



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-18717-2011 (O&M)

Reserved on: 13.08.2025

Pronounced on:11.11.2025

Ramal Thapar

....Petitioner

Versus

Central Government Industrial Tribunal-cum-Labour Court-1,
Chandigarh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Rajiv Atma Ram, Senior Advocate, with
Ms. Shreya Kaushik, Advocate,
for the petitioner.

Mr. Dhiraj Chawla, Advocate, and
Mr. Gaurav Goel, Advocate,
for the respondent-Bank.

KULDEEP TIWARI, J. (Oral)

1) The petitioner-workman, by filing instant writ petition, under Articles 226/227 of the Constitution of India prays for issuance of a writ of Certiorari, to quash the award dated 25.08.2010 (Annexure P-20), passed by the learned Industrial Tribunal-respondent No.1, vide which, reference was answered against him, and the order of dismissal passed by the respondent-Bank was upheld, on the ground that the same was passed, after following the principles of natural justice.

2) The factual matrix, in the backdrop of which the present petition has been instituted, are that the petitioner-workman had been employed with the respondent-Bharat Overseas Bank, at Ludhiana



Branch, as Clerk-cum-Cashier, on 21.02.1979. However, a dispute between the Employees Union and the respondent-Management led to a strike, which remained in operation from 07.08.1993 up till 11.08.1993. On the immediate next day, the Branch Manager had conveyed to the petitioner that he not only remained absent from duty during the period of strike, but also defied oral instructions to hand over the cash and safe keys to the designated employee, which, severely impacted smooth functioning of the institution, vide a communication dated 12.08.1993 (Annexure P-2). To which, the petitioner submitted his response on the same day, stating that no such direction was issued to him. Thereafter, the respondent-Bank served another letter upon the petitioner, thereby issuing a warning to hand over cash and safe keys to the Bank, vide letter dated 13.08.1993, (Annexure P-4).

3) Eventually, the respondent-Bank put him under suspension, vide letter dated 16.08.1993 (Annexure P-5). Further, the Management had even lodged a complaint on 19.08.1993 (Annexure P-7), with the Police, requesting action against the petitioner, under Section 406 IPC. Ultimately, on 19.08.1993, the keys were handed over to the Branch Manager, who also got the cash checked in the presence of Union Members, which was found to be correct by the Accountant. Thereafter, he was served with a charge-sheet dated 30.08.1993 (Annexure P-10), to which, he responded to, vide a reply dated 27.09.1993 (Annexure P-11). Before proceeding further with the matter, it is expedient to refer to the relevant contents of the charge-sheet:-

“Charge No.1: Your action of not handing over the possession of cash keys before absenting yourself from duty



amounts to violation of instructions laid down in the Bank's Book of Instructions, which is a minor misconduct as per para No.19.7 (d) of the Bipartite Settlement dated 19.10.1966.

Charge No.2: Your failure and refusal to handover the possession of cash keys and the charge of cash before striking work and despite repeated instructions by Accountant/Branch Manager and also by Head Office amounts to willful insubordination/disobedience, which is a major misconduct as per para No.19.5(e) of the Bipartite Settlement dated 19.10.1966.

Charge No.3: Your action of deliberately disrupting the branch functioning for more than 12 days by not handing over the cash keys as a result of which customers and Bank have been put to undue hardship, difficulty and loss is an act prejudicial to the interest of the Bank which is a major misconduct as per para 19.5 (e) of the Bipartite Settlement dated 19.10.1966.

Charge No.4: Your action of entering the Ludhiana Branch premises during the period of suspension without permission is violation of specific instructions contained in order dated 16.8.93, is an act of willful insubordination/disobedience which is a major misconduct as per para 19.5 (e) of the Bipartite Settlement dated 19.10.1966.

Charge No.5: Your action of shouting unparliamentary slogans against Manager, Officers and other non striking members inside the branch premises before and after the suspension has tarnished the image and reputation of the bank and you have thereby acted in a manner prejudicial to the interest of the Bank which is a major misconduct as per para 19.5 (j) of the Bipartite Settlement dated 19.10.1966."

4) Whereafter, the respondent-Bank appointed Mr. B.R. Prabahakar as Enquiry Officer, who submitted a report dated 09.03.1994 (Annexure P-12), against the petitioner. Resultantly, he was served with a show cause notice dated 09.04.1994 (Annexure P-13), which was issued by Mr. K.S. Markandan, Deputy General Manager, Disciplinary Authority, thereby, proposing the penalty of dismissal from service, and



he was also afforded a personal hearing on 14.06.1994. In the interregnum, on 30.10.1995, Mr. K.S. Markandan attained the age of superannuation. The petitioner, in a bid to prove his innocence, submitted a reply dated 03.06.1994 (Annexure P-14), to the show cause notice (supra). Further, he had approached the learned Civil Court by filing an application under Order 39 Rule 1 and 2 CPC, beseeching restraint orders against the respondent-Bank, and was even granted interim protection, vide order dated 03.05.1995. However, the application (supra), was dismissed on 15.02.1996, and even the learned Appellate Court upheld the same, on 06.04.1996. Not only that, the Civil Revision preferred against the order (supra), also met the same fate before the High Court, as it was dismissed on 17.04.1996, being a premature motion.

5) Accordingly, the respondent-Management appointed Mr. Ramanujan as Disciplinary Authority on 13.06.1996, who, without affording any personal hearing to the petitioner, passed the order of dismissal of services, vide letter dated 27.06.1996 (Annexure P-15). Aggrieved thereby, the petitioner preferred a departmental appeal, before the Chairman (Appellate Authority), which too was dismissed 14.11.1996 (Annexure P-17). Fetching grievance therefrom, the petitioner filed a claim statement before the learned Labour Court, in view of the provisions of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947'). Resultantly, a reference under Section 10 of the Act of 1947, was made to the learned Labour Court, for adjudication, "*Whether the action of the Management of Bharat Overseas Bank Ltd., in imposing penalty of dismissal of services upon Sh. Ramal Thapar w.e.f. 27.06.1996 is just and legal. If no, to what relief the workman is entitled and from what date?*"



6) Upon consideration of the matter in issue, the learned Labour Court, vide order dated 09.10.2009, decided the preliminary issue against the petitioner. Likewise, the learned Labour Court, after analyzing the material brought on record as well as the evidence led by the parties, answered the reference against the petitioner, vide award dated 25.08.2010 (Annexure P-20). Hence, the instant writ petition.

7) Learned Senior counsel for the petitioner, apart from making detailed submissions on merits, raised two substantial legal issues, for adjudication by this Court. He submitted that, in fact, the enquiry report was transmitted to the petitioner by the Disciplinary Authority, only after holding him guilty, and proposing the harshest punishment of dismissal from service. In such a situation, supplying the enquiry report to the petitioner was no more than a mere formality, and completely vitiated the principles of natural justice. Rather, furnishing the enquiry report to a delinquent official, enabling him to make a representation in response thereto, is an underlying principle, which was recognized by the Hon'ble Supreme Court in **Union of India and others Vs. Mohd. Ramzan Khan 1991 (1) SCC 588**. While further elaborating the issue, it was submitted that furnishing of the enquiry report, along with show cause notice, with a pre-determined mind to hold him guilty was nothing short of a *cul-de-sec* situation for the petitioner. In this regard, a verdict drawn by the Hon'ble Supreme Court in **Managing Director, ECIL, Hyderabad Vs. B. Karunakar, 1993 (4) SCC 727**, was relied upon.

8) The second issue, which was sought to be raked up, is that in the instant case, initially, Mr. K.S. Markandan had been appointed as Disciplinary Authority, who served the first show cause notice upon the



petitioner, and afforded a personal hearing on 14.06.1994, whereas, the final decision was passed by Mr. Ramanujan. Therefore, apparently, the established principle that, 'who hears must decide', was violated by the respondent-Bank, while dealing with the matter.

9) *Per contra*, learned counsel for the respondent-Bank submitted that the charges, which were framed and duly proved by the Enquiry Officer, were sufficiently grave to impose the punishment of dismissal upon the petitioner, as he did not choose to hand over the keys, which stalled the functioning of the Bank. It was further argued that there was no violation of principles of natural justice, at any stage, as the petitioner was granted due opportunity to defend himself, during the enquiry proceedings. Similarly, he was duly served with a second show cause notice, and only after affording an opportunity of hearing, the Disciplinary Authority passed the dismissal order. He next submitted that neither the petitioner had taken a plea of prejudice being caused to him, in his reply dated 03.06.1994, nor in the claim statement filed before the learned Labour Court. Therefore, the ratio of law laid down by the Hon'ble Supreme Court in **Mohd. Ramzan Khan (supra)**, would not be applicable to the facts of the present case. As far as the verdict in **B. Karunakar (supra)**, is concerned, it was held that merely because the enquiry report was not supplied to the delinquent official would not *ipso facto* entitle him for reinstatement along with full back wages.

10) He vehemently contended that it is a settled proposition of law that prejudice, if any, has to be established, but in the matter at hand, the respondent-Bank had duly supplied a copy of the enquiry report to the petitioner. In this way, no prejudice, whatsoever, is caused to the



petitioner. He concluded by asserting that this Court, while exercising its supervisory jurisdiction, cannot assume the role of an Appellate Court over the findings returned by the learned Labour Court, which were, undoubtedly, predicated upon the evidence, even if, another view is possible. Unless, the petitioner would establish that non-supply of the enquiry report has resulted in any prejudice or miscarriage of justice, the order of dismissal ought not to be held to be vitiated. In this regard, he placed reliance upon a decision of the Hon'ble Supreme Court in **Haryana Financial Corporation Vs. Kailash Chandra Ahuja, 2008 (4) SCT 103.**

11) This Court has heard the exhaustive submissions advanced on behalf of the rival parties, and perused the record.

12) Post 42nd Amendment in the Constitution, the issue of necessity of serving a copy of the enquiry report to the delinquent official was extensively examined by the Hon'ble Supreme Court in **Mohd. Ramzan Khan (supra)**. It was held that the enquiries which are directly handled by the Disciplinary Authority, and those, which are allowed to be handled by the Inquiry Officer, could be classified into two separate groups. If the enquiry was conducted by an officer other than the Disciplinary Authority, and concluded that charges were proved, either partially or fully, and submitted its report to the Disciplinary Authority, with or without any proposal of punishment, then the delinquent official is entitled to the enquiry report, enabling him to make a representation. In these circumstances, non-furnishing of the enquiry report would amount to infraction of principles of natural justice, giving cause of action to challenge such an act. To the contrary, where the Disciplinary Authority



itself is the Enquiry Officer, there is no necessity to supply the enquiry report to the delinquent. The relevant observations made in **Mohd. Ramzan Khan (supra)**, are extracted hereinbelow:-

“16. At the hearing some argument had been advanced on the basis of Article 14 of the Constitution, namely, that in one set of cases arising out of disciplinary proceedings furnishing of the copy of the inquiry report would be insisted upon while in the other it would not be. This argument has no foundation inasmuch as where the disciplinary authority is the Inquiry Officer there is not report. He becomes the first assessing authority to consider the evidence directly for finding out whether the delinquent is guilty and liable to be punished Even otherwise, the inquiries which are directly handled by the disciplinary authority and those which are allowed to be handled by the Inquiry Officer can easily be classified into two separate groups-one, where there is no inquiry report on account of the fact that the disciplinary authority is the Inquiry Officer and inquiries where there is a report on account of the fact that an officer other than the disciplinary authority has been constituted as the Inquiry Officer. That itself would be a reasonable classification keeping away the application of Article 14 of the Constitution.

18. We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.”



13) The issue, which is deliberated upon, was re-visited by the Larger Bench of the Hon'ble Supreme Court in **B. Karunakar (supra)**, wherein, it was reinforced that the delinquent official is entitled to get a copy of the enquiry report, even if the Services Rules, governing his service conditions, do not permit. Not only that, it was further held that the delinquent has a right to receive the enquiry report, regardless of any request made by him, in this regard. In nutshell, the Disciplinary Authority is under obligation to furnish a copy of the enquiry report to the delinquent, thereby, giving the latter an opportunity to make a representation. In this regard, the relevant observations made by the Hon'ble Supreme Court, read as thus:-

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

(i) Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

(ii) The relevant portion of Article 311 (2) of the Constitution is as follows:-

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and give a reasonable opportunity of being heard in respect of those charges."

Thus the Article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The Article, however, cannot be construed to mean that it



prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded.

The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all- India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded, and when the Inquiry Officer is not the disciplinary authority the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment.

(iii) Since it is the right of the employee to have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employees asks for the report or not, the report has to be furnished to him."

14) Similarly, the Hon'ble Supreme Court, in **S.L. Kapoor Vs. Jagmohan, 1980(4) SCC 379**, categorically held that even if the Court believes that compliance of the principles of natural justice would not change the fate of the matter, still it cannot absolve the employer from following the golden rule of Audi Alteram Partem:-

“xx xx xx xx

It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say: "Well, even if the case had been properly conducted, the result would have been the same. That is mixing up doing justice with seeing that justice is done (per Lord Widgery C. J. at p. 1375)."



In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who had denied justice that the person who had been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the 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 futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal.”

15) In the wake of the abovesaid laid down principles, this Court has examined the facts of the instant case. At this juncture, the second show cause notice dated 09.04.1994, assumes significance, and therefore, it would be expedient to refer to the relevant contents thereof:-

“Dear Sir,

Disciplinary proceedings- Charge Sheet dt.30.8.93.

Please refer to the Charge sheet dated 30.8.1993 and the subsequent enquiry held by the Enquiry Officer Shri B.R.Prabhakar into the charges framed against you.

2. Shri B.R. Prabhakar has since submitted his enquiry report dated 9.3.1994. He has held all the charges framed against you as proved.

3. I have gone through the report carefully and I do not have any reason to differ from the said findings of Shri B.R.Prabhakar. Accordingly, I hold that you are guilty of the charges framed against you under the above charge sheet.

4. As the charges proved against you are of serious nature, which warrant extreme punishment, I propose to impose upon you the penalty of DISMISSAL from the service of the bank in terms of para 19.6(a) of the Bipartite Settlement



dated 19.10.1966. You are, therefore, advised to show cause within 21 days from the date of receipt of this letter as to why the proposed penalty of DISMISSAL should not be imposed upon you. Copy of the enquiry report dated 9.3.1994 is enclosed.

5. I am also inclined to give you a personal hearing regarding the proposed punishment on Monday the 2nd May, 1994 at 3 p.m. at Head Office of the Bank, Madras.

6. You are therefore advised to approach the Branch Manager, Ludhiana branch for necessary travel advance for your onward and return journey. You will be eligible for halting allowance for your journey and stay at Madras.

Yours faithfully.”

16) A thorough scrutiny of the show cause notice (supra), particularly, paragraph 3 and 4, makes it explicitly clear that the Disciplinary Authority had made its mind to saddle the petitioner with the extreme punishment of dismissal from service, even before furnishing the enquiry report, and affording an opportunity to make a representation. Further, it is also vividly clear that the enquiry report was submitted only as a matter of form, with the sole intent of avoiding any procedural lapse. Given the abovesaid sequence of events, this Court is of the affirmed view that there, indeed, exists the element of infraction of principles of natural justice. To cull out the situation, as demonstrated above, this Court lends vigour from the judgment of the Hon'ble Supreme Court in **H.P. State Electricity Board Ltd. Vs. Mahesh Dahiya, 2017 (1) SCC 768.** It has been emphatically held that if the opinion is formed by the Disciplinary Authority to dismiss the delinquent employee, without extending any opportunity to respond to the enquiry report, such an action is in complete violation of principles of natural justice, at the level



of Disciplinary Authority itself. It has further been held that the delinquent official, in his representation to the enquiry report, is entitled to point out any defect in the procedure, a defect of substantial nature in appreciation of evidence, and any misleading of evidence, both oral and documentary. Such inputs and explanation advanced by the delinquent official are required to be considered by the Disciplinary Authority, before embarking with further proceedings, as per statutory rules. On the other hand, if the Disciplinary Authority forms an opinion to punish the delinquent official without supplying him the enquiry report, and before obtaining his comments on the enquiry report, such an order cannot pass the test of legality. In this regard, the following observations were made by the Hon'ble Supreme Court in **Mahesh Dahiya, (supra):-**

“26. Both the learned Single Judge and the Division Bench have heavily relied on the fact that before Members have already formed an opinion on 25.02.2008 to punish the writ petitioner with major penalty warding the copy of the report by letter dated 02.04.2008 the Disciplinary Authority cum Whole Time which is a clear violation of principle of natural justice. We are of the view that before making opinion with regard to punishment which is to be imposed on a delinquent, the delinquent has to be given an opportunity to submit the representation/reply on the inquiry report which finds a charge proved against the delinquent. The opinion formed by the Disciplinary Authority cum Whole Time Members on 25.02.2008 was formed without there being benefit of comments of the writ petitioner on the inquiry report. The writ petitioner in his representation to the inquiry report is entitled to point out any defect in the procedure, a defect of substantial nature in appreciation of evidence, any misleading of evidence both oral or documentary. In his representation any inputs and explanation given by the delinquent are also entitled to be considered by the Disciplinary Authority before it embarks with further



proceedings as per statutory rules. We are, thus, of the view that there was violation of principle of natural justice at the level of Disciplinary Authority when opinion was formed to punish the writ petitioner with dismissal without forwarding the inquiry report to the delinquent and before obtaining his comments on the inquiry report. We are, thus, of the view that the order of the High Court setting aside the punishment order as well as the Appellate order has to be maintained.

27. In view of the above discussion, we are of the view that present is the case where the High Court while quashing the punishment order as well as Appellate order ought to have permitted the Disciplinary Authority to have proceeded with the inquiry from the stage in which fault was noticed Le. the Stage under Rule 15 of Rules. We are conscious that sufficient time has elapsed during the pendency of the writ petition before learned Single Judge, Division Bench and before this Court, however, in view of the interim order passed by this Court dated 31.08.2015 no further steps have been taken regarding implementation of the order of the High Court. The ends of justice be served in disposing of this appeal by fixing a time frame for completing the proceeding from the stage of Rule 15.”

17) Now, this Court adverts to the plea raised by learned counsel for the respondent-Bank, while referring to the ratio laid down in **B. Karunakar (supra)**, that petitioner has to establish that on account of non-supply of the enquiry report, or the opinion, which had formed by the Disciplinary Authority, has caused any prejudice to him. As referred to above, he emphasised to apply the test of ‘prejudice’, before interfering with the order of dismissal. The petitioner was granted due opportunity to represent and only thereafter, the order of dismissal was passed. Therefore, there was no occasion of any infraction of principles



of natural justice. To substantiate the plea, he specifically relied upon the following observations made in **B. Karunkar (supra):-**

“(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry 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.

18) To deal with the abovesaid issue, this Court would like to refer to the latest judgment of the Hon’ble Supreme Court in the **State of Uttar Pradesh Vs. Ram Prakash Singh, (Civil Appeal No.14724-2024, decided on 23.04.2025) 2025 INSC 555**, wherein, the application of test of ‘prejudice’ when the requirement of supplying the enquiry report is



already held mandatory in character, has been examined in detail. It has been held that, where the report of enquiry has not been furnished, it goes against the very grain of the answer rendered by the Constitution Bench in **B. Karunakar (supra)**. Allowing employers to circumvent the law laid down by the Constitution Bench and dilution of such a declared law regarding necessity of supplying the enquiry report undermines the rule of law. It has further been held that post decision of the Constitution Bench in **B. Karunakar (supra)**, decisions by lesser Bench strength insisting upon the application of 'prejudice' would signal re-imposition of the legal regime pre-Mohd. Ramzan Khan (supra), when the employer was under no obligation to furnish the enquiry report, which could encourage mischievous employers to drain out is terminated employee by ensuring that copy of the enquiry report is not furnished. The observations, which are germane to the issue, are extracted hereinbelow:-

"38. Thus, the right to receive the enquiry report as a fundamental safeguard in disciplinary proceedings, where such report holds the charges against the delinquent employee to be established, was firmly entrenched by the Constitution Bench in the jurisprudence relating to proceedings initiated for disciplinary action for misconduct. This valuable right applies uniformly, regardless of who the employer is (Government, public or private) and regardless of what the rules governing the service ordain. Even if the rules are silent or do not require furnishing of the enquiry report, the same has to be furnished. Additionally, the report must be furnished to the employee even without a request, as it forms an integral part of ensuring a fair and reasonable opportunity to defend against the charges. By not furnishing the report, an employer cannot scuttle the rights of the delinquent employee.



39. *Reading the passage from S.K. Sharma (supra) highlighted above bearing in mind the guidance received from the dicta in B. Karunakar (supra), one can safely conclude that furnishing of a report of enquiry though is a procedural step, it is of a mandatory character. However, such a requirement can be waived by the delinquent employee, expressly or by conduct, but if on facts he is found not to have waived his right to receive the report, the theory of substantial compliance or the test of 'prejudice' would not be applicable.*

40. *In the decisions of this Court, referred to at the beginning of the discussion, it is revealed that some of the Benches of this Court have not invalidated the employers' acts of withholding the reports of enquiry on the ground that the delinquent employees have not been able to demonstrate how they suffered 'prejudice' by reason of the reports not being furnished, notwithstanding that such decisions of the employers clearly violated the precedential significance of the Constitution Bench decision in B. Karunakar (supra) while answering question (i).*

41. *Application of the test of 'prejudice', when the requirement is mandatory in character and where admittedly the report of enquiry has not been furnished, goes against the very grain of the answer rendered by the Constitution Bench in B. Karunakar (supra) to the basic issue that was under consideration before it. It is proposed to discuss, a little later in this judgment, why the test of 'prejudice' may not be made applicable in respect of disciplinary action, proceedings wherefor have commenced after the decision in B. Karunakar (supra) was rendered, appreciating the deleterious effects likely to befall employees who have been punished without furnishing of the enquiry reports. We consider it reasonable to think that in every case of failure/omission/neglect to furnish the report of enquiry, which is an act of the employer certainly in utter*



disregard of the ratio decidendi of the decision in B. Karunakar (supra), calling upon the employer to justify why the judicial mandate of the Constitution Bench had not been followed could have eased the situation.

48. Looked at from a different angle, it is unheard of and simply unacceptable to us that employers could brazenly disregard the law declared by the Constitution Bench and/or act in derogation of statutory rules, yet, argue that no prejudice was caused to the dismissed employee by reason of not giving him access to the enquiry report. If the answer to question (v) given in B. Karunakar (supra) is to be regarded as the final word, we are left to wonder whether it would have at all been necessary for the Constitution Bench to elaborately discuss the law on the subject, stress on the importance and need for the enquiry report to be furnished to the delinquent employee and to introduce a new regime with prospective effect. If the test of 'prejudice' were to be given primordial importance, the Constitution Bench could have, on the contrary, simply observed that post 20th November, 1990 [the date on which Mohd. Ramzan Khan (supra) was decided], if in case report of enquiry in a particular case were not furnished to the delinquent employee and upon the matter reaching the tribunal/court for adjudication at a subsequent stage, the employer is under no obligation to explain why the report has not been furnished and its action of taking disciplinary action has to be judged and could be interdicted only in the event the employee, on the touchstone of 'prejudice', were to succeed in proving that he had been denied reasonable opportunity to defend. The Constitution Bench's careful consideration of question (i), viz. the need to furnish the enquiry report to a delinquent employee before disciplinary action is taken being an integral part of natural justice, the answer thereto would be rendered redundant if such an approach by the employers is permitted. Allowing employers to circumvent the law



declared by the Constitution Bench and dilution of such declared law regarding the necessity, nay imperative, to furnish the enquiry report by interpretative exercises subsequently undertaken by Benches of lesser strength without bearing in mind other Constitution Bench decisions (we propose to refer to them briefly, immediately after this discussion) on the effect of breach of natural justice principles and the consequences that could visit an employee whose service is terminated if the report were not furnished in the first place is an unfortunate development which undermines the rule of law.

50. These Constitution Bench decisions have stood the test of time. Without being overruled in any subsequent decision, the law continues to bind all Benches of lesser strength. Equally, it cannot be gainsaid that with the march of time and the progress made in the years since then, nuanced or refined approaches to applying natural justice principles may be necessary and appropriate in specific cases. There can be no quarrel with this approach. However, we find it difficult for us to be guided by the decisions insisting on application of the ‘prejudice’ principle in the wake of the aforesaid Constitution Bench decisions. Accepting such decisions of lesser strength would signal re-imposition of the legal regime pre-Mohd. Ramzan Khan (supra) when the employer was under no obligation to furnish the enquiry report. We are afraid, this could encourage mischievous employers to drain out its terminated employee by ensuring that copy of the enquiry report is not furnished.”

19) Furthermore, no proof of ‘prejudice’ for breach of a statutory rule or the principles of natural justice and fair play is required to be proved, unless there exists a waiver, either expressed or by conduct, as regards the right to receive the report. And, it is only in specific and



not in all circumstances that proof of ‘prejudice’ should be insisted upon.

The relevant observations, are as under:-

“52. We now sum up our understanding of the law declared in B. Karunakar (supra) and answer the four questions delineated in paragraph 26 (supra) compositely. Reading the declaration of law by the Constitution Bench regarding the imperative need to furnish the report of enquiry to the delinquent employee even when: (i) the relevant statutory rules are silent or against it, (ii) the punishment to be imposed is other than the punishment referred to in clause (2) of Article 311 of the Constitution, (iii) the employee does not ask for it, and (iv) the burden is cast on a private employer too, and the law requiring furnishing of the report being made to operate prospectively from the date the decision in Mohd. Ramzan Khan (supra) was rendered, thereby reinforcing the legal position that prevailed after the GoI Act was enacted but became unsettled later, there can be no two opinions that on and from 20th November, 1990 [i.e., when Mohd. Ramzan Khan (supra) was decided] it is the mandatory requirement of law that the report of enquiry has to be furnished to the delinquent employee. Taking a cue from S. K. Sharma (supra), we are inclined to the view that the requirement of furnishing the report of enquiry, though procedural, is of a mandatory character and the bogey argument of the employer to apply the test of ‘prejudice’ when the report of enquiry is not furnished cannot be of any avail to thwart the challenge of the delinquent employee. Such test could call for application, if from the facts and circumstances, it can be established that the delinquent employee waived his right to have the report furnished. Should satisfactory explanation be not proffered by the employer for its failure/omission/neglect to furnish the enquiry report, that ought to be sufficient for invalidating the proceedings and directing resumption from the stage of furnishing the report. No proof of



*prejudice for breach of a statutory rule or the principles of natural justice and fair play need be proved, unless there is a waiver, either express or by conduct, to of the right to receive the report. **And, it is only in specific and not in all circumstances that proof of 'prejudice' ought to be insisted upon.*** (emphasis supplied).”

20) On the anvil of the abovesaid ratio laid down by the Hon’ble Supreme Court, this Court finds merit in the submission advanced on behalf of the petitioner. The consequent issue, which needs to be adverted to, is that, not only the principles of natural justice, but also the rule that ‘one who hears must decide’, has been grossly violated.

21) Indisputably, Mr. K.S. Markandan, Deputy General Manager, had issued the show cause notice to the petitioner, and also afforded a hearing on 14.06.1994. However, before he could pass the final order, he attained the age of superannuation. Whereafter, Mr. Ramanujan replaced him on 13.06.1996, who, without extending any fresh personal hearing to the petitioner, passed the order of dismissal, thereby, concurring with the view taken by the earlier Disciplinary Authority. In such circumstances, it is quite clear that the petitioner has, indeed, suffered a prejudice, as grant of opportunity to respond to the show cause notice (supra), was observed in form but not in substance. Therefore, this Court is of the considered opinion that, post submission of the enquiry report, the proceedings are illegal.

22) In conspectus of the position, as sketched out hereinabove, the impugned award dated 25.08.2010, consequently, the proceedings of Disciplinary Authority, post submission of the enquiry report, including the dismissal order dated 27.06.1996 (Annexure P-15), and the order



dated 14.11.1996 (Annexure P-17), passed by the Appellate Authority, are hereby, set aside. Consequently, the matter is **remitted** to the Disciplinary Authority, which shall invite response from the petitioner to the enquiry report. Thereupon, from that stage, after serving a fresh show cause notice and granting due opportunity of hearing, the Disciplinary Authority shall proceed with the matter, and pass a final order.

23) Since the matter is pending since 2011 before this Court, and the disciplinary proceedings were initiated way back in the year 1993, propriety demands that a Mandamus should be passed upon the Disciplinary Authority to complete the entire exercise, as expeditiously as possible. Accordingly, the Disciplinary Authority is directed to conclude the matter within a period of two months from the receipt of a certified copy of this order.

24) With the aforesaid observations, the petition stands **disposed of**.

(KULDEEP TIWARI)
JUDGE

11.11.2025
Ak Sharma

Whether speaking/reasoned	Yes
Whether reportable	Yes/No