Gurbachan Singh Bachi Vs State of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 11, 2004

Acts Referred: Central Civil Services (Classification, Control and Appeal) Rules, 1965 â€" Rule 10(3), 10(4), 10(5), 12(4)
Constitution of India, 1950 â€" Article 102, 311(2), 314
Electricity (Supply) Act, 1948 â€" Section 10(1)
General Clauses Act, 1897 â€" Section 16

Citation: (2005) 1 ILR (P&H) 584 : (2005) 3 SLJ 221

Hon'ble Judges: S.S. Saron, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: Gurminder Singh, for the Appellant; Rita Kohli, D.A.G. for Respondent No. 1 and N.S. Boparai, for the Respondent

Final Decision: Allowed

Judgement

S.S. Saron, J.
What are the consequential benefits payable to the petitioner after his removal as Administrative Member of the Punjab

State Electricity Board (''Board'' for short) as been set aside, is the question that requires consideration in this case on its remittance from the

Hon''ble Supreme Court of India.

2. The petitioner was appointed as Member of the Board for a period of two years vide notification dated 24.12.2001 (Annexure P2). He joined

as Administrative Member on 26.12.2001. After about two months and twenty days, the State Government, acting on the complaints received

from an Ex-Administrative Member of the Board and the Office Secretary of the Punjab Pradesh Congress Committee that the petitioner has mis-

used his position as Administrative Member of the Board by campaigning during the Assembly Elections, placed him under suspension vide order

dated 7.3.2002.

3. The petitioner-challenged the order of suspension in C.W.P. No. 5056 of 2002 by alleging mala fides against the respondents. In the reply filed

on behalf of the State Government, it was averred that the petitioner is likely to be charge-sheeted and appropriate action would be taken after

holding regular enquiry. During the pendency of the petition, the Inquiry Officer conducted an ex parte enquiry against the petitioner and submitted

report to the State Government. In view of that development, the writ petition was disposed of on 2.5.2003 with the direction that the Competent

Authority shall take final decision in the matter in accordance with law. The prayer of the petitioner with regard to grant of subsistence allowance

was ordered to be considered by the Competent Authority. Thereafter, vide order dated 23.6.2003, the petitioner was removed from the post of

Member of the Board in terms of Section 10(1)(e) of the Electricity (Supply) Act, 1948 (''Act'' for short). It was observed that the Administrative

Members of the Board was a tenure post and there was no provision in the Punjab State Electricity Board Chairman Powers Rules for giving

subsistence allowance/salary to any Member during his suspension and as such the petitioner was not entitled to any subsistence allowance or

salary during the period of his suspension.

4. The petitioner then filed the present petition. After considering the rival pleadings and the arguments of the learned Counsel, this Court allowed

the writ petition vide its order dated 18.9.2003 and quashed the removal of the petitioner. The last two paragraphs of that order read as under:

Before concluding, we deem it proper to notice the argument of Ms. Rita Kohli that even though, the petitioner was not given opportunity to

controvert the findings recorded by the Inquiry Officer and the impugned order appears to have been passed without complying with the rules of

natural justice, the Court may not interfere with the same because the denial of opportunity of hearing has not caused any prejudice to him. We are

afraid, there is no substance in the argument of the learned Deputy Advocate General. The theory of absence of prejudice can be invoked by the

Court for denying relief to a petitioner if breach of the rules of natural justice is insignificant or the person complaining of the breach has acquiesced

in the same. However, this theory cannot be applied to a case, like the present one in which the impugned order was passed by the State

Government in total disregard of the fundamental rule of natural justice and denial of opportunity to the petitioner to defend himself and to explain

his position qua the findings recorded by the Inquiry Officer has resulted in total failure of justice.

For the reasons mentioned above, the writ petition is allowed. Order dated 23.6.2003 (Annexure P.7) is quashed. The petitioner shall get all

consequential benefits. However, it is made clear that the State Government shall be free to pass fresh order in the matter in accordance with law.

5. The petition for Special Leave to appeal filed by the Board against the order of this Court was granted by the Supreme Court and was treated

as Civil Appeal No. 2677 of 2004. By an order dated 26.4.2004, their Lordships of the Supreme Court remitted the matter to this Court by

making the following observations :

Even while ordering notice in the SLP it was indicated as to why the matter should not be ordered to be remitted to the High Court for clarifying

as to what was meant by ""all consequential benefits"", since there is some controversy in the light of decided cases as to what is should comprehend

at this stage in the facts and circumstances of the case. Respondent entered appearance and filed counter affidavit and the appellant also filed

rejoinder. When, the order of punishment is set aside on account of defective procedural formalities or non-observance of principles of natural

justice and liberty is granted to the Competent Authority to pass fresh orders in accordance with law what could be the consequential benefits that

can be accorded at that stage requires to be considered in the case, wherein while setting aside the order of dismissal, liberty has been granted to

pass fresh orders in accordance with law.

In the above back-drop, we are required to decide whether as a result of quashing of the order of removal the petitioner is entitled to pay etc. for

the period during which he remained under suspension and also for the period during which he was deprived of his right to hold the post of

Member by virtue of the order of removal.

6. Mr. Gurminder Singh, learned Counsel for the petitioner argued that as a consequence of setting aside of the order of removal, the petitioner

became entitled to all the benefits including the monetary benefits which he would have got but for the illegal order of removal. He submitted that

the declaration of nullity which is inherent in the order passed by this Court has the effect of restoring the petitioner''s position as a Member of the

Board w.e.f. 7.2002 i.e. the date on which he was placed under suspension and as such, he is entitled to full pay and allowances for the period

between 7.3.2002 and the date on which he was allowed to join, as Member.

7. Ms. Rita Kohli, learned Deputy Advocate General, Punjab and Mr. N.S. Boparai, learned Counsel appearing for the Board argued that the

petitioner is not entitled to any monetary benefit because there is no provision in the rules for payment of subsistence allowance to a member during

his suspension. They further argue that the petitioner is not entitled to salary and allowances for the period during which he did not work as an

Administrative Member of the Board.

8. We have given serious thought to the respective arguments.

9. Before dealing with the question noted above, we consider it proper to mention that in furtherance of order dated 18.9.2003 passed by this

Court, the petitioner was allowed to re-join as Member of the Board on 22.10.2003 and his tenure of two years ended on 25.12.2003.

10. During the course of hearing, we had asked the learned Counsel for the parties to disclose the total emoluments paid to the petitioner before

his suspension from the post of Member. In reply, the learned Counsel for the petitioner stated that his client was getting about Rs. 22,000/- per

month. The Chairman of the Board filed affidavit dated 4.8.2004. A perusal thereof shows that at the time of suspension, the petitioner was getting

the following emoluments :

(i) Basic pay : Rs. 18,400/- per month

(ii) Additional dearness : Rs. 8,280/- per month

allowance

Total : Rs. 26,680/-

It is also borne out from the affidavit of the Chairman of the Board that if the order of suspension/removal had not been passed, the petitioner

would have received the following emoluments:

From 1.3.2002 to 7.3.2002 : Rs. 6,191/-

Date of suspension i.e. w.e.f. : Rs. 5,62,126/-

8.3.2002 to Date of reinstatement

i.e. upto 21.10.2003 (i.e. 1 year 7

months and 14 days)

Total : Rs. 5,68,317/-

After deduction of TDS

Net Amount payable to the petitioner : Rs. 4,11,137/-

11. The stand taken by the respondents is that in terms of Section 10(1) of the Act, the State Government can suspend any member of the Board,

but there is no provision for payment of subsistence allowance and as such, the petitioner is not entitled to any monetary benefit for the period

during which he remained suspended. Their further stand is that the petitioner is not entitled to salary and allowances for the period during which he

did not work as a member of the Board because there is no provision in the Act or the rules for payment of salary etc. to a member, who is kept

out of office by virtue of an order of removal passed u/s 10(1).

12. What are the effects of an order passed by the Competent Authority to suspend an employee and the consequences which flow from quashing

an order of removal/dismissal. These questions have been considered in a large number of decided cases. In Khem Chand Vs. Union of India

(UOI), , the Supreme Court, while repelling the appellant''s challenge to the validity of Rule 12(4) of the Central Civil Services (Classification,

Control and Appeal) Rules, 1957 (''the Central Rules'', for short), observed as under :

An order of suspension of a Government servant does not put an end to his service under the Government. He continues to be a member of the

service in spite of the order of suspension. The real effect of the order of suspension is that though he continues to be a member of the Government

service he is not permitted to work and further, during the period of his suspension he is paid only some allowance generally called ""subsistence

allowance""--which is normally less than his salary--instead of the pay and allowances he would have been entitled to it he had not been suspended.

There is no doubt that the order of suspension affects a Government servant injuriously. There is no basis for thinking, however, that because of the

order of suspension he ceases to be a member of the service.

13. In R.P. Kapur Vs. Union of India (UOI) and Another, , a Constitution Bench of the Supreme Court considered the question relating to

salary/emoluments/allowances payable to an employee, who is placed under suspension. The facts of that case were that the appellant, who was a

member of the Indian Civil Service and who, after independence, became member of the Indian Administrative Service, was placed under

suspension on 18.7.1959 in the wake of registration of a criminal case against him. The order of suspension postulated payment of subsistence

allowance equal to the leave salary which he would have drawn under the Leave Rules applicable to him if he had been on half average pay with a

further provision that in case the suspension lasted for more than twelve months a further order fixing the rate of subsistence allowance shall be

passed. The appellant challenged the order of suspension mainly on the ground of violation of Article 314 of the Constitution of India. It was also

pleaded that he was entitled to full pay and allowances. Their Lordships of the Supreme Court considered various questions including the one

relating to payment required to be made during the period of suspension. After making reference to the earlier judgments in The Management of

Hotel Imperial, New Delhi and Others Vs. Hotel Workers'' Union, and T. Cajee Vs. U. Jormanik Siem and Another, , their Lordships of the

Supreme Court held :

The general principle therefore, is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can

arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to

suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full

remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the

statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These

general principles in our opinion apply with equal force in a case where the Government is the employer and a public servant is the employee with

this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of Government, must be held to be the

authority which has the power to appoint a public servant. On general principles, therefore, the authority entitled to appoint a public servant would

be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a

departmental enquiry against him. This general principle is illustrated by the provision in Section 16 of the General Clauses Act, No. X of 1897,

which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a

different intention appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and

servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that

connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public

servant will be entitled to his full emoluments during the period of suspension.

(Underlining is ours)

14. In Jai Chand Sawhney v. Union of India, 1969 S.L.R. 879, the Supreme Court held that when an order of dismissal or removal is set aside by

the Court on the ground of violation of the constitutional provisions, the employee becomes entitled to salary etc. on month to month basis because

he had been wrongly prevented from rendering service.

15. In H.L. Mehra Vs. Union of India (UOI) and Others, , the Supreme Court interpreted Rule 10(3), (4) and (5) of the Central Rules and held

that once an order dismissing the employee is passed, the earlier order of suspension ceases to exist and the same does not get revived with the

setting aside of the order of dismissal.

16. In Krishan Murari Lal Sehgal Vs. State of Punjab, , the Supreme Court set aside the order of punishment on the ground of violation of Section

115(7) of the State Re-organisation Act, 1956 and the then directed that the appellant shall be entitled to full pay and allowances for the

intervening period. The facts of that case show that the appellant was dismissed from service on 21.10.1959 and he instituted the suit challenging

his dismissal order as void and illegal and praying for a declaration that he continued to be in service of the Punjab State. He then instituted the

second suit as Pauper claiming a decree for about Rs. 8,689/- as arrears of salary and allowances and other amount. Despite success of the

appellant before the final Court, he was denied emoluments beyond 15.1.1993 when his suit was decreed by the Sub Judge 1st Class, Patiala. He,

therefore, preferred Civil Miscellaneous Applications which were disposed of by the Supreme Court with the following directions :

Heard, Counsel for the parties. This application is disposed of on a short ground. It has become necessary to clarify the order made by this Court

allowing the appeals of the petitioner. According to the decision of this Court, the petitioner was given a declaration that he would be deemed to

continue in service with effect from the date of the suit. As a logical consequence of this declaration, it is manifest that the petitioner would be

entitled to back-salary from 1st June, 1962 till 19th February, 1974. The only way in which the judgment of this Court can be implemented is to

pay the aforesaid amount of salary to the petitioner. With these observations, this application is disposed of. The amount of the salary must be paid

within two months from today.

17. In Maimoona Khatun and Another Vs. State of Uttar Pradesh and Another, , Their Lordships of the Supreme Court interpreted the expression

when the wages accrue due"" appearing in Article 102 of the Limitation Act, 1908 and held :

In cases where an employee is dismissed or removed from service and is reinstated either by the Appointing Authority or by virtue of the order of

dismissal or removal being set aside by a Civil Court, the starting point of limitation under Article 102 of the Limitation Act of 1908 would be not

the date of the order of dismissal or removal but the date when the right actually accrues, that is to say, the date of the reinstatement by the

Appointing Authority where no suit is filed or the date of the decree where a suit is filed and decreed. If the Court takes the view that the right to

sue for the arrears of salary accrues from the date when the salary would have been payable but for the order of dismissal and not from the date

when the order of dismissal is set aside by the Civil Court, it will cause gross and substantial injustice to the employee concerned who having been

found by a Court of law to have been wrongly dismissed and who in the eye of law would have been deemed to be in service would still be

deprived for no fault of his, of the arrears of his salary beyond three years of the suit which, inspite of his best efforts he could not have claimed,

until the order of dismissal was declared to be void. Such a course would in fact place the Government employee in a strange predicament and

given an undeserving benefit to the employers who by wrongfully dismissing the employees would be left only with responsibility of paying them for

a period of three years prior to the suit and swallow the entire arrears beyond this period without any legal or moral justification.

Their Lordships further held that even though, the appellant''s husband Zamirul Hassan had died during the pendency of the litigation, she would be

entitled to arrears payable to her husband as a consequence of setting aside of his dismissal from service.

18. In Union of India Vs. K.V. Jankiraman, etc. etc., , it was held that when employee is completely exonerated in criminal/disciplinary

proceedings and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be

deprived of any benefits including the salary of the promotional post.

19. In Parkash Chand v. S.S. Grewal, Chief Secretary, Punjab ILR 1974 (P&H.) 56, a Full Bench of this Court held that when the dismissal of a

Government servant is declared, by a decree of a Civil Court, to be illegal, void or ineffective, then he becomes entitled to enjoy all the benefits

and privileges including emoluments for the entire period during which his dismissal remained in operation. This decree is to be construed as

enjoining upon the Government to reinstate the decree-holder and grant him all benefits and privileges, including his past and future emoluments. It

will entitle the Government servant concerned to claim the necessary reliefs from the Government and in case of the failure of the Government to

grant those reliefs, to file a suit or other legal proceedings to enforce the rights given to him by the declaratory decree. The Government will, of

course, be also entitled to plead such defences as may be open to it to defeat the claim of the Government servant. But it is not open to the

Government to challenge the decree or the legal status of the decree-holder as a Government servant to which the decree restores him.

20. Another Full Bench of this Court in Radha Ram v. Municipal Committee, Barnala 1983(1) S.L.R. 151, considered the question as to whether

a suit for declaration or a High Court sitting in appeal or otherwise is competent to give direction etc. for the payment of arrears of pay as a result

of dismissal order having been declared illegal or without jurisdiction and answered the same in affirmative by making the following observations :

Now if it is once held that a declaratory decree enjoins the employer to reinstate the decree-holder and grant him all the benefits and privileges

including his past and future emoluments then it is obvious that a direction to that effect only makes pointedly explicit what is plainly implicit in the

decree. Such a direction, therefore, only clothes in peremptory terms what has been held to be enjoined by the decree itself.

21. The principles which can be culled out from the above survey of the judicial precedents are :

(1) The employer has inherent right to suspend as employee.

(2) If the rules or other statutory provisions regulating the conditions of service provide for payment of subsistence allowance, then the suspended

employee is entitled to subsistence allowance at the prescribed rate(s).

(3) If there are no rules or other statutory provisions for payment only of subsistence allowance, then the employee is entitled to get full pay and

allowances during the period of suspension.

(4) Once the employee/public servant is removed or dismissed from service/ post, then his right to receive subsistence allowance/full pay and

allowances automatically comes to an end.

(5) If the order of removal of dismissal of an employee/public servant is nullified by the Court on the ground of violation of the statutory provisions

or the basics of natural justice, he becomes entitled to be reinstated with retrospective effect as if the order of removal/dismissal had not been

passed. In that event, the employee/public servant is entitled to receive full pay and allowances for the intervening period except when the Court

makes payment of salary etc. subject to the outcome of fresh/further enquiry or there is a provision for automatic suspension of the employee with

a further provision for payment of subsistence allowance during the period of revived suspension.

22. At this stage, we may notice the judgments of the Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and

State of Punjab and Others Vs. Dr Harbhajan Singh Greasy, , on which reliance was placed by the learned Counsel for the respondents.

23. One of the primary questions amongst others that was considered by the Supreme Court in Managing Director, ECIL v. B. Karunakar (supra)

was as to what is the effect of non-furnishing of the inquiry report on the order of punishment and what relief should be granted to the employees in

such cases. It was held that when an 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 case it may have made no difference to the

ultimate punishment awarded to him. Hence, it was observed, to direct reinstatement of the employee with back wages in all cases is to reduce the

rules of justice to a mechanical ritual and 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. Besides, where even after furnishing the report no different consequence

would have followed, it was observed that it would be perversion of justice to permit the employee to resume duty and get all the consequential

benefits. It was further observed that in all cases where the Inquiry Officer''s report is not furnished to the delinquent employee in the disciplinary

proceedings, the Court/Tribunal should accept 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 giving him an opportunity to show how his or her case was prejudiced because of the non-supply of the

report. If, however, Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate finding

and the punishment given, it should not interfere with the order of punishment. It was further observed that it is only if the Court/ Tribunal found 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 and where the

Court sets aside the order of punishment, it was observed, the proper relief that should be granted is direct reinstatement of the employee with

liberty to the authority/management to proceed with the inquiry by placing the employee under suspension and continue the inquiry from the stage

of furnishing with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his

dismissal to the date of his reinstatement if ultimately ordered, it was observed, should invariably be left to be decided by the authority concerned

according to the law. After culmination of the proceedings and depending of the final outcome, if the employee succeeds in the fresh inquiry and is

directed to be reinstated, the authority should be at liberty to decide according to law as to how it will treat the period from the date of dismissal till

reinstatement and what benefits, if any, and the extent of the benefits, he would be entitled. The reinstatement made as a result of the setting aside

of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of

furnishing the report and no more, where such fresh inquiry is held.

24. In State of Punjab v. Dr. Harbhajan Singh Greasy (supra), the report of the Inquiry Officer was based on the admission of the respondent

employee therein. However, the Inquiry Officer did not take the said admission in writing. Subsequently, the respondent therein denied having

made any admission. Under the circumstances, it was observed by the Supreme Court that the High Court may be justified in setting aside the

order of dismissal. However, when the inquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits and

the matter requires to be remitted to the Disciplinary Authority to follow the procedure from the stage at which the fault was pointed out and to

take action according to law. Besides, pending inquiry, the delinquent must be deemed to be under suspension and the consequential benefits

would depend upon the result of the inquiry and order passed thereon. It was held that the High Court had committed illegality in omitting to give

the said direction. However, since the respondent therein had retired from service it was observed that no useful purpose would be served in

directing to conduct inquiry afresh.

25. It is apposite to note that the ratio of the decision in B. Karunakar''s case (supra) is in relation to non-furnishing of the inquiry report and

proceeding with the stage from which the infraction of rule of not furnishing the report was pointed out. The position that was considered was in the

wake of the 42nd amendment to the Constitution of India which came into force from 1.1.1977 whereby it was stated that it shall not be necessary

to give to a person who was to be dismissed or removed or reduced in rank from the service of the Government any opportunity of making

representation on the penalty proposed. The amendment led to the controversy as to whether when the Inquiry Officer was other than the

Disciplinary Authority, the employee was entitled to a copy of the findings recorded by him, before the Disciplinary Authority applies its mind to

the findings and the evidence recorded or whether the employee was entitled to the findings of the Inquiry Officer only at the stage when the

Disciplinary Authority had arrived at its conclusion and proposed the penalty. The further question that arose was whether the employee was

entitled to make representation against such finding before the penalty was proposed even when Article 311(2) of the Constitution stood as it was

prior to the 15th amendment which came into force from 6.10.1963. In Union of India and others Vs. Mohd. Ramzan Khan, , the Hon''ble Apex

Court held that disciplinary proceedings attract the principles of natural justice and the report of the Inquiry Officer after it records a finding of guilt

and proposes a punishment so far as the delinquent is concerned he would be entitled to the supply of the copy of the inquiry report. This decision,

however, it was held, would have prospective application and no punishment imposed was open to challenge on this ground.

26. The decision in Mohd. Ramzan Khan''s case (supra) was pronounced on 20.11.1990. Besides, it was also clarified that the said decision

would not preclude the Disciplinary Authority from revising the proceeding and continuing with it in accordance with law from the stage of supply

of the inquiry report in cases where dismissal or removal was the punishment. It is in view of another conflicting decision in the case of Kailash

Chander Asthana Vs. State of U.P. and Others, , that the matter was referred to the Constitution Bench in Managing Director, ECIL v. B.

Karunakar (supra) and the prospective operation of Mohd. Ramzan Khan''s case (supra) was reiterated. Therefore, the observations of the

Supreme Court in B. Karunakar''s case (supra) were in the context of a technical infraction in the non-supply of the report of the Inquiry Officer to

a delinquent employee after an Inquiry Officer found the employee guilty and proposed a penalty. Besides, it is to be seen in the facts and

circumstances of each case as to whether any prejudice had been caused on account of non-furnishing of the inquiry report to the delinquent. The

basic requirement that is to be kept in view by the Courts while considering to set aside an order of punishment or removal as the case may be is

one of having caused prejudice. This aspect of the applicability of the test of prejudice and the rule in B. Karunakar''s case (supra) has been

considered by the Hon''ble Supreme Court in State Bank of Patiala and others Vs. S.K. Sharma, , wherein it was observed as follows :

In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders

and enquiries: a distinction ought to be made between violation of the principles of natural justice, audi alteram partem, as such and violation of a

facet of the said principle. In other words, distinction is between ""no notice"", ""no hearing"" and ""no adequate hearing"" or to put it in different words,

no opportunity"" and ""no adequate opportunity."" To illustrate take a case where the person is dismissed from service without hearing him altogether

[as in Ridge v. Baldwin 1964 AC 40]. It would be a case falling under the first category and the order of dismissal would be invalid or void, if one

chooses to use that expression (Calvin v. Carr 1984 AC 574). But where the person is dismissed from service say, without supplying him a copy

of the Inquiry Officer''s report (Managing Director, E.C.I.L. v. B. Karunakar AIR 1994 SC 1050) or without affording him a due opportunity of

cross-examining a witness K.L. Tripathi Vs. State Bank of India and Others, , it would be a case falling in the latter category violation of a facet of

the said rule of natural justice in which case, the validity of the order has to be tested on the touch stone of prejudice, i.e., whether, all in all, the

person concerned did or did not have a fair hearing. It would not be correct in the light of the above decisions to say that for any and every

violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without

further enquiry. In our opinion, the approach and test adopted in B. Karunakar should govern all cases where the complaint is not that there was

no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a

procedural rule or requirement governing the enquiry; the complaint should be examined on the touch stone of prejudice as aforesaid.

27. On the basis of the above discussion, we hold that as a consequence of the setting aside of order dated 23.6.2003, the petitioner shall be

entitled to all consequential benefits which necessarily include monetary benefits payable to him from the date of suspension i.e. 7.3.2002 to the

date of dismissal i.e. 23.6.2003 and thereafter up to the date of quashing of the order of removal by this Court.

With the above observations, the matter stands disposed of on remittance from the Hon''ble Supreme Court.