(2013) 11 CAL CK 0032

Calcutta High Court

Case No: Writ Petition No. 8899 (W) of 2006

Kartick Chandra Ghosh		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: Nov. 18, 2013

Citation: (2014) 2 CALLT 209

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Advocate: P.C. Das, Ms. S. Chowdhury Bandhu and Ms. S. Bhattacharya, for the Appellant; Soumya Majumdar, Amitava Mitra, Ms. Dolon Dasgupta and Mr. Snehasis Das for the respondent nos. 2 to 8, for the Respondent

Final Decision: Allowed

Judgement

Dipankar Datta, J.

This writ petition dated 12th April, 2006 is at the instance of an ex-employee of the Central Inland Water Transport Corporation Limited (hereafter the Corporation). Following disciplinary proceedings, the Corporation had dismissed him from service. The order of dismissal having been carried in appeal, was confirmed by the appellate authority. The petitioner by filing this writ petition seeks interference of this Court with the disciplinary proceedings culminating in the order of dismissal as well as the order of the appellate authority, on diverse grounds. I had the occasion to hear the writ petition finally on June 26, 2009. Accepting the contention of the learned counsel representing the Corporation that the terms and conditions of service of the petitioner were not governed by any statute and that a contract of personal service could not be specifically enforced in view of the provisions of Section 14 of the Specific Relief Act, 1963, I had held that the petitioner could not seek reinstatement in service and that if his service had been terminated wrongfully, he ought to have taken recourse to remedy available to him other than writ proceedings. Reliance placed by learned counsel for the Corporation on the Division Bench decision of this Court reported in West Bengal Electronics Industries

Development Corporation Ltd. and Others Vs. Dr. K.K. Chakraborty and Others, was found to be apt. There was a further reason for which I declined to entertain the writ petition. The petitioner admittedly was a workman. If indeed the domestic enquiry conducted against him was invalid either for breach of principles of natural justice or any other reason and an approach were made for adjudication of the industrial dispute between him and the Corporation under the Industrial Disputes Act, 1947, the tribunal on arriving at a finding that the domestic enquiry was invalid could have given opportunity to the Corporation to adduce further evidence for justifying the dismissal. Such opportunity would not be available before a court of writ. I had recorded my opinion that when law provides an opportunity to the employer to adduce further evidence before the tribunal, the writ court ought not to deprive the employer of such an opportunity, particularly when the writ petition was entertained on April 19, 2006 by a learned Judge of this Court keeping the point of maintainability open. Since an efficacious alternative remedy to the petitioner was available, it was held that he was not entitled to exercise of discretion in his favour.

2. The order dated June 26, 2009 was the subject matter of a writ appeal (MAT No. 765 of 2009) at the instance of the petitioner. Relevant portion of the order dated June 14, 2011 of the Appeal Court reads as follows:

This application has been filed in connection with the appeal preferred from the judgment and order dated 26th June, 2009 whereby a learned Judge of this court dismissed the writ petition upon holding that the appellant-writ petitioner herein should have taken recourse to remedy available to him other than writ proceedings.

We are unable to affirm the aforesaid decision of the learned Single Judge.

The petitioner is undisputedly, a regular employee of the Central Inland Water Transport Corporation Limited.*****

Undisputedly, Central Inland Water Transport Corporation Limited is a Government of India undertaking and the decision of the aforesaid Government undertaking can be challenged before the court of law by any aggrieved employee by filing a writ petition under Article 226 of the Constitution of India.

The order of dismissal in the case of Brojanath Ganguly, an employee of the Central Inland Water Transport Corporation Limited was also challenged before this court under Article 226 of the Constitution of India and the matter was finally decided by the Hon''ble Supreme Court. The decision in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another,

In the aforesaid circumstances, we cannot take a contrary view overlooking the decision in the case of Brojanath Ganguly (supra) and refuse to adjudicate the grievances of the appellant arising out of the order of dismissal passed in a disciplinary proceeding which was subsequently affirmed by the appellate authority.

For the aforementioned reasons, the impugned judgment and order under appeal passed by the learned Single Judge is set aside.

The learned Single Judge having determination to entertain service matters is requested to adjudicate the writ petition on merits upon deciding the validity and/or legality of the disciplinary proceedings as well as the orders passed therein at an early date.

With the aforesaid observations and directions, both the appeal and the connected Stay application stand disposed of upon treating the appeal as on day''s list.

(Pranab Kumar Chattopadhyay, J.)

(Mrinal Kanti Sinha, J.)

3. The petitioner must consider himself fortunate that his appeal succeeded on a point on which the parties were not at issue, at least at the stage when the writ petition was dismissed on June 26, 2009. Relief was declined by me not on the ground that an order of termination of service of an employee of the Corporation was not justiciable before the writ court but on different grounds.

4. Be that as it may, the writ petition on remand was again placed before me since I had the determination to hear it. Since the Appeal Court directed that the validity and/or legality of the disciplinary proceedings ought to be examined and the writ petition decided on merits, I have heard the learned counsel appearing for the parties on such aspect at substantial length. Upon such hearing, I am convinced that conduct of disciplinary proceedings against the petitioner stood vitiated and that the disciplinary authority as well as the appellate authority erred in passing the order of dismissal and in confirming it, respectively.

5. Charge-sheet dated December 26, 2002 issued against the petitioner by his disciplinary authority reveals that he had committed misconduct amounting to wilful insubordination or disobedience of lawful and reasonable order of his superior, absence from the place of posting for discharge of duty without permission or sufficient cause, and subversion of discipline and good behaviour. The statement of imputation reveals that the petitioner had been posted on MV TANSEN (hereafter the said vessel) with effect from September 13, 2002 vide office note dated September 12, 2002; that it had been observed that the petitioner was trying to get off from the said vessel since the time he came to know the scheduled sailing programme thereof; that he had reported to the medical officer on December 10, 2002 with some ENT/neurological problem, whereafter he was referred to the polyclinic as OPD patient for check-up; that the medical officer had neither recommended sick leave for the petitioner nor had declared him unfit for duties; that an application was submitted by the petitioner on December 12, 2002 before the Deputy Manager (Tech.) stating that he was sick and had to attend polyclinic on December 23, 2002 and requested for leave or posting on shore whereupon he was

advised to meet the medical officer (since without his recommendation sick leave application could not be considered); that it had also been observed from the OPD slip that there was no authorized signature of the official staff nor any official seal; that nothing was suggested by the polyclinic regarding the petitioner''s unfitness and in the meantime the chief driver and the master of the said vessel in their report dated December 12, 2002 had stated that the petitioner had left the same on the same day at about 02.10 pm after boarding it at J. Ghat; that the petitioner did not hand over the keys either to the master or the chief driver and having left the said vessel without proper permission, he had allegedly committed misconduct as noted above attracting clauses 6, 18 and 20 of the Corporation''s Conduct Rules and Service Discipline & Appeal Rules (hereafter the said Rules).

6. Perusal of the charge-sheet would reveal that it did not contain the list of documents and the list of witnesses by which/whom the charges levelled against the petitioner were sought to be established, although in terms of Rule 38(3) of the said Rules the same ought to have accompanied the charge-sheet.

7. After the domestic enquiry had commenced, the petitioner expressed his desire to be assisted by one Paritosh Chakraborty, who was an ex-employee of the Corporation. He had also requested that the proceedings be conducted in Bengali and the minutes be also recorded in Bengali, since he had little knowledge of English. Assistance of said Paritosh Chakraborty was disallowed on the ground that he ceased to be an employee of the Corporation. Conduct of the proceedings and writing the minutes in Bengali were also refused on the ground that the Corporation was a central public sector undertaking and that as per the rules of such undertakings, proceedings could only be recorded in Hindi or English.

8. In refusing the prayer of the petitioner to take the assistance of said Paritosh Chakraborty, the Corporation appears to have acted in terms of the said Rules and the petitioner also did not join issue and continued to participate in the proceedings. On the following dates of enquiry, the petitioner was duly assisted by one Mahadeb Patra, Technician-II.

9. Regarding the prayer of the petitioner to conduct the proceedings and record the minutes either in English or in Hindi, the Enquiry Officer had rejected the same by his letter dated February 7, 2002 citing the reason that has been noticed above. However, neither any provision of the said Rules nor any departmental circular to this effect were brought to my notice.

10. The petitioner, at the time he was proceeded against, was working in the Corporation as a Sr. Technician. From the signatures of the petitioner at the bottom of daily enquiry proceedings, it is clear that he could anyhow sign in English. The case is not too different with said Mahadeb Patra. After the minutes were drawn up in English and before the petitioner and his assistant were asked to sign it, no endorsement was made by the Enquiry Officer that he had explained the contents to

them in Bengali and that they seemed to understand the same. I am inclined to accept the plea of the petitioner that he lacked knowledge in English, but since he participated in the domestic enquiry without raising any demur, I am not persuaded to agree with his learned counsel Mr. Das that only because the minutes were recorded in English the enquiry ought to be invalidated.

11. There are, however, other disturbing features of the domestic enquiry conducted against the petitioner, which I propose to discuss now one after the other.

12. On February 03, 2003, the Enquiry Officer asked the Presenting Officer to submit the list of documentary evidences along with names of witnesses, if any. The Presenting Officer then submitted a memorandum containing 22 pages along with the charge-sheet which, according to him, were self-explanatory. The submission of the Presenting Officer that only documentary evidences would be relied on and that no witness would be required, was recorded. It was thereafter that the Enquiry Officer called upon the petitioner to reply to the charge-sheet, when he submitted his prayer for the proceedings to be conducted in Bengali. It is noteworthy that the Enquiry Officer while taking the documentary evidences on record did not direct supply of the same to the petitioner. I have taken note of the submission of Mr. Majumdar, learned counsel for the Corporation, that the petitioner also did not contend in course of the enquiry that the documents ought to be supplied to him; it is only after the Enquiry Officer had found the petitioner guilty of the charges in his report dated March 10, 2003 that in his representation of April 21, 2003 there against, the point of non-supply of documents had been raised by him before the disciplinary authority. This point would be examined a little later, after I complete the factual narrative. The petitioner, in his representation, referred to certain clauses of the said Rules, which required access to be given to him to the documents for the purpose of inspection to enable him prepare his defence. While considering the representation and ordering the petitioner''s dismissal by an order dated May 14, 2003, the General Manager (RSD) (the disciplinary authority) proceeded to record that he had carefully perused the representation of the petitioner and found that various allegations made therein "are completely false and baseless" and further that "the enquiry was conducted in a fair and free manner in accordance with the principles of natural justice". The disciplinary authority of the petitioner did not at all advert to the point of non-grant of opportunity to inspect the documentary evidences and further as to whether there was non-compliance of the governing rules in this regard.

13. The order of dismissal dated May 14, 2003 had been challenged by the petitioner in W.P. 10888(W) of 2003, being an earlier writ petition filed by him. Affidavits were called for. Thereafter, the petitioner had filed a miscellaneous application. He prayed for leave to withdraw the writ petition with further leave to approach the General Manager (RSD) of the Corporation with a request to revoke the order of

penalty. Such miscellaneous application and the writ petition were disposed of on December 15, 2004 by a learned judge of this Court. Since the application was not seriously opposed by learned counsel for the Corporation, it was allowed in terms of the prayers made therein. The petitioner was granted liberty to approach the competent authority with his grievance and the writ petition was deemed to have been disposed of as withdrawn as a result of the said order. A representation dated December 15, 2004 was submitted by the petitioner before the General Manager (RSD). The said General Manager noted that in his earlier representation dated April 21, 2003 the petitioner had raised many issues but did not contradict the basic issue of gross indisciplined acts reportedly committed by him leading to his dismissal from service. Upon alleged careful examination of the entire proceedings, the views of the earlier incumbent on the post of General Manager (RSD) were upheld by the order dated October 24, 2005. In such order also, the General Manager did not consider as to whether the point raised by the petitioner regarding non-grant of opportunity to inspect the documents had the effect of vitiating the domestic enquiry. He proceeded to concur with the views recorded in the earlier order of the disciplinary authority on the ground of failure of the petitioner to project a valid defence in respect of the main charge of wilful insubordination, absence from duty and subversion of discipline, without however realizing that the petitioner by reason of not having access to the documentary evidences produced by the presenting officer could not raise an effective defence. The order dated October 24, 2005 was carried in appeal by the petitioner before the Chairman/Managing Director of the Corporation. By an order dated February 23, 2006, the appeal was rejected. Although the appellate authority recorded in such order that the General Manager in his order dated October 24, 2005 had considered the representation dated April 21, 2003, there is nothing on record to suggest as to how the point of non-grant of permission to inspect the documents was dealt with.

14. Now, certain provisions of Rule 38 of the said Rules laying down the procedure for imposing major penalties require examination. Although sub-rule (3) thereof requires the lists of documents and witnesses to accompany the charge-sheet, the explanation thereto explains that it shall not be necessary to show the documents listed with the charge-sheet or any other documents "to the employee at this stage". Sub-rule (4) lays down that an enquiry may be held by the disciplinary authority upon receipt of the written statement of the employee, or if no statement is received within the time specified. The proviso to sub-rule (4) makes the position clear that it may not be necessary to hold an enquiry in respect of the charges admitted by the employee in his written statement but obliges the disciplinary authority to record his findings on each such charge. Sub-rules (5) to (19) are the provisions governing an enquiry, which the disciplinary authority might wish to conduct either by himself or by appointing an Enquiry Officer. Sub-rule (8) provides that if the employee does not plead guilty, the Enquiry Officer "shall adjourn the case to a later date not exceeding thirty days, after recording an order that the

employee may, for the purpose of preparing his defence: (i) inspect the documents listed with the charge-sheet; (ii) submit a list of additional documents and witnesses that he wants to examine; and (iii) be supplied with the copies of the statements of witnesses, if any, listed in the charge-sheets".

15. (a). The petitioner in his letter dated January 3, 2003 cited illness as a factor disabling him to reply to the charge-sheet and had prayed for time to reply till he recovers. The Manager (Personnel) of the Corporation by his letter dated January 21, 2003 informed the petitioner that having failed to reply to the charge-sheet, it had become expedient to conduct domestic enquiry into the charges levelled against him. The names of the Enquiry Officer and the Presenting Officer were also conveyed to him thereby, and assurance of full opportunity to him to defend his case was also given. On the following day, the petitioner submitted a reply contending that the charges brought against him were not genuine but fabricated, for which he is not liable to punitive measures. A prayer was made for exonerating him from the charges. However, the domestic enquiry commenced meaning thereby that his prayer for dropping the charges stood rejected.

(b). Here, I shall deal with a side argument of Mr. Majumdar. Referring to the reply of the petitioner to the charge-sheet, he contended that the same contained evasive denials and such evasive denial amounts to admission of the charges levelled against him. He placed reliance on the decision of a learned single judge of this Court reported in Bata Mazdoor Union and Others Vs. State of West Bengal and Others, With the deepest of respect I have for the learned judge, I am of the humble view that the decision does not represent the correct exposition of law. It seems that principles flowing from Rules 3 to 5 of Order VIII of the CPC have been imported in a domestic enquiry which, to my mind, is not the right approach. A delinquent employee, even after receiving the charge-sheet, is entitled to maintain silence. He may not reply to the charges. That would not amount to admission of the charges. If there is no specific admission of the charges, the management has to hold an enquiry and to prove the charges by adducing relevant evidence. It is also not the law that bare denial in one sentence that the allegations made are baseless and motivated can be construed as evasive denial amounting to admission of the charges. Mr. Majumdar at one stage submitted that should I be inclined to disagree with the proposition of law laid down in paragraph 40 of the decision in Bata Mazdoor Union (supra), a reference ought to be made for a decision by a Division Bench. The submission is one in desperation to prolong the proceedings. The reason why reference is not required is because of sub-rule (4) referred to above, which provides a complete answer. An employee is within his right not to reply to the charge-sheet and he does not stand the risk of suffering any penalty for maintaining silence (by not replying to the charge-sheet), since an enquiry has to be held even if there be no reply or irrespective of the nature of denial offered. However, only in a case where any or all the charge(s) is/are admitted by the employee in the written statement, an enquiry may be dispensed with but requiring

the disciplinary authority to record his findings on each and every charge. The management appears to have understood the said Rules in the right perspective and proceeded to hold enquiry, instead of forming the view that by an evasive denial the petitioner had admitted the charges. Once it is decided to hold enquiry, the same has to be conducted in accordance with the said Rules and proof of the charges framed attracting specific penal clauses could only form the basis of punishment. The contention raised by Mr. Majumdar, accordingly, is overruled.

16. Turning to the plea of non-grant of opportunity to inspect the documents, it is evident from the enquiry proceedings that the Enquiry Officer did not conduct himself in terms of the said Rules. Provisions in sub-rule (8) are conceived in the interest of the delinquent employee. It is for the Enquiry Officer to record an order that for preparing his defence, the petitioner was entitled to the opportunities of inspection of management documents, submission of list of additional documents and witnesses that he would like to examine, and of being furnished with copies of the statements of witnesses, if any, listed in the charge-sheet. No such order, however, was recorded.

17. An Enquiry Officer entrusted with the duty of discharging quasi-judicial functions has to be impartial and fair to both the prosecution and the delinquent employee. The obligation to be fair and neutral is all the more necessary if the Enquiry Officer is an employee of the organization of which the delinquent is also an employee, and that too an employee who is a workman not too educated and unaware of his rights. Presumption in favour of an officer holding a high position that he would not act arbitrarily or capriciously has to be eschewed, should the Court find that in an unequal duel such officer has failed to offer the minimum opportunity to the delinquent that the Rules envisage.

18. In the present case, it is found that the Enquiry Officer did not take the pains of ensuring that the petitioner, who had complained of his inadequate knowledge of the English language earlier, is afforded the opportunities contemplated in clauses (i) and (ii) of sub-rule (8) of Rule 38. The procedural safeguards were trampled in the process, which though pointed out before the disciplinary authority, was brushed aside as completely false and baseless coupled with the assertion that the enquiry was conducted in a free and fair manner and in accordance with natural justice. Since the said Rules make it the obligation of the Enquiry Officer to direct the prosecution to allow to the delinquent employee opportunity to inspect the documents sought to be relied on, failure to discharge such obligation cannot be saved by pointing fingers at the delinquent and saying that it was for him to ask for inspection at the proper time. It is not the law that defects that creep in at every stage in course of the enquiry proceedings are to be pointed out by the delinquent employee. It would be a proper course of action if after conclusion of enquiry, the defect(s) is/are pointed out to the disciplinary authority so that direction may issue for re-enquiry in accordance with the governing rules. The Corporation and its

officers are Article 12 authorities and their actions, bearing insignia of public law element or public law character, are amenable to judicial review and the validity of its actions to the prejudice and detriment of the delinquent could be tested on the anvil of Article 14. Since the duty to act fairly is part of fair procedure envisaged under Articles 14 and 21, the Corporation and its officers owe a public duty to act fairly and without arbitrariness. The duty to act fairly and without arbitrariness would mean to act in accordance with laid down procedures and not according to one''s whim, caprice and fancy.

19. The Supreme Court in a catena of reported decisions has approved the rule laid down by Justice Frankfurter in the decision reported in Viteralli v. Saton, 359 US 535; . The oft-quoted words read as under:

An executive agency must be rigorously held to the standards by which it professes its action to be judged.... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.

20. Mr. Majumdar has cited quite a few decisions for the proposition that the petitioner, in order to succeed on a complaint of violation of natural justice, must establish prejudice. The test of prejudice that applies to a plea of violation of natural justice is not quite applicable to a plea of violation of Article 14 by unfair and arbitrary actions.

21. While I propose to deal with the decisions separately at a later part of this judgment, I wish to record that none of the said decisions are of any assistance to Mr. Majumdar for two reasons. First, it has not been the stand either of the disciplinary authority or the appellate authority that although there has been a violation of natural justice, the petitioner did not suffer any prejudice; on the contrary, it is their stand that there has been a free and fair enquiry and that the petitioner did not raise any valid defence. There cannot be any doubt, considering non-compliance of the Rules, that the petitioner was not extended fair, reasonable and adequate opportunity to defend and thus the finding of a free and fair enquiry having been conducted is utterly perverse. The other finding that the petitioner could not raise valid defence is also perverse, since the materials required for raising effective defence were not made available to him. The plea that the petitioner did not suffer any prejudice raised by Mr. Majumdar is thus quite inconsistent with the stands of the disciplinary authority as well as the appellate authority. Secondly, assuming that Mr. Majumdar could raise such an inconsistent plea, it requires no detailed discussion to opine that the petitioner did suffer a prejudice, which is self-evident. The Rules of the Corporation prescribe the procedure to be followed in a departmental enquiry. The Enquiry Officer rested his decision on certain unspecified rules to decline the petitioner''s prayer for

conducting the proceedings in Bengali. If the rules were in place, he is right and no exception could be taken. When he was so keen to play by the rules, it passes my comprehension as to how he could overlook such a basic postulate and thereby omit to pass a direction on the Presenting Officer to furnish the management documents to the petitioner. The dual standard adopted by the Enquiry Officer unfortunately was overlooked both by the disciplinary authority and the appellate authority. In the fitness of things, the superior officers ought to have set aside the order of punishment and remit the matter for fresh enquiry from the stage of furnishing of management documents.

22. The last of the disturbing features is that no witnesses were produced in course of the domestic enquiry. Thus, there was none to prove the documents. It is settled law that documents do not prove themselves and that the same have to be brought on record in a legal manner. Reference in this connection may be made to the decision reported in Sri Swapan Ray Vs. Indian Airlines Ltd. and Others, . The learned judge who decided Swapan Ray (supra) later on as a judge of the Supreme Court appears to have taken almost similar view in the decision reported in Roop Singh Negi Vs. Punjab National Bank and Others, while holding that the proceedings in question stood vitiated for more reason than one. In paragraph 14 of the decision, the Court considered that no witness was examined to prove the documents and that the management witnesses merely tendered the documents without proving its contents. Here in the present case, among other documents, reports of the chief driver and the master of the vessel were taken into consideration. It was for the Enquiry Officer, who was discharging quasi-judicial functions, to perform his duty fairly and reasonably by calling upon the Presenting Officer to ensure their presence. Blind reliance on the contents of the report without proof that the chief driver and the master were really the authors of the reports appears to demonstrate improper exercise of discretion. Reliance having been placed by the Enquiry Officer on the documentary evidences to hold the petitioner guilty of the charges, the barest minimum that was required in the circumstances was to allow the petitioner inspection of the documentary evidences to raise effective defence. Relying on the decision of the Supreme Court reported Union of India (UOI) and Others Vs. Prakash Kumar Tandon, an inference can safely be drawn that the Enquiry Officer ensured a virtual walk-over for the prosecution to the utter prejudice and detriment of the petitioner.

23. The decisions relied on by Mr. Majumdar, learned counsel for the Corporation may now be considered.

24. The Constitution Bench decision reported in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., is well known. As a result of the 42nd amendment of the Constitution, the requirement of Article 311 for issuance of a second show cause notice in respect of proposed punishment had been done away. Controversy arose as to whether such amendment washed off the requirement of

furnishing copy of the enquiry report, where the enquiry officer is one different from the disciplinary authority, to the delinquent. The questions of law formulated for answers are noted in paragraph 2. In no uncertain terms, the Bench ruled that copy of the enquiry report must be furnished to the delinquent, irrespective of whether he has asked for it or not, and irrespective of whether the rules stipulate it or not, if such report forms part of the materials on which the final order of punishment imposed by the disciplinary authority rests. The core question that was referred was thus answered authoritatively. However, there were certain ancillary questions, which were also answered. One of them was with regard to orders of punishment that were passed without furnishing copy of the enquiry report to the delinquent, which were impugned in legal proceedings and were pending on the date of the decision. The law laid down was held to operate prospectively since the law itself was uncertain till the date of the decision. It was in respect of those pending proceedings the Supreme Court observed that non-furnishing of enquiry report would not automatically vitiate the disciplinary proceedings and it would be for the delinquent to prove prejudice suffered by him for non-furnishing of the enquiry report. It is unfortunate that instead of following the dictum of the Supreme Court regarding the necessity of furnishing the enquiry report to the delinquent prior to the same being considered by the disciplinary authority for imposing punishment, more attention is now paid to pleading and proof of prejudice on the basis of the answer to an ancillary question. The law laid down in the decision in B. Karunakar (supra) does not advance the case of the Corporation.

25. Even otherwise, whether one has suffered prejudice or not is essentially a question of fact. If a decision has been taken by the disciplinary authority to punish the charge-sheeted employee on the basis of a report of enquiry which finds him guilty but is not furnished to the employee concerned and he has no occasion to look into its contents, it is incomprehensible as to how the prejudice suffered by him can be shown to the Court. If a finding of fact is based on no evidence or there has been erroneous appreciation of evidence in recording a finding and such recording of finding could legitimately be attacked on the ground of being perverse, the prejudice can only be shown after the charge-sheeted employee has the opportunity to look into the report. The need to plead and prove prejudice cannot be insisted upon in a case where the charge-sheeted employee does not have the opportunity to look into the enquiry report, yet it is required of him that he must plead and prove prejudice.

26. In the decision reported in State Bank of India and Others Vs. Bidyut Kumar Mitra and Others, , the Supreme Court found that the issue of non-supply of documents was never raised by the respondent during the entire course of the enquiry proceedings as well as before the single judge of the High Court. The challenge was restricted only to denial of natural justice for not supplying the vigilance report. It was in such circumstances that the Court had the occasion to observe that the pleading and proof of prejudice is necessary and that the point

regarding non-supply has to be raised at the earliest stage. The decision is distinguishable since the petitioner in course of the disciplinary proceedings had raised the point of non-supply of documents before the disciplinary authority in his representation dated April 21, 2003 and such point was brushed aside as false and baseless despite there being no proof that the petitioner was indeed allowed access to the documents for the purpose of inspection.

27. In its decision reported in State of U.P. Vs. Harendra Arora and Another, the Supreme Court was considering the formulated question finding place in paragraph 3 thereof. Undisputedly, the grievance of the petitioner is not relatable to non-supply of enquiry report; he was duly supplied with such report and had the occasion to make a representation there against. The point decided in the said decision is not similar to the point that is canvassed before me and, hence, is distinguishable.

28. The decision reported in Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, was relied on for the principle that violation/breach of provisions becomes fatal if only prejudice has been caused to the person concerned. It was also a case arising out of non-supply of enquiry report. The foregoing discussions do clearly reflect the extent of prejudice that the petitioner suffered rendering the entire proceedings vitiated and, thus, instead of supporting the claim of the respondents, this decision supports the petitioner.

29. The controversy involved in the decision reported in State of U.P. and Another Vs. Chandrapal Singh and Another, related to initiation of disciplinary proceedings against the respondent/employee by the District Agricultural Officer, an officer subordinate to the appointing authority, i.e. the Director of Agriculture. The Supreme Court upheld the action of the subordinate officer.

30. In the decision reported State of Punjab and another Vs. Swaran Singh,), the order impugned passed by the appellate authority imposed a cut in pension and the contention of infraction of Rule 11 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 providing for supply of enquiry report was found to make no difference in view of the facts of the case.

31. I have failed to find the materiality of the decisions in Chandrapal Singh (supra) and Swaran Singh (supra) to the facts at hand.

32. From the decision of the Division Bench of this Court reported in Kalipada Das Vs. State of West Bengal), it appears that the challenge to the validity of the disciplinary proceedings on the two grounds noticed in paragraph 2 was overruled in view of the discussions in paragraphs 10, 12 and 22. No principle of law having the effect of a binding precedent appears to have been laid down since the factual matrix of the case was sufficient to decline relief.

33. The decision of the Division Bench of this Court reported Jagadish Prasad Awasthi Vs. Allahabad Bank and Others, reiterates the law that scope of judicial scrutiny of disciplinary proceedings is limited to the extent of finding out whether the delinquent was given sufficient opportunity to defend himself and whether the authority followed the appropriate service rules and/or regulations while proceeding against him culminating in the final order of punishment. On both counts, I consider it justified to interfere.

34. The disciplinary proceedings including the order of punishment, since merged in the appellate order, stand set aside. The petitioner shall be reinstated in service for the purpose of completing the disciplinary proceedings in accordance with law. It shall resume from the stage of furnishing copies of the management documents to the petitioner. The Corporation shall be free to place the petitioner under suspension. In such eventuality, he shall be entitled to subsistence allowance as per the Rules.

35. The petitioner shall be entitled to 50% of his back wages during the period spent under dismissal. Such amount is directed to be paid based on the satisfaction reached by me that had he not been fastened with the order of dismissal, he would have served the Corporation and earned his wages. It is also worth consideration that no evidence has been produced on behalf of the Corporation to establish that the petitioner was in gainful employment during the period of dismissal. The arrears be calculated and paid to the petitioner within eight weeks from date of receipt of a copy of this order.

36. The Corporation shall make sincere endeavour to complete the disciplinary proceedings in terms of this order within four months. The petitioner is directed to cooperate and not seek unnecessary adjournments.

37. The writ petition stands allowed to the aforesaid extent. There shall be no order as to costs.

Urgent photostat certified copy of this judgment and order, if applied, may be furnished to the applicant at an early date.