by the enquiry officer is based on no evidence. Therefore, the entire disciplinary proceedings are vitiated.

14. It is argued by the learned advocate appearing for the Petitioner that compulsory retirement is not a punishment as held by the Supreme Court in the decision reported in *A.P. Srivastava (Dead by Lrs.) Vs. Union of India (UOI) and Others*, . We are unable to agree with the above. The Supreme Court was considering a case of compulsory retirement after 20 years of service as provided in Rule 56(j) of the Fundamental Rules. Here, compulsory retirement is a major punishment as provided in the Statutes. Charge-sheet was issued. Enquiry was

conducted and as a punishment compulsory retirement was ordered. By any stretch of imagination, it cannot be contended that it is not a major punishment and it casts no stigma.

15. In view of the above discussions, it is clear that the disciplinary proceedings taken against the Petitioner are not sustainable. Therefore, we allow the C.R.P. and set aside the Tribunal's judgment confirming the disciplinary action. The punishment imposed on the Petitioner is hereby set aside. This will not preclude the management from taking fresh action against the Petitioner for the alleged failure of supervisory functions, dereliction of duty, negligence or any other misconducts as it may deem fit with specific allegations. Without prejudice to the above right of the Management, the disciplinary proceedings which culminated with the order of compulsory retirement is hereby set aside. Petitioner is entitled to reinstatement with all consequential benefits. The C.R.P. is allowed. However, on the facts and circumstances of the case, the parties should bear their costs.