

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.187 of 2020

In
Civil Writ Jurisdiction Case No.20264 of 2019

=====

Raj Kumar, son of Srinath Singh, Resident of Mohalla-Prakashpuri, P.O.-
Shivganj, P.S.-Ara Town, District-Bhojpur, Bihar-802301.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna
3. The Bihar Public Service Commission through its Chairman, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna-800001
4. The Chairman, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna-800001
5. The Secretary, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna-800001

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Kumar Kaushik, Advocate
For the Respondent (BPSC)	:	Mr. Lalit Kishore, Sr. Advocate
		Mr. Satyabir Bharti, Sr. Advocate
		Mr. Abhishek Anand, Advocate
		Ms. Kanupriya, Advocate
For the State	:	Mr. Saroj Kumar Sharma, AC to AAG-3

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 24-01-2025

Re.: I.A. No. 01 of 2020

I.A. No. 01 of 2020 has been filed for condonation of
delay of about four days in filing L.P.A. No. 187 of 2020.

2. For the reasons stated in the application read with



affidavit delay of about 4 days in filing L.P.A. stands condoned.

Accordingly, I.A. No. 01 of 2020 is allowed.

Re.: LPA No. 187 of 2020

3. The appellant has assailed the order of the learned Single Judge dated 16.01.2020 passed in C.W.J.C. No. 20264 of 2019.

4. Respondent- Bihar Public Service Commission notified 100 vacancies of Accounts Officer posts inviting application from the eligible candidates on 05.02.2015. Among others, appellant is one of the candidate. Respondent-Commission has undertaken preliminary examination on 25.09.2016 and results were announced on 10.03.2017, in which the appellant had passed the examination. Resultantly, he was eligible to participate in the main examination. The result were announced on 06.09.2018. Interview was conducted during the intervening period from 24.09.2018 to 28.09.2018. Petitioner was not invited for interview and marks secured by the appellant and others have not been notified till the final select list was notified on 01.10.2018. Thereafter, marks-sheets were issued on 12.10.2018. The appellant has secured 519 marks. 73 marks awarded in History Paper-I for 200 marks has not been taken into consideration while issuing the marks-sheet. In History



Paper- I, they found a currency note of Rs. 500/- in the answer book, resultantly, Commission has not taken note of whatever the marks awarded by the examiner in History Paper- I, i.e. 73 marks while announcing total marks secured. Appellant approached the Commission and obtained answer book through RTI on 15.02.2019. Thereafter, he has filed CWJC No. 20264 of 2019. Learned Single Judge dismissed the CWJC No. 20264 of 2019 on 16.01.2020. Hence, the present L.P.A.

Submission on behalf of the appellant –

5. Learned counsel for the appellant submitted that appellant has not been provided an opportunity before in not taking note of marks awarded in History Paper- I -73 marks on the score that answer book consisting of one currency note with a denomination of Rs. 500/-. Before the Commission taking such a decision, appellant has not been provided an opportunity. Minimum principle of natural justice was required in issuing notice and taking explanation and further oral hearing should have been provided.

6. Learned counsel for the appellant submitted that learned Single Judge has committed error in not appreciating that appellant has not been provided an opportunity of hearing or a notice before impugned action is taken. Insofar as not



considering the marks awarded in the History Paper I – 73 marks out of 200. It is also submitted that learned Single Judge has failed to apprise that by virtue of Commission's action he has been denied opportunity of further participation in the selection process pursuant to the advertisement dated 05.02.2015 and it amounts to penalising the appellant. In fact, he has pointed out that Section 3 read with Section 10 of Bihar Conduct of Examination Act, 1981 (for short Act, 1981) should have been invoked.

7. Similarly, non-considering the appellant's candidature for the selection pursuant to advertisement dated 05.02.2015 on the score that History Paper-I, answer book containing Rs. 500/- note denomination and it does not amount to penalty or debarring appellant for future selection. The aforementioned logic cannot be appreciated for the reasons that appellant has been denied right to participate in the entire process of the advertisement dated 05.02.2015 and in the mid of the process of recruitment his candidature has been cancelled. He has been denied his right to participate in the entire process of selection to that extent learned Single Judge has committed error. In support of the aforementioned contention he relied on decision in the case of *Nidhi*



Kaim vs. State of Madhya Pradesh and Others reported in ***(2016) 7 SCC 615 para 76, 111.***

Submission on behalf of the respondents-

8. Learned counsel for the respondents submitted that there are no infirmities in the order of the learned Single Judge. It is further submitted that facing sheet of the answer book, the examiner has recorded as under:

“इतिहास I की उत्तर पुस्तिकाओं की जाँच के क्रम में उत्तर पुस्तिका क्रम संख्या 31520273 में 500 रुपये का नोट मिला है (page 7) जिसकी संख्या 6EM 480182 है।”

9. He has also relying on para 4 of the facing sheet and it reads as under:

“4. उत्तर पुस्तिका के अन्दर किसी पृष्ठ पर प्रश्नोत्तर के अलावा अपना नाम, अनुक्रमांक, अन्य कोई (धार्मिक) शब्द या पहचान चिह्न नहीं लिखें, अन्यथा उत्तर पुस्तिका रद्द कर दी जायेगी।”

These two materials have been taken note of by the learned Single Judge while rejecting the writ petition.

10. In support of Commission's action learned counsel for the respondents is relying on the following decisions viz., in the case of ***Karnataka Public Service Commission and Others vs. B.M. Vijaya Shankar and Others*** reported in ***(1992) 2 SCC 206***. Para 2 relating to debar of the candidate for the current examination. Para 4 and 5 are relating to principle of natural justice is not warranted. In the ***State of U.P. vs. Sudhir Kumar Singh and Others*** reported in ***(2021) 19 SCC 706*** (Para 29 to



42) in which principle of natural justice is warranted or not in respect of any fraud in the examination process or candidate violated the instructions have been taken note of. Therefore, the appellant has not made out a case so as to interfere with the action of the Commission read with the order of learned Single Judge.

Analysis:

11. Heard learned counsels for the respective parties. Core issue involved in the present *lis* is whether appellant is entitled to have a notice / principle of natural justice before Commission taking decision that he is not eligible for further selection insofar as in not taking note of 73 marks secured in History Paper-I for further selection process on account of the fact that answer book was accompanied with the Rs. 500/- currency note, or not?

12. Facts are not disputed relating to advertisement till announcing final select list. The appellant has not been invited for the interview held during the intervening period from 24.09.2018 to 28.09.2018, in view of the fact that his name is not reflected in the final select list dated 01.10.2018. In the light of the allegation that answer book of the appellant in the History Paper-I contains currency note of Rs. 500/- and he has been



debarred for further selection process amounts to violation of principle of natural justice.

13. Impugned action of the Commission, in debarring the appellant for further process of selection viz., inviting him for interview while taking note that he had secured 73 marks in History Paper-I, would not amount to penalty is not appreciable for the reason that appellant had participated in the process of selection pursuant to the advertisement dated 05.02.2015 and abruptly he has been disqualified from the stage of final select list by taking note of the fact that the History Paper-I of the answer book of the appellant contains Rs. 500/- note. On the other hand, there is a specific provision under the Bihar Conduct of Examination Act, 1981, in particularly, Section 3 and 10 relates to taking certain action against candidate who is involved in alleged malpractice or undertaken any unfair means in the process of selection. The same has not been resorted to and without resorting to Section 3 read with Section 10 even the Commission cannot curtail the right of the appellant for the process of recruitment pursuant to advertisement dated 05.02.2015. In other words, the Commission has taken short-circuit method in not invoking the statutory provision viz., Section 3 and Section 10 of the Act, 1981, thus the learned



Single Judge has committed error in not appreciating that denial of participation of the appellant from the stage of final select list amounts to punishing the appellant.

14. Learned counsel for the appellant relied on a decision in the case of ***Nidhi Kaim vs. State of Madhya Pradesh and Others*** reported in **(2016) 7 SCC 615**, para 76, 111 read as under:

“76. Having gone through the draft judgment, I agree with the reasoning given by my learned Brother on all the issues except on one issue dealt with in paras 52 to 71 relating to issuance of directions to the respondents.”

“111. After examining the facts and the law laid down in the abovementioned seven cases, in my opinion, the ratio laid down in these cases can be summarised thus

111.1. First, in a case where several candidates are found involved in "mass copying" or in other words, where vast majority of candidates were found to have resorted to use of unfair means in any examination then it is not necessary for the institute concerned to give any show-cause notice to any individual candidate before cancellation of his result.

111.2. Second, when it is difficult to prove by direct evidence that the "copying" was done by the candidates then the same can be proved by drawing inference based on probabilities and circumstantial evidence.

111.3. Third, there are several ways in which unfair means can be resorted to by the candidates for doing copying individually or in the large scale by vast majority of candidates.

111.4. Fourth, where few candidates are found involved in doing copying then it is necessary to give to individual candidate a show-cause notice by following rules of natural justice before taking any action against him.

111.5. Fifth, there must be some material (whether direct or based on probabilities and circumstances) to prove that a candidate resorted to unfair means for doing copying in answering his question paper.

111.6. Sixth, if there is adequate material to prove that the



copying was done by individual candidate or by the candidates on a large scale then even if no report was submitted by any invigilator of any such incident yet it would be of no significance.

111.7. Seventh, the Court should not act as an appellate court over the decision of the Expert Committee to examine the issue of "copying" or/and "mass copying" i.e. copying done on a large scale by vast majority of candidates and more so when the Expert Committee has found the candidate guilty of resorting to unfair means.

111.8. Eighth, the Court should be slow to interfere in the decision taken by the Expert Committee in such cases.

111.9. Ninth, if wrong answers of two candidates sitting in close proximity tallies with each other then it would be a strong circumstance of copying done by these two candidates.

111.10. Tenth, this Court has consistently maintained a distinction between a case of "copying" and "mass copying" i.e. copying done on a large scale by vast majority of candidates for applying the rules of natural justice to the case. In the case of former, rules of natural justice would be applicable and hence, show-cause notice to individual candidate who is accused of doing copying will have to be given to such candidate whereas in the case of latter, the rules of natural justice are not applicable and hence, it is not necessary to give any show-cause notice to any candidate involved in mass copying.

111.11. And eleventh, the use of unfair means by any candidate is a serious matter because it affects the credibility of the examination and, therefore, once such charge is held proved against any such candidate, the matter needs to be dealt with sternly in relation to erring candidates."

(underline supplied)

Paragraphs 111.4 and 111.10 would assist the appellant's case.

15. Learned counsel for the respondents relied on the two decisions namely ***Karnataka Public Service Commission and Others vs. B.M. Vijaya Shankar and Others*** cited (supra) of which para 2, 4 and 5 read as under:



“2. Power and authority of the Commission to hold examinations, regulate its working and functioning, take action against erring candidates guilty of misconduct are all provided for by the rules and instructions issued in exercise of power conferred by the statutes. The claim of the candidates that they did not vest any right in the Commission to take such action was negated by the Tribunal. But it faulted in inferring that no penalty was provided for breach of instructions requiring a candidate not to write his roll number inside the answer book. Relevant clause (1) of the Instructions to Candidates is extracted below:

"Before commencing your answers please write your register number and other particulars in the space provided above. Do not write your name or register number or sign anywhere in the answer book or on any loose sheets, such as precis sheets, maps, graph papers, etc."

It is not disputed and it was found, even, by the Tribunal that it was printed on the first page of, every, answer book. Its observance was mandatory and its disregard was punishable as is clear from instructions (xii) and (xiii) of General Instructions to the candidates which are extracted below:

“(xii) The candidates must abide by such instructions as may be specified on the cover of the answer book or any further instructions which may be given by the Supervisor/Invigilator of the examination.

(xiii) If the candidates fail to do so or indulge in disorderly or improper conduct, they will render themselves liable to expulsion from examination and/or such other punishment as the Commission may deem fit to impose.”

Is the expression, 'such other punishment as the Commission may deem fit to impose' vague and thus arbitrary? We do not think so. Read with clause (xii) it presents no difficulty. It provides action for breach of that which is, clearly, specified. It cannot be characterised as vague. And then any capricious exercise of power can always be assailed. More important than this is that provisions attempting to infuse discipline in competitive examinations to be conducted by the Commission cannot be construed with same yardstick as a provision in penal statutes. Moreover the Commission did not impose any penalty on the candidates. Their examination was not cancelled nor they were debarred from taking any examination conducted by the Commission for that year or any year, in future. Their marks in papers, other than those in which they



were found to have acted in disregard of instructions were declared. The only action taken was that those answer books in which roll numbers had been written inside were not subjected to evaluation. In our opinion there was nothing, basically, wrong in it. The Commission did not treat it as misconduct. The action could not be termed as arbitrary. Nor it was abuse of power which could be corrected by judicial review.

4. Was natural justice violated? Natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness, the courts have been circumspect in extending it to situations where it would cause more injustice than justice. Even though the procedure of affording hearing is as important as decision on merits yet urgency of the matter, or public interest at times require flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to establish bona fide or innocence but for being otherwise arbitrary or against rules. Present is a case which, in our opinion, can safely be placed in a category where natural justice before taking any action stood excluded as it did not involve any misconduct or punishment.

5. Competitive examinations are required to be conducted by the Commission for public service in strict secrecy to get the best brain. Public interest requires no compromise on it. Any violation of it should be visited strictly. Absence of any expectation of hearing in matters which do not affect any interest and call for immediate action, such as the present one, where it would have delayed declaration of list of other candidates which would have been more unfair and unjust are rare but well recognised exceptions to the rule of natural justice. It cannot be equated with where a student is found copying in the examination or an inference arises against him for copying due to similarity in answers of number of other candidates or he is charged with misconduct or misbehaviour. Direction not to write roll number was clear and explicit. It was printed on the first page of every answer book. Once it was violated the issue of bona fide and honest mistake did not arise. Its consequences, even if not provided did not make any



difference in law. The action could not be characterised as arbitrary. It was not denial of equal opportunity. The reverse may be true. The Tribunal appears to have been swayed by principles applied by this Court where an examinee is found copying or using unfair means in the examination. But in doing so the Tribunal ignored a vital distinction that there may be cases where the right of hearing may be excluded by the very nature of the power or absence of any expectation that the hearing shall be afforded. Rule of hearing has been construed strictly in academic disciplines. It should be construed more strictly in such cases where an examinee is competing for Civil Service post. The very nature of the competition requires that it should be fair, aboveboard and must infuse confidence. If this is ignored then, as stated earlier, it is not only against public interest but it also erodes the social sense of equality. The Tribunal in issuing directions approached the matter technically and has attempted to make out much where it would have been better part of discretion to refuse to interfere. The Tribunal completely misdirected itself in this regard. In our opinion its order cannot be maintained."

16. Para 2 is relating to debarring for the examination.

The principle laid down in para 2 is not attracted in the present case, in view of the fact that Section 3 read with Section 10 of the Act, 1981. In other words, there is specific provision for the Commission to invoke. Debarring for particular examination amounts to penalising the candidate and without invoking Section 3 read with Section 10. Para 4 and 5 of the aforementioned decision is relating to principle of natural justice is not warranted. He is also relying on ***State of U.P. vs. Sudhir Kumar Singh and Others*** reported in (2021) 19 SCC 706 (*supra*) para 29 to 42 reads as under:

29. Both the learned Senior Advocates locked



horns on the audi alteram partem part of natural justice. Dr Singhvi argued that it is not an inflexible tool in the hands of the Court, but must yield when no prejudice is caused, and where it would be an idle formality to set aside an order, as all the facts on record are admitted facts, to which nothing can be added or subtracted by Respondent 1. Shri Dwivedi, on the other hand, argued that this is a case of a complete lack of natural justice, all orders having been passed behind the back of his client, as a result of which his client has been severely prejudiced.

30. *Natural justice is at least as old as the first man created on earth — the biblical ‘Adam’. J.R. Lucas in his book ‘On Justice’ states (at p. 86):*

“Hence, when we are judging deeds, and may find that a man did wrong, there is a requirement of logic that we should allow the putative agent to correct misinterpretations or disavow the intention imputed to him or otherwise disown the action. God needed to ask Adam ‘Hast thou eaten of the tree whereof I commanded thee that thou shouldest not eat?’ Because it was essential that Adam should not be blamed or punished unless he had done exactly that deed. If the serpent had planted the evidence, or if he had beguiled Adam into eating it under the misapprehension that it came from another, non-forbidden tree, then Adam had not sinned and should not have been expelled from Eden. Only if the accused admits the charge, or, faced with the accusation, cannot explain his behaviour convincingly in any other way, are we logically entitled to conclude that he did indeed do it.”

31. *In some of the early judgments of this Court, the non-observance of natural justice was said to be prejudice in itself to the person affected, and proof of prejudice, independent of proof of denial of natural justice, was held to be unnecessary. The only exception to this rule is where, on “admitted or indisputable” facts only one conclusion is possible, and under the law only one penalty is permissible. In such cases, a Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice, but because Courts do not issue writs which are “futile” — see S.L. Kapoor v. Jagmohan [S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379] , para 24. In P.D. Agrawal v. SBI [P.D. Agrawal v. SBI, (2006) 8 SCC 776 : (2007) 1 SCC (L&S) 43] , however, the Court observed that this statement of the law has undergone a “sea change”, as follows : (P.D. Agrawal case [P.D. Agrawal v. SBI, (2006) 8 SCC 776 : (2007) 1 SCC (L&S) 43] , SCC pp. 793-94, para*



39)

“39. Decision of this Court in S.L. Kapoor v. Jagmohan [S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379] whereupon Mr Rao placed strong reliance to contend that non-observance of principle of natural justice itself causes prejudice or the same should not be read “as it causes difficulty of prejudice”, cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, have undergone a sea change. In view of the decisions of this Court in State Bank of Patiala v. S.K. Sharma [State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364 : 1996 SCC (L&S) 717] and Rajendra Singh v. State of M.P. [Rajendra Singh v. State of M.P., (1996) 5 SCC 460] the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/doctrine of audi alteram partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straitjacket formula.”

(emphasis supplied)

32. Equally, the prejudice that is caused, apart from natural justice itself being denied, cannot be said to be present in a case in which there are admitted facts. Thus, in K.L. Tripathi v. SBI [K.L. Tripathi v. SBI, (1984) 1 SCC 43 : 1984 SCC (L&S) 62], the Court held : (SCC pp. 57-59, paras 29 & 32-33)

“29. We are of the opinion that Mr Garg is right that the rules of natural justice as we have set out hereinbefore implied an opportunity to the delinquent officer to give evidence in respect of the charges or to deny the charges against him. Secondly, he submitted that even if the rules had no statutory force and even if the party had bound himself by the contract, as he had accepted the Staff Rule, there cannot be any contract with a statutory corporation which is violative of the principles of natural justice in matters of domestic enquiry involving termination of service of an employee. We are in agreement with the basic submission of Mr Garg in this respect, but we find that the relevant rules which we have set out hereinbefore have been



complied with even if the rules are read that requirements of natural justice were implied in the said rules or even if such basic principles of natural justice were implied, there has been no violation of the principles of natural justice in respect of the order passed in this case. In respect of an order involving adverse or penal consequences against an officer or an employee of statutory corporations like State Bank of India, there must be an investigation into the charges consistent with the requirements of the situation in accordance with the principles of natural justice as far as these were applicable to a particular situation. So whether a particular principle of natural justice has been violated or not has to be judged in the background of the nature of charges, the nature of the investigation conducted in the background of any statutory or relevant rules governing such enquiries. Here the infraction of the natural justice complained of was that he was not given an opportunity to rebut the materials gathered in his absence. As has been observed in On Justice by J.R. Lucas, the principles of natural justice basically, if we may say so, emanate from the actual phrase “audi alteram partem” which was first formulated by St. Augustine (De Duabus Animabus, XIV, 22 J.P. Migne, PL. 42, 110).

32. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement.

33. The party who does not want to controvert the veracity of the evidence from record or testimony gathered behind his back cannot expect to succeed in any subsequent demand



that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases.”

(emphasis supplied)

33. Likewise, in State of U.P. v. Neeraj Awasthi [State of U.P. v. Neeraj Awasthi, (2006) 1 SCC 667 : 2006 SCC (L&S) 190], this Court held that where, on undisputed facts, a retrenchment would be valid in law, the principles of natural justice would not be attracted, unless there is some stigma or punitive measure which would be attached, which would then cause prejudice, as follows : (SCC p. 684, paras 47-49)

“47. If the employees are workmen within the purview of the U.P. Industrial Disputes Act, they are protected thereunder. Rules 42 and 43 of the Uttar Pradesh Industrial Disputes Rules provide that before effecting any retrenchment in terms of the provisions of Section 6-N of the U.P. Industrial Disputes Act, the employees concerned would be entitled to a notice of one month or in lieu thereof pay for one month and 15 days' wages for each completed year of service by way of compensation. If such a retrenchment is effected under the Industrial Disputes Act, the question of complying with the principles of natural justice would not arise. The principle of natural justice would be attracted only when the services of some persons are terminated by way of a punitive measure or thereby a stigma is attached.

48. In Viveka Nand Sethi v. J&K Bank Ltd. [Viveka Nand Sethi v. J&K Bank Ltd., (2005) 5 SCC 337 : 2005 SCC (L&S) 689] it was held : (SCC p. 345, para 22)

‘22. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. (See Gurjeewan Garewal v. Sumitra Dash [Gurjeewan Garewal v. Sumitra Dash, (2004) 5 SCC 263 : 2004 SCC (L&S) 747] .) The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case.’

49. The High Court, therefore, must be held to have erred in law in holding that the principles of natural justice were required to be complied with.”

34. In the five-Judge Bench decision in ECIL v. B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S)



1184] , this Court, after discussing the constitutional requirement of a report being furnished under Article 311(2), held thus : (SCC pp. 756-58, paras 30-31)

“30. Hence the incidental questions raised above may be answered as follows:

[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an “unnatural expansion of natural justice” which in itself is antithetical to justice.

31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment (and not



any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.”

(emphasis supplied)

35. *B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] was followed by this Court in Haryana Financial Corpn. v. Kailash Chandra Ahuja [Haryana Financial Corpn. v. Kailash Chandra Ahuja, (2008) 9 SCC 31 : (2008) 2 SCC (L&S) 789], as follows : (Haryana Financial Corpn. case [Haryana Financial Corpn. v. Kailash Chandra Ahuja, (2008) 9 SCC 31 : (2008) 2 SCC (L&S) 789] , SCC pp. 38-39, para 21)*

“21. From the ratio laid down in B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer's report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside.”

(emphasis in original)

36. *What is important to note is that it is the court or tribunal which must determine whether or not prejudice has been caused, and not the authority on an ex parte appraisal of the facts. This has been well-explained in a later judgment, namely, Dharampal Satyapal Ltd. v. CCE [Dharampal Satyapal Ltd. v. CCE, (2015) 8 SCC 519] , in which, after setting out a number of judgments, this Court concluded : (SCC pp. 538-41, paras 38-40 & 42-45)*

“38. But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straitjacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases,



though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

*39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasising that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason—perhaps because the evidence against the individual is thought to be utterly compelling—it is felt that a fair hearing “would make no difference”—meaning that a hearing would not change the ultimate conclusion reached by the decision-maker—then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in *Malloch v. Aberdeen Corpn.* [*Malloch v. Aberdeen Corpn.*, (1971) 1 WLR 1578 (HL)], who said that : (WLR p. 1595)*

‘... A breach of procedure ... cannot give [rise to] a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain.’

*Relying on these comments, Brandon L.J. opined in *Cinamond v. British Airports Authority* [*Cinamond v. British Airports Authority*, (1980) 1 WLR 582 (CA)] that : (WLR p. 593)*

‘... no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing.’

In such situations, fair procedures appear to serve no purpose since the “right” result can be secured without according such treatment to the individual.

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the



authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of "prejudice". The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.

42. So far so good. However, an important question posed by Mr. Sorabjee is as to whether it is open to the authority, which has to take a decision, to dispense with the requirement of the principles of natural justice on the ground that affording such an opportunity will not make any difference? To put it otherwise, can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be caused to the person against whom the action is contemplated? Answer has to be in the negative. It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority. This was so held by the English Court way back in the year 1943 in General Medical Council v. Spackman [General Medical Council v. Spackman, 1943 AC 627 (HL)] . This Court also spoke in the same language in Board of High School and Intermediate Education v. Chitra Srivastava [Board of High School and Intermediate Education v. Chitra Srivastava, (1970) 1 SCC 121] , as is apparent from the following words : (SCC p. 123, para 7)

'7. The learned counsel for the appellant, Mr C.B. Agarwala, contends that the facts are not in dispute and it is further clear that no useful purpose would have been served if the Board had served a show-cause notice on the petitioner. He says that in view of these circumstances it was not necessary for the Board to have issued a show-cause notice. We are unable to accept this contention. Whether a duty arises in a particular case to issue a show-cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order proposed to be passed.'

43. In view of the aforesaid enunciation of law, Mr Sorabjee may also be right in his submission that it was not open for the authority to dispense with the requirement of principles of natural justice on the presumption that no prejudice is going to be caused to the appellant since the judgment in R.C. Tobacco [R.C. Tobacco (P) Ltd. v. Union of India, (2005) 7 SCC 725] had closed all the windows for the appellant.

44. At the same time, it cannot be denied that as far as courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind



whether any prejudice is caused to the person against whom the action is taken. This was so clarified in ECIL [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] itself in the following words : (SCC p. 758, para 31)

'31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/tribunal and given the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.'

45. Keeping in view the aforesaid principles in mind, even when we find that there is an infraction of principles of natural justice, we have to address a further question as to whether any purpose would be served in remitting the case to the authority to make fresh demand of amount recoverable, only after issuing notice to show cause to the appellant. In the facts of the present case, we find that such an exercise would be totally futile having regard to the law laid down by this Court in R.C. Tobacco [R.C. Tobacco (P) Ltd. v. Union of India, (2005) 7 SCC 725] .”

(emphasis supplied)

37. In State Bank of Patiala v. S.K. Sharma [State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364 : 1996 SCC (L&S) 717], a Division Bench of this Court distinguished between “adequate opportunity” and “no opportunity at all”, and held that the “prejudice” exception operates more especially in the latter case. This judgment also speaks of procedural and substantive provisions of law which embody the principles of natural justice which, when infringed, must lead to prejudice being caused to the litigant in order to afford him relief, as follows : (SCC pp. 389-91, paras 32-33)

“32. Now, coming back to the illustration given by us in the preceding para, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our



respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise.

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — “no notice”, “no opportunity” and “no hearing” categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice viz. whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice i.e. whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein



and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] . The ultimate test is always the same viz. test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between “no opportunity” and no adequate opportunity i.e. between “no notice”/“no hearing” and “no fair hearing”. (a) In the case of former, the order passed would undoubtedly be invalid (one may call it “void” or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law i.e. in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule viz. to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.



(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.”

(emphasis in original)

38. *In M.C. Mehta v. Union of India [M.C. Mehta v. Union of India, (1999) 6 SCC 237], the expression “admitted and indisputable facts” laid down in Jagmohan [S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379], as also the interesting divergence of legal opinion on whether it is necessary to show “slight proof” or “real likelihood” of prejudice, or the fact that it is an “open and shut case”, were all discussed in great detail as follows : (M.C. Mehta case [M.C. Mehta v. Union of India, (1999) 6 SCC 237], SCC pp. 243 & 245-47, paras 16 & 22-23)*

“16. Courts are not infrequently faced with a dilemma between breach of the rules of natural justice and the Court's discretion to refuse relief even though the rules of natural justice have been breached, on the ground that no real prejudice is caused to the affected party.

22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of “real substance” or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed. See Malloch v. Aberdeen Corpn. [Malloch v. Aberdeen Corpn., (1971) 1 WLR 1578 (HL)] (per Lord Reid and Lord Wilberforce), Glynn v. Keele University [Glynn v. Keele University, (1971) 1 WLR 487], Cinnamond v. British Airports Authority [Cinnamond v. British Airports Authority, (1980) 1 WLR 582 (CA)] and other cases where such a view has been held. The latest addition to this view is R. v. Ealing Magistrates' Court, ex p Fannaran [R. v. Ealing Magistrates' Court, ex p Fannaran, (1996) 8 Admn LR 351], Admn LR at p. 358 (see de Smith, Suppl. p. 89) (1998) where Straughton, L.J. held that there must be “demonstrable beyond doubt” that the result would have been different. Lord Woolf in Lloyd v. McMahon [Lloyd v. McMahon, 1987 AC 625 : (1987) 2 WLR 821 (HL)], WLR at p. 862 has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in McCarthy v. Grant [McCarthy v. Grant, 1959 NZLR 1014] however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is “real likelihood — not certainty — of prejudice”. On the other hand, Garner Administrative Law



(8th Edn., 1996, pp. 271-72) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from *Ridge v. Baldwin* [*Ridge v. Baldwin*, 1964 AC 40 : (1963) 2 WLR 935 (HL)] , Megarry, J. in *John v. Rees* [*John v. Rees*, (1969) 2 WLR 1294] stating that there are always “open and shut cases” and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J. has said that the “useless formality theory” is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that “convenience and justice are often not on speaking terms”. More recently Lord Bingham has deprecated the “useless formality” theory in *R. v. Chief Constable of the Thames Valley Police, ex p Cotton* [*R. v. Chief Constable of the Thames Valley Police, ex p Cotton*, 1990 IRLR 344 (CA)] by giving six reasons. (See also his article “Should Public Law Remedies be Discretionary?” 1991 PL, p. 64.) A detailed and emphatic criticism of the “useless formality theory” has been made much earlier in “Natural Justice, Substance or Shadow” by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63) contending that *Malloch* [*Malloch v. Aberdeen Corpn.*, (1971) 1 WLR 1578 (HL)] and *Glynn* [*Glynn v. Keele University*, (1971) 1 WLR 487] were wrongly decided. Foulkes (*Administrative Law*, 8th Edn., 1996, p. 323), Craig (*Administrative Law*, 3rd Edn., p. 596) and others say that the court cannot prejudge what is to be decided by the decision-making authority *de Smith* (5th Edn., 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (*Administrative Law*, 5th Edn., 1994, pp. 526-30) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a “real likelihood” of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their “discretion”, refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in *State Bank of Patiala v. S.K. Sharma* [*State Bank of Patiala v. S.K. Sharma*, (1996) 3 SCC 364 : 1996 SCC (L&S) 717] , *Rajendra Singh v. State of M.P.* [*Rajendra Singh v. State of M.P.*, (1996) 5 SCC 460] that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual



benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

23. We do not propose to express any opinion on the correctness or otherwise of the “useless formality” theory and leave the matter for decision in an appropriate case, inasmuch as, in the case before us, “admitted and indisputable” facts show that grant of a writ will be in vain as pointed out by Chinnappa Reddy, J.”

(emphasis in original)

39. In Aligarh Muslim University v. Mansoor Ali Khan [Aligarh Muslim University v. Mansoor Ali Khan, (2000) 7 SCC 529 : 2000 SCC (L&S) 965] , the aforesaid authorities were relied upon, and the answer given was that there is no absolute rule, and prejudice must be shown depending on the facts of each case, as follows : (SCC pp. 539-40, paras 24-25)

“24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L. Tripathi v. SBI [K.L. Tripathi v. SBI, (1984) 1 SCC 43 : 1984 SCC (L&S) 62] Sabyasachi Mukharji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed, quoting Wade's Administrative Law (5th Edn., pp. 472-75), as follows : (SCC p. 58, para 31)

‘31. ... [I]t is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent. ... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.’

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in State Bank of Patiala v. S.K. Sharma [State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364 : 1996 SCC (L&S) 717] . In that case, the principle of “prejudice” has been further elaborated. The same principle has been reiterated again in Rajendra Singh v. State of M.P. [Rajendra Singh v. State of M.P., (1996) 5 SCC 460]

25. The “useless formality” theory, it must be noted, is an exception. Apart from the class of cases of “admitted or indisputable facts leading only to one conclusion” referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta [M.C. Mehta v. Union of India, (1999) 6 SCC 237] referred to above. This



Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark, etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.”

(emphasis in original)

40. *In Union of India v. Alok Kumar [Union of India v. Alok Kumar, (2010) 5 SCC 349 : (2010) 2 SCC (L&S) 22] , this Court, after eschewing a hyper-technical approach, held that prejudice must not merely be the apprehension of a litigant, but should be a definite inference of the likelihood of prejudice flowing from the refusal to follow natural justice, as follows : (SCC pp. 378-80, paras 83 & 87-89)*

“83. Earlier, in some of the cases, this Court had taken the view that breach of principles of natural justice was in itself a prejudice and no other “de facto” prejudice needs to be proved. In regard to statutory rules, the prominent view was that the violation of mandatory statutory rules would tantamount to prejudice but where the rule is merely directory the element of de facto prejudice needs to be pleaded and shown. With the development of law, rigidity in these rules is somewhat relaxed. The instance of de facto prejudice has been accepted as an essential feature where there is violation of the non-mandatory rules or violation of natural justice as it is understood in its common parlance. Taking an instance, in a departmental enquiry where the Department relies upon a large number of documents majority of which are furnished and an opportunity is granted to the delinquent officer to defend himself except that some copies of formal documents had not been furnished to the delinquent. In that event the onus is upon the employee to show that non-furnishing of these formal documents have resulted in de facto prejudice and he has been put to a disadvantage as a result thereof.

87. *In ECIL v. B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] this Court noticed the existing law and said that the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are neither incantations to be invoked nor rites to be performed on all and sundry occasions. Whether, in fact, prejudice has been caused to the employee or not on account of denial of report to him, has to be considered on the facts and circumstances of each case. The Court has clarified even the stage to which the departmental proceedings ought to be reverted in the event*



the order of punishment is set aside for these reasons.

88. *It will be useful to refer to the judgment of this Court in Haryana Financial Corpn. v. Kailash Chandra Ahuja [Haryana Financial Corpn. v. Kailash Chandra Ahuja, (2008) 9 SCC 31 : (2008) 2 SCC (L&S) 789] , at pp. 38 and 39 where the Court held as under : (SCC para 21)*

‘21. From the ratio laid down in B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] it is explicitly clear that the doctrine of natural justice requires supply of a copy of the enquiry officer's report to the delinquent if such enquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the enquiry officer is in breach of natural justice. But it is equally clear that failure to supply a report of the enquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside.’

89. *The well-established canons controlling the field of bias in service jurisprudence can reasonably be extended to the element of prejudice as well in such matters. Prejudice de facto should not be based on a mere apprehension or even on a reasonable suspicion. It is important that the element of prejudice should exist as a matter of fact or there should be such definite inference of likelihood of prejudice flowing from such default which relates to statutory violations. It will not be permissible to set aside the departmental enquiries in any of these classes merely on the basis of apprehended prejudice.”*

(emphasis in original)

41. *Under the broad rubric of the Court not passing futile orders as the case is based on “admitted” facts, being admitted by reason of estoppel, acquiescence, non-challenge or non-denial, the following judgments of this Court are all illustrations of a breach of the audi alteram partem rule being established on the facts of the case, but with no prejudice caused to the person alleging breach of natural justice, as the case was one on admitted facts:*

41.1. *Punjab & Sind Bank v. Sakattar Singh [Punjab & Sind Bank v. Sakattar Singh, (2001) 1 SCC 214 : 2001 SCC (L&S) 209], paras 1, 4 and 5.*

41.2. *Karnataka SRTC v. S.G. Kotturappa [Karnataka SRTC v. S.G. Kotturappa, (2005) 3 SCC 409 : 2005 SCC (L&S) 484], para 24.*

41.3. *Viveka Nand Sethi v. J&K Bank Ltd. [Viveka Nand Sethi v. J&K Bank Ltd., (2005) 5 SCC 337 : 2005 SCC (L&S) 689], paras 21, 22 and 26.*

41.4. *Mohd. Sartaj v. State of U.P. [Mohd. Sartaj v. State of*



U.P., (2006) 2 SCC 315 : 2006 SCC (L&S) 295], para 18.

41.5.*Punjab National Bank v. Manjeet Singh* [*Punjab National Bank v. Manjeet Singh*, (2006) 8 SCC 647 : (2007) 1 SCC (L&S) 16], paras 17 and 19.

41.6.*Ashok Kumar Sonkar v. Union of India* [*Ashok Kumar Sonkar v. Union of India*, (2007) 4 SCC 54 : (2007) 2 SCC (L&S) 19], paras 26 to 32.

41.7.*State of Manipur v. Y. Token Singh* [*State of Manipur v. Y. Token Singh*, (2007) 5 SCC 65 : (2007) 2 SCC (L&S) 107], paras 21 and 22.

41.8.*A.P. Social Welfare Residential Educational Institutions v. Pindiga Sridhar* [*A.P. Social Welfare Residential Educational Institutions v. Pindiga Sridhar*, (2007) 13 SCC 352 : (2008) 2 SCC (L&S) 656], para 7.

41.9.*Peethani Suryanarayana v. Repaka Venkata Ramana Kishore* [*Peethani Suryanarayana v. Repaka Venkata Ramana Kishore*, (2009) 11 SCC 308 : (2009) 4 SCC (Civ) 529], para 18.

41.10.*Municipal Committee, Hoshiarpur v. Punjab SEB* [*Municipal Committee, Hoshiarpur v. Punjab SEB*, (2010) 13 SCC 216 : (2010) 4 SCC (Civ) 861], paras 31 to 36, 44 and 45.

41.11.*Union of India v. Raghuwar Pal Singh* [*Union of India v. Raghuwar Pal Singh*, (2018) 15 SCC 463 : (2018) 2 SCC (L&S) 823], para 20.

42. *An analysis of the aforesaid judgments thus reveals:*

42.1. *Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.*

42.2. *Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.*

42.3. *No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.*

42.4. *In cases where facts can be stated to be admitted or*



indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5. The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.”

17. Para 4 and 5 of the ***Karnataka Public Service Commission and Others vs. B.M. Vijaya Shankar and Others*** and decision of ***State of U.P. vs. Sudhir Kumar Singh and Others*** reported in ***(2021) 19 SCC 706*** are read together, it relates to principle of natural justice is not warranted. Recently, Hon’ble Supreme Court in a Constitution Bench decision in the case of ***Central Organisation for Railway Electrification vs ECISPICSMOMCML (JV) A Joint Venture Company*** reported in ***2024 SCC OnLine SC 3219*** in para 76 to 78 elaborately considered issue relating to principle of natural justice. Reading of the Constitution Bench decision and the principle laid down, it warrants principle of natural justice is mandatory in the circumstances that if any person’s right is affected or such action has any civil consequences. Citations cited by the respondent’s counsel are not applicable to the case in hand on two counts viz., the aforementioned constitution Bench decision on the principle of natural justice and Commission has not



invoked Section 3 and 10 of the Act, 1981.

18. On these counts, the appellant has made out a case so as to interfere with the impugned action of the Commission read with the learned Single Judge order dated 16.01.2020 passed in CWJC No. 20264 of 2019 and they are set aside.

19. Respondent Commission is hereby directed to undertake the exercise of issuing show cause notice to the appellant as to why his History Paper -I shall not be taken into consideration for the purpose of selection and appointment to the post of Accounts Officer on the score that answer book was accompanied by Rs. 500/- note. Appellant is hereby directed to furnish his explanation thereafter the Commission is directed to fix a date and time of oral hearing and thereafter proceed to pass a detailed speaking order after due consideration of each of the contention to be raised by the appellant in his explanation to the show cause. The above exercise shall be undertaken within a period of two months from the date of receipt of this order. Speaking order shall be communicated to the appellant at the earliest.

20. In the event of appellant succeeding before the Commission that he is not involved in the unfair means in the History Paper-I, in that event further steps shall be undertaken



within a period of three months from the date of action to be taken by the Commission.

21. Accordingly, L.P.A. No. 187 of 2020, stands disposed of.

22. Pending I.A.(s), if any, stands disposed of.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	07.02.2025
Transmission Date	

