(2002) 09 AP CK 0001

Andhra Pradesh High Court

Case No: WA No. 2279 of 1998

Chairman and Managing Director, Singareni Collieries Company Limited and Others	APPELLANT
Vs	
B.V.S. Prasad	RESPONDENT

Date of Decision: Sept. 25, 2002

Acts Referred:

- Constitution of India, 1950 - Article 136, 226, 227, 32

Citation: (2002) 5 ALD 794

Hon'ble Judges: S.R. Nayak, J; Dalava Subrahmanyam, J

Bench: Division Bench

Advocate: K. Srinivas Murthy and Uma, for the Appellant; Nooty Ram Mohan Rao, for the Respondent

Judgement

S.R. Nayak, J.

This writ appeal preferred by the Singareni Collieries Company Limited. Kothagudem, Khammam District, is directed against the order of the learned single Judge dated 29-7-1998 made in WP No. 15290 of 1993 remanding the proceedings to the disciplinary authority with a direction to dispose of the disciplinary proceedings initiated against the petitioner afresh after considering the points raised by the petitioner in his representations and written arguments by a speaking order within a period of three months from the date of receipt of the order. The above writ petition was filed by the delinquent-employee who is the respondent in this appeal questioning the validity of the office order No. C.28/ 2130, dated 2/5-10-1993 passed by the Chairman and Managing Director of the appellant Corporation who is the disciplinary authority removing the petitioner from service with effect from 6.10.1993 as a disciplinary measure under Rule 27.1 of the Conduct. Disciplinary and Appeal Rules, (for short ''the rules'').

2. The background facts leading to the filing of the writ petition be summarised as under : The Director (Personnel) of the appellant company issued a charge memo dated 18-7-1990 to the petitioner alleging certain acts of misconduct under Rule 5.1, 5.5 and 5.20 of the Rules against him in the conduct and publication of results in recruitment to clerical posts on 6-8-1989 at Hyderabad. The petitioner submitted his explanation to the charge-memo on 6-8-1990. The disciplinary authority having not satisfied with the explanation of the petitioner appointed Sri B.V. Narayana Raju, Addl.C.I.E. (RC) and Sri K. Radhakrishna, Dy.CIE/Corporate, Kothagudem as Enquiry Officer and Presenting Officer respectively to enquire into the charges levelled against the petitioner vide office order dated 1-9-1990. The Enquiry Officer after conducting the enquiry submitted a report on 8-10-1992 holding the petitioner guilty of the charges framed under Rule 5.5 and 5.20 of the Rules only and not guilty of the charge framed under Rule 5.1. The disciplinary authority on consideration of the findings of the Enquiry Officer together with the Enquiry proceedings found the petitioner guilty of the charge under Rule 5.1 also. A copy of the Enquiry Report submitted by the Enquiry Officer as well as a copy of the tentative finding recorded by the disciplinary authority holding the petitioner guilty of the charge under Rule 5.1 also, were forwarded to the petitioner vide letter No. C.28/1179, dated 4-6-1993 as required under Rule 30.3 of the Rules asking the petitioner to submit his reply, if any, against the enquiry report and tentative findings of the disciplinary authority if he so desired within 7 days from the date of receipt of the letter. The petitioner submitted letters (representations) dated 8-6-1993, 14-6-1993, 21-6-1993, 2-7-1993 and 9-7-1993 against the findings of the Enquiry Officer and the tentative finding recorded by the disciplinary authority in respect of the charge under Rule 5.1. In the representations, the petitioner, among other things has stated - one of the candidates who failed in the tests filed a complaint to the Lok Ayukta alleging certain malpractices in the conduct of the examination for recruitment to the post of clerks. The Institution of Lok Ayukta directed an enquiry into the allegations through Anti-Corruption Bureau (for short ''ACB''). After the enquiry through the ACB, the Lok Ayukta directed action to be taken against all the computer specialists involved in the recruitment to clerical posts. In the course of enquiry by the ACB, the petitioner was also examined as a witness and in that enquiry the petitioner stated that he had nothing to do with the computer operations as he is not a computer specialist. Therefore, the petitioner requested the management of the appellant company to supply a copy of the report of the Lok Ayukta by his letter dated 21-6-1993. The management of the appellant company by its order dated 29-6-1993 informed the petitioner that they need not supply a copy of the report of the ACB/Lok Ayukta. Under those circumstances, the petitioner filed WP No. 9682 of 1993 in this Court for a direction to the Management of the appellant company to supply a copy of the report of the ACB/Lok Ayukta. The said writ petition was disposed of by this Court granting only ten days time to the petitioner to submit his reply, if any, without granting the relief sought by the petitioner. Accordingly, the petitioner submitted his reply on 22-7-1993. The disciplinary authority on consideration of the above reply

of the petitioner and other representations of the petitioner confirmed the findings of the Enquiry Officer holding the petitioner guilty of charges under rules 5.5 and 5.20 of the Rules. The disciplinary authority also held that the petitioner is guilty of charge under Rule 5.1 also. In that view of the matter, the disciplinary authority passed the office order No. C.28/2130, dated 2/5-10-1993 imposing penalty of removal from service on the petitioner with effect from 6-10-1993 as a disciplinary measure under Rule 27.1 of the Rules.

3. The petitioner being aggrieved by the office order dated 2/5-10-1993 and without availing the remedy of appeal provided under the Rules filed WP No. 15290 of 1993 in this Court. In the affidavit filed in support of the writ petition, inter alia, it is contended by the petitioner that several factual and legal contentions are raised in the reply dated 22-7-1993 and the representations of the petitioners against the findings recorded by the Enquiry Officer and also the finding recorded by the disciplinary authority holding the petitioner guilty of the charge under Rule 5.1 of the Rules and that the disciplinary authority has not at all considered those contentions before passing the impugned order. The learned single Judge agreeing with the said contention of the petitioner disposed of the writ petition remanding the proceedings to the disciplinary authority with certain directions noticed above. Although the contention that the non-supply of the report of the ACB/Lok Ayukta to the petitioner-delinquent vitiated the enquiry and the case law cited in support of that contention are noticed by the learned single Judge in the course of the order, the learned single Judge has not expressed any opinion on that contention. The learned Judge has allowed the writ petition and remanded the proceedings to the disciplinary authority only on the ground that the contentions raised by the petitioner in written brief are not considered by the disciplinary authority.
4. We have heard Sri K. Srinivasa Murthy, learned Standing Counsel for the appellant company ably assisted by Ms .Uma, learned Counsel and Sri Nooty Ram Mohan Rao, learned Counsel who appeared for the respondent-employee.

5. Sri K. Srinivasa Murthy, contended that non-supply of the report of the ACB/ Lok Ayukta prepared in the course of the enquiry and the evidence recorded in the preliminary enquiry would not vitiate the departmental enquiry held against the petitioner because the same has not been made a part of the record in the domestic/ departmental enquiry. The learned Standing Counsel pointed out that the disciplinary authority has not at all made use of the preliminary enquiry report of the ACB or the evidence collected in the course of the preliminary enquiry as the basis for the departmental enquiry and, therefore, there was no obligation cast on the disciplinary authority to furnish copies of the preliminary enquiry report or the evidence collected in the course of the enquiry to the petitioner-delinquent employee. Assailing the correctness of the opinion of the learned single Judge that the contentions raised by the petitioner are not considered by the disciplinary authority, the learned senior Standing Counsel submitted that in the impugned

order, the disciplinary authority has stated that he has considered the representations and the reply submitted by the petitioner against the findings recorded by the Enquiry Officer holding the petitioner guilty of the charges framed under the Rule 5.5 and 5.20 of the Rules and the objections raised to the tentative finding recorded by the disciplinary authority differing with the Enquiry Officer in respect of the charge framed under Rule 5.1 and, therefore, the learned single Judge is not justified in opining that the disciplinary authority has not considered the contentions raised by the petitioner-employee. The learned senior Standing Counsel submitted that the disciplinary authority while concurring with the findings recorded by the Enquiry Officer is not required to give separate reasons in support of the findings; secondly, the disciplinary authority vide his letter No. C.28/1179, dated 4-6-1993 while forwarding a copy of the report of the Enquiry Officer also sent a copy of the finding recorded by him differing with the finding of the Enquiry Officer in respect of the charge framed under Rule 5.1 setting out reasons. Therefore, petitioner has had reasonable opportunity to submit his reply and representation against the findings recorded under Rules 5.1. 5.2 and 5.20 and since the office order dated 2/5-10-1993 refers to consideration of the representations submitted by the petitioner, the learned single Judge was not justified in interfering with the order of the disciplinary authority. Alternatively, Sri K.Srinivasa Murthy, contended that even assuming that the learned single Judge was justified in setting aside the order passed by the disciplinary authority removing the petitioner as a disciplinary measure and in remanding the proceedings to the disciplinary authority for passing appropriate order after consideration of the contentions raised by the petitioner in his written brief is Justified, the learned Judge should have issued appropriate directions as to how the period of suspension of the petitioner should be treated and whether the petitioner could be kept under suspension before the disciplinary authority passes appropriate order as directed by the Court etc., in the light of the judgment of the Constitution Bench of the Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . The learned Senior Counsel contended that since the learned single Judge has set aside the order passed by the disciplinary authority on a technical ground that the office order dated 2/5.10.1993 does not reflect considerations of the contentions raised by the petitioners in his written brief, the learned Judge should have reserved liberty to the Management to place the petitioner under suspension pending passing of appropriate order after consideration of the contentions raised in the written brief. According to the learned Senior Counsel, the appropriate consequential direction that should have been passed by the learned single Judge is the following direction as has been done by the Constitution Bench in B. Karunakar''s case (supra).

"…. to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him 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 should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on 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 how it will treat the period from the date of dismissal till the* reinstatement and to what benefits, if any and the extent of the benefits, he will 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. That will also be the correct position in law."

6. Sri Nooty Ram Mohan Rao appearing for the respondent-employee contended that the finding recorded by the disciplinary authority in respect of the charge framed against the delinquent-employee under Rule 5(1) could not be sustained in the light of the judgment of the Supreme Court in Yoginath D. Bagde Vs. State of Maharashtra and Another, . According to Sri Nooty Ram Mohan Rao, if the disciplinary authority were to reverse the finding recorded by the Enquiry Officer in respect of the charge framed under Rule 5.1, the disciplinary authority before reversing the finding should have given an opportunity of hearing to the delinquent-employee and since admittedly such opportunity was not given to the delinquent-employee before reversing the finding, the finding recorded by the disciplinary authority in respect of the charge framed against the delinquent-employee under Rule 5.1 could not be sustained. According to the learned Counsel, the disciplinary authority after making up its mind to reverse the finding under Rule 5.1 sent a copy of the finding recorded by the disciplinary authority vide its covering letter No. C.28/3179, dated 4.6.1993. The opportunity of hearing so given to the delinquent-employee after making up mind is nothing but a sham pretext to comply with principle of natural justice and that tantamounts to a post decisional hearing and such course is legally impermissible for the disciplinary authority in the light of the judgment of the Supreme Court in Yoginath D.Bagde (supra). Sri Nooty Ram Mohan Rao supported the order of the learned single Judge by contending that the disciplinary authority was bound to consider as many as 24 contentions raised by the delinquent-employee in his reply dated 22-7-1993 besides the contentions raised in his letters dated 8-6-1993, 14-6-1993, 21-6-1993, 2-7-1993 and 9-7-1993. Mere reference to the above letters and reply dated 22-7-1993 and mere statement of the disciplinary authority that he has carefully considered the representations submitted by the delinquent-employee would not satisfy the mandates of principles of natural justice and Article 14 postulates. Sri Nooty Ram Mohan Rao also contended that the kinds of consequential directions sought by the learned Senior Standing Counsel for the management placing reliance on the judgment of the Constitution Bench of the Supreme Court in Managing Director, ECIL v. B. Karunakar (supra) were not warranted in the present case because the

equities are heavily loaded in favour of the delinquent-employee and not in favour of the management.

7. Sri K. Srinivasa Murthy by way of reply would highlight on the limited scope of judicial review by this Court under Article 226 with regard to the disciplinary proceedings and would maintain that no case is made out by the petitioner for inference with the disciplinary action. The learned Standing Counsel contended that though the delinquent-employee raised the pleas with regard to non-supply of preliminary enquiry report and denial of opportunity before the disciplinary authority recorded its finding in respect of the charge framed under Rule 5.1 differing with the Enquiry Officer has utterly failed to show how he was prejudiced by those alleged lapses on the part of the management. The learned Counsel placing reliance on the judgments of the Supreme Court in S.K. Singh Vs. Central Bank of India and Others, , and State of U.P. Vs. Harendra Arora and Another, , would contend that the Courts should refuse to interfere with the disciplinary action on technical grounds or on the alleged ground of violation of principles of natural justice unless the applicant for the writ also shows that on account of the violation of principles of natural justice, he has suffered prejudice.

8. The contention that the non-supply of the report of the ACB/Lok Ayukta prepared and the evidence recorded in the course of the preliminary enquiry vitiated the departmental enquiry is not tenable. It needs to be emphasised that a preliminary enquiry is of very informal character and the methods are likely to vary in accordance with the requirements of each case. It is well settled that the delinquent-employees have no vested right in any form or procedure of holding preliminary enquiry. The object for holding the preliminary enquiry being the satisfaction of the disciplinary authority, the procedure of enquiry is wholly at the discretion of the disciplinary authority holding the enquiry. After holding preliminary enquiry, the disciplinary authority need not record its satisfaction in writing nor is it required to give any reasons for initiating the regular departmental enquiry. A preliminary enquiry, it is trite, does not result either in exoneration or punishment. Therefore whatever be the finding in the preliminary enquiry, that will not affect any of the legal rights of the delinquent-employee. It is not necessary for us to dilate this aspect further because this Court has had an occasion to deal with the purpose and nature of the preliminary enquiry and the use of the evidence and material collected in the course of preliminary enquiry in The Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Ismail and Another, . A Division Bench of this Court speaking through one of us (S.R. Nayak, J) held in paras 12 and 19 thus :

"12. A preliminary enquiry is of very informal character and the methods are likely to vary in accordance with the requirements of each case. The delinquent employees have no vested right in any form or procedure of holding preliminary enquiry. The object being the satisfaction of the officer concerned, the procedure of enquiry is wholly at the discretion of the officer holding the enquiry. After holding preliminary

enquiry, the Disciplinary Authority need not record its satisfaction in writing nor is it required to give reasons for initiating the regular departmental enquiry. As already pointed out, that a preliminary enquiry does not result either in exoneration or punishment. Therefore, it should be held that whatever be the finding in the preliminary enquiry, that will not affect any of the legal rights of the delinquent."

19. We may look at the question for decision from another angle also. As pointed out supra, even in the absence of statutory obligations to hold delinquent employee, the Courts including the Apex Court emphasised the need and desirability of holding preliminary enquiry to find out whether there is prima facie case to proceed against a delinquent employee by launching regular departmental enquiry. That is why, generally, the Disciplinary authorities, both in public and private sectors, even in the absence of statutory compulsions, hold preliminary enquiry to satisfy themselves about the prima facie case. After holding such preliminary enquiry, it is quite understandable, a Disciplinary Authority will form an ''opinion about the prima facie case. If the Disciplinary Authority records that the delinquent is prima facie guilty of misconduct and decides to initiate regular departmental enquiry, he would be accused of having prejudged the guilty of the delinquent if we were to accept the argument of the learned Counsel for the workman. On the other hand, if the disciplinary authority does not hold preliminary enquiry, he would violate what the Courts have emphasised. If preliminary enquiry is desirable and if the argument of Sri A.K. Jayaprakash Rao, the learned Counsel for the first respondent is accepted, then it will lead to a situation where the Disciplinary Authorities will be disqualified from holding departmental enquiries or passing final orders only on the ground that the prima facie satisfaction recorded by them after the conclusion of the preliminary enquiries tantamounts to prejudging the alleged misconduct against the delinquent employees. If law is interpreted in the way suggested by Sri A.K. Jayaprakash Rao, it will lead to an impracticable situation. At this stage itself, we may also point out that the evidence and materials collected, and the findings recorded, in the preliminary enquiry are totally irrelevant as regards the departmental enquiry is concerned. The Disciplinary Authority need not maintain records of the preliminary enquiry; ex parte subjective satisfaction can be reached regarding prima facie case without recording the factors or reasons for such satisfaction, it need not give any opportunity to the delinquent to have his say in the preliminary enquiry. Final order that may be made by a Disciplinary Authority cannot rest on the findings recorded by the Disciplinary Authority in the preliminary enquiry. The charges are required to be proved in the departmental enquiry by adducing substantive material evidence. The findings recorded in the preliminary enquiry are ex parte findings and the delinquent is not bound by such findings. The delinquent will not be bound by even his own statement recorded in the preliminary enquiry unless the same is produced in the departmental enquiry and proved in accordance with law. Misconduct of a delinquent should be proved only in the departmental enquiry. If that is so, it should be held that the findings recorded by the Disciplinary Authority

in the course of preliminary enquiry will in no way prejudicate the delinquent and those findings will not violate any of the rights of the delinquent. Preliminary enquiry is not intended to determine anybody''s right; it is intended for the Disciplinary Authority to form subjective satisfaction regarding the desirability to launch departmental proceedings against a delinquent. Principles of rationality and fairness in action cannot be read into such enquiry. Therefore, there is absolutely no scope for applying the rule of official or departmental bias to a preliminary enquiry, and we accordingly hold."

It is true that all the relevant materials forming part of the charges should be disclosed to the delinquent-employee in order to enable him to defend himself effectively. That is what principles of natural justice and doctrine of fairness in action do demand. Therefore, in a given case where the disciplinary authority uses the evidence and materials collected by it in the course of preliminary enquiry as the basis for framing the charge against the delinquent-employee, it is obligated to supply all those materials to the delinquent-employee. In the instant case, the report of the ACB/Lok Ayukta prepared in the course of the preliminary enquiry or the evidence recorded in the said preliminary enquiry are not made part of the record nor used as evidence to record adverse finding against the delinquent-employee. In the counter affidavit filed by the appellant -company in the writ petition, it is stated that enquiry was conducted against the delinquent-employee independent of ACB/ Lok Ayukta reports and those reports are not used as the basis for recording adverse findings against the delinquent-employee in the domestic enquiry. Simply because in the list of documents, the report of the ACB is mentioned, on that count itself, it cannot be held that non-supply of a copy of the said report to the delinquent-employee vitiated the enquiry regardless of the fact whether that report formed part of the records of the departmental enquiry and whether those reports were used by the disciplinary authority as a piece of evidence to record adverse finding against the delinquent-employee on the charges framed by it. Therefore, we hold that the non-furnishing of a copy of the ACB report to the delinquent-employee has not vitiated the departmental enquiry conducted against him.

9. We do not find merit in the contention of Sri Nooty Ram Mohan Rao that the adverse finding recorded by the disciplinary authority against the delinquent-employee with regard to the charge framed under Rule 5.1 was vitiated on account of denial of opportunity to the delinquent-employee before such finding was recorded. It is well settled by a catena of decisions of the Supreme Court including the judgment in Bank of India and Another Vs. Degala Suryanarayana, , that the disciplinary authority can differ with the findings recorded by the enquiring authority. It is settled law that the findings of the Enquiry Officer are not binding on the disciplinary authority and the final decision rests with the disciplinary/punishing authority which can come to its own conclusions, bearing in mind the views expressed by the Enquiry Officer. It is also well settled that the disciplinary authority

in order to differ with the findings recorded by the Enquiry Officer, it need not give reasons to contest the correctness of the findings recorded by the Enquiry Officer. What is necessary is that the findings recorded by the disciplinary authority should have the support of the materials and the evidence on record and so long the findings recorded by the disciplinary authority can be sustained on the basis of the evidence and materials on record and simply because it has not given separate reasons to contest the correctness of the findings recorded by the Enquiry Officer, the Court would not be Justified in interfering with the findings recorded by the disciplinary authority. The disciplinary authority is the sole judge of facts and the findings recorded by it, if it can be supported by some legal evidence, cannot be interfered with by the Court. The question of adequacy or even reliability of that evidence is not a matter to be canvassed before the High Court under Article 226 of the Constitution. Interference with the decision of departmental authorities can be permitted while exercising jurisdiction under Article 226 of the Constitution only if such authority had held proceedings in violation of principles of natural Justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. The High Court cannot reappreciate the evidence on record and record a finding contrary to the findings recorded by the disciplinary authority though such findings are possible on the same set of facts and the evidence adduced in the departmental enquiry as if the High Court is an appellate authority over the decisions taken by the disciplinary authority either in recording the findings of misconduct against the delinquent employee or in awarding a particular punishment. With regard to the punishment, the High Court will interfere only if facts disclosed before the Court would warrant application of Wednesbury Rule of arbitrariness and unreasonableness and when the Court finds that the punishment imposed by the disciplinary authority is shockingly disproportionate to the gravity of misconduct established against the delinquent employee.

10. It is true that in the light of the law laid down by the Supreme Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , the disciplinary authority is obligated to give opportunity of hearing to charged employee before reversing findings of the Enquiry Officer which are favourable to the delinquent-charged officer. The Supreme Court has held that the disciplinary authority before forming its final opinion revising the finding of the Enquiry Officer, had to convey to charged employee its tentative reasons for disagreeing with the findings of the Enquiry Officer. In this case, before the disciplinary authority reversed the finding of the Enquiry Officer in respect of the charge framed under Rule 5.1 by its proceeding dated 26-5-1993 recorded its tentative reasons to differ with the Enquiry Officers finding. It is a matter of record that the disciplinary authority vide lets letter No.

C.28/1179. dated 4-6-1993 while forwarding a copy of the report of the Enquiry Officer also forwarded a copy of the tentative finding recorded by it with regard to the charge framed under Rule 5.1 thereby giving an opportunity to the petitioner to submit his reply, if any. It is true in the finding recorded by the disciplinary authority on 26-5-1993 with regard to the charge framed under Rule 5.1, the disciplinary authority has stated mat he disagrees with the finding of the Enquiry Officer that the charge framed under Rule 5.1 of acting dishonestly in connection with the conduct and publication of the results of the, recruitment test held on 6-8-1989 for the post of Clerk Grade II at Hyderabad is not established and having stated that he has given reasons on the basis of the evidence on record in paragraphs (i) to (viii) of the proceeding dated 26-5-1993. Simply because the disciplinary authority has stated that he disagrees with the finding recorded by the Enquiry Officer with regard to the charge framed under Rule 5.1, it is not reasonable to conclude that the disciplinary authority closed its mind and pre-determined the issue without hearing the delinquent-employee. The very fact that after recording the tentative reasons in the proceeding dated 26-5-1993 with regard to the charge framed under Rule 5.1, the Disciplinary authority forwarded the same to the delinquent-employee thereby giving him an opportunity to submit his reply, if any, against those findings would show that the disciplinary authority adhered to the law requirement as laid down by the Supreme Court and this Court and also the doctrine of fairness in action and it did not predetermine the issue before issuing the notice. Therefore, we hold mat the finding recorded by the Chairman and Managing Director, who is the disciplinary authority on 26-5-1993 while differing with the finding recorded by the Enquiry Officer with regard to the charge framed under Rule 5.1 is only tentative in nature. Only after consideration of the reply of the delinquent-employee dated 22-7-1993, the disciplinary authority confirmed its tentative finding and therefore, mere is no violation of principles of natural justice.

11. However, we find considerable force in the submission of Sri Nooty Ram Mohan Rao that the impugned order dated 2/5-10-1993 passed by the disciplinary authority does not reflect any application of mind on the part of the disciplinary authority for want of reasons in the impugned order. The delinquent-employee in his reply dated 22-7-1993 has raised contentions under 24 heads. They are; (1) the charges are invalid as they are based on CD. & A Rules, 1989; (2) Charge-sheet not signed by the Disciplinary Authority; (3) Only a few officers are charge-sheeted instead charge-sheeting all connected officers; (4) Holding separate enquiries in the case of M/s Kaleemullah, Prakash and Prasad (delinquent) is bad; (5) No correlation between charges and allegations; (6) Supply of Chief Vigilance Officer''s report to the Principal Management witness vitiates the whole proceedings; (7) Copy of Preliminary Enquiry . Report (Vigilance Report) not made available to the charged officer despite several requests though the contents were relied upon by both Presenting Officer and Enquiry Officer; (8) Failure to supply the copy of the report of Lok Ayuktha vitiates the proceedings; (9) The delinquent-employee is not a

computer specialist; (10) Copy of statement of witness V. Kumara Raja recorded during the Preliminary enquiry not furnished despite request; (11) A witness mentioned in the list of witnesses in charge-sheet was not produced; (12) The principal witness in the case Sri L. Rajan Babu, EDP Manager, at whose instance the entire manipulation is alleged to have been done, has not been examined; (13) Appointment of Sri B. V. Narayana Raju as Enquiry Officer and Sri K. Radhakrishnan as Presenting Officer and Sri V. Kumara Raja as main management witness has vitiated the enquiry proceedings; (14) Charges have not been established by independent witnesses; (15) The alleged crime has not been established; (16) Motive has not been established or proved; (17) The Presenting Officer cannot be expected to act in a fair, honest and unbiased manner; (18) The Presenting Officer tried to mislead the enquiry; (19) Dishonesty is a mere suspicion and not established by evidence; (20) Regarding the allegation that the charged officer failed to act in a diligent manner - the Enquiry Officer''s conclusion is not based on evidence but is only a biased opinion; (21) The entire charge falls to the ground by the evidence of Sri V. Kumara Raja, (22) The enquiry report submitted by the Enquiry Officer is biased and perverse as it has not considered the charged officer''s defence; (23) the delinquent-employee has gone through lot of agonies in the past few months etc., (24) If the disciplinary authority still feels that there are minor lapses on the part of the delinquent, the same may be condoned on humanitarian considerations. Besides these contentions, the delinquent-employee also raised certain contentions in his letters/ representations dated 8-6-1993, 14-6-1993, 21-6-1993, 2-7-1993 and 9-7-1993. The reply of the delinquent-employee itself runs to 30 typed pages. The disciplinary authority, as could be seen from the impugned order dated 2/5-10-1993, has disposed of all those contentions raised in the reply statement dated 22-7-1993 and representations referred to above, in one cryptic sentence stating that he has carefully considered the representations submitted by the delinquent-employee and he does not find any merit in them.

12. It cannot be gainsaid that if the removal order passed against the delinquent-employee, if unjustified, it would violate even the fundamental right of the delinquent-employee under Article 21 of the Constitution because such punishment is considered to be economic death. It is also relevant to notice that the disciplinary action taken against the delinquent-employee is subjected to judicial review by this Court under Article 226 of the Constitution. It is now well settled that where an authority makes an order in exercise of a quasi-judicial function or an order which has the effect of affecting civil rights of a person and which action is liable to be reviewed by Constitutional Courts as provided under the Constitution, it must record its reasons in support of the order it makes. In The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, , the Supreme Court held that the rule requiring reasons in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its

proper spirit and mere pretence of compliance with it would not satisfy the requirements of law. To the same effect is the opinion of the Supreme Court in Union of India (UOI) Vs. Mohan Lal Capoor and Others, , Woolcombers of India Ltd. Vs. Woolcombers Workers Union and Another, , Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, .

13. It hardly requires any emphasis that compulsion of disclosure of reasons guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate minimises arbitrariness: it gives satisfaction to the other party against whom the order is made; and it also enables an appellate or supervisory or reviewing Court to keep the Tribunals and authorities within bounds. Therefore, a reasoned order is always a desirable condition of judicial disposal or a disposal which is required to be done judiciously.

14. It cannot be gainsaid that when an employer proceeds to impose severest form of punishment of removal or dismissal from service on an employee, it is trite, it is required to act judiciously, fairly and reasonably in order to satisfy the postulates of Article 14 of the Constitution. If the Tribunals and authorities can make orders without giving reasons, it is trite, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. The insistence to disclose reasons will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. In Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), , the Supreme Court has pointed out that a speaking order will at its best be a reasonable and at its worst be atleast a plausible one and the public should not be deprived of this only safeguard. There is one more weighty reason why an authority is required to disclose the reasons in support of its decision. If that is not insisted, effective judicial review under Articles 32, 136, 226 and 227 of the Constitution would not be possible, because, the reviewing Court will not be in a position to appreciate what are the reasons or the factors which have gone into the decision-making. It is well-settled position in law by reason of the Judgments of the Supreme Court in State of M.P. v. Narasinghdas AIR 1969 SC 115, State of Gujarat v. Patel Raghav Nath AIR 1964 SC 1297, Travancore Rayons Ltd v. Union of India 1978 ELT (378) (SC), that if no reasons are given in the order, the order will be regarded as void. A Constitution Bench of the Supreme Court in S.N. Mukherjee Vs. Union of India, , dealing with the question whether there is any general principle of law which requires an administrative authority to record the reasons for its decision was pleased to hold-

"(35) The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in tine with that of the American Courts. An important consideration which has weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate

jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts'' under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions ; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary Courts of law and Tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency,

(38) A similar trend is discernible in the decisions of English Courts wherein it has been held that natural justice demands that the decision should be based on some evidence of probative value. (See . R. v. Deputy Industrial Injuries Commissioner ex p. Moore , Mahon v. Air New Zealand Ltd,.

(39) The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act. 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject-matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case".

15. In R. v. Home Secretary ex.p.Doody (1994) 1 AC 531, the House of Lords has recognised a perceptible trend towards the insistence of greater openness.... for transparency in the making of administrative decisions and consequently has held that, where in the context of the case, it is unfair not to give reasons, they must be given. In R. v. Civil Services Appeal Board ex.p. Cunningham (1991) 4 All ER 310, an award of abnormally low compensation to an unfairly dismissed prison officer by the Civil Service Appeal Board, which made it a rule not to give reasons, was quashed by the Court of Appeal, holding that natural justice demanded the giving of reasons both in deciding whether dismissal was unfair and also in assessing compensation, since other employees were entitled to appeal to, Industrial Tribunals which were obliged by law to give reasons, in R. v. Higher Education Funding Council ex.p.Institute of Dental Surgery (1994) 1 WLR 243, where the interest concerned was personal liberty, which is so highly regarded by the law, it was held that fairness requires that reasons.... be given as of right. In Treatise on Administrative Law by Sir William Wade. 8th Edition, at page 516, it is stated-

The principles of natural justice do not, as yet, include any general rule that reasons should be given for decisions. Nevertheless, there is a strong case to be made for the giving of reasons as an essential element of administrative justice. The need for it has been sharply exposed by the expanding law of judicial review, now that so many decisions are liable to be quashed or appealed against on grounds of improper purpose, irrelevant considerations and errors of law of various kinds. Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the protection of the law. A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man''s sense of justice. It is also a healthy discipline for all who exercise power over others. ''No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions."

16. Further, in R. v. Secretary of Trade and Industries ex.p, Lonrho plc (1989) 1 WLR 525, it was held that it is always possible that the failure to give reasons for a decision may justify the inference that the decision was not taken for a good reason. At the same time, we are quite aware that a disciplinary authority is not expected to disclose reasons on par with a quasi-judicial Tribunal or authority or Court. Be that as it may, when an administrative action, like dismissal or removal from service taken against an employee, is assailed before a Court of law, while reviewing the validity of such action, the Court should be satisfied that the disciplinary authority has taken into account all relevant evidence/materials and considered all factual and legal questions raised by the delinquent-employee with openness and fair mind. It is true that it is not necessary that the office order itself by which a delinquent-employee is imposed with the penalty of removal or dismissal from service should disclose all the reasons or factors which have gone into the

decision-making. But, atleast the reasons should exist in record. The Supreme Court in Union of India and others Vs. E.G. Nambudiri, has opined that if a representation is rejected after its consideration in a fair and Just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons in the order of rejection. It held-

"10. There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent authority is not under any obligation to record reasons. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer countersigning the same, if the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the Court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In Governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a Court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the Court to justify its action."

17. In the instant case, no records are placed before us to show that the disciplinary authority has, in fact, considered all the contentions raised by the delinquent-employee in his reply dated 22-7-1993 and the representations referred to above and for some valid reasons rejected the contentions. In that view of the matter, we do not find any substantive ground to interfere with the discretionary order made by the learned single Judge in remanding the proceedings to the disciplinary authority to pass appropriate order de novo after considering the contentions raised by the delinquent-employee in his reply dated 22-7-1993 and the representations. However, we find substance in the submission of Sri K. Srinivasa

Murthy, learned Standing Counsel for the appellant-Management that since the learned single Judge has remanded the proceedings on a technical ground that the contentions raised by the delinquent-employee in his reply dated 22-7-1993 and the representations are not considered, should have passed appropriate consequential directions as the Apex Court did in Karunakaran''s case (supra) and such a course of action is necessary to do justice to both the parties depending upon the result of the final order that may be made by the disciplinary authority after remand of the proceedings.

18. In the result, we dispose of the writ appeal with a direction to the appellant-Management to reinstate the respondent-delinquent into service with liberty to the Management to place the delinquent-employee under suspension pending disposal of the disciplinary proceedings as directed by the learned single Judge. The question whether the delinquent-employee would be entitled to the back wages and other benefits from the date of his removal from service to the date of his reinstatement, should undoubtedly be left to be decided by the authority concerned in accordance with law after the culmination of the proceedings and depending on the final outcome. If the delinquent-employee succeeds in the de novo order to be made by the disciplinary authority after remand and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of removal till the date of reinstatement and what benefits, if any, and the extent of the benefits, he will be entitled. The order of the learned single Judge impugned in this writ appeal shall stand modified in terms of the above directions. In the facts and circumstances of the case, the parties shall bear their own costs.