IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2528 OF 2005

N.V. Subba Rao
s/o. Late N.S. Sastry ...Petitioner
Versus
Union of India and ors. ...Respondents

Mr. R.P. Saxena for the Petitioner.
Mr. Suresh Kumar a/w. Ms Mohinee Chougule for Respondent No.2.

CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.

DATE : 13th APRIL 2018.

ORAL JUDGEMENT:.

1] Heard learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 3rd August 2004 made by the Central Administrative Tribunal in O.A. No. 784 of 1999 instituted by the petitioner to question the penalty of removal from service by order dated 7th March 1994.

3] Mr. Saxena, learned counsel for the petitioner, submits that in the present case, the enquiry into the charges leveled against the petitioner was nothing but farce. He points out that enquiry proceedings were in gross violation of sub-rules 17, 20 and 22 of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (said Rules), which caused grave prejudice to the petitioner. In particular, Mr. Saxena emphasized that in this case, no independent presenting officer was appointed and the enquiry officer combined himself to the role of both the enquiry officer as well as prosecutor. Mr. Saxena submits that the enquiry officer posed searching question and cross-examined the petitioner and the witnesses on behalf of the petitioner. The report of enquiry officer is entirely perverse and based only on surmises and conjectures. The appellate authority as well as the CAT have not considered these aspects, but merely held that the enquiry officer was not biased. He submits that the CAT has obviously, neither perused the depositions which were presented before it nor has the CAT dealt with the effect of an enquiry officer himself cross-examining the delinquent officials and defence witnesses. Mr. Saxena submits that the CAT has rejected the contention based on bias by observing that mere fact that enquiry officer recorded the evidence of some of the prosecution witnesses, he cannot be said to be biased. For all these reasons, Mr. Saxena submits that the impugned judgment and order made by the CAT as well as the order, by which, the petitioner came to be removed from the service is liable to be set aside. Mr. Saxena relies on ***Union of India vs. Mohd. Naseem Siddiqui – 2005 (I) CLR 374 (MP), State of Punjab and ors. vs. Dr. Harbhajan Singh Greasy – JT 1996 (5) SC 403, Mathura Prasad vs. Union of India – (2007) 1 SCC 437*** in support of the petition.

4] Mr. Suresh Kumar, learned counsel for respondent No.2, submits that there is no obligation in the Service Rules for appointment of presenting officer in the course of disciplinary proceedings. He submits that Rules merely prescribed that a presenting officer "*may be appointed".* He submits that there is also a bar to enquiry officer posing some questions to the witnesses. He submits that such questions are posed in order to obtain clarification and there is absolutely nothing wrong in adoption of such a course of action. He submits that there is no breach of Service Rules and in any case, there is no breach of Service Rules which could be regarded as mandatory. He submits that no prejudice has been demonstrated by the petitioner, assuming that there is any breach of Service Rules. For all these reasons, Mr. Suresh Kumar submits that this petition may be dismissed.

5] The rival contentions now fall for our determination.

6] The petitioner was appointed as Clerk/Typist in 1971 with Southern Railway, Bhilai. In 1987, he was transferred to Durg-Nagpur Railway Electrification Project, Bilaspur and there, he was promoted to officiate As Depot Store Keeper for holding stores at 19th December 1987. By order dated 15th May 1989, the petitioner was ordered to attend the office on Monday, Wednesday and Friday, i.e., on alternate days at Ajni. This means that on three days, the petitioner had to work at his office and on the balance three days, in Store, at a distance of 25 KM from the office.

7] On 10th April 1990, the petitioner was placed under suspension in contemplation of disciplinary proceedings, for which, he was issued a charge-sheet on 15th June 1990. The charge against the petitioner was that while he was working as a Depot Store Keeper between March 1988 to February 1990, the petitioner failed to maintain proper account of material received at Store Depot. As a result, shortages to the extent of Rs.8.76 lakhs were noticed during the Special Staff Verification undertaken by Shri. N. Biswas. It was alleged that this constituted failure to maintain absolute integrity and devotion to duty rendering the petitioner liable for major penalty under the Rules 1968.

8] An enquiry officer was appointed to enquire into the charge leveled against the petitioner. We have perused the material on record and find that the enquiry, which concluded in about 8 sittings cannot, in the facts and circumstances of the present case, be regarded as some fair and impartial enquiry and the report of such enquiry officer, could not have been relied upon for imposing major penalty upon the petitioner.

9] The first sitting before this enquiry officer was on 26th November 1990, on which dated, the enquiry officer not only recorded the statement of the petitioner but proceeded to himself cross-examine the petitioner. On the next date, i.e., 27th November 1990, Shri. N. Biswas, who had undertaken Special Stock Verification was examined as a departmental witness. His statement was recorded by the enquiry officer and the enquiry officer again posed question to the petitioner purportedly continuation of the petitioner's statement recorded on 26th November 1990. At the third sitting on 11th December 1990, four witnesses were examined and again, the enquiry officer himself cross-examined them. At the fourth sitting on 24th December 1990, two more witnesses were examined and they were again cross-examined by the enquiry officer. At the fifth, sixth, seventh and eight sitting, the petitioner protesting against the manner in which enquiry being held, did not attend the enquiry. However, it appears that nothing substantial was done on the said dates. Based upon such an enquiry, the enquiry officer furnished his report stating that the charge stands proved against the petitioner.

10] Although, the contention of Mr.Suresh Kumar could be accepted that in all cases it is not mandatory for the department to appoint the presenting officer, the fact remains a serious charge was leveled against the petitioner, who, by then, had completed almost two decades of service. A major penalty was proposed to be imposed upon the petitioner. In such a situation, the appointment of the presenting officer could not be avoided on the specious plea that the provision for such appointment is not mandatory.

11] Mr. Suresh Kumar may also be right in his submission that there is no bar to an enquiry officer posing questions to some of the witnesses and on that ground *per se,* it cannot be said that the enquiry officer is biased or that the enquiry stands vitiated. However, the questions which the enquiry officer can pose, are normally to secure clarification or to clear up any ambiguity in the deposition of the witness. The enquiry officer cannot combine himself to the role of prosecutor and enquiry officer. The enquiry officer cannot himself pose searching questions and virtually cross examine the delinquent official or the defence witnesses or for that matter even the departmental witnesses. Such a course of action on part of the enquiry officer is bound to raise issues of bias.

12] Ultimately, when it comes to bias, proof of actual bias may not be necessary and the test to be applied is reasonable likelihood of bias. It must be based on reasonable apprehension of a reasonable man fully appraised of all the facts. As Lord Denning* says the reason is plain enough. Justice must be rooted in confidence; and confidence is destroyed when right -minded people go away thinking "*the judge was biased*".

13] In such cases, the test is not where whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. Thereafter, as to the test of likelihood of bias what is relevant is reasonableness of the apprehension in that regard in the mind of the party. The correct approach for the judge is not to look at his own mind and ask himself, however honestly: "Am I biased ?" but to look at the mind

* Metropolitan Properties Co.(F.G.C.) Ltd. vs. Lannon – (1969) I QB 577, Krishna Bus Service (P) Ltd. vs. State of Haryana (1985) 3 SCC 711

of the party before him.*

14] In this case, from the record, it is quite clear that the enquiry officer has posed searching questions and has openly cross-examined all the witnesses. This in our opinion, amounts to violation of principles of natural justice and fair play. By way of illustration, the reference can be made to the evidence of Shri. Rajaram and Shri. S.P. Goswami, which is indicative of the manner in which the entire enquiry was held by the enquiry officer.

15] The proceedings held on 24th December 1990 which reflect the manner in which examination and cross-examination of Rajaram and S.P. Goswamyi was held, is transcribed below, by way of illustration.

Bilaspur,
Dated : 24-12-90.

DAR Enquiry in connection with S.F.5 issued to
Sri N.V. Subba Rao, DSK/DNRE/KAV.

REGULAR ENQUIRY.

Evidence of DW-5.

Name	:	*Sri Raja Ram.*
Desig.	:	*IOW/RE/RCC/Nagpur.*
Age.	:	*32 yrs.*
Address.	:	*C/o DEN/DE/Ajni.*

* Ranjit Thakur vs. Union of India – (1987) 4 SCC 611

Examination-in-chief.

Q.No.1	*Please go through the ledger of cement maintained by you and give the details of the cement received by you without any supporting challan for the said issue made by the depot of DSK/DNRE/KAV.*
Ans.	*I have received 200 bags of cement on 26-12-89 along with some steel 6mm – 895 kg. under challan No. 89/3/9 dt.27-12-89. Till to-day I have not received challan for the said cement.* *On 29-1-90 I have received 400 bags of cement and challan No. 5/2 was issued for 200 bags on 30-1-90.*

Examination-in-chief is concluded.
Cross Examination by E.O.

Q.No.2	*Go through your records and tell whether the materials as per the challans no. 89/1/7A dt. 25-5-89, 9A, dt. 29-5-89, 10A dt.6-6-89 13 dt. 10-6-89, 13A dt. 16-6-89, 15 dt. 26-6-89 and 17 dt.26-6-89 and steel as per challan No. 89/1/15 dt. 21-6-89 was received by you and accounted for the same against the respective contractor ?*
Ans.	*I have gone through the challan No. DSK/DNRE/KAV/1/7A dt. 25-5-89 and say that this material was not received by me and my contractor and as such I have not accounted for. (150 bags)* *I have gone through challan No.*

DSK/DNRE/KAV/ 9A dt. 29-5-89 and say that the cement entered therein for 300 bags was not received by me or by my contractor on the said works. However this contains some K.S. Agre as receiptant of cement who is an un-authorised person.

I have gone through challan No. DSK/DNRE/KAV/1/10A dt. 6-6-89 and say that this cement of 300 bags was not received by me or by my contractor the signature of Sri. K.A. Agre, as a receiptant of cement as is not valid as he is un-authorised.

E.O. D.A. D.E D.W.5.

DAR Enquiry against Sri. N. V. Subba Rao.
Evidance of D.W.5 continued.
Answer to Q. No. 2 is continued.

I have gone through challan No.DSK/DNRE/KAV/ 13 dt. 10-6-89 and say that this material was not received by me or by my contractor.

I have gone through challan No. DSK/DNRE/KAV/ 1/ 13A dt. 16-6-89 and say that I have not received the said material. The receiptant who signed this challan is a un-authorised person.

I have gone through challan No. DSK/DNRE/KAV/ 1/ 15 dt. 21-6-89 and say that I have not received the steel entered therein and cement of 16 bags.

I have gone through challan No. DSK/DNRE/KAV/1/17A dated 26-6-

	89 and say that neither myself nor my contractor received cement from DSK. The signature of K.S.Agre who signed as receiptant of cement is an un-authorised person.
Q. No. 3	*As per your reply to the question mentioned above it means that DSK/DNRE/KAV has shown the issue of 1616 bags of cement and 7.435 MT of steel issued to IOW/DNRE/ AQ i.e . your Depot is absolutely fague?*
Ans.	*Yes, these are fague in my openion.*
Q.No. 4	*Further do you mean to say that fague challans were issued by DSK/DNRE/KAV ?*
Ans.	*Yes, I confirm it.*
Q. No. 5.	*Do you know any body as K.S.Agre,whose signatures are available on some challans as receiptant of the materials, in question.*
Ans.	*I do not know Sri. K.S.Agre, or recognise his signature.*

Cross examination is concluded. No re-examination.
Evidance of D.W.5 is concluded.

E.O. *D.A.* *D.E* *D.W.5. "*

* * * *

"Bilaspur,
Dated : 24-12-90.

DAR Enquiry in connection with S.F.5 issued to Shri N.V. Subba Rao, DSK/DNRE/KAV.

REGULAR ENQUIRY.

Evidence of D.W.6.

Name	*:*	*Sri S.P. Goswamy.*
Desig.	*:*	*IOW/RE/RCC/TMR.*
Age.	*:*	*35 yrs.*
Address.	*:*	*C/o D.E.N/DNRE/Ajni.*

<u>Examination-in-chief by DA/A.R.E.</u>

Q.No.1	*The document Ex-D-2 is shown to you which is a challan of DSK / RE / AQ / bearing No. BNRE /NPW/ 61 / 17 dated 19-5-88. The materials of 250 bags have been received by Sri Beer Singh on your behalf though it is addressed to DSK /BNRE / KAV. Do you admit that you have received the material and accounted for the same without the knowledge of DSK/DNRE/KAV Sri N. V. Subba Rao?*
Ans.	*On going through my ledger at page – 2 there ias an entry of receipt of materials from DSK/RE/AQ as per challan No. BNRE/NPW/61/17 dt. 19-5-88. The said cement bags of 250 bags have been correctly accounted for.*

Examination-in-chief is concluded.
<u>Cross Examination by E.O.</u>

Q.No.1	*Challan No. BNRE / NPW/61/17 dt. 19-5-88 was challan from DSK/BNRE/AQ to DSK/DNRE/KAV and your representative Sri Beer Singh, directly received 250 bags of cement. since you have taken this material in to the leger, you must have received the three or four copies of the challan, why you have failed to hand over the challan to DSK/DN /KAV.?*

Ans. *The material as per ex.D-2 was received by me as per the requisition put up by me on DSK/BNRE/AQ. However the material was erroneously addressed to DSK /RE /DNRE/AQ by DSK/BNRE/AQ. For the said reason I have not routed this challan ex.D-2 through DSK/DNR / KAV. However the materials were correctly received and accounted for.*

Q.No. 3 *Kindly go through the records and let me know that the copy of said challan i,e. 61/17 dt 19-5-88 is available with you ?*

Ans. *Yes, the said challan is available with me and the same is not available during the enquiry to show you. I confirm that copy is available in my record.*

E.O. *D.A.* *D.E* *D.W.6.*
DAR Enquiry against Sri. N. V. Subba Rao.
Evidence of D.W.6 continued.

Q. No. 4. *When materials were issued to you for your works from the Depot of DSK/DNRE/KAV. Do you receive challans along with the issue of materials by the Depot of DSK /DNRE/KAV ?*

Ans. *When ever the matierials were issued by the Depot of DSK/DNRE/KAV the vouchers/ challans were not issued along with the materials always. The vouchers are received at later date.*

Q.No. 5.	*In your openion who is responsible for not issuing the challan along with materials ?*
Ans.	*In my openion staff working under DSK or DSK himself is responsible for not issuing the challan along with the matierals.*
Q. No. 6.	*During Aprill'88 to Dec., '88 who was the incharge of the Kalumna Depot .?*
Ans.	*Shri N.V. Subba Rao, was the incharge of the Kalumna Depot.*

Cross examination is concluded. No re-examination.
Evidance of D.W.6 is concluded.

E.O. *D.A.* *D.E* *D.W.6."*

16] From the aforesaid, it is quite clear that the enquiry officer has openly cross-examined the witnesses and thereby, combined himself to the role of prosecutor as well as judge. This is not a case where the enquiry officer has merely sought for some clarification or sought to clear any ambiguities. This is a case where the enquiry officer acted as both the prosecutor and the judge.

17] In *Mohd.Naseem Siddiqui (supra),* the Division Bench of the Madhya Pradesh High Court (Chief Justice Mr. R.V.

Raveendran and Mr. K.K. Lahoti, as their Lordships then were) have held that one of the fundamental principles of natural justice is that no man shall be a judge in his own cause. This principle consists of seven well recognised facets: (i) The adjudicator shall be impartial and free from bias. (ii) The adjudicator shall not be the prosecutor. (iii) The complainant shall not be an adjudicator. (iv) A witness cannot be the Adjudicator. (v) The Adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges. (vi) The Adjudicator shall not decide on the dictates of his superiors or others. (vii) The Adjudicator shall decide the issue with reference to material on record and not reference to extraneous material or on extraneous considerations. If any one of these fundamental rules is breached, the inquiry will be vitiated.

18] Their Lordships have held that a domestic inquiry must be held by an unbiased person who is unconnected with the incident so that he can be impartial and objective in deciding the subject matters of inquiry. He should have an open mind till the inquiry is completed and should neither act with bias nor give an impression of bias. Where the Enquiry Officer acts as the Presenting Officer, bias can be presumed. At all events, it clearly gives an impression of bias. An enquiry officer is in position of a Judge or Adjudicator. The presenting officer is in the position of a prosecutor. If the enquiry officer acts as a presenting officer, then it would amount to Judge acting as the prosecutor. When the Inquiry Officer conducts the examination-in-chief of the prosecution witnesses and leads them through the facts so as to present the case of the disciplinary authority against the employee or cross-examines the delinquent employee or his witnesses to establish the case of the employer/disciplinary authority evidently, the enquiry officer cannot be said to have an open mind. The very fact that he presents the case of the employer and supports the case of the employer is sufficient to hold that the enquiry officer does not have an open mind.

19] Their Lordships have noted that there is however a clear and real distinction between an enquiry officer acting as the presenting officer, and an enquiry officer putting some questions to any witness to clarify the evidence or ascertain the truth. They have held that while the first would vitiate the inquiry the second would not. In paragraph 11, their Lordships, by means of an illustration have explained the limits to which an enquiry officer can travel even in a case where no presenting officer is actually appointed. Therein, it is held that if the enquiry officer examines the prosecution witnesses as a prosecutor does by taking them through the prosecution case stage by stage and puts leading questions or questions which are intended to build up the case of the prosecution, and also cross-examines the defence witnesses or puts suggestions to them, to establish the prosecution case, then he crosses the *Laxman Rekha* and becomes the prosecutor and consequently the inquiry becomes vitiated.

20] Finally, the Division Bench has summarised the principles in paragraph 12, which read as follows

> *"12. We may summarise the principles thus:*
>
> *(i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.*

(ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non-appointment of a Presenting Officer, by itself will not vitiate the inquiry.

(iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

(iv) If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case of employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

(emphasis supplied)

21] From the material on record, in the present case, it is apparent that the enquiry officer, in the present case, has examined the departmental witnesses by taking them stage by stage through the departmental case. He has put them leading questions or questions which were intended to build up the case of the department. He has also cross-examined the defence witnesses or puts suggestions to them. In such circumstances, to borrow the expression from the decision in *Mohd. Naseem Siddiqui (supra),* the enquiry officer has crossed *Laxman Rekha* and become the prosecutor.

22] In *Mathura Prasad (supra),* the Hon'ble Supreme Court has held that when an employee is sought to be deprived of his livelihood, the procedures laid down under sub- rules are required to be strictly followed. A judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review.

23] In ***State of Uttaranchal & ors. vs. Kharak Singh – JT 2008 (9) SC 205,*** the Hon'ble Supreme Court (Coram :R.V. Raveendran & P. Sathasivam, JJ.) has interfered with the findings of an enquiry officer, where, from the perusal of enquiry report, it was found that no presenting officer was appointed and the enquiry officer himself inspected the areas in the forest and after taking note of certain alleged deficiencies secured some answers from the delinquent by putting some questions. The Hon'ble Supreme Court has observed that the enquiry officer himself has acted on the investigator, prosecutor and judge. Such a procedure is opposed to principles of natural justice and has been frowned upon by the court.

24] In ***Chamoli District Cooperative Bank Limited and anr. vs. Raghunath Singh Rana and ors. - (2016) 12 SCC 204,*** the Hon'ble Supreme Court has approved the following principles:

> *"From the above decisions, the following principles would emerge:*
>
> *i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.*

ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.”

25] The above principles were in fact, set out in *Kharak Singh (supra)* and reiterated in *Chamoli District Cooperative Bank Limited (supra)* .

26] We have perused the impugned judgment and order made by the CAT in the present case. The CAT has not at all addressed the issue as to the effect of the enquiry officer himself acting as the presenting officer and proceeding to cross-examine the witnesses, in the context of allegation of bias. The CAT, has disposed of the issue of bias by making the following observation at paragraph 12.

> *"12. The contention of the learned counsel for the applicant that the Enquiry Officer was biased cannot be accepted. There is no reasonable ground for assessing the possibility of the bias. The mere fact that the Enquiry Officer recorded the evidence of some prosecution witnesses he cannot be said to be biased. It is not that the Enquiry Officer acted as a party in the Enquiry and also as Enquiry Officer in the same case. The Enquiry Officer himself is not concerned with the matter. There is nothing to show that Enquiry Officer acted with a prejudiced view against the applicant. The record does not show that the Enquiry Officer has prejudice and expressed his opinion before hand. The delay in appointing the Presenting Officer does not cause any prejudice to the applicant. The ratio in A.B. Mishra's case is not helpful to the applicant. In A.B. Mishra's case, the Enquiry Officer was fully biased and prejudiced against the applicant. He was an interested person. He was hostile and inimical to the applicant. There was very grave and serious union dispute between them. The applicant had filed the private complaint in the Magistrate Court against the officer in that respect. In the case before us, the Enquiry Officer is not shown at cross terms with the applicant."*

27] From the aforesaid, it is quite clear that the CAT has in fact, misconstrued the contention of the petitioner and there is no consideration whatsoever to the aspect of the reasonable likelihood of bias arising from the role played by the enquiry officer in the enquiry proceeding. As noted earlier, it is evident that the enquiry officer has combined into himself, the role of prosecutor as well as judge. The enquiry officer in the absence of presenting officer has himself cross-examined all the witnesses and posed searching questions as if, his role was confined to some how or the other establishing the alleged guilt of the petitioner. This is not, as observed by the CAT, a case where the enquiry officer has merely "*recorded the evidence of some prosecution witnesses*". Since, there is virtually no consideration of this aspect or in any case, since there is mis-construction of the very scope of the contention based on doctrine of bias, the impugned judgment and order made by the CAT is liable to be set aside. Further, since in this case, we are satisfied that the entire enquiry on basis of which, the petitioner has been removed from service was nothing but a farce and since, such enquiry, was vitiated by the doctrine of bias, the penalty of removal will have to be set aside. The question which then arises is what is to be the appropriate relief to be granted to the petitioner in such circumstances.

28] Mr. Saxena has himself relied upon *Dr. Harbhajan Singh Greasy (supra)* and *Mathura Prasad (supra),* which lay down that it is well settled that when the enquiry was found to be faulty it would not be proper to direct reinstatement with all consequential benefits, rather, the matter will have to be remitted to the disciplinary authority to follow the correct procedures from the stage at which the fault was pointed out and to take action according to law. Pending enquiry, the delinquent must be deemed to be under suspension. Normally, therefore, this course of action would have to be followed in the matter of this nature.

29] However, learned counsel for the parties state that the petitioner, by now, has already attained the age of superannuation. There was no clarity as to whether there are any provisions, which permit the conduct of departmental enquiry after an employee has attained the age of superannuation. Taking into consideration of all these circumstances, we consider it appropriate to issue the following operative directions, thereby, leaving the choice to the respondents to follow one of the alternatives:

(a) To treat the petitioner as retired whilst under suspension, to pay to the petitioner subsistence/suspension allowance as permissible under the rules; and thereafter to take action as permissible under rules, no doubt, after conduct of departmental proceedings in accordance with Service Rules and principles of natural justice;

(b) In the alternate to drop any further enquiry and to treat the petitioner as having superannuated on the date, he reached the age of superannuation. On this basis, to award the petitioner all the retiral benefits including pension, if applicable along with arrears of such retiral benefits/pension within a period of three months from today.

30] According to us, the aforesaid directions will be in the interests of justice. If, the respondents wish to hold a fresh enquiry into the charges leveled against the petitioner, then, it is only appropriate that the petitioner be deemed to be under suspension until he attained the age of superannuation. Thereafter, if the rules permits, the respondents can very well hold a fresh enquiry to determine the guilt or otherwise of the petitioner and on such basis take further action against the petitioner. Though, we are setting aside the penalty of removal imposed upon the petitioner, consciously and following the dictum in *Dr. Harbhajan Greasy (supra)* , we are not awarding any back-wages or other consequential benefits except suspension/subsistence allowance as permissible under the rules.

31] In the alternate, if the respondents, taking into consideration the circumstance that the petitioner had rendered over two decades of service and further, it is quite some time since he has retired, wish to drop the proposal of holding an enquiry, then, it is only appropriate that the respondents pay to the petitioner of retiral/pensionary benefits as available under the rules. At the same time, taking into consideration the fact that the petitioner's exoneration, is mainly on the ground that the enquiry held against him was not fair and proper and that the petitioner has not actually worked from the date of his suspension from service, it is only appropriate that the petitioner is not awarded full back-wages and other consequential benefits.

32] For all the aforesaid reasons, this petition is allowed and disposed of with the following order:

(a) The impugned judgment and order dated 3rd August 2004 made by the Central Administrative Tribunal in OA No. 784 of 1999 is set aside;

(b) The impugned order dated 7th March 1994, by which the petitioner was removed from service is also set aside;

(c) The respondents are directed to adopt any one of the following alternatives :

(i) To treat the petitioner as retired on attaining the age of superannuation whilst under suspension; to pay to the petitioner subsistence / suspension allowance as permissible under the Rules; and thereafter to take such action as may be permissible under the Rules, in the matter of charge sheet dated 15th June 1990, no doubt, after conduct of departmental proceedings consistent with the service rules and principles of natural justice and fair play; the arrears towards subsistence / suspension allowance from the date of removal i.e. 7th March 1994 till date to be paid within three months from today, failing which, the same shall bear interest at the rate of 6% per annum;

OR

(ii) To drop any further enquiry into charge sheet dated 15th June 1990; to treat the petitioner as superannuated on the date he reached the age of superannuation; and on these basis to award the petitioner all retiral benefits including pension (if available under the service rules) along with the arrears within a period of three months from today. If the arrears are not cleared within a period of three months from today, the same shall bear interest at the rate of 6% per annum from the date the petitioner attained the age of superannuation, till the date of actual payment of such arrears;

(d) Although, the order of petitioner's removal dated 7th March 1994 is set aside, we are consciously not awarding the petitioner any back-wages as such;

(e) Rule is made absolute in the aforesaid terms. There shall however be no order as to costs.

(M.S. SONAK, J.) **(ACTING CHIEF JUSTICE)**