

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1157 of 2019

In

Civil Writ Jurisdiction Case No.8711 of 2017

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1. The State Of Bihar Bihar.
 2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
 3. The Engineer in Chief Madhya cum the Disciplinary Authority, Water Resources Department, Government.
 4. The Officer on Special Duty, Water Resources Department, Government of Bihar, Patna.
 5. The Deputy Secretary, Water Resources Department, Government of Bihar, Patna.
 6. The Chief Engineer, Water Resources Department, Balmiki Nagar, District-West Champaran, Bihar.
 7. The Executive Engineer, Main Western Canal Division, Balmiki Nagar, District West Champaran, Bihar.
 8. Sri Ram Pukar Ranjan, son of Late Laxmi Baitha at present posted as Engineer in Chief, Water Resources Department, Government of Bihar, Patna, resident of Mohalla 4B, Khushi Villa, P.s. Budha Colony, District-Patna.

... .. Appellant/s

Versus

Braj Bhushan Sharma, son of Late Ram Govind Sharma, resident of near Jail Road, Shahpur, Govind Complex, P.S. Shahpur, District Gorakhpur Uttar Pradesh.

... .. Respondent/s

with

Letters Patent Appeal No. 1161 of 2019

In

Civil Writ Jurisdiction Case No.2406 of 2018

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1. The State of Bihar through Principal Secretary, Water Resources Department, Government of Bihar, Patna.
 2. The Joint Secretary, Water Resources Department, Government of Bihar,



Patna.

3. The Deputy Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Engineer in Chief (Madhya), Water Resources Department, Government of Bihar, Patna.
5. The Officer on Special Duty, Water Resources Department, Government of Bihar, Patna.
6. The Chief Engineer, Water Resources Department, Balmiki Nagar, District-West Champaran, Bihar.
7. The Executive Engineer, Main Western Canal Division, Balmiki Nagar, District-West Champaran, Bihar.

... .. Appellant/s

Versus

Md. Sadique Hussain Son of Akramul Haque, Resident of Village-Bahadur Ganj, P.O.-Chikasi, P.S.-Sigori, District-Patna, Bihar.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1157 of 2019)

For the Appellant/s	:	Mr. Anjani Kumar, AAG 4 Mr. Sanjay Kumar (AC To AAG 4)
For the Respondent/s	:	Mr. Prabhat Ranjan, Advocate Mr. Chandan Kumar, Advocate

(In Letters Patent Appeal No. 1161 of 2019)

For the Appellant/s	:	Mr. Anjani Kumar, AAG 4
For the Respondent/s	:	Mr. Prabhat Ranjan

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 12-12-2022

LPA 1157 of 2019

Heard learned counsels for the respective parties.

The present appeal is against the order of the
learned Single Judge dated 14.05.2019 passed in CWJC No.



8711 of 2017.

Respondent Braj Bhushan Sharma, while working as a Junior Engineer was subjected to disciplinary proceeding on certain allegations and it was concluded in imposition of penalty of dismissal from service on 13.04.2017. Feeling aggrieved and dissatisfied with the Inquiring Officer's report dated 09.11.2016 read with the dismissal order dated 13.04.2017 he had preferred CWJC No. 8711 of 2017 and it was decided in his favour on 14.05.2019. Hence the present LPA by the State.

Learned counsel for the State-appellants made one and only submission that the present case is not similar to that of Dinesh Kumar Chaudhary which is cited by the learned Single Judge in its order at para-3 and 4. Today, we pose question as to how the present case is distinguishable to that of Dinesh Kumar Chaudhary. Learned State counsel is not in a position to apprise this Court as to how the present case is different from Dinesh Kumar Chaudhary. In the Dinesh Kumar Chaudhary case, the learned Single Judge has taken note of Apex Court decision in the case of *Union of India & Ors. Vs. P. Gunasekaran*, reported in (2015) 2 SCC 610 and *Roop Singh Negi Vs. Punjab National Bank & Ors.*, reported in (2009) 2 SCC 570. In *Union of India & Ors. Vs. P. Gunasekaran* decision, Apex Court has



elaborately considered under what circumstances the judicial review is permissible in so far as disciplinary proceedings is concerned. The learned Single Judge must have taken note of examination and non-examination of witnesses and in support of that he is relying on Roop Singh Negi decision cited supra. Learned State counsel could not apprise this Court what is the infirmity in the order of the learned Single Judge dated 14.05.2019.

In the light of these facts and circumstances, the State-appellant has not made out a case so as to interfere with the order of the learned Single Judge. However, perusal of the records we feel that it is a case for remand with certain observations in the light of Apex Court decision.

Apex Court in the case of *ECIL v. B. Karunakar*, (1993) 4 SCC 727 read with *Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha and Others* reported in (2011) 5 SCC 142 and the *State of Uttar Pradesh and Others vs. Prabhat Kumar*, 2022 LiveLaw (SC) 736 (para 46 to 50) it is held as under:-

“46.K. RAMASWAMY, J.— I have had the benefit of reading the draft judgment of my learned brother P.B. Sawant, J. While broadly agreeing with his interpretation of Article 311(2), I disagree with his conclusion that the application of Mohd. Ramzan Khan



[(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] ratio to him and his companions was per incuriam. To deal with certain aspects which would flow from our judgment in this batch too, I feel it expedient to express my views. Since my learned brother has critically examined in extenso the historical development and the interpretation given to Section 240(3) of the Government of India Act, 1935 and Article 311(2) of the Constitution of India vis-a-vis the Constitution (Fifteenth Amendment) Act, 1963 and the Constitution (Forty-second Amendment) Act, 1976, I would desist to tread the path once over. For continuity of thought, I would broadly sketch the scope of the phrase “reasonable opportunity of being heard” at an inquiry into a charge and the action proposed to be taken against a member of a civil service or holder of a civil post engrafted in Article 311 of the Constitution and the concept of the principles of natural justice embedded as its part at an inquiry into the charges against an employee or workman/officer of an authority under Article 12 of the Constitution, a workman/officer of an employer compendiously called “the delinquent” as the same principles are applicable to them all. Before doing so it is necessary to state facts in brief in some sample cases.

47. The respondent B. Karunakar in the main appeal while working as a Senior Technical Officer, was served on December 27, 1986 with a Memorandum of Charges setting out the misconduct said to have been committed by him, with details thereof that he had unauthorisedly sold T.V.



sets. The enquiry officer appointed in this behalf conducted the inquiry, recorded the evidence, giving him adequate opportunity to rebut the evidence. On March 13, 1987 the enquiry officer submitted his report finding that the respondent acted fraudulently and dishonestly in conducting the business of the appellant company and acted thereby prejudicially to the interest of the company. On its consideration and agreeing with the findings, the disciplinary authority, by proceedings dated April 27, 1987, removed him from service and on appeal it was confirmed. The Single Judge of the Andhra Pradesh High Court dismissed his writ petition but on appeal, the Division Bench, by judgment dated March 29, 1991 relying on the Union of India v. Mohd. Ramzan Khan [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] allowed it. In this case the rules framed by the company do not require the supply of the copy of the report to the delinquent. In Civil Appeal No. 4148 of 1991 Union of India v. A.J. Shah the respondent, while working as T.T.E. in S.E. Railway, was found to have collected excess amounts from the passengers. The enquiry officer, after giving an opportunity to the respondent, submitted his report and the disciplinary authority agreeing with the findings of guilt recorded by the enquiry officer, reverted him to the grade of Ticket Collector in the pay scale of Rs 950-1500 fixing his initial pay as Rs 950. The CAT at Cuttack set it aside as the enquiry report was not supplied to him holding that it resulted in denial of opportunity and violates the principles of natural justice. In Civil Appeal No. ... of



1993 (arising out of SLP (C) No. 13813 of 1992) State of M.P. v. A. Sheshagiri Rao the respondent, while working as Executive Engineer, was suspended by order dated July 21, 1983. On October 21, 1983 he was served with a charge-sheet. After conducting an inquiry the enquiry officer submitted his report and the disciplinary authority while agreeing with the findings of guilt, reverted him by an order dated October 21, 1987 as an Asstt. Engineer. It was set aside by the Tribunal, holding that non-supply of the enquiry report was denial of opportunity under Article 311(2) and it violates the principle of natural justice. In C.A. No. ... of 1993 (arising out of SLP (C) No. 17484 of 1991) Union of India v. Mohammed Naimulla the respondent was working as an electrical fitter. On March 11, 1983 a charge-sheet was issued. The enquiry officer had given him reasonable opportunity and after completing the inquiry submitted his report that the charges were proved against the respondent. The disciplinary authority by an order dated April 29, 1988 removed him from service. On appeal, it was confirmed. The Tribunal set aside the order. In all these cases the enquiry report was not supplied. In C.A. No. 302 of 1992, Bank of India v. Vinodchandra Balkrishan Pandit the respondent was served with a charge-sheet on August 10, 1982 accusing him of having committed misconduct by taking illegal gratification in his discharge of official duties. The enquiry officer after giving full opportunity found him to have received illegal gratification in the stated instances and was guilty of the charges. The disciplinary authority agreed with the



findings of the enquiry officer; removed him from service by supplying him a copy of the enquiry report along with the order of removal as required under Regulation 9 of the Bank of India Employees (Disciplinary Appeal) Regulations, 1976. Following the Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] the order was set aside. These facts have been stated with a view to illustrate that Ramzan Khan [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] ratio was applied by the Courts/Tribunals to the cases where rules are either absent, or statutory rules were amended after Constitution (Forty-second Amendment) Act, 1976, omitting the obligation to supply a copy of the enquiry report. The Banking Regulations enjoins to supply it along with the order when served.

48. It is settled law that the disciplinary authority, by whatever name called, has power and jurisdiction to inquire into the misconduct by himself or by his delegate and to impose the penalty for proved misconduct of a delinquent. It is a condition precedent that the charge-sheet, statement of facts in support thereof and the record, if any, need to be supplied to the delinquent. The record, if bulky and not having been supplied, an opportunity for inspection and to have copies thereof at his expenses, be given as per rules, regulations or standing orders. The delinquent must be given reasonable opportunity to submit his written statement. In case he denies the charges and claims for inquiry, disciplinary authority or the enquiry officer, if appointed, shall conduct the inquiry. The department



should examine the witness or prove the documents to establish the charge of the imputed misconduct. The delinquent shall be given an opportunity to cross-examine the witnesses, if he so desires to examine himself and to examine his witnesses in rebuttal. After giving an opportunity of being heard the enquiry officer should consider the entire records and the evidence and should submit his report to the disciplinary authority with reasons and findings or conclusions in support of the proof or disproof of each of the charge or charges, as the case may be. He shall transmit the record of inquiry and his report to the disciplinary authority.

In Khem Chand v. Union of India [1958 SCR 1080 : AIR 1958 SC 300 : (1958) 1 LLJ 167] it was held thus:

49. "If the opportunity to show cause is to be a reasonable one it is clear that he should be informed about the charge or charges levelled against him and the evidence by which it is sought to be established, for it is only then that he will be able to put forward his defence. If the purpose of this provision is to give the Government servant an opportunity to exonerate himself from the charge and if this opportunity is to be a reasonable one he should be allowed to show that the evidence against him is not worthy of credence or consideration and that he can only do if he is given a chance to cross-examine the witnesses called against him and to examine himself or any other witness in support of his defence. All this appears to us to be implicit in the language used in the clause, but this does not exhaust his rights. In addition to



showing that he has not been guilty of any misconduct so as to merit any punishment, it is reasonable that he should also have an opportunity to contend that the charges proved against him do not necessarily require the particular punishment proposed to be meted out to him. He may say, for instance, that although he has been guilty of some misconduct it is not of such a character as to merit the extreme punishment of dismissal or even of removal or reduction in rank and that any of the lesser punishments ought to be sufficient in his case.”

50. *In Bachhittar Singh v. State of Punjab [AIR 1963 SC 395 : 1962 Supp (3) SCR 713] another Constitution Bench held that the departmental proceedings taken against the Government servant are not divisible into two compartments. There is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the charges raised against the Government servant have been established or not and the second is reached only if it is found that they are established. That stage deals with the action to be taken against the Government servant concerned. Therefore, from the stage of service of the charge-sheet till the imposition of punishment was considered to be a continuous whole process consisting of the proof of the charge and imposition of the punishment on the proved charge. In Dr M.N. Dasanna v. State of A.P. [(1973) 2 SCC 378 at 383 : 1973 SCC (L&S) 521] a Bench of three Judges held that the inquiry consists of recording evidence, admitting documents*



and generally completing the records upon which the finding would be based. It is only after all the material has been placed on record by both the sides, the stage of recording a finding would arise. In Khardah Co. Ltd. v. Their Workmen [(1964) 3 SCR 506 : AIR 1964 SC 719 : (1963) 2 LLJ 452] a Bench of three Judges held that it is the duty of the enquiry officer to record clearly and precisely his conclusions and to indicate briefly the reasons therefor, so that the Industrial Tribunal can judge whether they are basically erroneous or perverse. In that case since the reasons were not specifically recorded the Court quashed the order of termination. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] another Constitution Bench held that the enquiry report along with the evidence recorded constitute the material on which the Government has ultimately to act, i.e. only the purpose for the inquiry held by the competent officer and the report on which he makes as a result of the said inquiry. The non-supply of the copy of the report contravenes the principle of reasonable opportunity envisaged under Article 311(2) and also violates the principle of natural justice. If the dismissal order is based on no evidence then the order of dismissal is clearly illegal. In State of Maharashtra v. B.A. Joshi [(1969) 1 SCC 804 : (1969) 3 SCR 917] this Court held that the report of the enquiry officer is bound to influence the disciplinary authority; to deprive the plaintiff of a copy of the report was a handicap to the delinquent as he was not knowing what material had influenced the disciplinary authority. Therefore, it was



held that it would be in a rare case in which it can be said that the Government servant was not prejudiced by the non-supply of the report of the enquiry officer. Accordingly the finding of the High Court holding that non-supply of the report violates the principles of natural justice and the statutory provision was upheld by a Bench of three Judges. In State of Gujarat v. R.G. Teredesai [(1969) 2 SCC 128 : (1970) 1 SCR 251] a Bench of three Judges held that the enquiry officer was under no obligation or duty to make any recommendations in the matter of punishment to be imposed on the servant against whom the departmental inquiry was held. Its function was merely to conduct the inquiry in accordance with the law and to submit the record along with his findings or conclusions on the delinquent. If the enquiry officer has also made recommendation in the matter of punishment, that is likely to affect the mind of the punishing authority with regard to the penalty or punishment to be imposed on such officer; it must be disclosed to the delinquent. Since such recommendation form part of the record and constitutes appropriate material for consideration, it would be essential that the material should not be withheld from him so that he could, while showing cause against the proposed punishment, make a proper representation. The entire object of supplying a copy of the report of the enquiry officer is to enable the delinquent to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved the punishment proposed to be



inflicted is unduly severe.”

Apex Court in the case of Prabhat Kumar Vs. State of U.P. reported in **2022 LiveLaw (SC) 736** reiterated the principle laid down in the case of ***ECIL v. B. Karunakar, (1993) 4 SCC 727*** read with ***Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha and Others*** reported in **(2011) 5 SCC 142**.

In the light of the aforementioned judicial pronouncements, the Disciplinary Authority is hereby directed to conclude the departmental inquiry from the defective stage and complete the inquiry within a period of three months from the date of receipt of this order.

Question of reinstatement or suspension is not warranted in the present case for the reasons that respondent Braj Bhusan Sharma is stated to have attained age of superannuation and retired from service on 31.03.2020. Therefore, the Disciplinary Authority is hereby directed to regulate the intervening period from the date of dismissal i.e., from 13.04.2017 till passing of a fresh order in the disciplinary proceedings and regulate the intervening period in accordance with law within a period of one month from the date of passing a fresh order in the departmental inquiry.

The learned counsel for the respondent submitted



that the respondent has not been extended retiral benefits. Of course he is not entitled for retiral benefits unless and until departmental inquiry is concluded. However, he is entitled to provisional pension, the same shall be calculated and disbursed to the respondent within a period of three months from the date of receipt of this order. In other words arrears of provisional pension from 01.04.2020 to this date and continued to pay provisional pension till final decision is taken in the departmental inquiry.

Accordingly, writ petition stands disposed of.
Pending I.As., if any, stands disposed of.

LPA 1161 of 2019

Heard learned counsels for the respective parties.

In the present LPA the appellant State has questioned the validity of the order of the learned Single Judge dated 06.05.2019 passed in CWJC No. 2406 of 2018. The learned Single Judge has noticed that there is non-examination and cross-examination and various lacuna in departmental inquiry, in this regard he has quoted ***Dinesh Kumar Chaudhary vs. State of Bihar and Ors. (CWJC No. 16258 of 2017)*** decided on 04.12.2018 read with Apex Court decision in the case of



Roop Singh Negi Vs. Punjab National Bank & Ors., (2009) 2 SCC 570.

The learned counsel for the State could not apprise this Court as to how he would overcome the decision rendered in the aforesaid cited two decisions. Thereafter one has to draw inference that *prima facie* there is legal lacuna in a departmental inquiry hence question of interference with the order of the learned Single Judge is not warranted. However, we are of the view that certain observation is warranted in the light of the fact that matter has been remanded to the Disciplinary Authority to hold a fresh inquiry.

In the light of these facts and circumstances, the State-appellant has not made out a case so as to interfere with the order of the learned Single Judge. However, perusal of the records we feel that it is a case for remand with certain observations in the light of Apex Court decisions.

Apex Court in the case of ***ECIL v. B. Karunakar, (1993) 4 SCC 727 read with Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha and Others reported in (2011) 5 SCC 142 and the State of Uttar Pradesh and Others vs. Prabhat Kumar, 2022 LiveLaw (SC) 736*** (para 46 to 50) it is held as under:-



“46.K. RAMASWAMY, J.— I have had the benefit of reading the draft judgment of my learned brother P.B. Sawant, J. While broadly agreeing with his interpretation of Article 311(2), I disagree with his conclusion that the application of Mohd. Ramzan Khan [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] ratio to him and his companions was per incuriam. To deal with certain aspects which would flow from our judgment in this batch too, I feel it expedient to express my views. Since my learned brother has critically examined in extenso the historical development and the interpretation given to Section 240(3) of the Government of India Act, 1935 and Article 311(2) of the Constitution of India vis-a-vis the Constitution (Fifteenth Amendment) Act, 1963 and the Constitution (Forty-second Amendment) Act, 1976, I would desist to tread the path once over. For continuity of thought, I would broadly sketch the scope of the phrase “reasonable opportunity of being heard” at an inquiry into a charge and the action proposed to be taken against a member of a civil service or holder of a civil post engrafted in Article 311 of the Constitution and the concept of the principles of natural justice embedded as its part at an inquiry into the charges against an employee or workman/officer of an authority under Article 12 of the Constitution, a workman/officer of an employer compendiously called “the delinquent” as the same principles are applicable to them all. Before doing so it is necessary to state facts in brief in some sample cases.

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Rs 950-1500 fixing his initial pay as Rs 950. The CAT at Cuttack set it aside as the enquiry report was not supplied to him holding that it resulted in denial of opportunity and violates the principles of natural justice. In Civil Appeal No. ... of 1993 (arising out of SLP (C) No. 13813 of 1992) State of M.P. v. A. Sheshagiri Rao the respondent, while working as Executive Engineer, was suspended by order dated July 21, 1983. On October 21, 1983 he was served with a charge-sheet. After conducting an inquiry the enquiry officer submitted his report and the disciplinary authority while agreeing with the findings of guilt, reverted him by an order dated October 21, 1987 as an Asstt. Engineer. It was set aside by the Tribunal, holding that non-supply of the enquiry report was denial of opportunity under Article 311(2) and it violates the principle of natural justice. In C.A. No. ... of 1993 (arising out of SLP (C) No. 17484 of 1991) Union of India v. Mohammed Naimulla the respondent was working as an electrical fitter. On March 11, 1983 a charge-sheet was issued. The enquiry officer had given him reasonable opportunity and after completing the inquiry submitted his report that the charges were proved against the respondent. The disciplinary authority by an order dated April 29, 1988 removed him from service. On appeal, it was confirmed. The Tribunal set aside the order. In all these cases the enquiry report was not supplied. In C.A. No. 302 of 1992, Bank of India v. Vinodchandra Balkrishan Pandit the respondent was served with a charge-sheet on August 10, 1982 accusing him of having committed misconduct by taking illegal



gratification in his discharge of official duties. The enquiry officer after giving full opportunity found him to have received illegal gratification in the stated instances and was guilty of the charges. The disciplinary authority agreed with the findings of the enquiry officer; removed him from service by supplying him a copy of the enquiry report along with the order of removal as required under Regulation 9 of the Bank of India Employees (Disciplinary Appeal) Regulations, 1976. Following the Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] the order was set aside. These facts have been stated with a view to illustrate that Ramzan Khan [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] ratio was applied by the Courts/Tribunals to the cases where rules are either absent, or statutory rules were amended after Constitution (Forty-second Amendment) Act, 1976, omitting the obligation to supply a copy of the enquiry report. The Banking Regulations enjoins to supply it along with the order when served.

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or standing orders. The delinquent must be given reasonable opportunity to submit his written statement. In case he denies the charges and claims for inquiry, disciplinary authority or the enquiry officer, if appointed, shall conduct the inquiry. The department should examine the witness or prove the documents to establish the charge of the imputed misconduct. The delinquent shall be given an opportunity to cross-examine the witnesses, if he so desires to examine himself and to examine his witnesses in rebuttal. After giving an opportunity of being heard the enquiry officer should consider the entire records and the evidence and should submit his report to the disciplinary authority with reasons and findings or conclusions in support of the proof or disproof of each of the charge or charges, as the case may be. He shall transmit the record of inquiry and his report to the disciplinary authority.

In Khem Chand v. Union of India [1958 SCR 1080 : AIR 1958 SC 300 : (1958) 1 LLJ 167] it was held thus:

49. "If the opportunity to show cause is to be a reasonable one it is clear that he should be informed about the charge or charges levelled against him and the evidence by which it is sought to be established, for it is only then that he will be able to put forward his defence. If the purpose of this provision is to give the Government servant an opportunity to exonerate himself from the charge and if this opportunity is to be a reasonable one he should be allowed to show that the evidence against him is not worthy of credence or consideration and that he can only do if he is



given a chance to cross-examine the witnesses called against him and to examine himself or any other witness in support of his defence. All this appears to us to be implicit in the language used in the clause, but this does not exhaust his rights. In addition to showing that he has not been guilty of any misconduct so as to merit any punishment, it is reasonable that he should also have an opportunity to contend that the charges proved against him do not necessarily require the particular punishment proposed to be meted out to him. He may say, for instance, that although he has been guilty of some misconduct it is not of such a character as to merit the extreme punishment of dismissal or even of removal or reduction in rank and that any of the lesser punishments ought to be sufficient in his case.”

50. *In Bachhittar Singh v. State of Punjab [AIR 1963 SC 395 : 1962 Supp (3) SCR 713] another Constitution Bench held that the departmental proceedings taken against the Government servant are not divisible into two compartments. There is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the charges raised against the Government servant have been established or not and the second is reached only if it is found that they are established. That stage deals with the action to be taken against the Government servant concerned. Therefore, from the stage of service of the charge-sheet till the imposition of punishment was considered to be a continuous whole process consisting of*



the proof of the charge and imposition of the punishment on the proved charge. In Dr M.N. Dasanna v. State of A.P. [(1973) 2 SCC 378 at 383 : 1973 SCC (L&S) 521] a Bench of three Judges held that the inquiry consists of recording evidence, admitting documents and generally completing the records upon which the finding would be based. It is only after all the material has been placed on record by both the sides, the stage of recording a finding would arise. In Khardah Co. Ltd. v. Their Workmen [(1964) 3 SCR 506 : AIR 1964 SC 719 : (1963) 2 LLJ 452] a Bench of three Judges held that it is the duty of the enquiry officer to record clearly and precisely his conclusions and to indicate briefly the reasons therefor, so that the Industrial Tribunal can judge whether they are basically erroneous or perverse. In that case since the reasons were not specifically recorded the Court quashed the order of termination. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] another Constitution Bench held that the enquiry report along with the evidence recorded constitute the material on which the Government has ultimately to act, i.e. only the purpose for the inquiry held by the competent officer and the report on which he makes as a result of the said inquiry. The non-supply of the copy of the report contravenes the principle of reasonable opportunity envisaged under Article 311(2) and also violates the principle of natural justice. If the dismissal order is based on no evidence then the order of dismissal is clearly illegal. In State of Maharashtra v. B.A. Joshi [(1969) 1 SCC 804 : (1969) 3 SCR 917] this Court held that



the report of the enquiry officer is bound to influence the disciplinary authority; to deprive the plaintiff of a copy of the report was a handicap to the delinquent as he was not knowing what material had influenced the disciplinary authority. Therefore, it was held that it would be in a rare case in which it can be said that the Government servant was not prejudiced by the non-supply of the report of the enquiry officer. Accordingly the finding of the High Court holding that non-supply of the report violates the principles of natural justice and the statutory provision was upheld by a Bench of three Judges. In State of Gujarat v. R.G. Teredesai [(1969) 2 SCC 128 : (1970) 1 SCR 251] a Bench of three Judges held that the enquiry officer was under no obligation or duty to make any recommendations in the matter of punishment to be imposed on the servant against whom the departmental inquiry was held. Its function was merely to conduct the inquiry in accordance with the law and to submit the record along with his findings or conclusions on the delinquent. If the enquiry officer has also made recommendation in the matter of punishment, that is likely to affect the mind of the punishing authority with regard to the penalty or punishment to be imposed on such officer, it must be disclosed to the delinquent. Since such recommendation form part of the record and constitutes appropriate material for consideration, it would be essential that the material should not be withheld from him so that he could, while showing cause against the proposed punishment, make a proper representation. The entire object of supplying a copy of the report of the enquiry



officer is to enable the delinquent to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved the punishment proposed to be inflicted is unduly severe.”

Apex Court in the case of ***Prabhat Kumar Vs. State of U.P.*** reported in ***2022 LiveLaw (SC) 736*** reiterated the principle laid down in the case of ***ECIL v. B. Karunakar, (1993) 4 SCC 727*** read with ***Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha and Others*** reported in ***(2011) 5 SCC 142***.

In the present case the respondent has not yet attained the age of superannuation and retirement from service therefore, the Disciplinary Authority is hereby directed to examine as to whether the respondent should be reinstated or placed under suspension. Such a decision shall be taken within a period of one month from the date of receipt of this order in the light of the observation made by the Apex Court cited supra.

In the light of the aforesaid judicial pronouncements, the Disciplinary Authority is hereby directed to conclude the departmental inquiry from the defective stage and complete the inquiry within a period of three months from the date of receipt of this order.

The intervening period from the date of punishment



till passing of afresh order in the disciplinary proceedings be regulated within one month from the date of afresh order to be passed in the disciplinary proceedings, in accordance with relevant provisions of Bihar Service Code.

Accordingly, writ petition stands disposed of.
Pending I.As., if any, stands disposed of.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

Niraj/aditya

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	15.12.2022
Transmission Date	N/A

