

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 27th August, 2015

ROOP CHAND + W.P.(C) 6311/2007

..... Petitioner

Through: Mr K.C. Dubey, Adv.

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through: Ms Manisha Tyagi, Adv.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The challenge in this writ petition under Article 226 of the Constitution of India is to the award dated 09.09.2005 passed by the Industrial Tribunal in ID No.218/2001.

2. The case of the petitioner – workman as disclosed in the writ petition is that the petitioner–workman was employed with the respondent corporation as a driver since 1981 and was lastly posted in Okhla Depot. He was served with the charge-sheet dated 24.09.1996 alleging that he remained unauthorizedly absent from 01.05.1996 till 14.09.1996 for 79 days which showed lack of interest in the work of corporation and the act of the petitioner–workman tantamount to misconduct within the meaning of paragraph 4(1) and paragraph 19(f), (h) and (m) of the Standing Orders governing the conduct of DTC employees. The petitioner denied the allegations made in the charge-sheet by way of his reply dated 18.10.1996 wherein it was stated that the leave was taken due to his own illness and illness of his wife, who ultimately died. He had duly informed the depot authorities by way of applications duly supported by the medical certificates. Without considering the reply of the petitioner – workman to the charge-sheet, the respondent corporation proceeded to hold enquiry which was in violation of principles of natural justice as the petitioner – workman was not given the assistance of co-worker as laid down in the circular dated 12.02.1973. No list of witnesses or list of documents was

provided along with the charge-sheet as laid down in the circular dated 28.05.1980. The Enquiry Officer proceeded to hold the petitioner workman guilty of the charges even when he admitted in his report that leave applications were available on record but were rejected and the petitioner workman was never informed about the rejection of the leave application. Even the salary slip showed 46 leave without pay right from May, 1996 till September, 1996. The Depot Manager proceeded to pass the order of removal dated 11.03.1998 mechanically. The petitioner – workman submitted an appeal dated 17.12.1998 to the Chairman which was dismissed without giving any reasons and without a speaking order dated 12.10.1999. The action of the respondent corporation in terminating the services of the petitioner workman is wrong and illegal. Feeling aggrieved, the petitioner workman raised an industrial dispute vide ID No.218/2001 wherein the Tribunal proceeded to hold the enquiry in favour of the respondent corporation and held that the punishment imposed on the workman is legal. This award is the subject matter of challenge in this writ petition.

3. Mr K.C. Dubey, learned counsel for the petitioner – workman assailed the enquiry proceedings and the findings of the Industrial Tribunal on the ground that enquiry proceedings were in contravention of various instructions/circulars issued by the corporation from time to time and also in gross violation of principles of natural justice. It was submitted that the petitioner workman was handed over a vague charge-sheet which was in contravention of Executive Instructions on procedure regarding disciplinary action and appeals bearing no. ADMI – 3 (18)/53 dated 05.08.1955. Moreover, petitioner workman was neither given the list of witnesses nor the list of documents which is in gross contravention of the DTC's Circular dated 28.05.1980 which mandates supply of list of documents and list of witnesses.

4. Moreover, there was no Presenting Officer on behalf of the management. The Enquiry Officer cannot perform the duty of a Presenting Officer as well as Enquiry Officer. The Enquiry Officer and the witnesses sitting in the enquiry room were the officers of DTC having power to command the petitioner workman who could not deny anything and did whatever was instructed to do. He was not ever offered the assistance of any other employee and reliance was placed in this regard on the Office Order No.9 dated

12.02.1973 whereby the Enquiry Officer is required to take in writing from the delinquent employee as to whether he wants to take any assistance or not in writing. This has been mandated to ensure that proper opportunity for availing the assistance is given to the employee. In the instant case, the Enquiry Officer himself wrote everything on the minutes of enquiry and the delinquent employee was asked to put his signatures. Reliance was placed on ***Bhagat Ram v. State of Himachal Pradesh & Ors.***, (1983) 2 SCC 442. The counsel further submits that the whole enquiry was conducted on a single day. It is humanly impossible that the entire proceeding of an enquiry could be completed on same day in the working hours and in one shot. The petitioner workman had no time even to think of his defence. The employee of such category like the petitioner workman being under threat of punishment cannot be expected even to understand, instantly, what has been put forth against him before the Enquiry Officer. By placing reliance on Sub-Rule (1) and (2) of Rule 16 of Order XVIII of CPC, the counsel for the petitioner workman submits that even under the Code of Civil Procedure, a date is fixed for cross examination of the witnesses after the affidavit is filed by the witness by way of examination in chief. Such a procedure has been laid to extend proper opportunity to the delinquent employee for cross examination. In the instant case, the way the enquiry has been conducted, it cannot be said that proper opportunity has been extended to the delinquent employee.

5. Moreover, the charge-sheet alleges that the petitioner workman remained unauthorizedly absent for a period of 79 days. PW – Kirath Ram stated before the Enquiry Officer that as per MAR record the petitioner workman remained absent for 33 days without any leave applications and no application for 46 days leave was received by the respondent corporation. But these facts were never intimated to the petitioner workman. These facts came to his knowledge only during the enquiry proceedings. He was never intimated about rejection of his leave application prior to that moment. He did not know which application was belated. No time was extended to him to explain the situation. Reference was made to Circular No.G.M. (S/88/220) dated 14.12.1988 for submitting that DTC itself mandates that (i) where Competent Authority sanctioned leave without pay, no charge is made out as the same stands regularized as leave without pay

and (ii) where leave applications have been rejected or no application has been received from the employee, for all intent and purposes, the said employee can be treated as absent. In the instant case, the petitioner – workman was never informed whether his applications were rejected or accepted. Putting the stamp of rejection and keeping in the file and not intimating the same to the employee makes no sense. The petitioner workman obtained copies of the application under Right to Information Act. On three applications, there is no mention that his applications were rejected because the same were received belatedly. The reasons for rejection of leave applications, as stated by PW - Mr Kirath Ram is not supported by these documents. The DTC has not produced any document to show that these applications were received late and hence were rejected. No document was supplied to the petitioner workman but the Enquiry Officer relied upon the documents of the department. Reliance was placed on **PEPSU Road Transport Corpn. V. Lachhman Das Gupta**, (2001) 9 SCC 523 for submitting that due to non-supplying of documents, petitioner has been seriously prejudiced. It is further submitted that perversity in the finding of the Enquiry Officer is apparent from a bare perusal of enquiry report as the Enquiry Officer based his conclusion on the premise that the petitioner workman was “agreeable with the statement of the prosecution witness”. The Enquiry Officer looked into all applications from 07.08.1996, 22.07.1996 to 29.07.1996, 09.07.1996 to 15.07.1996, 18.06.1996 to 21.06.1996, 31.05.1996 to 02.06.1996 and said the same were received late and were rejected on this account. But a perusal of the said applications reveals altogether different story. For applications dated 03.05.1996, 05.06.1996, 07.06.1996 to 08.06.1996 and 17.06.1996, the leaves were allegedly not sanctioned as they were not received four hours before duty, but the fact remains that no reason was assigned at all. The Enquiry Officer went on stating that no applications for other leaves were submitted which shows his carelessness. The counsel for the petitioner workman further urged that the petitioner workman made a positive statement before the Enquiry Officer that his wife was seriously ill, he was busy in her treatment, took her to her native village for treatment but at the end she died. This crude fact was brushed aside by the Enquiry Officer on the ground that the same was not mentioned in his leave applications. The medical certificate shows that his wife was suffering from acute jaundice. Even otherwise, treatment of his wife could be treated as ‘urgent work’. Before the Enquiry

Officer, the testimony of management witness who was not cross examined and the statement of the petitioner workman were there. He accepted the prosecution witness's testimony but rejected the statement of the petitioner. As such, the conclusion of the enquiry report is contrary to the factual matrix and is not sustainable.

6. Without prejudice to the above, it is submitted that the punishment awarded in the peculiar facts and circumstances of the case is disproportionate and excessive as the petitioner workman availed leave not due to his carelessness but due to his own illness, his wife's illness, death of his family member and death of his wife. As per Circular No. ADMI – 3 (18) / 68 dated 08.04.1968, for the misconduct of habitual absence from duty without intimation or prior permission of the Competent Officer and leaving station without permission, punishment of stoppage of increment with or without cumulative effect is imposed. In the instant case, the charge of 79 days unauthorized absence was never proved and at best the petitioner workman can be charged for 9 days. Petitioner could not have been punished twice by treating leave without pay and thereafter terminating his service. The learned counsel for the petitioner workman further submits that all the rules relied upon by the petitioner workman are having statutory force and thus in the circumstances, the order of removal of service is unsustainable and since the petitioner workman has now attained the age of superannuation, his wages and consequential retirement benefits be granted to him.

7. Per contra, the learned counsel for the respondent – DTC submitted that although it is urged by learned counsel for the petitioner workman that due to illness of his wife and her subsequent death, he could not attend the duty, however, the applications sent by him does not disclose this reason. The applications were moved either on account of his own illness or illness of some relatives or urgent work. As such, the medical certificate now produced by the petitioner workman shows that the same has been procured. Furthermore, deductions of salary for the period of unauthorized absence is only for the purposes of maintaining records and does not tantamount to double jeopardy. Reasonable opportunity of being heard was afforded to the petitioner workman and no prejudice has been caused to him. Even if the entire proceedings were conducted on a single day, no prejudice is caused to the petitioner workman and this Court ought not interfere with the

order passed by the Tribunal. Reliance was placed upon *State Bank of Patiala and Others v. S.K. Sharma*, (1996) 3 SCC 364 and as such it is submitted that the present petition is liable to be dismissed.

8. Indisputably, the petitioner workman was served with the charge-sheet on 24.09.1996 on the allegations that he remained unauthorizedly absent from duty with effect from 01.05.1996 to 14.09.1996. The petitioner workman denied the allegations by submitting reply dated 18.10.1996 stating therein that he had submitted applications which were duly received in Depot but he was never informed that leaves have not been granted to him. He further denied that he did not give applications for 33 days. Another plea was taken that he was already punished by treating his leaves as '*leaves without pay*' and as such he cannot be punished twice for the same. It was also stated that he could not attend duty due to his own illness and illness of his wife who ultimately died. Not finding the reply to be satisfactory, a department enquiry was initiated against him which took place on 17.07.1997. A perusal of the Enquiry Report Ex.MW1/15 reflects that the Enquiry Officer – Smt. Sunita Chauhan and the petitioner workman were only present. The petitioner workman was asked as to whether he wished to face the enquiry himself or needs assistance of any co-worker on which he stated that he wanted to face the enquiry himself. Thereafter, charges were read over to him to which he pleaded not guilty. On the same day, Mr Kirath Ram was examined by the Enquiry Officer and the petitioner workman was asked to cross examine him to which he declined. The petitioner workman was also inquired whether he wants to lead any defence evidence to which he declined. He sought one week's time to file his statement which was granted. Thereafter, subsequent enquiry was conducted by Mr J.L. Kapoor who went through the statement submitted by the petitioner workman and the record produced by the department and submitted his report holding that the department had succeeded in proving the charges against the delinquent employee. Subsequently, a show cause notice was given to the petitioner workman stating that his services were terminated. An industrial dispute was raised by the petitioner workman. The conciliation proceedings failed and as such, the Secretary (Labour), Govt. of NCT of Delhi referred the disputes to the Industrial Tribunal with the following terms of reference:

“Whether the punishment imposed upon Sh. Roop Chand by the management vide their order dated 11.03.1998 is illegal and / or unjustified and if so, to what relief is he entitled and what directions are necessary in this regard?”

9. The petitioner workman filed his statement of claim to which written statement was filed by the management and on the pleadings of the parties, following issues were framed on 08.07.2002 by the Tribunal:

- “1. Whether the claim is without cause of action? OPM*
- 2. Whether valid and legal enquiry was conducted by mgt? OPM*
- 3. Whether the order of punishment imposed upon Roop Chand removing him from service vide order dated 11.03.1998 is illegal and unjustified? OPW*
- 4. As per terms of reference.*

10. Issue no.1 was decided against the management while the remaining issues were decided against the petitioner workman and it was held that a legal and valid enquiry was conducted by the management and punishment imposed upon the petitioner workman is not illegal and unjustified. The validity of the departmental enquiry conducted by the management is in serious dispute as it is undisputed that the entire enquiry was completed on a single day i.e. 17.07.1997 in which except for the Enquiry Officer and the delinquent employee neither there was any presenting officer on behalf of the department nor any defence assistant. As per record submitted by the management, out of 79 days no application was submitted by the petitioner workman for 33 days whereas for 46 days, leave applications were rejected as the same were received late. However, a vague charge-sheet was furnished to him by stating that during the period from 01.05.1996 to 14.09.1996 he remained unauthorizedly absent for 79 days. Following instructions have been given in Circular No. ADMI – 3 (18)/53 dated 05.08.1955 which are executive instructions of procedure regarding disciplinary action and appeals relating to charge-sheet:

“When the Competent Officer is convinced that there is prima facie case

for starting the disciplinary proceedings, he will set forth the charges in a defined and clear fashion. The allegations upon which the charges are framed should be set forth in detail in order to enable the employee to put forth his defence clearly. It should be appreciated that if the charges are vague, it will not be possible for the employee to explain his conduct fully and to the satisfaction of the authorities concerned. Vague charges and vague explanation are the weakest point of a case which made the work of Appellate Authority difficult.”

11. In view of the executive instructions dated 05.08.1955 referred above, it was incumbent upon the management to put forth the charge in a clear and defined fashion.

12. Not only that, the Enquiry Officer Mr J.L. Kapoor examined by the Industrial Tribunal admitted in his cross examination that neither the names of the witnesses were given in the charge-sheet nor list of witnesses was attached with the charge-sheet. It is the consistent case of the petitioner workman that he was not provided the list of documents on which the department sought to rely upon. In **PEPSU Road Transport Corpn.** (supra), it was held by the Supreme Court that where the documents relied upon by the Enquiry Officer have not been supplied such denial of the reasonable opportunity vitiates the order of punishment inflicted upon the delinquent employee. It is the case of the petitioner workman that he had been submitting applications for leave, however, he was never informed whether the same has been accepted or rejected. Ultimately, he obtained copies of his leave application under Right to Information Act. PW – Kirath Ram in his statement before the Enquiry Officer had stated that the applications sent by the delinquent employee were rejected because the same were received belatedly. However, this reason is not supported by the reasons ascribed for rejecting his applications which were received by the petitioner under the RTI Act. No document was produced by the respondent management to show that these applications were received late and, therefore, rejected.

13. Further, as per Office Order No.9 dated 12.02.1973, it is incumbent upon the Enquiry Officer to take in writing from the delinquent employee as to whether he wants to take any assistance or not. In the instant case, no such separate statement has been recorded by the Enquiry Officer rather the Enquiry Officer's proceedings reveals that the

Enquiry Officer herself wrote the minutes of enquiry and thereafter signatures of delinquent employee was taken. In ***Bhagat Ram*** (supra) it was held that where the Presenting Officer is the senior officer of the delinquent employee, the delinquent employee is pitted against a legally trained mind and it is against the fair play to leave him to fend himself. If the delinquent employee was not informed of his right and an overall view of the enquiry shows that the delinquent government servant was at a comparative disadvantage compared to the Disciplinary Authority represented by the Presenting Officer, unless it is shown that the petitioner workman had not suffered any prejudice, the same vitiates the enquiry. Even if it is taken that the petitioner workman himself stated before the Enquiry Officer that he did not want to conduct the proceedings himself even then keeping in view the fact that the delinquent employee was a Class – IV employee and as such belonging to lower echelons of service coupled with the fact that no list of witnesses were supplied to him nor the documents and there was no Presenting Officer on behalf of the department, the departmental witness should not have been examined by the Enquiry Officer herself on the very same day as the Enquiry Officer cannot be a Presenting Officer. Moreover, even if the witness was examined, at least sufficient opportunity should have been afforded to the delinquent employee to cross examine the witness. This was not the end of the matter. On the same day, even the delinquent employee was asked to produce the witnesses to which he denied. The net result was that the entire enquiry proceedings were conducted on a ‘single day’.

14. While applying the rule of *audi alteram partem* (the primary principles of nature justice), the Court / Tribunal / Authority has to bear in mind the ultimate and overall objective underlying the said rule which is to ensure fair hearing and to ensure that there is no failure of justice. It is this objective which is the guiding factor for applying to varying situation that arise before the authorities.

15. In ***State Bank of Patiala and Others*** (supra) relied upon by the learned counsel for the respondent, after referring to several judgments in the context of disciplinary inquiries and orders of punishment imposed by the employer upon the employee, the principles laid down in those judgments were summarized as under:

“33. We may summarise the principles emerging from the above discussion. [These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee]:

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character. (2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice, including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of

looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory characters the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirements either expressly or by his conduct. If he is found to have waived its then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could no be waived by him, then the Court or Tribunal should make appropriate directions [include the setting aside of the order of punishment], keeping in mind the approach adopted by the Constitution Bench in B.Karunkar. The ultimate test is always the same viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action the Court or the Tribunal should make a distinction between a total violation of natural justice [rule of audi alteram] and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and "no adequate opportunity, i.e., between "no notice"/"no hearing" "no fair hearing".

(a) In the case of former, the order passed would undoubtedly be invalid [one may call it "void" or a nullity if one chooses to]. In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule [audi alteram partem]. (b) But in the latter case, the effect of violation [of a facet of the rule of audi alteram] has to be examined from the standpoint of prejudice; in other word in other words, what the Court or Tribunal has to see is whether in the

totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle [No.5] does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem [the primary principle of natural justice] the Court/ Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. . In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.”

16. In view of the foregoing principles, the conduct of the whole enquiry proceedings on a single day that too without supplying copies of the documents or list of witnesses to the delinquent employee, recording statement of the management witness on the very same day in the absence of any presenting officer and then asking the delinquent employee to cross-examine the witness on the same day and asking him to lead evidence has really prejudiced the petitioner workman as it cannot be said that enquiry proceedings were conducted in accordance with the principles of natural justice. As a part of the rule of natural justice the right of *audi alteram partem* is a valuable right which mandates that no one should be condemned unheard. A corollary has been deduced from the above rule, namely “*Quialiquid statverit parte in audita altera, aequum licet dixerit baudaequum fecerit*” i.e., “he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right” or in other words as is now expressed “justice should not only be done but should manifestly be seen to be done.”

17. In ***D.K. Yadav Vs. M/s. J.M.A. Industries Ltd., 1993 (3), SCT, 537*** where it was observed by Hon’ble Supreme Court that:

“...the order of termination of service of an employee/workman visits with civil consequences of jeopardising not only his/her

career but also the livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman, fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry is conducted complying with the principles of natural justice.”

18. As observed in ***Bhagat Ram*** (supra), this Court is not sitting in appeal over the findings of the Enquiry Officer. Under Article 226 of the Constitution, the High Court does not function as a Court of Appeal over the findings of disciplinary authority, however, where the findings are utterly perverse, the Court can always interfere with the same. The Hon’ble Supreme Court referred to its earlier decision rendered in ***Union of India v. H.C. Goel (1964) 4 SCR 728*** where it was observed as under:

“...It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. It is a conclusion which is perverse and-, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract Art. 311 (2), the High Court under Art. 226 has Jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charge framed against him are in the nature of quasi judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings which is the basis of his dismissal is based on no evidence.

19. In the facts and circumstances of this case discussed herein above, this Court is of the opinion that the petitioner workman was not threadbare given a reasonable opportunity to defend himself and accordingly the enquiry and consequent order of removal from service are vitiated and deserves to be set aside.

20. Resultantly, the petition is allowed and the award dated 09.09.2005 passed by the Industrial Tribunal in ID No.218/2001 is set aside.

21. The other question which remains for consideration is as to what relief should be given to the petitioner workman in the petition. Ordinarily, where the disciplinary enquiry is shown to have been held in violation of principles of natural justice, the enquiry would be vitiated and the order based on such enquiry would be quashed by issuance of a writ of certiorari. It is well settled that in such a situation, it would be open to the disciplinary authority to hold the enquiry afresh. The situation, however, has changed and no fruitful purpose will be served by remanding the case back as the petitioner workman has now attained the age of superannuation. As such keeping in view the fact that the order of removal passed by the Enquiry Officer is unsustainable, the petitioner workman is ordered to be granted 50% of back-wages and consequential retirement benefits, which be paid to the petitioner workman within a period of eight (8) weeks from the date of pronouncement of this judgment.

The writ petition and pending applications, if any, stands disposed of accordingly.

Trial Court record be returned forthwith.

(SUNITA GUPTA)
JUDGE

AUGUST 27 2015/rd