(2009) 04 CAL CK 0017

Calcutta High Court

Case No: Writ Petition No. 3065 (W) of 2009

Purushottam Dubey		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: April 7, 2009

Acts Referred:

- Constitution of India, 1950 - Article 14, 141, 311, 311(2)
- Railway Protection Force Act, 1957 - Section 16A, 17, 21, 9

Citation: 113 CWN 528

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Advocate: Achin Kumar Majumder, for the Appellant; P.K. Mullick and Mrs. Soma Ray Chowdhury, for the Respondent

Final Decision: Allowed

Judgement

Dipankar Datta, J.

In this writ petition, the petitioner [an Inspector of the Railway Protection Force (hereafter the Force), posted at Santragachi] has questioned the propriety, legality and validity of the charge-sheet dated 8th January, 2009 (annexure P-3), and the orders of suspension (annexure P-4) and temporary attachment (annexure P-5), both dated 29th January, 2009, issued by the respondent No.3, being his disciplinary authority viz. the Senior Security Commissioner of the Force, South Eastern Railway, Kharagpur. The disciplinary authority has also been impleaded in the petition eo nomine as respondent No.4. The charge relates to alleged acceptance of illegal gratification by the petitioner from certain shop holders.

2. The disciplinary authority mentioned in the charge-sheet that Mr. S.N. Sinha, Assistant Security Commissioner had been nominated as he Enquiry Officer and the first date of enquiry has been fixed on 27th January, 2009 at the venue indicated therein. The petitioner was requested to attend the enquiry failing which it would be

conducted ex- parte. It was further informed thereby that if for the purpose of preparing defence the petitioner wishes to inspect and take extracts from any official records, a list of such records must be furnished to the Enquiry Officer within the time granted.

3. In State of Punjab v. V.K. Khanna, reported in AIR 2001 SC 343, the Apex Court observed as follows:

34. The High Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an enquiry officer to substantiate the frame of mind of the authorities and thus depicting bias - what bias means has already been dealt with by us earlier in this Judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindset viz.: the inquiry shall proceed irrespective of the reply - is it an indication of a free and fair attitude towards the officer concerned? The answer cannot possibly be in the affirmative. It is well settled in service jurisprudence that the authority concerned has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative - the inquiry follows but not otherwise and it is this part of service jurisprudence on which reliance was placed by Mr. Subramanium and on that score, strongly criticised the conduct of the respondents (sic appellants) herein and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record.

4. Following the said decision this Court (Division Benches as well as single Benches) has consistently held, in respect of disciplinary proceedings initiated against members of the Force, that appointment of an Enquiry Officer simultaneously with issuance of the charge-sheet itself and asking the delinquent to submit his reply before such Enquiry Officer, without waiting for a reply from him in respect of the accusations levelled, is demonstrative of a pre judged mind of the disciplinary authority. Resultantly, disciplinary proceedings have been interdicted on the ground that the same are vitiated by bias. Reference in this connection may be made to the following decisions:

(i) Sanjoy Singh v. Union of India, reported in 2002(2) SLR 266, (SB);

(ii) 2003 (2) SLR 426 : Suresh Chowdhury v. Union of India & Ors., (SB);

(iii) unreported decision dated 18.8.2008 on W.P. No.11614 (W) of 2008 (Biman Garai v. Union of India & Ors.), (SB);

(iv) unreported decision dated 10.11.2008 on M.A.T. No.580 of 2008 (Union of India v. Sri Dilip Kumar Palit), (DB)

(v) unreported decision dated 10.11.2008 on M.A.T. No.429 of 2008 (Union of India & Ors. v. Ram Parwesh Dubey & Anr.), (DB); and

(vi) unreported decision dated 17.11.2008 on M.A.T. No.530 of 2008 (Union of India & Ors. v. Champa Das & Anr.), (DB).

5. Mr. Majumdar, learned counsel for the petitioner while assailing the charge-sheet relied on the aforesaid decisions and urged me to set it aside on the authority thereof.

6. Referring to a circular dated 31.3.2003 issued by the Chief Security Commissioner of the Force, South Eastern Railway (annexure P-6), he contended that respective disciplinary authorities. had been directed not to appoint Enquiry Officer to enquire into charges framed, upon preliminary enquiry, without calling for representation from the delinquent and that the decision to proceed further with the enquiry must be taken only after satisfaction is reached by him that further action is called for. According to him, the respondent No.3 acted in violation of the said circular and hence the impugned charge-sheet merits to be interdicted.

7. He also challenged the charge-sheet on the ground of mala fide of the respondent No.4. According to him, the petitioner had lodged a complaint dated 15.11.2008 against the respondent No.4 since he misbehaved with the petitioner and unnecessarily harassed and humiliated him. Therein, the petitioner also expressed his intention to retire voluntarily from service. To teach the petitioner a lesson, the respondent No.4 suspended the petitioner from December, 2008 without mentioning any reason. However, on 8th January, 2009, the order was revoked. Again, on 29th January, 2009 a fresh suspension order was issued. It was contended that the respondent No.4 has not been acting impartially and reasonably but his actions manifest his bias towards the petitioner. A prayer was therefore made for a direction on the respondents to change the petitioner''s disciplinary authority in the event I permit the respondents to proceed with the enquiry.

8. Although the petition contains a prayer for declaring Rule 153.5 of the Railway Protection Rules, 1987 (hereafter the RPF Rules) as ultra vires, it was not seriously pressed at the hearing.

9. Answering the contentions raised on behalf of the petitioner, Mr. Mullick, learned senior counsel for the respondents submitted that the writ petition being premature, it does not warrant interference. According to him, the petitioner would have the opportunity of defending himself in the enquiry and fullest opportunity in accordance with the RPF Rules would be accorded to him. If at all a penal order is passed against him, the petitioner has a right of appeal in terms of the RPF Rules. Having regard to the fact that the RPF Rules provide adequate safeguards, he urged me not to entertain the petition.

10. The decision in Sohan Lal Gupta (Dead) thr. L.Rs. and Others Vs. Smt. Asha Devi Gupta and Others, was relied on by him to contend what ''reasonable opportunity'' constitutes. In paragraph 23, the Apex Court had the occasion to observe as follows:

"23. For constituting a reasonable opportunity, the following conditions are required to be observed:

1. Each party must have notice that the hearing is to take place.

2. Each party must have a reasonable opportunity to be present at the hearing, together with his advisers and witnesses.

3. Each party must have the opportunity to be present throughout the hearing.

4. Each party must have a reasonable opportunity to present evidence and argument in support of his own case.

5. Each party must have a reasonable opportunity to test his opponent''s case by cross-examining his witnesses, presenting rebutting evidence and addressing oral argument.

6. The hearing must, unless the contrary is expressly agreed, be the occasion on which the parties present the whole of their evidence and argument.

It was submitted that although the said decision was rendered in a different fact situation, the principle would have full application even in respect of disciplinary proceedings. Reply to charge-sheet and consideration thereof before deciding on appointment of Enquiry Officer, he urged, is not contemplated in ''reasonable opportunity'' of hearing and therefore the contention, raised on behalf of the petitioner ought not to be accepted.

11. Next, he invited my attention to Rule 153 of the RPF Rules. According to him, it is a complete code in itself providing the procedure for imposing major penalties. In particular, reference was made to Rules 153.1, 153.5, 153.10, 153.12, 153.13 and 153.15 to explain how and to what extent the rights of an enrolled member of the Force are protected thereby. The said provisions, he contended, are statutory having been framed in exercise of power conferred by section 21 of the Railway Protection Force Act, 1957 (hereafter the Act). Rule 153, he further contended, does not contemplate granting of opportunity to an enrolled member of the Force to reply to the charge-sheet before appointment of an Enquiry Officer as is ordinarily found in other statutes regulating procedure for holding enquiries; on the contrary, filing of reply stands deferred till the prosecution has led oral and documentary evidence and cross-examination of the prosecution witnesses are complete and the delinquent member pleads ''not guilty''. Therefore, the official respondents can in no manner be faulted for having complied with the relevant statutory provisions.

12. He then placed reliance on a circular dated 3rd September, 2008 issued by the Chief Security Commissioner of the Force, South Eastern Railway. Inviting my attention to its contents, he asserted that the earlier circular dated 31st January, 2003 was reviewed and it was found that the direction regarding grant of opportunity to represent against the charges and consideration thereof before

appointment of Enquiry Officer was in contravention of Rule 153 of the RPF Rules. Hence, it was directed to be treated as deleted. The petitioner, in view of the subsequent circular, can no longer press the circular dated 31st January, 2003 for seeking relief.

13. Referring to the decisions relied on by counsel for the petitioner, Mr. Mullick vehemently contended that the same have been rendered per incuriam and as such do not have the effect of a binding precedent. By placing ''Words and Phrases'' he submitted that a decision given per incuriam is giving a decision when a case or statute has not been brought to the attention of the Court and they have given the decision in ignorance or forgetfulness of the existence of that case or that statute''. He next placed the decisions to demonstrate that Rule 153 had not even been referred to therein. The Court having directed the official respondents to follow a procedure different from the one laid down in the statutory provisions, obviously in ignorance or forgetfulness thereof, he contended that statutory rules have been sought to be replaced by Court''s direction which is impermissible.

14. Alternatively, it was contended by him by referring to the order in Champa Das (supra) that the Division Bench had granted liberty to the disciplinary authority to proceed in accordance with rules and hence the action of the respondent No.3 impugned herein is above board since it is in accordance with rules.

15. He next urged that there is no pleading in the petition as to how the petitioner felt prejudiced by reason of appointment of Enquiry Officer simultaneously with issuance of charge-sheet. Having regard to the settled law that violation of principles of natural justice has to be judged on the touchstone of prejudice, he urged that the Court ought not to be swayed merely because in some of the decisions the procedure of appointing Enquiry Officer alongwith issuance of charge-sheet has been faulted by the Court.

16. He, accordingly, prayed for dismissal of the writ petition and liberty to the petitioner''s disciplinary authority to proceed further.

17. I have heard the parties and perused the authorities cited. Before I proceed further to consider the rival contentions for deciding whether the petitioner deserves relief or not, it would be worthwhile at this stage to note the provisions of section 9 of the RPF Act and Rule 153 of the RPF Rules.

18. Section 9 of the RPF Act provides for dismissal, removal, etc. of members of the Force and reads as under:

"9.Dismissal, removal, etc., of members of the Force.- (1) Subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under this Act, any superior officer may-

(i) dismiss, suspend or reduce in rank any enrolled member of the Force whom he shall think remiss or negligent in the discharge of his duty, or unfit for the same; or

(ii) award any one or more of the following punishments to any enrolled member of the Force who discharges his duty in a careless or negligent manner, or who by any act of his own renders himself unfit for the discharge thereof, namely :

(a) fine to any amount not exceeding seven days'' pay or reduction in pay scale;

(b) confinement to quarters for a period not exceeding fourteen days with or without punishment, drill, extra guard, fatigue or other duty;

(c) removal from any office of distinction or deprivation of any special emolument."

The sub-rules of Rule 153, which are relevant, are quoted hereunder:

"153.1. Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order of dismissal, removal, compulsory retirement or reduction in rank shall be passed on any enrolled member of the Force (save as mentioned in rule 161) without holding an inquiry, as far as may be in the manner provided hereinafter, in which he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded a reasonable opportunity of defending himself.

153.2.1. Whenever the disciplinary authority is of the opinion that there are ground for inquiring into the truth of any imputation of misconduct or misbehaviour against an enrolled member of the Force, it may itself inquire into or appoint an Inquiry Officer higher in rank to the enrolled member charged but not below the rank of Inspector, or institute a Court of Inquiry to inquire into the truth thereof.

153.3. On receipt of complaint or otherwise, the disciplinary authority on going through the facts alleged or brought out shall decide whether it is a case for major or minor punishment. No attempt shall be made to convert cases punishable u/s 16A or section 17 into disciplinary cases nor divert cases in respect of which major punishments are imposable to the category of cases where minor or petty punishments are imposable.

153.4. Where it is proposed to hold an inquiry against an enrolled member of the Force under this rule, the disciplinary authority may order that the enrolled member shall not be transferred to any other place nor given leave without its written permission till the conclusion of the disciplinary proceedings, and the disciplinary authority shall draw up or cause to be drawn up -

(a) substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(b) a statement of the imputations of misconduct or misbehaviour in support of each article of charge which shall contain, -

(i) a statement of all relevant facts including any admission or confession made by the enrolled member of the Force,

(ii) a list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained.

153.5. The disciplinary authority shall deliver or cause to be delivered to the delinquent member, at least seventy-two hours before the commencement of the inquiry, a copy of the articles of charge, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and fix a date when the inquiry is to commence; subsequent dates being fixed by the Inquiry Officer.

153.8. The enrolled member charged shall not be allowed to bring in a legal practitioner at the proceedings but he may be allowed to take the assistance of any other member of the Force (hereinafter referred to as ''friend") where in the opinion of the Inquiry Officer may, at the request of the party charged, put his defence properly. Such "friend" must be a serving member of the Force of or below the rank of Sub-Inspector for the time being posted in the same division or the battalion where the proceedings are pending and not acting as a ''friend'' in any other proceedings pending anywhere. Such ''friend" shall, however, not be allowed to address the Inquiry Officer nor to cross-examine the witnesses.

153.10. At the commencement of the inquiry, the party charged shall be asked to enter a plea of "guilty" or "not guilty" after which evidence necessary to establish the charge shall be let in. The evidence shall be material to the charge and may either be oral or documentary. If oral -

(a) it shall be direct;

(b) it shall be recorded by the Inquiry Officer in the presence of the party charged; and the party charged shall be allowed to cross-examine the witnesses.

153.12. All evidence shall be recorded, in the presence of the party charged, by the Inquiry Officer himself or on his dictation by a scribe. Cross-examination by the party charged or the fact of his declining to cross-examine the witness, as the case may be, shall also be recorded. The statement of each witness shall be read over to him and explained, if necessary, in the language of the witness, whose signature shall be obtained as a token of his having understood the contents. Statement shall also be signed by the Inquiry Officer and the party charged. Copy of each statement shall be given to the pararged who shall acknowledge receipt on the statement of witness itself. The Inquiry Officer shall record a certificate of having read over the statement to the witness in the presence of the party charged.

153.13. Documentary exhibits, if any, are to be numbered while being presented by the concerned witness and reference of the number shall be noted in the statement of the witness. Such documents may be admitted in evidence as exhibits without being formally proved unless the party charged does not admit the genuineness of such a document and wishes to cross-examine the witness who is purported to have

signed it. Copies of the exhibits may be given to the party charged on demand except in the case of voluminous documents, where the party charged may be allowed to inspect the same in the presence of Inquiry Officer and take notes.

153.15. The party charged shall then be examined and his statement recorded by the Inquiry Officer. If the party charged has pleaded guilty and does not challenge the evidence on record, the proceedings shall be closed for orders. If he pleads "not guilty", he shall be required to file within 10 days a written statement together with a list of such witnesses as he may wish to produce in his defence and giving therein a gist of evidence that each witness is expected to give. If he declines to file a written statement, he shall again be examined by the Inquiry Officer on the expiry of the period allowed and his statement, if any, recorded.

153.16. If the party charged refuses to produce any witnesses or to produce any evidence in his defence, the proceedings shall be closed for orders. If he produces any evidence, the Inquiry Officer shall proceed to record the evidence. If the Inquiry Officer considers that the evidence of any witness or any document which the party charged wants to produce in his defence is not material to the issues involved in the case, he may refuse to call such witness or to allow such document to be produced in evidence, but in all such cases he must briefly record his reasons for considering the evidence inadmissible. When all relevant evidence has been brought on record, the proceedings shall be closed for orders after recording the statement, if any, of the party charged and obtaining any clarification, if necessary, from him."

19. A bare perusal of the aforesaid statutory provisions leaves no manner of doubt that the same do not contemplate submission of reply by an enrolled member of the Force to the charges for persuading the disciplinary authority not to hold enquiry against him. The decision to proceed against an enrolled member of the Force may be reached on receipt of a complaint or otherwise regarding alleged misconduct or misbehaviour. The disciplinary authority is obliged to be satisfied whether the facts alleged or brought out constitute a case for major or minor punishment. The satisfaction having an element of subjectivity sets the ball rolling. If Rule 153 applies, specific and distinct charges are drawn up and served on the delinquent member alongwith the statements of misconduct or misbehaviour and lists of witnesses and documents by which the charges are to be sustained. Date of enquiry has to be fixed initially by the disciplinary authority and subsequent dates by the Enquiry Officer. The delinquent has to be given opportunity to inspect and take extracts from official records relevant for his defence. The delinquent must be given the assistance of a "friend". (According to Mr. Majumdar, Rule 153.8. has been declared ultra vires by this Court. More the merrier for a delinquent member, for he could now be entitled to assistance of a legal practitioner if the circumstances so warrant). At the commencement of the enquiry, the delinquent member shall be asked whether he pleads ''not guilty''. If he pleads so, evidence, either oral or documentary, has to be led by the prosecution. Oral evidence is required to be

recorded in the presence of the delinquent member who shall thereafter have the choice of cross-examining the witnesses. It is only after this stage has been reached that the delinquent member is examined and his statement recorded by the Enquiry Officer. If he still pleads ''not guilty'', he has to be given the opportunity of submitting his written statement of defence together with a list of witnesses who he may wish to produce in support of the defence version. Thereafter if evidence is led by defence witnesses, the Enquiry Officer shall record the same. After all relevant evidence has been brought on record, the proceedings shall be closed.

20. It would therefore appear that a wholesome procedure (rather unusually) has been laid down which is conceived entirely in the interest of the enrolled member of the Force facing disciplinary proceedings. The delinquent member is not asked to disclose his defence till such time the prosecution has adduced its evidence. This secures the salutary purpose of not enabling the disciplinary authority to fish out the defence of the delinquent member and to tailor the prosecution case accordingly. That it is within the administrative domain and exclusive discretion of the disciplinary authority to commence disciplinary proceedings and to continue it after issuance of the charge-sheet cannot be doubted. Such proceedings, however, can be questioned and interdicted on grounds of proved mala fide, patent bias, manifest lack of jurisdiction and other grounds (not possible to be laid down exhaustively) which might shock the conscience of the Court.

21. Left to my judgment, I do not find any infirmity in the action of the respondents because in issuing the charge-sheet and mentioning therein the name of the Enquiry Officer to whom the delinquent must apply for inspection/taking extract of official records, the respondent No.3 has in the process adhered to statutory provisions.

22. However, whether or not such action should be upheld or not is altogether a different matter since decisions have been cited for my consideration which, according to Mr. Majumder, are binding on me and there is no other course but to follow the same and grant relief to the petitioner. It should, therefore, be my endeavour to ascertain whether the matter directly in issue in the present petition is covered by any binding precedent or not.

23. But before I venture to do that, I must remind myself the principle of law laid down in Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, regarding what constitutes ratio decidendi of a decision. It reads as follows:

"9. ****It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge''s decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates-(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the

Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and therefrom the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi."
(underlining for emphasis)

24. The decision in V.K. Khanna (supra) now needs consideration in some detail. The officer concerned was the former Chief Secretary to the Government of Punjab who had approached the Administrative Tribunal questioning the charge-sheet issued against him. The challenge having failed, he approached the High Court and was granted relief. The Apex Court upheld the judgment of the High Court. The dispute before the Apex Court has been summarised in paragraph 4 of the decision, which reads as follows:

4. The dispute in the appeals pertain to the last phase of the earlier Government and the first phase of the present Government in the State of Punjab: Whereas the former Chief Secretary of the State of Punjab upon obtaining approval from the then Chief Minister of Punjab initiated proceedings against two senior colleagues of his in the Punjab State Administration but with the new induction of Shri Prakash Singh Badal as the Chief Minister of Punjab, not only the Chief Secretary had to walk out of the administrative building but a number seventeen officer in the hierarchy of officers of Indian Administrative Service and working in the State of Punjab as a bureaucrat, was placed as the Chief Secretary and within a period of 10 days of his entry at the Secretariat, a notification was issued, though with the authority and

consent of the Chief Minister pertaining to cancellation of two earlier notifications initiating a Central Bureau of Investigation (CBI) inquiry - the charges being acquisition of assets much beyond the known source of income and grant of sanction of a government plot to the Punjab Cricket Control Board for the purposes of stadium at Mohali. A worthwhile recapitulation thus depicts that a government servant in the Indian Administrative Service being charged with acquiring assets beyond the known source of income and while one particular Government initiates an inquiry against such an acquisition, the other Government within 10 days of its installation withdraws the notification - is this fair? The High Court decried it and attributed it to be a motive improper and mala fide and hence the appeal before this Court.

25. It is noticed from the report that a charge-sheet containing several charges was served on the charged officer on 24th April, 1997 giving him 21 days to reply thereto. Soon after the issuance of the charge-sheet, however, the press reported on 27th April, 1997 a statement of the Chief Minister that a Judge of the High Court would look into the charges against him. This statement was ascribed to be mala fide by counsel of the charged officer by reason of the fact that even prior to the expiry of the period pertaining to submission of reply to the charge-sheet, the announcement was made regarding appointment of an Enquiry Officer. It was contended that it depicts malice and vendetta and the frame of mind so as to humiliate the former Chief Secretary. The time had not expired for assessment of the situation as to whether there was any misconduct involved; yet, a decision had been taken to proceed with the enquiry irrespective of merits of the reply that he might submit. The charged officer alleged that bias was the foundation of the disciplinary proceedings. On the basis of the facts presented, which were found glaring, it was held that there was real danger of bias and not a mere apprehension of bias and, accordingly, the challenge of the charged officer was upheld.

26. In my reading of the decision, announcement of the Chief Minister appointing an Enquiry Officer simultaneously with issuance of charge-sheet was one of several grounds on which the allegation of bias was founded and that weighed in the mind of the Apex Court to hold that the disciplinary proceedings were tainted with bias and that the circumstances clearly revealed a pre judged and pre-determined mind.

27. I have looked into the All India Services (Discipline and Appeal) Rules, 1969 (hereafter the AISDA Rules) considering it to be the applicable rules that govern disciplinary proceedings against a member of the All India Service holding equal rank as the charged officer. Rule 8 thereof contains provisions regulating the procedure for imposing major penalties. It would be profitable to note, at this stage, sub-rules (5) and (6) of Rule 8. They read as under:

"8. Procedure for imposing major penalties

(5) The disciplinary authority shall deliver or cause to be delivered to the member of the Service a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the member of the Service to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(6) (a) On receipt of the written statement of defence the disciplinary authority may appoint, under sub-rule (2), an inquiring authority for the purpose of inquiring into such of the articles of charge as are not admitted, and where all the articles of charge have been admitted by the member of the Service in his written statement of defence, the disciplinary authority shall record its finding on each charge and shall act in the manner laid down in rule 9.

(b) If no written statement of defence is submitted by the member of the service, the disciplinary authority may, if it considers it necessary to do so, appoint under sub-rule (2), an inquiring authority for the purpose."

A bare reading of sub-rule (6) makes the position clear that appointment of inquiring authority on receipt of written statement of defence from the charged officer denying the charges is not automatic but is necessarily within the discretion of his disciplinary authority. He may or may not appoint an inquiring authority in case of denial of the charges whereas if they are admitted, he has no other option but to record his findings on each charge and proceed to take action under Rule 9 of the AISDA Rules for imposing penalty. The use of the words ''may'' and ''shall'' in the same sub-rule is significant. In my reading, use of the words ''may'' implies that further action would be within the discretion of the disciplinary authority while the words ''shall'' have been used to emphasize that further action of the nature specified therein is imperative. Thus, the words ''may'' and ''shall'' need not be read inter-changeably.

28. Though sub-rule (2) of Rule 8 of the AISDA Rules conferring power on the disciplinary authority to appoint an authority to inquire into the truth of any imputation of misconduct or misbehaviour against a member of the Service is placed above sub-rules (5) and (6), the same does not come into play before the time to file written statement of defence has expired.

29. Having regard to the provisions of Rule 8 of the AISDA Rules, it was not open to the Chief Minister to announce appointment of a Judge of the High Court as inquiring authority before receipt of reply from the charged officer. It is in such circumstances that the Apex Court upheld the impugned order of the High Court granting relief to the officer. The ratio of the decision, to my mind, is whether there is a mere apprehension of bias or there is a real danger of bias has to be ascertained from the surrounding circumstances and a conclusion has to be drawn therefrom, and if the facts reveal a real danger of bias the administrative action

cannot be sustained whereas a fanciful apprehension of bias would not be a ground for interfering with administrative action. The other principle that was laid down is in paragraph 34 of the decision. Although the Apex Court ruled that "It is well established in service jurisprudence ……", as extracted supra, the law enunciated ought to be read and understood in view of the rule position governing the proceedings. Although the relevant rule was not referred to in the decision, it stands to reason that while holding so, the Apex Court did bear in mind that in view of the extant rules, the inquiring authority could not have been appointed before consideration of the written statement of defence.

30. Having regard to Dhanwanti Devi (supra), if the judgment in V. K. Khanna (supra) is read as applicable to the particular facts proved, or assumed to be proved and the generality of the expressions found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are found, there is scope to contend that the dictum with which I am concerned requires to be read bearing in mind the rules governing the enquiry and not divorced from it. To my mind since each case requires examination to a very large extent on its specific facts vis-a-vis the law applicable thereto, attempting universal application of a law laid down in the context of a rule not quite similar to the one at hand might lead to unwarranted and undesirable results.

31. It is this decision of the Apex Court, according to Mr. Majumder, that the Division Benches (comprising of the same learned Judges) relied on to dismiss the intra-Court appeals filed by the Union of India against orders of learned single Judges allowing the writ petitions of the delinquent members of the Force viz. Dilip Kumar Palit, Ram Parwesh Dubey and Champa Das, who had approached the Writ Court with identical grievance, and that I ought to follow for granting relief to the petitioner.

32. I shall now proceed to consider what exactly the Division Benches held and whether there is any distinguishing feature giving me the scope not to follow the same without violating judicial discipline.

33. In Dilip Kumar Palit (supra), the Division Bench was called upon to consider the correctness of the impugned judgment of the learned single Judge who interfered with the charge-sheet on twin grounds of delay and of the accepted procedure in service jurisprudence not being followed. The discussion on the delay aspect need not detain me. Quoting paragraph 34 of the judgment in V.K. Khanna (supra), the Division Bench held that the same "recognizes that a disciplinary authority had to obtain a preliminary response from the concerned employee before deciding whether the process of enquiry was necessary to go into the charges leveled against the employee." The learned single Judge had also relied on paragraph 34 referred to above and granted relief. The Division Bench found no infirmity in the order under appeal and dismissed it.

34. In Ram Parwesh Dubey (supra), the order under appeal was passed in the second round of litigation between the parties. The first round of litigation ended with an order recording the concession of the employer that the impugned charge-sheet would be withdrawn and a fresh one issued after deleting the portion by which the Enquiry Officer was appointed. The operative portion of the order recorded that if the employer served identical charge-sheet by deleting the portion showing the appointment of an Enquiry Officer, the member of the Force would be at liberty to use a reply which would be considered by the appropriate authority in accordance with the relevant rules. The employer then repeated the same charge-sheet by only removing the name of the Enquiry Officer who had been originally appointed without, however, deleting paragraphs 3 and 4 thereof which gave particulars of the date and venue of enquiry and called upon the delinquent member to attend it. The delinquent member complained of mechanical action on the part of the disciplinary authority without application of mind. The challenge succeeded before the learned single Judge who placed reliance on the dictum in V.K. Khanna (supra). The Division Bench held that the disciplinary authority construed the earlier order of the learned single Judge far too literally; if there was no Enquiry Officer, there was no question of issuing directions of the nature contained in paragraphs 3 and 4 of the impugned charge-sheet. On a reading thereof it was clear that the member of the Force was being conveyed that an enquiry proceedings had been put in place and that is what precisely fouled the dictum in the V.K. Khanna decision. The appeal was accordingly dismissed granting liberty "to the disciplinary authority to seek a preliminary response from the writ petitioner and then decide if an enquiry is necessary to consider the allegations against the writ petitioner."

35. In Champa Das (supra), the Division Bench was considering the correctness of the order dated 2nd April, 2008 passed by the learned single Judge. His Lordship had rejected the argument of learned counsel for the disciplinary authority who contended that "the relevant R.P.F Rules do not speak of giving an opportunity to submit any explanation or show cause prior to initiation of the enquiry;" by holding that "this Court does not find any convincing argument since an opportunity to the charged officer to explain his conduct or to show cause as regards the charges is the foundation of the principles of natural justice. By no means such an opportunity can be denied. In fact, it is for the authority to give the concerned official an opportunity to explain the charges against him/her and thereafter, if the authority concerned is not satisfied with such explanation, then only the question of enquiry arises." Ultimately, it was held that initiation of an enquiry in the manner proposed is not legally permissible and as such the impugned charge-sheet was set aside. However, the respondents were granted liberty to initiate enquiry in accordance with rules. The Division Bench by its order dated 17th November, 2008, while dismissing the appeal, ruled as follows:

"We have heard learned counsel for the parties at length. We have also perused the record. The charge sheet issued to the employee dated 15th February, 2008 clearly

indicate that one Sri A. K Kundu has been nominated as an Enquiry Officer. This enquiry has been initiated without seeking any explanation from the employee. The Enquiry Officer has been immediately directed to hold an enquiry against the employee. Such a course is not permissible in view of the law laid down by the Supreme Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, and in the case of State of Punjab v. V.K Khanna, reported in (2001) 2 SCC 330.

In view of the above, we see no reason to interfere with the order passed by the Trial Court. We may notice that the Trial Court has specifically mentioned that passing of the impugned order, by no stretch of imagination, can stop the respondent-authority for initiating any enquiry against the writ petitioner in accordance with the rules. In such circumstances, we are of the opinion that no manifest injustice has been done to the appellant. We see no merit in the appeal. The appeal is accordingly dismissed treating the same as on day''s list. The application for stay is also dismissed."

36. It is noticed that the Division Bench in Champa Das (supra) also ruled that the course of action adopted by the appellants in initiating enquiry without seeking any explanation from the employee and directing the Enquiry Officer to immediately hold an enquiry against the employee is not permissible in view of the law laid down by the Apex Court in the case of Tulsi Ram Patel (supra).

37. I must place on record that Mr. Majumder did not rely on the decision in Tulsi Ram Patel (supra). However, since the Division Bench in Champa Das (supra) relied on it to dismiss the appeal before it, I have considered it necessary to find out to what extent the decision is applicable for an answer to the issue before me.

38. In that case the Constitution Bench of the Apex Court was called upon to consider, having regard to conflict of opinion between two Benches of equal strength, the effect of the second proviso to Article 311(2) of the Constitution which permits the appointing authority to dispense with formal enquiry and to impose either of the punishments mentioned in clause (2) thereof without granting any opportunity of hearing both before the finding of guilt is arrived at and the punishment imposed. The decision in Divisional Personnel Officer, The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, was found to be in conflict with the decision in M. Gopala Krishna Naidu Vs. State of Madhya Pradesh, . A reference was laid before the Constitution Bench of five learned Judges. Exposition of law in regard to the true meaning and content of the ''pleasure doctrine'' and its implications and impact is discernible therefrom. The majority speaking through Hon''ble Madon, J. ruled that the audi alteram partem rule was excluded expressly by the second proviso to Article 311(2) of the Constitution and therefore there was no need to hear the delinquent even at the stage of imposition of penalty.

39. Even though the issue considered and decided by the Apex Court in Tulsi Ram Patel (supra) is not quite the same I have been called upon to decide, the said decision deals in extenso with applicability of principles of natural justice and throws sufficient light on compliance therewith in disciplinary proceedings. Relevant portions from the decision are quoted below:

"96. The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentari, in his defence ..... If we look at clause (2) of Article 311 in the light of what is stated above, it will be apparent that that clause is merely an express statement of the audi alteram partem rule which is implicitly made part of the guarantee contained in Article 14 as a result of the interpretation placed upon that article by recent decisions of this Court. ..... If, therefore, an inquiry held against a government servant under clause (2) of Article 311 is unfair or biased or has been conducted in such a manner as not to give him a fair or reasonable opportunity to defend himself, undoubtedly, the principles of natural justice would be violated, but in such a case the order of dismissal, removal or reduction in rank would be held to be bad as contravening the express provisions of clause (2) of Article 311 and there will be no scope for having recourse to Article 14 for the purpose of invalidating it.

97. Though the two rules of natural justice, namely, nemo judex in causa sua and audi alteram partem, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal strait-jacket. They are not immutable but flexible. These rules can be adapted and modified by statutes and statutory rules and also by the constitution of the Tribunal which has to decide a particular matter and the rules by which such Tribunal is governed.

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98. In India, in Suresh Koshy George Vs. University of Kerala and Others,) this Court observed:

''The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions.''

After referring to this case, in A.K. Kraipak and Others Vs. Union of India (UOI) and Others,], Hegde, J., observed :

''What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle o natural justice had been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.''

99. Again in Union of India (UOI) Vs. Col. J.N. Sinha and Another,] it was said:

''It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the Court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.''

101. Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. ..... So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiori so can a provision of the Constitution, for a constitutional provision has a far greater and all-pervading sanctity than a statutory

provision. In the present case, clause (2) of Article 311 is expressly excluded by the opening words of the second proviso and particularly its keywords "this clause shall not apply". As pointed out above, clause (2) of Article 311 embodies in express words the audi alteram partem rule. This principle of natural justice having been expressly excluded by a constitutional provision, namely, the second proviso to clause (2) of Article 311, there is no scope for reintroducing it by a side-door to provide once again the same inquiry which the constitutional provision has expressly prohibited....."

(underlining for emphasis)

40. The decision in Tulsi Ram Patel (supra) although recognizes that Article 311(2) embodies in express words the audi alteram partem rule and in its fullest amplitude includes granting of an opportunity to a delinquent to submit his explanation to the charges, in my reading, it does not go so far to suggest that opportunity to reply to the charges and consideration thereof by the disciplinary authority before it proceeds to decide whether enquiry ought to be conducted or not is a course of action that is required to be followed in consonance with audi alteram partem principles and that the enquiry would stand vitiated for a failure to follow such course. On the contrary, it approves the warning of Hon''ble Megarry, J. in Hounslow London Borough Council v. Twickenham Garden Developments Ltd., [(1970)3 All E R 326] that the principles of natural justice must be confined within their proper limits and not allowed to run wild.

41. Be that as it may, Their Lordships of the Division Benches upon appreciation of the principle of law laid down in V.K. Khanna (supra) and Tulsi Ram Patel (supra) have applied the same in the respective appeals before them and held that the course of action adopted by the respondents was not permissible. There is no discernible dissimilarity on the factual score before me. Mr. Mullick''s contention that the said decisions have been followed by the Division Benches without even referring to Rule 153 of the RPF Rules, though correct on facts, ipso facto does not empower a Judge of the High Court, sitting singly, to pronounce that such decisions were rendered per incuriam. I may usefully refer in this connection to the observations of Lord Diplock in Cassell & Co. Ltd. v. Broome, reported in (1972) 1 ALL ER 801 while considering the Court of Appeal''s comment that Rookes v. Barnard, reported in (1964) 1 ALL ER 367 was rendered per incuriam. It was observed:

The Court of Appeal found themselves able to disregard the decision of this House in Rookes v. Barnard by applying to it the label per incuriam. That label is relevant only to the right of an appellate Court to decline to follow one of its own previous decisions, not to its right to disregard a decision of a Higher appellate Court or to the right of a Judge of the High Court to disregard a decision of the Court of Appeal.

42. The Division Benches considered the principle of law laid down in paragraph 34 of the decision in V.K. Khanna (supra) having universal application and must have,

with due deference to Article 141 of the Constitution, followed it. The decision in Tulsi Ram Patel (supra) has also been read by the Division Benches as laying down the law that the course of action adopted by the respective disciplinary authorities of the members of the Force who approached the Court with identical grievance is defective and, thus, vitiated. In my view, even if the Division Benches have misread the principle of law laid down by the Apex Court on consideration of a particular rule and misapplied it, I am bound thereby as a Judge sitting singly. That in a hierarchical judicial system, a Court of a lower tier must accept loyally the decision of the higher tier is settled law. Within the State, the Division Bench has the last word and failure or obstinacy on the part of a Judge to accept it would certainly be subversive of judicial discipline, propriety and prudence. The Division Benches having interfered with charge-sheets issued by the respective disciplinary authorities of the Force under Rule 153 of the RPF Rules in similar circumstances by following the dictum in V.K. Khanna (supra) and Tulsi Ram Patel (supra), I am left with no other option but to follow the same course.

43. The other contention of Mr. Mullick, drawing inspiration from the decision in Champa Das (supra), that the Division Bench granted liberty to proceed with the rules and the official respondents in the present case having followed the rules, their action is immune from judicial review cannot be accepted for the simple reason that the liberty that was granted followed the finding that whatever action had been taken was not in accordance with law. The charge-sheet in the present case admittedly recorded appointment of an Enquiry Officer to whom the petitioner was directed to apply if he considered it necessary to seek inspection of official records or to have copies therefrom for preparing his defence which, as held in Champa Das (supra) and the other Division Bench decisions, is in the teeth of the pronouncement in V.K. Khanna (supra).

44. The charge-sheet impugned herein cannot be sustained in law and hence is set aside with liberty to the respondents to proceed afresh according to law. However, the orders being annexures P-4 and P-5 to the petition being incidental to the disciplinary proceedings and no infirmity having been found therein are not interfered with.

45. Since the charge-sheet has been set aside on the ground as above and counter affidavit from the respondents has not been invited, I have not considered it necessary to examine the allegation that the respondent No.4 in proceeding against the petitioner acted mala fide, as contended on his behalf by Mr. Majumder.

46. Despite challenge to the charge-sheet succeeding on the authority of the Division Bench judgments (supra), I cannot repel the temptation of penning my views since a constitutional issue of vital importance is involved.

47. Article 311 (2) of the Constitution postulates an inquiry to be conducted before a person [as specified in clause (1) thereof] is dismissed or removed or reduced in

rank. In consonance with natural justice principles (read audi alteram partem), in such enquiry the person concerned has to be informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The requirement as spelt out in V.K. Khanna (supra), in my humble view, has not been recognised in any previous decision of the Apex Court concerning disciplinary proceedings/ domestic enquiry to be a part of ''reasonable opportunity of being heard'' either enshrined in Article 311(2), statutory rules for conducting disciplinary proceedings or in procedures governing domestic enquiry.

48. Reference in this connection may be made to the decision in Khem Chand Vs. The Union of India (UOI)and Others, wherein the Apex Court considering Article 311(2) had the occasion to lay down that ''reasonable opportunity of hearing'' would include:

"19. To summarise: the reasonable opportunity envisaged by the provision under consideration includes-

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses m support of his defence; and finally (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry, is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant."

49. The observations in Tulsi Ram Patel (supra) on the point of applicability of principles of natural justice in proceedings under Article 311 of the Constitution have been noticed earlier and hence are not repeated.

50. In Meenglas Tea Estate Vs. Its Workmen, , the Apex Court (albeit in respect of a domestic enquiry, validity of which was questioned before an industrial adjudicator) ruled that:

4. *****It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the

burden upon the person charged to repel the charge without first making it out against him. *****

51. In Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen, the Apex Court laid down the ingredients that are required to be satisfied for holding an enquiry to be fair and proper, which are as follows:

"An enquiry cannot be said to have been properly held unless,

(i) the employee proceeded against has been informed clearly of the charges levelled against him,

(ii) the witnesses are examined- ordinarily in the presence of the employee- in respect of the charges,

(iii) the employee is given a fair opportunity to cross-examine witnesses,

(iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and

(v) the enquiry officer records his findings with reasons for the same in his report".

52. At this juncture, the decision of the Apex Court in Employers of Firestone Tyre and Rubber Co. Ltd. Vs. Their Workmen, may also be noticed. The Court was considering a case where the charge-sheet that had been issued without calling for an explanation from the employee charged was claimed to have vitiated the domestic enquiry. It was ruled that non-grant of opportunity to a charged employee to reply to the charge(s) before a decision is taken to conduct enquiry against him by appointing an Enquiry Officer does not offend any principles of natural justice. Relevant portions of the decision read thus:

"5. The Tribunal gave several reasons for its conclusion that the enquiry was not properly conducted. These were:

(a) That the inquiry was held immediately after the investigation without taking the explanation of the workman;

(b) **

(c) **

(d) **

6. The Company now contends that none of these grounds has any validity. It has tried to meet each of the grounds and in our opinion successfully. We shall take these grounds one by one and indicate the submissions which in our opinion must be allowed to prevail. As regards Ground (a) it is clear to us that, although it may be desirable to call for such an explanation before serving a charge-sheet, there is no principle which compels such a course. The calling for an explanation can only be with a view to making an enquiry unnecessary, where the explanation is good but in

many cases it would be open to the criticism that the defence of the workman was being fished out. If after a preliminary enquiry there is prima facie reason to think that the workman was at fault, a charge-sheet setting out the details of the allegations and the likely evidence may be issued without offending against any principle of justice and fairplay. This is what was done here and we do not think that there was any disadvantage to the workman."

53. Considering the RPF Act and the RPF Rules, I am of the firm opinion that attempt to apply the law laid down in V.K. Khanna (supra) requiring the disciplinary authority to consider the reply to the charges before it appoints an inquiring authority/Enquiry Officer ought to be made in consonance with the mandate of the statute applicable in a particular case and not in ignorance thereof. Whether or not a decision to hold enquiry should be taken only after receipt of a reply to the charge-sheet would really be dependent on the rules governing the procedure for holding enquiry and the Court, by a judicial fiat, may not introduce a procedure not ordained by the relevant rules to be followed by the disciplinary authority. Re-writing of rules by Court, it is again well settled, is not permissible. In such a case, and as has happened in the present case, the respondents though having acted perfectly in accordance with statutory rules find their action invalidated on the ground of acting in a manner contrary to principles of law decided by the Court.

54. Prior to the decision in V.K. Khanna (supra), there appears to be no precedent of the Apex Court directly on the point which by long recognition matured into the rule of stare decisis.

55. A search for precedents on the point reveal contrasting judicial pronouncements of different High Courts of the country, other than those cited before me, regarding initiation of enquiry without waiting for a reply from the charged employee.

56. The Madras High Court in its decision in Anglo American Direct Tea Trading Co. Ltd. v. Labour Court, Coimbatore & Anr., reported in 1971 I LLJ 147 after considering the decision of the Apex Court in Sur Enamel (supra) proceeded to observe that "the fact that the charge-sheet did not expressly call upon the workman to offer his explanation cannot be said to have vitiated the enquiry. Even if the charge-sheet had not called upon the workman to offer his explanation, nothing prevents him from offering an explanation himself before the enquiry is commenced. Therefore, I cannot hold that the first ground given by the Labour Court in support of its conclusion is legally tenable."

57. Incidentally, the view expressed by the Madras High Court in Anglo American (supra) has been accepted by the Gauhati High Court in its decision in The Secretary, Assam Chah Majdoor Sangha, Sonari Branch v. The Presiding Officer, Labour Court, Dibrugarh & Ors., reported in 1981 Lab IC 93. In paragraph 13 of the decision, it was held that calling upon the concerned employee to submit his explanation to the charge sheet issued in connection with a domestic enquiry into his misconduct is

not a pre-requisite and hence failure of the employer to call for such explanation would not vitiate the enquiry.

58. Similar issue was also considered by the Rajasthan High Court in Balvir Kumar Arya v. Rajasthan State Road Transport Corporation, Jaipur & Anr., reported in 1982 Lab IC 61. The Court was called upon to consider Standing Order No.35 which, inter alia, dealt with the procedure of enquiry. It read:

"35. (i) Competent authority may suspend a worker for any act or omission of misconduct as described in Standing Order No.34 by an order in writing and serve the worker with a charge-sheet containing specific charges on which each charge is based and asking him to state whether he desires to be heard in person:

(ii) A worker shall be required to submit his explanation in writing not exceeding a week from the date of service of charge-sheet and if he desires to be heard in person a summary enquiry shall be held."

In paragraph -11 of the decision, the Court held as under:

11. Before discussing the authority cited by Mr. Sharma, I may right away state that there is nothing in the language of Standing Order No.35 (i) and (ii) reproduced above which may be reasonably construed to divide the entire process relating to suspension and dismissal of a workman into two watertight compartments like those suggested by counsel. Standing Order 35 (i) which provides for suspension of a workman or any act or omission of misconduct, lays down that the order of suspension must be reduced to writing and that the workman must be served with a charge-sheet requiring him to state whether he desires to be heard in person. Standing Order 35 (ii) lays down that the workman shall be required to submit his explanation in writing within a period not exceeding a week from the date of service of charge-sheet. If the workman desires to be heard in person, a summary enquiry must be held into the charge-sheet in accordance with the other clauses of Standing Order No.35. It will thus be seen that there is no requirement of this order that the entire procedure must be divided into two separate stages and that one stage must be dealt with by the disciplinary authority and the other by the Inquiry authority. The disciplinary authority is under no legal obligation to obtain the explanation at his own level and to consider it personally. Of course, before the enquiry is commenced, the delinquent must be called upon to file his explanation to the charge-sheet and thus given an opportunity of explaining his side of the case. In case, he admits the charge-sheet he removes the necessity of holding the summary enquiry. The case, then goes back to the disciplinary authority for consideration of the question of punishment. If however he does not admit the charge and renders some explanation of his own it is a matter for enquiry and the inquiring authority must hold the enquiry according to law and submit his report to the disciplinary authority. The entire process commencing with the passing of the order of suspension and service of the charge-sheet and the eventual exoneration or

punishment of the workman, as the case may be, is a continuous and integrated process and is not susceptible of any such artificial division into watertight compartment as suggested by counsel for the appellant".

59. While giving its decision, the Rajasthan High Court considered the decision of the Allahabad High Court in Hindusthan Lever Ltd. v. Their Workmen & Anr., reported in 1974 (29) FLR 305 and distinguished it on the basis of the language of the Standing Order which fell for consideration before the Allahabad High Court.

60. It would be interesting to note what the Allahabad High Court held in Hindustan Lever (supra). It was considering provisions of Standing Order No.23(c), which read:

No order of dismissal or suspension under Standing Order 23(a) for misconduct shall be made unless the workman concerned, if present, is informed in writing of the misconduct alleged against him and is given an opportunity to produce evidence in his defence

The Court proceeded to observe as follows:

It can be easily gathered from the tenor of the above provision that the Standing Orders contemplate two stages applicable to the dismissal or suspension of a workman, namely, the one anterior to the enquiry and another posterior thereto. In the stage preceding the actual enquiry, the management is required to serve a charge-sheet on the workman concerned and also afford him an opportunity of offering an explanation. It is only when this has been done that the next stage is reached, namely, the commencement of the actual enquiry, and there it is essential that the workman should be given an opportunity to produce evidence in his defence. In my opinion, this is substantially a complete procedure, which is enshrined in the Standing Order, and the management cannot with impunity disregard any of the vital steps in this entire procedure. It is not open to the management either to deny altogether to a workman the opportunity of submitting an explanation in writing or to defer it by telescoping it somewhere in the midst of the actual enquiry. In my opinion, the provision for demanding an explanation in writing serves a salutary purpose, and is not merely a ritual which may or may not be performed. It is essential to the maintenance of industrial harmony that a workman should not be unnecessarily harassed by the employer by holding an enquiry against him. One cannot also ignore the fact that in industrial disputes the motive of the employer is a very important factor to be considered. So often, a workman raises the plea of unfair labour practice or victimisation on account of his trade union activities. It, therefore, serves as a brake on the management to comply with this preliminary step of asking for an explanation and reducing it to writing from the workman and thereafter proceeding to hold an enquiry, if the explanation is not satisfactory.

61. A Division Bench of the Orissa High Court while considering sub-rules (2), (3) and (4) of Rule 15 of the Orissa Civil Services (Classification, Control and Appeal) Rules,

1962 in its decision in Jagannath Mohapatra v. Utkal University, reported in 1979 (1) SLR 828 held as follows:

From the above provisions in the said Rules it is absolutely clear that after the charges are framed against an employee that should be sent to the delinquent with a statement of the allegations on which they are based, and he shall be supplied with all records on which the allegations are based, and he shall be permitted to inspect and take extracts from such other official records as he may specify, provided that such permission may be refused for reasons stated in sub-rule (3) quoted above. After that, if the delinquent submits his written statement or he does not submit the same, then only the disciplinary authority may itself inquire into the charges framed against the delinquent as are not admitted, or, if he considers it necessary so to do, appoint a board of inquiry or an inquiring officer for the purpose. Therefore, it would not be illegal to appoint the inquiring officer simultaneously with the framing of the charges and to direct the delinquent to submit his explanation on the charges to the inquiring officer so that he will directly deal with the same from that stage. Therefore, the appointment of the inquiring officer before the submission of the written statement of defence by the delinquent cannot be supported. The above provisions are wholesome, for there may not be any necessity to appoint an inquiring officer in case the delinquent admits the charges or the disciplinary authority finds that the allegations against the delinquent have been suitably explained in the written statement of defence. My above view gets support from the observations made by a Division Bench of this Court in Rabindranath Mohanty v. Government of Orissa & Anr. (4) based on similar provisions in Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969.
The word ''not'' in bold font in the extracted portion appears to be a mis-print since it cannot be reconciled with the principle laid down therein.

62. The aforesaid decisions have been referred only to emphasize that the decisions of the High Courts on the issue are not uniform and consistent.

63. I would, on a conspectus of the aforesaid decisions, perhaps be not unjustified in observing, without fear of admonition, that the law on the point at the level of the High Courts was not at all "well-settled" or "well established".

64. I am of course minded to hold that the dictum of V.K. Khanna (supra) would have full application in respect of disciplinary proceedings initiated not only under the AISDA Rules referred to above but also to proceedings initiated under the Railway Servants (Discipline & Appeal) Rules, 1968 (hereafter the RSDA Rules). There, proceedings for major penalty are to be drawn up in terms of Rule 9. Sub-rules (7), (8) and (9), to the extent relevant, are extracted hereunder:

"7. The disciplinary authority shall deliver or cause to be delivered to the Railway servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour ....., and shall require the Railway servant to

submit a written statement of his defence within ten days or such further time as the disciplinary authority may allow. .....

8. The Railway servant may, for the purpose of his defence, submit with the written statement of defence, a list of witnesses to be examined on his behalf. .....

9(a)(i). On receipt of the written statement of defence, the disciplinary authority shall consider the same and decide whether the inquiry should be proceeded with under this rule."

(ii) ******

(iii) *****

(iv) If the disciplinary authority, after consideration of the written statement of defence, is of the opinion that the imposition of a major penalty is not necessary, it may drop the proceedings already initiated by it for the imposition of major penalty, without prejudice to its right to impose any of the minor penalties, ... "

65. The aforesaid rules apparently are not quite similar to Rule 153 of the RPF Rules and different considerations are bound to arise when an enrolled member of the Force not being a superior officer (who would be governed by Rule.153) and a superior officer (who would be governed by Rule 9) face disciplinary proceedings.

66. There could perhaps be an argument that even if the rules do not provide, there is no harm in reading natural justice in the provision for that would promote the cause of justice. However, the law laid down in Mangilal Vs. State of Madhya Pradesh, may be noticed:

"10. *****The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant''s defence or stand. Even in the absence of a provision in procedural laws, power inheres in every Tribunal/Court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. *****"

(underlining for emphasis)

67. The RPF Rules are explicit regarding the stage at which a written statement of defence could be filed by a charge-sheeted member of the Force. There is no place

for reading natural justice in Rule 153 and holding that decision to initiate enquiry could only be taken after opportunity to file written statement of defence is extended upon service of the charge-sheet. That is not to say that upon receipt of a charge-sheet an enrolled member may not file his written statement of defence; he may do so without inhibition but in such case he would run the risk of disclosing his defence, thereby giving opportunity to the prosecution to tailor its case.

68. The complaint of a delinquent that he has not been afforded reasonable opportunity of being heard in essence being a demand that audi alteram partem rule be adhered, such complaint has to be tested in the light of the facts and circumstances of each case, the nature of enquiry, the statutory rules governing such enquiry and the prejudice that one might suffer for non-adherence to such rule. Principles of natural justice are required to be modulated consistent with the rules. They are not made to supplant but supplement the law.

69. As the law stands, disciplinary proceedings under Rule 153 of the RPF Rules may be commenced against an enrolled member of the Force by his disciplinary authority upon a prima facie satisfaction that his conduct needs to be investigated. Once a decision to proceed against a member has been reached, there is no scope to read a requirement of the nature contemplated in Rule 8(6) of the AISDA Rules or Rule 9(9)(a)(i) of the RSDA Rules in Rule 153 of the RPF Rules by a process of inference or implication and if so read, in my humble view, the concept of natural justice would be allowed to turn into a wild and unruly horse.

70. In my judgment, and for whatever it is worth, a Court may not read natural justice in a procedure laid down by a statute to prevent its infringement when the rule framing authority, I would say consciously, has deferred its compliance in the interest of the person to be proceeded against so that his defence is not fished out. Wherever the applicable rules permit the disciplinary authority to appoint an Enquiry officer simultaneously with issuance of charge sheet, such course of action would not violate any principle of natural justice and no relief can be granted ignoring its mandate. Rules governing service conditions are binding on the employees and cannot be brushed aside or ignored, even if discriminatory, unless held invalid or unconstitutional [see Union of India & Ors. v. S.K. Saigal & Ors., reported in (2007) 14 SCC 556].

71. However, for reasons discussed above, the writ petition stands allowed. Parties shall bear their own costs.

Urgent photostat certified copy of this judgment, if applied for, be furnished to the applicant within 4 days from date of putting in requisites therefore.