

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P(C) No.331 of 2011

Shri Prasad Biswas,
son of Shri Pranab Kanti Biswas,
resident of village – Durgapur, P.O.
Paiturbazar, P.S. Kailashahar, North
Tripura

..... **Petitioner**

- V e r s u s -

- 1. The State of Tripura,**
represented by the Secretary, to the
Government of Tripura, Rural
Development Department,
Secretariat Complex, Khejurbagan,
P.O. Kunjaban, P.S. East Agartala,
West Tripura
- 2. The Secretary,**
to the Government of Tripura, Rural
Development Department,
Secretariat Complex, Khejurbagan,
P.O. Kunjaban, P.S. East Agartala,
West Tripura
- 3. The District Magistrate & Collector,**
North Tripura, Kailashahar, now
Uankoti
- 4. The Additional Commissioner,**
Department of Inquiries, Tripura,
Agartala, Gurkhabasti, P.O.
Kunjaban, P.S. East Agartala, West
Tripura

.....**Respondents**

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioners : Mr. A.K. Bhowmik, Sr. Advocate
Mr. R. Dutta, Advocate

For the respondents : Mr. S. Chakraborty, Addl. G.A.

Date of hearing : 11.06.2015 & 09.10.2015

Date of delivery of Judgment & Order : **16.12.2015**

Whether fit for reporting:

YES	NO
√	

JUDGMENT & ORDER

By means of this writ petition, the petitioner who has been working as the Junior Engineer, Grade-I has challenged the memorandum of charge under No.F.12(77)/DP/DNE/98/9696-97 dated 14.05.2003, Annexure-3 to the writ petition, the inquiry report dated 31.07.2007 under departmental proceeding case No.923/INQ/DM(N)/2003, Annexure-6 to the writ petition, the order of penalty under No.F.12(77)/DP/DNE/03/8455-56 dated 26.10.2007, Annexure-8 to the writ petition, and the order dated 25.06.2011 passed by the appellate authority, Annexure-14 to the writ petition.

[2] Briefly stated the case of the petitioner is that by the Note.F.15(3)/DND/2001-02/1159 dated 10.05.2002, Annexure-R/1 to the counter affidavit, the petitioner was imposed penalty of recovery of Rs.15,000/- (Rupees fifteen thousand) in 10 instalments. In the said note dated 10.05.2002, it has been observed that:

"..... it is clearly evident that the Government suffered this loss due to negligence of duty by Sri Prasad Biswas. Therefore, it is hereby decided that said Sri Prasad Biswas should compensate for the loss. However, keeping a lenient view seeing past record of Sri Prasad Biswas a penalty of Rs.15,000/- (Rupees fifteen thousand) only is hereby awarded to Sri Prasad Biswas so as to ensure greater care and sincerity in discharging official duties in future."

The petitioner has asserted that the said amount had been recovered from him. Prior to issuance of the said note, the petitioner was asked to show cause why action should not be

taken against him. The petitioner explained that for the defect in the design, the OBB building under reference had collapsed. On consideration of this reply, the said penalty was imposed. Without any reference to the said order of penalty as available in the memorandum dated 11.06.2002, Annexure-1 to the writ petition, the respondent No.3, the District Magistrate & Collector, North Tripura, Kailashahar, now Unokoti District, issued the memorandum dated 14.05.2003 levelling against the petitioner the following charges:

Article-I

"That Shri Prasad Biswas while functioning as Junior Engineer in BDO's office, Gournagar had unauthorisedly /illegally distributed 260 Nos. of RCC pillars valued Rs.91,598/- among the people of Noorpur G.P. without any permission/authority/ knowledge of the BDO and also without issue of work order. While the BDO, Gournagar directed Shri Biswas to position the said pillars at the manufacturing site, he failed to comply the same. Further when order was issued by the BDO directing Shri Biswas to refund Rs.91,598/- for his aforesaid illegal act, he did not comply the same wilfully.

Article-II

That Shri Prasad Biswas while functioning as Junior Engineer in BDO's office, Gournagar was engaged as Implementing Officer for construction of OBB building at Rangauti under EAS during 2001-2002 vide work order No.6640-62 dated 12.10.01. But owing to sub-standard execution of work due to wilful negligence by said Shri Biswas the constructed building had collapsed on 26.04.2002 causing serious loss of invested fund of the Govt. On enquiry the estimated loss was found to be Rs.43,268/-

Article-III

That Shri Prasad Biswas while functioning as Junior Engineer in BDO's office, Gournagar was engaged as Implementing Officer for construction of a culvert in Tillagaon Gaon Panchayet under RD Scheme during 2000-2001. While executing the work as Implementing Officer he had certified 2 Nos. of bills against claimed supply of 18000 1st class brick in each for payment to M/S Soma Brick Industry, Kumarghat. But subsequently during verification of the works conducted by the Executing Engineer, RD Division, Kumarghat it was

found that only 15757 Nos. of 1st class brick and 1476 Nos. of Jhama bricks were utilized in the work. No proof found about consumption of balance bricks of 14767 Nos. costing Rs.37,656/-. Moreover, total value of executed work was found Rs.87,436/- against estimated cost of Rs.1,85,000/-. Cement and cash wages lifted & received by the Implementing Officer in excess were recovered from said Shri Biswas, JE. A Memo was issued to said Shri Biswas on 27.01.03 by BDO, Gournagar on preliminary assessment directing him to refund Rs.35,700/- as cost of un-utilized 14,000/- bricks which he failed to comply.

By doing such act, Shri Prasad Biswas, Junior Engineer has proved his negligence in Govt. Duty, lack of devotion, lack of integrity and violated relevant provisions of rule of the TCS (Conduct) Rules, 1988 which warrants disciplinary action."

[3] Before the said memorandum dated 14.05.2003 was issued, the petitioner was placed under suspension in contemplation of a disciplinary proceeding by the order dated 01.02.2003, Annexure-2 to the writ petition. The said order of suspension was revoked by the order dated 16.06.2003, Annexure-5 to the writ petition, with immediate effect.

[4] The petitioner denied the charges as brought against him by filing a written statement of defence on 26.03.2013, Annexure-4 to the writ petition. The petitioner has categorically stated while replying against the article of Charge II that:

"The BDO/GNR ordered the undersigned to raise the plinth height by 0.5 meter which was against my will. Consequently, the extra load caused by the raising of plinth height made the plinth sink into the soft soil. Ultimately, high tension produced thereof caused the damage of the building. For such faulty and poor wind resistive height this building once again this year damaged under storm."

He has also mentioned in the written statement of defence that he was 'unjustly penalised financially' without any

proper inquiry. The disciplinary authority was not satisfied with the said reply and they referred the matter for inquiry to the Addl. Commissioner, Departmental Inquiries. The said inquiring authority by its findings dated 31.07.2007 in the Departmental Proceeding Case No.923/INQ/DM(N)/2003 has held that the prosecution has miserably failed to prove the Articles I & III but the prosecution has been successful to substantiate the Article II against the petitioner. It has been also observed while retuning the finding on Article II that the petitioner had deviated from the design as approved by the EE, RD. Even the admission of the prosecution as to the previous penalty has been recorded in the said report in the following manner:

"The prosecution alleged that due to sub standard work, the concerned OBBB building had collapsed for which the then DM & Collector awarded a penalty of Rs.15,000/- against the A.O. taking lenient view considering past record of the A.O. The prosecution led no technical evidence to show that due to sub standard of work executed by the A.O, the constructed OBB building had collapsed."

[5] Relying on the said report, Annexure-6 to the writ petition, the disciplinary authority passed the final order dated 26.10.2007, Annexure-8 to the writ petition, without complying the provisions of Rule 15(2) of the CCS (CCA) Rules, 1965 which provides that the Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for

disagreement, if any, with the findings of the Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within 15 days irrespective of whether the report is favourable or not to the Government servant. By the said final order, the Disciplinary Authority has imposed on the petitioner the following penalties:

“(i) Reduction to a lower in the time scale of pay for 5(five) years w.e.f. the date issue of the order. During the said period the A.O will not earn any increment. He will however, earn increment after expiry of 5 years.

(ii) Recovery of Rs.28,268/- [Rs. 43,268/- minus Rs.15,000/-) already recovered vide Note No.15(13)/DND/2001-02/1169 dated 10.05.02] with simple interest should be made from the A.O in two equal instalment.”

[6] Against the said order dated 26.10.2007, the petitioner filed an appeal under Rule 23 of the CCS (CCA) Rules, 1965 and the said appeal was dismissed by the order dated 25.06.2011, Annexure-14 to the writ petition, but from a bare reading, it appears that the said order was passed in exercise of powers under Rule 29 of the CCS(CCA) Rules, 1965.

[7] Mr. A.K. Bhowmik, learned senior counsel appearing for the petitioner has submitted that (i) after the Note dated 10.05.2002, Annexure-R/1 to the counter affidavit, the disciplinary authority should not have proceeded against the petitioner by drawing up a disciplinary proceeding by the memorandum of charge dated 14.05.2003. The petitioner thus has suffered double jeopardy as both the Note dated 10.05.2002

and the final order dated 26.10.2007 had been passed on the same alleged misconduct. (ii) By not furnishing the inquiry report in terms of Rule 15(2) of the CCS (CCA) Rules, 1965 a valuable safeguard has been denied to the petitioner. Hence, the entire proceeding has become vitiated. (iii) There is no material even to substantiate the Article II. As such, the impugned orders and memoranda are liable to be interfered with and set aside. Mr. Bhowmik, learned senior counsel in support of his contention that the petitioner had right to get a copy of the inquiry report to defend himself effectively has relied on a decision of the larger Bench of the apex court in **Managing Director, ECIL, Hyderabad vs. B. Karunakar**, reported in **AIR 1994 SC 1074** where it has been held as under:

"7. What emerges from the above survey of the law on the subject is as follows:

Since the Government of India Act, 1935 till the 42nd Amendment of the Constitution, the Government servant had always the right to receive report of the Inquiry Officer/authority and to represent against the findings recorded in it when the Inquiry Officer/authority was not the disciplinary authority. This right was however, exercisable by him at the second stage of the disciplinary proceedings viz., when he was served with a notice to show cause against the proposed penalty. The issuance of the notice to show cause against the penalty necessarily required the furnishing of a copy of the inquiry officer's report since, as held by the Court, the right to show cause against the penalty also implied the right to represent against the findings on the charges. This was considered to be an essential part of the 'reasonable opportunity' incorporated earlier in Section 240(3) of the GOI Act and later in Article 311(2) of the Constitution as originally enacted. The right to receive the Inquiry Officer's report and to show cause against the

findings in the report was independent of the right to show cause against the penalty proposed. The two rights came to be confused with each other because as the law stood prior to the 42nd Amendment of the Constitution, the two rights arose simultaneously only at the stage when a notice to show cause against the proposed penalty was issued. If the disciplinary authority after considering the Inquiry officer's report had dropped the proceedings or had decided to impose a penalty other than that of dismissal, removal or reduction in rank, there was no occasion for issuance of the notice to show cause against the proposed penalty. In that case, the employee had neither the right to receive the report and represent against the finding of guilt nor the right to show cause against the proposed penalty. The right to receive the report and to represent against the findings recorded in it was thus inextricably connected with the acceptance of the report by the disciplinary authority and the nature of the penalty proposed. Since the 42nd Amendment of the Constitution dispensed with the issuance of the notice to show cause against the penalty proposed even if it was dismissal, removal or reduction in rank, some courts took view that the Government servant was deprived of his right to represent against the findings of guilt as well. The error occurred on account of the failure to distinguish the two rights which were independent of each other.

While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusion. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the 42nd Amendment.

The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusion. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the

principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusion, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it.

It will thus be seen that where the Inquiry Officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusion on the basis of the evidence, Inquiry Officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.

The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the Inquiry Officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputation. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry to impose upon him any such penalty such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the Inquiry Officer being only his delegate appointed to hold the inquiry and to assist him),

the employee's reply to the Inquiry Officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the Inquiry Officer. The latter right was always there. But before the 42nd Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the 42nd Amendment of the Constitution is to advance the point of time at which the representation of the employee against the Inquiry Officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

Hence it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

Hence the incidental question raised above may be answered as follows:

(i) Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows

that the statutory rules if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

(ii) The relevant portion of Article 311(2) of the Constitution is as follows:

‘(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.’

Thus the Article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The Article, however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all-India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded, and when the Inquiry Officer is not the disciplinary authority the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment.

(iii) Since it is the right of the employee to have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

(iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan Khan's case (supra) should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whether the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Since to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice is a mechanical ritual the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be

perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an 'unnatural expansion of natural justice' which in itself is antithetical to justice.

Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, The Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment the Courts/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Court/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered,

should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

In this connection we may refer to a decision of this Court in *State Bank of India v. Shri N. Sundara Money*: AIR 1976 SC 1111, where the Court has shown the proper course to be adopted where the termination of service of an employee is faulted on a technical ground. This was a case where an employee was appointed as Cashier off and on by the State Bank of India between July 31, 1973 and August 29, 1973. Together with the earlier employment, this nine days' employment during the said period had ripened into 240 days of broken bits of service. The employment, however, was terminated without notice or payment of retrenchment compensation. The Court moulded the relief taking into consideration the long period which had passed and directed that the employee would be put back to the same position where he left off, but his new salary will be what he would draw were he to be appointed in the same post "today" de novo. He was further directed to be ranked below all permanent employees in that cadre and to be deemed to be a temporary hand till that time. He was not allowed to claim any advantages in the matter of seniority. As for the emoluments, he was left to pursue other remedies, if any.

Questions (vi) and (vii) may be considered together. As has been discussed earlier, although the furnishing of the Inquiry Officer's report to the delinquent employee is a part of the reasonable opportunity available to him to defend himself against the

charges, before the 42nd Amendment of the Constitution, the stage at which the said opportunity became available to the employee had stood deferred till the second notice requiring him to show cause against the penalty, was issued to him. The right to prove his innocence to the disciplinary authority was to be exercised by the employee along with his right to show cause as to why no penalty or lesser penalty should be awarded. The proposition of law that the two rights were independent of each other and in fact belonged to two different stages in the inquiry came into sharp focus only after the 42nd Amendment of the Constitution which abolished the second stage of the inquiry, viz., the inquiry into the nature of punishment. As pointed out earlier, it was mooted but not decided in *E. Bashyan's case* (supra) : AIR 1988 SC 1000 by the learned Judges of this Court who referred the question to the larger Bench. It has also been pointed out that in *K.C. Asthana's Case* (supra): AIR 1988 SC 1338, no such question was either raised or decided. It was for the first time in *Mohd. Ramzan Khan's case* (supra) : AIR 1991 sc 471, that the question squarely fell for decision before this Court. Hence till 20th November, 1990, i.e., the day on which Mohd. Ramzan Khan's case (supra) was decided, the position of law on the subject was not settled by this Court. It is for the first time in *Mohd. Ramzan Khan's case* (supra) that this Court laid down the law. That decision made the law laid down there prospective in operation, i.e., applicable to the orders of punishment passed after 20th November, 1990. The law laid down was no applicable to the orders of punishment passed before that date notwithstanding the fact that the proceedings arising out of the same were pending in courts after that date. The said proceedings had to be decided according to the law prevalent prior to the said date which did not require the authority to supply a copy of the Inquiry Officer's report to the employee. The only exception to this was where the service rules with regard to the disciplinary proceedings themselves made it obligatory to supply a copy of the report to the employee.

However, it cannot be gainsaid that while *Mohd. Ramzan Khan's case* (supra) made the law laid down there prospective in operation, while disposing of the cases which were before the Court

the Court through inadvertence gave relief to the employees concerned in those cases by allowing their appeals and setting aside the disciplinary proceedings. The relief granted was obviously per incuriam. The said relief has, therefore, to be confined only to the employees concerned in those appeals. The law which is expressly made prospective in operation there, cannot be applied retrospectively on account of the said error. It is now well-settled that the courts can make the law laid down by them prospective in operation to prevent unsettlement of the settled positions, to prevent administrative chaos and to meet the ends of justice. In this connection, we may refer to some well-known decision on the point.

In *I.C. Golak Nath and Ors. v. State of Punjab and Anr.* : [1967] 2 SCR 762, dealing with the question as to whether the decision in that case should be given prospective or retrospective operation, the Court took into consideration the fact that between 1950 and 1967, as many as twenty amendments were made in the Constitution and the legislatures of various States had made laws bringing about an agrarian revolution in the country. These amendments and legislations were made on the basis of the correctness of the decisions in *Sri Sankari Prasad Singh Deo etc. v. Union of India and State of Bihar etc.* : 1952 SCR 89 and *Sajjan Singh v. State of Rajasthan* : 1965 1 SCR 933 viz., that the Parliament had the power to amend the fundamental rights and that Acts in regard to estates were outside the judicial scrutiny on the ground they infringed the said rights. The Court then stated that as the highest Court in the land, it must evolve some reasonable principle to meet the said extra-ordinary situation. The Court pointed out that there was an essential distinction between the Constitution and the statutes. The Courts are expected to and they should interpret the terms of the Constitution without doing violence to the language to suit the expending needs of the society. In this process and in a real sense, they make laws. Though it is not admitted, such role of this Court is effective and cannot be ignored. Even in the realm of ordinary statutes, the subtle working of the process is apparent though the approach is more conservative and inhibitive. To meet the then extraordinary situation that may be

caused by the said decision, the Court felt that it must evolve some doctrine which had roots in reason and precedents so that the cast may be preserved and the future protected. The Court then referred to two doctrines familiar to American Jurisprudence, viz., Blackstonian view that the Court was not to pronounce a new rule but to maintain and expound the old one and, therefore, the Judge did not make law but only discovered or found the true law. That view would necessarily make the law laid down by the Courts retrospective in operation. The Court, therefore, preferred the opinion. The Court, therefore, preferred the opinion of justice Cardozo which tried to harmonise the doctrine of prospective over-ruling with that of Stare decisis expressed in *Great Northern Railway v. Sunburst Oil & Ref. Co.* [1932] 287 U.S. 358, 77 *Led* 360. The court also referred to the decisions subsequent to Sunburst and to the 'Practice Statement (Judicial Precedent)' issued by the House of Lords recorded in (1966) 1 W.L.R. 1234 and pointed out that the modern doctrine as opposed to the *Blackstonian* theory was suitable for a fast moving society. It was a pragmatic solution reconciling the two doctrines. The Court found law but restricted its operation to the future thus enabling it to bring about a smooth transition by correcting its errors without disturbing the impact of those errors on the past transactions. It was left to the discretion of the court to prescribe the limits of the retroactivity. Thereby, it enabled the Court to mould the reliefs to meet the ends of justice. The Court then pointed out that there was no statutory prohibition against the Court refusing to give retroactivity to the law declared by it. The doctrine of *res judicata* precluded any scope for retroactivity in respect of a subject matter that had been finally decided between the parties. The Court pointed out that the Courts in this land also, by interpretation, reject retroactivity of statutory provisions though couched in general terms on the ground that they affect vested rights. The Court then referred to Articles 141 and 142 to point out that they are couched in such wide and elastic terms as to enable this Court to formulate legal doctrines to meet the ends of justice. The only limitation therein is reason, restraint and injustice. These Articles are designedly made comprehensive to enable the Supreme

Court to declare law and to give such direction or pass such order as is necessary to do complete justice. The Court then held that in the circumstances to deny the power to the Supreme Court to declare the operation of law prospectively on the basis of some outmoded theory that the Court only finds law but does not make it is to make ineffective a powerful instrument of justice placed in the hands of the highest judiciary of this land. The Court then observing that it was for the first time called upon to apply the doctrine of prospective overruling evolved in a different country under different circumstances, stated that it would like to move warily in the beginning. Proceeding further, the Court laid down the following propositions:

(1) The doctrine of prospective over-ruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.

The Court then declared that the said decision will not affect the validity of the Constitution (Seventeenth Amendment) Act, 1964 or other amendments made to the Constitution taking away or abridging the fundamental rights. The Court also declared that in future Parliament will have no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights.

Accepting the lead given in the above decision, this Court has since extended the doctrine to the interpretation of ordinary statutes as well.

In *Woman Rao and Ors. etc. etc. v. Union of India and Ors. : AIR 1981 SC 271*, the question involved was of the

validity of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 and again the device of prospective overruling was resorted to.

In Atam Prakash v. State of Haryana and Ors. : [1986] 2 SCC 249, the question was of the validity of the Punjab Pre-emption Act, 1913. The Court while holding that the relevant provisions of the Act were ultra vires the Constitution gave direction that the suits and appeals which were pending in various courts will be disposed of in accordance with the declaration made in the said decision. Where, however, the decrees had become final they were directed to be binding inter- parties and it was held that the declaration granted by the Court with regard to the invalidity of the provisions of the Act would be of no avail to the parties to such decrees.

In Orissa Cement Ltd. etc. etc. v. State of Orissa and Ors. etc. 1991 Supp. 1 SCC 430, the question involved was about the validity of the royalty and related charge for mining leases. Although the Court held that the levy was invalid since its inception, the Court held that a finding regarding the invalidity of the levy need not automatically result in a direction for a refund of all collections thereof made earlier. The Court held that the declaration regarding the invalidity of a provision of the Act enabling levy and the determination of the relief to be granted were two different things and, in the latter sphere, the Court had, and it must be held to have, a certain amount of discretion. It is open to the Court to grant moulded restricted relief in a manner most appropriate to the situation before it and in such a way as to advance the interest of justice. It is not always possible in all situations to give a logical and complete effect to a finding. On this view, the Court refused to give a direction to refund to the assessee any of the amounts of cess collected until the date of the decision since such refund would work hardship and injustice to the State.

We may also in this connection refer to *Victor Linkletter v. Victor G. Walker (1965) 381 U.S. 618*, it was held that a ruling which is purely prospective does not apply even to the parties before the court. The Court held that in appropriate cases a court may in the interest of justice make its ruling

prospective and this applies in the constitutional area where the exigencies of the situation require such an application.

The direction with regard to the prospective operation of the law laid down in *Mohd. Ramzan Khan's case* (supra) was followed by various Benches of this Court, viz., *S.P. Viswanathan v. Union of India* as. : (1991) Supp 2 SCC 269, *Union of India and Ors. v. A.K. Chatterjee* : (1993) 2 SCC 191 and *Managing Director, Food Corporation of India and Ors. v. Narendra Kumar Jain* : [1993] 2 SCC 400.

The apparent departure was in *R.K. Vashisht v. Union of India and Ors.* (1993) Supp 1 SCC 431. However, the employee there had made a request for a copy of the inquiry report but it was not furnished to him prior to the issue of the order of dismissal. It is in these circumstances that this Court, relying upon the proposition of law laid down in *Mohd. Ramzan Khan's case* (supra) held that the order of dismissal was vitiated. It is not clear from the decision whether the rules in that case required furnishing of the copy and at what stage.

However, it has to be noticed that although it is in *Mohd. Ramzan Khan's case* (supra) that this Court for the first time accepted and laid down the law that the delinquent employee is entitled to the copy of the report before the disciplinary authority takes its decision on the charges levelled against him, Gujarat High Court in a decision rendered on 18th July, 1985 in *Dr. H.G. Patel v. Dr. (Mrs.) K.S. Parikh*: (1985) 2 Guj LR (26) 1385 and a full Bench of the Central Administrative Tribunal in its decision rendered on 6.11.1987 in *Premnath K. Sharma v. Union of India and Ors.* (1988) 2 ASLJ 449 had taken a similar view on the subject. It also appears that some High Courts and some Benches of the Central Administrative Tribunal have given retrospective effect to the law laid down in *Mohd. Ramzan Khan's case* (supra) notwithstanding the fact that the said decision itself had expressly made the law prospective in operation. The fact, however, remains that although the judgments in *H.G. Patel's case* and *Premnath K. Sharma's case* (supra) as well as some of the decision of the High Courts and of the Benches of the Central Administrative Tribunal were either

taking a similar view prior to the decision in Mohd. Ramzan Khan's case (supra) or giving retrospective effect to the said view and those decisions were not specifically challenged, the other decisions taking the same view were under challenge before this Court both before Mohd. Ramzan Khan's case (supra) was decided and thereafter. In fact, as stated in the beginning, the reference to this Bench was made in one such case as late as on the 5th August, 1991 and the matters before us have raised the same question of law. It has, therefore, to be accepted that at least till this Court took the view in question in Mohd. Ramzan Khan's case (supra), the law on the subject was in a flux. Indeed, it is contended on behalf of the appellants/petitioners before us that the law on the subject is not settled even till this day in view of the apparent conflict in decisions of this Court. The learned Judges who referred the matter to this Bench had also taken the same view. We have pointed out that there was no contradiction between the view taken in Mohd. Ramzan Khan's case (supra) and the view taken by this Court in the earlier cases, and the reliance placed on K.C. Asthana's case (supra) to contend that a contrary view was taken there was not well-merited. It will, therefore, have to be held that notwithstanding the decision of the Central Administrative Tribunal in H.G. Patel's case (supra) and of the Gujarat High Court in Premnath K. Sharma's case (supra) and of the other courts and tribunals, the law was in an unsettled condition till at least 20th November, 1990 on which day the Mohd. Ramzan Khan's case was decided. Since the said decision made the law expressly prospective in operation made the law expressly laid down there will only to those orders of punishment which are passed by the disciplinary authority after 20th November, 1990. This is so, notwithstanding the ultimate relief which was granted there which, as pointed out earlier, was per incuriam. No order of punishment passed before that date would be challengeable on the ground that there was a failure to furnish the inquiry report to the delinquent employee. The proceedings pending in court/tribunals in respect of orders of punishment passed prior to 20th November, 1990 will have to be decided according to the law that prevailed prior to the said date and not according to the law laid down in Mohd. Ramzan Khan's

case (supra). This is so notwithstanding the view taken by the different Benches of the Central Administrative Tribunal or by the High Courts or by this Court in R.K. Vashist's case (supra)."

[8] From the other side, Mr. S. Chakraborty, learned Addl. G.A. appearing for the respondents has submitted that all opportunities were extended to the petitioner for his defence against the charges. Even during the hearing of the appeal, the petitioner was personally heard.

[9] What has surfaced from the writ petition is that the petitioner has asserted that if had he been given a copy of the inquiry report and an opportunity of making representation in terms of Rule 15(2) of the CCS (CCA) Rules, 1965 he would have satisfied the disciplinary authority that the report of the inquiry authority is not based on any tenable evidence and the findings are returned on surmise. Moreover, he would have convinced the disciplinary authority that the subsequently drawn-up disciplinary proceeding was highly irregular and as such, that should not have proceeded further. Having not received that opportunity the petitioner has been seriously prejudiced inasmuch as, what could he lay in the representation, would make his grounds of objection, far better perceptible.

[10] So far the appreciation of evidence, recorded in the departmental proceeding, is concerned, this Court would not venture in that unless it appeared *ex-facie* that no evidentiary

material has surfaced for holding the charge substantiated. While wielding the jurisdiction under Article 226 of the Constitution of India, the High Court would not appreciate the evidence in the manner as is carried out by an appellate court. The another aspect, as raised by the petitioner, of the double jeopardy, this Court will also not examine that aspect at this stage inasmuch as on the face of the Article of Charges it appears that some new allegations have been couched with the previous allegation. But denial of the safeguards as provided under Rule 15(2) of the CCS (CCA) Rules, 1965 has caused serious prejudice, in the considered opinion of this Court, to the petitioner. Rule 15(2) of the CCS (CCA) Rules, 1965 is not a mere formality. The apex court in **Union of India and others vs. Mohd. Ramzan Khan**, reported in **AIR 1991 SC 471** held that no order of punishment shall be passed without furnishing the inquiry report to the delinquent employee. The said principle has been restated in **Managing Director, ECIL, Hyderabad vs. B. Karunakar** which has later on been engrafted as a statutory provision in Rule 15(2) of the CCS(CCA) Rules, 1965 with effect from 01.09.2000. From the day of the judgment of **Union of India and others vs. Mohd. Ramzan Khan** till 01.09.2000, the principles as enunciated in **Union of India and others vs. Mohd. Ramzan Khan** had operated the field.

In this context, this Court is satisfied that the impugned orders dated 26.10.2007 and 25.06.2011, Annexurs-8 & 14 respectively to the writ petition, passed by the disciplinary

authority and the appellate authority cannot survive. Accordingly, the orders dated 26.10.2007 and 25.06.2011 are set aside. However, this Court is not inclined to interfere with the memorandum dated 14.05.2003, Annexure-3 to the writ petition and the inquiry report dated 31.07.2007, Annexure-6 to the writ petition. Till such time, the consequential orders shall wait. If the petitioner is exonerated he shall get all pecuniary and service benefits, otherwise the order of the disciplinary authority unless interfered by the superior authority, shall stand final.

The matter is remanded back to the disciplinary authority for affording the opportunity to the petitioner to make the representation against the inquiry report dated 31.07.2007 in terms of Rule 15(2) of the CCS (CCA) Rules, 1965 and thereafter, pass the final order with due regard to the representation and other relevant aspects. The entire exercise by the disciplinary authority shall be completed within 6(six) months from the date when he would receive a copy of this order.

This writ petition is, therefore, allowed partly, to the extent as indicated above, leaving the parties to bear their own costs.

JUDGE