

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Before: Honb'ble Justice Shampa Sarkar

WPA 5745 of 2020

Arnab Bhattacharjee

Vs.

Bengal Chemicals & Pharmaceuticals Ltd. & Ors.

For the petitioner : Mr. Ashim Kumar Routh,
Mr. Subhabrata Choudhury.

For the respondents : Mr. Jaydip Kar,
Mr. Supriya Ranjan Saha,
Mr. S. Choudhury.

Hearing concluded on: 24.03.2022

Judgment on: 20.05.2022

Shampa Sarkar, J.:-

1. The subject matter of challenge in the writ petition is the order of dismissal bearing No. MD/AB/13-14/29.09/19-2020-2021, dated June 5, 2020, and the procedure adopted in the departmental proceeding initiated against the petitioner by issuance of a charge sheet bearing No. MD/AB/13-14/ 29.09/19, dated April 18, 2019. The petitioner has impugned the said order of dismissal and the disciplinary proceedings on several grounds, namely, lack of jurisdiction of the disciplinary authority, vague and motivated charge sheet, failure to prove the charges, procedural

irregularities, violation of the principles of natural justice, denial of his prayer for production of witnesses, non-issuance of a second show cause notice, violation of the service rules and harsh and disproportionate punishment, which did not commensurate with the charges.

2. The disputes and the allegations as averred in the writ petition are as follows:-

a) The petitioner was appointed as the Deputy General Manager (Finance) of the Bengal Chemicals & Pharmaceuticals Ltd. (a Government of India Enterprise) on July 1, 2014. The petitioner was posted at the registered office and he reported to the Managing Director of the Company. During the period of probation, the petitioner received accolades and appreciation from the Director (Finance), for his sincere work.

b) On September 3, 2016, the petitioner was transferred to the Panihati factory. The petitioner started performing his duties at the factory and again on November 2, 2018, the petitioner was served with an unsigned copy of a transfer order issued by the Deputy General Manager (HR & Administration) of the company. By the said letter, the petitioner was transferred to the accounts department of the Kanpur factory of the company. The release order from the Panihati factory was issued on November 2, 2018 and the petitioner received the

same on November 5, 2018. Challenging the transfer order, the petitioner filed a writ petition being WP No. 22633(W) of 2018. The writ petition was disposed of without any orders. The petitioner joined the Kanpur factory and started working in it's accounts department from December, 2018. His performance was always good. The audit and accounts of the Kanpur factory was completed for the financial year 2019-2020. Final accounts had been prepared and audited by the authorized auditor of the company.

- c) Upon completion of the audit and accounts as indicated, on or about April 11, 2019, the petitioner made a request to transfer him from the Kanpur factory to the corporate office at Kolkata. Instead of considering such representation, the employer served the petitioner with a charge sheet dated April 18, 2019. The charge sheet, containing the articles and memorandum of charges was issued by the Managing Director (AC) & Director (Finance), Bengal Chemicals & Pharmaceuticals Ltd. The charge sheet was issued under Rule 25 of the Bengal Chemicals & Pharmaceuticals Ltd. (Conduct Discipline and Appeal) Rules. 1985 (hereinafter referred to as the said Rules).
- d) The charges against the petitioner, inter alia, were illegal printing of a letterhead in his personal name with the logo of the company, acts of misconduct, lack of integrity, negligence

to perform his duties, absenteeism, not maintaining office hours, reaching the office late, leaving the office before the end of the day, not being available during the stock audit at the Kanpur factory, wilful insubordination, disobedience of the orders of the superiors and acting in a manner prejudicial to the interest of the company.

- e) The petitioner submitted his written statement of defence on May 2, 2019, denying the charges. Upon receiving the written statement of defence, the petitioner was informed that the management had decided to hold an enquiry under Rule 25 of the said Rules and one Sri Asim Kumar Das had been appointed as the inquiring authority. Challenging the appointment of the said inquiring authority, the petitioner filed WP No. 10122(W) of 2019. The challenge was on the ground that the inquiring authority, not being a public servant, could not have been so appointed as per the said Rules. As the company had itself replaced Sri Asim Kumar Das by Sri Alokendu Mukherjee, the writ petition was disposed of without any orders. Sri Alokendu Mukherjee was a retired Judicial Officer. The petitioner challenged such appointment by filing WP No. 15290(W) of 2019. The writ petition WP No. 15290(W) of 2019 was disposed of upon recording that as the appointment of Sri Alokendu Mukherjee had been withdrawn

by the company and one Dr. Santosh Kumar Naskar, a retired Deputy Director of the Government of India had been appointed as the inquiring authority in his place, the challenge in the writ petition did not survive. One Sri Tapan Chakraborty, Deputy General Manager (HR & Administration), was finally appointed as the presenting officer in the proceedings.

- f) A preliminary hearing was fixed on October 10, 2019 at 3.00 p.m. at the Panihati factory. On October 4, 2019, the petitioner wrote a letter to the inquiring authority seeking some clarifications and also prayed for an adjournment. The preliminary hearing was held on October 10, 2019. Proceedings were thereafter held on October 21, 2019 and October 28, 2019. November 4, 2019 was fixed as the next date. On October 30, 2019, the petitioner made a request before the disciplinary authority for replacement of the presenting officer. The disciplinary authority declined such request. Thereafter, the proceedings were held on November 4, 2019, November 12, 2019, November 15, 2019, November 23, 2019, November 27, 2019, December 7, 2019, December 9, 2019, December 12, 2019, December 17, 2019, December 24, 2019, and December 27, 2019. The next date of hearing was fixed on December 31, 2019. By a letter dated December 30, 2019, the petitioner

requested the Inquiring Authority for an adjournment of the hearing fixed on December 31, 2019.

- g) Adjournment was refused and the proceeding was held on December 31, 2019. The petitioner did not attend the said proceeding and the inquiring authority closed the proceeding and asked the presenting officer and the petitioner to file their written briefs within 15 days there from.
- h) The adjournment was prayed primarily on the ground that some post operative tests of his son was to be conducted on December 31, 2019.
- i) Thereafter, by a letter dated January 13, 2020 the petitioner requested the inquiring authority for extension of time for submitting the written brief. Seven days' time was granted to the petitioner.
- j) Arguments had not been advanced by either party, evidence was not completed, but the proceedings were closed. The decision of the inquiring authority dated December 31, 2019 was challenged by the petitioner in WPA 1365 (W) of 2020. The writ petition could not be moved during the pandemic situation.
- k) That a second disciplinary proceeding was again initiated by issuance of a second charge sheet bearing No. MD/AB/19-

20/20.09/19 on the self same cause of action, which did not progress thereafter, but has been kept pending.

- l) The inquiring authority concluded the proceedings, and filed his report dated March 17, 2020 without granting further adjournment to the petitioner. The petitioner was asked to file his objections to the report, within 15 days from receipt thereof.
- m) The petitioner repeatedly wrote to the disciplinary authority about his inability to submit the objection to the said report in view of the pendency of another writ petition being WPA No. 1365(W) of 2020.
- n) The disciplinary authority granted the petitioner time up to May 26, 2020, to file his objections to the enquiry report.
- o) All of a sudden, the final order of punishment dated June 5, 2020 was served upon the petitioner by email as also by courier. Major penalty of dismissal from service was imposed with immediate effect.
- p) The authority passed the final order of dismissal during the lockdown period, thereby violating the office Memorandum dated March 30, 2020 issued by the Government of India, Department of Personnel & Training (Establishment A-III Desk).

3. Mr. Routh learned Advocate for the petitioner contended before this Court, that the initiation of the disciplinary proceedings from the stage of issuance of the charge sheet up to the final order of dismissal was irregular, contrary to the service rules, mala fide, arbitrary, and in violation of the principles of the natural justice. That the charges against the petitioner, were not proved. That the inquiring authority had gone beyond the charges and had extended the scope of the inquiry to various issues which were not a part of the Articles and Memorandum of charges. The charge sheet was vitiated and must be quashed. He further contended that, the charge sheet was issued by the Managing Director (AC) and Director (Finance) (hereinafter referred as to the said authority), who was not the disciplinary authority of the petitioner, according to the company itself. The company's case was that the Board was the disciplinary authority, the appellate authority and the reviewing authority. Thus the charge sheet was issued by an authority not authorized by the law. Mr. Routh's contrary argument was that assuming the Managing Director (AC) and Director (Finance) was the disciplinary authority, then the Board could not have issued the order of punishment. He objected to the records with regard to the delegation of power of the Board which were not before the inquiring authority.

4. Mr. Routh, further submitted that if the Board was the disciplinary authority, the appellate authority and also the reviewing authority as per the company, in that case the petitioner did not have either an appellate forum or a forum for review. Under such circumstances, a second show cause notice ought to have been served, containing the proposed punishment.
5. It was next contented that Rule 25 of the said Rules had not been followed by the disciplinary authority. The charges and statements of imputation of misconduct were vague and not substantiated by facts. The charges did not satisfy the definition of misconduct as stated in the service rules.
6. According to Mr. Routh, printing the name of the petitioner on a letterhead with a logo of the company for official purpose was permissible and such permission was granted by the authority. Non-mentioning of the CIN of the company was a mistake and totally unintentional. He further submitted that the charges under Articles II to VI were false and baseless as the records would reveal that the petitioner had successfully discharged his duties as the Deputy General Manager (Finance) at the Panihati Factory and at the Kanpur Factory. The audited statements of accounts would reveal that during the tenure of the petitioner at the Kanpur and Panihati factories, there had been no discrepancies in the accounts and the statutory compliances had

been met by the company. The auditors did not ever raise any queries or objection with regard to the accounts and as such there could not have been any allegation of dereliction of duty, insubordination or misconduct against the petitioner.

7. With regard to the Article VII of the charges, it was submitted that a mere suggestion to prefer an appeal through a consultant against the order suffered by the company, by ante dating the appeal was irrelevant and inconsequential. A casual conversation ought not to have been taken seriously and used against the petitioner, when no loss was caused to the company.
8. Next, it was contended that despite having requested the inquiring authority to summon some of the employees of the company as witnesses in the proceeding, the prayer was not allowed, although such request was permissible under the said Rules. This, according to the petitioner, amounted to violation of the principles of natural justice. Next, it was submitted that assuming the said charges had been proved, the punishment of dismissal from service was shockingly disproportionate and harsh.
9. It was further submitted that as the petitioner had been going through a crisis in his family due to a spine operation of his minor son and ailment of his aged mother at Kolkata, he was compelled to take leave. For the period of his absence at the Kanpur factory

when the audit was being conducted, he had applied for leave. Such leave had been denied and he was marked absent on those days. According to the petitioner, the records did not reveal that on account of such leave or absence of the petitioner, the company had suffered any loss or prejudice. No significant audit queries were raised. The audit and accounts of the Kanpur factory were completed, as per the rules. The statutory compliances had not been overlooked by the petitioner and the audited accounts and statements were proof of the fact that the petitioner had discharged his duties as the Deputy General Manager (Finance), diligently, in spite of having taken leave under compelling circumstances. Mr. Routh urged that entering the office five to six minutes late should not result in the imposition of the maximum punishment of dismissal. According to the petitioner, the entire action of the authority was motivated, mala fide and a ploy to get rid of the petitioner, on frivolous and baseless allegations.

10. The petitioner assailed the enquiry report, inter alia, stating that the inquiring authority had travelled beyond the scope of the charge sheet, formulated his own issues and decided the same, against the petitioner. Mr. Routh submitted that the inquiring authority had accepted the statements of witnesses produced by the company and the charges as gospel truth and reproduced them in his report, without assessing the evidence on record.

Even the company was not asked to advance arguments in the proceeding in support of the charges against the petitioner. The charges were accepted and copied verbatim, in the report. The records also did not reveal that the written brief had been submitted by the company.

11. Mr. Routh, next submitted that by concluding the proceeding without allowing the petitioner an adjournment, at a juncture when the petitioner was unable to concentrate on the proceedings due to the spine operation and post operative care of his son, the inquiring authority acted mala fide, in violation of the principles of natural justice and also in gross violation of the service rules. He further submitted that before the inquiring authority concluded the hearing, an opportunity should have been given to the petitioner to examine the company's employees and to present his case. The prayer of the petitioner to summon the employees of the company as witnesses should have been accepted by the inquiring authority.

12. The petitioner relied on the following decisions:

- (a) *State Bank of India vs Mohammad Badruddin* (2019) 16 SCC 69**
- (b) *Commr. of Police v. Sat Narayan Kaushik*, (2016) 6 SCC 303**
- (c) *Chamoli Dist.Coop.Bank ... vs Raghunath Singh Rana & Ors.* 2016 (3) Supreme 676**

- (d) *Brij Nandan Kansal v. State of U.P.*, 1988 Supp SCC 761**
- (e) *Chairman-Cum-M.D., Coal India ... vs Ananta Saha & Ors.* 2011 (3) Supreme 524**
- (f) *State Bank of India and Ors. vs B.R.Saini***
- (g) *Kalabharati Advertising vs Hemant Vimalnath Narichania & Ors.* AIR 2010 Supreme Court 3745**
- (h) *Delhi Development Authority vs H.C. Khurana.* AIR 1993 SC 1488**
- (i) *Nagaraj Shivarao Karjagi vs Syndicate Bank Head Office, Manipal and another* AIR 1991 SC 1507**
- (j) *Surjit Ghosh vs Chairman & Managing Director United Commercial Bank.* AIR 1995 SC 1053**
- (k) *Badrinath vs Government of Tamil Nadu and Ors.* AIR 2000 SC 3243**
- (l) *Union of India and Others vs. Paul George.* (2014) 1 SCC 352**

13. Mr. Jaydip Kar learned senior counsel appearing on behalf of the respondents submitted that the Board was the appointing as also the disciplinary authority. The said Rules also provided that an appeal or review would lie before the Board. In issuing the charge sheet, the Managing Director acted as a delegatee of the Board. The managing director was authorized to act on behalf of the Board. The issuance of the charge sheet was ratified by the Board. He submitted that the Board by a resolution dated September 21, 2018 authorized the Director (Finance) & Managing Director (AC) to take all necessary action as per the rules and regulations of the said company, against negligent employees.
14. Delegation of power to the Managing Director was done under Article 78 of the Memorandum and Association of the company.

The charge sheet dated April 18, 2019 was accordingly issued by the respondent no. 3. Such action of the respondent no. 3 in issuing the charge sheet was ratified by the Board. Similarly, the approval of the Board was also taken before the order of dismissal was issued.

15. He further submitted that the present Board had been newly constituted. The present members of the Board were not part of the earlier proceedings and could function as the appellate authority. That the petitioner had the right to approach the Board as the appellate authority against the order impugned, in terms of the service Rules. It was contended that the inquiring authority was appointed on September 30, 2019. The petitioner was afforded full opportunity to defend the charges. He was given the copies of the documents relied upon by the disciplinary authority. He was given inspection of the original exhibits. He cross examined the first four witnesses of the company, but as the petitioner tried to drag the proceedings by seeking repeated adjournments, the enquiry was concluded. On several occasions, adjournments had been granted on account of the illness of the petitioner's mother and the operation of his son. Even after the conclusion of the enquiry, the inquiring authority had given several opportunities to the petitioner to submit his written brief of defence, but the petitioner, himself, did not avail of such

opportunities and, as such, the question of violation of the principles of natural justice, did not arise.

16. With regard to the allegation that the charges were vague and the charge sheet was motivated, Mr. Kar urged that the first charge was with regard to a serious violation of the provisions of the Companies Act, 2013. The employees were repeatedly informed that the letterhead of the company should contain the company's CIN. The office orders were mailed to the employees to ensure such compliance.
17. That the petitioner printed his own name on the company's letterhead without any permission from the authority and by not incorporating the CIN, he had acted in violation of the provisions of the law which could attract fine of Rs. 1000 per day from the date of non-compliance, which would be payable by the company for the petitioner's irresponsible and negligent behaviour.
18. Relying upon the biometric records of the attendance which were annexed to the affidavit in opposition, Mr. Kar submitted that the petitioner was a habitual late comer and being a senior officer he could not afford to be late. He had set a bad example to his subordinates. Such action of the petitioner amounted to insubordination, dereliction of duty and non-compliance of the service rules. Absenting from duty during the stock audit was a serious instance of misconduct and relying upon the decision of

the Hon'ble Apex Court in **L & T Komatsu Ltd. Vs. N. Udayakumar reported in (2008) 1 SCC 224**, Mr. Kar submitted that regular absenteeism could well invite disciplinary proceedings and would justifiably lead to imposition of the major penalty of dismissal from service.

19. With regard to charges no. VII and VIII, Mr. Kar relied on several documents in order to show that the petitioner wanted some illegal gratification through his consultant and such intention was an instance of moral turpitude. Relying on the enquiry report, Mr. Kar specifically illustrated before the court that the inquiring authority had dealt with each and every charge and had come to specific findings with reasons. Mr. Kar relied on several decisions of the Hon'ble Apex Court to show that a second show cause notice was not required to be issued, after the 42nd amendment of the Constitution of India. According to Mr. Kar, the charges levelled against the petitioner fell within the definition of misconduct as elaborated under Rule 5 of the said Rules. From the enquiry report, Mr. Kar tried to point out that the findings of the inquiring authority were based on both oral and documentary evidence.
20. Mr. Kar submitted that December 31, 2019, was fixed for resumption of the adjourned hearing held on December 27, 2019. The PW 5 was ready for his cross examination, by the petitioner.

The PW 5 had already appeared before the inquiring authority on several days for his cross examination, but the petitioner failed to cross examine the said witness and prayed for adjournments one after the other on the ground of illness of his family members. That the petitioner unnecessarily asked for certain documents namely audit reports, service rule book, pay rolls of employees etc which were not relevant for the proceedings. The inquiring authority on many occasions, had directed the petitioner to produce his defence witnesses and documents, but the petitioner failed to produce his witnesses and documents. As many as fifteen days had been fixed for hearing, out of which the petitioner attended only eight hearings and on the rest of the seven hearings, the petitioner was absent.

21. The petitioner was not cooperating and as such the order dated December 31, 2019 had been passed. The inquiring authority refused to adjourn the hearing on December 31, 2019 and concluded the hearing by asking the petitioner and the presenting officer, to file their written briefs.
22. Even, thereafter, the petitioner failed to submit his written brief despite several opportunities having been granted. The enquiry report was submitted by the inquiring authority on March 17, 2020. The report was forwarded to the petitioner on March 20, 2020. The petitioner refused to file his reply to the said enquiry

report. Several opportunities were granted to the petitioner to file his objection/representation to the enquiry report, upto May 6, 2020. The petitioner failed to file the reply to the report. A final opportunity was given to the petitioner to file this reply to the report by June 3, 2020. The petitioner did not file any objection and or reply to the enquiry report and the order of dismissal from service was passed, on June 5, 2020. Mr. Kar urged that the inquiring authority proceeded in accordance with law, granted several opportunities to the petitioner to contest the proceedings, to adduce his evidence, cross examine witnesses, and to file defence documents. The adjournments, as far as practicable, were granted to the petitioner and ultimately, the inquiring authority came to the conclusion that the petitioner was only trying to delay the proceedings and did not have any intention to co-operate. He next submitted that the principles of natural justice were not violated. The petitioner failed to adduce evidence by calling his witnesses. He himself did not depose. It was neither for the inquiring authority nor the company to procure witnesses on his behalf. That overall, the entire proceeding up to the issuance of the order of punishment, was conducted as per law. The service Rules were followed and the principles of natural justice were complied with. He submitted that the petitioner had failed to produce instances to show that serious prejudice had been

caused to him by the inquiring authority during the entire proceeding. Thus, according to Mr. Kar, the order of dismissal should be upheld. Mr. Kar relied on the following decisions:

- (a) *National Institute of Technology and another vs Pannalal Choudhury and another.* (2015) 11 SCC 669**
- (b) *Union of India and Others vs Bishamber Das Dogra.* (2009) 13 SCC 102**
- (c) *Indian Institute of Technology, Bombay vs. Union of India and Others.* 1991 Supp (2) SCC 12**
- (d) *Dhruba pada Ghosh vs. Bank of Baroda and Ors.* 2001(2) CHN 632**
- (e) *Government of Andhra Pradesh and another vs N.Ramanaiah.* (2009) 7 SCC 165**
- (f) *Managing Director, ECIL, Hyderabad and others vs. B.Karunakar and others.* (19993) 4 SCC 727**
- (g) *Union of India and Others vs. Mohd. Ramzan Khan.* (1991) 1 SCC 588**
- (h) *L & T Komatsu Ltd. Vs. N. Udayakumar.* (2008) 1 SCC 224**
- (i) *State of Uttar Pradesh and others vs. J.P. Saraswat.* (2011) 4 SCC 545**
- (j) *S.R. Tewari vs. Union o India and another.* (2013) 6 SCC 602**
- (k) *Union of India and Others vs Alok Kumar.* (2010) 5 SCC 349**

23. The rival submissions of the parties are dealt with one by one.

With regard to the jurisdiction of the respondent No. 3 in issuing the charge sheet, this Court does not accept the contention of the petitioner. Under the said rules and as per the amended schedule read with Rule 3.1, the Board is the disciplinary authority for

imposition of all penalties on the officers who fall under category II of the category of employees mentioned in the said schedule. The petitioner is in the said category. The appointing authority as also the disciplinary authority of the petitioner, is the Board.

24. The Board, vide resolution dated July 11, 2016, approved the delegation of financial, operational and administrative powers to the Director (Finance) till the regular Managing Director was appointed. Copy of the Board's resolution has been annexed to the affidavit in opposition filed by the Company. By the said resolution, the respondent No. 3 was given the additional charge of Managing Director. The Joint Secretary to the Government of India, by a letter dated July 19, 2016 entrusted the Director (Finance) with the additional charge of Managing Director of the Company. The Under Secretary to the Government of India, Ministry of Chemical and Fertilizers, Department of Pharmaceuticals, by a letter dated January 21, 2019 conveyed the approval of the Minister on the decision of the department to entrust the additional charge of the post of the Managing Director of the company to the Director (Finance) for a period of six months, which was further extended from time to time.
25. Article 78 of the Articles of Association of the Company permits delegation of authority and power of the Board to the Managing Director. The relevant portion is quoted below:

“(i) The Board may from time to time delegate such of its powers as may think fit to the Chairman and Managing Director or Managing Director, subject to such terms and conditions and restriction as the Board may deem fit necessary to impose and the Board may from time to time revoke, amend or vary any of the power so delegated.

(ii) The Chairman and Managing and/or Managing Director may sub delegate of any of the power delegated to him by the Board to any officer of other employees was of the company, subject to the conditions that every such sub-delegation of his power will be reported to the Board.”

26. Thus, the Director (Finance) who was given the additional charge of the Managing Director was delegated all the functions of the Board. The said authority had the jurisdiction to issue the charge sheet as a delegatee of the Board. After the issuance of the charge sheet dated April 18, 2019, the Board ratified such action in its 191st meeting, Extract of the resolution of the said meeting has also been annexed with the affidavit-in-opposition.

The definition of the Board as per the Rules is quoted below:

Rule 3(d)- “Board means the Board of Directors of the Company and includes, in relation to the exercise of powers, any Committee of the Board or any Officer of the Undertaking to whom the Board delegates any of its powers.”

27. Thus, according to the definition of the Board, any officer of the company could be delegated the powers of the Board and any

action taken by such officer pursuant to such delegation would be considered to be the action of the Board. The issuance of the charge sheet by Managing Director (Additional Charge) and Director (Finance), who was as a delegatee of the Board, is upheld. The decision relied upon by Mr. Kar with regard to ratification in the matter of ***National Institute of Technology and another vs Pannalal Choudhury and another*** reported in **(2015) 11 SCC 669** is applicable. The relevant paragraph is quoted below:

“33. Applying the aforementioned law of ratification to the facts at hand, even if we assume for the sake of argument that the order of dismissal dated 16-8-1996 was passed by the Principal and Secretary who had neither any authority to pass such order under the Rules nor was there any authorisation given by the BoG in his favour to pass such order yet in our considered view when the BoG in their meeting held on 22-8-1996 approved the previous actions of the Principal and Secretary in passing the respondent's dismissal order dated 16-8-1996, all the irregularities complained of by the respondent in the proceedings including the authority exercised by the Principal and Secretary to dismiss him stood ratified by the competent authority (Board of Governors) themselves with retrospective effect from 16-8-1996 thereby making an invalid act a lawful one in conformity with the procedure prescribed in the Rules.”

The Director Finance had been delegated all the powers of the Board. The question of jurisdiction of the Managing Director (AC) and the Director (Finance) was not raised in the written statement

of defence and, as such, the office orders relating to such delegation, were not filed before the inquiring authority.

28. The next point to be taken up for consideration is the allegation of violation of the principles of natural justice. The records reveal that the petitioner had prayed before the inquiring authority that some employees of the company should be summoned on his behalf so that they could be examined by him. It was mentioned by the petitioner that as the petitioner was not in a position to summon them as his witnesses who were employees of the company, and were not within the administrative control of the petitioner, they might not agree to appear. Such prayer of the petitioner was denied by the inquiring authority on the ground that the petitioner had failed to substantiate before the inquiring authority as to why such witnesses were necessary and had also failed to ascertain whether such witnesses were ready to depose on his behalf.

The relevant paragraph of the minutes of the meeting held on November 23, 2019 denying such prayers, is quoted below:

“IA asked the CO to produce his defence assistant and witnesses. He informed that at this stage he will not take defence assistant, he will cross examine prosecution witnesses. And regarding the witness he submitted the list of witness in the last hearing held on 15th November, 2019 where he did not mention the Department and their willingness to appear before the Inquiry Authority.

IA asked CO to produce the defence witness today, CO informed that it is the responsibility of the Management to provide them and give their witness before the IA.

The PO informed that it is the responsibility of the delinquent officer (CO) to produce his witnesses. If the witnesses apply to the management for appearing before the IA for their witness in favour of the CO then the management will allow them.

CO informed that due to fiduciary relationship between defence and management the witness may not appear before the IA. As they may be threatened by the management not to appear before the IA. So, he is unable to produce the witness on his own."

The relevant paragraph of minutes of the meeting held on December 12, 2019 which is quoted below:

"PO informed that it is the responsibility of the delinquent officer with the CO to produce his witness. If the witness apply to the management for appearing before the IA for defence witness in favour of CO then the management will allow them as per CDA Rule (Rule 25 and sub rule 14) of BCPL.

CO informed due to the fiduciary relationship between the defence witness and the prosecution witness may not appear before the IA and they may be threatened by the management not to appear before the IA? So he expresses his inability to produce the witness before the IA by himself and in this regard IA mentioned about one paper submitted before IA on 23/11/19 where only mentioned list of witness not addressed anybody and secondly mentioned one mail sent to IA on 26/11/19 mentioning therein list of witness and additional document as defence documents letter 1 and 2. IA shall be passed an order in these two matter dated 23/11/19 & 26/11/19 in the next date of hearing".

29. Any disciplinary proceeding must be conducted by strict adherence to the principles of natural justice. One of the essential ingredients of the principle of natural justice is to allow the delinquent officer to adduce evidence and examine his own

witnesses and also cross examine the prosecution witnesses. In this case, the cross-examination of PW 5 was not completed. The enquiry authority not only closed the cross-examination of PW5, but also closed the entire proceeding. The petitioner was neither allowed to cross examine the PW 5 nor examine himself and above all the petitioner's request for summoning witnesses who were employees of the company for the purpose of examination by the petitioner, had been denied. An obligation was cast upon the petitioner to produce these witnesses upon expression of their willingness to depose on behalf of the petitioner. Lastly, the petitioner was not even allowed to place his case before the inquiring authority. The procedure as laid down under Rule 25 of the said rules has not been followed by the Inquiring Authority, especially Rule 13 to 17 of the said Rules thereof. Thus, the proceeding, in the opinion of the Court was concluded in violation of the principles of natural justice and also in disregard to the service Rules.

30. In ***Taylor vs. Taylor***, reported in **1875(1) Ch. D 426**, the principle laid down was that if a statute had conferred power to do an act and had laid down the method in which that power had to be exercised, it necessarily prohibited the doing of the act in any other manner than that which had been prescribed.

31. Sub-Rule 13 to 17 of Rule 25 of the said Rules are quoted hereinbelow:

“Rule 25. Procedure for imposing major penalties

13. When the case for the Disciplinary authority is closed, the employee may be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the employee shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any appointed.

14. The evidence on behalf of the employee shall then be produced. The employee may examine himself in his own behalf if he so prefers. The witnesses produced by the employee shall then be examined and shall be liable to cross-examination, re-examination and examination by the Enquiring Authority according to the provision applicable to the witnesses for the Disciplinary authority.

15. The Enquiring Authority may, after the employee closes his case, and if the employee has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the employee to explain any circumstances appearing in the evidence against him.

16. After the completion of the production of the evidence, the employee and the Presenting Officer may file written briefs of their respective areas within 15 days of the date of completion of the production of evidence.

17. If the employee does not submit the written statement of defence referred to in sub-rule (3) on or before the date specified for the purpose or does not appear in person or through the assisting officer or otherwise fails or refuses to comply with any of the provisions of these rules, the Enquiring Authority may hold the enquiry ex parte.”

32. When the petitioner had himself submitted before the inquiring authority that he intended to examine some of the employees of

the company and had produced a list, inter alia stating that they should be summoned by the inquiring authority, the inquiring authority being a quasi-judicial authority ought to have allowed such request and should have summoned such witnesses to enable the petitioner to examine them. The contention of the petitioner that such persons being under the managerial control of the company would not volunteer to appear as the petitioner's witness and they ought to be summoned by the inquiring authority, was a reasonable apprehension and the court does not see any reason why the inquiring authority did not accept the request of petitioner and summon those person as witnesses, even if they were strangers to the proceeding. Certain documents like the audit reports for the relevant period, biometrics with regard to attendance of other staff and relevant office records could have also been produced through these summoned witnesses. Thus, the manner in which the proceeding was closed, calls for judicial review.

33. In the matter of **BC Chaturvedi vs. Union of India reported in AIR 1996 SC 484** the Apex Court held that judicial review was not an appeal from a decision but a review of the manner in which the decision was made. Power of judicial review was meant to ensure that the individual received fair treatment, and not to ensure that the conclusion which the authority reached was

necessarily correct in the eye of the Court or not. When an enquiry was conducted on charges of misconduct by a public servant, the Court was to determine whether the enquiry was held by a competent authority or whether rules of natural justice were complied with.

34. Thus the Court can interfere if the authority held the proceedings in violation of rules of natural justice or in breach of the service rules which prescribed the mode of inquiry or where the conclusions or findings were not based on evidence.
35. Jurisdiction of the Writ Court is circumscribed by the limits of correcting errors of law and /or procedural errors leading to manifest injustice. On these principles, this Court now proceeds to discuss the issues relevant for disposal of the writ petition
36. The concept of summoning company's employees as witnesses is not alien to the provisions governing examination of witnesses under the procedural laws. Broad principles of those laws can be applied to disciplinary proceedings. The inquiring authority could summon any witness at the request of the petitioner and also direct such witness to produce documents which would be useful to the petitioner in the disciplinary proceeding. The inquiring authority ought to have allowed such prayer of the petitioner instead of closing the proceeding. The endeavour of the inquiring authority should have been to extract the truth and for such

purpose, the prayer to summon the witnesses, as requested by the petitioner should have been allowed by the inquiring authority. Moreover, denying the adjournment to the petitioner and closing the proceeding without giving him an opportunity to even examine himself and advance his arguments on the basis of the records and evidence adduced by the prosecution, itself, was violative of the principles of natural justice. Without allowing the petitioner an opportunity to examine himself, examine his witnesses and advance his arguments by dealing with each and every document and evidence adduced against him, the proceedings could not have been closed. Directing the parties to file their written brief could not be a substitute for arguments by the parties in support of their respective cases. Even the presenting officer had not advanced any arguments.

37. The Court also takes note of the fact that the petitioner was attending the disciplinary proceeding at the Panihati Factory, while being posted at Kanpur factory. The dates were fixed in close proximity when the pandemic had hit the country. Illness of the family members, the journey from Kanpur to Panihati and covid restrictions could be valid reasons for seeking adjournments on several occasions.

38. A person cannot be denied of his right to livelihood enshrined under Article 21 of the Constitution of India, unless he had been given complete and adequate opportunity to defend himself.
39. Although, a disciplinary authority exercising quasi judicial functions is not a court, and it is not strictly bound by the principles of evidence, yet certain basic principles shall have to be observed, which shall dispel any complaint of bias, pre determination of mind and arbitrariness. **In S.C. Givotra v. United Commercial Bank 1995 (Supp) (3) SCC 212**, the Supreme Court set aside the dismissal order which was passed without giving the employee an opportunity of cross-examination.
40. With regard to Mr. Kar's submission that unless the petitioner showed real prejudice or de facto prejudice by the closure of the procedure, the Court should not interfere with the final decision of the disciplinary authority, I am of the view that if such contention is accepted, the same would amount to upholding a procedure which was concluded in total violation of the principles of natural justice, in violation of Article 14 of the Constitution of India and above all in violation of the procedure laid down by the service rules.
41. The decision passed in **Union of India & ors. vs. Alok Kumar** reported in **(2010) 5 SCC 349** would not be applicable in this

case. The law appears to be well-settled that a complaint of violation of principles of natural justice has to be tested on the touchstone of prejudice, unless the case falls under “no notice”, “no opportunity” and “no hearing” categories. This case falls under “no opportunity” and “no hearing” categories and as such, contrary to Mr. Kar’s argument of “no prejudice”, the petitioner has suffered real prejudice.

42. This court holds that the disciplinary proceedings have to be held in a free, fair and just manner. It is serious exercise of power by the employer. Thus, a duty is cast upon the inquiring authority to examine the records and evidence in order to extract the truth after providing adequate opportunity to the delinquent officer.
43. In the matter of **State of Uttar Pradesh and ors vs. Saroj Jumar Sinha** reported in **(2010) 2 SCC 772**, the Hon’ble Apex Court held that:

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and

could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of the rules of natural justice is to ensure that a government servant is treated fairly in the proceedings which may culminate in imposition of punishment including dismissal/removal from service.

31. In *Shaughnessy v. United States* (Jackson, J.), a Judge of the United States Supreme Court has said: (L Ed p. 969)

‘... Procedural fairness and regularity are the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied...’.”

44. In the matter of **Central Bank of India Ltd. vs. Karunamoy Banerjee** reported in **AIR 1968 SC 266** the Apex Court held as follows:

“14. There can be no controversy that the principles of natural justice must be observed, in the conduct of a domestic enquiry, and the workman concerned, must be allowed reasonable opportunity to defend himself. It has also been held by this Court, that rules of natural justice require that the workman, proceeded against, should be informed

clearly of the charges levelled against him; witnesses should be normally examined in the presence of the employee, in respect of the charges; if statements, taken previously and given by witnesses, are relied on, they should be made available to the workman concerned; the workman should be given a fair opportunity to cross-examine witnesses; he should be given a fair opportunity to examine witnesses, including himself, in support of his defence; and the Enquiry Officer should record his findings, based upon the evidence so adduced.

.....

.....

19. We must, however, emphasize that the rules of natural justice, as laid down by this Court, will have to be observed, in the conduct of a domestic enquiry against a workman. If the allegations are denied by the workman, it is needless to state that the burden of proving the truth of those allegations will be on the management; and the witnesses called by the management, must be allowed to be cross-examined by the workman, and the latter must also be given an opportunity to examine himself and adduce any other evidence that he might choose in support of his plea. But, if the workman admits his guilt to insist upon the management to let in evidence about the allegations, will, in our opinion, only be an empty formality. In such a case, it will be open to the management to examine the workman himself, even in the first instance, so as to enable him to offer any explanation for his conduct or to place before the management any circumstances which will go to mitigate the gravity of the offence. But, even then, the examination of the workman, under such circumstances, should not savour of an inquisition. If, after the examination of the workman, the management chooses to examine any witnesses, the workman must be given a reasonable opportunity to cross-examine those witnesses and also to adduce any other evidence that he may choose.”

45. In the matter of **Deputy General manager (Appellate Authority) and ors. Vs. Ajai Kumar Srivastava** reported in (2021) 2 SCC 612, the Hon'ble Apex Court held as follows:

25. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the court is to examine and determine:

- (i) whether the enquiry was held by the competent authority;
- (ii) whether rules of natural justice are complied with;
- (iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion."

46. In the decision of **Swapan Ray v. Indian Airlines, Ltd.**, reported in **1995 SCC OnLine Cal 339**, a Co-ordinate Bench of this Court held as follows:

"15. From the said enquiry proceedings, therefore, it would appear that the same was not conducted in accordance with law. In the aforementioned domestic enquiry no witness was examined, no document was proved before allowing the presenting officer to argue his case. The petitioner was not given an opportunity to examine any witness or to produce his documents despite the fact that he clearly stated that he wanted to examine some witnesses and also produce some documents. The petitioner was also not given an opportunity to be represented by a defence helper, although he clearly stated that he would like to be defended by a friend but he defended himself on that date as his friend was not available.

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26. It is now well known that although principles of natural justice are based on two pillars, namely;

- (1) Nobody shall be condemned without hearing and
- (2) nobody shall be a judge of his own cause, in relation to domestic enquiry, fairness in the procedure is admittedly a part of the principles of natural justice.

As in the instant case, there has been a gross violation of the principles of natural justice, the impugned orders must be held to be bad in law. Reference in this connection may be made to *Khem Chand v. Union of India* reported in A.I.R. 1958 S.C. 300.

27. *****

In *Sawai Singh v. State of Rajasthan* [1986 (2) L.L.N. 91], it was held, in Paras. 16 and 17, at page 95:

“.....But a departmental enquiry entailing consequences like loss of job which nowadays means loss of livelihood, there must be fair play in action, in respect of an order involving adverse or penal consequences against an employee, there must be investigation to the charges consistent with the requirement of the situation in accordance with the principles of natural justice in so far as these are applicable in a particular situation.

The application of those principles of natural justice must always be in conformity with the scheme of the Act and the subject-matter of the case. It is not possible to lay down any rigid rules as to which principle of natural justice is to be applied. There is no such thing as technical natural justice. The requirements of natural justice depends upon the facts and circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject-matter to be dealt with and so on. Concept of fair play in action which is the basis of natural justice must depend upon the particular lis between the parties. See *K.L. Tripathi v. State Bank of India* [1984 (1) L.L.N. 19]. Rules and practices are constantly developing to ensure fairness in the making of decisions which affect people in their daily lives and livelihood. Without such fairness democratic Governments cannot exist. Beyond all rules and procedures that is the *sine qua non*.”

47. The Allahabad High Court in the matter of **Ram Prakash Pal vs.**

Chairman UPSRTC & ors. passed in WRIT - A No. - 38264 of

1996, decided on December 7, 2017, had elaborately discussed the procedure to be followed by an inquiring authority with regard to examination of witnesses. It was held that grant of adequate opportunity would include official assistance to secure the attendance of witnesses working in the same establishment. The inquiring authority may at the request of the accused, write to the head of the department requesting him to send the required person to appear at the enquiry in such matters. The relevant portion of the said judgment is quoted below:

“Examination of the defence witnesses: adequate opportunity for adducing evidence

(a). Opportunity for adducing evidence. The accused employee must have an adequate opportunity of producing his own witnesses for examination as well as tendering documentary evidence in his own defence. The expression "adequate opportunity" includes official assistance to secure the attendance of the witnesses working in the same establishment. Of course, there is no compulsion for the Enquiry Officer to secure attendance of the witnesses listed by the accused employee, but he can not refuse to summon any such witnesses who belong to the same establishment. The Enquiry Officer may, at the request of the accused, write to the head of the department requesting him to send the required person to appear at the enquiry at the appointed date and time. In normal circumstances, no employer should refuse to co-operate in such matters, because it is necessary, for the sake of equity, justice and industrial peace, to co-operate in the matter as much as possible.

(b). Opportunity for examining witnesses: The next step for the Enquiry Officer is to ask the accused employee to examine his witnesses as may be present on that date. The same principle of examination-in-chief by the accused or by another employee who represents him followed by the cross-

examination by the Presiding Officer, then re-examination of the witnesses, if so desired by the accused will be adopted. If all the witnesses are not examined on the day, the hearing may be adjourned.

(c). Cross- examination of the defence witnesses. The same principle of cross- examination of defence witnesses stated earlier may be followed by the Presiding Officer. There is no fixed principle of cross- examination in a domestic enquiry. The main object of such cross- examination is three- fold; (i) to impeach the accuracy, credibility and general value of the evidence given-in-chief; (ii) to detect and expose discrepancies; and (iii) to elicit suppressed facts which will support the case of the cross-examination party.

(d). Re-examination of the witnesses by the accused. After the cross-examination of the defence witnesses is over, the Enquiry Officer should ask the accused if he would like to examine any of his witnesses, with a view to clarify some more points left open in the course of cross-examination. If he wishes If he wishes to re-examine some of his own witnesses, his request should be granted but if he wishes to cross- examine any of the prosecution witnesses at this stage his request should be considered on merit.

(e). Cross examination of defence witness by the Enquiry Officer. Enquiry Officer is competent to ask questions to the defence witnesses. So the mere fact that defence witnesses were cross-examined by the Enquiry Officer does not show that he was biased. But he can do so only way of clarification. But he must not himself cross- examine the defence witness as if he is the prosecutor, for that would be violation of the principles of natural justice.”

48. Following the above decisions, this Court is of the opinion that, the inquiring authority failed to exercise his jurisdiction as a quasi judicial authority. Before arriving at the conclusion that the officer was guilty of the charges, the officer should have been given an adequate opportunity to prove his innocence, by defending himself by examining himself and his witnesses and

upon production of relevant official documents through such witnesses.

49. This Court is of the opinion that it was not unreasonable for the petitioner to request the inquiring authority to call some of the employees as per the list provided by him, as his witnesses and also produce relevant documents. The charges were primarily about insubordination, dereliction of duty going to office late, leaving the office early, leaving the Kanpur factory without permission to leave etc. As such, the office staff who were regularly acquainted with the petitioner and the culture in the office, could be potential witnesses to throw some light on the performance of the petitioner and adduce evidence contrary to the evidence produced by the P.Ws. Especially, to bring on record instances as to whether other officers who were late to arrive were treated in the same manner as the petitioner. The audit report was also relevant for the enquiry in view of the petitioner's case that his absence did not cause any hindrance during the stock audit and the audits were held smoothly. Whether the inquiring authority would accept the evidentiary value thereof would be a different issue and not for an opinion of this court. He was entitled to form his opinion on the contents thereof at the

proceedings, but he should not have disallowed the production of the same.

50. For the reasons aforesaid, I am of the definite view that the enquiry proceedings were vitiated, for violation of the rules of natural justice, lack of fairness in the procedure and disobedience of the service rules. This Court does not need to answer the other allegations made with regard to the enquiry report, charges not being proved, disproportionate punishment etc. as the proceedings are set aside from the stage of the order dated December 31, 2019, passed by the inquiring authority, upto the order of imposition of punishment by the disciplinary authority.

51. In view of the above observations, the contention of Mr. Jaydip Kar, that the petitioner has an alternative remedy by way of an appeal and thereafter by way of a review as per the said rules, cannot be accepted.

52. In the matter of ***Radha Krishnan Industries vs. State of Himachal Pradesh and Others reported in (2003) 2 SCC 107***, the Hon'ble Apex Court held:-

“27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the

power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in *Chand Ratan v. Durga Prasad* [*Chand Ratan v. Durga Prasad*, (2003) 5 SCC 399] , *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot* [*Babubhai Muljibhai Patel v. Nandlal Khodidas Barot*, (1974) 2 SCC 706] and *Rajasthan SEB v. Union of India* [*Rajasthan SEB v. Union of India*, (2008) 5 SCC 632] among other decisions.”

53. In the matter of ***Harbanslal Sahnia v Indian Oil Corpn. Ltd, reported in (2003) 2 SCC 107***, the Hon'ble Apex Court held that:

“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. **In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] .)** The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.”

54. Sub-Rule 17 of Rule 25 of the said Rules provides for a situation where inquiring authority may hold the enquiry ex parte. In this case, the facts do not reveal that the occasion had arisen for the inquiring authority to conclude the proceeding without allowing the petitioner to cross-examine PW 5, to examine his witnesses to examine himself and advance arguments in support of his defence

case. Sub- Rule 15 also casts a duty upon the inquiring authority to question the charged officer if he failed to examine himself.

55. Thus, the order dated December 31, 2019, the report of the inquiring authority dated March 17, 2020 and the order of dismissal dated June 5, 2020 are set aside.
56. The proceeding shall be initiated afresh from the stage of cross examination of PW-5. The petitioner shall be at liberty to examine himself and his witnesses. Liberty is granted to the petitioner to file the list of witnesses whom he wishes to examine on his behalf, who may also be employees of the company. List of relevant documents he requires to be produced by the company's witnesses as part of the official records, shall also be filed. The inquiring authority shall summon such witnesses who are under the administrative control of the Company and direct production of relevant official records. It is not for the inquiring authority to decide whether such witnesses shall adduce evidence in favour of the petitioner or not or would be willing to depose. Their attendance shall be secured by the management upon the direction of the inquiring authority. Whether they depose against or in favour of the petitioner is not the concern of the inquiring authority. The proceedings shall be completed by reaching the same to its logical conclusion within four months from date. The

company can cross-examine those witnesses and recall its own witnesses if the occasion so arises, after the company's witnesses depose.

57. With regard to the other contentions of the petitioner, of the charge sheet being motivated, the punishment being harsh and charges not being proved, second show cause not being served etc. the court does not need to answer the same as the proceeding has been set aside and quashed from the stage of the order passed on December 31, 2019. All the orders passed thereafter, including the imposition of punishment are set aside. The petitioner shall be at liberty to raise all such points at any relevant time in future when the occasion so arises.
58. The order of dismissal having been set aside, the petitioner shall be reinstated with immediate effect. The petitioner shall be deemed to be in service from the date of dismissal till date. Till such time the enquiry is completed, the Company shall be at liberty to decide whether to allow the petitioner to resume his duty or to keep him under suspension as per the service rules.
59. In view of the decision of the Hon'ble Apex Court in ***Bharat Heavy Electricals Limited vs Umesh Eknath Agalawe and Ors. (Civil Appeal No. 811 of 2021)***, the question of payment of back-wages from the date of dismissal till such reinstatement,

shall be decided by the authorities on the conclusion of the disciplinary proceedings.

60. Accordingly, the writ petition is disposed of. WPA 1365 (W) of 2020 is also disposed of as the same has become infructuous.

61. However, there will be no order as to costs.

62. Parties are directed to act on the server copy of this order.

63. Urgent photostat certified copy.

(Shampa Sarkar, J.)