

(2007) 03 DEL CK 0131

In the Delhi High Court

Case No : Writ Petition (C) No's. 998 and 1432 of 1991

V.K. Garg and Ravinder Kaushal

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 19-03-2007

Acts Referred:

Constitution of India, 1950 — Article 311(2), 63, 94
Delhi State Industrial Development Corporation Limited (Staff Service) Rules, 1978 — Rule 44, 46(3)

Citation : (2007) 140 DLT 69 : (2007) 95 DRJ 498

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : G.D. Gupta, Sanjeev Joshi, for the Appellant; Anusuya Salwan and Monika Sharma, for the Respondent

Final Decision : Allowed

Judgement

Hima Kohli, J.—Both the writ petitions are taken up for final hearing and disposal by passing a common judgment and order, as counsels for the parties have stated that the facts of both the cases are same and issues involved are also common. For the sake of convenience, facts of WP(C) No. 998/1991 are taken note of.

2. The petitioner has assailed the order dated 22nd March, 1991 passed by the respondents, imposing penalty of dismissal from service on the petitioner. He has also sought a declaration to the effect that the order passed by the Appellate Authority upon reviewing its earlier decision dated 3.10.1989, in the absence of any such provision for review, is illegal and thus the petitioner is entitled to be reinstated in service with all consequential benefits.

3. The factual matrix of the case, as culled out from the record is that the petitioner was initially appointed as an Assistant Manager (Technical) in respondent No. 2/Delhi State Industrial Development Corporation (hereinafter referred to as 'the DSIDC') on 1st September, 1976. In November 1980, the

petitioner was promoted as Deputy Manager. During the year 1983-84, the petitioner along with three others, including Mr. Ravinder Kaushal [petitioner in WP(C) No. 1432/1991] faced a departmental enquiry. On 14th October, 1983, a charge sheet was issued to the petitioner to the effect that the petitioner, while working as an Assistant Manager with the DSIDC, during November 1980, failed to maintain absolute integrity and devotion to duty as he made a wrong and false assessment of a requirement of 40 MT of CRC sheets per month on 10th November, 1980 for manufacture of pen caps in favor of M/s Golden Aluminium & Plastic Industries (a company owned by the daughter of the then General Manager of DSIDC, one Mr. T.R. Kalia against whom disciplinary proceedings were initiated separately), when the application of the unit did not ever indicate that pen caps are to be manufactured from CRC and knowing that CRC sheet of 14 to 20G is so thick that it cannot be used for the purpose of manufacturing the said pen caps, which resulted in allocation of 13MT of CRC sheets to the unit during the period 29th November, 1980 to 21st January, 1981, which the unit was otherwise not entitled to receive from DSIDC. Thus the petitioner was charged with contravention of Rule 44 (iv), (viii) of DSIDC Ltd.(Staff Service) Rule, 1978.

4. On 28th March, 1984, the Commissioner of Departmental Inquiry, Central Vigilance Commission (CVC) was appointed as Inquiry Officer. The petitioner with other charged officers represented against the appointment of the said officer of the CVC on the ground that getting the enquiry conducted through the CVC was controlled by the Memorandum dated 5th March, 1982, issued by the Ministry of Home Affairs, which stipulated that enquiry could be conducted by the CVC only in case of officers who were in the minimum pay scale of Rs. 1,800/- per month, which was not the pay scale of the petitioner at the relevant time. However, the enquiry was held by the same officer. The Inquiry Officer after dealing with the entire material placed before him, gave the following findings in his enquiry report dated 7th February, 1986:

The charge that CO made wrong assessment of requirement of CRC sheets even when the application of unit did not indicate that pen caps are to be manufactured from CRC sheets nor project report of unit indicated requirement of CRC as raw material stands established subject to the extenuating factor mentioned in this report.

5. The petitioner was served with the order dated 18th September, 1987 passed by respondent No. 4, Chairman, DSIDC whereby penalty of dismissal from service was imposed upon him. Upon receiving the aforesaid dismissal order, the petitioner filed an appeal before the Appellate Authority/respondent No. 3, who passed an order dated 3rd October, 1989 partly allowing the appeal of the petitioner by reducing the penalty of dismissal from service to that of stoppage of six increments with future effect and thus reinstated the petitioner. Pursuant to the aforesaid order of the Appellate Authority, the petitioner joined duty in DSIDC on 4th October, 1989 and started working as Deputy Manager. While the

petitioner was working in the said capacity, it is averred that the petitioner suddenly learnt that the other charged officer, namely, Mr. Ravinder Kaushal, [petitioner in WP(C) No. 1432/1991], whose case was identical to that of the petitioner on facts and whose appeal was also partly allowed by the Appellate Authority like that of the petitioner herein, received an order dated 22nd March, 1991 wherein it was stated that after the Board of Directors had reduced the penalty imposed on him from dismissal to stoppage of six increments with future effect, the matter had been referred to the CVC for consultation and that the CVC reiterated its earlier advise of giving only major penalty and not a minor penalty of stoppage of six increments and that the matter was thereafter referred to the Lt. Governor of Delhi, namely, respondent No. 1, who in turn, directed the DSIDC to rescind its earlier order dated 3rd October, 1989 and to restore the penalty of dismissal from service on the said Sh. Ravinder Kaushal.

6. In the aforesaid facts and circumstances, the petitioner filed the present writ petition. Along with the said writ petition, a interim application was also filed by the petitioner on which an order was passed on 2nd April, 1991 staying the operation of the impugned order dated 22nd March, 1991, by virtue of which the petitioner continues to work till date in the DSIDC. However, it is relevant to note that in the case of the other charged officer Sh. Ravinder Kaushal, petitioner in WP(C) No. 1432/1991, the order dated 22nd March, 1991 had already been given effect to by the DSIDC, as a result of which the petitioner therein is no longer working in the DSIDC, pursuant to the penalty of dismissal from service imposed on him.

7. Counsel for the petitioner assailed the order dated 22nd March, 1991 passed by the Appellate Authority, respondent No. 3, on various counts. It was submitted that the appointment of the officer from the CVC to conduct the enquiry was bad, as enquiry conducted through the CVC was controlled by the Ministry of Home Affairs' Memorandum dated 5th March, 1982, which stipulated that the enquiry could only be conducted by the CVC in case of officers having a minimum pay scale of Rs. 1,800/- per month, and as the petitioner was not in the aforesaid pay scale, the officer of CVC was not entitled to conduct the inquiry against the petitioner. It was next submitted that despite the fact that the Inquiry Officer found certain extenuating circumstances in favor of the petitioner, for instance the fact that the assessment report/note of the petitioner was signed later on by the Chief Project Manager and forwarded to the Raw Material Division, and it was only thereafter that the raw material was released to the party, Therefore, though the petitioner was found guilty, but the aforesaid circumstances were taken as mitigating factors. It was submitted that as the Disciplinary Authority did not agree with the findings of the Inquiry Officer that there were any extenuating factors, in such circumstances, it was incumbent upon it to communicate to the petitioner the disagreement note and afford an opportunity of hearing to him vis-a-vis the disagreement, before passing an order of dismissal.

8. It was also contended by the counsel for the petitioner that once the appeal filed by the petitioner before the Appellate Authority i.e. respondent No. 4 was allowed and the petitioner had resumed working with the DSIDC, there was no scope of reviewing the said order as there is no such power of review vested in the Appellate Authority and secondly, assuming without admitting that the Appellate Authority had the power of reviewing its orders, still the petitioner ought to have been granted an opportunity of being heard before setting aside the order dated 3rd October, 1989. Reliance was also placed on para 18 of Schedule xviii of the Vigilance Manual of the Government of India to contend that as the Appellate/Revising Authority, while modifying the penalty imposed by the Disciplinary Authority, on the advice of the Commission still imposed a major penalty on the petitioner in the nature of stoppage of six increments with future effect, there was no need to consult the CVC again and that such a modification does not have the effect of departing from the earlier advice given by the CVC, for the reason that though the penalty was reduced from removal from service to stoppage of six increments with future effect, still both were major penalties and not minor penalties.

9. Lastly, it was argued that the DSIDC had no power to refer the matter to respondent No. 1, as done by it in the present case and that the respondent No. 1 is not an appropriate authority for the purpose of exercising disciplinary powers. Hence, invocation by the DSIDC of Article 63 and Article 94 of the Memorandum and Articles of Association of the DSIDC is wrong, as the said Articles do not confer any such power on respondent No. 1 with regard to disciplinary matters. In support of his contentions, counsel for the petitioner has relied on the following judgments:

(i) Chandra Mohan v. State of UP AIR 1966 SC 1987.

(ii) Sayeed-ur-Rehman v. State of Bihar 1973 (1) SLR 761.

(iii) Kulwant Singh Gill v. The State of Punjab JT 1990 (4) 70.

(iv) H.C. Suman and another Vs. Rehabilitation Ministry Employees Co-operative House Building Society Ltd. New Delhi and others,

(v) Punjab National Bank and Others Vs. Sh. Kunj Behari Misra,

(vi) Yoginath D. Bagde Vs. State of Maharashtra and Another,

10. As against the aforementioned arguments raised by the senior counsel for the petitioner, counsel for the respondents submitted that it is misconceived on the part of the petitioner to claim that the Disciplinary Authority, while passing the order of removal from service against the petitioner, differed from the findings of the Inquiry Officer as contained in the inquiry report and thus ought to have afforded an opportunity of hearing with respect to the said disagreement. It was submitted that a perusal of the enquiry report shows that the Inquiry Officer had in fact found the petitioner guilty of the charges. A specific reference was drawn to paras 12, 14 & 20 of the inquiry report which

according to the counsel for the respondents, held the petitioner guilty, in spite of certain extenuating factors mentioned in the report. The definition of term "extenuating" was relied upon to state that the conduct of the petitioner was undoubtedly blameworthy, though the level of blameworthiness may be less serious. She stated that the definition of the word "extenuating" in the Webster Dictionary is "to represent as less blameworthy, make excuse for, as to cause to some less serious of blameworthy". It was Therefore submitted that the Disciplinary Authority did not find any "extenuating" factors in the case of the petitioner and thus did not agree with the Inquiry Officer while imposing the punishment of dismissal from service on the petitioner.

11. It was argued that the Disciplinary Authority on receiving the report of the Inquiry Officer was well within its right to either agree or disagree with the findings and in case of a disagreement, it had to record the reasons and also to record its own findings. It was submitted that the court while exercising its discretion of judicial review, ought not to interfere with the findings of facts arrived at in the enquiry proceedings. In support of this contention, reliance has been placed on a judgment of the Supreme Court in the case of Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others,

12. It was further argued that the claim of the petitioner, that he was entitled to be communicated about disagreement note and afforded an opportunity of hearing, before the Disciplinary Authority arrived at any conclusions, is misconceived inasmuch as the rules of natural justice have undergone a sea change, and the degree and requirement of compliance with the principles of natural justice varies from case to case. It was submitted that in the present case, the petitioner has not proved any prejudice, far less any real prejudice that was caused to him, as the Inquiry Officer had found the petitioner guilty of the charge, and all the requirements of the principles of natural justice had been complied with. Therefore, any fresh notice by the Disciplinary Authority to the petitioner would have amounted to a "useless formality", as the end result would have been the same even if a notice was given to the petitioner. It was also argued that the claim of the petitioner that he had been deprived of the principles of natural justice, was never taken by him in the appeal filed by him before the Appellate Authority against the order dated 18th September, 1987. Counsel for the respondents claims that her stand is fortified by the following judgments:

- (i) State of U.P. Vs. Harendra Arora and Another,
- (ii) Divisional Manager, Plantation Division, Andaman and Nicobar Islands Vs. Munnu Barrick and Others,
- (iv) P.D. Agrawal Vs. State Bank of India and Others,

13. In respect of the arguments raised by the counsel for the petitioner that the CVC had no power to conduct the inquiry, counsel for the respondents submitted that the power to appoint a Commissioner of Departmental Inquiry from the CVC

as an Inquiry Officer was contained in Rule 46 (3) of the Staff Service Rules which read as under:

46 (3) Procedure for imposing punishments:

For this purpose, the Management may themselves enquire into the charges, reported against the employee or if it considers necessary may appoint an enquiry committee or enquiry officer for the purpose.

Provided that the Management shall not be required to follow the procedure mentioned in the aforesaid clause for taking suitable disciplinary action against any employee, who has been convicted in any court of law for any criminal offence involving moral turpitude.

14. Therefore, the respondent was well within its power to appoint the concerned Inquiry Officer from the CVC. It was further submitted that reliance placed by the counsel for the petitioner on Office Memorandum dated 5th March, 1982 issued by the Ministry of Home Affairs was misconceived, as para 3 of the said Memorandum clarified that though normally the CVC will not deal with cases of employees whose pay scale is less than Rs. 1,800/- per month but this would not curtail the jurisdiction of the Commission and Therefore, there was no absolute bar for a Inquiry Officer of the CVC to enquire into the charges. In support of this contention, reliance was placed on the judgment of the Supreme Court in the case of National Bicycle Corporation of India Ltd. v. Ashok Kumar Singh reported as 1999 SCC 665.

15. As regards the grievance of the petitioner that the Appellate Authority of the DSIDC, namely, the Board of Directors, could not have reviewed its earlier order dated 3rd October, 1989 and that the advice of the CVC could also be not taken at the second stage, it was submitted by the counsel for the respondents that whenever the Appellate Authority proposes to reduce a major penalty into a minor penalty, it is mandatory to seek advice of the CVC. It was submitted that the advice of the CVC was with respect to imposition of major penalty which was not put up before the Appellate Authority. A reference has been drawn to the Staff Service Rules to contend that the penalties as defined under the said Rules did not define whether stoppage of six increments with future effect is a major or a minor penalty. In fact, it was submitted that stoppage of six increments is a minor penalty.

16. It was further submitted by the counsel for the respondents that in cases pertaining to CVC, where the CVC had rendered its advice, whenever the Appellate Authority proposes to reduce a major penalty into a minor penalty in appeal, it is mandatory for it seek further advice from the CVC before doing so. While relying on the provisions of para 18 of Schedule xviii of the Vigilance Manual of the Government of India, it was submitted that the matter was referred to CVC for its advice on 28th August, 1989. The advice of the CVC was yet to be received. However, due to inadvertence and oversight, the Appellate Authority issued the order dated 3rd October, 1989. In the meantime, the advice

of the CVC was received, wherein previous advice of imposition of major penalty of dismissal from service on the petitioner, was reiterated. By the time the said advice was communicated to the Appellate Authority, the order dated 3rd October, 1989 was not only conveyed to the petitioner but was ever implemented by the DSIDC. When the said advice came to be placed before the Appellate Authority, it was found appropriate to make a reference to respondent No. 1, Lt. Governor of Delhi, for necessary orders as he was the Executive Head of the DSIDC. The Lt. Governor after considering the records, issued a directive on 14th December, 1990 under Article 63 and Article 94 of the Memorandum and Articles of Association directing the Appellate Authority to restore the penalty of dismissal, resulting in the impugned order dated 22nd March, 1991.

17. Furthermore, as against the argument canvassed by the counsel for the petitioner that the matter could in no event be referred to the respondent No. 1, Lt. Governor, Delhi, it was urged by the counsel for the respondents that the order passed by Lt. Governor, Delhi was neither a review nor a revision but only an advice to the Appellate Authority, the Lt. Governor, Delhi being an Executive Head of the DSIDC and thus the impugned order dated 22nd March, 1991 was passed by the Appellate Authority itself and not by respondent No. 1. The same was Therefore legal and valid. It was submitted that the Lt. Governor is the Head of the Corporation and is empowered to do so under Articles 63 and 94 of the Memorandum and Articles of Association.

18. In rejoinder, counsel for the petitioner submitted that the argument of the respondent to the effect that the penalty of stoppage of six increments was a minor penalty, is incorrect inasmuch as the same was a major penalty and thus there was no occasion for the DSIDC to refer the matter to the CVC for consultation at a later stage. It was further submitted that there is a factual inaccuracy in the submission made on behalf of the DSIDC that the Appellate Authority on receiving the recommendations of the CVC passed the order dated 3rd October, 1989. It was submitted that the advice of the CVC had in fact been received by the DSIDC on 29th September, 1989 whereas the order of the Appellate Authority was passed on 3rd October, 1989. Hence, the Explanation furnished by the DSIDC in this regard was stated to be without any basis and contrary to the factual position.

19. I have heard the counsels for the parties. I have also been taken through the entire records, particularly the inquiry report, the orders of the Disciplinary Authority as also the order of the Appellate Authority. I have given my thoughtful consideration to the pleadings of the parties and the arguments advanced in the court.

20. To start with, it would be relevant to refer to the report of the Inquiry Officer as much has been stated about the said report and the conclusions arrived at therein by both the parties. A perusal of the said report shows that the same is a detailed one wherein not only the history of the case has been narrated but the evidence has also been analysed before arriving at the findings. While discussing

the facts in hand and after analysing the evidence, the Inquiry Officer gave a finding that the petitioner who was functioning as an Estate Manager, was required to make an assessment for the purposes of assessing requirement of raw material of a particularly industry from the DSIDC. While dealing with the allegations against the petitioner that he made wrong and false assessment of 40MT of CRC sheet per month in favor of the manufacturing unit concerned, the Inquiry Officer observed that neither the application of the party nor the project report prepared by the party indicated requirement of CRC as a raw material for manufacture of pen caps and that the petitioner alone had gone for inspection and assessment of requirement of raw material and that his report would be essentially his own responsibility. After making aforesaid observations, the Inquiry Officer went on to state that nevertheless, it was a fact that the assessment report of the petitioner was forwarded to the CPM (Planning), who then sent it to the raw material division that made its recommendations for release of the raw material to the parties. Hence although both the CPM and the raw material division had knowledge that in his assessment report the petitioner had recommended release of raw material to the party, neither of the two objected to the same. It were these circumstances which were considered as extenuating circumstances by the Inquiry Officer in favor of the petitioner. The same have been described in the enquiry report as 'mitigating circumstances'. When the aforesaid enquiry report was placed before the Disciplinary Authority, the same was considered and in para 3 of the order dated 18th September, 1987, the Disciplinary Authority categorically held that it had considered the enquiry report but did not agree with the enquiry Officer that there was any extenuating factor in favor of the petitioner. It was observed that the raw material was sanctioned in favor of the private party on the basis of a false capacity certificate issued by the petitioner who was required to assess the capacity of the private party correctly and properly which he did not do. Thus, it was held that he performed his duties in a negligent manner and gravity of misconduct did not get belittled in any way. Ultimately, it was ordered that as the petitioner had contravened Rule 44 (iv), (viii) of the DSIDC Limited (Staff Service) Rules, 1978 and the charges leveled against him stood duly proved, major penalty of dismissal from service was imposed upon him.

21. The argument raised by the petitioner on the point that if the Disciplinary Authority disagrees with the Inquiry Officer, then a copy of the disagreement note is to be given to the employee concerned so as to give him an opportunity of being heard before imposing a penalty on the officer, is well taken. In the case of Kunj Behari Mishra(supra), the respondents who were Assistant Managers in the appellant bank, were held responsible for the shortage of cash of Rs. 1 lac and an enquiry was conducted against them, wherein the Inquiry Officer completely absolved one of the respondents but exonerated the other respondent in respect of five charges while holding him guilty of only one charge. The question that arose for consideration was, "when the enquiry officer, during the course of disciplinary proceedings, comes to a conclusion that all or some of the

charges alleging misconduct against an official are not proved, then can the disciplinary authority differ from that and give a contrary finding without affording any opportunity to the delinquent officer". The Supreme Court held as below:

Para 19 : The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

22. The aforesaid judgment in Kunj Behari Mishra (supra) was approved by the Supreme Court in the case of Yoginath Bagde (supra) , wherein it was held that since the disciplinary committee did not give an opportunity of hearing to the appellant therein before taking a final decision in the matter relating to the findings on the two charges framed against him, the principles of natural justice as laid down in Kunj Behari Mishra (supra) were violated. It was held that the requirement of affording opportunity of hearing in consonance with the Article 311(2) of the Constitution of India being a constitutional right to be heard, has to be read into a rule which does not make a specific provision to this effect and that a post-decisional hearing in some circumstances would not be a substitute for pre-decisional hearing.

23. In the present case also, in view of the fact that the Disciplinary Authority categorically held that it did not agree with the report of the Inquiry Officer that there were any extenuating factors which could be read in favor of the petitioner, the Disciplinary Authority ought to have granted an opportunity of hearing to the petitioner before passing an order.

24. The other plea raised by the counsel for the petitioner on the point that before reviewing the order dated 3rd October, 1989 and passing the order dated 22nd March, 1991, the Appellate Authority ought to have granted an opportunity of hearing to the petitioner and that penalty of dismissal from service was imposed on the petitioner without affording him such an opportunity in gross violation of the principles of natural justice, is also not without merit. The plea of the DSIDC to the effect that the subsequent order passed by the Appellate Authority on 22nd March, 1991 was neither a review nor a revision but only "an advice" to the Appellate Authority, does not hold any water. In the present case, not only had the Appellate Authority passed the order dated 3rd October, 1989

but the same was duly conveyed to the petitioner who joined duties in pursuance thereto and was working in the DSIDC for almost one and a half years, when the impugned order dated 22nd March, 1991 came to be passed. In these circumstances, even if it is assumed that due to some lack of communication or inadvertence the order dated 3rd October, 1989 of the Appellate Authority was passed without awaiting the opinion of the CVC, still the petitioner ought not to have been deprived of being afforded an opportunity of hearing before passing the impugned order of dismissal from service. There is also no rebuttal on the part of the DSIDC to the averment made by the petitioner that the advice of the CVC had already been received in the office of the DSIDC on 29th September, 1989 whereas the order of the Appellate Authority was passed thereafter, on 3rd October, 1989. Assuming that there was some inadvertent mistake or oversight on the part of the DSIDC, it is all the more a reason that to rectify the said mistake, another mistake be not committed and the petitioner who had been put back to service and was imposed a penalty of stoppage of six increments with future effect, be not punished by substituting the said penalty with that of dismissal from service without being put to notice and being afforded an opportunity of hearing. As held by the Supreme Court in the case of Sayeed-ur-Rehman (supra):

Para 7:...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 President of the Board of Secondary Education would be deciding a controversy affecting the rights of parties before him if and when he chooses to reconsider the order dated April 22, 1960, whatever be the source of his power to do so—a point left open by us. He is required to decide in the spirit and with a sense of responsibility of a tribunal with a duty to mete out even-handed justice. The appellant would thus be entitled to a fair chance of presenting his version of facts and his submissions on law as his rights would be directly affected by such proceeding. The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering the order dated April 22, 1960 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.

25. The argument raised on behalf of the DSIDC to the effect that the petitioner has failed to prove prejudice, much less some real prejudice for invoking the rules of natural justice is also devoid of any merits in view of the aforesaid circumstances. Reliance placed by the counsel for the DSIDC on the judgment of the Supreme Court in the case of P.D.Agrawal (supra) to contend that the principles of natural justice cannot be put in a straight jacket formula and that the present case was not one where non-observance of principles of natural

justice caused prejudice to the petitioner, is misconceived. As held by the Supreme Court in the celebrated case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , the aim of the rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice. These rules can operate only in areas not covered by miscarriage of justice. The rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose.

26. There is no denial that the principles of natural justice must be given circumstantial flexibility and that the said principles have to be applied keeping in mind the fact situation of each case. However, the present case is not one where it can be said that only a facet of the principles of natural justice have been violated and that there has not been a total failure of the said rule nor is it a case of "no notice" and "no fair hearing". The moment the Appellate Authority differed with the Disciplinary Authority and instead of upholding the order of the Disciplinary Authority whereby the petitioner was visited with the major penalty of dismissal from service, he was imposed a penalty of stoppage of six increments instead, pursuant to which the petitioner was even reinstated in service and continued working for about a year and a half, it cannot be envisaged that while recalling/reviewing/revising/rescinding such an order, after a lapse of one and a half years, the Appellate Authority could dispense with the provision of putting the petitioner to notice and granting him an opportunity of hearing. As a consequence of the said order, a substantive right had accrued in favor of the petitioner which could not be defeated in such a manner.

27. Even assuming that the order passed by the Appellate Authority in the present case could be reviewed without there being any specific provision of review in the Staff Service Rules of DSIDC, the moot question is as to whether the Appellate Authority could review the said order after a lapse of one and a half years without putting the petitioner to notice and affording him an opportunity of hearing. The answer can only be an emphatic No. The substance of the impugned order and the consequences that flow from the same, have to be kept in mind while considering the true import of the said order. As indicated above, the direct consequence of the impugned order was withdrawing the penalty of stoppage of six increments imposed on the petitioner and substituting the same with the penalty of removal from service. Such a stark and harsh consequence flowing from the impugned order, without observing the basic principles of natural justice has led to grave miscarriage of justice in the present case.

28. If the Appellate Authority for any reason decided to overturn its earlier decision, then the petitioner ought to have been afforded an opportunity of being heard. In the case of P.D.Agrawal (supra), relied upon by the counsel for the petitioner, the Supreme Court also considered the case of Kunj Behari Mishra

(supra) and after adverting to a number of judgments with regard to the principles of natural justice and the manner in which it ought to be interpreted, held that the charges in the said case being more than three in number, and one of which was severable, the court could proceed to sever the said charge and if the remaining charges stood proved, it was held that the punishment imposed pursuant thereto may not be interfered with in exercise of the powers of judicial review. For arriving at the said conclusion, the Supreme Court referred to the following judgments:

(i) Radhakrishnadas Vs. Kaluram,

(ii) Binny Ltd. Vs. Their Workmen,

(iii) Sawarn Singh and Another Vs. State of Punjab and Others,

29. In the present case, as there is only one charge leveled against the petitioner, there is no question of applying the principles laid down in the abovementioned cases relating to severing the remaining charges.

30. In so far as the argument of the learned senior counsel for the petitioner to the effect that the Rules of holding disciplinary proceedings did not require consultation with respondent No. 1 and nor did the said Rules contemplate that the Disciplinary Authority can pass an order at the dictate of the higher authority, more so when Articles 63 & 94 of the Memorandum and Articles of Association do not confer any such power on the respondent No. 1, in the opinion of this Court, once this Court has arrived at the conclusion that the action of the Appellate Authority in rescinding its earlier order dated 3rd October, 1989 and restoring the penalty imposed by the Disciplinary Authority is itself in gross violation of the principles of natural justice, it is not necessary to further dilate the discussion by giving a finding on the aforesaid issue as to whether the Appellate Authority could have consulted respondent No. 1 and if so, the effect thereof.

31. On the issue as to whether the Appellate Authority was vested with the power of reviewing its earlier order in the light of the fact that Staff Service Rules of the DSIDC does not confer any such power, reference may be drawn to the judgment of the Supreme Court in H.C.Suman (supra), wherein it has been held that once a quasi-judicial order becomes final, it cannot be reviewed by the authority passing the same unless power of review has been specifically conferred. Review is a creation of a Statute and unless there is a provision in the Statute, the order cannot be reviewed. No power of review has been conferred on the Appellate Authority in the Staff Service Rules, nor has the counsel for the DSIDC been able to point out any such power that vests with the Appellate Authority. The moment the Appellate Authority passed the order dated 3rd October, 1989, on the appeal preferred by the petitioner, it became functus officio for all effects and purposes. To claim that the impugned order dated 22nd March, 1991 was not an order of review but one of rescission, will also not be of any avail to the DSIDC as even though the impugned order purported to rescind the earlier order dated 3rd October, 1989 it cannot be lost sight of that really

speaking, the effect of rescission was reviewing and nullifying the earlier order dated 3rd October, 1989 and that too, only on the basis of "advice" stated to have been received from respondent No. 1, and not by application of mind by the Appellate Authority on the said advice.

32. Therefore, in the facts and circumstances of the present case, this Court is of the opinion that the fine distinction sought to be drawn by the DSIDC, as above, would not serve any purpose as for all practical purposes, by implication, the impugned order nullified the earlier order dated 3rd October, 1989, which was not permissible.

33. In the present case, principles of natural justice have been violated on two occasions. Once when the Disciplinary Authority differed with the findings of the Inquiry Officer to the extent that in the enquiry report, the Inquiry Officer had found certain mitigating circumstances and extenuating factors in favor of the petitioner but still it proceeded to impose the penalty of dismissal from service on the petitioner without communicating a disagreement note to the petitioner and affording him an opportunity of hearing, and the second time, when after overturning the order of the Disciplinary Authority and imposing the penalty of stoppage of six increments on the petitioner, the Appellate Authority duly communicated the same to the petitioner who was thereafter, permitted to rejoin the service and continued working with the DSIDC for about one and a half years till the Appellate Authority passed the impugned order dated 22nd March, 1991 restoring the penalty of dismissal imposed by the Disciplinary Authority, without affording an opportunity of hearing to the petitioner and in the absence of any specific power to review its own order.

34. However, learned senior counsel for the petitioners categorically stated in the course of arguments that if this Court ultimately decides to set aside the impugned order dated 22nd March, 1991, then the petitioners are ready and willing to accept the penalty of stoppage of six increments imposed on them by the Appellate Authority vide order dated 3rd October, 1989.

35. In the light of the aforesaid facts and circumstances and the case law as discussed above, the impugned order dated 22nd March, 1991 imposing the penalty of dismissal from service on the petitioners is set aside. The order dated 3rd October, 1989 imposing a penalty of stoppage of six increments with future effect imposed on the petitioners is restored. In view of the fact that the impugned order dated 3rd October, 1989 was given effect to in the case of Mr. Ravinder Kaushal, petitioner in WP(C) No. 1432/1991 and he remained out of service, the said petitioner is granted reinstatement with continuity of service and all consequential benefits. In so far as back wages is concerned, it is settled law that back wages need not be granted automatically on the order of termination being found illegal. Balancing the factors that on one hand the petitioner has been out of service for almost 15 years now and has Therefore not contributed anything to the DSIDC during this long duration, and on the other hand the fact that the action of the DSIDC in terminating the services of the

petitioner has been held to be illegal, inasmuch as he was unlawfully prevented from discharging his duties, payment of back wages to the said petitioner to the extent of 50% is found appropriate. The writ petitions are allowed to the aforesaid extent. Parties are left to bear their own costs.