(2013) 02 AHC CK 0137

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 987 (Sb) of 2002

U.C.Mishra		APPELLANT
	Vs	
State of U.P. and Another		RESPONDENT

Date of Decision: Feb. 6, 2013

Hon'ble Judges: Rajiv Sharma, J and Arvind Kumar Tripathi (II), J

Final Decision: Dismissed

Judgement

Arvind Kumar Tripathi II, J.

Present writ petition has been filed by Sri U.C. Mishra, Son of Late Sri Babu Ram Mishra, resident of Sitakunj Bilandpur, District Gorakhpur (a dismissed Higher Judicial Service Officer) for quashing the dismissal order dated 14.2.2002 and to reinstate him in service with all consequential benefits.

2. Deciding a land acquisition reference case resulted in infliction of major penalty of dismissal of the petitioner, who was a member of Higher Judicial Service is the issue involved in the writ petition.

3. Brief facts of the case of the Land Acquisition Act will be appropriate to be narrated in order to decide the controversy involved in this writ petition. A notification under Section 4(1) of Land Acquisition Act was issued for acquisition of land admeasuring 2 Bigha 5 Biswa and 8 Biswansi bearing Civil Station No. 24 Tehsil Chail District Allahabad for establishing a commercial center in Allahabad City on 13.11.1986. Notification under Section 6 was issued on 6.2.1987 and the land was acquired at the instance of Allahabad Development Authority. The proceeding for determination and the determination of amount of compensation commenced and the Special Land Acquisition Officer gave award on 25.5.1987, determining the value of the land as ` 7,34,505.67/ with interest at 12 per cent from the date of notification till date of award and solatium under Section 23 (2) of the Act amounting to ` 9,80,565/ and.06 paise. The Special Land Acquisition Officer found that the land was granted on lease by the State Government, which had expired in the year 1960 and thereafter it was not renewed. As the land belongs to the State Government, the

S.L.A.O.made a reference to the District Judge under Section 30 of the Act to determine as to how much amount is payable to the lease holder and to the State Government. In the reference, nine persons were made opposite parties viz., 1.Shiva Narain Lal Chowdhery 2Laxmi Narain Chowdhery 3Raj Narain Chowdhery 4Hari Narain Chowdhery 5Man Kamal Narain Chowdhery 6Laddomal S/o late Hukum Chand 7Z.A. Kazmi 8Prabhari Adhikari, Rajkiya Ashram, Allahabad and 9Secretary, Allahabad Development Authority.

4. The reference was received by the District Judge, Allahabad on 13.10.1987 and was registered as Acquisition Reference No. 124 of 1987. The Government fixed 11.11.1987 for written statement and 18.11.1987 for issues. Notices were issued to all the above nine persons. In the mean while the Prayag Upnivesh Sahkari Samiti Ltd. (in short ''Samiti'') also moved an application under Section 18 read with Section 30 and Section 31 of the Land Acquisition Act which was registered in the office of Special Land Acquisition Officer on 12.10.1987 and S.L.A.O directed the ''Ahalmad'' to take necessary action (Annexure 8, page 84 to 95 of writ petition and S.A.3 of supplementary affidavit filed by the petitioner. (The main controversy in the case revolves around this application as to whether that application was under Section 30 and 31 merely or also under Section 18 of the Land Acquisition Act and whether that application was surreptitiously placed on record at the behest of the petitioner, after he took over charge on 2nd June 1992). The State sought time and was allowed 15 days time to file written statement. The state was Opposite Party No.1 in the reference application of society and, therefore, it had sought time to file written statement (Annexure 9 page 96 of the writ petition). Allahabad Development Authority moved an application seeking impleadment in the reference application of the society on 16.4.1990 (Annexure 10 page 97 of the writ petition). The then 11th Additional District Judge, Allahabad (not the petitioner) allowed the application for impleadment of the Allahabad Development Authority on 24.12.1991 (Annexure 11 page 102 of the writ petition). On his transfer from Fatehpur the petitioner was posted as 9th Additional District Judge, Allahabad on 9.6.1990 and after that he took charge of the court of 11th Additional District Judge, Allahabad on 2.6.1992.

5. After taking over charge of 11th Additional District Judge, Allahabad when file was produced before the petitioner, he wrote a letter to the S.L.A.O. inter alia showing therein that though the application of the Samiti is on record but it has not been mentioned in the letter of reference dated 12.10.1987 and, therefore, the petitioner requested the S.L.A.O to clarify the position as to whether the said case has been referred or not (Annexure12 page103 of Writ Petition). The S.L.A.O. Allahabad, in response to the above letter informed that in the office file, the reference under Section 18 of the Act moved on behalf of the Samiti was available but it appears that on account of some inadvertence/mistake in the covering/forwarding letter dated 12.10.1987, Section 18 could not be mentioned in the reference (Annexure 13, page 104 of the Writ Petition). Written statement on behalf of State Government was signed by District Government Council (Civil) on 4.12.1991 and was verified by

A.D.M./C.R.O., Allahabad on 10.1.1992. No objection was made regarding genuineness of Reference of the Samiti under Section 18 read with Section 30 and 31 of Land Acquisition Act by S.L.A.O in the written statement. On the basis of the available evidence, the reference was decided by the petitioner. After that a complaint was sent by the District Magistrate, Allahabad through the Government allegedly mentioning that compensation amount of Rs. 9,80,565/(nine lac eighty thousand five hundred sixty five) was enhanced by the petitioner to the tune of Rs. 1,80,76,000/(one crore eighty lac seventy six thousand). The complaint was laid before the Hon''ble Administrative Judge, Allahabad and a report was also obtained from District Judge, Allahabad.

6. On 6.11.1995, the District Judge, Allahabad submitted his report which was laid before Hon''ble Mr. Justice G.P. Mathur (as he then was), the then Inspecting Judge, Allahabad, who also wrote a letter/note addressed to Hon''ble the Chief Justice expressing the view that the matter requires further probe regarding conduct of the petitioner.

7. On 30.7.1997, Hon''ble the Chief Justice directed to place the mater before Administrative Committee (AC).

8. On 16.8.1997, the Administrative Committee (AC) considered the matter and resolved that a disciplinary proceeding be initiated against the officer and further resolved that the officer be placed under suspension with immediate effect.

9. On 19.8.1997, the petitioner was placed under suspension vide Court''s Office Memo C760/CF(A)/97 dated 19.8.1997 and Hon''ble Mr. Justice Sudhir Narain was appointed as Enquiry Judge. On 23.3.1998, chargesheet dated 19.3.1998 was served on the petitioner. (Annexure No.3 page 4954 of the Writ Petition).On 23.5.1998 petitioner submitted reply to the chargesheet (Annexure No.7 pages 5988 of the Writ petition). On 8.1.2001, Hon''ble the Enquiry Judge submitted its inquiry report (Annexure No. 16 pages 109142 of the Writ Petition).

10. On 11.01.2001, Hon''ble the Chief Justice directed to place the matter in A.C. Meeting. On 9.2.2001, A.C. Meeting held and considered the enquiry report and resolved that the report be accepted and the same together with the comments of the officer be referred to Full Court for decision. On 19.2.2001, enquiry report sent to District Judge, Gonda through Court''s letter no. C70/CF(A)/2001 dated 19.2.2001 for furnishing to the petitioner for his comments on it. On 15.10.2001 petitioner submitted his comments (Annexure No. 17 pages 143154 of the Writ petitioner).

11. On 5.10.2001, Full Court meeting was held and considered the enquiry report dated 8.1.2001 along with comments of the petitioner and resolved that the officer be dismissed from service.

12. On 23.01.2002, in pursuance of the resolution of the Full Court, the matter was referred to the State Government to move His Excellency the Governor to issue

necessary orders for dismissal of the petitioner. On 14.2.2002 the State Government passed the order of dismissal of the petitioner from service.

13. It was argued from the side of petitioner that petitioner has demanded five documents through his letters dated 21.4.1998 and 28.3.1998 but it was not supplied. Only the undated note of Hon''ble Mr. Justice G.P. Mathur was permitted to be perused and at a later stage after examination of the District Magistrate as a witness, the copy of the complaint of the District Magistrate was given to the petitioner. Regarding the report of the then District Judge, Allahabad which was a preliminary inquiry report was not provided and the request was denied on the ground that the same is a confidential document. In this regard, it was submitted by learned counsel for petitioner that it is the preliminary enquiry of the then District Judge Allahabad which had formed basis for initiation of disciplinary proceeding against the petitioner and, therefore, it was a document in absence of which the petitioner could not be able to know the psyche as to what was the determining factor to take a decision to hold disciplinary proceeding against the petitioner. The disciplinary proceeding had found its genesis from the said report of the District Judge, Allahabad and, therefore, nonsupply of the said report has caused great prejudice to the petitioner. This report was the foundation of enquiry and, therefore, the authorities were under obligation to permit the petitioner to have access to the said report.

14. It has also been submitted that the report of Hon''ble Justice M. P. Kenia the then Administrative Judge of Allahabad was also very important document for the simple reason that the report of District Judge formed basis of disciplinary proceedings against the petitioner, whereas Hon''ble Justice M. P. Kenia had exonerated the petitioner from the charge. It was also submitted that when two views were there, the Hon''ble High Court was obliged to permit the petitioner to have access to the said report to defend himself on the basis of the contradictory finding in the two reports. Thus it was submitted that it is clear that the the documents demanded by the petitioner were relevant for the purpose of defending his but non supply of the same has caused injury to the petitioner as even after conclusion of the inquiry, the petitioner was kept in dark. It is well settled principles of law that an officer/employee has a right to access of all the materials which are foundations of inquiry against him. It was also submitted that thus the rule of natural justice has not been followed and on this score alone the inquiry against the petitioner is vitiated.

15. It was also submitted that charge No. 1 and 3 are contradictory to each other and the same cannot be proved at one and same time and thus the finding of fact recorded by Hon''ble Inquiry Judge was perverse.

16. Elaborating the argument, it was submitted that charge No.1 leveled against the petitioner was in respect of assuming the jurisdiction of section 18 of Land Acquisition Act treating the application under Section 30 to be Reference under

Section 18 and charge no. 3 relates to procuring an application of the Samiti made under Section 18 on record by antedating it. Further elaborating the arguments it was submitted that these two charges cannot be proved simultaneously as in case if the petitioner assumed jurisdiction under Section 18 on the application under Section 30, the question of procuring the application under Section 18 on record by antedating it could not have arisen. It was contended that Hon''ble the Enquiry Judge have utterly omitted to take into consideration the fact that the application of Samiti was an application under Section 18 read with Section 30 and 31 of the Land Acquisition Act and this was the only application which was on record. Samiti did not prefer separate applications under section 30 and section 18. This application was a joint application then the same application can be treated to be application available on record from the very inception and hence the question of application under Section 18 being brought on record later on did not arise at all. The heading of application is very clear which leaves no room for any doubt. Thus, neither the charge no.1 and 3 could have been proved simultaneously nor independently. The finding of the learned Enquiry Judge is thus perverse.

17. It was also submitted that Learned Enquiry Judge became influenced by certain facts which were not before the petitioner while deciding the Reference Application.

18. It was also argued that Learned Enquiry Judge has taken into account of such things for which charge was not framed and there was no opportunity to reply to those allegations.

19. Learned counsel for the State refuting the argument of petitioner''s counsel, argued that in departmental proceeding, strict rule of evidence is not to be followed and only probabilities pointing towards the misconduct of the petitioner are to be considered and seen. It was also argued that High Court while exercising writ jurisdiction can not sit over as an appellate court. However, he admitted that principles of natural justice are to be followed in the inquiry and principles of natural justice have been followed in the inquiry.

20. We have considered the rival submissions of learned counsel for the petitioner and learned counsel for the State and also gone through the record.

21. We are going to take firstly, the arguments of the petitioner regarding nonsupply of copies of Annexure 5 to the petition, which is a letter written by O.S.D. inquiry dated 1.9.1998 to the Enquiry Judge, wherein it has been informed that the Officer has been served with the chargesheet. He has also prayed for the copies of following documents be also supplied to him;

(i) Note of Hon''ble Mr Justice G.P. Mathur.

(ii) The report of the then D. J. Allahabad, O.P. Garg.

(iii) Order of the Hon''ble Court (if any) in compliance of which, the then D.J. Allahabad conducted the preliminary inquiry and prepared his report.

(iv) The complaint (if any) which inspired the then D. J. Allahabad to enquire into the matter and prepare his report.

22. It was further submitted in the letter that regarding paper no.1 Hon''ble Mr. Chief Justice has refused the prayer and directed that he may peruse report and the same has been perused by Sri Mishra on 4.9.1997. It has further been submitted that paper no.2 is a report of preliminary inquiry of the then District Judge, Allahabad which is a confidential document. It was also submitted that paper no.3 is administrative correspondence and paper no.4 is a confidential letter by the District Judge, Allahabad to Secretary, Confidential and Vigilance Department, Uttar Pradesh Shashan, Lucknow. It was also submitted that none of the above documents have been referred to in the charges leveled against the officer. This note was submitted to Inquiry Judge for orders.

23. The petitioner has referred this letter in para 10 of the petition and it has also been mentioned in para 11 that it has further been stated that the said note prepared by O.S.D. inquiry dated 1.5.1998 was approved by the Inquiry Judge on 2.5.1998.

24. In the counter affidavit filed by O.S.D. litigation, High Court Allahabad on behalf of respondent no.2. it has been mentioned that all the documents which were sought to be relied upon in support of the charges leveled in the chargesheet dated 19.3.1998 were duly made available to the petitioner during the course of inquiry and the petitioner did not raise any objection of non availability of relevant documents causing any prejudice to the petitioner in the department inquiry conducted against him.

25. In para 9 of the petition it has also been mentioned that in the same matter an inquiry was conducted long back by the then Administrative Judge Hon''ble Mr. Justice M.P. Kenia who after holding the enquiry found the allegations unfounded. It has also been mentioned that for putting forth his reply to the same allegation Hon''ble Mr. Justice M.P. Kenia is relevant and essential. Annexure 6 to the petition,is the application by which petitioner has requested the Registrar High Court of Judicature at Allahabad for supplying copy of the same so that, the submission of the written statement be not delayed. There is no averment in the counter affidavit that this report was provided to the petitioner. A sweeping averment has been made in para 8 of the counter affidavit that all the documents which were sought to be relied upon in support of the charges leveled in the chargesheet dated 19.3.1998 were duly made available to the petitioner during the course of inquiry. This clearly goes to show that none of the papers which petitioner had demanded for an effective reply to the charges have been made available to him. We shall deal with the effect of non supply of documents later on after dealing with findings of the Enquiry Judge visavis the facts available on the record. For the sake of reference the charges are being reproduced herein:

CHARGE

"1 That you on 16.11.1999, while working as XIth Additional District Judge, Allahabad decided Land Acquisition Reference Case No. 124/87 State Vs. Shiv Narayan Lal Chaudhary and others illegally and without jurisdiction treating the reference made under Section 30 by the Special Land acquisition Officer, as under Section 18 of the Act with a view to assume jurisdiction to enhance the amount of compensation in favour of the Prayag Upnivesh Sahakari Samiti on extraneous consideration and with an oblique motive, which was set aside on 11.2.1998 in F.A. No. 628/95 Allahabad Vikas Pradhikaran and another Vs. the Prayag Upnivesh Sahakari Samiti. Ltd. by Hon''ble High Court holding that it is bad in law and you have travelled beyond your jurisdiction.

And you thereby, failed to maintain absolute integrity and devotion to duty, and thus committed misconduct within the meaning of Rule 3 of the U.P. Government Servants Conduct Rules 1956.

Evidence which is proposed to be considered in support of the charge :

(i) Your judgment and order dated 16.11.1992 passed in L.A.R. Case No. 124/87 State Vs. Shiv Narayan Lal Chaudhary and others.

(ii) Copy of judgment and order dated 11.2.98 passed by the Hon''ble High Court, in F.A. No. 628/95 Allahabad Vikas Pradhikaran and another Vs Prayag Upnivesh Sahakari Samiti Ltd.

(iii) Copy of reference application made by Spl. Land Acquisition Officer Allahabad dated 12.10.87 addressed to the court of District Judge, Allahabad.

(iv) Copy of your application dated 11.8.1992 addressed to Spl. Land Acquisition Officer, Nagar Mahapalika, Allahabad.

(v) File of L.A.R. Case No. 124/87 State Vs. Shiv Narayan Lal Chaudhary and others.

2. That you on 18.11.92 while working as XI th Additional District Judge, Allahabad, passed judgment and decree in L.A. Case No. 124/87 State Vs. Shiv Narayan Lal Chaudhary and others, by enhancing the amount of compensation out of proportion from Rs. 9,80,565.60 naya paisa to Rs. 1,78,76,000 (one crore seventy eight lacs seventy six thousands) against the record and all judicial norms with oblique motive to confer advantage on the Housing Society, i.e. Prayag Upnivesh Sahakari Samiti Ltd. and you thereby, failed to maintain absolute integrity and devotion to duty and committed misconduct within the meaning of Rule 3 of U.P. Government Servants Conduct Rules 1956.

Evidence which is proposed to be considered in support of the charge:

(1) Judgment and order dated 16.11.92 passed in L.A.R. Case No.124/87 State Vs. Shiv Narayan Lal Chaudhary and others.

(2) Judgment and order of the Hon''ble High Court dated 11.2.1998 passed in F.A. No. 628/95 Allahabad Vikas Pradhikaran and another Vs. The Prayag Upnivesh Sahakari Samiti Ltd. Allahabad.

(3) Copy of the award made by Special Land Officer dated 25.5.87.

(4) File of L.A.R. Case No. 124/87 State Vs. Shiv Narayan Lal Chaudhary and others.

3 That you during the year 1992, while posted as XI the Additional District Judge, Allahabad, have been instrumental in getting the application for reference under Section 18 of the Act on behalf of the Prayag Upnivesh Sahakari Samiti Ltd. and bringing it on record in a surreptitious manner in Land Acquisition case no. 124/87 State Vs. Shiv Narayan Lal Chaudhary and others pending in your court, which was filed by anti dating it, in order to bring the application within time, for extraneous considerations, affecting your integrity and devotion to duty and you thereby, committed misconduct within the meaning of Rule 3 of the U.P. Government Servants Conduct Rules 1956.

Evidence which is proposed to be considered in support of the charge:

(1) Application on behalf of the Prayag Upnivesh Avas Evam Nirman Sahakari Samiti Ltd. Allahabad bearing the date 12.10.1987 (in 7 pages) which, copy was given to opposite party on 23.10.1992.

(2) Judgment and order dated 10.11.1992 passed by you in L.A.R. Case No. 124/87 State Vs. Shiv Narayan Lal Chaudhary and others.

You are, hereby required within 15 days of the receipt of this chargesheet to put in your written reply to the charge.

You are, further informed that if no such statement is received from you by the undersigned within the prescribed time, it will be presumed that you have none to furnish and orders will be passed in your case accordingly.

The copies of the documentary evidence are attached herewith except the file of L.A.R. Case No. 124/87 State of U.P. And another Vs. Shiv Narayan Lal Chaudhary and others. This file may be inspected by you in the office of the O.S.D. (inquiries)."

26. Before entering into the factual and evidential aspect of the enquiry, it will have to be seen first that whether this Court, while hearing the writ can enter into the evidence on record or it will be treated as sitting in appeal over the enquiry report, as argued by learned Chief Standing Counsel.

27. In the case of State Bank of Bikaner & Jaipur Vs. Nemi Chand Nalwaya reported in (2011)4 SCC. 584, it has been held that:

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and

properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, malafide or based on extraneous considerations."

28. In another case, namely, Mavji C. Lakum Vs. Central Bank of India reported in (2008) 12 SCC 726 the Apex Court held that:

"Even if inquiry is found to be fair, that is only a finding certifying that all possible opportunities were given to delinquent and principles of natural justice and fair play were observed, that does not mean that findings arrived at were essentially correct findings. If the Industrial Tribunal comes to a conclusion that findings could not be supported on the basis of evidence given, or further comes to a conclusion that punishment given is shockingly disproportionate, the Industrial Tribunal would still be justified in re appreciating evidence and/or interfering with the quantum of punishment. There can be no dispute that power under Section 11A has to be exercised judiciously and interference is possible only when the Tribunal is not satisfied with the findings and further concludes that punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. Besides, the Tribunal has to give reasons as to why it is not satisfied either with the findings or with the quantum of punishment and that such reason should not be fanciful or whimsical but there should be good reasons."

29. The Apex Court in the case of South Bengal State Transport Corporation Vs. Sapan Kumar Mitra and others reported in (2006) 2 SCC 584 has held that "The Division Bench has also found that the findings of the disciplinary authority in passing the order of removal were perverse. It is not possible to agree with that view. Caselaw shows that when the finding of fact was arrived at without any material or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law would have come to that determination, the decision can be said to be perverse".

30. The cumulative effect of the above decisions of Apex Court can be summarized as follows:

(1) Courts will not act as an appellate court and reassess the evidence led in the domestic inquiry,nor interfere on the ground that another view is possible on the material on record.

(2) Courts will not interfere in the finding of fact recorded in departmental enquiries, except where such finding are based on no evidence or where they are clearly perverse.

(3) The test to find out perversity is conclusion or finding, on the material on record.

(4) The Courts will however interfere with the finding in disciplinary proceeding

(a) if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations,

(b) if findings could not be supported on the basis of evidence given,

(c) if the finding of fact was arrived at without any material or upon a view of the facts which could not reasonably been entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law would have come to that determination.

(5) Even if inquiry is found to be fair, that is only a finding certifying that all possible opportunities were given to the delinquent and principles of natural justice and fair play was observed,that does not mean that findings arrived at were essentially correct findings.

(6) If the Court comes to a conclusion that finding could not be supported on the basis of evidence given, the Court would still be justified in reappreciating evidence.

31. On the basis of above principles it is clear that this court can re appreciate the evidence if the conditions enumerated above are satisfied.

32. We shall now deal with the charge no 1 and 3. After carefully going through the wording of charge no1 and charge no3 and also going through the finding of the learned Enquiry Judge, we find that much emphasis has been given on the allegation that reference u/s 18 of the Act filed by the Samiti was surreptitiously placed on record after 2nd June 1992 after the delinquent officer took over charge as XI Additional District Judge Allahabad. So in our opinion, it is very important to discuss whether the reference by Samiti was already on record or it was surreptitiously placed on record after 2nd June 1992 when the delinquent officer took over as XIth Additional District Judge Allahabad. If the reference of Samiti was already on record then the entire basis of the findings arrived by the Enquiry Judge falls.

33. The wording of charge number 1, is very important. At the cost of repetition relevant portion is reproduced below

"That you illegally and without jurisdiction treating the reference made under Sec30 by the special land acquisition officer, as under section 18 of the Act"

This clearly goes to show that a reference under section 30 of the Act was already there on record and the petitioner treated it to be under Section 18 also.

The relevant portion of charge no3 is also reproduced below:

"That you have been instrumental in getting the application for reference under section 18 of the Act on behalf of the Prayag Upniveshan Sahakari Samiti and bringing it on record in a surreptitious manner in Land Acquisition case no. 124/87 Stat Vs Shiv narain Lal Chaudhary and others,which was filed by antedating it,"

34. The wording of this charge is also important. The combined reading of Charge 1 and 3 gives an impression that there were two applications for Reference, one u/s 30 of the Act which was already on record, second u/s 18 of the Act which was surreptitiously placed on record after the petitioner took over charge as XI Additional District Judge Allahabad on 2nd June 1992.

Annexure 8 is the copy of reference made to Special Land Acquisition Officer by the Prayag Upniveshan Avas Evam Nirman Sahkari Samiti. The heading itself reveals that it has been made under section 18 read with section 30 and 31 of the L.R. Act. This leaves no room for doubt that there was only one reference on record under section 18 and 30/31 of the Act.

35. Annexure 14 is the written statement filed by State against the reference of the Samiti. The then D.G.C. Civil Sri Ram Nihor Singh has signed it on 91291 and the verification by Addl. District Magistrate/C.R.O is done on 10011992 long before the petitioner assumed charge of the court of XIth Addl. District Judge Allahabad.

36. Annexure 9 is the copy of order sheet dated 851989 in which the Court had on the request of D.G.C. Civil, granted 15 days time to file written statement in L.A.R. Case number 127 of 1987; State Vs Shiv Narain Lal Chaudhary and others.

37. This also goes to show that reference of the Samiti was already on record as there was no occasion for the State to file written statement in the reference under section 30 of the Act, which was filed by the State it self. The occasion to file written statement on behalf of the State will arise only when it is opposite party in the reference of the Samiti under section 18 of the Act.

It has been mentioned in para 19 and 20 of writ petition that in reference application u/s 30 of L.A.R Act, State Government was the petitioner and Allahabad Development Authority was already impleaded as opposite party no9 through its secretary,(this fact also is mentioned in the enquiry report) whereas in reference application of the Samiti initially it was only State of U.P. which was arrayed as party. In the counter affidavit, reply to this assertion has been given in para 11 wherein it has been mentioned that this was the defence taken by petitioner, which has already been considered by the Enquiry Judge, and the entire defense was found to be incorrect. The averments are matter of record hence need no reply. However the correctness is not admitted in view of Enquiry report dated 812001.

38. This goes to show that this was the defense taken by the petitioner before the Enquiry Judge.

39. However Annexure 10 is copy of application and affidavit by Allahabad Development Authority wherein Allahabad Development Authority has prayed for impleading itself as party in reference case number 124 of 1997. Though the heading of this application shows that it was an application in reference "Shiv Narain Vs State of U.P." But this fact is evident from enquiry report that State Government has filed a reference u/s 30 of the Act in which there were nine(9) opposite parties including Allahabad Development Authority as opposite party number 9, and there was no reference on record in the name of "Shiv Narain Vs State of U.P.". This application was allowed vide order dated 241291 by the Sri Udho Singh, the then XI Additional District Judge. It has been mentioned in the order that applicant and State has no objection in allowing this application. Thus it is abundantly clear that this application was not moved in reference u/s 30 of the Act filed by State. The only other reference on record was the reference moved by the Samiti.

40. The Enquiry Judge has also mentioned in his inquiry report that "On 16490 the A.D.A filed an application that it should be impleaded as opposite party and be allowed opportunity to adduce evidence and contest the aforesaid reference. This application was not opposed by any one and it was allowed by the XIth Additional District Judge on 241291".

41. While dealing with charge no3 The Enquiry Judge has, while mentioning the above fact also mentioned that "Neither in the application nor in the affidavit there was any mention regarding any application of the Prayag Upniveshan Sahkari Samiti." The learned Enquiry Judge has lost sight of the fact that in reference u/s 30 of the State, A.D. A was already a party as opposite party no9 so there was no occasion by A.D.A for moving application for getting itself arrayed as opposite party. The occasion arises only when already there was an application/reference by Samiti on record and A.D.A. was initially not made party.

42. Charge number 1 as reproduced above leaves no room for doubt that there was a reference by the Samiti on record.

43. Annexure 12 is a letter written by the petitioner to Special Land Acquisition Officer. The letter is reproduced below:

44. Annexure 13 is the reply given by the Special Land Acquisition Officer. The reply is also produced below:

45. This reply also goes to show that reference of the Samiti under section 18 was also on the record of the S.L.A. O''s office.

46. Petitioner in para 38 of the writ petition has stated that " that it is noteworthy here that the then S.L.A.O Sri Yogesh Kumar Srivastava was also produced as witness, who in his deposition admitted that on application of the society under

sec18 of the Act dated 12101987, there was an endorsement under his signature to the Ahalamad for taking necessary action. In his crossexamination, this witness, namely, Sri Yogesh Kumar Srivastava admitted the initials on the aforesaid endorsement. He also stated that the application of the society was not returned. This witness also admitted that on the Index Sheet, the reference u/s 18 of the Act is also noted."

Its reply has been given in para 13 of the Counter Affidavit, which reads as follows "That in reply to the contents of paras 36 to 39 of the petition it is stated that oral deposition of the two witnesses produced in support of the charge, have been duly considered by Hon'' Enquiry Judge and findings have been recorded after perusal of the same."

47. Thus it is clear that it has not been denied that S.L.A.O has not given any such statement. The enquiry report also mentions that the S.L.A.O has given a dubious statement that the reference application was sent to the District Judge but on a question put to him he stated that he was making statement on the basis of the inference as the application is on record.

48. The inference by the learned Enquiry Judge that the reference application of the Samiti was surreptitiously placed on record after the delinquent officer had taken cognizance of the case after 2nd June 1992 and the officer was instrumental in it, is not based on available evidence and papers on record.

49. While dealing with charge no1, the learned Enquiry Judge has heavily stressed that the delinquent officer after taking charge wrote a letter on 1181992 to the Special Land Acquisition Officer seeking clarification as to whether any reference has been made in regard to application filed by the Samiti on 12101987, which was on record. This according to the Enquiry Judge was mala fide act of the delinquent officer. Again the learned Enquiry Judge lost sight of the fact that there was a reference on record in which state has filed written statement and A.D.A. has moved application for impleadment as party and the application was allowed prior to 2nd June 1992.

50. While dealing with Charge no3 The inquiry judge has mentioned that "In my view the application was surreptitiously placed on record after the delinquent officer took charge as XIth Additional District Judge and his conduct in the matter of the Samiti fully establishes the charge no3 against him."

51. A perusal of the reasoning given by the learned Enquiry Judge reveals that they are based on conjectures and surmises as it is fully established from the above discussion that the reference u/s 18 was already on record prior to 2nd June 1992.

52. The learned Enquiry Judge has, while dealing with the statement of P.W.2 Sri Yogesh Srivastava completely ignored his statement in cross examination, relevant portion of which is mentioned below:

@ Hindi @

53. In our considered view, the learned Enquiry Judge has also not dealt with the impact of statement of the then District magistrate, who has made the complaint. The District Magistrate, P.W.1 has stated in his cross examination that :

@ Hindi @

54. This statement shatters the whole basis of the finding of guilt against the delinquent officer.

55. The fact that his predecessor never found the reference on record does not reflect against the delinquent officer but actually it reflects towards the callous attitude of his predecessors. When the predecessor allowed the impleadment application of A.D.A vide order dated 241291 was he not aware that A.D.A is already a party as opposite party no9. The predecessor fixed 201 92 for written statement of A.D.A and for framing of issues. The predecessor allowed 15 days time to the State for filing written statement vide order dated 8589 (Annexure 9), was it not his duty to ask as to why State is seeking time to file written statement in the reference filed by State. This clearly goes to show that reference of Samiti was already there but they did not care to clarify the matter from the S.L.A.O or to pass any order regarding that.

It is also noteworthy that the reference of State too was filed in the year 1987 but till 1992 there was no considerable progress in the case, reason best known to the predecessors of the delinquent officer. This clearly goes to show that the delinquent officer after taking charge of that court and finding it an old case tried to dispose it off expeditiously. While dealing with charge no2, the learned Enquiry Judge has discussed following points :

(1) The record of S.L.A.O was not summoned.

(2) The officer neither drew adverse inference nor asked the Samiti to file sale deed dated 18.3.1986.

(3) The Enquiry Judge has summoned the record of Writ Petition No. 18974 of 1987 filed by Samiti and drew inference from that file.

(4) The Enquiry Judge has considered the project report and found that Samiti had filed only Photostat copy of the project report which was inadmissible in evidence but later on filed a certified copy of project report on 12.11.1992 after the close of evidence. Copy of which was not given to Allahabad Development Authority. The project report was filed without enclosing the copy of affidavit. The project report was filed without a coy of affidavit. The delinquent officer has misread the project report.

(5) The delinquent officer has considered the report of Sri G.S. Virdhi which was not admissible.

(6) Hot haste in deciding the matter.

(7) Proper opportunity was not given to Allahabad Development Authority.

56. It is worth noting that charge No.2 reads as follows :

"2. That you on 18.11.92 while working as XI the Additional District Judge, Allahabad, passed judgment and decree in L.A. Case No. 124/87 State Vs. Shiv Narayan Lal Chaudhary and others, by enhancing the amount of compensation out of proportion from Rs. 9,80,565.60 naya paisa to Rs. 1,78,76,000 (one crore seventy eight lacs seventy six thousands) against the record and all judicial norms with oblique motive to confer advantage on the Housing Society Prayag Upnivesh Sahakari Samiti Ltd. And you thereby, failed to maintain absolute integrity and devotion to duty and committed misconduct within the meaning of Rule 3 of U.P. Government Servants Conduct Rules 1956."

It is also noteworthy that in order to prove the charge No.1 following documents were to be relied:

(i) Judgment and order dated 16.11.1992 passed by LA.R. Case no. 124/87 State Vs. Shiv Narayan Lal Choudhry.

(ii) Judgment and order dated 16.11.1992 passed Hon''ble High Court dated 11.2.1998 passed in FA. No. 628/95 Allahabad Vikas Pradhikaran and Anrs. Vs. Prayag Upnivesh Sahkari Samiti Ltd.

(iii) Copy of award made by S.L.A.O. Dated 25.5.1987.

(iv) File of L.A.R. Case No. 124/87 State Vs. Shiv Narayan Lal and Anrs.

57. The list of documents which were to be relied upon by the learned Enquiry Judge, nowhere mentions that the record of Writ Petition No. 18974 of 1987 will be used as evidence against the delinquent officer. It is noteworthy that the learned Enquiry Judge has himself noted that the charged officer has taken objection that these papers were not before him when he decided the reference and he could not be blamed if certain documents were not placed before him when he decided the matter. The learned Enquiry Judge himself has mentioned that it is true that the Court had to record the finding on material produced before it. The learned Enquiry Judge tried to find out as to why the sale deed was not summoned by the officer from the Samiti. The learned Enquiry Judge placed all the burden on the delinquent officer and drew adverse inference but that was against natural justice and also against law.

58. In a case of land acquisition, the reference court is not a court which sits in appeal over the award passed by S.L.A.O. So, there was no statutory duty or legal obligation on the part of delinquent officer to summon the record of S.L.A.O. In the case of the Land Acquisition Officer, Vijayawada Thermal Station Vs. Nutalapati Venkat Rao (FB) AIR 1991, Andhra Pradesh, page31, it has been held that:

"We, therefore, hold that the list of sale transactions mentioned in the Award by the L.A.O. Cannot be treated as evidence before the court. We do not agree with the view of the learned single Judge in the referring order that such a list referred to in the Award can be relied upon by the Court, so far as sales favourable to the landowner whose land is acquired. The view of the learned Judge that just as transactions in the sale list favourable to the government are relied upon by the L.A.O., the owner can also rely on other sales in that list favourable to him, is not, in our opinion, correct. So far as the L.A.O is concerned, the award passed by him is an offer and that is the minimum compensation that is payable in view of S.25 of the Land Acquisition Act. If the owner of the land wants higher compensation, he should adduce adequate evidence in the Court and at that stage the L.A.O cannot lead evidence for paying anything less than the award. We, therefore, hold that the sale list or transactions relied upon in the Award cannot be treated as evidence in the Civil Court. Learned counsel for the respondent claimant relied upon Arunachala Aiyar V. Collector of Tanjore, (AIR 1926 Madras 926). There the Madras High Court held that the Award of the L.A.O. is evidence in the proceedings before the Court and that statements in the award, such as statements as to contents of certain documents examined by the L.A.O. are evidence and need not be proved by the production of the documents themselves. We are unable to accept the said statement of law as correct in view of the contrary view expressed by the Supreme Court in Collector, Raigarh V. Harishing Thakur, (AIR 1979 SC 472). We accordingly overrule the said decision."

59. The Apex Court in the case of A. Chiman Lal Hargovind Das Vs. Special Land Acquisition Officer, Poona, AIR 1988, SC. 1652 formulated following guidelines for disposing Reference under the land Acquisition Act:

"While disposing of a reference, the following factors must be etched on the mental screen:

(1) A reference under Section 18 is not an appeal against the award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the Award, approve or disapprove its reasoning or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose."

60. In Sangunthala(Dead) through LRS. Vs. Special Tehsildar (Land Acquisition) and Others reported in (2010)3 SCC 661, the Apex Court held that :

"28. It is settled that the burden of establishing/proving the market value of the lands is always on the claimants. In Periyar and Pareekanni Rubbers Ltd. V. State of Kerala reported in (1991) 4 SCC 195 : AIR 1990 SC 2192 this Court held that it is the duty of the court to determine just and fair market value. It was further held that the claimants should produce necessary evidence on the value of land since the burden of proof is on them to establish the higher compensation claimed.

29. While agreeing with the judgment in Periyar and Pareekanni Rubbers Ltd. V. State of Kerala reported in (1991)4 SCC 195 : AIR 1990 SC 2192, this court in Collector v. Kurra Sambasiva Rao reported in (1997) 6 SCC 41 held that in a claim for enhancement of compensation the burden of proof was on the claimants that the land was capable of fetching higher compensation.

30. Further in Kiran Tandon V. Allahabad Development Authority reported in (2004) 10 SCC 745, it was held that :(SCC P.754, para 10)

"10.... The burden of proving that the amount of compensation awarded by the Collector is inadequate lies upon the claimant and he is in the position of a plaintiff."

31. The Court, therefore, has to treat the reference as an original proceeding before it for determination of the market value afresh on the basis of the material produced before it. The claimant in the position of a plaintiff has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in court. The material produced and proved by the other side will also be taken into account for this purpose. (See 754, para 10 of Kiran Tandon)."

61. In view of the above decisions there was no need to summon the record from the S.L.A.O and the delinquent officer has to decide afresh the valuation of the acquired land on the basis of evidence filed by parties.

62. Thus it is clear that finding of the Enquiry Judge on charge no2 under heading "The record of Special Land Acquisition Officer was not summoned" and "The officer neither drew adverse inference nor asked the Samiti to file sale deed dated 1831986" has no legal base and against established law.

63. The learned Enquiry Judge has summoned the file of Writ Petition No. 18974 of 1987, being aware of the fact that no papers from this file were filed by either of the parties, in the reference court. The evidence which was to be read and used against the delinquent officer and was mentioned in the chargesheet also does not contain

this file and despite that the delinquent officer was found guilty of not being aware of this writ and its contents. This is clear cut violation of natural justice.

64. The learned Enquiry Judge had laid emphasis on the photocopy of project report and came to the conclusion that it was inadmissible in evidence. This finding is also without any cogent reason. Certified Copy was filed later on. The Project Report was prepared by A.D.A. This project report was filed by A.D.A in High Court in connection of the writ petition. Certified Copy of the project report was obtained by the Samiti and filed in the reference court. As this project report was filed and relied by A.D.A in High Court, hence it was rightly treated by the reference court to be the admission of the A.D.A regarding cost of the acquired land. There is nothing on record even in the enquiry proceeding that A.D.A has anywhere objected that they have not been provided opportunity to rebut/explain their project report.

65. The delinquent officer in his reply to enquiry report has replied that the project report was already on record before framing of issues.

66. The reply to the enquiry report by the delinquent officer regarding charge no2 is also very material Itmentions that there were only two documents filed by the Samiti in the reference court to enable the reference court/delinquent officer to determine the market value of the acquired land,(a)the project report of A.D.A and (b) expert valuer''s report. The valuer has come in witness box and proved the report. There was no rebuttal from the side of A.D.A.

67. This expert report was discarded by the learned Inquiry Judge on the ground of the witness being interested party as he had purchased an area of 266.66 sq. yard out of acquired land from Samiti itself on 2431986 at the rate of Rs.228/ per sq. yard. The Enquiry Judge has come to the conclusion on the basis of the writ petition filed by Samiti against the acquisition proceeding.

68. Admittedly, file/papers of that writ petition were not on record before the delinquent officer while deciding the reference. Therefore, there is no doubt that the learned Inquiry Judge has relied upon such document which was not before the reference court and the delinquent officer was not ever informed that this file is to be used in enquiry which is violation of natural justice.

69. When the papers regarding the writ petition were not before the delinquent officer, then no motive can be attributed to him in relying upon that expert report.

70. The learned Enquiry Judge has further found that the delinquent officer was in hot haste in deciding the matter. The learned Enquiry Judge has given a chronological list of date of events.

(I) A.D.A filed written statement on 29.10.1992 and issues were framed on the same date 6.11.1992 was the date fixed for final hearing.

(II) On 6111992 Samiti produced P.W.1 Sri Prem Prakash Shukla. Court fixed 9111992 for further evidence.

(III) On 9111992 and 11111992 evidence of Prem Prakash Shukla was recorded and concluded. Thereafter, Samiti examined Sri G.S.Virdi and concluded its evidence. 12111992 was fixed for evidence.

(IV) State examined two witnesses and closed evidence. 13111992 was fixed for arguments.

(V) On 13111992, arguments were heard and 16111992 was fixed for delivery of judgment and the judgment was delivered on 16111992.

(VI) The Officerpetitioner, after delivery of judgment, handed over charge as he has received transfer orders prior to 16.11.1992.

71. The enquiry report itself shows that the transfer was not a routine/annual transfer. Thus it can not be said that officer was aware of the transfer order. The inquiry report it self reveals that Registry of the Court has issued a letter to the District Judge on 10111992 to relieve the officer from the present post and to direct him to take over charge of his new assignment as Judge Family Court. The learned Enquiry Judge has not mentioned that as to when this letter was received in the office of the District Judge and when did the District Judge informed the officer about his transfer. This aspect was very important and the learned Enquiry Judge ought to have examined this aspect. This fact has also not been mentioned in the charge so as to enable him to explain/reply to this accusation. This is also violation of natural justice and wrong impression was created in the mind of the learned Enquiry Judge. As per reply of the delinquent officer against the enquiry report, the letter was received in the Office of the District Judge on 13.12.1992. 14th and 15th November was holiday being second Saturday and Sunday. He received the transfer order on 16th November 1992 and he handed over charge on the same day.

72. Had the learned Enquiry Judge called for explanation from the delinquent officer regarding this fact then the explanation would have been provided and the learned Enquiry Judge would not have reached to a wrong and damaging finding. Thus again rules of natural justice have been violated.

73. The principle of natural justice requires that no material should be utilised against a person before giving him a chance to explain.

74. After dealing with the charge and enquiry report, we again revert to the effect of nonsupply of documents asked by the delinquent officer.

75. In the case of D.K. Yadav Vs. J. M. A. Industries Ltd., reported in (1993) 3 SCC, it is stated herein below:

"12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the

rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and procedural justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive procedural potency and versatile quality, equalitarian in its soul allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable."

76. In the case of Dr. Rash Lal Yadav Vs. State of Bihar, reported in (1994) 5 SCC, it is stated hereinbelow :

"6.The concept of natural justice is not a static one but is an ever expanding concept. In the initial stages it was thought that it had only two elements, namely, (i) no one shall be a judge in his own cause and (ii) no one shall be condemned unheard. With the passage of time a third element was introduced, namely, of procedural reasonableness because the main objective of the requirement of rule of natural justice is to promote justice and prevent its miscarriage. Therefore, when the legislature confers power in the State Government to be exercised in certain circumstances or eventualities, it would be right to presume that the legislature intends that the said power be exercised in the manner envisaged by the statute. If the statute confers drastic powers it goes without saying that such powers must be exercised in a proper and fair manner. Drastic substantive laws can be suffered only if they are fairly and reasonably applied. In order to ensure fair and reasonable application of such laws courts have, over a period of time, devised rules of fair procedure to avoid arbitrary exercise of such powers. True it is, the rules of natural justice operate as checks on the freedom of administrative action and often prove timeconsuming but that is the price one has to pay to ensure fairness in administrative action. And this fairness can be ensured by adherence to the expanded notion of rule of natural justice. Therefore, where a statute confers wide powers on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be controlled or checked by insisting on their being exercised in a manner which can be said to be procedurally fair. Rules of natural justice are, therefore, devised for ensuring fairness and promoting satisfactory decisionmaking. Where the statute is silent and a contrary intention cannot be implied the requirement of the applicability of the rule of natural justice is read into it to ensure fairness and to protect the action from the charge of arbitrariness. Natural justice is read into it to ensure fairness and to protect the action from the charge of arbitrariness. Natural justice has thus secured a foothold to supplement enacted law by operating as an implied mandatory requirement thereby protecting it from the vice of arbitrariness. Courts presume this requirement in all its width as implied

unless the enactment supplies indications to the contrary as in the present case. This Court in A.K. Kraipak V. Union of India after referring to the observations in State of Orissa V. Dr. (Miss) Binapani Dei, (SCC P 272, para 20) observed as under:

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it."

These observations make it clear that if the statute, expressly or by necessary implication omits the application of the rule of natural justice, the statute will not be invalidated for this omission on the ground of arbitrariness."

77. Apex Court has in the case of State of Andhra Pradesh Vs. Sree Rama Rao laid AIR 1963 SCC 1723 laid down as under:

"7. There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition under Article 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. The High court is not constituted in a proceeding under Article 226 of the constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant:it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry had themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

78. In another case, namely, Pandit D. Aher Vs. State of Maharashtra reported in (2007) 1 SCC 437 the Hon''ble Supreme Court held that

"19. When an employee,by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the subrules are required to be strictly followed. It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority

uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review."

79. While dealing with the question of judicial review, the Apex Court in Ganesh Bank of Kurundwad Ltd and Ors. Vs. Union of India and Ors. (2006)10 SCC. 645 propounded as under:

"50. There should be judicial restraint while making judicial review in administrative matters. Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decisionmaking authority exceeded its powers; (c) committed an error of law; (d) committed breach of the rules of natural justice; and (e) reached a decision which no reasonable tribunal would have reached; or (f) abused its powers. Administrative action is subject to control by judicial review in the following manner :

(i) Illegality This means the decisionmaker must understand correctly the law that regulates his decisionmaking power and must give effect to it.

(ii) Irrationality, namely, Wednesbury''s unreasonableness.

(iii) Procedural impropriety.

80. The pertinent question will be in what circumstances prejudice be caused by nonproduction of document.If the previous statement or a document is required for exercising the right of effective crossexamination and if such document is not produced, then prejudice can be assumed.

81. In the case of Union of India Vs T.R. Verma A.I.R.1957 S.C Page 882 Apex Court has held that

"The law requires that such tribunals should observe rules of natural justice in the conduct of the inquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a court of law.

Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given opportunity of crossexamining the witness by the party and that no materials should be relied on against him without his being given an opportunity of explaining him,"

82. In the case of State of M.P. Vs Chinta Man Sadashiva Waishampine, A.I.R.1961 S.C. 1623 Apex Court has held that

"Mr Khaskalam has strenuously contended before us that in not supplying the copies of the documents asked for by the respondents the inquiry officer was merely exercising his discretion, and as such it was not open to the High Court to consider the propriety or the validity of his decision. In support of this argument he has referred us to the decision of Patna High Court in Dr Tribhuwan Nath V State of Bihar. In that case the public officer wanted to have a copy of the report made by anticorruption department as a result of a confidential inquiry made by it against the said officer and the inquiry officer had rejected his prayer. When it was urged before the High Court that the failure to supply the copy of said report constituted a serious infirmity in the inquiry and amounted therefore to a denial of a reasonable opportunity to the public officer, the High Court repelled the argument and held that the officer was not entitled to a copy of the report unless that report formed part of the evidence before the Enquiry Commissioner and was relied upon by him. "When however the report was not at all exhibited in the case nor was it referred to nor relied by the Commissioner" said the High Court "there was no meaning in contesting it and consequently absence of opportunity to meet its contents involved no violation of Constitutional provisions." In our opinion this decision cannot assist the appellant''s case because as we have pointed, the documents which the respondents wanted in the present case were relevant and would have been of invaluable assistance to in making his defence and cross examining the witnesses who gave evidence against him."

83. It is now an established principle that the Inquiry Officer while writing his report, should rely only on the evidence adduced during the inquiry and that he should not make use of any material which is not brought to his notice during the course of the enquiry. The Supreme Court of India, in the case of State of Assam Vs M.K Das, 1970 (SC) SLR 444 has observed as under:

"It is highly improper for an Inquiry Officer during the conduct of inquiry to attempt to collect any materials from outside source and not make that information so collected, available to the delinquent officer and, further make use of the same in the inquiry proceedings. There may also be cases where a very clever and astute Inquiry Officer, may collect outside information behind the back of the delinquent officer and, without any apparent reference to the information so collected, may have been influenced in the conclusion recorded by him against the delinquent officer concerned. If it is established that the material behind the back of the delinquent officer has been collected during the enquiry and such material has been relied on by Inquiry Officer, without its having been disclosed to the delinquent officer it can be stated that the inquiry proceedings are vitiated".

84. One of the documents, which the delinquent officer has demanded included the papers of previous inquiry held by the then Administrative Judge Justice M.P. Kenia, who has exonerated the delinquent officer after preliminary enquiry. This document was very much material as it relates to the innocence of the delinquent officer.

85. Another document was the report of preliminary inquiry. This report in the view of delinquent officer was helpful in knowing him the evidence against him. We have seen above that such papers were summoned and relied upon to draw an inference against the delinquent officer(despite his objection that these papers were not brought on record by either party when he decided the reference) regarding his guilt.

From the above discussion we are of the opinion that enquiry is based on no evidence and there is violation of natural justice hence the dismissal order based on the enquiry is liable to be quashed.

86. The long and short of the discussions made above, the writ petition deserves to be allowed.

87. The writ petition is hereby allowed and the dismissal order dated 1422002 passed by State Government is quashed.

88. It is important to point out that while filing the writ petition, the petitioner has indicated the age as 59 years and as such, he has attained the age of retirement during the pendency of the writ petition. In these circumstances, no question for reinstatement or for "de novo enquiry" arises. We are of the considered view that ends of justice and equity would be served, if the petitioner is made entitled for post retiral benefits. Accordingly, respondents are directed to fix the pay scale of the petitioner treating him to be in service and pay all his terminal benefits within four months. However, it is clarified that on the principle of "no work no pay", the petitioner shall not be entitled for the arrears of salary with effect from the date of dismissal till the actual date of his retirement.