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HIGH COURT OF CHHATTISGARH AT BILASPUR

Order Reserved on : 08.04.2026

Order Delivered on : 15.06.2026

WPS No. 6696 of 2021

Shri Prakash Chandra Sahu D/o Late Bheluram Sahu Aged About 61 Years R/o Sharma Vihar, Khamtarai Road P.S. Sarkanda District-Bilaspur (C.G.)

--- Petitioner

Versus

- 1** - State of Chhattisgarh Jila Panchayat Kabirdham, District- Kawardha (C.G.)
- 2** - The Collector District Kawardha (C.G.)
- 3** - The Chief Executive Officer Jila Panchayat Kabirdham, District- Kawardha (C.G.)
- 4** - Executive Engineer Water Resources Department, District Kawardha (C.G.)
- 5** - Shri K.K. Shrivastava Contempornious Sub Engineer Sutyapat Project, Sub Division-3 Lohara, District- Kawardha (C.G.)

--- Respondents

WPS No. 3110 of 2023

Shri Prakash Chandra Sahu D/o Late Bheluram Sahu Aged About 61 Years R/o Sharma Vihar Khamtarai Road Police Station Sarkanda, District : Bilaspur, Chhattisgarh

---Petitioner

Versus

- 1** - State of Chhattisgarh District Kawardha, District : Raipur, Chhattisgarh

2 - The Collector District Kawardha, Chhattisgarh

3 - The Chief Executive Officer Jila Panchayat Kabirdham, District : Kawardha (Kabirdham), Chhattisgarh

4 - Chief Engineer Water Resources Department Shivnath Bhawan Naya Raipur, District : Raipur, Chhattisgarh

--- Respondents

WPS No. 248 of 2021

Kailash Kumar Shrivastava S/o Late Shri Rajendra Kumar Shrivastava Aged About 62 Years Retired Sdo, Pipariya Pariyojana Shrish Karya, Jal Sansadhan Sub Division Chhuikhadan, District Rajnandgaon Chhattisgarh

---Petitioner

Versus

1 - State of Chhattisgarh Through The Secretary, Jal Sansadhan Department Mantralaya, Mahanadi Bhavan, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh

2 - Chief Engineer Department of Water Resources, Sihava Bhavan, Raipur, District Raipur Chhattisgarh

3 - Superintendent Engineer Shivnath Mandal, Durg District Durg Chhattisgarh

4 - Executive Engineer Department of Water Resources, Division Chhuikhadan, District Rajnandgaon Chhattisgarh

5 - Executive Engineer Department of Water Resources, Division Kawardha, District Kabirdham Chhattisgarh

6 - Chief Executive Officer District Panchayat Kawardha, District Kawardha Chhattisgarh

--- Respondents

(Cause-title taken from Case Information System)

For Respective Petitioners	:	Mr. Manoj Paranjpe, Senior Advocate assisted by Ms. Ruchi Nagar and Mr. Arpan Verma, Advocates
For State	:	Mr. Sangharsh Pandey, Government Advocate

Hon'ble Shri Amitendra Kishore Prasad, Judge

CAV Order

1. Heard Mr. Manoj Paranjpe, learned Senior Counsel assisted by Ms. Ruchi Nagar and Mr. Arpan Verma, learned counsel appearing for the respective petitioners as well as Mr. Sangharsh Pandey, learned Government Advocate appearing for the State.
2. Since a common question of law and fact arises for consideration in the present batch of writ petitions, being WPS Nos.6696/2021, 3110/2023 and 248/2021, all the matters were heard analogously and are being disposed of by this common order.
3. It is noted that WPS Nos. 6696/2021 and 3110/2023 have been filed by one Prakash Chandra Sahu, whereas WPS No. 248/2021 has been preferred by Kailash Kumar Shrivastava.
4. The grievance raised in all the writ petitions is essentially identical and revolves around the legality, propriety and correctness of the impugned orders dated 28.11.2020 and 15.12.2020, whereby a recovery to the tune of Rs. 5,13,900/- (being 45% of the alleged excess expenditure of Rs. 11.42 Lakhs) has been directed against the petitioner, and consequentially, deduction from the petitioner's pensionary benefits has been initiated.
5. The further grievance of the petitioners is that despite retirement, their pension, gratuity and other retiral dues have not been released in full on account of the aforesaid recovery, which

according to the petitioners are wholly illegal, arbitrary and without jurisdiction.

6. It is the consistent case of the petitioners across all the writ petitions that they have neither misappropriated nor utilized any government funds in excess, and that the alleged excess expenditure was incurred only after due approval from the competent authorities. It is further contended that certain documents were fabricated by one Shri K.K. Shrivastava, then Sub Engineer, by misusing and forging the petitioners' signature and seal, for which the petitioners had already brought the matter to the notice of the department and higher authorities.
7. The petitioners have thus challenged the impugned orders primarily on the ground that the recovery has been directed without proper enquiry, without affording adequate opportunity of hearing, and in violation of principles of natural justice, and further that such recovery from pensionary benefits is impermissible in law.
8. In WPS No.6696/2021, the petitioner has prayed for following reliefs :-

"10.1 That, this Hon'ble Court may kindly be pleased to set aside the impugned impugned order dated 28/11/2020 passed by Respondent no.3 and memo dated 15/12/2020 of Respondent no. 4 Annexure P/1.

10.2 That, the Hon'ble Court may kindly be

pleased to direct the respondent's authorities to pay Cost of the Petition.

10.3 Any other reliefs may also be granted to the petitioner which this Hon'ble court deems fit and proper in the facts and circumstances of the case."

- 9.** In WPS No.3110/2023, the petitioner has prayed for following reliefs :-

"10.1 That, this Hon'ble Court may kindly be pleased to direct the respondent's authorities to release the of Pension, Gratruety and other retirement benefits of the petitioner.

10.2 That, the Hon'ble Court may kindly be pleased to pay Cost of the Petition.

10.3 Any other reliefs may also be granted to the petitioner which this Hon'ble court deems fit and proper in the facts and circumstances of the case"

- 10.** In WPS No.248/2021, the petitioner has prayed for following reliefs :-

"i. That, this Hon'ble Court may kindly be pleased to quash the order dated 15/12/2020 issued by the respondent no.5.

ii. That, this Hon'ble Court may kindly be pleased to further direct respondent authorities to pay the balance gratuity amount i.e. Rs.1,77,223/- and further pay the petitioner the balance pension amount of Rs.69,048/-

from January 2020 till December 2020, with an interest of 15% per annum.

iii. That, this Hon'ble Court may kindly be pleased to direct the respondent authorities to pay the Cost of the petition to the petitioner.

iv. Any other relief, which this Hon'ble Court deems fit and proper, may also kindly be granted to the petitioner, in the interest of justice."

Brief Consolidated Facts of WPS Nos. 6696/2021 and 3110/2023

11. The petitioner, Prakash Chandra Sahu, was initially appointed as a Sub-Engineer in the Water Resources Department on 09.10.1980 and, over the course of his service, was promoted to the post of Sub-Divisional Officer (SDO) in November, 2018. At the relevant point of time, he was posted as SDO, Sutiapat Project, Sub-Division No. 3, Sahaspur Lohara, District Kabirdham (C.G.).
12. During the period 2016–2017, certain repair works relating to Sari Dam situated in Gram Panchayat Talpur were undertaken under the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGA). The said works were executed through the departmental machinery and were stated to have been completed within the stipulated period.
13. Subsequently, on 11.12.2019, the Executive Engineer, Water Resources Department, Kawardha, addressed a communication

to the competent authorities indicating that in the execution of the said works, an excess expenditure to the tune of approximately Rs. 11.42 Lakhs had been incurred beyond the sanctioned amount. It was further indicated that appropriate directions would be issued regarding recovery after examination at the higher level. Thereafter, on 29.02.2020, a show cause notice was issued to the petitioner calling upon him to explain the alleged excess expenditure. The petitioner submitted his reply on 12.03.2020, stating, inter alia, that the expenditures were incurred in the course of execution of work and that the same were undertaken with due approvals from the competent authorities.

14. The petitioner also addressed communications to the departmental authorities bringing to their notice certain irregularities in the execution of the work and the maintenance of records, particularly alleging that his signatures had been misused by the then Sub-Engineer, Shri K.K. Shrivastava, by way of a forged seal on official documents such as Measurement Books, vouchers and related records.
15. As no decision was taken on his representations and his retiral dues were withheld, the petitioner approached this Court by filing WPS No. 1850/2020, which was disposed of on 20.05.2020 with a direction to the respondents to consider and decide the petitioner's representation within a stipulated time. Pursuant thereto, on 22.07.2020, correspondence was made between the

respondent authorities regarding fixation of liability and initiation of recovery proceedings against the petitioner and other concerned officials in relation to the alleged excess expenditure.

- 16.** Thereafter, the respondent authorities passed an order dated 28.11.2020, whereby a total alleged loss of Rs. 11.42 Lakhs was apportioned and a sum of Rs. 5,13,900/- (being 45% thereof) was directed to be recovered from the petitioner. This was followed by issuance of a consequential memo dated 15.12.2020 directing the petitioner to deposit the said amount within a stipulated period.
- 17.** Aggrieved by the aforesaid orders dated 28.11.2020 and 15.12.2020, the petitioner has preferred WPS No. 6696/2021 challenging the legality and validity of the recovery proceedings initiated against him.
- 18.** During the pendency of the said writ petition, further actions were taken by the respondent authorities in pursuance of the impugned orders, including steps affecting the petitioner's retiral dues and continuation of recovery proceedings. Being aggrieved by the subsequent developments and continuation of the impugned action, the petitioner has filed WPS No. 3110/2023 raising the same cause of action and challenging the continued enforcement of the impugned orders.
- 19.** Both the writ petitions thus arise out of the same set of facts, relate to the same impugned orders and recovery proceedings, and involve identical issues concerning the alleged excess

expenditure incurred in the MGNREGA works and the consequent liability fastened upon the petitioner.

Brief Facts of W.P.(S) No. 248/2021

20. The petitioner, Kailash Kumar Shrivastava, was serving in the Water Resources Department, State of Chhattisgarh, and at the relevant point of time was posted as Sub-Engineer in Sutiapat Project, Sub-Division No. 3, Sahaspur Lohara, District Kabirdham.
21. During the period 2016–2017, various repair and construction works, including the repair of Sari Dam situated at Gram Panchayat Talpur, were undertaken under the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGA) pursuant to work order dated 25.05.2016 issued by the competent authority. The said works were executed through the departmental set-up and entries relating to execution of work, measurements, and expenditure were recorded in the Measurement Books (M.B.), vouchers, and other official records maintained at the sub-divisional level.
22. Subsequently, on 11.12.2019, the Executive Engineer, Water Resources Department, Kawardha, reported that in the execution of the said works, an excess expenditure amounting to approximately Rs. 11.42 Lakhs had been incurred beyond the sanctioned amount, based on available records. Thereafter, on 29.02.2020, a show cause notice was issued to the concerned officers, including the present petitioner, calling for an explanation

regarding the alleged excess expenditure reflected in the records. The matter was thereafter examined at different administrative levels, and on 22.07.2020, correspondence was made by the competent authority recommending initiation of recovery proceedings for the alleged excess expenditure from the concerned officers.

- 23.** Following the said process, an order dated 28.11.2020 was passed by the Chief Executive Officer, Zila Panchayat, Kabirdham, determining the total alleged financial loss at Rs. 11.42 Lakhs and apportioning the liability among the concerned officers, including the present petitioner. Pursuant thereto, a consequential order/memo dated 15.12.2020 was issued directing recovery of a quantified amount from the petitioner as his share of liability arising out of the said alleged excess expenditure.
- 24.** In furtherance of the aforesaid orders, steps were initiated by the respondent authorities for recovery of the determined amount from the petitioner, including adjustment and deduction from amounts payable to him. Aggrieved by the orders dated 28.11.2020 and 15.12.2020 and the consequential recovery proceedings initiated thereunder, the petitioner has filed the present writ petition, i.e., WPS No. 248/2021.
- 25.** Mr. Manoj Paranjpe, learned Senior Counsel, assisted by Ms. Ruchi Nagar and Mr. Arpan Verma, learned counsel appearing for the respective petitioners, submits that the impugned orders dated

28.11.2020 and 15.12.2020, whereby recovery to the extent of Rs. 5,13,900/- (being 45% of the alleged excess expenditure of Rs. 11.42 Lakhs) has been imposed upon the petitioners, are wholly illegal, arbitrary and unsustainable in law. It is contended that the said orders have been passed in a mechanical manner without any independent application of mind and without adhering to the settled principles governing imposition of recovery from a government servant, particularly after retirement.

26. Learned Senior Counsel further submits that the entire basis for fastening liability upon the petitioners rests on an inquiry report dated 22.07.2020, which was neither supplied to the petitioners nor were they afforded any effective opportunity to rebut the findings recorded therein. It is contended that no regular departmental inquiry, as contemplated under the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short, 'Rules of 1966'), was ever initiated. No charge-sheet was issued, no list of witnesses was furnished, and no opportunity of cross-examination was granted. In the absence of such procedure, the impugned recovery, which is penal in nature, stands vitiated on account of gross violation of the principles of natural justice.

27. It is further submitted that the petitioners have consistently maintained that the alleged excess expenditure, if any, was not attributable to them. It is contended that the records, including

Measurement Books and vouchers, were manipulated by the then Sub-Engineer, Shri K.K. Shrivastava, by using a forged seal and signature of the petitioner. This aspect, though specifically brought to the notice of the authorities through written representations, has been completely ignored while passing the impugned orders. It is also submitted that the affidavit of the said Sub-Engineer, wherein he has admitted certain lapses and expressed willingness to bear the recovery, has not been considered by the respondent authorities.

- 28.** Learned Senior Counsel submits that the recovery has been imposed merely on the basis of the designation held by the petitioners, on the assumption that being supervisory officers, they are liable for all acts carried out in the sub-division. It is argued that such an approach is contrary to settled principles of service jurisprudence, which require that liability must be fixed on the basis of specific acts of omission or commission supported by a clear finding of negligence causing pecuniary loss to the State. In the absence of any such finding, fastening liability by applying a fixed percentage is wholly arbitrary and legally unsustainable.
- 29.** It is further contended that in the case of the petitioner in WPS No.3110/2023, the action of the respondents in withholding pension, gratuity and other retiral benefits solely on account of the impugned recovery is illegal and contrary to law. It is submitted that the petitioner, having already superannuated, could not have

been subjected to recovery without following due process. Pensionary benefits, being a vested right, cannot be withheld except in accordance with statutory provisions. The continued deduction from pension and withholding of retiral dues are therefore liable to be set aside.

30. Placing reliance upon judicial precedents, learned Senior Counsel submits that it is well settled that recovery from a retired employee or from retiral benefits cannot be effected without a duly conducted departmental inquiry establishing misconduct and pecuniary loss. In this regard, reliance has been placed on the judgment of this Court in ***WPS No. 8586 of 2019 (Suresh Singh v. State of Chhattisgarh & Others)***, decided on 14.02.2025, wherein it has been held that in the absence of a proper inquiry, recovery from pensionary benefits is impermissible. Further reliance has been placed on ***WPS No. 1625 of 2024 (Mamta Chaudhary v. State of Chhattisgarh & Others)*** decided on 08.05.2025, wherein it has been reiterated that retiral dues cannot be withheld arbitrarily and must be released unless supported by a legally sustainable order.
31. Learned Senior Counsel has also placed reliance upon the authoritative pronouncement of the Hon'ble Supreme Court in the matter of ***State of Uttar Pradesh through Principal Secretary, Department of Panchayati Raj, Lucknow v. Ram Prakash Singh, 2025 SCC OnLine SC 891***, to contend that failure

to conduct a formal departmental inquiry before imposing financial liability vitiates the entire action. It is submitted that subjecting a retired employee to recovery without due process causes serious prejudice and hardship. It is thus argued that the impugned orders, having been passed in violation of statutory provisions and principles of natural justice, deserve to be quashed and the petitioners are entitled to consequential reliefs, including release of their withheld retiral benefits.

- 32.** Learned Senior Counsel appearing for the petitioner, Shri Kailash Kumar Shrivastava in WPS No.248/2021 would submit with considerable emphasis that the impugned orders dated 28.11.2020 and 15.12.2020, whereby recovery to the tune of Rs.5,13,900/- has been directed against the petitioner on account of alleged excess expenditure of Rs. 11.42 Lakhs, are ex facie illegal, arbitrary and unsustainable in the eyes of law. It is contended that the entire action of the respondents is vitiated on account of non-compliance of the mandatory procedure prescribed under the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966. Elaborating the submission, it is urged that no regular departmental enquiry, as contemplated under the Rules, was ever conducted prior to fastening pecuniary liability upon the petitioner. Neither any formal charge-sheet was issued nor were the articles of charge framed, and the petitioner was never afforded an opportunity to defend himself in accordance with law.

- 33.** It is further submitted that the impugned action is in teeth of the settled principles of natural justice, as the petitioner has been condemned unheard. The recovery has been imposed in a mechanical manner solely on the basis of the petitioner's designation as Sub-Divisional Officer, without there being any independent finding regarding his specific role, negligence or misconduct in causing the alleged financial loss. Such an approach, it is contended, is impermissible in law, as liability cannot be fastened merely on the basis of holding a particular post, in absence of cogent material demonstrating culpability.
- 34.** Learned Senior Counsel would further contend that the entire foundation of the impugned action rests on conjectures, surmises and unverified material, which cannot sustain a finding of liability in law. It is vehemently urged that there is absolutely no legally admissible evidence on record to establish that the petitioner was in any manner involved in the alleged excess expenditure or financial irregularities. The respondents have failed to discharge the burden of proving misconduct, which is a sine qua non for imposing any penal or pecuniary liability. It is specifically submitted that the documents sought to be relied upon by the department, including Measurement Books, vouchers and other execution records, do not bear the genuine signatures of the petitioner. On the contrary, it is the categorical case of the petitioner that the said documents have been manipulated and fabricated by the then Sub-Engineer, Shri K.K. Shrivastava, by

misusing forged seals and signatures. Despite such serious allegations having been raised by the petitioner through contemporaneous representations, the respondent authorities have failed to conduct any independent verification, forensic examination or inquiry into the authenticity of the records.

35. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Nirmala J. Jhala v. State of Gujarat (2013) 4 SCC 301***, it is contended that findings based on preliminary or unverified material, without subjecting the same to the test of a regular enquiry, cannot form the basis of punishment. The use of such material, without affording opportunity of rebuttal, is in clear violation of the principles of natural justice. It is thus submitted that in absence of any direct or circumstantial evidence linking the petitioner to the alleged misconduct, the impugned orders are rendered arbitrary, perverse and liable to be set aside.
36. Learned Senior Counsel would further submit that the impugned orders stand vitiated on account of gross violation of the principles of natural justice, particularly the doctrine of *audi alteram partem*, which mandates that no person shall be condemned unheard. It is contended that the petitioner was not afforded any effective or meaningful opportunity of hearing prior to passing of the impugned orders. The so-called proceedings, if any, were conducted in a wholly perfunctory and casual manner, without supplying the relevant documents, without disclosing the material

sought to be relied upon, and without granting any opportunity to controvert the same. It is further urged that the petitioner was neither confronted with the alleged incriminating material nor permitted to cross-examine any witness or official whose statements may have been relied upon by the department. Such a procedure, it is submitted, strikes at the very root of fair play and due process, and renders the entire decision-making process legally unsustainable.

- 37.** In view of the law laid down by the Hon'ble Supreme Court as well as this Court, it is submitted that any action having civil consequences must strictly adhere to the principles of natural justice and statutory procedure. In the present case, the complete absence of a fair enquiry, coupled with denial of opportunity and lack of evidence, renders the impugned orders wholly arbitrary, illegal and unsustainable. It has been lastly submitted that the impugned action is vitiated on account of gross violation of the settled principles of natural justice, which form the bedrock of any fair administrative or quasi-judicial decision-making process. It is contended that the respondents have failed to adhere to the essential requirements of *audi alteram partem*, inasmuch as no proper or meaningful opportunity of hearing was afforded to the petitioners prior to fastening pecuniary liability upon them. The material sought to be relied upon by the department, including the inquiry report and supporting documents, was never furnished to the petitioners, thereby depriving them of an effective opportunity

to rebut the allegations. It is further submitted that no reasons have been assigned in the impugned orders to demonstrate due application of mind or consideration of the explanations furnished by the petitioners. The decision, therefore, suffers from procedural impropriety and arbitrariness. It is well settled that even in administrative actions, where civil consequences ensue, strict compliance with the principles of natural justice is mandatory. The expression “civil consequences” encompasses not only pecuniary loss but also deprivation of property, livelihood and other vested rights, including pensionary benefits. In the present case, the impugned recovery directly affects the petitioners’ retiral dues, thereby undoubtedly attracting civil consequences of a serious nature. In such circumstances, denial of a fair hearing strikes at the root of the decision-making process and renders the impugned action legally unsustainable. Hence, the impugned orders deserve to be quashed.

- 38.** On the other hand, Mr. Sangharsh Pandey, learned Government Advocate, appearing for the State, opposes the submissions advanced by learned Senior Counsel for the petitioners and, by filing a detailed return in all these writ petitions, submits that the impugned action is fully justified, lawful and based on a duly conducted inquiry, and therefore, does not warrant any interference under Article 226 of the Constitution of India. It is submitted that the present matter arises out of a complaint regarding excess expenditure in the repair work of the canal of

Sari Jalashay Dam situated at Gram Panchayat Talpur, pursuant to which an inquiry was conducted by the Executive Engineer, Water Resources Division, Kawardha. During the course of inquiry, several notices dated 13.01.2020, 23.01.2020, 01.02.2020, 06.02.2020 and 16.02.2020 were issued to the concerned officials including the petitioners, calling upon them to produce relevant records, vouchers and supporting documents. In response thereto, the petitioner submitted the requisite documents on 18.02.2020 and also furnished his reply to the show cause notice dated 29.02.2020 on 06.03.2020. It is thus contended that full and adequate opportunity was afforded to the petitioners during the inquiry proceedings.

- 39.** Learned Government Advocate further submits that upon detailed scrutiny of the records, it was found that against the sanctioned amount of Rs. 41.53 Lakhs under the MGNREGA Scheme, an excess amount of Rs. 11.42 Lakhs had been incurred without obtaining revised administrative approval. It was also found that the petitioners, being responsible officers, failed to discharge their duties with due diligence, inasmuch as the vouchers/documents pertaining to excess payment were not physically attested, the Material-at-Site Account was submitted belatedly, and proper supervisory control was not exercised. Accordingly, the petitioners were found negligent in discharge of their official duties, which resulted in financial loss to the State. It is further submitted that, based on the inquiry report, the competent authority

recommended recovery of the excess amount from the concerned officers, namely Shri K.K. Shrivastava (Sub-Engineer), Shri P.C. Sahu (Sub-Divisional Officer) and Shri S.K. Tikam (Executive Engineer), in proportion to their respective roles. Thereafter, the Chief Executive Officer, Zila Panchayat, Kabirdham, vide order dated 28.11.2020, directed recovery of Rs. 5,13,900/- each from Shri K.K. Shrivastava and Shri P.C. Sahu, and Rs. 1,14,200/- from Shri S.K. Tikam. Pursuant thereto, the Executive Engineer issued memo dated 15.12.2020 directing deposit of the recoverable amount, followed by reminder dated 28.06.2021. It is also contended that the petitioners have not specifically challenged the inquiry proceedings or the findings recorded therein, whereby they have been held guilty of negligence. In absence of any challenge to the inquiry report, the consequential recovery orders cannot be assailed independently. It is further submitted that one of the co-delinquent officers, namely the then Executive Engineer, has already deposited his share of the recoverable amount, thereby demonstrating compliance with the impugned order.

- 40.** Learned State counsel further submits that, in pursuance of the impugned orders, necessary administrative approval has also been granted by the competent authority, i.e., the office of the Engineer-in-Chief, Water Resources Department, vide order dated 20.01.2025, for recovery of Rs. 5,13,900/- from the gratuity of the petitioner, and the process of deduction is underway. It is contended that such recovery is permissible under the provisions

of the Chhattisgarh Civil Services (Pension) Rules, 1976 (for short, 'Rules of 1976'). It is further submitted that the petitioners have already been extended substantial retiral benefits in accordance with law. In the case of the petitioner in WPS No.248/2021, it is pointed out that an amount of Rs. 42,17,945/- has been paid towards retiral dues, and 90% of the gratuity amount has been released in terms of Rule 74 of the Rules of 1976, while only the recoverable amount has been withheld. The petitioner is also receiving regular pension. It is thus contended that there is no illegality in withholding a part of the gratuity to the extent of recoverable dues. It is also submitted that the recovery proceedings are further supported by documentary material, including Measurement Books and a detailed chart prepared by the competent authority demonstrating the excess consumption of materials such as cement, moorum, diesel and earthwork, thereby quantifying the loss at Rs. 11.42 Lakhs. Additionally, it is contended that the petitioner himself had submitted an affidavit undertaking that any excess expenditure found would be recoverable from retiral dues, and therefore, he is estopped from challenging the recovery proceedings at this stage.

- 41.** In view of the aforesaid submissions, learned Government Advocate submits that the impugned orders have been passed after due inquiry, based on cogent material and in accordance with statutory provisions, and as such, the writ petitions, being devoid of merit, are liable to be dismissed.

- 42.** I have heard learned counsel for the respective parties at considerable length and have bestowed my thoughtful consideration to the rival submissions advanced across the Bar. I have also carefully perused the pleadings filed in all the connected writ petitions, the annexures appended thereto, the original records made available by the learned State counsel and the statutory provisions and notifications governing the field.
- 43.** From perusal of the record of all the three writ petitions, it is apparent that the impugned recovery proceedings arise out of an allegation of excess expenditure incurred in the execution of works under the MGNREGA Scheme during the period 2016–2017. The record reflects that the basis for initiating action against the petitioners is primarily an inquiry report prepared at the departmental level, along with certain documents such as Measurement Books, vouchers and internal correspondence. It is also borne out from the record that the liability has been apportioned amongst the concerned officers, including the present petitioners, by assigning a fixed percentage of the alleged excess amount.
- 44.** It further appears from the record that prior to passing of the impugned orders, a show cause notice was issued to the petitioners and replies were submitted by them denying the allegations and explaining the circumstances under which the works were executed. The petitioners also raised a specific plea

regarding alleged discrepancies in the records, including misuse of signatures and seals; however, the material available on record does not indicate any detailed consideration or adjudication of the said defence. The record also reflects that no formal departmental proceedings, in terms of issuance of charge-sheet or framing of specific charges, were undertaken against the petitioners. It is also evident from the record that the impugned orders have resulted in initiation of recovery from the petitioners, including from their retiral dues such as pension and gratuity. The proceedings leading to such recovery appear to have been undertaken on the basis of the aforementioned inquiry and departmental correspondence, culminating in the orders dated 28.11.2020 and 15.12.2020, which are the subject matter of challenge in the present writ petitions.

- 45.** Upon an anxious consideration of the entire material available on record and the rival submissions advanced by learned counsel for the parties, this Court finds that the foundational basis of the impugned recovery proceedings is legally unsustainable. The records reveal that though an inquiry was conducted at the departmental level, the same does not satisfy the requirements of a regular departmental inquiry as contemplated under the Rules of 1966.
- 46.** Admittedly, no charge-sheet was issued, no articles of charge were framed, no list of witnesses or documents was supplied, and

no opportunity of cross-examination was afforded to the petitioners. The so-called inquiry, therefore, remains in the nature of a preliminary fact-finding exercise, which, by itself, could not have formed the basis for fastening civil consequences of recovery, particularly of a penal character. It is well settled that any action entailing civil or pecuniary liability must be preceded by adherence to the principles of natural justice and due process, failing which such action stands vitiated.

47. This Court further finds substance in the contention of the petitioners that the liability has been mechanically apportioned without recording any specific finding regarding the individual role, misconduct or negligence attributable to each of the officers. The impugned orders merely distribute the alleged excess amount in fixed percentages, which reflects a complete non-application of mind. There is no discussion as to how and in what manner each of the petitioners was responsible for the alleged excess expenditure, nor is there any determination of causal connection between the alleged lapse and the quantified loss. Such an approach is contrary to settled principles of service jurisprudence, which mandate that recovery must be founded on clear, cogent and individualized findings of misconduct resulting in pecuniary loss to the State.

48. Insofar as the submissions advanced on behalf of the petitioners are concerned, it is their specific case that the alleged excess

expenditure cannot be attributed solely to them, inasmuch as the works in question were executed through a departmental set-up involving multiple officers, including the Sub-Engineer, Executive Engineer and other field functionaries. It is contended that the responsibility, if any, was collective in nature and required a proper determination of individual roles. The petitioners have further asserted that the records, including Measurement Books and vouchers, were not exclusively maintained or controlled by them and that there are serious allegations regarding manipulation of documents and misuse of their signatures by another officer, namely Shri K.K. Shrivastava. It is submitted that had a proper opportunity of hearing been afforded, the petitioners would have effectively demonstrated their lack of involvement and rebutted the allegations by placing relevant material on record. However, in absence of such opportunity, the petitioners were deprived of their right to put forth a proper and effective defence.

- 49.** It is well settled that where an action entails civil and pecuniary consequences, particularly in the nature of recovery from a government servant, the affected employee is required to be afforded a reasonable and adequate opportunity of hearing in accordance with law. In the present case, the record does not reflect compliance with the essential procedural safeguards, inasmuch as no regular departmental inquiry, as contemplated under the applicable service rules, was conducted. No charge-sheet was issued, no specific articles of charge were framed, and

no opportunity was granted to the petitioners to contest the material relied upon by the respondents. In such circumstances, the proceedings culminating in the impugned orders stand vitiated on account of non-observance of the principles of natural justice.

- 50.** The scope of examination and interference under Article 226 of the Constitution of India in matters of the present nature is well settled. While this Court ordinarily does not sit as an appellate authority over departmental findings, it is equally trite that where the decision-making process is found to be vitiated by arbitrariness, procedural impropriety or violation of principles of natural justice, interference is not only permissible but warranted. In the present case, the impugned action, having been taken without adherence to due process and without affording a fair opportunity of hearing to the petitioners, falls within the well-recognized exceptions justifying exercise of writ jurisdiction. In the matter of ***State of Andhra Pradesh v. S Sree Rama Rao***, AIR **1963 SC 1723**, a 3-Judge Bench of the Hon'ble Supreme Court has held as follows:-

“7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure

prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a

proceeding for a writ under Article 226 of the Constitution.'

(emphasis supplied)"

51. The above was reiterated by a Bench of equal strength in the matter of ***State Bank of India v. Ram Lal Bhaskar, (2011) 10 SCC 249***. Three learned Judges of the Hon'ble Supreme Court stated as under in the matter of State of ***Andhra Pradesh v. Chitra Venkata Rao, (1975) 2 SCC 557:-***

"21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723: (1964) 3 SCR 25: (1964) 2 LLJ 150]. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent

in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article

226.

xxx

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477: (1964) 5 SCR 64].

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.

Xxx

26. For these reasons we are of opinion that the High Court was wrong in setting aside the dismissal order by reviewing and reassessing the evidence. The appeal is accepted. The judgment of the High Court is set aside. Parties will pay and bear their own costs.'

(emphasis supplied)''

- 52.** In the matter of **State Bank of India v. S K Sharma, (1996) 3 SCC 364**, two learned Judges of the Hon'ble Supreme Court has

held:-

“28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk [(1949) 1 All ER 109: 65 TLR 225] way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405: (1978) 2 SCR 272]). The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India [(1982) 1 SCC 271: 1982 SCC (Cri) 152] and Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664].) As pointed out by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262] , the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable — a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 All ER 935 : (1984) 3 WLR 1174 : 1985 AC 374, HL] where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing — applying the test of prejudice, as it may be called — that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be

situations where observance of the requirement of prior notice/hearing may defeat the very proceeding — which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India [(1984) 3 SCC 465]. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between “no notice”/“no hearing” and “no adequate hearing” or to put it in different words, “no opportunity” and “no adequate opportunity”. To illustrate — take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin [1964 AC 40: (1963) 2 All ER 66: (1963) 2 WLR 935]). It

would be a case falling under the first category and the order of dismissal would be invalid — or void, if one chooses to use that expression (*Calvin v. Carr* [1980 AC 574: (1979) 2 All ER 440: (1979) 2 WLR 755, PC]). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (*Managing Director, ECIL v. B. Karunakar* [(1993) 4 SCC 727: 1993 SCC (L&S) 1184: (1993) 25 ATC 704]) or without affording him a due opportunity of cross-examining a witness (*K.L. Tripathi* [(1984) 1 SCC 43 : 1984 SCC (L&S) 62]) it would be a case falling in the latter category — violation of a facet of the said rule of natural justice — in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct — in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in *B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be

examined on the touchstone of prejudice as aforesaid.”

53. In the matter of ***Union of India v. K G Soni, (2006) 6 SCC 794***, it was opined by the Hon’ble Supreme Court, in following words :-

“14. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223: (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.

15. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to

direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.'

(emphasis supplied)"

54. The legal position was restated by two learned Judges in the matter of ***State of Uttar Pradesh v. Man Mohan Nath Sinha, (2009) 8 SCC 310***, by observing as follows :-

"15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappraise and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the High Court."

55. In the matter of ***Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia and others, (2005) 7 SCC 764*** while dealing with the similar issue, the Hon'ble Supreme Court has held as follows:-

"44. We are aware of the normal rule that a

person must have a fair trial and a fair appeal and he cannot be asked to be satisfied with an unfair trial and a fair appeal. We are also conscious of the general principle that pre-decisional hearing is better and should always be preferred to post-decisional hearing. We are further aware that it has been stated that apart from Laws of Men, Laws of God also observe the rule of audi alteram partem. It has been stated that the first hearing in human history was given in the Garden of Eden. God did not pass sentence upon Adam and Eve before giving an opportunity to show cause as to why they had eaten forbidden fruit. [See R.v. University of Cambridge, (1723) 1 Str 557]. But we are also aware that principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straight-jacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. It has been stated ; "To do a great right after all, it is permissible sometimes to do a little wrong". [Per Mukharji, C.J. in Charan Lal Sahu v. Union of India, (Bhopal Gas Disaster); (1990) 1 SCC 613] While interpreting legal provisions, a court of law cannot be unmindful of hard realities of life. In our opinion, the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than 'precedential'."

56. Taking into consideration the overall facts and circumstances of all

the three writ petitions in the light of the aforementioned principles laid down by the Hon'ble Supreme Court, it is quite vivid that the impugned recovery orders cannot be sustained in the eyes of law. The record clearly demonstrates that the decision-making process adopted by the respondent authorities is vitiated by procedural impropriety and non-observance of the principles of natural justice, inasmuch as no regular departmental inquiry, as contemplated under the applicable Rules of 1966, was conducted prior to fastening pecuniary liability upon the petitioners. The entire action is founded merely on a preliminary inquiry report, without issuance of charge-sheet, framing of specific charges, or affording a reasonable opportunity to the petitioners to contest the material relied upon against them. It is further apparent that the liability has been apportioned in a mechanical manner, without recording any clear and individualized findings regarding the role, responsibility or misconduct attributable to each of the petitioners. The impugned orders do not disclose any application of mind to the defence raised by the petitioners, particularly with regard to alleged manipulation of records and misuse of signatures. In absence of any cogent evidence establishing a direct nexus between the petitioners and the alleged excess expenditure, the action of the respondents suffers from arbitrariness and can withstand judicial scrutiny even within the limited scope of interference under Article 226 of the Constitution of India.

57. Thus, the present cases fall squarely within the well-recognized

exceptions warranting interference in exercise of writ jurisdiction, as the impugned action is not merely a matter of appreciation of evidence, but one where the very foundation of the proceedings is flawed due to violation of mandatory procedural safeguards and absence of a fair and lawful inquiry.

58. Equally significant is the fact that the recovery in the present cases has been sought to be effected from the retiral dues of the petitioners. It is no longer *res integra* that pension and gratuity are not bounty but valuable rights vested in a government servant, and any deduction therefrom must strictly conform to the statutory framework. In the absence of a duly conducted departmental inquiry culminating in a finding of guilt, recovery from pensionary benefits is impermissible. In this regard, reference may be made to the judgment of the Hon'ble Supreme Court in a recent decision in ***Ram Prakash Singh*** (supra), wherein it has been reiterated that recovery from a retired employee without due process is legally untenable and causes undue hardship, by observing as follows :-

“12. M/s. Bareilly Electricity Supply Company Limited v. The Workmen and Others, (1971) 2 SCC 617 is a decision arising from an award under the Industrial Disputes Act, 1947. Law has been laid down therein as follows:

“9. ... Innumerable statements, letters, balance-sheet, profit and loss account and other documents called for or otherwise were

filed on behalf of the appellants. It cannot be denied that the mere filing of any of the aforementioned documents does not amount to proof of them and unless these are either admitted by the respondents or proved they do not become evidence in the case.

14. ... But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained therein true. When the appellant produced the balance-sheet and profit and loss account of the company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be

filed and opportunity afforded to the opposite party who challenges this fact. ... ”

(emphasis ours)

13. *In Roop Singh Negi v. Punjab National Bank and Others, (2009) 2 SCC 570, it was held that an officer conducting an enquiry has a duty to arrive at findings in respect of the charges upon taking into consideration the materials brought on record by the parties. It has also been held therein that any evidence collected during investigation by an investigating officer against the accused by itself could not be treated to be evidence in the disciplinary proceedings.*

14. *What follows from a conjoint reading of the above two decisions is and what applies here is that, ‘materials brought on record by the parties’ (to which consideration in the enquiry ought to be confined) mean only such materials can be considered which are brought on record in a manner known to law. Such materials can then be considered legal evidence, which can be acted upon. Though the Indian Evidence Act, 1872 is not strictly applicable to departmental enquiries, which are not judicial proceedings, nevertheless, the principles flowing therefrom can be applied in specific cases. Evidence tendered by witnesses must be recorded in the presence of the delinquent employee, he should be given opportunity to cross- examine the witnesses and no document should be relied on by the*

prosecution without giving copy thereof to the delinquent - all these basic principles of fair play have their root in such Act. In such light, the documents referred to in the list of documents forming part of the annexures to the chargesheet, on which the department seeks to rely in the enquiry, cannot be treated as legal evidence worthy of forming the basis for a finding of guilt if the contents of such documents are not spoken to by persons competent to speak about them. A document does not prove itself. In the enquiry, therefore, the contents of the relied-on documents have to be proved by examining a witness having knowledge of the contents of such document and who can depose as regards its authenticity. In the present case, no such exercise was undertaken by producing any witness.

15. We may further refer to the decision of this Court in State of Uttar Pradesh and Others v. Saroj Kumar Sinha, (2010) 2 SCC 772 where disciplinary proceedings were drawn up against the respondent, Saroj Kumar Sinha, under the 1999 Rules itself with which we are concerned. Paragraphs 26 to 30 and 33 of the said decision being relevant are quoted below:

“26. The first inquiry report is vitiated also on the ground that the inquiry officers failed to fix any date for the appearance of the respondent to answer the charges. Rule 7(x) clearly provides as under:

'7. (x) Where the charged government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the inquiry officer shall proceed with the inquiry ex parte. In such a case the inquiry officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged government servant.'

27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

28. *An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.*

29. *Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.*

30. *When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry*

officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet.”

(emphasis ours)

16. It appears that the appellant is yet to take lessons despite the admonition in Saroj Kumar

Sinha (supra). The same kind of omissions and commissions that led to setting aside of the order of punishment imposed being upheld by this Court were repeated in the present case.

*17. Next, the decision in **Nirmala J. Jhala v. State of Gujarat and Another**, (2013) 4 SCC 301 deserves consideration where the concept of preliminary enquiry being distinct from a regular enquiry was noticed and discussed. Paragraphs 45 and 51 from such decision read as follows:*

*“42. A Constitution Bench of this Court in **Amalendu Ghosh v. North Eastern Railway**, AIR 1960 SC 992, held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.*

*43. Similarly in **Champaklal Chimanlal Shah v. Union of India**, AIR 1964 SC 1854, a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2)*

of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. ...

45. In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.

34. Hon'ble Ramaswamy, J. answered the basic question as follows:

'61. It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offends Articles 14 and 21. It is well-settled law that the principles of natural justice are integral part of Article 14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry

report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post-mortem certificate with putrefying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Articles 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice. The behalf of the on contention Government/management that the report is not evidence adduced during such enquiry envisaged under proviso to Article 311(2) is also devoid of substance. It is settled law that the Evidence Act has no application to the enquiry conducted during the disciplinary proceedings. The evidence adduced is not in strict conformity with the Indian Evidence Act, though the essential principles of fair play envisaged in the Evidence Act are applicable. What was meant by 'evidence' in the proviso to Article 311(2) is the totality of the material collected during the enquiry including the report of the enquiry officer forming part of that material. Therefore, when reliance is sought to be placed by the disciplinary authority, on the report of the enquiry officer for proof of the charge or for imposition of the penalty, then it is incumbent that the copy thereof should be supplied before reaching any conclusion either on proof of the charge or the nature of the penalty to be imposed on the proved

charge or on both."

(emphasis ours)

38. *Thus, the right to receive the enquiry report as a fundamental safeguard in disciplinary proceedings, where such report holds the charges against the delinquent employee to be established, was firmly entrenched by the Constitution Bench in jurisprudence relating to proceedings initiated for disciplinary action for misconduct. This valuable right applies uniformly, regardless of who the employer is (Government, public or private) and regardless of what the rules governing the service ordain. Even if the rules are silent or do not require furnishing of the enquiry report, the same has to be furnished. Additionally, the report must be furnished to the employee even without a request, as it forms an integral part of ensuring a fair and reasonable opportunity to defend against the charges. By not furnishing the report, an employer cannot scuttle the rights of the delinquent employee.*

39. *Reading the passage from S.K. Sharma (supra) highlighted above bearing in mind the guidance received from the dicta in B. Karunakar (supra), one can safely conclude that furnishing of a report of enquiry though is a procedural step, it is of a mandatory character. However, such a requirement can be waived by the delinquent employee, expressly or by conduct, but if on facts he is*

found not to have waived his right to receive the report, the theory of substantial compliance or the test of 'prejudice' would not be applicable.

41. Application of the test of 'prejudice', when the requirement is mandatory in character and where admittedly the report of enquiry has not been furnished, goes against the very grain of the answer rendered by the Constitution Bench in B. Karunakar (supra) to the basic issue that was under consideration before it. It is proposed to discuss, a little later in this judgment, why the test of 'prejudice' may not be made applicable in respect of disciplinary action, proceedings wherefor have commenced after the decision in B. Karunakar (supra) was rendered, appreciating the deleterious effects likely to befall employees who have been punished without furnishing of the enquiry reports. We consider it reasonable to think that in every failure/omission/neglect to furnish the report of enquiry, which is an act of the employer certainly in utter disregard of the ratio decidendi of the decision in B. Karunakar (supra), calling upon the employer to justify why the judicial mandate of the Constitution Bench had not been followed could have eased the situation.

49. Just as Articles 14, 19 and 21 of the

Constitution constitute a triumvirate of rights of citizens conceived as charters on equality, freedom and liberty, the trio of decisions of Constitution Benches of this Court in Union of India v. Tulsiram Patel⁴⁰, Olga Tellis v. Bombay Municipal Corporation⁴¹ and A.R. Antulay v. R.S. Nayak⁴² form the bedrock of natural justice principles being regarded as part of Article 14 of the Constitution and obviating the need to demonstrate 'prejudice' if a challenge were laid on the ground of breach of Article 14. In Tulsiram Patel (supra), it was held that violation of a principle of natural justice is violation of Article 14. The dictum of the three-Judge Bench in S.L. Kapoor v. Jagmohan⁴³ that non-observance of natural justice is itself prejudice to any man and proof of prejudice, independently of proof of denial of natural justice is unnecessary, was approved by the Constitution Bench in Olga Tellis (supra). No prejudice need be proved for enforcing the Fundamental Rights is the emphatic assertion in A.R. Antulay (supra).

50. These Constitution Bench decisions have stood the test of time. Without being overruled in any subsequent decision, the law continues to bind all Benches of lesser strength. Equally, it cannot be gainsaid that with the march of time and the progress made in the years since then, nuanced or refined approaches to applying natural justice principles may be necessary and appropriate in specific cases. There can be no quarrel with this approach.

However, we find it difficult for us to be guided by the decisions insisting on application of the 'prejudice' principle in the wake of the aforesaid Constitution Bench decisions. Accepting such decisions of lesser strength would signal re-imposition of the legal regime pre-Mohd. Ramzan Khan (supra) when the employer was under no obligation to furnish the enquiry report. We are afraid, this could encourage mischievous employers to drain out its terminated employee by ensuring that copy of the enquiry report is not furnished.

68. In *A. Masilamani v. LIC*, (2013) 6 SCC 530, this Court held:

“16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same.”

69. The decision of this Court in *Allahabad Bank v. Krishna Narayan Tiwari*, (2017) 2 SCC 308 also throws light on the approach to be adopted but in a more nuanced manner than what was held in *A. Masilamani* (supra). Paragraph 8 of the decision reads as follows:

“8. There is no quarrel with the proposition

that in cases where the High Court finds the enquiry to be deficient, either procedurally or otherwise, the proper course always is to remand the matter back to the authority concerned to redo the same afresh. That course could have been followed even in the present case. The matter could be remanded back to the disciplinary authority or to the enquiry officer for a proper enquiry and a fresh report and order. But that course may not have been the only course open in a given situation. There may be situations where because of a long time-lag or such other supervening circumstances the writ court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority. That is precisely what the High Court has done in the case at hand.”

(emphasis ours)

70. Respondent, undoubtedly, was denied a reasonable opportunity to defend himself in the enquiry by the appellant, as ordained by the 1999 Rules. The manner in which the disciplinary proceedings were conducted and continued against the respondent did not satisfy the requirements of ‘due process’. The flaws creeping in such proceedings have rendered the same wholly illegal. The routine course of action in a case, such as the present, where an order of punishment is set aside on grounds of breach of statutory rules

and the charged officer is not acquitted on merits, is to remit the case to the disciplinary authority and direct resumption from the stage the proceedings is found to stand vitiated.

71. This, in this case, would mean reverting to the stage of production of witnesses on behalf of the department. When not a single witness could be produced for examination in 2010 and 2014, we do not think that witnesses would now be available to support the charges. Even otherwise, these proceedings have certain incidents of 2004-05 as the origin. Having regard to the lapse of time since then coupled with the retirement of the respondent from service in 2010 and, more particularly, when the appellant despite an earlier opportunity granted by the Tribunal has failed to avail the same by continuing the enquiry in accordance with law, it would be highly unfair and unjust to subject the respondent to face the enquiry once again. Gravity of the offence alleged to have been committed is certainly a vital consideration; however, repeated opportunities cannot be claimed without there being overwhelming public interest warranting such opportunity. No doubt, the respondent was charged with involvement in a financial scam but a line has to be drawn. Or else, it could be an unending affair till such time based on a legal and valid report of enquiry, the disciplinary authority passes an appropriate order. On facts, we are satisfied that second opportunity was not

required to be given. Also, we have noticed from the materials on record that two of the respondent's colleagues (one of them a senior officer) who were also proceeded against have been practically let off with no punishment or punishment of stoppage of increments. Thus, we are satisfied that no useful purpose will be served by reviving the disciplinary proceedings and in remitting the case to the appellant. On the contrary, the issue must be given a quietus because the Tribunal or the High Court did not commit any illegality. We hold that the Tribunal and the High Court were correct and justified in not granting one more opportunity to the appellant to resume proceedings from the stage invalidity in the proceedings was detected. The impugned order of the High Court, not suffering from any legal infirmity, does not warrant any interference and deserves to be upheld.

CONCLUSION

72. For the foregoing reasons, we find no merit in this appeal. The same is, accordingly, dismissed. Interim order stands vacated.

73. The respondent shall be entitled to full retiral benefits from the date of his superannuation without any sum being deducted. However, provisional pension received by him may be adjusted with the arrears. Let the pensionary benefits be computed and the balance sum of pension together with other retiral benefits be released

in favour of the respondent as early as possible, but positively within three months from date of receipt of a copy of this judgment and order. In default, the sum payable to the respondent shall carry interest @ 6% per annum and the High Court too shall be free to carry the contempt proceedings forward.”

59. Reverting to the facts of the present cases, in the light of the aforesaid authoritative pronouncements of the Hon'ble Supreme Court, it is quite apparent that although a show cause notice was issued to the petitioners, the same cannot be construed as affording a real and meaningful opportunity of hearing. The record reflects that the material sought to be relied upon by the respondents was neither supplied to the petitioners nor were they granted an effective opportunity to rebut the allegations or defend themselves in accordance with law. No regular departmental inquiry was conducted, no witnesses were examined, and the documents forming the basis of the impugned action were not proved in the manner known to law.
60. Thus, the so-called opportunity extended to the petitioners was merely illusory and not in consonance with the settled principles of natural justice. In absence of a fair and proper inquiry, the findings recorded against the petitioners, leading to imposition of recovery from their retiral dues, stand vitiated and cannot be sustained in the eyes of law.
61. Taking into account the facts of the present batch of petitions in

the light of the above referred judicial precedents, it is quite vivid that the impugned action of the respondent authorities suffers from serious infirmities in the decision-making process. The record reveals that the petitioners had specifically raised a categorical defence regarding manipulation of official records, including Measurement Books and vouchers, and misuse of their signatures by another officer, namely Shri K.K. Shrivastava. However, this vital aspect, which goes to the root of the matter and has a direct bearing on the question of liability, has neither been properly examined nor adjudicated by the competent authority. The impugned orders are conspicuously silent on this crucial defence, thereby reflecting non-application of mind.

- 62.** It further emerges that the respondents have placed reliance upon certain departmental documents and internal charts to fasten liability upon the petitioners, without subjecting the same to scrutiny in a duly constituted and legally permissible inquiry. The said documents have neither been proved in accordance with law nor tested through any process of verification or cross-examination. In absence of such procedural safeguards, the reliance placed upon these materials cannot be said to constitute legally admissible evidence for the purpose of imposing pecuniary liability.
- 63.** In the backdrop of the principles laid down by the Hon'ble Supreme Court, it is evident that the findings recorded against the

petitioners are not based on a fair and transparent process, but rather on unverified material and incomplete consideration of relevant facts. The failure of the authorities to examine the specific defence raised by the petitioners and to conduct a proper inquiry renders the entire exercise arbitrary and unsustainable, particularly when the impugned action entails serious civil consequences in the form of recovery from retiral dues.

- 64.** So far as withholding of pension, and retiral dues i.e. gratuity etc. is concerned, it is settled preposition of law that, right to receive pension by the employee has been recognized by Hon'ble Apex Court as right to property under Article 300A of the Constitution of India. The Supreme Court in the ***Deokinandan Prasad Vs. State of Bihar, (1971) 2 SCC 330***, while considering various judgments, has held in para 33 as under :-

“33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order, dated June 12, 1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension

Act (Act 23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of writ of mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law.”

- 65.** In the case of ***State of W.B. v. Haresh C. Banerjee, (2006) 7 SCC 651***, Hon'ble Supreme Court has recognized that, even when after repealing of Article 19(1)(f) and Article 31(1) of the Constitution of India, vide Constitution (Forty – fourth Amendment) Act, 1978 with effect from 20.06.1979, the right to property was no longer remained a fundamental right, it was still constitutional right as provided in Article 300A of the Constitution of India. Right to receive pension was treated as right to property.
- 66.** For withholding pension, Rule 9 of the Rules of 1976 is applicable. Rule 9(4) speaks as under :-

"9. Right of Governor to withhold or withdraw pension : (4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension and death-cum-retirement gratuity as provided in [Rule 64] shall be sanctioned:

[Provided that, where pension has already been finally sanctioned to a Government

servant prior to institution of departmental proceedings, the Governor, may, by order in writing, withhold, with effect from the date of institution of such departmental proceedings, fifty percent of the pension so sanctioned subject, however, that the pension payable after such withholding is not reduced to less than [the minimum pension as determined by the Government from time to time]:

Provided further that, where departmental proceedings have been instituted prior to the 25th October, 1978, the first proviso shall have effect as if for the words 'with effect from the date of institution of such proceedings' the words 'with effect from a date not later than thirty days from the date aforementioned' had been substituted:

Provided also that, -

(a) if the departmental proceedings are not completed within a period of one year from the date of institution thereof, fifty percent of the pension withheld shall stand restored on the expiration of the aforesaid period of one year;

(b) if the departmental proceedings are not completed within a period of two years from the date of institution, the entire amount of pension so withheld stand restored on the expiration of the aforesaid period of two years; and (c) if in the departmental proceedings final order is passed to withhold or withdraw the pension or any recovery is ordered, the order shall be

deemed to take effect from the date of the institution of departmental proceedings and the amount of pension since withheld shall be adjusted in terms of the final order subject to the limit specified in sub-rule (2) of Rule 43."

- 67.** So far as gratuity is concerned, Rule 64 of the Rules of 1976 provides as under :-

"64. Provisional pension where departmental or judicial proceedings may be pending-

(1) (a) and (b) xxx xxx xxx

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

Provided that where departmental proceedings have been instituted under Rule 16 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966, for imposing any of the penalties specified in clauses (i), (ii) and (iv) of Rule 10 of the said rules, the payment of provisional gratuity to the extent of 90% of the gratuities admissible under the rules shall also be authorised to be paid to the government servant.

(2) xxx XXX XXX."

- 68.** Admittedly, in the instant batch of writ petitions, as has been observed hereinabove, no regular departmental proceedings, as contemplated under the applicable service rules, have been

instituted or conducted against the petitioners prior to passing of the impugned recovery orders. The record reveals that the action of the respondents is founded merely on a preliminary inquiry and departmental correspondence, without issuance of any charge-sheet, framing of definite charges or conducting a full-fledged inquiry in accordance with the procedure prescribed under the Rules of 1966. In absence of such legally valid departmental proceedings, the necessary pre-condition for invoking Rule 9 of the Rules of 1976 for withholding or withdrawing pension is not satisfied.

- 69.** It is further apparent that despite the petitioners having already retired from service, their retiral dues, including pension and gratuity, have been subjected to recovery or withholding on the basis of the impugned orders, which themselves do not emanate from any duly concluded departmental or judicial proceedings. The record does not indicate that any order, as required under Rule 9, has been passed by the competent authority recording a finding of misconduct after following due process of law. Thus, the action of the respondents in effecting recovery and withholding retiral benefits is de hors the statutory provisions governing the field.
- 70.** Moreover, even as per Rule 64 of the Rules of 1976, gratuity can be withheld only when departmental or judicial proceedings are pending or duly instituted. In the present cases, since no such

proceedings, in the eye of law, can be said to have been initiated or continued in accordance with prescribed procedure, the withholding of gratuity and other retiral dues of the petitioners is not only contrary to the statutory mandate but also violative of their constitutional right to property under Article 300A of the Constitution of India. Therefore, the impugned action of the respondents in withholding and/or recovering amounts from the retiral benefits of the petitioners cannot be sustained.

- 71.** Insofar as the contention of the State that the petitioners had participated in the inquiry and submitted replies is concerned, the same, in the considered opinion of this Court, does not cure the inherent defect of absence of a regular departmental inquiry. Participation in a preliminary inquiry cannot be equated with compliance of the mandatory procedural safeguards required before imposing a penalty having civil consequences. Likewise, the alleged affidavit said to have been submitted by the petitioner cannot operate as a waiver of statutory rights or as a substitute for due process.
- 72.** Taking into consideration the aforesaid settled principles of law and applying the same to the facts of the present case, this Court is of the considered opinion that the impugned action of the respondents does not withstand the test of legality on the touchstone of procedural propriety and fairness in decision-making. As discussed hereinabove, the very foundation of the

impugned orders is an inquiry which, in essence, is only a preliminary fact-finding exercise and not a regular departmental inquiry conducted in accordance with the prescribed Rules of 1966. In absence of a legally sustainable inquiry, the consequential action of fastening pecuniary liability upon the petitioners, particularly after their retirement, cannot be justified.

- 73.** It is further evident that though notices were issued and replies were obtained from the petitioners, the same cannot be construed as compliance with the requirement of affording a reasonable and effective opportunity of hearing. The material on record clearly demonstrates that the inquiry report, which forms the sole basis of the impugned orders, was never supplied to the petitioners, nor were they given an opportunity to controvert the findings recorded therein. The petitioners were also not provided with the relevant documents sought to be relied upon by the respondents, nor were they afforded any opportunity to cross-examine the persons whose statements or reports may have been taken into consideration.
- 74.** Thus, the so-called opportunity extended to the petitioners was merely illusory and not a real or meaningful opportunity in the eye of law.
- 75.** The distinction between “no opportunity” and “no adequate opportunity”, as explained by the Hon’ble Supreme Court, assumes significance in the present case. Here, the facts clearly

indicate a case closer to “no real opportunity”, inasmuch as the petitioners were deprived of the essential safeguards necessary to defend themselves effectively. The denial of access to the inquiry report and relevant material has caused serious prejudice to the petitioners, as they were unable to rebut the allegations or demonstrate their non-involvement in the alleged excess expenditure. Therefore, the action of the respondents stands vitiated on account of violation of the principles of natural justice.

- 76.** This Court also finds that the impugned orders suffer from manifest arbitrariness, as the liability has been apportioned in a mechanical manner without recording any specific findings as to the role or culpability of each individual officer. The approach of assigning a fixed percentage of recovery, in absence of any determination of individual responsibility, reflects non-application of mind and is contrary to the settled principles governing fixation of liability in service jurisprudence. The respondents were required to establish, through a proper inquiry, the specific acts of omission or commission attributable to each of the petitioners and the nexus between such acts and the alleged financial loss, which has not been done in the present case.
- 77.** Insofar as the contention of the State that sufficient opportunity was granted to the petitioners by issuance of notices is concerned, the same does not merit acceptance in light of the well-settled principles governing compliance of natural justice. It is

no longer *res integra* that mere issuance of a show cause notice, in a ritualistic or formal manner, does not by itself satisfy the mandate of fair hearing. A valid and meaningful opportunity necessarily requires that the delinquent employee be apprised of the complete material sought to be relied upon against him, including all documents, reports and evidence forming the basis of the proposed action, so as to enable him to effectively rebut the allegations.

- 78.** In the present batch of cases, the record does not disclose that any such material was furnished to the petitioners. There is nothing to indicate that copies of relevant documents, including the basis for computation of alleged excess expenditure, inspection reports, measurement books or any enquiry findings, were ever supplied to them. In absence of such disclosure, the so-called opportunity becomes illusory and an empty formality. The petitioners were thus deprived of an effective chance to controvert the allegations, explain their position or demonstrate their innocence.
- 79.** The Hon'ble Supreme Court has consistently held that the essence of natural justice lies not in mere form, but in substance, and any procedure which denies a reasonable and effective opportunity of hearing stands vitiated. In fact, in ***Ram Prakash Singh*** (supra), it has been categorically observed that non-supply of material forming the basis of the decision strikes at the root of

fairness and renders the action arbitrary under Articles 14 and 21 of the Constitution of India. The facts of the present case clearly demonstrate that the decision-making process was concluded in a pre-determined and mechanical manner, without affording the petitioners a fair, adequate and meaningful opportunity of hearing. As such, the impugned action stands vitiated on this ground alone.

- 80.** Furthermore, the impugned action entails grave and far-reaching civil consequences for the petitioners. The direction of recovery not only imposes a substantial financial liability upon them, but also directly impacts their vested and accrued rights to receive full pensionary and retiral benefits upon superannuation. It is well settled that pension is not a bounty but a valuable right earned by an employee for long years of service, and any deduction or withholding thereof must strictly conform to the procedure established by law.
- 81.** The imposition of such pecuniary liability, particularly after retirement, affects the financial stability and dignity of the petitioners, thereby attracting the protective umbrella of Articles 14 and 21 of the Constitution. In such circumstances, the law requires a heightened degree of procedural fairness and strict adherence to the statutory framework governing disciplinary proceedings, especially under the Rules of 1966.
- 82.** However, in the present case, the respondents have failed to

follow even the basic procedural safeguards. No regular departmental enquiry was conducted, no charges were framed, no evidence was led, and no opportunity of cross-examination was granted. The entire action has been taken in a summary and arbitrary manner, in complete disregard of the binding legal principles laid down by the Hon'ble Supreme Court in ***Nirmala J. Jhala*** (supra), wherein it has been held that any order of punishment founded on material not tested in a regular enquiry is unsustainable.

83. Thus, when an action visits an employee with serious civil consequences, such as recovery affecting retiral dues, strict compliance with the principles of natural justice and statutory procedure is not a mere formality but a mandatory requirement. The failure of the respondents to adhere to these requirements renders the impugned action wholly arbitrary, unjust and legally untenable. Accordingly, the same is liable to be set aside.
84. In view of the foregoing analysis, this Court is of the considered opinion that the impugned orders dated 28.11.2020 and 15.12.2020, as well as the consequential recovery proceedings initiated against the petitioners, are vitiated on account of violation of principles of natural justice, absence of a legally valid departmental inquiry and lack of cogent findings regarding individual liability.
85. Consequently, in view of the detailed discussion made

hereinabove and for the reasons so recorded, this Court is of the considered opinion that the impugned action of the respondent authorities cannot withstand judicial scrutiny and deserves to be interfered with in exercise of powers under Article 226 of the Constitution of India. Accordingly, all the writ petitions deserve to be and are hereby allowed. The impugned recovery orders dated 28.11.2020 and 15.12.2020, along with all consequential actions taken pursuant thereto, including any deduction, adjustment or withholding from the petitioners' salary or retiral dues, are hereby quashed and set aside as being wholly unsustainable in law.

- 86.** It is held that the action of the respondent authorities in fastening pecuniary liability upon the petitioners is arbitrary, unreasonable and contrary to settled principles of law, inasmuch as the same has been done without conducting a regular departmental inquiry as mandated under the applicable service rules and without adhering to the minimum procedural safeguards. The record reveals that no formal charges were framed, no evidence was adduced in accordance with law, and no opportunity was afforded to the petitioners to effectively defend themselves. The entire exercise appears to have been undertaken in a mechanical manner, without proper application of mind and in complete disregard of the principles governing fair procedure.
- 87.** As a necessary consequence thereof, the respondent authorities are directed to release and pay to the petitioners their full pension

and all consequential retiral benefits, including gratuity, leave encashment, GPF, GIS and any other admissible dues, strictly in accordance with law. The aforesaid exercise shall be completed within a period of 45 days from the date of receipt of a certified copy of this order. It is further directed that the petitioners shall also be entitled to interest @ 6% per annum on the delayed payment of their retiral dues, which shall be calculated from the date of their respective retirement till the date of actual payment of the outstanding amount. The grant of such interest is justified in view of the settled position that retiral benefits are not a bounty, but a vested right, and any unjustified delay in disbursement thereof entitles the employee to reasonable compensation by way of interest.

- 88.** The respondent authorities are further directed to refund to the petitioners the amounts, if any, already recovered from them pursuant to the impugned recovery orders, along with interest @ 6% per annum from the date of such recovery till the date of actual refund.
- 89.** It is, however, made clear that this order shall not preclude the respondents from initiating appropriate proceedings in accordance with law, if so advised, by strictly adhering to the prescribed procedure and affording full opportunity of hearing to the petitioners.
- 90.** With the aforesaid observations/directions, all these writ petitions

being WPS Nos. 6696/2021, 3110/2023 and 248/2021, stand **allowed** accordingly.

91. There shall be no order as to costs.

Sd/-
(Amitendra Kishore Prasad)
Judge

Yogesh

The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website	
		Operative	Full
08.04.2026	15.06.2026	-----	15.06.2026

Head-Note

Mere issuance of a show cause notice, without furnishing the relevant material relied upon and without affording an effective and meaningful opportunity of hearing, amounts to no real or adequate opportunity in the eye of law, being in violation of the principles of natural justice, and thereby vitiates the action on account of procedural impropriety.