

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
FIRST APPEAL NO. 867 OF 1999

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| The Union of India and ors. | .. | Appellants  |
| vs.                         |    |             |
| Amar Bahadur Singh          | .. | Respondents |

Mr. Suresh Kumar for the Appellants.  
Mr. G.K. Masand with Ms Ajgaonkar and Mr. Shaikh for the Respondent.

**CORAM : M. S. SONAK, J.**

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| Date of Reserving the Judgment   | : | 09 FEBRUARY 2017. |
| Date of Pronouncing the Judgment | : | 16 FEBRUARY 2017. |

**JUDGMENT :-**

- 1] Heard learned counsel for the parties.
  
- 2] This appeal is directed against the judgment and decree dated 29 September 1997 in S.C. Suit No. 7396 of 1985, whereby the City Civil Court, Mumbai (Trial Court) set aside the dismissal of the respondent (original plaintiff) and directed his reinstatement with all consequential benefits.
  
- 3] The respondent was appointed as “*Rakshak*” in the Railway Protection Force (RPF) of the Central Railway some time in the year 1960. His conditions of service are governed by the Railway Protection Force Act, 1957 and Railway Protection Force Rules, 1959.
  
- 4] On 15 April 1982, the respondent, who was by then “*Senior Rakshak*” was served with a chargesheet alleging that on 6 April 1974, whilst posted at Kurla, he was found underneath II Class passenger Coach adjacent to Wagon No. CR/64751 at 0200 hours

stabled in Western Railway Yard, in suspicious circumstances. He was apprehended by Rakshak No. 507 M.P. Raul of Dadar. The Inquiry Officer, in his inquiry report, exonerated the respondent holding that the charge was not proved. The Disciplinary Authority, however, disagreed with the findings of Inquiry Officer and proposed penalty of reduction in pay by two stage for period of two years with cumulative effect upon the respondent. No opportunity of hearing was however afforded to the respondent by the Disciplinary Authority, before disagreeing with the findings of Inquiry Officer. The Disciplinary Authority on 23 January 1984 imposed the proposed penalty upon the respondent. The Revisional Authority, *suo moto*, revised penalty and enhanced the same to dismissal from service. The Disciplinary Authority, accordingly, dismissed the respondent from service on 9 October 1984. The respondent's appeal against such dismissal was rejected by the Appellate Authority on 7 December 1984.

5] The respondent instituted a writ petition before this court and in paragraph 16 of the plaint has averred that the same was summarily rejected on the grounds of availability of alternate remedy by way of a suit. Thereafter on 18 September 1985, the respondent instituted S.C. Suit No. 7396 of 1985, which has since been decreed on 29 September 1997.

6] Mr. Suresh Kumar, learned counsel for the appellants, has raised the only following three grounds in support of this appeal:

A] The writ petition instituted by the respondent questioning his dismissal before this court was rejected. In such circumstances, S.C. Suit No. 7396 of 1985 was barred by the principle of *res judicata* or constructive *res judicata*;

B] That in terms of the Rules and Regulations applicable to disciplinary proceedings against members of the RPF, there was no requirement of afford of opportunity by the Disciplinary Authority to the charged member, before, disagreeing with the findings recorded by the Inquiry Officer. Only a show cause notice was required to be issued to the charged member on the aspect of proposed penalty. Since, such show cause notice had been admittedly issued to the respondent, there was no breach of the service rules or for that matter principles of natural justice and fair play. The impugned judgment and decree, which holds otherwise, is therefore vulnerable and liable to be interfered with; and

C] The civil court exceeded jurisdiction in sitting in appeal over the findings recorded by the Disciplinary Authority. In this case, the material produced on record in the course of disciplinary proceedings, was sufficient to prove the charge against the respondent. This was held so by the Disciplinary Authority, the Revisional Authority and also the Appellate Authority. In such circumstances, the civil court was not at all justified in reassessing such material on record and concluding that the charge against the respondent was not proved. On this ground also, the impugned judgment and decree is liable to be set aside.

7] Mr. Shaikh, learned counsel for the respondent, submitted that the writ petition was summarily rejected on the ground availability of alternate remedy by way of suit. There was no decision by this court on merits. Accordingly, there was no question of suit being barred by principles of *res judicata* or constructive *res judicata*. Mr.

Shaikh, learned counsel for the respondents, submitted that the respondent could not have been dismissed from service without compliance with the safeguards prescribed under Article 311 of the Constitution of India. Relying upon decision in ***Punjab National Bank and ors vs. Kunj Behari Misra***<sup>1</sup>, Mr. Shaikh submitted that the Disciplinary Authority was obliged to afford opportunity to show cause, even before the Disciplinary Authority could finally disagree with the findings of exoneration recorded by the Inquiry Officer. Since, admittedly, no such opportunity was ever afforded to the respondent, the order of Disciplinary Authority was a nullity. Further actions of the Revisional and Appellate Authorities, in furtherance of such a nullity, are also nullities. Mr. Shaikh also submitted that this was a case of “*no evidence*” since, the only material witness, had retracted from the statement allegedly made by him in the course of preliminary inquiry. Accordingly, he submitted that this is not a case of any reassessment of the material by the civil court. Further, Mr. Shaikh submitted that the chargesheet itself was completely vague and based upon mere suspicion. Such chargesheet was itself unsustainable.

8] Taking into consideration aforesaid grounds raised by Mr. Suresh Kumar in support of the present appeal, the following points for determination arise :

A] Whether S.C. Suit No. 7396 of 1985 instituted by the respondent was barred by principle of *res judicata* or constructive *res judicata* ?

B] Whether in the facts and circumstances of the present case, the Disciplinary Authority was right in disagreeing with the findings recorded by the Inquiry Officer, without afford of

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1 (1998) 7 SCC 84

any opportunity to show cause to the respondent ?

C] Whether in the facts and circumstances of the present case, the civil court has exceeded its jurisdiction in interfering with the chargesheet as well as the penalty of dismissal imposed upon the respondent, in pursuance of the same ?

9] In this case, the respondent, in paragraph 16 of his plaint had averred that he had instituted a writ petition before this court, but it was summarily rejected on account of availability of alternate remedy by way of suit. The appellant-original defendants, in their written statement denied the averments in paragraph 16 of the plaint and stated that dismissal of the writ petition was on merits and therefore, urged that the principle of *res judicata* or at least, constructive *res judicata* will apply.

10] In paragraphs 64, 65 and 66 of the impugned judgment and decree, it is recorded that several opportunities were granted to the appellants to produce on record any material to indicate that the dismissal of the respondent's writ petition was on merits. However, the respondent failed to produce any such material on record. Section 11 of the CPC provides that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court. Explanation IV, which deals with the principle of constructive *res judicata* provides that any matter, which might and ought to have been made a ground of defence or attack in such former suit shall be

deemed to have been a matter directly and substantially in issue in such suit.

11] There is nothing on record to indicate that dismissal of the writ petition instituted by the respondent in this court was on merits. Despite opportunity, the appellants failed to produce any such material on record though having raised plea of bar of *res judicata*. In ***Darshan Prasad v. Civil Judge II, Gorakhpur***<sup>2</sup>, the Hon'ble Supreme Court has held that if an earlier judgment is said to operate as *res judicata* in the subsequent proceedings then all necessary facts and including pleadings of the earlier litigation must be placed in the subsequent proceedings. Similarly, the Hon'ble Supreme Court, in ***Pujari Bai v. Madan Gopal***<sup>3</sup>, has held that where a writ petition is dismissed in *limine* or on the ground of laches or availability of alternative remedy, such a dismissal would not operate as *res judicata*. The important words in section 11 are “*has been heard and finally decided*”. The bar of *res judicata* applies only if the matter directly and substantially in issue in a former suit has been heard and finally decided by the Court competent to try such suit. This clearly means on the matter in question, there has been application of judicial mind and final adjudication made. If the former suit is dismissed without any adjudication on the matter in issue merely on technical ground or non-joinder that cannot operate as *res judicata*<sup>4</sup>. The plea of *res judicata*, at least, in the facts and circumstances of the present case, was not purely a legal plea, but a mixed question of fact and law. Thus, it was for the appellants, who had raised such a plea before the trial court to have produced all the relevant material on record in order to sustain such a plea. As noted in the impugned

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2 AIR 1992 SC 967

3 1989 (3) SCC 433

4 State of Maharashtra and anr. v. National Construction Company Bombay and anr.- (1996) 1 SCC 735

judgment and decree, the appellants have clearly failed in this. Accordingly, there is no reason, at this stage, to accept this plea at the appellate stage. The first contention of Mr. Suresh Kumar is therefore rejected.

12] Admittedly, the respondent in the present case, was entitled to protection of Article 311 of the Constitution of India. Article 311(2) provides that no person, who is entitled to the protection of Article 311 shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed. In this case, we are not concerned with the proviso to Article 311 (2) of the Constitution since, the same has not been invoked and in any case, none of the predicates, really apply.

13] Section 9 of RPF Act, 1957, *inter alia*, provides that “*subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under this Act*”, any superior officer may dismiss, suspend or reduce in rank any enrolled member of the Force whom he shall think remises or negligent in the discharge of his duty or unfit for the same. This section also provides for an appeal to the prescribed authority against an order of dismissal or imposition of any other penalty.

14] In the exercise of powers conferred by section 21 of RPF Act, 1957, the Central Government has framed rules, *inter alia*, for regulating the punishments and prescribing authorities to whom appeal shall be preferred from orders of punishment, or remission of fines, or other punishments and the procedure to be followed for the disposal of such appeals. Such rules are earlier referred to as RPF Rules, 1959.

15] Rule 44 of 1959 Rules stipulate the procedure for imposing major penalties. Broadly, the procedure prescribed includes the following :

- a] The Disciplinary Authority shall frame definite charges on the basis of allegations on which the inquiry is proposed to be held;
- b] Such charges, together with a statement of the allegations on which they are based, shall be communicated to the charged member who shall be afforded opportunity to submit his written statement of defence and also state whether he desires to be heard in person;
- c] The charged member, for the purpose of preparing his defence, shall be permitted to inspect and take extract from such official record as he may specify. However, for reasons to be recorded in writing, the Disciplinary Authority may decline such permission if such records are not relevant or if it is against public interest to allow access to such materials;
- d] Upon receipt of written statement of defence, or if no such statement is received within time specified, the Disciplinary Authority may himself inquire into the charges as are not admitted or appoint a superior officer or an officer not lower in rank than an Inspector or a Board of Inquiry as the

Inquiring Authority to conduct the inquiry;

(e) The charged officer may be permitted by the Inquiring Authority to take assistance of any member of the Force of the Zonal Railway in which the charged member is working;

(f) The Inquiring Authority, shall, in course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges;

(g) The charged member shall be entitled to cross examine witnesses examined in support of the charges, to give evidence in person, and to produce defence witnesses. If the Inquiring Authority declines leave to examine any witness on the ground that such evidence is not relevant or material, it shall record its reasons in writing;

(h) At the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons therefor;

(i) The Inquiring Authority shall then forward record of inquiry to the Disciplinary Authority. The record of inquiry shall include charges framed, statement of allegations, statement of defence, oral evidence, documentary evidence, orders made by Inquiring Authority and Disciplinary Authority, in the course of inquiry, and the report setting out of finding on each charge with the reasons therefor;

(j) The Disciplinary Authority shall, if it is not the Inquiring Authority, considering the record of the inquiry shall record its findings on each charge;

(k) If the Disciplinary Authority having regard to the findings on the charges, is of the opinion that only minor penalties [penalties specified in clauses (e) to (h) of Rule 41]

should be imposed, it shall pass appropriate orders;

(l) If the Disciplinary Authority, having regard to the findings on the charge, is of the opinion that any major penalty (penalty specified in clauses (a) to (d) of Rule 41) should be imposed, it shall;

(i) Furnish the charged member with copy of the report of the Inquiring Authority and, where the Disciplinary Authority is not the Inquiring Authority, a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Inquiring Authority;

(ii) Give the charged member a notice stating the action proposed to be taken in regard to him and calling upon him to submit within a specified time such representation as he may wish to make against the proposed action; and

(iii) Consider the representation, if any, made by the member so charged in response to the notice and determine what penalty, if any, should be imposed on the member so charged, and pass appropriate orders in the case.

(m) Orders passed by the Disciplinary Authority shall be communicated to be members of the Force who shall also be supplied with a copy of the report of the Inquiring Authority and, where the Disciplinary Authority is not the Inquiring Authority, a statement of its findings together with brief reasons for disagreement, if any, along with the findings of the Inquiring Authority, unless they have already been supplied to him.

16] In the impugned judgment and decree, there is reference to Railway Protection Force Regulations 1966. Chapter XVI of such Regulations deals with conduct of departmental proceedings and procedure for imposition of major penalties. This, in terms, makes reference to Rules of 1959, including, in particular, Rule 44 and Rule 46 of Regulations 20 and 21 also deal with the procedure for imposition of major penalty and procedure for department inquiries. Nothing much turns upon such Regulations taking into consideration the grounds now raised in the present appeal.

17] In the present case, there is no dispute that the Inquiring Authority, upon detailed appreciation of the oral and documentary evidence on record completely exonerated the respondent by holding that the charges levelled against the respondent were not proved. Such record of inquiry was forwarded by the Inquiring Authority to the Disciplinary Authority since, in the present case, the Disciplinary Authority was not itself the Inquiring Authority.

18] The Disciplinary Authority, upon consideration of record of the inquiry and the inquiry report disagreed with the findings recorded by the Inquiring Authority and held that the charge against the respondent stands proved. On 9 December 1983, the Disciplinary Authority supplied its "*findings & orders*" to the respondent. Such findings & orders record the reasons for disagreement and ultimately, afford the respondent opportunity to show cause as to why the proposed penalty of reduction in pay by two stages for period of two years with cumulative effect be not imposed upon the respondent.

19] Admittedly, the Disciplinary Authority did not record any tentative disagreement with the findings of Inquiring Authority but Disciplinary Authority, in its order dated 9 December 1983, recorded a firm conclusion of disagreement with the findings of Inquiring Authority. For reasons, as recorded in the impugned judgment and decree and even otherwise, such record of firm conclusions of disagreement with the findings of the Inquiring Authority constitutes breach of principles of natural justice and fair play. This was sufficient to set aside the order of the Disciplinary Authority. However, apart from the manner in which the Disciplinary Authority arrived at its decision, there is much to be said about the decision itself, as is reflected in the “*findings & orders*”, dated 9 December 1983. Such decision is also vitiated by non application of mind and perversity.

20] As indicated earlier, the charge sheet in the present case was issued after inordinate and unexplained delay of eight years on 15 April 1982, in respect of an incident which is alleged to have taken place on 6 April 1974. There is nothing on record to explain such inordinate delay in a matter of this nature. The charge alleges that the respondent, on 6 April 1974, was found underneath IInd Class passenger Coach adjacent to Wagon No. CR/64751 at about 02.00 hrs. stabled in Western Railway Yard in suspicious circumstance. This part of the charge is quite vague particularly because it is an admitted fact that the respondent was a member of the RPF and there is accordingly, nothing suspicious about his presence, if established, at the location area at that time of the day. The next part of the charge however state that the respondent was apprehended by Rakshak No. 507 M. P. Raul, for suspected theft from Wagon No. CR/64751, but *he escaped after assaulting Rakshak No. 507 M. P.*

*Raul.*' The later part, if proved, can be regarded as a serious misconduct, because, this is certainly not the conduct expected of a member of the RPF. However, this later part of the charge has not at all been proved, since, M. P. Raul who was examined as a witness has totally denied the incident of apprehending the respondent and the consequent assault on 6 April 1974.

21] In the course of inquiry, M.P. Raul was examined as a witness on behalf of the department. He categorically denied the incident of 6 April 1974. He merely stated that he recollects informing his another colleague, i.e. SRK Bangar that he apprehended "*some outsider*" underneath II<sup>nd</sup> Class passenger Coach adjacent to Wagon No. CR/64751 and though he could not really see such outsider, who ran away on account of dark of the night, the outsider appeared to be like SRK Amar Bahadur Singh (respondent). The deposition of Rakshak No. 507 M.P. Raul, on this relevant aspect, in the course of inquiry reads thus:

*"I had told him (SRK Bangar) that the outsider appears to be like SRK Amar Bahadur Singh and could not see him as the outsider ran away in the darkness"*

22] On the basis of aforesaid evidence of Rakshak No.507 M.P. Raul, the Inquiring Authority was absolutely right in exonerating the respondent. Although, the degree of proof that required in the course of departmental proceedings may be rather relaxed, no finding of guilt can be recorded on the basis of mere suspicion. No finding of guilt can be recorded on basis of such a vague statement, particularly, when the charge was that the respondent had actually assaulted Rakshak No.507 M.P. Raul on 6 April 1974 and the Rakshak M.P. Raul did not support such charge.

23] The Disciplinary Authority in its "*findings & Orders*" dated 9 December 1983, which, as noted earlier, were not preceded by afford of opportunity to the respondent, however, relies upon the statement of S.P. Paladia, ASO (CI), who was assigned the duty of conducting a preliminary inquiry into the incident of 6 April 1974. Mr. Paladia had stated in the course of inquiry that Rakshak No. 507 M.P. Raul, in the course of preliminary inquiry had made a statement that it was the respondent who was apprehended underneath II<sup>nd</sup> Class passenger Coach adjacent to Wagon No. CR/64751 and it was the respondent, who escaped after assaulting the said M.P. Raul. The Disciplinary Authority has held that there is no reason to doubt this recording of statement by S.P. Paladia in the course of preliminary inquiry. The Disciplinary Authority has held that since there was no enmity between between S.P. Paladia and the respondent, it cannot be said that there was any error or malice in the record of such statement of M.P. Raul in the course of preliminary inquiry. Primarily on such basis, the Disciplinary Authority, without afford of any opportunity of hearing or showing cause of the respondent, recorded firm disagreement with the findings of the Inquiring Authority.

24] The purpose for holding preliminary inquiry in such matters is only to assist the Disciplinary Authority in forming an opinion as to whether disciplinary proceedings, involving a formal Departmental Inquiry are really warranted in the matter. Normally, in such preliminary inquiry, only statements of witnesses are recorded. At that stage, normally, delinquent official is not involved and therefore, there is no question of any cross-examination of departmental witnesses or production of defence evidence. The statements made in the course of preliminary inquiry, therefore,

cannot be ordinarily used as evidence in the course of formal departmental inquiry.

25] If “*findings & orders*” dated 9 December 1983 is perused, it is clear that the Disciplinary Authority in the present case has adopted an erroneous approach in the matter. The Disciplinary Authority, in effect has relied upon the statement allegedly made by M. P. Raul in the course of preliminary inquiry to S. P. Paladia, the officer who conducted the preliminary inquiry and submitted the preliminary inquiry report. The statement allegedly made by M. P. Raul in the preliminary inquiry was not made in the presence of the respondent. The respondent therefore, had no opportunity to cross-examine M. P. Raul. Further, M. P. Raul was examined as a departmental witness in the course of formal departmental inquiry. There, M. P. Raul made statements, which were more than sufficient to exonerate the respondent for the alleged incident of 6 April 1974. If the charge against the respondent was that the respondent assaulted M. P. Raul and M. P. Raul, in the course of the inquiry denies any incident of assault, this is quite sufficient to hold that the charge is not proved. Even assuming that M. P. Raul had made some incriminating statements in the course of preliminary inquiry, that by itself, was not sufficient to prove the charge against the respondent. Admittedly, there is a doubt as to whether such statements were ever made. In any case, such statements were made in the absence of the respondent and without afford of any opportunity of cross-examination to the respondent. The Disciplinary Authority has clearly erred in relying upon the statement of S. P. Paladia to the effect that M. P. Raul did make some statement in the course of preliminary inquiry and on the said basis, disagreed with the clear and cogent findings recorded by the Inquiring Authority. Such

disagreement, as noted earlier, was without even afford of any opportunity to show cause to the respondent.

26] In the context of “*reasonable opportunity of being heard*” as contemplated by Article 311(2) of Constitution of India, it has been held that the Disciplinary Authority, before it finally or firmly disagrees with the findings recorded by the Inquiring Authority, must afford charged officer, opportunity to show cause as to why such disagreement should not be recorded and the charges, of which, the charged officer may have been exonerated by the Inquiring Authority, not held as proved. Such requirement is to be read as a concomitant to “*reasonable opportunity*” as contemplated by Article 311 (2) of the Constitution of India. As noted earlier, Section 9 of RPF Act, 1957, which is source for action of dismissal, suspension or reduction in rank of an enrolled member of the RPF itself states that the same shall be “*subject to the provisions of Article 311 of the Constitution*”. Even in the absence of such a provision, once it is admitted that an officer is entitled to protection of Article 311 of the Constitution, there is no question of dismissal of such an officer without compliance with the safeguards prescribed in Article 311 (2) of the Constitution.

27] In *Kunj Behari Misra (supra)*, the Hon'ble Supreme Court was concerned with the regulations of Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. Regulation 7, which is quite similar, at least in material aspects, to the Rules and Regulations with which we are concerned in the present case, reads thus:

"7. *Action on the inquiry report: (1) The disciplinary authority, if it is not itself the enquiring authority, may, for*

*reasons to be recorded by it in writing, remit the case to the enquiring authority for fresh or further enquiry and report and enquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of Regulation 6 as far as may be.*

*(2) The disciplinary authority shall, if it disagrees with the findings of the enquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.*

*(3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty.*

*(4) If the disciplinary authority having regard to its findings on all or any o the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned”.*

28] The issue before the Hon'ble Supreme Court related to the case where the Disciplinary Authority had disagreed with the findings of the Inquiring Authority and acted under the aforesaid Regulation 7(2). The Hon'ble Supreme Court noted that Regulation 7(2) does not contemplate opportunity of hearing to the delinquent officer before the Disciplinary Authority disagrees with the finding of the Inquiring Authority on any article of charge. However, the Hon'ble Supreme Court, by taking into consideration several decisions, ruled that principles of natural justice and fair play will have to be read into Regulation 7(2). As a result, whenever the Disciplinary Authority disagrees with the Inquiring Authority on any article of charge, then, the Disciplinary Authority must record its tentative reasons for such disagreement and give the delinquent

officer an opportunity to represent, before, the Disciplinary Authority proceeds to record any firm disagreement with the findings recorded by the Inquiring Authority. This means that the report of the Inquiring Authority containing its findings will have to be conveyed to the delinquent officer, together with the tentative reasons for disagreement. The delinquent officer will then, have to be afforded an opportunity to persuade the Disciplinary Authority to accept the favourable conclusions recorded by the Inquiring Authority. The Hon'ble Supreme Court observed that such a course of action is in consonance with the underlying principle enunciated in *Institute of Chartered Accountants of India v. L.K. Ratna*<sup>5</sup>.

29] The decision in *Kunj Behari Misra (supra)*, therefore, affords a complete answer to the second contention raised by Mr. Suresh Kumar. In this case, admittedly, there was no compliance with principles of natural justice and fair play before the Disciplinary Authority recorded its own findings by disagreeing with the findings recorded by the Inquiring Authority. Such approach on the part of Disciplinary Authority vitiates not only “*findings & orders*” dated 9 December 1983, but also further the order dated 23 January 1984, imposing penalty of reduction in pay by two stage for period of two years with cumulative effect upon the respondent. Since, the order dated 23 January 1984 issued by the Disciplinary Authority was itself legally infirm, there was no question of Revisional Authority, whether *suo moto* or otherwise, acting on the basis of same issuing order dated 5 October 1984, enhancing the penalty and dismissing the respondent from service with effect from 9 October 1984. So also, the Appellate Authority, without detecting obvious errors, erred

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5 (1995) 6 SCC 157

in dismissing the respondent's appeal by order dated 7 December 1984.

30] The decision in *Kunj Behari Misra (supra)* has been followed by the Hon'ble Supreme Court in the following cases:

- (i) *Yoginath D. Bagde v. State of Maharashtra and anr.*<sup>6</sup>;
- (ii) *State Bank of India and ors. v. K.P. Narayanan Kutty*<sup>7</sup>;  
*and*
- (iii) *SBI and ors v. Arvind K. Shukla*<sup>8</sup>

31] For the aforesaid reasons, there is no merit in the second contention raised by Mr. Suresh Kumar, which is accordingly rejected.

32] In this case, the trial court cannot be said to have exceeded its jurisdiction because, this is not a case where the trial court has assessed or reevaluated the material on record, in order to interfere with the findings recorded in the course of disciplinary proceedings. As noted earlier, in this case, the Inquiring Authority, in its inquiry report had in fact, exonerated the respondent and held that the charge against him was not proved. The findings & orders dated 9 December 1983, by which, the Disciplinary Authority disagreed with the findings recorded by the Inquiring Authority and proceeded to hold that the charge against the respondent stands proved, was vitiated for two reasons:

- (i) Failure to comply with principles of natural justice and fair play, inasmuch as no notice or reasonable opportunity was afforded to the respondent, before the Disciplinary Authority,

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6 (1999) 7 SCC 739

7 (2003) 2 SCC 449

8 (2004) 13 SCC 797

after disagreeing with the findings recorded by the Inquiring Authority, recorded that the charge leveled against the respondent stands proved; and

(ii) The finding of the Disciplinary Authority were vitiated by "*perversity*".

33] Learned trial Judge, may have made reference to the material on record. However, that by itself does not amount to either re-appreciation or reevaluation of the material on record. The reference is mainly to demonstrate that there is really no legal material on record on the basis of which the finding that the charge stands proved against the respondent could have ever been made by the Disciplinary Authority. In any case, such a finding could never have been recorded, without compliance of the principles of natural justice and fair play Accordingly, there is no merit in the third contention raised by Mr. Suresh Kumar, which is hereby rejected.

34] Ordinarily, in a matter of this nature, upon setting aside the penalty imposed, the matter would have to be remanded to the Disciplinary Authority to proceed from the stage of receipt of findings of the Inquiring Authority. However, in the facts and circumstances of the present case, this will not be a fit course of action to adopt. In the first place, the incident on basis of which charge sheet was issued relates to 6 April 1974. The charge sheet was issued after unexplained and inordinate delay of eight years i.e. 15 April 1982. The charge was generally vague and in any case the Inquiring Authority, upon detailed consideration of the entire material on record chose to exonerate the respondent. Secondly, the Disciplinary Authority, in breach of principles of natural justice and fair play, chose to disagree with the findings of Inquiring

Authority and thereafter had proposed and imposed penalty of reduction in pay by two stages for a period of two years with cumulative effect. Thus, even if such penalty were to be sustained, the respondent would have continued in service and post his retirement received all terminal benefits.

35] The Revisional Authority in this case, *suo moto* enhanced the penalty from reduction in pay by two stages to that of dismissal. The very imposition of penalty by the Disciplinary Authority in the present case, has been adjudged as legally infirm. The respondent in the present case joined as Rakshak in the year 1960 and except for this charge sheet, there is nothing on record to indicate that his service upto the date of his dismissal i.e. 9 October 1984, was not blemishless.

36] The suit in this case, was decreed on 29 September 1997. On account of interim relief granted by this Court, the respondent could not be reinstated, though, this was a relief granted by the impugned judgment and decree. There was delay on the part of the appellants in even taking steps to effectively serve the respondent. As a result, the proceedings were considerably delayed. This court, did permit the respondent to withdraw amounts deposited by the appellants towards back-wages etc., pending disposal of the appeal. However, the respondent, who is now stated to be 74 years of age is not in receipt of any terminal benefits like pension etc. A period of almost 16 years has elapsed from the date the respondent attained the age of superannuation. To prolong his agony any further, in respect of the incident of 6 April 1974, in the facts and circumstances of the present case, will not be neither just nor proper.

37] In *Kunj Behari Misra (supra)*, the Hon'ble Supreme Court, after noting that more than 14 years had elapsed since the delinquent officer had superannuated, declined to remand matter to the Disciplinary Authority for start of yet another innings. Similar course of action is required to be adopted in the present case as well.

38] In the result, this appeal is dismissed. The appellants to pay to the respondent all consequential benefits, including in particular pension etc. as expeditiously as possible and in any case within a period of two months from today. In case, the appellants have deposited any amounts in this court as a condition for grant of interim relief, the respondent shall be entitled to withdraw the same unconditionally along with interest, if any, as may have accrued upon such amount.

39] The appeal is accordingly, dismissed. There shall, however, be no order as to costs.

**(M. S. SONAK, J.)**