

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 935 of 2005

Dhanpati Barik, S/O Shri Hari Barik, aged about 40 years, Ex- Forest Guard
Production Division, Mahasamund Chhura Range, C/o Dhanurjai Barik,
Village and post Putka Via Paikin (Tehsil Sarai Pali, District -Raipur)

---- Petitioner

Versus

1. State of Madhya Pradesh, through Secretary Forest Department, Vallabh Bhawan, Bhopal (MP) (now C.G.)
2. Conservator of Forests, Raipur Circle, Raipur (MP) (now C.G.)
3. Divisional Forest Officer, Production Division, Mahasamund (Distt. Raipur) M.P. (now C.G.)

---- Respondents

For Petitioner	:	Smt. Savita Tiwari, Advocate
For State	:	Shri Manish Nigam, Panel Lawyer

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

CAV Order

31/10/2017

Heard.

1. The petitioner filed Original Application No.983 of 1994 before the then existing State Administrative Tribunal, Principal Bench Jabalpur assailing correctness and validity of the order dated 15.10.1992 (Annexure A-1) passed by the Divisional Forest Officer (Production Division) Mahasamund, by which a penalty of compulsory retirement from service was imposed on the petitioner in a departmental enquiry held against him. During the pendency of the said Original Application, the State Administrative Tribunal was abolished and this case was received on transfer and registered as WP No.935 of 2005 before this Court.

2. While the petitioner was posted as Forest Guard and Assistant In-charge of Forest Coop No. 20 Peeparchhedi, under the direction of Divisional Forest Officer (Production Division) Mahasamund, a charge sheet was issued to the petitioner on 14.10.1991 instituting a departmental enquiry on following charges:

“आरोप क्रमांक 1 :

श्री धनपति बारीक वनरक्षक कूप क्रमांक 20 पीपरछेड़ी के सहायक कूप प्रभारी नियुक्त थे । उक्त अवधि में कूप प्रभारी श्री किशनलाल सोनवानी वनरक्षक से साठ— गांठ कर कूप 20 पीपरछेड़ी से वृक्षों की अवैध कटाई एवं कम से कम 22 नग साल काष्ठ (6.225 घ.मी. लगभग) अवैध निकासी में लिप्त रहकर घोर दुराचरण कर अपने आप को दंड का भोगी बनाया ।

आरोप क्रमांक 2:—

कूप क्रमांक 20 पीपरछेड़ी में हुये अवैध कटाई एवं अवैध निकासी को छुपाने के लिये कूप प्रभारी एवं परिक्षेत्र अधिकारी से अपराधिक साठ—गांठ कर कूप अभिलेखों में जालसाजी एवं फेरबदल कर शासन के साथ धोखाधड़ी की ।

आरोप क्रमांक 3:—

वनरक्षक के पद पर रहते हुये अवैध कटाई एवं अवैध निकासी में लिप्त होकर शासन से न्यास भंग (breach of trust) किया ।”

3. In the statement of allegation, it was alleged that on 10.7.1991, the Forest Department seized 22 number of *saal* logs from one Vishnu Saw Mill Dhamtari, transported by a truck No.CPS 9026 under carting challan book No.45 page 2234 dated 20th June 1991. It was alleged that the 22 logs seized from a private saw mill were carved out from seven standard tree of *saal* which was subjected to illegal cutting. At that time, one Shri Kishan Lal Sonwani, Forest Guard was In-charge of Forest Coop No.20 Peeperchhedi and the petitioner was Assistant In-charge of the same Coop and during posting of the aforesaid Coop Forest Guard, illegal felling of tree and transportation of 22 number of *saal* logs was allowed which was ultimately seized from a private saw mill. Further allegation was that in order to mislead higher authorities and suppress the illegal transportation, on the instructions of the then Range Officer Cherpa Gopal, concerned Coop In charge Kishan Lal Sonwani and Coop Helper Kamta Ram Sahu, petitioner

Dhanpati Barik, interpolated the records of the Coop by changing some of the pages of the Tree Felling Register and substituting a blank paper to create false evidence of cutting in the forest and false entries were made. The list of documents included various statements including the statements of Kishan Lal Sonwani, Kamta Ram Sahu and the petitioner recorded on 12.9.1991 and 7.9.1991 respectively. It also included records of Coop No.20 Peeparchhedi. As against the petitioner, Kishan Lal Sonwani, Kamta Ram Sahu and Cherpa Gopal were cited as the prosecution witnesses. The petitioner submitted his reply to the charge sheet dated 26.10.1991 and denied charges.

4. It is also relevant to note that enquiry was also initiated against Kishan Lal Sonwani and Cherpa Gopal .

The enquiry proceeded, statement of witnesses were recorded and an enquiry report was prepared on 16.6.1992 which was submitted before the Disciplinary authority. On the basis of said enquiry report, the Disciplinary Authority held that while the charge No.1 was not proved against the petitioner, charge No.2 relating to interpolation in connivance with the Range Officer and Coop In-Charge was proved and further that charge No.3 was partly proved against the petitioner to the extent that though the petitioner was not involved in illegal felling of trees, later on, he was involved and associated with Coop In-charge and the Range Officer in interpolating the records of the Forest Department. On the basis of this finding, the Disciplinary Authority imposed a penalty of compulsory retirement from service on the petitioner. Against the order of penalty, the petitioner preferred an appeal. When appeal was not decided, the petitioner filed an Original Application (present petition).

5. Assailing the correctness and validity of the impugned order of penalty, learned counsel for the petitioner argued that enquiry was held in a wholly illegal and irregular manner and proper opportunity of hearing was not afforded to the petitioner. Learned counsel for the petitioner argued that the documents relied upon by the prosecution in support of charges against the petitioner were not supplied to the petitioner despite petitioner

submitting application for supply of documents on 30.4.1992. According to learned counsel for the petitioner, the documents which were demanded by the petitioner along with his application were extremely relevant for the petitioner to effectively defend himself and on account of non-supply of those documents, as demanded by the petitioner, the petitioner suffered immense prejudice. Next contention of learned counsel of the petitioner is that the enquiry report was not supplied to the petitioner and without giving the petitioner an opportunity to traverse the finding recorded by the Enquiry Officer, the Disciplinary Authority acted upon enquiry report to impose penalty of compulsory retirement on the petitioner. Therefore, the impugned order is bad in law. The next submission of learned counsel for the petitioner is that along with the petitioner, Kishan Lal Sonwani, Forest Guard, In-charge of Forest Coop No. 20 Peeperchhedi as also Range Officer Cherpa Gopal were also subjected to departmental enquiry, but separate enquiry was made and no joint enquiry was ordered. Therefore, in the absence of joint enquiry against all the officers subjected to common allegation, entire enquiry is vitiated. Next submission of learned counsel for the petitioner is that the Enquiry Officer fixed the enquiry on 4.4.1992 and all the witnesses were called in one room and then all were examined together in the presence of each other. It is also submitted that even the enquiry against the other two delinquent officers was also held and statements were recorded in this enquiry at the same time. As departmental enquiry was initiated on the same allegations against Kishan Lal Sonwani and Cherpa Gopal, they could not be made prosecution witnesses against petitioner and their evidence could not be used as incriminating evidence against the petitioner to hold the charges proved against him. It is also argued that another employee Kamta Ram Sahu was also alleged to be involved and, therefore, he also could not be made a witness against petitioner and his statement could not be relied upon. Lastly, it is argued that the petitioner was not allowed to engage a defence assistant and looking to the complex nature of enquiry and the petitioner being Class-IV employee, the Enquiry Officer ought to have afforded the petitioner an opportunity to engage a defence assistant. In this manner, the

petitioner could not be properly represented nor could effectively defend himself for want of trained defence assistant and for this reason also, the petitioner suffered serious prejudice. It is finally submitted that in view of aforesaid patent illegality and irregularity committed in the departmental enquiry, the entire enquiry is vitiated and consequent order of penalty is also liable to be set aside.

6. Per contra, learned counsel for the State argued that the petitioner is not entitled to any relief only on the technical ground of non-supply of documents unless it is shown as to what prejudice was caused to the petitioner in his defence. It is contended that the petitioner, during preliminary enquiry, had given a statement on 7.9.1991 in which he admitted that he had interpolated the official records in order to mislead the authority and created an evidence of felling of trees which were otherwise illegally felled and transported away from the forest area. In his reply to charge sheet, the petitioner nowhere stated that he had never given any such statement of admission of his guilt on 7.9.1991 and he only gave evasive denial of charges against him. It is further submitted that all relevant documents as stated in Sr. No.1 of his application dated 30.4.1992 were supplied to him and remaining documents demanded by the petitioner were not relevant to the charges because the charge No.1 was not found proved against the petitioner and charge No.2 was found proved on the basis of petitioner's own statement dated 7.9.1991 recorded during preliminary enquiry prior to issuance of charge sheet, which the petitioner did not dispute but only sought to justify at a later stage and not at the first instance while submitting his reply to the charge sheet. Once the petitioner had admitted having interpolated the records, the other ground of violation of principle of nature justice would not come to his aid and the enquiry cannot be said to be vitiated. Learned counsel for the State also submitted that there is no obligation cast under Rule 18 of the Civil Services (Classification, Control & Appeal) Rules, 1966 (hereinafter referred to as "*the Rules of 1966*") to hold joint enquiry. The power is discretionary and not obligatory. In any case, it is argued, in the absence of any prejudice

established on account of non holding of joint enquiry, enquiry is not vitiated. It is also argued that alleged irregularity of recording evidence of all the witnesses on one day would not have any vitiating effect because the petitioner was given full opportunity to cross-examine all the witnesses.

7. During the course of hearing, learned counsel for the State also submitted the original records of enquiry. This Court gave anxious consideration to the submissions made by learned counsel for the parties and also perused the records of departmental enquiry.
8. As far as non-holding of joint enquiry is concerned, Rule 18 of the Rules of 1966 gives discretion to the Disciplinary Authority to hold joint enquiry. The Rule, however, does not make it obligatory on the authority to hold joint enquiry in a situation like the present case. Present is a case where on the allegation of illegal felling of trees and unauthorized removal from the forest and transportation to a private saw mill, charge sheet was issued not only to the petitioner but also to Kishan Lal Sonwani, the other Forest Guard and In-charge of Coop No.20. Records also show that charge sheet was also issued to Range Officer Cherpa Gopal in connection with unauthorized removal of *saal* logs and tampering and interpolation of official records. Though it was open for the authority to hold joint enquiry, and it would have been proper to hold joint enquiry, merely because a joint enquiry was not held, that by itself, in the absence of any prejudice established to have been caused to the petitioner, enquiry cannot be held to be vitiated on this technical ground. Therefore, I am not inclined to interfere with the order of punishment on that ground.
9. The petitioner has raised a grievance that he was not allowed to engage a defence counsel. In this regard, it has to be noted that after the charge sheet was issued to the petitioner requiring him to file his reply, the petitioner had an occasion to demand that he should be allowed to engage a defence assistant.

Sub-Rule (8) of Rule 14 provide thus:

“14 (8). The Government servant may take the assistance of

any other Government servant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.”

10. Thus, it is always open for the Govt. servant to take assistance of any other Govt. servant to present the case on his behalf though he cannot engage a legal practitioner for the purpose unless Presenting Officer appointed by the Disciplinary Authority is also a legal practitioner. Moreover, having regard to the circumstances of the case, the Disciplinary Authority may permit engagement of a legal practitioner even in a case where the Presenting Officer is not a legal practitioner. Therefore, if the petitioner intended to be defended by a defence assistant, after the petitioner was noticed to appear before the Enquiry Officer, he should have demanded that he may be allowed to engage a defence assistant. However, this Court does not find an application on record filed by the petitioner during enquiry nor any such oral prayer made and recorded by the Enquiry Officer during the course of enquiry, to show that the petitioner had actually made a prayer for engaging a defence assistant which was either rejected or not paid any heed to by the Enquiry Officer. The records show that the petitioner not only filed reply to the charge sheet, during examination of witnesses, he submitted various application demanding copy of the documents. Therefore, only on the ground that he was not apprised of his right to engage defence assistant, the enquiry cannot be held illegal when no prejudice was caused to the petitioner on account of such non-engagement of a defence assistant.

11. A perusal of the impugned order and the enquiry report which forms part of record of the departmental enquiry show that against the petitioner, charges were sought to be proved by documentary as well as oral evidence. In so far as 1st charge is concerned, enquiry report as well as the order of

the Disciplinary Authority clearly shows that the Charge No.1 was not proved against the petitioner because it was held that during the period the tress were illegally felled and removed from the forest area, the petitioner was on leave and he had no role to play.

The second charge against the petitioner was that he, in connivance with Coop In-charge and Range Officer, interpolated Coop records. The allegation is that when the incident of illegal felling of trees and removal of *saal* logs came to light, the petitioner and two other officers removed some of the pages of Tree Felling Register and new pages were added and false and fabricated entries of felling of trees, which were illegally removed, were entered as if felling of trees had actually taken place in jungle No.11178 to 11199. To prove this charge, an incriminating material relied upon by the Enquiry Officer is an earlier statement of the petitioner recorded by the Deputy Divisional Forest Officer, Chhura (North). Apparently, therefore, in order to hold charge No.2 proved against the petitioner, the most incriminating evidence was so called previous statement dated 7.9.1991 of the petitioner recorded in some preliminary enquiry by a Forest Officer. It is therefore necessary to examine the records of the case including departmental enquiry records, to find out whether the petitioner was actually supplied or allowed to inspect his previous statement dated 7.9.1991, where he had an opportunity to rebut this incriminating documentary evidence and lastly whether the previous statement of the petitioner recorded in preliminary enquiry prior to institution of departmental enquiry could be made a basis to record a finding of guilt and prove charge No.2 against the petitioner.

12. Charge No.2 read along with the statement of allegation and the papers of the departmental enquiry, alleged that when initially Kishan Lal Sonwani was found involved in illegal felling and removal of *saal* trees from the jungle coop No.20 of Peeperchhedi, he was suspended and vide memo dated 8.8.1991 (Annexure A-12), he was directed to handover entire records and store material of Coop No.20 Peeperchedi within 24 hours to the petitioner D.B. Barik. The aforesaid documents show that the petitioner

was required to take in his charge within 24 hours, the records of the store material of Coop No.20 Peeperchhedi. From the petitioner's reply to the charge sheet, memo of appeal and the writ petition, it is revealed that the petitioner has not disputed the fact that he was actually handed over the charge of the Coop No.20 after suspension of Kishan Lal Sonwani and the petitioner was in possession of those records. Later on, when it was alleged that while in possession of the records, the petitioner acted in conspiracy with Kishan Lal Sonwani, Cherpa Gopal and Kamta Prasad and interpolated the records, that the petitioner was also suspended vide order dated 11.10.1991 and departmental enquiry initiated against him also.

13.A perusal of the impugned order passed by the Disciplinary Authority, in so far as, charge No.2 is concerned, reveals that in order to hold charge No.2 proved against the petitioner, it has relied upon statement of Kishan Lal Sonwani and Kamta Ram Sahu as also the previous statement of the petitioner recorded by SDO Forest, Chhura. The finding on charge No.2 is more based on petitioner's admission as contained in his previous statement recorded in a preliminary enquiry by the Sub Divisional Officer, Forest, Chhura. But then this statement was never supplied to the petitioner. In this regard averment has been made in the petition which has not been disputed that the documents enlisted along with the charge sheet were never supplied to the petitioner despite demand made in this regard by an application dated 30.4.1992 (Annexure A-18). In the said application, at serial No.1, the petitioner demanded that all the documents of enquiry be supplied to him. At this juncture, it is relevant to state that the petitioner was not supplied any of the documents relied upon by the prosecution and as enlisted along with the charge sheet. The list of documents included so called earlier statement of the petitioner said to be recorded in some preliminary enquiry where he was alleged to have admitted having interpolated records.

14.In a departmental enquiry, in so far as documents which are relied upon by the prosecution including those which are enlisted along with the charge sheet are required to be supplied to delinquent employee. This is necessary

to disclose to the delinquent employee, the material on the basis of which charges are proposed to be proved against him. If such documents are not supplied, the delinquent employee is likely to be prejudiced on account of non-supply of those documents because he may not get opportunity to impeach the case of the prosecution.

There may be documents which may not have been relied upon by the prosecution but yet delinquent employee may require those documents in possession of the authority in order to effectively defend himself. However, for such documents, the delinquent employee will have to make a demand for supply.

15. The petitioner's application dated 30.4.1992 consisted of the aforesaid two demand viz. documents relied upon by the prosecution and documents needed to effectively defend himself even though not relied upon by the prosecution. But none of these documents were supplied to the petitioner.

16. Present is also a case where copy of the enquiry report was not supplied to the petitioner. Admittedly, present is a case where enquiry report was prepared on 16.6.1992 i.e. after the decision of the Supreme Court in the case of **Union of India & Ors. Vs. Mohd. Ramzan Khan** (1991) 1 SCC 588. In the case of **Managing Director, ECIL, Hyderabad and Ors. Vs. B. Karunakar & Ors.** (1993) 4 SCC 727, the Supreme Court clarified that the judgment rendered in the case of **Mohd. Ramzan** (supra) is prospective in operation. The petitioner has assailed legality and validity of the penalty order on this ground as well that on account of non-supply of enquiry report, serious prejudice was caused.

17. On both the aspects of supply of documents and enquiry report, of late, prejudice theory has been applied by the Apex Court and the Courts have leaned to uphold the order of punishment even in those cases where documents including enquiry report was not supplied where the delinquent employee failed to establish any real prejudice caused to him. A few decisions in this regard need to be referred to.

18. In the case of **Sohan Lal Gupta (dead) through LRs. & Ors. Vs. Asha**

Devi Gupta (SMT) and Ors. (2003) 7 SCC 492, relying upon earlier decision in *State of U.P. v. Harendra Arora* (2001) 6 SCC 392, it was held that an order passed in disciplinary proceedings cannot ipso facto be quashed merely because the copy of enquiry report has not been furnished to the delinquent officer but he is obliged to show that by non-furnishing of such a report, he has been prejudiced, and that principle would apply even in a case where there is statutory requirement of furnishing copy of enquiry report.

19. In the case of **U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Anr.** (2005) 8 SCC 264, the Supreme Court applied prejudice theory. It was held that if non supply of report would have made no difference to ultimate finding and the punishment, the Court/Tribunal should not interfere with the order of punishment. It was also declared that the Court/Tribunal should not mechanically set aside the order of punishment on the ground that report was not furnished, thereby introducing the element of prejudice to decide necessity of supplying enquiry report and set the future course of service jurisprudence.

20. Later on, in the case of **Om Prakash Mann Vs. Director of Education (Basic) & Ors.** (2006) 7 SCC 558, it was held that where the appellant has not been able to show as to how he has been prejudiced by non furnishing of the copy of report, the same would not vitiate the enquiry.

21. Later on, aforesaid principles were again reiterated in the case of **Union of India and Ors. Vs. Bishamber Das Dogra** (2009) 13 SCC 102 that in case where enquiry report has not been made available to the delinquent employee, it would not ipso facto vitiate the disciplinary proceedings as it would depend upon the facts and circumstances of the case and delinquent employee has to establish that real prejudice has been caused to him by non- furnishing the enquiry report to him. Following observations are pertinent :

“21. Thus, in view of the above, we are of the considered opinion that in case the enquiry report had

not been made available to the delinquent employee it would not ipso facto vitiate the disciplinary proceedings as it would depend upon the facts and circumstances of the case and the delinquent employee has to establish that real prejudice has been caused to him by not furnishing the enquiry report to him."

22. Apart from development of law with regard to requirement of supply of enquiry report and effect of non-supply of document during a departmental enquiry in the matter of non-supply of other documents, there has been a marked development in the service jurisprudence applying the same prejudice theory. In the case of **Pandit D. Aher Vs. State of Maharashtra** (2007) 1 SCC 445, it was held that copy of documents which have not been relied upon, is not required to be supplied to a delinquent officer and documents which are required to be supplied are only those whereupon reliance has been placed by the Enquiry Officer and Disciplinary Authority.
23. Therefore, the fate of petitioner's case would essentially depend upon consideration as to whether the petitioner was prejudiced or not.
24. A perusal of the enquiry report and the order of the Disciplinary Authority would at once reveal that the statement of Kishan Lal Sonwani, Kamta Ram Sahu as also pre-recorded statement of the petitioner himself was made a basis to sustain the charge No.2 proved against him that he, acting in concert with Cherpa Gopal and Kishan Lal Sonwani, tampered the official record. As a matter of fact, the so called pre-recorded statement of the petitioner was used as an admission of the guilt by the petitioner. But this document was never supplied to the petitioner despite demand. This was the most crucial documents because the Enquiry Officer as well as the Disciplinary Authority both have heavily relied upon this document to hold charge No.2 proved against the petitioner. The petitioner in his memo of appeal and even before this Court has taken a categorical stand that he was

coerced to put signature on certain documents. Whether or not the petitioner would not been able to make out his defence, on this aspect, is one thing, but it can certainly be concluded that non-supply of this crucial documents seriously prejudiced the petitioner. It would not out of place to mention here that so called statement of the petitioner was not even proved by examining the officer who is alleged to have recorded the said statement. Therefore, serious prejudice on account of non-supply of statement is writ large on the fact of it.

25. In the present case, as the pleadings and documents on record of enquiry revealed, a very peculiar procedure to the serious prejudice of the petitioner was adopted by the Enquiry Officer. It is relevant to note that the allegation against Cherpa Gopal, the Range Officer and Coop In-charge, Kishan Lal Sonwani was that at the instance of Cherpa Gopal, Kishan Lal illegally felled and removed *saal* timbers from the jungle which was ultimately found in a private saw mill. The petitioner was involved in the case on the allegation that later on, in order to create an evidence that there was due and proper felling of tree, recorded in the forest records and removal of the same was also recorded in the records to show that there was no illegality in removal of trees, Cherpa Gopal, Kishan Lal Sonwani and Kamta Prasad Sahu all acted in concert and conspiracy by which various records were interpolated. No doubt the allegation against the petitioner was a grave one that in order to save other employees who allegedly removed timber from forest, the petitioner helped them by interpolating the records which was given in his possession after suspension of Kishan Lal Sonwani but then it was not only the petitioner but charge sheet was issued to Cherpa Gopal, Forest Range Officer and also Kishan Lal Sonwani. The charge sheet issued to Kishan Lal Sonwani is on record. The departmental enquiry records also indicate the nature of allegations against Cherpa Gopal and it is found that as far as allegation of illegal felling and removal of tree is concerned, Cherpa and Kishan Lal were involved but as far as interpolating of records is concerned not only Cherpa Gopal and Kishan Lal Sonwani but the petitioner was also involved. Even

though no joint enquiry was held which was permissible in view of the provision contained in Rule 18 of the Rules of 1966, the Enquiry Officer conducted the enquiry of petitioner as well as Kishan Lal Sonwani on 4.4.1992 in the same premises. A perusal of the charge against petitioner and Kishan Lal Sonwani would show that in case of petitioner, the other delinquent employee against whom the charge sheets were issued and who were facing enquiry, were made prosecution witnesses. There were allegation not only against the petitioner but also against Cherpa Gopal and Kishan Lal as also Kamta Prasad. These persons were made witnesses against the petitioner. In the charge sheet against Kishan Lal Sonwani, Cherpa Gopal, the petitioner and Kamta Prasad were made witnesses. The records speak that on 4.4.1992 in the same premises, the Enquiry Officer called all the witnesses and examined them. On 4.4.1992, statements of Cherpa Gopal, petitioner, Kishna Lal and Kamta Prasad were recorded and it has been categorically averred, which has not been disputed, that all of them were sitting together when their statements were being recorded. Each of the witnesses being involved in the allegation was not expected to speak truth but only to save his own skin by involving delinquent employee.

26. In view of the aforesaid finding and conclusion, this Court is of the considered opinion that entire departmental enquiry was held in utter violation of principle of natural justice and is vitiated because of the irregularity and the manner in which it was conducted by the Enquiry Officer. Consequently, the impugned order cannot be sustained in Law and is therefore set aside.

27. Though it is a case where the finding recorded by the Court would have resulted in remanding the matter to the Enquiry Officer for holding proper enquiry by supplying documents demanded by the petitioner, supply of enquiry report, but this Court finds that the penalty order was passed by the Disciplinary Authority way back on 15.10.1992 i.e. 25 years before and in the meantime, the petitioner has attained age of superannuation. Moreover, the allegation against the petitioner were grave in the nature that he interpolated departmental records to protect officers and

employees who were alleged to have illegally felled and removed *saal* timbers from forest area and taken to private saw mill, which charge by its very nature, is so grave as to warrant a major punishment including a compulsory retirement.

28. In somewhat of the similar circumstance in the case of **G. Vallikumari vs Andhra Education Society & Ors**, (2010) 2 SCC 497, instead of remanding the matter back to the Enquiry Officer, matter was closed with observations as below :

"21. Since the order of punishment passed by the Chairman of the Managing Committee is vitiated due to violation of the statutory rules and the principles of natural justice, we may have remitted the matter to the Tribunal with a direction to consider whether or not the penalty of removal from service imposed upon the appellant was disproportionate to the misconduct found against her or the action taken by the management was wholly arbitrary or unjust but keeping in view the fact that the appellant was removed from service more than 13 years ago, we do not consider it proper to adopt that course.

22. In *Supdt. (Tech I) Central Excise v. Pratap Rai*, 1978 (3) SCC 113, this Court held that if an order passed by the disciplinary authority is annulled on a technical ground, the concerned authority is free to pass fresh order but, at the same time, the Court declined to give such liberty to the administration on the ground that a period of 15 years had elapsed since the framing of charge.

23. In *Bhagwan Lal Arya v. Commr. of Police*, (2004) 4 SCC 560, a somewhat similar approach was adopted by this Court by recording the following observations:

"14. Thus, the present one is a case wherein we

are satisfied that the punishment of removal from service imposed on the appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily we would have set aside the punishment and sent the matter back to the disciplinary authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the appellant to be reinstated in service subject to the condition that the period during which the appellant remained absent from duty and the period calculated up to the date on which the appellant reports back to duty pursuant to this judgment shall not be counted as a period spent on duty. The appellant shall not be entitled to any service benefits for this period. Looking at the nature of partial relief allowed hereby to the appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside. The appellant must report on duty within a period of six weeks from today to take benefit of this judgment."

29. Therefore, taking into consideration that under the impugned order of penalty of compulsory retirement, the petitioner must be getting his retirement pension and must have also received other benefits including

GPF, he will be treated as having superannuated on the date of his superannuation upon attaining the age of superannuation applicable in respect of Forest Guard of Forest Department and he would be entitled to 25% of the salary from the date of compulsory retirement up to date of superannuation in addition to what he has already received after 1992 by way of pension and other retiral dues.

30. The petition is accordingly partly allowed in the manner and extent indicated above.

31. The original records be returned to the State Counsel or the Officer-in-Charge of the case and the acknowledgment of receipt thereof shall be kept in the records of this case. No order as to costs.

Sd/-
(Manindra Mohan Shrivastava
Judge