

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision: 25.05.2016

CWP No.3065 of 1998 (O&M)

M.A. Warsi through LRs

...Petitioner

Versus

Union of India & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Dinesh Kumar, Advocate, for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

Mr. S.K.Pipat, Senior Advocate, with
Mr. Manoj Kumar Pundir, Advocate,
for respondent No.3, 4 & 6.

1. *To be referred to the Reporters or not?*
2. *Whether the judgment should be reported in the Digest?*

RAJIV NARAIN RAINA, J.

1. Heard the learned counsel for the parties at length.
2. Having heard them and after giving my thoughtful consideration to the respective cases of the disputing parties, I would allow the petition for various reasons recorded hereafter and in the light of the case law relied on to support the moot points involved at the appropriate places in the judgment as pressed by the learned counsel late petitioner through his legal representatives.
3. First the facts necessary to render decision are noticed. The petitioner was appointed as Law Officer in the pay scale of Rs.1800-40-2000-50-240-60-2700-75-3000-100-3200 on 21.06.1989 by the Wakf Board.

He was earlier recruited as Administrative Officer, Wakf Board, Malerkotla

and in a few months was designated the Law Officer. He was confirmed as such w.e.f. 31.10.1990. The petitioner was served with a charge sheet dated 08.07.1994 (Annex P/1) on account of alleged acts of omission and commission relating to the manner in which he was performing his duties as Law Officer recording comments on the office files. However, none of the imputation of charges relates to any imputation of embezzlement or misappropriation of funds or giving or withholding legal opinion for any vested interest or extraneous consideration. The petitioner filed CWP No.17421 of 1994 challenging the enquiry proceedings pending before Respondent No.5, a retired High Court Judge who was appointed as an Inquiry Officer by letter dated 08.08.1994 (Annex P-2). The writ petition was admitted on 07.08.1995. The learned Single Judge on the preliminary hearing stayed the submission of final report. The learned Single Bench dismissed the petition on 06.01.1997 [reported as 1997(2) SLR 423], but without deciding the real controversy and the issue regarding jurisdictional venue of the enquiry being conducted at New Delhi or at Ambala which issue of territorial jurisdiction was left open and it was observed that the venue in future would be mutually aggrieved upon. Feeling aggrieved, the petitioner filed Letters Patent Appeal No.192 of 1997, but the same was dismissed on 16.03.1998.

4. On 09.04.1997, the petitioner filed a representation (Annex P-4) stating his defence to the charge-sheet and further requested the Inquiry Officer to conduct the enquiry at Ambala which is the Head-Office of the respondent-Board. In alternative, the petitioner prayed for travelling allowance and for providing security from Malerkotla to Delhi at Board's expense as the petitioner apprehended danger to his life for the reason stated

subsistence allowance along with payment of arrears. The said representation was addressed to the Inquiry Officer with a copy to the Administrator of the respondent-Board. Respondent No.5 fixed the date of enquiry vide letter dated 12.04.1997 informing the next date as 03/04.05.1997. The order passed by the Inquiry Officer reads as under:

“Mr. Abdus Satter alongwith Mr. B.R. Gupta appeared before me. Mr. M.A. Warsi as usual absented. Heard Mr. Sattar, Mr. Sattar submits, the Board wants to prove the delinquency of Mr. Warsi by producing evidence of 13 witnesses and some documents in support of the charge.

I direct, Mr. Sattar to produce affidavits of 13 witnesses sought to be examined and serve copies of the affidavits to Mr. Warsi. If Mr. Warsi wants to cross examine any of the witnesses, only such witnesses will be directed to appear & Mr. Warsi will have the liberty to cross examine only those witnesses. I also direct to serve alongwith the affidavits, photo copies of the documents to Mr. Warsi.

If Mr. Warsi refuses to accept the documents, an affidavit of serving officer shall be filed before E.O.

I further direct the Board to file a compilation before E.O. of the following documents for the convenience of E.O.

1. Charge
2. Show cause notice, if any,
3. Boards letter for holding enquiry.
4. Affidavits of witnesses.
5. Copies of documents to be relied upon with the original for comparison.

The next date fixed is 3rd and 4th May. The case proceeds ex parte even if Mr. Warsi fails to appear. No further adjournment will be granted. The subsequent dates will have to be found out from the office of E.O. No further communication of the next date will be notified to the parties. The Board is directed to send copy of the order as well to Mr. Warsi alongwith the papers indicated above.

A copy of this order is being sent to Mr. Warsi by Regd. post.

The venue of sitting will be 41, Supreme Enclave, Mayur Vihar, Phase-I, New Delhia t 10.30 AM in my office.”

5. It would be seen that the Inquiry Officer did not pass any order on the claim of the petitioner for grant of suspension allowance, Travelling Allowance and for providing security from Malerkotla to New Delhi or for holding enquiry at Ambala Cantt, Haryana being the Head Office of the Board. Apprehending ex-parte proceedings against him in absence of prayers decided by orders, the petitioner as an abundant caution filed his affidavit dated 02.05.1997 (Annex P-6) duly sworn before the Notary Public, Malerkotla before the Inquiry Officer expressing his grievances and apprehensions.

6. In compliance of the order of the Inquiry Officer dated 12.04.1997, the respondent Board served the copies of affidavits of the eight witnesses to be produced and other documents on 02.05.1997 at 4.50 P.M. at Malerkotla and the next date, time and venue of enquiry proceeding was fixed for 03.05.1997 at 10.30 A.M. in New Delhi. Meaning thereby, that the petitioner was not given due and reasonable time as the time allowed was even less than 24 hours which was too short. The petitioner at the time of receipt of the eight affidavits and other documents to be used against the petitioner on the directions of Respondent No.5 by the Board on 02.05.1997 clearly stated whether he would desire to cross-examine all the witnesses at Ambala Cantt. After receipt of the affidavits, the petitioner sent a counter affidavit objecting to the manner in which the Presenting Officer has procured the affidavits of the witnesses and produced the same before the Inquiry Officer without presenting the witnesses in person whose affidavits were being tendered. Further, the verification clauses at the foot of the

affidavits by way of evidence were not tendered in accordance with law and would lend no evidentiary value to the averments even on mode of proof. The petitioner upon receipt of the affidavits and other documents vide Annex P-6 filed a counter affidavit. The Inquiry Officer concluded the enquiry in one sitting i.e. on 03.05.1997 at New Delhi by taking the affidavits of the witnesses through Presenting Officer but the witnesses who swore the affidavits were not produced even to state that they are filing their respective affidavits on record and the Inquiry Officer submitted the report holding the petitioner guilty of the charges. The Board did not supply the inquiry report to the petitioner before forming an opinion about the guilt of the petitioner and accepting the Inquiry report as per the mandate of the Supreme Court in Union of India vs. Mohd. Ramzan Khan, 1999(1) SLR 159, as reaffirmed by the Constitution Bench of the Supreme Court in the case of Managing Director ECIL vs. B. Karunakar, 1993(5) SLR 532, rather the Administrator exercising the powers of the Board clearly expressed his full agreement with the findings recorded by the Inquiry Officer and decided to impose one of the major punishments and then served the show cause notice and supplied the copy of the report. The petitioner submitted an interim reply to the show cause notice.

7. Respondent No.4 passed an order imposing the extreme penalty of dismissal without recording any good and sufficient reasons for awarding such an extreme penalty of dismissal from service and also without dealing with the contentions/pleas raised in the defence statement.

8. It is submitted by the learned counsel that the Inquiry report Annex P-9 is based on no legal evidence and the enquiry has been conducted contrary to the procedure provided under the Punjab Wakf Regulations,

1966, and further without affording due and reasonable opportunity to the petitioner to put-forth his defence in proof of innocence and on the quantum of punishment. The inquiry report is vague, cryptic, laconic, unjust, improper, non-speaking and lacks reasoning and does not disclose the process of reasoning. Furthermore, the defence of the petitioner has not been taken into consideration. The said report is based on conjectures and surmises and the findings of guilt are imaginary. It is also relevant to mention that the affidavits of witnesses of the Board could not have been taken into consideration for the reason that the said affidavits suffered from various inherent defects and have not been sworn in accordance with law and even the verification is defective and still further the witnesses did not appear before the Inquiry Officer at all and therefore, the findings recorded by the Inquiry officer are based upon no legal evidence which vitiates the entire proceedings.

9. It is further stated that under the Regulations, the evidence is required to be recorded orally, which means that the witnesses are bound to appear before the Inquiry Officer and make a statement before the charged official, but in the present case the Inquiry Officer on his own directly entertained and introduced the affidavits in the evidence which is contrary to the Regulations.

10. The impugned order of dismissal Annex P-11 is also vague, cryptic, non-speaking, unjust, improper and lacks cogent reasoning. The extreme penalty of dismissal is shockingly disproportionate and excessive to the charges of misconduct leveled by the disciplinary authority. While imposing the punishment, it was incumbent upon the disciplinary authority to record good and sufficient reasons in support of his conclusions, but the

same are also wanting. Further, the pleas and contentions raised by the petitioner in his defence reply to the show cause notice have not been taken into consideration except vague references made to it and the authority has arbitrarily rejected the plea of the reasonable opportunity not given in defence.

11. CWP No.3065 of 1998 filed by the petitioner came up for hearing on 14.03.1998, wherein the following order was passed:

“One of the contention urged by learned counsel for the petitioner is that the order of dismissal passed by the Administrator is vitiated due to the patent violation of the natural justice inasmuch as the representation submitted by the petitioner in reply to the show cause notice has not been considered objectively and no reasons have been assigned for rejecting the various points raised in the representation.

Prima facie we agree with Shri Dinesh Kumar that order Annexure P-11 does not contain reasons and, therefore, it is liable to be quashed on the ground of violation of principles of natural justice.

Admitted.”

12. Since the petitioner was facing acute financial hardship being the only bread earner in the family, he submitted a representation dated 22.01.1999 (Annex P/12) to the Board for revoking the dismissal order. Instead of considering reinstatement in tune with the motion order, the petitioner was appointed as Officer on Special Duty in the pay scale of Rs.6400-10040 by order dated 24.03.1999 (Annex P/13).

13. However, the appointment was short-lived and in view of decision rendered in CWP No.7299 of 1999 titled ‘M.R. Farooqui & others Vs. Union of India’ in which challenge was to the appointment of the petitioner by third party on the ground that a dismissed employee cannot be

petitioner were terminated.

14. The date of birth of the petitioner is 25.03.1945 and he attained the age of superannuation on 25.03.2005 and would be deemed to have been retired on 31.03.2005. The petitioner unfortunately died and his LRs have been brought on record since the cause of action had not abated.

15. Respondent No.3 & 4 filed reply and did not controvert the basic averments made in the petition in support of the case. However, respondent No.5, the Inquiry Officer, who was impleaded as a party respondent did not file any reply and the allegations levelled against him stand uncontroverted.

Case Law in Support of the Petitioner.

16. Mr. Dinesh Kumar submits that the employees of the Punjab Wakf Board are governed by Punjab Wakf Regulations, 1966 and Regulation 44 prescribes the procedure for imposing major penalties which provision reads as under:

44. Procedure for imposing major penalties – Section 68(2)(e):
No order imposing any of the penalties specialized in clauses (v) to (vii) of regulation 43 shall be passed against an employee of the Board (other than an order passed on facts which have led to his conviction, in a criminal court) unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required within reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires, or if the authority concerned so directs,

an enquiry shall be held. At that enquiry oral evidence shall be heard and recorded as to such of the allegations as are admitted and the person charged shall be entitled to cross-examine the witnesses to give evidence in person and have witnesses called, as he may wish, provided that the inquiring officer, may, for special and sufficient reasons to be recorded in writing, refuse to call a witness. The proceeding shall contain a sufficient record thereof. The punishing authority shall, if it not the inquiring authority, consider the record of the inquiry, record its findings on each charge and pass appropriate orders on the case.

(2) The regulations shall not apply where the person concerned has absconded, or where for other reasons it is impracticable to communicate with him. All or any of the provisions of this regulation may, in exceptional cases, for special and sufficient reasons to be recorded in writing, be waived, where there is a difficulty in observing exactly the requirements of the regulation and those requirements can be waived without injustice to the person charged.”

17. Under the above Regulations the Inquiry Officer is required to hear the oral evidence and record the same and then allow delinquent to cross-examine witness cited against him but in the present case no oral evidence has been recorded and rather it has been procured by undated affidavits produced by the Presenting Officer on 03.05.1997 before the Inquiry Officer at New Delhi without producing the authors of the same and as such it is a case of absence of legally admissible evidence of no probative value and the enquiry has not conducted been conducted in accordance with Punjab Wakf Regulations, 1966.

Re: Inquiry Report

18. To support the argument that the inquiry report is vague, cryptic and lacks cogent reasoning, the learned counsel or the petitioner relied upon the judgment of Supreme Court reported as Anil Kumar vs. Presiding

Officer & Others, 1985 (3) SLR 26, wherein it has been held as follows:

“5. We have extracted the charges framed against the appellant. We have also pointed out in clear terms the report of the Inquiry Officer. It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Inquiry Officer has a duty to act judicially. The Inquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An Inquiry report in a quasi-judicial enquiry must show the reasons for conclusions. It cannot be an ipse dixit of the Inquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well settled to be supported by a precedent. In *Madhya Pradesh Industries Ltd. v. Union of India* (1966) 1 SCR 466, this Court observed that a speaking order will at best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard. Similarly, in *Mahabir Prasad v. State of Uttar Pradesh* (1971) 1 SCR 201 this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case, the Inquiry report is an order sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non-application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a gross case of non-application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court.

6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then they may not enter into the adequacy or sufficiency of evidence. But where the

evidence is annexed to an order-sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an Inquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination in based on such proceeding disclosing non-application of mind would be unsustainable.”

19. He also relies on Union of India Vs. H.C. Goel, AIR 1964 SC 364, wherein the Supreme Court observed as under:

“20. This conclusion does not finally dispose of the appeal. 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 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 Article 311(2), the High Court under Article 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 charges 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. In fact, in fairness to the learned Attorney-General, we ought to add that he did not seriously dispute this position in law.

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22. We are not prepared to accept this contention. Mala fide exercise of power can be attacked independently on the ground that it is mala fide. Such an exercise of power is always liable to be quashed on the main ground that it is not a *bonafide* exercise of

power. But we are not prepared to hold that if mala fides are not alleged and *bonafides* are assumed in favour of the appellant, its conclusion on a question of fact cannot be successfully challenged even if it is manifest that there is no evidence to support it. The two infirmities are separate and distinct though, conceivably, in some cases both may be present. There may be cases of no evidence even where the Government is acting bonafide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of mala fides. That is why we are prepared to accept the learned Attorney-General's argument that since no mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent.”

20. He then relies upon ruling reported as State of Punjab vs. Sohan Lal, 1993 (4) RSJ 750. The relevant passage from the said judgment reads as under:

“11.But the bare reading of the Inquiry report clearly shows that the Inquiry Officer did not apply his mind to the evidence. He has not even set out the names of the witnesses what to say about the discussion of their disposition. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the plaintiff did not appeal to him or was considered not credit worthy. He also did not permit a peep into his mind as to why the evidence produced by the department appealed to him in preference to the evidence produced by the plaintiff. An Inquiry report in a quasi-judicial enquiry must show the reasons for the conclusions. It cannot be an ipse dixit of the Inquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well settled to be supported by a precedent. In *Madhya Pradesh Industrial Tribunal vs. Union of India*, (1966) 1 SCR 466, the (sic) observed that a speaking order will (sic) reasonable and at its worst be at least a plausible one. The citizens should not be deprived of this only safeguard. Similarly in *Mahabir Prasad vs. State of Uttar Pradesh*, (1971) 1 SCR 201, the

Supreme Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. Again in *Anil Kumar vs. Presiding Officer and others*, 1985(3) SLR 26, the Supreme Court had held that where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, it cannot be said to be an Inquiry report at all.”

Non supply of inquiry report before forming an opinion about the guilt of the employee and acceptance of report

21. In Union of India vs. Mohd. Ramzan Khan, 1991 (1) SLR 159, the Supreme Court in Para.18 observed as under:

“18. We may make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.”

22. In Managing Director, ECIL, Hyderabad Vs. B. Karunakar, 1993 (5) SLR 532, the Supreme Court held to the following effect:

“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 Courts, 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 the 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 conclusions. 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 a 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 conclusions. 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 finding 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 finding 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 conclusions, 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 conclusions 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 imputations. 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 of 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 conclusion 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 take 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 questions 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 give 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 employees 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 in 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' 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 proceedings or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject.

Whatever 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. Hence to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to 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 a 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 conclusions 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 Court/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 shortcuts. Since it is the Courts/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 either 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, when 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, 1976(3) SCR 160* 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 ripen 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) by the two 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), no such question was either raised or decided. It was for the first time in Mohd. Ramzan Khan's case (supra) 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 not 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 protective 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 decisions on the point.

In *I.C. Golak Nath & Ors. v. State of Punjab & Anr.* 1967(2) SCR 762, dealing with the question as to whether the decision in that case should be given protective 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 expanding 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 past 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 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 L.ed, 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. It found law but restricted its operation to the future and thus enabled the Court 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. Proceedings further, the Court laid down the following propositions:

"(1) The doctrine of prospective overruling 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 *Waman Rao & Ors. v. Union of India & Ors.*, 1981(2) SCR 1, 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 & 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 & Ors.*, (1991) Supp. 1 SCC 430, the question involved was about the validity of the royalty and related charges 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 provisions 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 or 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 assesseees 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*, 381 US 618, 14 L ed 2d 601 where 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 the various Benches of this Court, viz., *S.P. Viswanathan (I) v. Union of India & Ors.* (1991) Suppl. 2 SCC 269; *Union of India & Ors v. A.K. Chatterjee*, 1993(2) SCC 191 and *Managing Director, Food Corporation of India & Ors v. Narendra Kumar Jain*, 1993(2) SCC 400 : 1993(3) S.C.T. 191.

The apparent departure was in *R.K. Vashisht v. Union of India & 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 & Ors.*, 1985(2) GLR (XXVI) 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 & 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 decisions of the High Courts and of the Benches of the Central Administrative Tribunal were either taking a similar view prior to the decisions in Mohd. Ramzan Khan's case (supra) or giving retrospective effect to the said view and those decisions were not specifically challenged, the other decision 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 of 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 the law laid down there will apply 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 courts/tribunals in respect of order 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).”

Re: Abatement

23. In Manmohan Anand (Deceased) Vs. State of Punjab & others, 1972 SLR 852 (DB) P&H, the Division Bench of this Court held as follows:

“6. Mr. G.R.Majithia, the learned counsel for the respondents could not find any, fault with the Division Bench judgment of the Gujarat High Court, but submitted that the present case fell within the ambit of the judgment of the learned Single Judge of the Madras High Court in U. Vridhachalam & others Vs. The State of Madras, AIR 1966 Madras 260. A Police Head Constable had filed the writ petition in that case impugning the order of his dismissal from service. On his death during the pendency of the petition, his legal representatives were brought on record. The State counsel submitted that no relief could be granted in the petition, as legal representatives claimed no personal right and the interest in the petition was personal only to the deceased dismissed officer. The objection of the State counsel prevailed with the Madras High Court on two grounds viz.; (i) that the court could vacate the impugned order, but could not exonerate the police official who having died, the department could not possibly recommence the proceedings against him and (ii) if the petitioner were to succeed, the legal representatives would be entitled to receive from the State such

emoluments and other monetary benefits which the delinquent police official would have been entitled to during the period he was kept out of office for which the legal representatives would, in any case, have to file a suit, which was by then prima facie barred by time. It was said that if a suit were to be filed, it would have to be independently established therein that the order of dismissal was not justified. It was held that the issuance of a writ was, therefore, sought only as a step towards further legal steps which the representatives of the deceased officer proposed to take. It was held that the petition could not be entertained in those circumstances. The learned Judge further added that he was inclined to agree with the contention of the State that the relief sought was purely personal right which really involves the continuance in service or otherwise of a person, cannot survive to the Legal Representatives. Mr. Majithia sought to draw a distinction between the Madras case and the Gujarat case on the ground that whereas an order of reversion in rank had been impugned in Gujarat case, it is an order of dismissal from service which has been challenged in the Madras case. It was argued that the present case being of removal (which is for all practical purposes equivalent to dismissal) the law laid down in the Madras case should govern the decision on the point in issue and that the judgment of the Gujarat High Court should be ignored as irrelevant. This contention of Mr. Majithia does not appear to be sound. There is no material distinction between the two cases in so far as the point for determination before us is concerned. Counsel referred to the observations of Desai, J. in Ibrahim Bhai Karim Bhai & others Vs. State of Gujarat, AIR 1968 Gujarat 202, wherein a distinction has been sought to be drawn between the two cases on the ground that the disciplinary proceedings in the Gujarat case had come to an end, but that the charges had not been wiped out in the Madras case. These observations were probably made in order to draw a distinction between the two cases to meet the argument which prevailed with the learned Single Judge of the Madras High Court about the difficulty in restraining the disciplinary proceedings after the death of the delinquent official. It appears to me that the principle finding relied by the learned Single Judge of the Madras High Court was to give effect to the objection of the State counsel about it being not possible to make any order in favour of the legal

representatives. If, however, the learned Judge intended to hold that relief by way of a declaration to the effect that the order of dismissal was null and void was personal to the deceased and did not survive to the legal representatives, I must say with the greatest respect to the learned Judge that I am unable to agree with that proposition. None of the two difficulties which weighed with the Madras High Court appears to me to really affect the decision of the question before us. If the Government passes an unconstitutional or a wrong, or a void order, which is sought to be declared null and void by the court, it is no legal right to the Government to say that the order should not be annulled merely because in the changed circumstances the Government would not be able to pass a fresh order in accordance with law. In case of annulment of an order of removal or dismissal from service, the fresh order cannot possibly be passed retrospectively but can take effect only from the date on which such an order is passed. If the delinquent official is dead before the annulment of the previous order, there is nobody in existence against whom a fresh order can be passed. Moreover, any difficulty of the Defendant or the respondent which is of his own creation cannot in my opinion take away the legal rights of heirs of a deceased to claim emoluments to which the deceased would have been entitled if the order of his removal or dismissal from service were found to be illegal. As pointed out earlier the respondents in the present case have also conceded in writing in Paragraph 8 of their application that the legal representatives of the original petitioner can institute a suit for claiming the emoluments to which the original petitioner would have been entitled for the period commencing from June 6, 1970, the date of his purported order of removal of the original petitioner from the membership and the chairmanship was illegal and ineffective. This is the basic relief without obtaining which no claim of the legal representatives for salary or emoluments can succeed. It is that basic relief which is being claimed in the present petition. To that extent, therefore, the right to sue survives to the legal representatives. If the original petitioner had claimed declaration to the effect that he continues in service or had asked for a mandamus for being issued to the respondents to reinstate him. I would have held that right to claim such relief was personal, to the deceased and died with him and that the right to sue in respect of those reliefs did not survive to

the legal representatives. So far the declaration of the order of the removal being illegal is concerned, a somewhat similar point was decided by a Division Bench of Allahabad High Court in 1956 All. 1114 in connection with the claim of the legal representatives of an unsuccessful plaintiff who had died pending the appeal for being permitted to prosecute the appeal for obtaining a declaration to the effect that the dismissal of the original plaintiff was wrongful or ultra vires. The question was whether the appellate court could give any such relief to the legal representatives of original plaintiff. It was held that though the legal representatives could not have been entitled to seek the declaration which the plaintiff had sought after the death of the plaintiff, they were entitled to the finding that the dismissal of the original plaintiff was wrongful and further that they were entitled as a result of such a finding to the consequences that flow therefrom.”

In Shri Jang Bahadur vs. Union of India, 1973(1) SLR 366, the Delhi High Court held as under:

“9. The next question which arises for consideration is whether the legal representative of Jang Bahadur could continue the proceedings. Mr. Mehra contends that the right to sue does not survive since it relates to personal service to be rendered by Jang Bahadur. Mr. Rameshwar Dial, learned counsel for the petitioner, submits that to the extent that estate would have been benefited by the service of Jang Bahadur, the legal representative could continue the proceedings. In this connection reliance is placed on Ibrahimbhani Karimbhai and others v. State of Gujarat, A.I.R. 1968 Gujarat 202. I find that some of the similar questions had arisen in that case since the employee had died during the course of the writ proceedings challenging the reversion. It was held that right to sue survived since the impugned order of reversion resulted in pecuniary loss to the original petitioner and after his death to the legal representative brought on record who was entitled to the (state of the deceased. I agree with the views expressed in this decision and hold that the present petitioner is entitled to continue with the writ petition filed by Jang Bahadur deceased.”

Effect of affidavits/ statements without producing the author during inquiry

24. In Union of India & Ors. Vs. P. Thayagarajan, 1998(5) SLR 734 SC, the Supreme Court held as under:

“3. The Enquiry Officer conducted an enquiry on the aforesaid charges and made a report to the Disciplinary Authority. The Disciplinary Authority noticed certain irregularities in the conduct of the enquiry which were of vital nature, in particular, that the Enquiry Officer acted on the letters of one U.N. Chaini, who was a witness on behalf of the department and K.M. Verghese, who was a witness on behalf of the respondent on the basis of a representation made by them stating that they are not in a position to attend the enquiry proceedings but indicating the facts within their knowledge. The concerned authority was of the view that the witnesses should have been examined in person and the procedure adopted by the Enquiry Officer was contrary to the relevant rules in taking their letters as statements. The Enquiry Officer did not ascertain the facts necessary for the conclusion of the case. Therefore, he set aside the findings recorded by him and directed de novo enquiry by an order made on May 19, 1995 which was communicated to the respondent on June 7, 1995. Challenging this order, the respondent preferred a writ petition in the High Court of Guwahati. The learned single Judge directed issue of rule but did not grant any interim order on the basis that Rule 15 of the Disciplinary Rules enables the authority to remit the matter to the Enquiry Officer for further enquiry and that the power has been exercised by the authority under Rule 15 and mere use of expression "de novo" will not change the tenor of the order. A writ appeal was preferred against the said order and the Division Bench of the High Court granted initially an interim order staying further proceedings in the enquiry and thereafter by an order made on December 15, 1997 allowed the appeal by taking the view that in an appeal arising out of an order of punishment made by the Disciplinary Authority accepting or rejecting the conclusion reached by the enquiry authority, the appellate authority could direct a fresh or de novo enquiry and such power is not available to the Disciplinary Authority. Thus, the Division Bench set aside the order

made by the Disciplinary Authority on June 6, 1995. Hence this appeal by special leave.

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8. A careful reading of this passage will make it clear that this Court notices that if in a particular case where there has been no proper enquiry because of some serious defect having crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined, the Disciplinary Authority may ask the Inquiry Officer to record further evidence but that provision would not enable the Disciplinary Authority to set aside the previous enquiries on the ground that the report of the Enquiry Officer does not appeal to the Disciplinary Authority. In the present case the basis upon which the Disciplinary Authority set aside the enquiry is that the procedure adopted by the Enquiry Officer was contrary to the relevant rules and affects the rights of the parties and not that the report does not appeal to him. When important evidence, either to be relied upon by the department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand result in a miscarriage thereof. Therefore we are of the view that Rule 27(c) enables the Disciplinary Authority to record his findings on the report and to pass an appropriate order including ordering a de novo enquiry in a case of present nature.”

25. In Kuldeep Singh Vs. the Commission of Police & Ors., 1999

(1) SLR 283 (SC), the Supreme Court observed as under:

“26. This Rule, which lays down the procedure to be followed in the departmental enquiry, itself postulates examination of all the witnesses in the presence of the accused who is also to be given an opportunity to cross-examine them. In case, the presence of any witness cannot be procured without undue delay, inconvenience or expense, his previous statement could be brought on record subject to the condition that the previous statement was recorded and attested by a police officer superior in rank than the delinquent. If such statement was recorded by the Magistrate and attested by him then also it could be brought on record. The further requirement is that the statement either should have been signed by the person concerned, namely, the person who has made that statement, or it was recorded during an investigation or a judicial enquiry or trial.

The Rule further provides that unsigned statement shall be brought on record only through the process of examining the Officer or the Magistrate who had earlier recorded the statement of the witness whose presence could not be procured.

27. Rule 16(3) is almost akin to Sections 32 and 33 of the Evidence Act. Before the Rule can be invoked, the factors enumerated therein, namely, that the presence of the witness cannot be procured without undue delay, inconvenience or expense, have to be found to be existing as they constitute the "condition-precedent" for the exercise of jurisdiction for this purpose. In the absence of these factors, the jurisdiction under Rule 16(3) cannot be exercised."

26. In Hardwari Lal Vs. State of UP & Ors., 1999(4) RSJ 697, it has been held as under:

"3. Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant.

4. However, Shri Goel, the learned Addl. Advocate General, State of Uttar Pradesh, has submitted that there was other material which was sufficient to come to the conclusion one way or the other and he has taken us through the same. But while appreciating the evidence on record the impact of the testimony of the complainant cannot be visualised. Similarly, the evidence of Jagdish Ram would also bear upon the state of inebriation, if any, of the appellant.

5. In the circumstances, we are satisfied that there was no proper enquiry held by the authorities and on this short ground we quash the order of dismissal passed against the appellant by setting aside the order made by the High Court affirming the order of the Tribunal and direct that the appellant be reinstated in service. Considering the fact of long lapse of time before the date of dismissal and reinstatement, and no blame can be put only on the door of the respondents, we think it appropriate to award 50 per cent of the back salary being payable to the appellant. We thus allow the appeal filed by the appellant. However, there shall be no order as to costs.”

27. In Nirmal Lakra vs. Union of India, 2003(3) RSJ 131 DB Delhi, it has been observed that:

“56. It is, however, a matter of great surprise that reply thereto had not been placed on records. Protest Notes had been proved by the persons who were not the makers thereof. In that view of the matter the same were inadmissible in evidence. In absence of the maker of the report, in our opinion, the contents thereof cannot be said to have been proved.”

In the absence of employee the department is not absolved of duty to hold an ex-parte inquiry in accordance with rules.

28. In State of UP & another vs. T.P. Lal Srivastva, 1997(1) SLR 119 SC, the Supreme Court held to the following effect:

“4. This appeal by special have arises from the judgment of the Allahabad High Court made on March 15, 1993 in Writ Petition No. 12480/87. The admitted position is that while the respondent was working as a Senior Marketing Inspector, a charge-sheet was served on him on November 23, 1984 calling upon him to explain the charges for committing gross irregularities in the movement of wheat outside the State of U.P. Instead of submitting reply to the charge-sheet, he went on dilly-dallying in submitting the reply. Several letters addressed to the respondent proved ineffective. Resultantly, the appellants took a decision on June 26, 1987 holding that the respondent was found guilty of misappropriation. Consequently, he came to be dismissed from service. The respondent

challenged the same in the writ petition. The High Court has set aside the order in the impugned order holding that the documents have not been supplied to the respondent and therefore, the action was vitiated by error of law. We do not find any justification in the view taken by the High Court; the substratum of the result is that the appellants have not conducted any enquiry though the respondent had been avoiding to give the reply. Since the respondent had avoided to submit the reply, he has forgone his right to submit his reply. Nonetheless, the appellants are not absolved of the duty to hold an *ex parte* enquiry to find out whether or not the charge has been proved. In the event of the Enquiry Officer find that the charge is proved, he would submit his report to the disciplinary authority. The disciplinary authority should communicate the copy of the enquiry report to the respondent and seek an explanation for the proposed action thereon. If the respondent submits any explanation, the same may be taken into consideration and appropriate order may be passed according to law. Until then, the respondent must be deemed to be under suspension.”

Non-payment of suspension/subsistence allowance-Effect on Inquiry

29. In Ghanshyam Das Shrivastva vs. State of Madhya Pradesh, (1973) 1 SCC 656, the Supreme Court observed as follows:

“5. With respect, we find it difficult to share the view taken by the High Court. Paragraph 5 of the writ petition expressly alleges that on December 5, 1964, the appellant sent a letter to the Enquiry Officer informing that unless he was paid subsistence allowance he would not be able to face the enquiry proceedings. The letter was filed along with the petition. It is annexure H. The letter stated that "Until and unless I am paid subsistence allowance.....I categorically refuse to face any proceedings as I have no capacity to do so because of acute shortage of funds". (emphasis added).

This is obviously specific pleading on the point that for non-payment of subsistence allowance he was short of funds and could not attend the enquiry. It is true that his affidavit does not give any particulars about his source of income and the estimate of expenses to be incurred in the enquiry. But it would *prima facie* suggest that he had no other sources of income except his pay. If he had no other sources

of income, he could not invent them for the purpose of mentioning them in the affidavit. More significantly, the Government affidavit does not allege that he had any other source of income except pay. The fact that he had been drawing a monthly pay of Rs. 300/- till October 1964 would not necessarily show that he had sufficient money to enable him to go to Jagdalpur to attend the enquiry in February, 1965. He was suspended on October 30, 1964 and thereafter, he did not get suspended on October 30, 1964 and thereafter, he did not get subsistence allowance until March 20, 1965. Having regard to the prevailing high prices, it is not possible to draw any adverse inference against him from the mere circumstances that he had been receiving a monthly pay of Rs. 300/- till October 1964. The fact that he had filed a writ petition immediately on the passing of the order of dismissal and thereafter, came in appeal to this Court, would not establish that he had enough resources to enable him to attend the enquiry. It seems to us that on the whole the High Court has gone by conjectures and surmises. There is nothing on the record to show that he had any other source of income except pay. As he did not receive subsistence allowance which was made to him on March 20, 1965 after a part of the evidence had already been recorded on February 9, 10 and 11, 1965. The enquiry proceedings during those days are vitiated accordingly. The report of the Enquiry Officer based on that evidence is infected with the same defect. Accordingly, the order of the Government dismissing him from service cannot stand. It was passed in violation of the provisions of Article 311(2) of the Constitution for the appellant did not receive a reasonable opportunity of defending himself in the enquiry proceedings.”

30. In Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr., 1999(2) RSJ 318, it has been observed as follows:

“17. These decisions indicated that though it would not be wrong in conducting two parallel proceedings, one by way of disciplinary action and the other in the criminal court, still it would be desirable to stay the domestic inquiry if the incident giving rise to a charge framed against the employee in a domestic inquiry is being tried in a criminal court. The case law was reviewed by this Court in

Kusheshwar Dubey v. M/s. Bharat Coking Coal Ltd. and others, 1988(4) SCC 319 : 1988 Supp(2) SCR 821 : AIR 1988 SC 2118 and it was laid down as under:

"The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases, it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guidelines.

"The Court further observed as under : In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal."

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31. On joining Govt. service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Govt. The Govt., only because it has the power to appoint does not become the master of the body and soul of the employee. The Govt. by providing job opportunities to its citizens only fulfils its obligations under the Constitution, including the Directive Principles of the State Policy. The employee, on taking

up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employer, like Instrumentalities of the Govt. or Statutory or Autonomous Corporations etc., is regulated by the terms of contract of service or Service Rules made by the Central or the State Govt. under the Proviso to Article 309 of the Constitution or other Statutory Rules including Certified Standing Orders. The fundamental rights, including the Right to Life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. The provision for payment of Subsistence Allowance made in the Service Rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in *State of Maharashtra v. Chanderbhan*, 1983(3) SCR 337 : 1983(3) SCC 387 : AIR 1983 SC 803 struck down a Service Rule which provided for payment of a nominal amount of Rupee one as Subsistence Allowance to an employee placed under suspension. This decision was followed in *Fakirbhai Fulabhai Solanki v. Presiding Officer and another*, 1986(3) SCC 131 : 1986(2) SCR 1059 : AIR 1986 SC 1168 and it was held in that case that if an employee could not attend the departmental proceedings on account of financial stringencies caused by non-payment of Subsistence Allowance, and thereby could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated. For this purpose, reliance was also placed on an earlier decision in *Ghanshyam Dass Shrivastava v. State of Madhya Pradesh*, 1983(1) SCC 656.”

31. In **P.L. Mehta vs. State of Haryana**, 1999(5) SLR 580 DB

P&H, a Division Bench of this Court held as under:

“11. Admittedly, the petitioner is a salaried person. Subsistence allowance is a meager amount which is essential for the subsistence of an employee. It becomes all the more important in a case where the employee is facing disciplinary proceedings. It also deserves notice that when a person is asked to produce evidence in defence, he/she has to incur some expenses in the travel etc. of the witnesses. In view of this factual position, the petitioner had been making

repeated requests to the respondents for the release of her subsistence allowance. The first request had been made by her as far back as February 27, 1996. Thereafter, the requests were made to the President of the Managing Committee, the Director, Higher Education and the Enquiry Officer himself. Surprisingly, all the requests fell on totally deaf ears. Nothing was done. In this situation, the petitioner's complaint that the management was using the economic pressure to break her defences, cannot be said to be unfounded. This becomes all the more apparent in view of the fact that the subsistence allowance for the months of January and February was not paid to the petitioner despite the fact that the amount had already been received by the Institution from the Directorate. At her insistence for payment, it was promised to be paid on the next date viz. April 15, 1996. It may also be mentioned that it was not even suggested on behalf of the respondents that the petitioner had any other source of income. In fact, it is admitted position that she was unable to engage any counsel. Admittedly, her husband was assisting her during the proceedings. Thus, it is clear that the petitioner's request for payment of subsistence allowance was bona fide. The action of the respondent in not releasing the payment to her was not fair. The case falls squarely within the ratio of the decision of their Lordships of the Supreme Court in *Ghanshyam Das Srivastava Vs. State of Madhya Pradesh*, 1973 (1) SCC 656. In this case, it was held that the enquiry proceedings were vitiated as the employee had been unable to attend the proceedings on account of non-payment of subsistence allowance. The position in the present case is identical."

Affidavits evidentiary value

32. In Smt. Savitramma vs. Cicil Naronha & anr., AIR 1988 SC 1987, the Supreme Court held as follows:

"2. During the hearing we noticed that the affidavit filed by the complainant as well as the affidavit filed in reply to the contempt petition both were not in accordance with the provisions of the Supreme Court Rules or Order 19 Rule 3 of Code of Civil Procedure. Smt. Savithramma the complainant has filed affidavit in support of the contempt petition. In paragraph 2 of her affidavit she

stated that the statements contained in the contempt petition were true to the best of her knowledge, belief and information. In paragraph 3 she has further stated that the affidavit had been read over, translated and explained to her and she understood the contents thereof and has further stated that the same were true to her knowledge. The affidavit is clearly vague and general and it does not comply with the requirement of a valid affidavit as laid down in Order 11 rules 5 and 13 of the Supreme Court Rules. The affidavit is defective as it does not indicate as to what facts were true to her personal knowledge, information and belief. Order 11 Rule 2 of the Supreme Court Rules lays down that evidence in support of an application may be given by affidavit in the Supreme Court. Rule 5 provides that affidavit shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that the grounds thereof are stated. Rule 13 provides that in the verification of petitions, pleadings or other proceedings statements based on personal knowledge shall be distinguished from statements based on information and belief. In the case of statements based on information the deponent shall disclose the source of his information. Similar provisions are contained in Order 19 Rule of the Code of Civil Procedure. Affidavit is a mode of placing evidence before the Court. A party may prove a fact or facts by means of affidavit before this Court but such affidavit should be in accordance with Order 11 Rules 5 and 13 of the Supreme Court Rules. The purpose underlying Rules 5 and 13 of Order 11 of the Supreme Court Rules is to enable the Court to find out as to whether it would be safe to act on such evidence and to enable the court to know as to what facts are based in affidavit on the basis of personal knowledge, information and belief as this is relevant for the purpose of appreciating the evidence placed before the Court, in the form of affidavit. The importance of verification has to be judged by the purpose for which it is required. It is only on the basis or verification, it is possible to decide the genuineness and authenticity of the allegations and the deponent can be held responsible for the allegations made in the affidavit. In this Court evidence in support of the statements contained in writ petition, special leave petitions, application and other miscellaneous matters, is accepted in the form

of affidavit filed by the parties concerned. It is therefore necessary that the party stating facts must disclose as to what facts are true to his personal knowledge, information or belief. If the statement of facts is based on information the source of information must be disclosed in the affidavit. An affidavit which does not comply with the provisions of Order 11 of the Supreme Court Rules, has no probative value and it is liable to be rejected. In a matter where allegations of mala fides or disobedience of the Court's order are made against a person or party it is all the more necessary that the person filing the affidavit in this regard must take care to certify the facts stated in the affidavit strictly in accordance with the Rules 5 and 13 of Order 11 of the Supreme Court Rules.

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5. The matter does not rest here. The affidavit filed on behalf of the accused in reply to the contempt petition is shocking. The office clerk of the advocate for the accused has filed affidavit on behalf of the accused in reply to the contempt petition. The deponent of the counter affidavit has verified the affidavit saying that the statements of the case of the accused are true and correct which are based on the records maintained in the office of the advocate and based on the instructions received from the clients. Such an affidavit is wholly improper and inadmissible in evidence and liable to be rejected. What reliance can be placed on an affidavit filed by a person sitting at Delhi and that too a clerk of an advocate practising at Delhi giving reply to the allegations and facts and circumstances existing at Karnataka on basis of records maintained in advocate's office at Delhi? The practice of clerks of advocate filing affidavit without a proper verification should be deprecated. As matters before the apex court are determined on the basis of the statements contained in affidavits it is the duty of the litigants and the lawyers to file affidavits in accordance with the rules to assist the Court in administering justice.”

MERE PRODUCTION OF FILE IS NO EVIDENCE

33. In Jagsir Singh vs. State of Punjab, 1983 (2) SLR 685 P&H, this Court observed as follows:

“4. The main question which arises for consideration here is with regard to the enquiry said to have been held against the petitioner. A reference to the record would show that the enquiry file was produced before the Labour Court, but by a person who admitted that he had no personal knowledge of the case. It is significant to note that no evidence was led to prove the signatures in this enquiry file of either the Enquiry Officer or of the petitioner or for that matter any of the officials appearing therein. A specific objection was raised on behalf of the workman to the enquiry file being looked into in evidence on the ground that the person who had produced it had no personal knowledge of the file or the documents contained therein and the file had at any rate not been proved by the management. The reply of the management in this behalf was to the effect that the enquiry file was a Government document and was thus a self speaking piece of evidence. This was indeed a wholly untenable stance.

5. The further fact which invites pointed attention is that a specific plea had been put forth by the workman that no opportunity had been given to him to cross-examine the witnesses examined by the management and his signature had been obtained by the Legal Advisor Sh. Nahar Singh by fraud. The petitioner was not confronted with his signatures or any other part of the enquiry file in order to create any doubt with regard to his testimony to this effect. In these circumstances there can be no escape from the conclusion that the management had failed to show that the enquiry held against the petitioner was proper and legal.

6. Next the Labour Court had placed great reliance upon the reply of petitioner to the charge-sheet served upon him. This reply being Exhibit M-6. There is a clear misreading to this reply here. The Labour Court read it to contain an admission of guilt by the petitioner to the charges against him ; whereas a reading thereof would show that the allegations contained in the charge-sheet were denied as being false and it was specifically stated that he did not admit them.”

34. In The Director State Transport Punjab, Chandigarh vs.

Gurbachan Singh & another, 1993(4) RSJ 436, it has been held as under:

“2. I do not find any merit in the contention of the State. This Court in *Jagbir Singh v. The State of Punjab and others*, 1983(2) *Service Law Reporter* 685 held that "it is significant to note that no evidence was led to prove the signatures in this enquiry file of either the Enquiry Officer or of the petitioner for that matter any of the officials appearing therein. A specific objection was raised on behalf of the workman to the enquiry file being looked into in evidence on the ground that the person who had produced it had no personal knowledge of the file or the documents contained therein and the file had at any rate not been proved by the management. The reply of the management in this behalf was to the effect that the enquiry file was a Government document and was thus self speaking piece of evidence. This was indeed a wholly untenable stance." The judgment of this Court relied upon by Mr. Verma covers this case against the petitioner and, therefore, there is no choice but for the dismiss this petition.”

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Post decisional hearing

35. In H.L. Trehan vs. Union of India, reported as 1989 (1) SLR 7 SC, the Supreme Court observed as follows:

“13. The view that has been taken by this Court in the above observation is that once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. Thus, even if any hearing was given to the employees of CORIL after the issuance of the impugned circular would not be any compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution. The High Court, in our opinion, was perfectly justified in quashing the impugned circular.”

36. In Shekhar Ghosh vs. Union of India, 2007 (1) SCT 86, the Supreme Court held that post-decisional hearing is not sustainable in a case where despite arriving at a finding post-decisional hearing was not called for

In these circumstances, post decisional hearing is not contemplated in law and result of such hearing was a foregone conclusion.

Speaking order

37. In M/s Kranti Associates Pvt. Ltd. & another Vs. Sh. Masood Ahmed Khan & Ors., 2010 (4) RCR (Civil) 600 (SC), their Lordships of the Supreme Court held that an order of authority whether administrative or quasi judicial must be a speaking order. In para.51, their Lordships laid down the following principles which read as under:

“51. Summarizing the above discussion, this court holds:-

- a. in India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- b. A quasi-judicial-authority must record reasons in support of its conclusions.
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- g. Reasons facilitate the process of judicial review by superior Courts.
- h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This virtually the life blood of

judicial decision making justifying the principle that reason in the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. if a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya v. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

38. In State of Haryana Vs. Ramesh Kumar, 2009(2) SCT 145 SC:

“6. Reasons introduce clarity in order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. Similar view was expressed in *State of U.P. v. Battan and Ors.*, (2001) 10 SCC 607). About two decades back in *State of Maharashtra v. Vithal Rao Pritirao Chawan*, (AIR 1982 SC 1215) the desirability of a speaking order while dealing with an application for grant of leave was highlighted. The requirement of indicating reasons in such cases has been judicially recognized as imperative. The view was reiterated in *Jawahar Lal Singh v. Naresh Singh and Ors.*, (1987) 2 SCC 222. Judicial discipline to abide by declaration of law by this Court, cannot be forsaken, under any pretext by any authority or Court, be it even the Highest Court in a State, oblivious to Article 141 of the Constitution of India, 1950 (in short the ‘Constitution).

7. Even in respect of administrative orders Lords Denning, M.R. in *Breen v. Amalgamated Engg. Union* (1971) 1 All E.R. 1148 observed: “The giving of reasons is one of fundamentals of good administration.” In *Alexander Machinery (Dudley) Ltd. v. Crabtree*, 1974 ICR 120 (NIRC), it was observed: “Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at.” Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The “inscrutable face of a sphinx” is

ordinarily incongruous with a judicial or quasi judicial performance. Chairman and Managing Director United Commercial Bank and others vs. P.C. Kakkar, 2003 (4) SCC 364: [2003(2) SLR 445 (SC).”

39. In The State of Punjab Vs. Bakhtawar Singh & ors., 1972 SLR 85 (SC), para 11 and 12 being relevant are reproduced as under:

“11. Now coming to Shri Rajinder Pal Abrol, all the charges leveled against him related to alleged acts and omissions prior to his appointment as a member of the Board. That apart the order of the Minister removing him does not disclose that he had applied his mind to the material on record. That order does not show what charges against Shri Abrol have been established. The order reads:

“I have gone through the charges and the explanation furnished by Shri R.P. Abrol. From the material on the file, I am definitely of the opinion that he is not a fit person to be remained as parting member of the Electricity Board. I, therefore, order that Sh. Abrol may be removed from membership under sub clause (iv) of clause (e) of sub-s. (1) of Section 10 of the Electricity Supply Act, 1948.

C.M. may kindly see. After C.M. has seen, immediate orders be issued.”

Sd/- Sohan Singh Basi,
I.P.M.
17-7-1969.”

12. This order cannot be said to be a speaking order. It is arbitrary to the core. Such an order cannot be upheld. Hence it is not necessary to go into the other contentions advanced on behalf of Shri Abrol.”

40. In S.N. Mukherjee v. Union of India, 1990 (5) SLR 8 SC (Constitution Bench):

“38. The object underlying the rules of natural justice “is to prevent miscarriage of justice” and secure “fair play in action.” As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi – judicial

functions achieves this object of excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the recruitment to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities.

39. For the reason aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.”

Broad reasons on facts

41. Learned counsel for the petitioner has argued at length on O.M. dated 08.07.1994 (Annex P-1) containing the Statement of Articles of Charge framed against the petitioner. There were five charges alleged against the petitioner – delinquent. The first charge is not as much centered on anything other than principally delaying acting on a particular office file, but the reply to the explanation letter imputing that the petitioner acted in a most irresponsible manner and dragged in irrelevant and baseless allegations against the superior officers. It was inferred that the petitioner had a tendency to shirk responsibility; was guilty of willful disobedience and had committed insubordination by casting aspersions on superior officers, which conduct was unbecoming of an officer. The second charge was that when he was asked to examine some office files, instead of giving legal opinion, which was his duty as a Law Officer on the relevant portion, he indulged in recording uncalled for comments on file, which are not expected from a Class-I officer of the Wakf Board and this amounted to misconduct since he made comments which are irrelevant, unrelated to the work and uncalled for.

All the office files were not specified in the charge-sheet to substantiate the

charge with material particulars. The third charge was that while working as a member of the Lease Committee, he refused to attend meetings of the Committee after 30.09.1993. This was an act of disobedience and insubordination amounting to misconduct. The fourth charge was that while functioning as Law Officer, he was asked by the Secretary, Punjab Wakf Board on 30.09.1993 to visit a site at Amritsar to ascertain the factual position as to whether the proposal for allotment was in relation to the mosque or the land adjoining it not forming part of the mosque. The petitioner did not visit the site and kept the file in his custody till 02.03.1994 i.e. for more than five months. This was an act of dereliction of duty and an act of insubordination. The fifth charge related to a letter received from the Government of Punjab with a direction to Board to send para-wise comments in respect of a notice under Section 80 CPC received by Government from an Advocate on behalf of his client. The charge was that when the petitioner was asked to put up a reply to the letter, he put up a note dated 18.03.1994 questioning the authority of the Secretary to ask him to make a reply to the notice on the ground that his terms of appointment excludes his dealing with such matters. This note put up by the petitioner was objected to as deliberately flouting the orders of superior officer, disobedience and intentionally refusing to perform his official duties. At the end of the charge memo, a note was recorded that all these five incidents are not exhaustive of instances of insubordination, dereliction of duty, willful disobedience and gross misconduct etc., which invited major penalty under Regulation 44 of the Punjab Wakf Regulations, 1966. The charge-sheet was issued by the Administrator of the Punjab Wakf Board, Ambala Cantt, which city is the Head Office of the Punjab Wakf Board.

42. Learned counsel has taken me to the Statement of Imputation of Misconduct or Misbehaviour on the five Articles of charge, which deserve to be read with the exhaustive reply filed by the petitioner to the charge-sheet. Learned counsel also taken me through Annex P-4, a request letter sent by the petitioner to the Inquiry Officer, which contains the account why the petitioner was wronged by very senior officers mentioned in the letter and especially at the hands of Mr. S.Y.Quraishi, IAS, who was holding additional charge as Administrator of the Wakf Board. The delinquent questioned the very authority of Mr. S.Y.Quraishi and cross-questioned it as without jurisdiction. The petitioner's request was that the enquiry to be conducted in Ambala instead of Delhi. This Court has carefully read the exhaustive reply of the petitioner to the charge-sheet and from there gather a distinct impression that the delinquent made out a case at least for consideration of his objections on each of the Articles of charge and the findings recorded by the Inquiry Officer, who has failed to consider many important issues raised in the defence. The petitioner had referred to the proceedings in the previous case filed by the petitioner before this Court, which was decided on 06.01.1997 against him in which he had made certain allegations against the Inquiry Officer, which were not gone into by the learned Single Judge in the final order. The Inquiry Officer was named as a party to the proceedings, but did not file a reply nor was the joint reply signed by the Inquiry Officer. Therefore, the petitioner argued that the allegations against the Inquiry Officer went uncontroverted. He mentions that in the first communication received by him after the dismissal of the writ petition was to the effect "*Please note that the matter will be proceeded ex parte because of non-appearance*". This was according to the petitioner an act of pre-judging his non-appearance and initiation of ex parte enquiry.

There was no need to extend the threat of ex parte proceedings when appearance or non-appearance had not become an accomplished fact. In his objections and reply to the charge-sheet, the petitioner referred to Regulation 44, as reproduced above.

43. The petitioner complains of breach of procedure stipulated in the regulations, which has led to prejudice and this vitiates the enquiry proceedings inasmuch as the enquiry was concluded in a single day without witnesses present and testifying on oath as to the contents of the affidavits submitted by the presenting officer. This methodology was in violation of the provisions contained in the Code of Civil Procedure and in the High Court Rules and Orders in their provisions containing procedure of making depositions before an Oath Commissioner. Even the verification clause was faulted in the affidavits by the petitioner in his reply, which swears facts to be correct to the best of knowledge and belief. The petitioner even raised the issue whether the affidavits ought to have been sworn either before the Executive Magistrate or before the Notary Public and not before the Oath Commissioner, as the affidavits attested and sworn by/before the Oath Commissioners can only be entertained in the civil, revenue or criminal courts and none else. The petitioner pointed out that there is even no mention at all that the affidavits were sworn before the Oath Commissioner by the deponents. As a result of this, the entire evidence produced through the affidavits by the presenting officer during the course of enquiry is inadmissible and so the findings recorded by the Inquiry Officer on the basis of these affidavits are clearly based upon evidence which is no evidence in the eyes of law and therefore, it can be safely concluded that the findings of the Inquiry Officer are not based upon any legal evidence. This is a legal objection, which can be taken at any stage. Above all, it was incumbent

upon the Inquiry Officer to see whether evidence produced before him is legal and in accordance with law or not.

44. One of the principal grievances of the petitioner in the present case is that his defence has neither been taken into consideration nor was it discussed either by the authorities of the Wakf Board or by the Inquiry Officer, who was a retired Judge of the High Court and practicing as Senior Advocate in the Supreme Court. Besides, there is no process of reasoning disclosed in the Inquiry reports to what weighed with the learned Inquiry Officer to reject the contentions of the petitioner and accept the version of the prosecution witnesses. It is rather interesting that the Inquiry Officer has categorically observed that it was not his business to decide as to who is right or who is wrong. (*See* Pg.21 of the enquiry report). The petitioner asserts that on the one hand, the Inquiry Officer has restrained himself from deciding whether who is right and who is wrong, but on the other hand, he has made observations in the concluding part that: “his conduct is not behoving of officer of Class-I”. Then...“His conduct is bound to generate indiscipline and insubordination even amongst other employees of the Board”. This was an excess of his brief. There was no charge against the petitioner alleging acts of omission and commission on his part, which would create indiscipline and insubordination amongst the other staff. To support his point, the petitioner cited case law in Anil Kumar Vs. Presenting Officer, 1985 (3) SLR 26 (Paras.5 & 6), the Supreme Court holding that a disciplinary enquiry affects livelihood and is likely to cast stigma, therefore, it must indicate application of mind. The report must be a reasoned one. Where no evidence is discussed it does not amount to an enquiry report. Termination on the basis of such report is rendered illegal. For the necessity

of recording reasons, the petitioner cited the Constitution Bench decision in

S.N.Mukerjee Vs. Union of India, AIR 1990 SC 1984. The Inquiry Officer also did not pay due attention to the objections regarding the jurisdiction of Mr. S.Y. Quraishi, IAS, the then Administrator of the Punjab Wakf Board for the reason that there was no valid appointment by notification issued by the Central Government appointing him after his being sent on deputation to the Central Government and consequently the very initiation of the proceedings against the petitioner from suspension to issuance of charge-sheet are null and void and without jurisdiction. This was an important matter, which should have been discussed by the Inquiry Officer and a view expressed thereon, but there was failure to do so.

45. The most sensitive issue that the petitioner raised was whether a former Judge of the High Court and a practicing Senior Advocate of the Supreme Court could act as an Inquiry Officer in a domestic proceeding in view of clear legal position placed before him in the communication dated 09.04.1997 and earlier communications dated 13.08.1994 and 15.09.1994. The Inquiry Officer also did not decide the question whether the venue of the enquiry proceedings can be beyond the territorial jurisdiction of the Punjab Wakf Board, as the enquiry was conducted at Delhi, which does not form the erstwhile Punjab State and territorial jurisdiction of the Punjab Wakf Board. This is indicative of the working of the mind tilting on unfairness though not on illegality. The petitioner raised other ancillary issues such as lack of prior information and notice that 13 witnesses cited would be called to prove which charge and this has prejudiced the defence of the petitioner. Out of 13 witnesses, only 8 affidavits were filed. Even the 8 affidavits furnished are undated and according to the petitioner were later on got attested by an Oath Commissioner on 01.05.1997. Such an evidence by way of affidavit is not worthy of credence. Still further, the petitioner

asserted that the charge-sheet was vague, cryptic and indefinite, as would be seen from Articles of Charge, where it is nowhere mentioned as to which utterances of the petitioner amount to irresponsible speech. It has nowhere come on record as to on what date the alleged file was entrusted to the petitioner with regard to Article I. Similarly, in Article II, it has nowhere been mentioned as to which portion of the noting or writing recorded by him amounts to malicious and acrimonious nature. Similarly, under Articles III & IV relating to non-participation in the Lease Committee Meetings the allegations were vague and cryptic. The petitioner had submitted in defence that a Law Officer has nothing to do with the functions of the Lease Committee, as it is a revenue matter and he was unnecessarily dragged to the Lease Committee in order to have a seal of approval of the Law Officer despite his dissent because of the majority decision and when the matter would come for legal opinion to the petitioner, he would not be in a position to comment differently and independently since he would be deemed to have participated in the Lease Committee meeting. He even raised the issue that the question of visiting site by the Law Officer for inspection for the purpose of demarcation was improper act since the property in question was clearly notified in the gazette notification with its area defined, which had become final under Section 6 of the Wakf Act, 1954 and there can be no deviation from the same and the inspection of the site could not have improved the position and was a useless exercise without there being any purpose behind it since the notification was evidence that property was a mosque. However, two of the Members of the Lease Committee without there being on record anything to support the conclusion still opined that it was the property of the Municipal Committee, Amritsar. Since the property was a notified mosque and as such no useful purpose would have been served by the visit he had

refused to obey as it was not part of his duty as Law Officer and thus the charges are totally baseless and unfounded on this point.

46. In reply to the fifth charge, which related to preparation of a draft reply to the legal notice under Section 80 of the CPC served on the Punjab Government, the petitioner asserted that the Punjab Wakf Board is not the party to the litigation nor was the notice served upon the Board and in fact the Government sought the factual position, which could not have been in the knowledge of the Law Officer as the matter related to the Lease Section and accordingly the reply was to be prepared by the staff of the Lease Section and later on, if so advised, the same could have been examined legally by him, but that situation did not arise and thus for asking irrelevant things not related to the duty of the employee, non-compliance thereof shall not amount to any indiscipline or an act of insubordination.

47. A reading and re-reading of the file leaves one guessing as to whether the petitioner had committed any gross misconduct at all, worthy of extreme punishment of dismissal from service. It appears to this Court that the charged official was within the law in his defence and those working against his interest, including the Executive Officer and the Administrator, were not within the law in charge sheeting him. On the other hand were without the law. The petitioner pointed fingers at Mr. M.R.Firooqui and Mr. Amir Hassan that the lapse and dereliction of duty on their part in whose possession the file remained was being unnecessarily passed/thrust upon the petitioner. He explained each affidavit and how they were not relevant to each other and to the total picture and I would tend to agree with the petitioner that the evidence was tutored and deliberately excessive of the charges to throw the petitioner out of his job in a predetermined manner. It

justice and is not to be seen as tendering convenient advice. The petitioner questioned the very basis of movement of the files and the affidavits fall far short of establishing the chain of events inevitably leading to the guilt of the petitioner which the affidavits did not demonstrate when read in the context of the defence.

48. The petitioner even referred to his earlier letter for dropping his name from the Lease Committee which request was earlier accepted on 15.06.1991 agreeing that the Law Officer has no business with lease matters. The petitioner submitted that so far as the alleged retention of the file is concerned, the detailed position has been explained in note dated 02.03.1994 on the reverse of the proposal itself which may be perused. Besides, it is submitted that he had filed his defence in detail in his communication dated 09.04.1997 and affidavit dated 26.04.1997, which may be read as part and parcel of reply to the charges. It may not be out of place to mention that Mr. Bashir Ahmed Khan, the then Estate Officer, Wakf Board, Amritsar, who mooted the proposal for visit at site, was in the habit of sending such deceitful proposals. He was also indicted by the Lok Pal in his report in the matter of Jagtar Singh Vs. Jagir Singh in Complaint No.2 of 1995, but for the reasons best known to the Board no further action as recommended by the Lok Pal was taken by the Board against the official. In these circumstances, the petitioner refrained from giving his assent or dissent on the proposal for the reason that the assent would have been against the directives issued by the Central Government as submitted in the preliminary submissions and his dissent would have been dragged him into controversy and thus he left the matter open to the conscience of the members of the Lease Committee to act in accordance with law and to seek his advice, if any, ex post facto but before final decisions were made.

49. The petitioner even made detailed written submissions including reference to his articles published on the subject of 'Problem of Encroachment of Wakf Properties & its Solution', which was published in the Annual Report for the year 1988 to 1990 which work had led to the introduction of Section 107 of the Wakf Act, 1995 under which Wakf properties have been exempted from the law of limitation. This contribution of the petitioner, he says is of permanent nature and is in the welfare of the Wakf Board. The entire episode was a conspiracy hatched against the petitioner for the simple reason, as asserted by him, that he did not succumb to pressure to pen favourable notes/opinions on various matters including the allotment of the Wakf properties since he did not oblige any one and continued to function with an open and independent mind to safeguard the interest of the Board and therefore, he had become an eye sore of all those high-ups who had their own vested and personal interests to grind. It may be noticed that there is not a single charge of corruption against the petitioner or that he took illegal gratification for any of the five charges etc. He even went to the extent of giving in writing in his additional submissions that he was a convert to Islam from a Hindu and referred to verse 60 of the Holy Quran, which guarantees that no person who has come to Islam can be rendered to the miseries rather he is to be treated as a privileged beneficiary of the Wakf. While summing up his submissions dated 30.06.1997, the petitioner concluded that the enquiry was not conducted in a fair, just and proper manner and no opportunity of defence was afforded to him to put forth his defence factually and reasonably. Even the preliminary objections were not decided and no order on the subsistence allowance and the payment of travelling allowance in advance was passed and even if passed, they same was no acted upon by the Board rendering him in a position that he could not

participate in the enquiry due to paucity of funds needed for travel and stay at New Delhi. He submitted that the charges did not warrant major penalty which may render him jobless. He was the only bread earner with the large family to support and had no other source of income.

50. The Inquiry Officer proceeded in undue haste. Besides, there is no discussion in the order by Mr. S.Y. Quraishi, IAS, the then Administrator of the Punjab Wakf Board on the contents of the enquiry report. There is no discussion whatsoever on the merits of the case in the dismissal order. There is sufficient material on record to hold that the petitioner was not given a fair deal in the enquiry which renders the proceedings vitiated in law. In any case, dismissal to the mind of then Court is totally disproportionate to the charges leveled especially when the learned Inquiry Officer did not go into the question of who was right or wrong. The orders of dismissal are thus illegal arbitrary, oppressive and unconstitutional. The procedure laid down in Regulation 44 has not been adhered to in letter and spirit which has prejudiced his defence. If subsistence allowance was not paid to the petitioner, nor was travelling allowance given, then the petitioner was even more seriously prejudiced and he cannot be accused of not associating himself with the enquiry which was held ex parte and not for the best reasons. This is a case of conjectures and surmises without legal evidence

Relief:

51. As a result of the foregoing discussion, it is held that the enquiry conducted is neither fair nor proper and does not deserve to stand. A defective enquiry is no enquiry in the eyes of law while both stand on the same footing. The various lacunas pointed out supra are serious in nature,

death of the petitioner pending litigation, it is not found fair and just to apply the principles in Managing Director ECIL, Hyderabad v. B. Karunakar, AIR 1994 SC 1074 to rewind the enquiry and order it to start again by setting aside the ex parte enquiry when the man is no more and the burden of defence cannot be discharged by the LR's by any stretch of imagination to vindicate the rights of the late petitioner and defence available to prove his innocence which were special to his knowledge. Therefore, the legal representatives of the deceased petitioner are held entitled to all the consequential benefits of deemed reinstatement from the date of dismissal i.e. 14.09.1997 till the date of attaining the age of superannuation i.e. 31.03.2005 as the petitioner died on 06.11.2006 and the arrears of subsistence allowance/full salary for the period from 21.03.1994 till the date of dismissal i.e. 14.07.1997 and further release of provident fund, leave encashment and gratuity and any other service benefit which is legally due subject to adjustment of the salary paid to the petitioner during appointment as Officer on Special Duty from 31.03.1999 when he joined as OSD and posted vide order dated 31.03.1999 (Annex P/14) in pursuance of the appointment order (Annex P/13) dated 24.03.1999 till the date of termination dated 15.01.2000.

52. I would, therefore, allow this petition and quash the impugned order of dismissal as illegal, arbitrary, unreasonable, irrational and unconstitutional, besides it is based on no legal or probative evidence and is rather found grossly disproportionate to the imputations of misconduct all of which do not justify the extreme punishment of dismissal from service. All tangible and monetary consequential benefits flowing therefrom will be admissible to the LR's of the petitioner after fixation of pay as a result of this

to paid to the LR's of the late petitioner within 2 months from the date of receipt of a certified copy of the order. The amounts will be actual and will not carry any interest. The same be worked till the date of superannuation of the petitioner had he continued in service. The widow would be entitled to other benefits including family pension etc in accordance with law. There will however be no order as to costs.

25.05.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE