Anandram Jiandrai Vaswani Vs Union of India (UOI) and Others

Court: Calcutta High Court

Date of Decision: June 25, 1982

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 80
Constitution of India, 1950 â€" Article 226, 31, 311

Citation: (1983) 2 LLJ 122

Hon'ble Judges: S.C. Ghose, C.J; R.N. Pyne, J

Bench: Division Bench

Judgement

R.N. Pyne, J.
This appeal is directed against the judgment and order of Dipak Kumar Sen, J. dated 31st January, 1977 dismissing the

appellant"s suit filed against the respondents. A reference to the relevant facts of this case may be made.

2. On 8th April, 1948 the appellant, A.J. Vaswani (hereinafter referred to as "Vaswani"), who migrated from West Pakistan, was appointed in the

post of Preventive Officer, Grade I in the Customs Department. Thereafter, in May 1961 the appellant was promoted to the post of Senior Grade

Preventive Officer in the Customs Department. At the material time, he was posted as Senior Seizure Shed Officer at the Customs House,

Calcutta.

3. On August 25, 1961 a passenger namely Mrs. S.B. Dadlani arrived at Dum Dum Airport with 2 (two) suit-cases which were detained at the

Airport. On 26th August, 1961 the said two suit-cases were brought in sealed conditions from Dum Dum Airport to the Seizure Shed at Customs

House, Calcutta. Vaswani made the inventory of the contents of the said two suit-cases and made a valuation of the contents thereof. Thereafter,

on 1st September, 1961 the passenger"s representative B.S. Dadlani took delivery of the said two suit-cases from Vaswani after payment of

duties levied on the goods so inventorised and adjudicated upon by the Assistant Collector for Adjudication.

4. It has been said that on the same day that is to say 1st September, 1961 acting on the basis of information derived from an unnamed informer,

one S.N. Banerjee, Superintendent, Preventive Service, Customs, stopped the Taxi which was hired by B.S. Dadlani and was about to move off,

and three packages being Box No. 1, Box No. III and Case No. 2 were seized from the said Dadlani. Thereafter, inventory of the contents of the

said three packages was made. On the same day the said B.S. Dadlanj was arrested u/s 173 of the Sea Customs Act on the ground that he was

guilty of offences under Sea Customs Act in respect of fraudulent evasion of duty payable on goods stored in the Warehouse.

5. On September 2, 1961 Vaswani was suspended as disciplinary proceedings were contemplated against him.

6. On September 15, 1961 B.S. Dadlani was sent to jail custody by the Chief Presidency Magistrate before whom he was produced by the

Customs Department. On the application made by the Customs Department before the Chief Presidency Maginstrate on November 6, 1961 to the

effect that there was no material sufficient for prosecution of the accused B.S. Dadlani, the Chief Magistrate discharged the accused.

7. On May 31, 1962 a Charge-Sheet was issued against Vaswani alleging that he wilfully prepared an incorrect inventory in respect of the goods

belonging to the said Mrs. S.B. Dadlani. It was ; further alleged that after B.S. Dadlani took delivery of two suit-cases from Vaswani he loaded the

goods into a taxi brought by him and when the said taxi was about to move off it was stopped by S.N. Banerji, Superintendent Preventive ;

Service. Goods were taken out, re-checked and a fresh inventory was prepared and it was found that there were number of articles which were

not included at all in the earlier inventory list prepared by Vaswani. It was also alleged that., Vaswani wilfully made an incorrect inventory to cause

wrongful gain to the said B.S. Dadlani. On June 11, 1962 Vaswani submitted his Written Statement denying the charges.

8. On February 19,1963 M.M. Sethi, Assistant Collector of Customs was appointed as Enquiry Officer and on April 24, 1963 enquiry

commenced. However, on May 10, 1963 J.C. Saha, another Assistant Collector of Customs, was appointed in place and stead of M.M. Sethi as

the Enquiry Officer. Vaswani made a complaint that as J.C. Saha was subordinate to S.K. Srivastava, the Additional Collector of Customs and

was junior to S.N. Banerjee the Superintendent, Preventive Service (who was the de facto complainant) he had reasonable apprehension that he

would not get justice from Saha. It was also stated that enquiry should be held either by an officer of the rank of Additional Collector or by an

Officer who was not subordinate to Srivastava or S.N. Banerjee. Vaswani further suggested that one of the Enquiry Commissioners appointed by

the Home Department should be appointed as the Enquiry Officer.

9. It appears that 14 witnesses on behalf of the prosecution and 5 witnesses on behalf of the defence were examined before the said Enquiry

Officer. Vaswani himself gave evidence and he was also cross-examined by the prosecution in the said enquiry proceedings.

10. On December 14, 1964 the final defence statement was submitted by Vaswani. The Inquiry Officer submitted his report on 6th April, 1965

holding Vaswani guilty of the charges.

11. Vaswani in his written statement of defence complained that he was not allowed the assistance of lawyer before the Enquiry Officer. He also

complained that he was not allowed inspection or access to various documents and papers which prejudiced him in the trial. He also complained of

the biased attitude of the Enquiry Officer in the proceedings.

12. On April 20, 1965 the Collector of Customs issued the second show cause notice to Vaswani. Vaswani replied to the said notice on June 9,

1965. By his order dated July 22, 1965 the Collector of Customs dismissed Vaswani from service. Vaswani preferred an appeal to the Central

Board of Excise and Customs and thereafter to the Central Government against the dismissal which remained undisposed of at the time of hearing

of the suit.

13. After serving a notice u/s 80 of the Civil P.C. on the Union of India and the Collector of Customs on 6th June, 1966 Vaswani instituted on

17th April, 1967 the suit in the court of the first instance out of which the present appeal has arisen. In his plaint Vaswani prayed, inter alia, as

follows:

(a) A declaration that the purported dismissal of the plaintiff is illegal, void and/or in- operative and that he still continues in the services of the

defendant No. 1 and is entitled to all salaries, allowances, overtime allowances and other emoluments and benefits accordingly.

(b) In the alternative, an enquiry into damages and a decree for such sum as may be found due.

14. In the Written Statement filed on behalf of the defendants it is alleged, inter alia, that the plaintiff i.e. appellant herein had made an incorrect

inventory of the seized goods brought by Mrs. Dadlani wilfully causing loss and injury to the Customs Revenue.

15. It is alleged that this suit is premature and not maintainable in view of the pendency of the appeal preferred by the appellant. If is contended

that the Customs Act, 1962 read with Central Civil Services (Classification, Control and Appeal) Rules is in any event a complete code containing

and prescribing its own procedure and remedies. The present suit is not maintainable without exhausting the said remedies. It is further alleged that

there was full enquiry against the appellant in accordance with the prescribed procedure and there was not failure of justice by the appointment of

an Enquiry Officer below the rank of Additional Collector of Customs. The defendant No. 2 acted in conformity with the prescribed rules in

refusing to allow the appellant to take the help of a legal practitioner at the enquiry as the Presenting Officers themselves were not lawyers. All

opportunities were given to the appellant to defend himself. The appellant was allowed inspection of hundreds of documents and records though

many of them had no relevance to the charges. It is alleged that the Enquiry Officer was fair to the appellant throughout and held the enquiry in a

proper manner and spirit. The Enquiry Officer was a senior officer in the rank of Assistant Collector and had no earlier dealings with the appellant.

The appellant did not indicate any motive to show that the Enquiry Officer was biased or prejudiced. The Enquiry Officer had put questions to the

witnesses at the enquiry with the object of elucidating the truth and correctly and faithfully recorded the evidence. It was also alleged that the

Enquiry Officer did not go beyond the scope of the enquiry. Some of the witnesses in their evidence had referred to an informer and in examining

such evidence the Enquiry Officer had dealt with the matter. The second show cause notice was issued by the defendant No. 2 after fully applying

his mind to the case and after considering the entire records including the appellant''s statement of defence.

16. It is denied that the appellant was suspended or dismissed illegally or wrongfully or arbitrarily. In view of the suspension and subsequent

dismissal it is contended that the appellant was entitled to only his subsistence allowance which was duly paid. It was contended that in view of the

insufficiency of the statutory notice u/s 80 of the Civil P.C. the suit should be dismissed. The defendant No. 2 not being a corporation sole it is

alleged that the suit cannot proceed against the office only.

17. In the court of the first instance the following issues were raised:

1. Has there been a failure of justice by reason of the facts alleged in para 12 of the plaint?

2. Did the refusal of the request of the plaintiff to engage a legal practitioner at the enquiry result in the failure of justice by reason of the facts

alleged in para 13 of the plaint?

3. Were the documents and records not made available for the plaintiff''s inspection and not produced at the enquiry as alleged in para 16 of the

plaint?

4. Did the Enquiry Officer act with bias against the plaintiff in the said enquiry as allege in paras 24 and 25 of the plaint?

5. Were leading questions put to the witnesses of the defendants at the enquiry as alleged in para 19 of the plaint?

6. Were relevant questions in cross-examination put by the plaintiff arbitrarily disallowed and not recorded as alleged in para 20 of the plaint?

7. Did the Enquiry Officer refuse to record evidence at, the enquiry as alleged in para 21 of the plaint and in the letter dated 28th September, 1963

written by the plaintiff to the Enquiry Officer?

8. Did the Enquiry Officer act illegally or wrongfully as alleged in para 32 of the plaint?

9. Did the Enquiry Officer take into consideration and rely upon the report of police investigation against the plaintiff not disclosed at the enquiry as

alleged in para 35 of the plaint?

10. (a) Is the show cause notice dated 20th April, 1965 illegal and wrongful as alleged in paras 37, 38 and 39 of the plaint?

(b) Is the order of dismissal dated 22nd July, 1965 wrongful and illegal?

11. Is the sum of Rs. 1,11,072.40 P, or any other sum due to the plaintiff as alleged in para 48 of the plaintiff?

12. Is the plaintiff entitled to any damages as alleged in para 62 of the plaint?

13. Was there due notice u/s 80 of the Civil P.C. issued by the plaintiff as alleged in para 53 of the plaint?

14. Is the suit maintainable against the defendant No. 2 in its present form?

15. To what relief, if any, is the plaintiff entitled?

18. The learned trial Judge answered almost all the issues against the appellant and by his judgment and decree dated 31st January, 1977

dismissed the suit.

19. At this stage it will be useful to refer to a few facts which came out in evidence before the Enquiry Officer. The two suit-cases which were

detained in the Airport were thereafter brought in sealed condition in the Seizure Shed at the Customs House. After Vaswani made the inventory of

the contents of the articles contained in the said 2 suit-cases the matter was placed before the Assistant Collector, Adjudication, who adjudicated

on the quantum of duty to be levied. After the adjudication was made, the passenger''s representative paid the duty and Vaswani delivered the said

2 suit-cases to him. Thereafter acting on the basis of alleged information the taxi hired by the passenger was detained at the exit gate and 3

packages were brought out from the taxi. The 3 packages were described as Box No. 1, Box No. III and Case No. 2. Although in the charge

sheet the case of the department was that 2 suit-cases were delivered by Vaswani, but at the enquiry it was sought to be proved that he delivered

aforesaid 3 packages to the passenger''s representative. The taxi driver and S.N. Banerjee, Superintendent (Preventive) were the principal

witnesses on behalf of the prosecution. It appears from the enquiry proceedings that they contradicted themselves on many essential facts and

particulars. After the inventory of the said 3 packages was made, certain articles like leather pieces were found. According to the evidence of S.N.

Banerjee there were two packages but a package was wrapped up with bed sheet and inside a bundle was found, whereas in the list of inventory

there was no mention of bed sheet at all. The witnesses for the prosecution who opened the suit-cases of the passenger at the Airport said that

they did not find any leather pieces in the said suit-cases of the passenger. The taxi driver said that coolies brought two suit-cases and one bundle

out of the seizure shed and kept them in the taxi, whereas there is evidence to show that no coolie was hired in the seizure shed on the material

date. The Enquiry Officer did not take proper notice of the said facts but was of the view that leather pieces and the bed sheet might have been

introduced by Vaswani himself in collusion with the passenger''s representative with a view to use them as covers.

20. Here it may be stated that during the pendency of the suit the appellant attained the age of superannuation in December, 1973.

21. Before we deal with the findings of the learned trial Judge on various issues we would like to refer to a point which has been taken on behalf of

the appellant in the instant appeal.

22. Mr. Ajit Sengupta, learned Counsel appearing for the appellant has submitted that under the issue ""whether the dismissal of Vaswani was

wrongful and illegal""-he is entitled to urge whether the findings arrived at by the Enquiry Officer are vitiated in law and/or are perverse. It is the

contention of Mr. Sengupta that if the findings of the Enquiry Officer are vitiated in law and/or are perverse on any of the recognised grounds then

in that event his report is liable to be set aside and consequently all subsequent proceedings including the order of dismissal based on such report

should also be set aside. It has been further submitted that the question whether the findings of the Enquiry Officer are vitiated in law or perverse is

a question of law and the question can be decided on the records of this case and therefore this question can be urged at the appellate stage

although it was not argued before the Trial Court.

23. Mr. A.K. Banerji, learned Counsel for the respondents, has strongly urged, firstly, that the appellant is not entitled to raise the point of

perversity at this stage inasmuch as the said issue was not raised before the Trial Court. Secondly, the question as to whether the findings arrived at

by the Enquiry Officer are vitiated in law or perverse, is not a pure question of law, but a mixed question of law and fact, and therefore the said

point cannot be urged for the first time in the appellate stage. Thirdly, in a suit the Court cannot go into the merits of the findings of the Enquiry

Officer inasmuch as that will involve appreciation of evidence and the Court of Appeal is precluded from doing so. Lastly, and in any event, even if

the findings are vitiated in law or perverse, the same will not go to the root of the matter and will not affect the ultimate decision of the respondents.

24. Mr. A.K. Banerji has further submitted that the ground which is not a ground relating to jurisdiction or which has nothing to do with the

conduct of enquiry cannot be taken or canvassed before this Court, particularly in a proceedings arising out of a suit instituted for challenging the

order of dismissal. In this connection Mr. Banerji relies on the observation of the Supreme Court in the case of R.C. Sharma Vs. Union of India

(UOI) and Others, . He has drawn our attention to para 10 at page 2040 (of AIR) of the report where the Supreme Court has observed as

follows:

A question which could affect the result in a Civil Suit has to be of such a nature that it goes to the root of jurisdiction and the conduct of the

departmental trial and vitiates the result. It is only if the departmental proceedings is null and void, that the plaintiff in such a suit could obtain relief

he has asked for. We are unable to see what point had been raised by the appellant which could have the effect upon the departmental

proceedings.

25. Counsel for the appellant has however strongly placed reliance on the decision of this Court in the case of Collector of Customs v. Biswanath

Mukherjee reported in 1974 Cal L.J. 251 in support of his contention that the question whether the findings of the Enquiry Officer are perverse or

vitiated in law is itself a question of law. He has referred to us the passage at page 313 of the report where this Court has quoted with approval the

judgment delivered by A.N. Sen J. in the case of Additional Collector of Customs v. padam Kumar Agarwalla. It hs been laid down in the above

two cases that

It is however equally well settled even in Writ Petition under Article 226 of the Constitution the Court is entitled to interfere with the finding of the

Tribunal on any question of fact where the Tribunal is competent to decide if the Court is satisfied that the finding of the Tribunal is perverse.....

where the Court considers the findings of the Tribunal to be perverse and where the Court is of the opinion that justice of the case so requires, the

Court is entitled to interfere and set aside the finding of the Tribunal on any question of fact. In such cases the Court holds that there is an error of

law.

26. Counsel for the appellant also contended that the observation of Supreme Court in the case of R.C. Sharma v. Union of India (supra) must be

read in the context of the observation made in para 6 at page 2039 (of AIR) of the report which reads as follows;

It is only when an opportunity denied is of such a nature that the denial contravenes a mandatory provision of law or a rule of natural justice that it

could vitiate the whole departmental trial.

27. Again at para 11 the Supreme Court quoted wirt approval its earlier judgment in the case of Smt. Ujjam Bai Vs. State of Uttar Pradesh, where

the Court held that (at p. 1629)

A Tribunal may lack jurisdiction if it is improperly constituted or it fails to observe certain essential preliminaries to the enquiry.

At para 13, page 2041 (of AIR) the Supreme Court in R C. Sharma''s case held as follows:

Further, after hearing the arguments of the learned Counsel for the appellant we are ourselves unable to see any point which could he raised on

behalf of the appellant capable of vitiating the departmental proceedings. Unless such a point could be raised, there could be no declaration that

the-departmental proceedings were null and void.

28. It has been contended by Mr. Sengupta that in the present case the opportunity denied to the appellant is of such nature that the denial

contravenes the mandatory provisions of law or rules of justice. He also submitted that the Supreme Court in Purohit and Purohit Vs. Sarva

Shramik Sangh and Another, quoted the following observation made in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, :

If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity.

29. He also contended that in the case of Collector of Customs v. Biswanath Mukherjee (supra), the Court found, inter alia, that the findings of the

Enquiry Officer were perverse, and accordingly set aside the findings of the Enquiry Officer and the order of dismissal. He also submitted that the

present case is on all fours with the aforesaid case and the principles enunciated in that case should be applied to the facts of the present case.

30. We have carefully considered the rival submissions of both the parties on the point and the decisions cited at the Bar. We are unable to accept

the contentions raised on behalf of the respondents. We are of the view that the question as to whether the findings arrived at by the Enquiry

Officer are vitiated in law and/or perverse is a pure question of law. This has been laid down in the case of Collector of Customs v. Biswanath

Mukherjee (supra). In determining the question of perversity of the finding''s, Court does not appreciate the evidence but it has to look into the

evidence as such. In this respect there cannot be any difference1 in the approach in the case of a suit and a writ proceedings. The same principle

will apply in both the cases. It is well settled that the appellant is entitled to urge a pure question of law for the first time in the first appellate Court

on the basis of evidence on record. We are also unable to accept the submission of the counsel for the respondents that even if the findings are

vitiated in law or are perverse, the same will not go to the root of the matter and will not affect the ultimate decision of dismissal. The order of

dismissal is based on the enquiry report. If the findings of the Enquiry Officer are vitiated in law or are perverse then in that event no dismissal

order can be sustained on the basis of such vitiated or perverse; findings. An order of dismissal based on the findings obtained in the report of the

Enquiry Officer which are vitiated in law or perverse and thereby making the report bad cannot be made the basis for taking an action against the

delinquent officer. Since the entire report is vitiated no further action can be validly taken on the basis thereof.

31. We are therefore to see whether the findings of the Enquiry Officer in the instant case are vitiated in law and/or perverse, as contended on

behalf of the appellant before dealing with the other issues.

32. Mr. Sengupta on behalf of the appellant has urged that in this particular case the findings of the Enquiry Officer are vitiated in law on the

following grounds:

(i) The Enquiry Officer has arrived at a finding based on no evidence.

(ii) The findings are inconsistent with the evidence or contradictory to it.

(iii) The Enquiry Officer has acted on material partly relevant and partly irrelevant.

(iv) The Enquiry Officer has drawn upon its own imagination and imported facts and circumstances not apparent from the records.

(v) The Enquiry Officer has based his own conclusion on mere conjectures and surmises.

(vi) No reasonable person could have come to findings as has been arrived at by the Enquiry Officer

(vii) The Enquiry Officer has ignored the material evidence and has cast the onus of proof upon the accused person.

33. In support of his above contentions Mr. Sengupta has submitted before us a detailed chart showing the facts and circumstances which

according to him would go to show that the findings of the Enquiry Officer are vitiated on either any one or all of the above grounds. It may be

mentioned that Counsel for the respondents has not dealt with the said chart specifically to controvert the submissions made by Mr. Sengupta on

the basis of the said chart. On this aspect of the matter we have considered the submissions of the parties and have also gone through the report of

the Enquiry Officer and the evidence on record.

34. The case of the Department against Vaswani is that he delivered 2 suit-cases to the Passenger''s representative and the articles contained in the

said two suit-cases were not correctly inventorised by him. However, from the taxi which was hired by the Passenger''s representative to take the

goods, 3 packages were found and inventory of those 3 packages was made and excess articles were found. Mr. Banerjee for the respondents

has not been able to show us any iota of evidence with regard to the findings of the Enquiry Officer to the effect that Vaswani delivered 3 packages

to Dadlani, representative of the Passenger. The case of the department even in the charge-sheet is that Vaswani delivered only 2 suit-cases to the

Passenger''s representative. It has not been shown anywhere how could the question of delivery of 3 packages by Vaswani arise.

35. It further appears that there is no evidence for the finding that Vaswani delivered the impugned articles to the said Dadlani or the articles in the

3 impugned boxes are the articles of the 2 suit-cases admittedly delivered by Vaswani. No link between the 2 suit-cases delivered by Vaswani and

the 3 packages described as Box No. I, Box No. III and Case No. 2 found in the possession of Dadlani has been established by evidence. There

is also no evidence that the impugned articles of which inventory had been taken subsequently were brought by the Passenger in the said two suit

cases. It is the evidence of Vaswani before the Enquiry Officer as well as before this Court that the 3 packages which were found and the

inventory of which was taken were 2 steel trunks and one wooden case whereas he delivered only 2 suit-cases which is also the case of the

department. In this connection it may be noted that the 3 impugned packages were never exhibited before the Enquiry Officer nor in this Court and

no one has contradicted what Vaswani had said about the description of the 3 packages as aforesaid. It has been alleged in the charge-sheet that a

fresh inventory was taken after the goods were seized from the possession of the passenger''s representative outside the seizure shed. The question

of fresh inventory could only arise after it is proved that the articles were found in the same 2 suitcases which were delivered by Vaswani to the

passenger''s representative. This fact has not been proved. It is a case where we find that although admittedly 2 suit-cases were delivered by

Vaswani the inventory was taken of 3 packages. There is no basis for holding that a ""fresh inventory"" was taken of the same articles which were

delivered by Vaswani or which were in the two suitcases, contents of which were inventorised by Vaswani.

36. The Enquiry Officer said, ""evidently whatever 3 packages were delivered were apprehended and brought back in the seizure shed"". It is

difficult to appreciate the assumption of the Enquiry Officer. No one said that three packages were delivered by Vaswani. As already stated the

case of the department as made out in the Charge-sheet also was that 2 suit-cases were delivered and there was no mention that 3 packages were

found later on. In making the above observation the Enquiry Officer proceeded on assumption, surmises and conjectures. It is in evidence that two

suit-cases in sealed condition were brought in the seizure shed from the Airport on 26th August, 1961 and after the inventory was done the said

suit-cases were again re-sealed in the presence of the passenger''s representative and remained there in the seizure shed till the same were

delivered on 1st September, 1961.

The Enquiry Officer said that, ""Vaswani could open, extract, repack and reseal them during the relevant period being in charge of the Seizure

Shed"". The Enquiry Officer has also proceeded on the assumption, surmises and conjectures when he said that the leather pieces and bed sheet

were brought in by Vaswani himself in collusion with the passenger''s representative with a view to use them as covers. We have not been able to

find out any iota of evidence in support of this observation of the Enquiry Officer, There is also no evidence for the conclusion that Vaswani

delivered three packages or there was any link between the inventory of the two suit-cases and the inventory of the contents of the three packages.

The Enquiry Officer proceeded erroneously in arriving at the finding or conclusion which was not in the charge sheet itself. It is true that when there

is no direct evidence the Enquiry Officer is competent to proceed on the basis of circumstantial evidence. It has been laid down in the case of

Collector of Customs v. Biswanath Mukherjee reported in (1974) CaLL.J. 315 as follows:

The finding or the conclusion of the Tribunal if based on circumstantial evidence must undoubtedly lead reasonably to the finding arrived at or the

conclusion reached by the Tribunal and unless it is reasonable to arrive at the finding or conclusion on the basis of such circumstantial evidence, the

Court will interfere.

37. In this case there is no direct evidence that Vaswani delivered 3 packages, nor there is any direct evidence about the link between the two suit-

cases and three packages. Dadlani, the representative of the passenger against whom the Department launched a proceeding and withdrew the

case, could have deposed to the actual state of affairs. He was also not called as a witness by the prosecution. The Enquiry Officer has said as

follows:

Shri Dadlani was evidently present. But he was not produced before the Enquiry either by the prosecution or by the defence. Shri Vaswani

attributes the blame to the Department for not calling Shri Dadlani as a witness. The charge is based on the allegation of surreptitious delivery of

excess goods by Shri Vaswani to Shri Dadlani. It is, therefore, reasonable to suspect that Shri Dadlani was an accomplice of Shri Vaswani. In fact,

it is on record that Shri Vaswani was found to be an accomplice of Shri Dadlani during the police investigation of the case. This being the position,

it is too much to expect the Department to produce Shri Dadlani as a prosecution witness.

38. We have not been able to find out any record where Vaswani was found to be an accomplice of Dadlani during the police investigation of the

case. We requested Mr. Banerji, counsel for the respondent to produce before us the documents relating to the Police Investigation, but the same

was not produced. It shows that the Enquiry Officer proceeded on the basis of his own assumption and imagination. We may only take out one or

two other illustrations from the report of the Enquiry Officer to show that there was no evidence before the Enquiry Officer to come to the

conclusion about the guilt of the accused. No reasonable person could come to such conclusion as the Enquiry Officer did in the instant case and

he has cast the onus of proof of innocence on the accused. The Enquiry Officer said as follows:

There is no material that he entered and valued all the articles in the inventory and did not leave out or omit any from being entered

therein.""....."""There is no evidence that Vaswani prepared the inventory correctly on August 26, 1961. There is no evidence also that ho made

the correct delivery on September 1, 1961""....."""There is no dispute that Vaswani delivered packages to Dadlani on September 1, 19nl. The

dispute is about giving delivery of additional/excess goods. It is in evidence that the two coolies brought two suit-cases and a bundle from inside

the seizure shed and loaded them in the taxi. It is also in evidence that the very two suitcases and one bundle that were delivered from the seizure

shed were apprehended and brought back in the seizure shed by Shri Banerjee. Now the most vital point is, who delivered the additional/excess

goods? The manner and circumstances under which the two suit-cases and one bundle were apprehended leads to the conclusion beyond any

shadow of doubt that delivery of additional/excess goods was made by Vaswani.

From the above extract it is evident that the onus was cast upon Vaswani to prove his innocence. The Enquiry Officer has not mentioned any

evidence which could have linked Vaswani with the delivery of the 3 packages or the delivery of excess goods. The Enquiry Officer acted contrary

to the evidence on record when he said that two coolies brought two suit-cases and a bundle from inside the seizure shed and loaded them in a

taxi. In the Charge-Sheet the case made out was the delivery of two suit-cases. There was no evidence before the Enquiry Officer to come to the

conclusion that Vaswani delivered two suit-cases and one bundle and/or he delivered any excess or additional goods to Dadlani.

39. We may also refer to another passage from the Enquiry Officer''s report to show as to how he acted in the matter. He says as follows:

It is worthwhile to mention that Shri Banerjee stated in examination-in-chief that there were two packages - one suit-case and the other a bundle

wrapped up and tied with a bed sheet and when the knots of the bed sheet were opened, it was found that there was a suit-case and a package

underneath it.

This clearly proves that one suit-case and a bundle were wrapped up in a package with the bed sheet with a view to make the total number of

packages into two so as to match the quantity and description of the packages as mentioned in the Gate Pass.

40. If this version is correct according to him, then the taxi driver who said in examination-in-chief that two coolies brought two leather suit-cases

and one bundle and put them into the taxi could not have been correct. (Question 10 page 580). But the Enquiry Officer said whatever the taxi

driver said in examination-in-chief was true and whatever he said in Cross-examination was not true. We have not been able to follow the logic of

the Enquiry Officer. The above finding is contrary to the evidence on record. 11 Mr. Banerjee found one bundle after the two packages were

opened then obviously the taxi driver could not have seen three separate packages when the goods were brought out of the seizure shed. In any

event we have not been able to appreciate how the Enquiry Officer could go beyond the scope of the charge sheet which had not mentioned

anywhere that three packages were ever found or delivered by Vaswani.

41. There is yet another illustration to show how the Enquiry Officer acted on the basis of surmises and/or conjecturers. The relevant extracts are

as follows:

Shri Vaswani pleads that no bed sheet was mentioned in either of the inventories Exhibits 4, 5 and 6 as an item of article or as a container. Yet a

bed sheet was found in the apprehended package. Similarly, he maintains that leather pieces are not generally imported by passengers and in the

present case there was definitely no leather pieces with Mr. Dadlani. Despite, leather pieces were found place in the apprehended packages.

It is correct that leather pieces were found in the package. It is also correct that there was a bed sheet. As stated earlier, the story of plantation,

introduction and substitution as well as that of conspiracy against Shri Vaswani (has) miserably failed, It has also been established that the

additional/excess goods were delivered by Shri Vaswani. The only cogent logical conclusion is, therefore, that the leather pieces were brought in

by Shri Vaswani himself in collusion with passenger''s representative with a view to use them as ""covers"" likewise the bed sheet was brought in to

wrap 2 packages (suitcase and a package) into one.

42. We have already stated that the evidence of the prosecution witnesses was that leather pieces were not imported by Mrs. Dadlani which were

found in the inventories of the three packages. The Enquiry Officer instead of holding that the contents of the three packages that were

subsequently inventorised, and the contents of the two suit-cases inventorised by Vaswani are not the same and in his anxiety to hold against the

accused indulged in surmises that the bed sheet and the leather pieces were introduced by the accused.

43. From what has been stated above it is evident that the findings of the Enquiry Officer in this particular case are vitiated in law. Findings and/or

conclusions of the Enquiry Officer are based on surmises and conjectures. We have not been shown any evidence; wherefrom it can logically or

reasonably follow that Vaswani was guilty of any of the charges as mentioned in the charge sheet. In our view no person acting judicially and

properly instructed as to the relevant law could have come to the conclusion from the facts found in this case as was done by the Enquiry Officer.

The materials on record, in our view, do not support the finding that Vaswani delivered 3 packages or Vaswani did not prepare the inventory

correctly of the two suit-cases brought to him or that he did not correctly deliver the same or Vaswani passed out any additional or excess goods

intentionally or otherwise. Therefore, the findings of the Enquiry Officer, in our opinion, cannot be sustained. The Enquiry Officer, in our opinion, in

arriving at the finding and reaching the conclusion mentioned hereinabove, has excluded materials which are relevant and taken into consideration

materials which are irrelevant. Further the findings of the Enquiry Officer which are relied upon by him in coming to his ultimate conclusion are also

based on conjectures and surmises and suspicion. We therefore hold that the conclusion of the Enquiry Officer is perverse and cannot be

sustained.

44. In view of our aforesaid finding the appeal should he allowed. However, since all the issues have been elaborately argued before us, we shall

deal with the contentions made by the parties on different issues.

45. The first issue is with regard to the failure of justice by reason of the fact that the Enquiry Officer was subordinate to S.K. Srivastava, the

Additional Collector of Customs who was principal prosecution witness in this case and junior to S.N. Banerjee, the Superintendent, Preventive

Service who was de facto complainant. On behalf of that appellant it was contended before the Trial fudge that the appointment of the said P.C.

Saha as Enquiry Officer is violative of the Manual of the Customs Department which enjoins upon the authorities that an enquiry should not be held

by an officer directly subordinate to an officer who had already expressed a definite opinion on the point at issue and when such opinion is adverse

to the accused. In such cases an independent officer should be associated with the formal enquiry. Relying on the case of Union of India (UOI) Vs.

K.P. Joseph and Others, it was contended that the provision of the said Manual conferred a right on the appellant to have an Enquiry Officer as

laid down in the said order and such right had been violated as the Enquiry Officer was not appointed in the manner as indicated.

46. The learned Trial Judge had observed that at no stage of proceeding the appellant complained of the violation of the provisions of the Manual.

It is also not the case of the appellant in the plaint. C1.13 page 2 of the Manual merely suggests, the manner of appointment of Enquiry Officer and

does not create any right. In any event, it has not been alleged nor established that Enquiry Officer concerned was an officer directly subordinate to

either the said Sri S.K. Srivastava or the said S.N. Banerjee. It cannot be held that enquiry by an officer where any superior officer is involved as a

witness or otherwise, is invariably and automatically vitiated. In the facts and circumstances it does not appear that there has been any failure of

justice.

47. According to the learned Counsel for the appellant the above finding of the learned Judge against the appellant is not correct. He submitted that

it is in evidence in this Court, both oral and documentary, that the appellant repeatedly requested the higher authorities to change the incumbent in

office as he would not get any justice. He made various applications being dated January 18, 1963, February 22, 1963, May 20, 1963, July 17,

1963, November 6, 1963 (Vol.5 pp.2464," 2487, 2494, 2497 and 2505) which were addressed either to the Union of India or to the Collector

of Customs. He also in his evidence before this Court stated in reply to question No. 69 that the manner in which the Enquiry Officer proceeded in

a biased way was brought to the attention of Acting Collector of Customs who had to give further direction to the Enquiry Officer to conduct the

Enquiry proceedings properly. Appellant''s counsel submitted that there is no evidence to contradict the appellant and the various letters and

applications clearly show the apprehension of the appellant which came to be true when the report of the Enquiry Officer was made. He has

submitted that justice is not only to be done but also seem to have been done. According to Counsel, in the instant case there was no difficulty to

the authorities to change the Enquiry Officer.

48. Counsel for the respondent has submitted that by various letters dated 20th November, 1962 (Vol.V page 2456); 18th January, 1963 (Vol.V,

page 2469); 22nd February, 1963 (Vol.V, page 2477); 29th January, 1963 (Vol.V page 2478); 22nd February, 1963 (Vol.V page 2488); 28th

March, 1963 (Vol.V, page 2493) and 22nd May, 1963 (Vol.V, pages 2484, 2495) the appellant requested the Collector of Customs and the

Union of India for the appointment of a higher officer of the rank of Additional Collector as the Enquiry Officer. The said letters were replied to by

letters dated 19th February, 1963 (Vol.V page 2523); 8th March, 1963 (Vol.V, page 2525) and 11th July, 1963 (Vol.V, page 2526). By these

letters the appellant was intimated that there was no reason for appointing a higher officer as the Enquiry Officer. Referring to Rule 15(4) of Central

Civil Services (Classification, Control and Appeal) Rules 1957 counsel submitted that the power is given to the disciplinary authority to appoint the

Board of Inquiry or an Inquiring Officer to whom the task of enquiring into the charges may be delegated. It will be seen that these rules do not

give any option to the public servant to choose whether he would like the matter to be enquired into by Administrative Tribunal, Enquiry

Commissioner or by a superior Officer of his choice. The option under the Rules is with the disciplinary or appointing authority.

49. Relying on a decision in the case of Ram Naresh Lall Ram Yash Lall Vs. The State of Uttar Pradesh and Others, it was submitted that the

mere fact that the Enquiry Officer is subordinate to the appointing authority is not sufficient to clothe him with bias. It was further submitted that

some of the witnesses are subordinate to Enquiry Officer would not show that a fair hearing was not given. Further mere possibility of bias is not

enough and real likelihood of bias must be shown. In this connection reference was made to several cases, to wit Pradyat Kumar Bose Vs. The

Hon''ble The Chief Justice of Calcutta High Court, ; Fedders Lloyd Corporation (P.) Ltd. Vs. B.A. Lakshminarayana Swami and Another, ;

Durga Prosad Sarawagi and Others Vs. Registrar of Firms and Another, ; Govind Shankar Vs. State of Madhya Pradesh and Another, ; Harsh

Narayan Singh v. Inspector General of Police AIR 1954 Vin. 50; The Queen, on the prosecution of J.F. Harrison v. Meyer. (1875) QBD 173;

Regina v. Burton (1897) 66 LJ QB 831 and Gurudeva Narayan Srivastava Vs. State of Bihar and Another, .

50. On going through the various letters, documents and evidence on record, it appears that the appellant in various applications pointed out ''that it

was absolutely necessary to appoint an Enquiry Officer of the status and rank of an Additional Collector, as the Additional Collector (Preventive)

himself is the main witness and complainant in this case. It was further pointed out that the ''''appointment of an Enquiry Officer who was lower in

rank than that of the Additional Collector and lower in position than that of the Superintendent (Preventive) is, therefore, not virtually legal and

correct, as the Enquiry Officer in such a position will be subject to a bias and as such he will not be able to hold fair and independent proceedings

and will not be in a position to impart fair justice with an open mind and the enquiry will be a mere formality''''....

...It further appears that in answers to repeated requests made in various applications (pages 2560-2562; 2578-2581; 2585-2587; 2588-2589

and 2590-2591 Vol.5) the Collector of Customs stated that it was not considered necessary or feasible to appoint an Enquiry Officer of the status

and rank of an Additional Collector, (page 2523 Vol.5) The Collector again reiterated that the plea ""that the Enquiry Officer in the said case will

be subject to bias has no real basis, there is no justification for reconsideration of decision already taken in the matter"". (2526 Vol.5). In answer to

question 69, in this Court the Appellant stated that he had reasonable apprehension that the Enquiry Officer would be biased against him in the

Enquiry proceedings and in his findings and he would not get fair and impartial enquiry and proper justice from him. There is no cross-examination

on this point.

51. Having regard to the overall picture of this case, we are of the opinion that the appellant was justified in his apprehension that the Enquiry

Officer could not act independently in the matter, It also appears to us that the authorities concerned had violated the provisions of Chapter XIII of

the Central Board of Revenue Manual which enjoins as follows:

Inquiry should not be held by an officer directly subordinate to an officer who had expressed a definite opinion on the point at issue and where

such information is adverse to the accused. In such cases an independent officer should be associated with formal inquiry.

52. It has not been stated before us what prevented the Department from making an appointment of an Officer who is above the rank of Assistant

Collector and who is not in any way subordinate to the principal prosecution witness or de facto complainant. The learned judge was also not right

in saying that it was not established that the Enquiry Officer concerned was an officer directly subordinate either to Srivastava or S.N. Banerjee.

The evidence of Vaswani in this Court has not been contradicted. Further, the learned Judge was also not right in saying that the said Manual did

not create any right in favour of the appellant. In the case of Union of India (UOI) Vs. K.P. Joseph and Others, , cited before the learned Judge as

well as before us the Supreme Court observed at page 305 (of AIR) as follows:

To say that an administrative order can never confer a right would be too wide a proposition. There are administrative orders which confer rights

and impose duties.

53. In our opinion on the facts and in the circumstances of this case the appellant had the right to demand the appointment of an independent

person as the Enquiry Officer as the enquiry concerned his reputation and livelihood. An enquiry to find out whether the accused officer is guilty of

the offences charged which may ultimately affect the reputation and livelihood of the said officer is not an idle formality. In a case where the

accused officer has given good grounds for asking the appointment of an independent officer and where the Government itself has laid down by

way of administrative order that on such grounds there should be an independent officer associated with the formal enquiry, but even then no

independent officer is appointed to conduct the enquiry, and no reason is assigned for such action, then in such a case we have to hold that there

has been a failure of justice. We, therefore, answer the issue No. 1 in the affirmative and in favour of the appellant.

54. The next issue (i.e. Issue No. 2) is with regard to the refusal of the request of the appellant to engage a legal practitioner to defend him at the

enquiry, and whether such refusal resulted in the failure of justice.

55. The appellant''s case was that the Department had nominated as Presenting Officer Shri A.K. Mukherjee and thereafter D.C. Banerjee. Both

of them were Inspectors of Special Police Establishment, Calcutta. They had extensive experience in law and court cases and were appointed to

conduct the case against the appellant at the enquiry. It was also the case of the appellant that in view of the complexity of the case and the

complicated nature of enquiry, and the appointment of the Presenting Officer experienced in legal matters to conduct the case against the appellant,

the appellant made repeated requests to the authority concerned to allow him to defend himself with the help of a legal practitioner. But his

requests were arbitrarily turned down. It is stated that such refusal seriously handicapped and prejudiced the appellant in his defence and amounted

to denial of reasonable and adequate opportunity to defend himself and consequently there has been great failure of justice.

56. The learned trial Judge has held that the authority while refusing permission to the appellant to engage a lawyer at the enquiry had taken into

consideration the facts and circumstances of the case. Of course, according to the learned Judge the order of refusal was not a speaking order. It

has also been held by the learned Judge that the fact that the Presenting Officers had extensive experience in law and court cases was not

established in the evidence in the suit. The appellant in lieu of a lawyer had nominated an Officer and when he was not available the appellant did

not ask for any other nomination, nor did he seek for any adjournment. The learned Judge has further observed that it has come out in evidence

that the appellant prior to joining the Customs Department in 1949 was a Nayeb Tahasildar and Magistrate in Sind and as a Magistrate had

conducted court cases and litigations. Further, the manner in which he conducted the impugned enquiry did not show that he was handicapped in

the absence of lawyer. The allegations against the appellant were mainly of fact. The learned Judge therefore held that there had been no failure of

justice by reason of the appellant not being allowed to defend himself through a lawyer. Accordingly the said issue was answered in the negative

and against the appellant.

57. Challenging the above findings of the learned fudge, Counsel for the appellant has submitted that in very many letters the appellant had asked

for the assistance of a lawyer. In several applications appellant stated that Shri S.K. Srivastava and S.N. Banerjee were the important witnesses in

the complaint and they would have to be cross-examined by him, and being a subordinate to them and in a perturbed and unbalanced state of mind

due to prolonged suspension and agony, it would not be possible for him to present the case properly before the Inquiry Officer and to cross-

examine them. He therefore requested the assistance of a lawyer. The appellant also stated that there was factual complexity and legal issues were

involved in the case. He would hardly be able to cope single-handed with the defence. He stated in his application dated 21st February, 1963

(pp.2530 to 2532 Vol.5) that he was placed on an unequal footing with the Department in so far as representation in the enquiry was concerned.

The Department had an experienced officer to represent the departmental case who had developed the argumental technique by virtue of his

constant handling of the cases. The appellant was thus placed at a disadvantageous position in this case. Further, no Government servant was

willing to defend him in the Departmental proceedings. Counsel has also pointed out from the application dated 28th August, 1963 (pages 2540 to

2643 Vol,5), that the Railway Servant who promised to come for help in his defence was not released by his superiors, and accordingly he was

left by himself to defend the case. He therefore requested that he should be given the assistance of a lawyer. It was also submitted that the findings

of the learned Judge were not at all correct as would be evident from the documentary evidence being the different applications of the appellant.

The Enquiry Officer in his report at pages 1634 and 1640-41 of Vol.4 has also recorded that though the Collector acceded to the request of Shri

Vaswani to defend himself by J.H. Karamchandani, Assistant Personnel Officer, Eastern Railway, the Railway Authorities declined to grant

Karamchandani leave for that purpose. Vaswani therefore filed another application dated 28th August, 1963 reverting to his earlier request for

defending himself through a lawyer. This time too his request was not complied with by the Collector. Our attention was also drawn to different

questions which were put to Vaswani in this connection (questions Nos. 87 to 97 and 580 to 598) in examination in chief and in cross-

examination.

58. Counsel for the appellant in support of his contention has strongly relied on the decision of the case of Collector of Customs v. Biswanath

Mukherjee, reported in 1974 Cal L.J. 251 and urged that on this aspect of the matter the facts of the said case are almost identical with the facts

of the present cast, i.e. with regard to the refusal by the authorities concerned to allow the delinquent officer to be represented by a lawyer.

59. Counsel for the respondent on the other hand has argued that Rule 15(5) of the Central Civil Services (Classification, Control and Appeal)

Rules 1957 does not confer any absolute right on the delinquent officer to be assisted by a lawyer. It is the discretion of the disciplinary authority

whether such permission should be granted or not. It has also been argued that the appellant was himself a Nayeb Tahasildar and a Magistrate in

Sind before partition and as such he was not handicapped in the absence of a lawyer. He also tried to distinguish the case of Biswanath Mukherjee

stating that Biswanath Mukherjee was young and had no experience of law and court cases. He further submitted that the appellant had conducted

his defence as an able lawyer and he also cross-examined the departmental witnesses with skill. It was further argued that it would have been

unjust if the Collector had permitted the officer to engage a legal practitioner. He also stated that the case of Biswanath Mukherjee was a case

under Article 226 of the Constitution whereas the present case has come by way of suit. It has also been urged that unless the failure to appoint a

lawyer resulted in deflecting the course of justice, the delinquent officer is not entitled to get assistance of a lawyer.

60. Having regard to the facts and circumstances of the case and evidence on record, we are unable to accept the contentions of the respondent''s

counsel. It appears to us that the submissions of respondent''s counsel have no actual or legal basis. The distinction sought to be made by the

learned Counsel appears to us to be a distinction without difference. On this aspect of the matter, in our view, the principles decided by this court

in the cast of Biswanath Mukherjee (supra) are applicable. In the case of Biswanath Mukherjee this court followed the principles laid down by the

Supreme Court in the case of C.L. Subramaniam Vs. Collector of Customs, Cochin, . At para 4 page 467 this Court observed as follows:

In the case C.L. Subramaniam Vs. Collector of Customs, Cochin, the order of removal from service was challenged on the ground of violation of

R.l5(5) of 1957 Rules. In that case the appellant asked for permission to be represented by a lawyer on the ground that the officer to present the

case before Enquiry Officer in support of the allegation was a trained police prosecutor and legally trained to conduct such prosecution. It was

stated that under such circumstances unless permission to engage a counsel to appear and defend the appellant during the enquiry was granted he

would be prejudiced in his defence.

In para 12 of the above judgment at page 470 this Court further observed that:

The other ground on which the Supreme Court held that the order of removal was bad because the appellant was not afforded facility to have the

assistance of another Government servant in defending him which assistance he was entitled to under the Rule, was a separate ground of decision

as will appear from the observation of the Supreme Court that the Appellant supported his complaint of breath of Rule 15(5) on yet another

ground.

In para 23 at page 471 of the above case this Court considered the same argument as has been raised in this case on Rule 15(5) of 1957 Rules.

After considering all the relevant decisions on this point, this Court laid down the principles in para 24 at pages 481-482 of the report and held as

follows:

The principles laid down by the Supreme Court in the case of G.I. Subnamantam v. Collector of Customs, Cochin 1972 I L.L.J. 165 in our view,

fully apply to this case. In the instant case the Presenting Officer was a seasoned Police Officer and a trained Prosecutor whereas the respondent

has no legal training. The charge against the respondent is quite serious entailing serious consequences which have in fact followed in this case.

Accusation against the respondent also threatened his very livelihood and any adverse verdict against him was bound to be disastrous to him as it

has proved to be. Further the questions involved in the enquiry were complicated and the inquiry also involved intricate questions of law and fact

for which it was necessary for the respondent to have the assistance of a lawyer particularly, in the context of the nature of charge and its

consequences. In the facts and circumstances of the case we do not think assistance of another Government servant particularly when he has no

legal training, afforded adequate opportunity to the respondent to defend himself. As noted earlier, the respondent from time to time prayed to both

the Disciplinary Authority as well as the Enquiry Authority for permission to be represented by a lawyer fully setting out the ground therefore but

his prayer was turned down. In such circumstances what the respondent could have been expected to do but to take assistance of another

Government servant to represent him in the enquiry proceeding. In these circumstances it cannot legitimately be said that the respondent was quite

content with the service of another Government servant or that he appeared in the proceeding without protest. Repeated requests of the

respondent were turned down. The ground taken for refusal of the permission that the issues involved did not justify the appointment of a lawyer

cannot be said to Lie reasonable in die background of the facts and circumstances of the case and in the context of the charge against the

respondent. In the aforesaid view of the matter we are of the opinion that there has been a violation of Rule 14(8) of 1965 Rules which is

corresponding to Rule15(5) of 1957 Rules (which Rules are mandatory) thereby depriving the respondent of the reasonable opportunity to defend

himself as guaranteed by Article 311(2) of the Constitution.

61. It appears to us that the decision of the Supreme Court as followed by this Court on the construction of Rule 15(5) of 1957 Rules in the case

of Biswanath Mukherjee (supra) is equally applicable on the facts and in the circumstances of the present case. The Collector of Customs

nominated A.K. Mukherjee and thereafter D.C. Banerjee as presenting officer. Both of them were well trained prosecutors acquainted with law

and having experience of court cases. The appellant therefore made request to present his case and to defend himself through a legal practitioner

(See question Nos. 87, 88 in the Examination-in-Chief and question Nos. 588-591 in Cross-examination). In the various applications made by the

appellant before the disciplinary authority and the Enquiry Officer for engagement of a lawyer, his main grounds for obtaining a lawyer were as

follows:

(a) S.K. Srivastava and S.N. Banerjee, Additional Collector of Customs (Preventive) and Superintendent, Preventive Service respectively are the

main and important witnesses and complainants, who have to be cross-examined carefully, and being subordinate to them and in a perturbed and

unbalanced state of mind due to prolonged suspension and agony, he will not be able to do so.

(b) No member from the Customs Department dared to volunteer his services to represent the delinquent Officer in view of Sri S.K. Srivastava

and S.N. Banerjee being the principal witnesses to be cross-examined on behalf of the defence and as such he was placed in a disadvantageous

position.

(c) The Department had an experienced Police Inspector of the Special Police Establishment to represent the Department who has developed the

argumental technique by virtue of his (constant) handling of the cases and no Government servant was willing to defend him as Sri S.K. Srivastava

and S.N. Banerjee were involved.

(d) There were legal and factual complexities and legal issues were involved in this case.

(e) He was not in a fit state of mind due to ill health. Suspension for more than 17 months had affected his health, brain and mind (suspension was

on 2nd September, 1961 and enquiry commenced on 24th April, 1963).

(f) Due to advanced age and under serious mental stress he was unable to cope single-handed with the demands of the defence. He was thus in a

disadvantageous position. Further, he had to face an Enquiry Officer who was biased against the appellant about whom he was complaining all

through.

(g) Even the assistance of the Departmental Officer from another Department was not made available to him as he could not be released by the

Railway Department.

62. The above in our view are reasonable grounds for asking permission for engaging a legal practitioner to defend the delinquent officer in the

enquiry proceeding.

63. For reasons stated above we are unable to agree with the findings and/or conclusion of the learned Trial Judge.

64. The argument of the respondent''s counsel that the appellant was a Nayab Tahasildar and a Magistrate and as such he knew the law and also

knew how to conduct the cases appears to us to be contrary to the evidence on record. On this aspect of the case the learned Judge failed to take

into consideration the relevant facts appearing from evidence which are as follows:

(a) In reply to question 240 in Cross-examination the appellant said that he joined the Customs Service on 8th April, 1948. In reply to question

242 he said that prior to 1948 he was a Nayab Tahasildar and Magistrate in Sind and his qualification is Bachelor in Articles (Question 244).

(b) Further he deposed that he was only acting in that post of Nayab Tahasildar and Magistrate for 2/3 years prior to 1948 (Question 245).

The said post was mainly concerned with collection of Revenue (Question 248).

(c) The Appellant further stated in cross-examination in answers to questions 580 to 587 (pp.159-160 Vol.1) that he purchased a book of

Disciplinary Proceedings and found the ruling there. The said Book was by Srivastava, an Advocate of Allahabad High Court. By reading the

book he gathered the particular rulings on particular points. It was emphatically said that he had forgotten everything about the judicial proceedings,

as he was working in the Preventive Department and he was not acquainted with them at the time when his proceedings took place.

(d) It is in evidence (in cross-examination No. 591) that the Department engaged well trained Police Prosecutor acquainted with the law and

having experience of Law Court. The appellant was deficient in defending his case in the proceedings is no one from the Department was prepared

to help him as everybody was afraid of Srivastava and Banerjee the bosses of the Department.

65. Relying on the decisions of the Supreme Court reported in Krishna Chandra Tandon Vs. The Union of India (UOI), and H.H. Shri Swamiji of

Shri Amar Mutt and Others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and Others, Counsel for the respondent

has submitted that where the rules do not confer absolute right on the delinquent officer to have the assistanct of a legal practitioner to defend him

before the Enquiry Officer, the refusal to appoint a lawyer is justified if the case is not of complex nature. Secondly, where the Officer''s request for

appointment of a lawyer is belated, the refusal to appoint a lawyer is justified.

66. The case of Krishna Chandra Tandon Vs. The Union of India (UOI), is a case where the Income Tax Officer who was charge-sheeted for

improper handling of the assessments and not following the direction of the Commissioner with regard to the assessments and for making under-

assessments resulting in loss of Revenue, asked for the assistance of a lawyer at the enquiry and which was refused. At page 1594 (of AIR) of the

report the Supreme Court held as follows:

The appellant was not entitled under the Rules to the assistance of an Advocate during the course of the enquiry. The learned fudges were right in

pointing out that all that the appellant had to do in the course of the enquiry was to defend the correctness of his assessment orders. Clear

indications had been given in the charges with regard to the unusual conduct he displayed in disposing of the assessment cases and the various

flaws and defaults which were apparent on the face of the assessment record themselves. The circumstances in the evidence against him were

clearly put to him and he had to give his explanation. An advocate could have hardly helped him in this. It was not a case where oral evidence was

recorded with reference to accounts and the petitioner required the services of a trained lawyer for cross-examining the witnesses. There was no

legal complexity in the case. We do not therefore, accede to the contention that the absence of a lawyer deprived the appellant of a reasonable

opportunity to defend himself.

67. It appears that the aforesaid case was not concerned with the Rule 15(5) of 1957 Rules. There was no oral enquiry in that case and there was

no legal complexity inasmuch as it was his own orders of assessments which the delinquent Income Tax Officer had to defend himself. Further

Judgment of the Supreme Court in the case of G.I. Subramaniam v. Collector of Customs, Cochin (supra) was not considered in that case. This

case, it appears to us, has no relevance on the facts of the instant case. From the above observation of the Supreme Court it appears that where

oral evidence is recorded or there is legal complexity the service of a trained lawyer for cross-examining the witnesses would be required. In the

instant case oral enquiry was held, very many witnesses were called by the prosecution and there were factual complexities in this case as have

been noted earlier.

68. In the case of Sunil Kumar Banerjee Vs. State of West Bengal and Others, the appellant was the Divisional Commissioner of North Bengal

and a member of the Indian Administrative Service who argued his case himself before the Supreme Court. The Supreme Court held as follows:

(Para 5)

In the present case the appellant cross-examined the defence witness. Thereafter when this matter was posted for argument and was adjourned at,

least once at the instance of the appellant, the appellant came forward with an application seeking permission to engage a lawyer. The Enquiry

Officer rejected the application noticing that it was made at a very belated stage. We think he was right in doing so.

68-A. This case again was with regard to the belated prayer for assistance of a lawyer and that too after the evidence was closed and argument

was about to start. In our view, it has no application in the facts and circumstances of the present case. On the contrary in this case from the very

beginning of the case in 1962 and after the appointment of the Presenting Officer by the department till the last date when the appellant''s defence

counsel was not made available, the appellant had asked for assistance of a lawyer which was refused. We are therefore, unable to agree with Mr.

Banerjee that the aforesaid decision is the authority for the proposition that where the Departmental Officer appointed to defend the delinquent

officer did not do his job badly and no complaint was made about the job in that event the delinquent officer cannot get the assistance of a lawyer.

If the delinquent officer was equipped to conduct his own case and shows that he was not handicapped for want of a lawyer, the refusal to have a

lawyer is justified. The Supreme Court in the aforesaid case although observed that the Officer concerned argued his case admirably, but that was

not the ground on which the said decision rests. The main ground was that the officer concerned asked for assistance of a lawyer at a belated

stage. In the instant case the prayer for legal assistance was made from the very beginning stating the grounds therefore. The appellant''s repeated

prayer for legal assistance was refused. The Officer of the Railway chosen by the appellant to conduct the case was not released. In the above

circumstances what else the appellant could do but to conduct his own case. Here it may be mentioned that ability or efficiency is no ground

because in the case of Nripendra Nath Bagehi v. Chief Secretary, Government of West Bengal 1961 II I.T.J. 312 Nripendra Nath Bagchi was

himself an Additional District judge belonging to higher-judiciary, who was refused the help of a lawyer in the disciplinary proceeding. It was held

that there was violation of the principles of natural justice.

69. Mr. Banerjee also relied on the decision of the Supreme Court in the case of K.L. Shinde Vs. State of Mysore, and argued that when a

departmental officer appointed to defend the delinquent officer did not do his job badly and no complaint was made about the job, then in that

event, the delinquent officer cannot get the assistance of lawyer. However, the said decision does not help the respondent in this case. The

Supreme Court at page 1082 (of AIR) of the report observed as follows:

He also fully used the assistance of a policeman (called police friend) provided to him to conduct the defence on his behalf.

The policeman in that case got the assistance of a defence helper which is not the case here. As stated earlier, Karamchandani, a Railway servant

who was selected by the appellant as his defence counsel was not released by the Railway Authority and no one volunteered in the department to

help the appellant. Furthermore, the said decision of the Supreme Court was not concerned with the question as to whether the assistance of a

lawyer should have been given or not.

70. Counsel for the respondent also contended that even assuming that there was a violation of the principles of natural justice for not affording the

appellant the assistance of a lawyer at the enquiry, it could not be said that there was any violation of R.l5(5) of 1957 Rules or the principles of

natural justice and the refusal to allow the appellant to be assisted by a lawyer did not vitiate the whole departmental trial. In support of his

contention counsel has relied on the observation of the Supreme Court in the case of R.C. Sharma Vs. Union of India (UOI) and Others, The

observation of the Supreme Court in that case does not help the respondent in this appeal. In para 6 at page 2039 (of AIR) of the report Supreme

Court observed as follows:

It is only when an opportunity denied is of such a nature that the denial contravenes a mandatory provision of law or a rule of natural justice that it

could vitiate the whole departmental trial. Prejudice to the Government servant resulting from an alleged violation of a rule must be proved.

In R.C. Sharma''s case the delinquent officer was absolved of the charges involving corruption and he was given a lesser punishment of demotion

and was neither dismissed nor removed from service. In para 10 of the report at page 2040 (of AIR) it was held by the Supreme Court:

A question which could affect the result in a Civil Suit has to be of such a nature that it goes to the root of jurisdiction and the conduct of the

departmental trial and vitiates the result. It is only if the departmental proceeding is null and void that a plaintiff in the suit could obtain the reliefs he

has asked for. We are unable to see what point had been raised by the appellant which could have had that effect upon the departmental

proceedings.

71. The principles laid down in the above case are also applicable in the present case. Because the violation complained of is inter alia, of

mandatory Rule 15(5) as well as violation of the principles of natural justice which affect the departmental trial. It goes to the root of the matter.

72. The Supreme Court in 1972-I L.L.J. 465 (Subramaniam''s case) observed at page 472 (of L.L.J.) at (para 24) as follows:

For the reasons mentioned above we think there had been a contravention of Rule 15(5). We are also of the opinion that the appellant had not

been afforded a reasonable opportunity to defend himself. Hence the impugned order is liable to be struck down and it is hereby struck down. The

facts of this case are not such as to justify any fresh enquiry against the appellant and he be restored to the position to which he would have been

entitled to but for the impugned order. The appeal is accordingly allowed.

73. In the premises, on ground of violation of Rule 15(5) of 1957 Rules, the enquiry report is also to be struck down. It may also be mentioned

that in the above Supreme Court case the Enquiry Officer held Subramaniam guilty of charges. Therefore, both the report as well as the order

were struck down in that case. Further, if the dismissal order goes, the report of the Enquiry Officer cannot have any independent existence.

74. The last contention made by respondent''s counsel is that if there is violation of the rules of natural justice in one or two inspects (us in this case

it relates to refusal to give a lawyer) the Court should not set aside the report if the finding of the enquiry officer prima facie makes out a case of

misdemeanour and where the failure to appoint a legal practitioner has not deflected the course of justice.

75. Respondent''s counsel has relied on the? following observation of the Supreme Court in the case of State of Orissa Vs. Bidyabhushan

Mohapatra, .

...When the findings of the Tribunal relating to the two out of five heads of the first charge and the second charge was found not liable to be

interfered with by the High Court and those findings established that the respondent was prim a facie guilty of grave delinquency, in our view the

High Court had no power to direct the Governor of Orissa to reconsider the order of dismissal..... If the High Court is satisfied that if some but

not all the findings of the Tribunal were not "unassailable" the order of the Governor on whose powers by the rules no restrictions in determining

the appropriate punishment are placed was final and the High Court has no jurisdiction to direct the Governor to review the penalty....

76. Respondent"s counsel further relied on the following observations of the Supreme Court in the case of State of Uttar Pradesh Vs. Om Prakash

Gupta, .

We are in agreement with the Trial Court that the first charge levelled against the respondent is conclusively established. In respect of that charge

apart from any other evidence, we have the admission made by the respondent himself in the written state merit filed in reply to the charges levelled

against him.

* * * *

The gravity of the affence of the respondent under the first charge is such us to merit his dismissal from service. As observed by the Court in State

of Orissa Vs. Bidyabhushan Mohapatra, that if the order of the Government can be supported on any finding as to substantial misdemeanour for

which punishment imposed can be lawfully imposed, it is not for the Court to consider whether that ground alone would have weighed with the

authority dismissing the public servant.

77. The two cases cited above are distinguishable on fact. The above observations of the Supreme Court show that if there were several charges

and one of the charges was conclusively established and on the basis of the same the dismissal was justified, the Court would not interfere even if

other charges are not established at all. That is not the position in the instant case. In the instant case there is only one charge and the said charge as

stated hereinbefore has not been established. No evidence has been adduced to link Vaswani with the alleged offence. Mr. Banerjee has failed to

show us how the charge in the charge-sheet alleging delivery of the 2 suit-cases by the appellant could be proved on the basis of the inventories

made of 2 boxes and one case. In this connection reference may be made to what has been stated with regard to the question of perversity of the

Enquiry Report.

78. Mr. Banerjee also contended that it is the discretion of the disciplinary authority to allow the assistance of a lawyer and such discretion has

been properly exercised as has been held by the learned Judge. Even assuming that there is a discretion of the disciplinary authority to refuse the

help of a lawyer, such discretion must be judicially exercised because the proceedings are quasi judicial. The disciplinary authority refused the help

or assistance of a lawyer without considering it objectively. The Collector of Customs wrote

...Shri Vaswani is further informed having regard to the circumstances of the case it is felt not necessary that he should be assisted by a legal

counsel at the enquiry....

79. We have not been able to find out what are the circumstances considered by the Collector in refusing Vaswani the assistance of a lawyer. In

the written statement it is stated that the plaintiff was not allowed the assistance of a legal practitioner as the presenting officers on behalf of the

department were themselves not legal practitioners. However, the respondent did not deny that the presenting officers were trained police

prosecutors. We are, therefore, unable to accept the contention raised on behalf of the respondents. In our opinion the principles laid down in the

case of Biswanath Mukherjee (supra) are equally applicable in the facts and circumstances of the case.

80. In the aforesaid view of the matter we are of the opinion that there has been a violation of Rule 15(5) of 1957 Rules which rules are mandatory

thereby depriving the appellant of the reasonable opportunity to defend himself as guaranteed by the Article 311(2) of the Constitution. The

principles laid down in the case of Biswanath Mukherjee, in our view, fully apply to this case. For reasons stated hereinbefore we answer this issue

in favour of the appellant.

81. Issue No. 3 relates to the appellant''s allegation that the documents and records were not made available for the purpose of his inspection and

not produced at the inquiry. By reason of such failure the appellant was prejudiced and handicapped and this resulted in failure of justice. It is the

case of the appellant that the documents listed in his final written defence statement dated 14th December, 1964 submitted to the Inquiry Officer

were either not made available to him or were not given inspection of. In annexure being ''D'' to the said written statement of defence, there were

about 20 documents. According to the learned Trial Judge, the said documents were ultimately withheld (p.229 of Vol.1). The learned Judge has

observed that the question which has to be determined is whether in fact relevant documents were withheld in this case. In the opinion of the

learned Judge the appellant had failed to establish that any relevant document had been so withheld. Accordingly the issue was answered in the

negative and against the appellant.

82. Counsel for the appellant has contended that the learned Trial Judge had failed to take into consideration the relevant facts and circumstances

in coming to his conclusion on this issue. Further, the assumption of the learned Judge Js not factually correct. Our attention was drawn to the facts

relating to the withholding of the documents item wise by the learned Counsel.

83. Item No. 1 is the report of making over and taking over of the charge of the seizure shed signed by the appellant''s predecessor in office. The

Collector had stated that the appellant might inspect the report in question if it was available (p.2635 and 2636 of Vol.5). But in subsequent letters

it was stated that the said, documents were not traceable (pp.2640 and 2617 of Vol.5). In this connection also see appellant''s evidence (Q.294).

However, according to the learned Judge the said documents were made available for inspection by the appellant. It is not clear to us as to how

the said documents which according to the respondents were not traceable could be made available for inspection of the appellant. From the facts

appearing from the record it appears that this report was not made available for appellant''s inspection. According to the appellant, this document

would have shown the irregularities found in the seizure shed and not in the report.

84. Item No. 2 are the bills for 1960-61 submitted through Customs House Inspector showing the charges for making duplicate keys for opening

of locks etc. It is the evidence of the appellant in this Court, which was also noted by the learned Judge, that the. appellant had asked for aforesaid

bills for preparation of duplicate keys to show that there was mismanagement in the sale shed, (appellant''s Q. No. 312).

85. The respondent first stated that the said bills were not relevant without giving any reasons therefor, (p. 2636 Vol.V). However, later on the

respondents stated that the appellant might contact Customs House Inspector for the aforesaid bills. (Vol.V p.2637). When the said bills were not

made available for appellant''s inspection, he again demanded the same but the Collector stated that the said bills were not relevant (p.2640

Vol.V). The learned Trial fudge, however, came to the conclusion that inspection of the said bills was allowed to the appellant when as a matter of

fact as stated above the said bills were withheld from the appellant on the ground that they were not relevant.

86. Item No. 3 relates to the Registers maintained by the Customs House Inspector showing payment of money made by him from day to day for

the years 1960-61. Regarding this item the learned Judge in his judgment has recorded from the evidence that (p.216 to p.217 Vol.1)-the

appellant had asked for the said records relating to the hire of the labourers or coolies to prove that on the 1st September, 1961 no coolies were

hired in the seizure shed and it had been falsely stated by Wali Mohammad Khan that coolies brought the suit-cases from the seizure shed to the

taxi. The appellant''s case was that there were no coolies in the seizure shed on 1st September, 1961 and that the story told by the taxi driver was

false. It appears that this document was not made available to the appellant on the ground that the same was not relevant (Vol.V p.2636). But the

learned Judge came to the conclusion that the appellant was allowed inspection of the said Register (Vol.1 p.229). In this connection it may be

mentioned that the Inquiry Officer in coming to his finding relied on the fact that it is in evidence that two coolies brought two suitcases and one

bundle from inside the seizure shed and loaded them in the taxi. This document, it appears, was relevant for the purpose of establishing the case of

the defence but it was withheld from him on the ground that this was not relevant.

87. Item No. 4 relates to Registers maintained in the sales shed for the year 1960 61. The appellant was not allowed inspection of the said

Registers on the ground that the same were not relevant (see Vol.5, pp.2635-2636, 2639 and 2617). The learned Trial Judge held that inspection

of the registers was disallowed on the ground that these were not relevant. However, the learned Judge did not go into the question whether

withholding of such documents was proper. It is the evidence of the appellant at the trial (Qs.109, 312 and 313) that sale shed was the source of

the impugned three packages i.e. Box No. 1, Box No. III and Case No. 2 and the most important document with which the appellant wanted to

substantiate his defence were the said registers and records of the shed. The appellant wanted to establish that the packages delivered by ""him to

Dadlani were different from the packages found in the taxi. In this connection see appellant''s answers to question Nos. 341, 416, 418, 420, 421

and 424. Unfortunately, the learned Judge did not advert to the said fact although at the trial various questions were put to Vaswani on this aspect

of the matter. We cannot say on the evidence before us that the respondent authorities were justified in refusing the inspection, of the said registers

to the appellant which was relevant to the appellant''s defence.

88. Item No. 5 was with regard to the adjudication files which the appellant wanted for the purpose of showing that no one accepted the delivery

until and unless he was satisfied that the packages were in sealed condition and were in perfect order. The admitted position appears to be that the

said documents were not made available to the appellant as the same were not traceable. It has not been stated by the respondents what efforts

were made by them to trace out the files. It has not been explained how the adjudication files could be untraceable.

89. Item No. 6 relates to certain files which the appellant wanted for the purpose of showing that the seizure shed Officer was competent to take

inventories of the goods received at the seizure shed and effect deliveries of the packages and in making the inventory and effecting delivery of the

two suit-cases, he followed the same procedure and practice in the seizure shed which was followed by other seizure shed officers who preceded

and succeeded him. But the respondents stated that the appellant would not be permitted to inspect the said files as a number of adjudication files

had already been shown to him. Although the respondents could very well allow or refuse on some ground the inspection thereof, the learned

Judge, however, stated that item No. 6 was not made available to the appellant as this item remained unspecified. The learned Judge also observed

that relevancy of this item to the defence of the appellant was also unestablished. We are unable to agree with the observation made by the learned

fudge. In his application dated 21st September, 1963 (Vol.5 p.2543) to the Inquiry Officer the appellant stated that the purpose of getting those

files was to prove that the seizure shed officer preceding him in office as well as his successors have been taking inventories and making deliveries

in respect of some consignment as well as different consignments. He also reiterated the same in answer to the question Nos. 287 and 388. In our

view it cannot, therefore, be said that the said documents were not relevant and it is very difficult to appreciate as to why the documents were not

made available to the appellant in spite of his repeated requests for the same.

90. Item No. 7 relates to Sales Shed Register containing entries of the packages in question. It is the admitted position that the said register was

not made available to the appellant. The learned judge recorded from the evidence at page 218 Vol.1 that the most important documents were the

sale shed registers which were required to show that the impugned articles were obtained from the sale shed and had been entered there prior to

1st September, 1961. The learned Judge further recorded at page 214 of Vol. I that from the registers of the sale shed which were withheld he

had wanted to prove that the sale shed was the source of the packages on the inventory whereof the charge-sheet was based. In spite of the said

evidence at page 231 the learned Judge observed that the said item still remained unspecified and the relevance of this item to the defence of the

appellant was also unestablished. We fail to see how such conclusion could follow from the earlier observations made by the learned judge on the

basis of evidence on the sale shed registers. The fact remains that the appellant was not given inspection of the said document which certainly

prejudiced him in his defence.

91. Item No. 8 related to relevant records for the period of June, 1961 to September, 1961 with regard to hired labourers and coolies in the

seizure shed. The learned Judge has observed that this item does not appear to have been asked for in earlier stage and it was not made available

to the appellant. However, it appears that in the application made by the appellant on J6th October, 1963 and 18th April, 1964 he mentioned

about the aforesaid documents. This observation of the learned fudge, it appears, was not quite correct. In this connection Counsel for the

respondents submitted that in his letter dated 19th June, 1964 (Vol.5 pp.2592-97) the appellant does not mention about his said two letters. It was

further stated that in answer to Q.351-353 the appellant stated that he did not know if any separate book or register was maintained in hiring of

coolies. Further in his letter dated 8th and 11th May, 1964 (Vol.5 p.2578) it is stated that to the best of his knowledge of the appellant the

documents did not exist.

92. Item Nos. 9, 10, 11, 12, 13, 14, 15, 16 and 17 are documents which the appellant wanted on the basis of the evidence of S.N. Banerjee

before the Inquiry Officer. According to appellant these documents were required by him for the purpose of showing that S.N. Banerjee was not

telling the truth. It was from the evidence of S.N. Banerjee the principal prosecution witness before the Inquiry Officer, the question of production

of these documents arose. The respondents stated that the documents were not available whereas the learned Judge observed that the said

documents were not traceable. Strangely enough it was not stated by the respondents that the said documents were not maintained. What was

stated was that the said documents were not available. If the said documents were maintained and were not produced then it must be held that the

respondents acted illegally in not producing the said documents. The appellant in his evidence admitted that some of the said documents according

lo his own personal knowledge were never maintained and he wanted to show by referring to those documents that the said S.N. Banerjee misled

the Enquiry and gave false evidence. In this connection it should be noted while asking for inspection of the above document the appellant qualified

his statement by the expression "if any". Hence the appellant himself was not sure of the existence of such documents.

93. Item No. 19 relates to reports submitted by S.N. Banerjee, the Preliminary Enquiry Officer and the Departmental Investigation Officer.

According to appellant this document was essential for the purpose of his defence. He wanted to show as to what was the exact place and exact

time and when the alleged taxi was apprehended and the number, description and condition of the packages which were alleged to have been

brought by S.N. Banerjee to the seizure shed. The Collector staled that the statement of S.N. Banerjee to the Police was made available to

Vaswani (p.2365 Vol.V). Vaswani did not want the statement of S.N. Banerjee. What he wanted was the report of S.N. Banerjee to the

Collector of Customs made on 2nd September, 1961. When the appellant asked for the said document it was stated by the Collector that the file

would not be available for his inspection as it contained Investigation Report (p.2640 Vol.V). The report therefore was never made available to the

plaintiff. However, the learned Judge observed that the report submitted by S.N. Banerjee was made available to the appellant. In fact that

statement of S.N. Banerjee was referred to in the charge-sheet (p.230 Vol.1). It is quite clear that the learned Judge did not advert to the facts of

the case. The report was never made available to the appellant. If the report was the basis of the charge sheet then the appellant was entitled to

have a copy of the same. There has been failure of justice in this case in view of that fact that the said report was although in existence was not

given to the appellant. Counsel for the respondent submitted that although by letter dated 11th June, 1962 the appellant asked for the report yet

there was no mention of the report in the letters dated 17th September, 1962 and 19th June, 1964. Further, as the Inquiry Officer did not rely on

the report the appellant was not entitled to the inspection thereof.

94. According to the appellant, the most crucial document which was withheld from him is the Report - submitted by the Special Police

Establishment.

95. The learned Trial Judge in his judgment observed that the report submitted by the Special Police Establishment was not furnished to the

appellant but it was not shown as to how this report helped the appellant"s case. The learned Judge also observed that the Enquiry Officer had not

mentioned that there was any report of the Police Investigation. The learned Judge also observed that it cannot be assumed from the observation of

the Inquiry Officer that he had considered any particular police report which was withheld from the appellant. The learned fudge also stated that

facts relating to and the details of the police investigation were brought out by the plaintiff himself in the cross-examination of A.K. Mukherjee.

Again the learned fudge observed (at pages 245-246) that it is not established by evidence that there was any report of the police investigation and

this report was considered and relied upon by the Inquiry Officer behind the back of the plaintiff.

96. Counsel for the appellant has relied upon the following observation of the Inquiry Officer in his report at page 1712 para 65 of Vol.IV of the

Paper book.

Shri Dadlani was evidently present, but he was not produced before the Enquiry either by the prosecution or by the defence. Shri Vaswani

attributes the blame to the department for not calling Dadlani as witness. Charge is based on the allegation of surreptitious delivery of excess goods

by Vaswani to Dadlani. It is, therefore, reasonable to suspect that Dadlani was an accomplice of Vaswani. In fact it is on record that Shri Vaswani

was found to be an accomplice of Shri Dadlani during the police investigation of the case.

97. According to the appellant''s counsel the above observations support the fact that there was a Report submitted by Special Police

Establishment. From the facts and circumstances of this case it appears that after complaints were made to the Police the matter was investigated

by them and a report was submitted. In this connection we may mention that we asked learned Counsel for the respondents to produce the said

report submitted by the Special Police Establishment for perusal of this Court. Although he agreed to produce the said report the said report was

not however made available for our perusal. This was a very important document in so far as the appellant was concerned and had this document

been produced perhaps it would have been possible for us to find out as to whether there was any case at all against the appellant. No evidence

has been given on behalf of the respondents explaining what was the record that was referred to by the Inquiry Officer.

98. From the aforesaid observation it appears to us that the Inquiry Officer relied on the said report and also based his conclusion on the basis of

the said report. It appears that the learned Trial Judge also fell into error in holding that facts relating to police investigation came out from the

cross-examination by Vaswani of A.K. Mukherjee, Inspector. It may however be mentioned in this connection that the Inquiry Officer himself

stated that evidence of Inspector Shri A.K. Mukherjee (Page 1655 Vol.IV, para 30) could not be relied on. A.K. Mukherjee, Inspector Special

Police Establishment conducted the investigation in regard to the allegation brought against Vaswani. He was produced as prosecution witness by

the department. According to the Enquiry Officer this is not in consonance with the principle of natural justice. The Inquiry Officer, therefore,

expunged the entire oral evidence of A.K. Mukherjee and stated that he would not place any reliance on his evidence while recording his findings.

It is, therefore, quite clear that there was evidence of A.K. Mukherjee but it became nonest. On the facts and in the circumstances of the case, in

our view, the refusal to allow inspection of the record or the report of the Special Police Establishment which was referred to and relied on by the

Inquiry Officer would amount to violation of the principles of natural justice. The Enquiry Officer held Vaswani to be an accomplice of Dadlani on

the basis of the said record or report without giving him any opportunity to controvert the same. It is therefore evident that the mind of the Inquiring

Officer was influenced by the said record or report which ultimately held Vaswani guilty of the charge. We are, therefore, unable to accept the

conclusion of the learned Judge on this point.

99. In this connection it should also be noted that the appellant in the Trial Court in answer to questions 98 to 119 stated that the documents and

records required for substantiating his defence were not made available to him by the Collector of Customs or the Inquiry Officer for his

inspection. He also stated that most of the documents were relevant material and essential for his defence which were not given access to him and

not produced at the enquiry. The said evidence of the appellant has not been controverted by or on behalf of the respondents.

100. Counsel for the appellant further submitted that inspection of the packages of which inventories were drawn by the Customs Authorities on

1st September, 1961 was not given to the appellant. In reply to various applications made by the appellant, the Collector of Customs in his

Memorandum dated 20th July, 1962 (pp.2635 to 2636 Vol.V) stated that the appellant might inspect the packages with Seizure Shed Officer in

the presence of Chief Inspector and Customs House Inspector. Since inspection was not given to the appellant of the said packages, he again

wrote to the Collector and the Collector by his letter dated 6th November, 1962 (p.2537 Vol.V) stated that the appellant might see the Seizure

Shed Officer for the purpose of inspection of the packages connected with the case of Dadlani. According to Counsel the packages were never

shown to the appellant. In this connection Counsel has referred to certain answers of the appellant in his evidence. It was pointed out that in reply

to question Nos. 17 to 19 of the Court the appellant stated that he never saw the two suit-cases which he had delivered to the representative of the

passenger any more after the said delivery. He also stated that there was no identification of the packages. In reply to question No. 16 he also

stated that the inventories were taken of 3 packages being Box I and III which were metal boxes commonly known as Trunk with black colour

and one wooden packing case being case No. 3 According to Counsel the aforesaid evidence given by the appellant in this Court has not been

controverted by the respondents. It therefore appears that the inspection of the packages which was very vital in this case as the appellant was

sought to be charged with some offence with regard to the said packages had not been given to him. The Enquiry Officer had sought to link the

appellant with the offence without first linking the said two suit-cases delivered by the appellant with the three packages being Box No. I, Box No.

III and Case No. 3. It is not known as to why the said packages were not exhibited by the department before the Enquiry Officer or in this Court.

The above, in our view, has vitiated the enquiry proceedings.

101. On the legal aspect of the matter reliance was placed by the respondents Counsel on the judgment of the Supreme Court - reported in AIR

1961 SC 1623 State of Madhya Pradesh v. Chintamani Sudashiva Waishampavan Krishna Chandra Tandon Vs. The Union of India (UOI), :

Krishna Chandra v. Union of India Dr. Tribhuwan Nath Vs. The State of Bihar and Another, Dr. Tribhuwan Nath v. State of Bihar. The cases

reported in AIR 1961 SC 1623 and Dr. Tribhuwan Nath Vs. The State of Bihar and Another, were considered by the Division Bench of this

Court in paras 58 and 59 at pages 297 and 298 of Biswanath Mukherjee''s case (supra).

102. In Chintamani Sadashiva''s case AIR 1961 SC 1623 the Supreme Court observed as follows (Para 10):

Mr. Khaskalam has strenuously contended before us that in not supplying the copies of the documents asked for by the respondent the Enquiry

Officer was merely exercising his discretion, and as such it was not open to the High Court to consider the propriety or the validity of his decision.

In support of this argument he has referred us to the decision of the Patna High Court in Dr. Tribhuwan Nath Vs. The State of Bihar and Another, .

In that case the public officer wanted to have a copy of the report made by the anti-corruption department as a result of a confidential enquiry

made by it against the said officer and the Enquiry Officer had rejected his prayer. When it was urged before the High Court that the failure to

supply the copy of the said report constituted a serious infirmity in the enquiry and amounted thereby to a denial of a reasonable opportunity to the

Public Officer, the High Court repelled the argument and held that the Officer was not entitled to a copy of the report unless that report formed

part of the evidence before the Enquiry Commissioner and was relied upon by him.''When however, the report was not at all exhibited in the case,

nor was it referred to, nor relied upon by the Commissioner, said the High Court, there was no meaning in contesting it, and consequently absence

of opportunity to meet its contents involved no violation of constitutional provisions. In our opinion, this decision cannot assist the appellant''s case

because as we have already pointed out, the documents which the respondent wanted in the present case were relevant and would have been of

invaluable assistance to him in making his defence and cross-examining the witnesses who gave evidence against him. It cannot be denied that

when an order of dismissal passed against a public servant is challenged by him by a petition filed in the High Court under Article 226 it is for the

High Court to consider whether the Constitutional requirements of Article 311(2) have been satisfied or not. In such case it would be idle to

contend that the infirmities on which the Public Officer relies flow from the exercise of discretion vested in the Enquiry Officer. The enquiry officer

may have acted bona fides but that does not mean that the discretionary orders passed by him are final and conclusive.

103. In the present case inspection of some documents as stated herein before was not allowed by the Collector of Customs. It appears that the

Enquiry Officer acted as a Post Office only. The discretion vested on the Enquiry Officer and/or the Disciplinary Authority it appears to us was not

exercised properly. Merely saying that the documents were not relevant without giving reasons therefore would not serve the ends of justice. We

may point out that the point urged by the respondent''s Counsel is now fully concluded by the decision of this Court in the case of Biswanath

Mukherjee (supra) where this Court followed the Judgment of the Supreme Court in the case of trilok Nath v. Union of India and at page 296 of

1974 Cat. L.J. referred to the following observations of the Supreme Court:

Therefore, in our view, the failure of the Enquiry Officer to furnish the appellant with copies of the documents such as the First Information Report

and the statements recorded at the Shidipura House during investigation must be held to have caused prejudice to the appellant in making his

defence at the enquiry. The enquiry held must, in these circumstances, be regarded as one in violation not only of Rule 55 but also of Article 31(2).

104. In Biswanath Mukherjee''s case, this Court came to the conclusion that in view of the decision of the Supreme Court in Trilok Nath''s case,

non-production of 3 documents in that case was considered to be a violation of the principles of natural justice which had deprived the delinquent

officer of reasonable opportunity to defend himself as guaranteed under Article 311(2). We would like to mention here in this connection that in the

case of Biswanath Mukherjee the documents which had been withheld from the delinquent officer, inter alia, included Preliminary Report, First

Information Report and Investigation Report.

105. We may also observe that the contention of the learned Counsel for respondents cannot he accepted. As staled hereinbefore the Enquiry

Officer relied on the documents viz. the Police Investigation Report in coining to his conclusion and the inspection of the said document was not

given to the delinquent officer. That apart no reason had been stated for withholding the documents or for holding that the documents were

irrelevant. We may also point out that our attention was drawn by appellant''s counsel to the Circular of the Government at page 2631 Vol. 5

which lays clown that it is obligatory on the part of the department to allow all the documents asked for by the delinquent officer, although the

relevancy of such documents may not be very clear to the disciplinary authority. It appears that the aforesaid circular was issued alter the judgment

of the Supreme Court in Trilok Nath case.

106. The other case which was relied on by Mr. Banerjee is Krishna Chandra Tandon Vs. The Union of India (UOI), . The Supreme Court in that

case at para 16 page 1593 (of AIR) observed as follows:

It was first contended that inspection of relevant record and copies of documents were not granted to him. The High Court has dealt with this

matter and found that there was no substance in the complaint. All that Mr. Hardy was able to point out to us was that the reports received by the

Commissioner of Income Tax from his departmental subordinates before the Charge Sheet was served on the appellant had not been made

available to the appellant. It appears that on complaints being received about his work the Commissioner of Income Tax has asked the Inspecting

Assistant Commissioner Shri R.N. Srivastava to make a report. He made a report. It is obvious that the appellant was not entitled to a copy of the

report made by Mr. Srivastava or any other officer unless the Enquiry Officer relied on these reports. It is very necessary for the authority which

orders an enquiry to be satisfied that there are prima facie grounds for holding a disciplinary enquiry and therefore, before he makes up his mind he

will either himself investigate or direct his subordinates to investigate in the matter and it is only after he receives the result of these investigations

that he can decide as to whether disciplinary action is called for or not. Therefore, these documents of the nature of inter-departmental

communication between officers preliminary to the holding of enquiry have really no importance unless the Enquiry Officer wants to rely on them

for his conclusion. In that case it would only be right that copies of the same would be given to the delinquent.

107. In the instant case the learned judge held at page 230 Vol.1 that the preliminary Investigation Report being Item No. 19 was referred to in the

charge-sheet itself and was made available to the appellant. As stated earlier the said document was not made available to the appellant. As stated

earlier only the statement of S.N. Banerji to Police which was referred to in the charge-sheet was shown to the appellant. That apart Item No. 20

being the Police Investigation Report was relied on by the Enquiry Officer and the said document was also withheld by the department. In our

opinion on the basis of the ratio of the said judgment of the Supreme Court, as stated hereinabove the appellant is entitled to succeed.

108. Counsel for the respondents submitted that documents Nos. 2 and 3 are irrelevant to the charge-sheet. Document No. 2 was bills for 1960

and 1961 for making duplicate keys and document No. 3 is the Register maintained showing payment of money for the years 1960 61. The

question of relevancy of these documents and why inspection thereof was asked for have been dealt with earlier. In view of the aforesaid circular

as mentioned earlier it was not open to the department to say that these documents were not relevant to the charge-sheet.

109. It was also the submission of the Counsel for the respondents that all the relevant documents which are available have been supplied whether

they were required for cross-examination or not. This submission is not factually correct, as we have already noted earlier that inspection of various

documents had not been given to the delinquent officer. It was the contention of the respondents'' counsel that the only document No. 5 which is a

register maintained in the Sale Shed was withheld on the ground that it was not relevant. It was further contended that the said document was not

supplied on the ground of irrelevancy. The delinquent officer must show that the same is really relevant and/or the Enquiry Officer has relied upon it

or made use of it. This contention of the respondents'' Counsel does not appear to be correct. The said Register was asked for to substantiate the

defence that the impugned packages and the articles therein had their source in the Sale Shed. The learned Trial Judge recorded at page 214 of

Vol.1 that appellant''s case was that the said document was the most important document which was withheld and by which the appellant wanted

to prove his case that the Sale Shed was the source of the 3 packages on the inventory whereof the charge-sheet was based. The decision of the

Supreme Court in the case of State of Uttar Pradesh Vs. Om Prakash Gupta, cited on behalf of the respondents does not appear to us to have any

bearing on this issue. That case was concerned with the statements of the witnesses taken at the preliminary stage. In para 12 at page 684 (of AIR)

of the report the Supreme Court observed as follows:

This Court has repeatedly laid down that the statements of the witnesses taken at the preliminary stage of the enquiry that were used at the time of

formal enquiry does not vitiate the enquiry if those statements were made available to the delinquent officer and he was given opportunity to cross-

examine the witnesses in respect of these statements. In the instant case no complaint was made in regard to the statements of the witnesses taken

at the stage of preliminary enquiry. Complaint was made about Police Investigation Report which was withheld as stated hereinbefore.

110. It has also been contended on behalf of the respondents that the Enquiry Officer has discretion under Rule 15(3) of the Central Civil Services

(Classification, Control & Appeal) Rules 1957 to refuse permission as the appellant had not been able to establish relevancy of such documents.

Rule 15(3) of the said Rule states as follows:

The Government servant shall, for the purpose of preparing his defence, be permitted to inspect and take extracts from such official records as he

may specify provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the disciplinary authority such

records are not relevant for the purpose or it is against the public interest to allow him access thereto.

111. In this case we do not find that the Disciplinary Authority or the Enquiry Officer gave any reason for withholding the documents asked for by

the delinquent except stating that they were irrelevant. Under Rule 15(3) for refusal of the permission, reasons have to be recorded in writing.

Further, Rule 15(3) is applicable to the stage before filing of the statement of defence. In the case of Biswanath Mukherjee this Court has held at

pages 298-299 of 1974 Cal L.J. on the similar facts that by reason of non-production of the documents there has been violation of the principles

of natural justice which has deprived the delinquent officer of the reasonable opportunity to defend himself as guaranteed by Article 311(2) of the

Constitution. The power to refuse access to official records should however be used by recording in writing the reasons for such refusal and not by

merely stating that the same is irrelevant as has been done in this case.

112. In aforesaid view of the matter we are of the opinion that in the instant case the Enquiry Proceedings have been vitiated because of the refusal

of the disciplinary authority and/or the Enquiry Officer to give access to the documents to the appellant which were relevant to his defence. Hence

this issue is answered in the affirmative and in favour of the appellant.

113. The Issue No. 4 relates to the bias of the Enquiry Officer against the appellant in the enquiry. It has been pointed out by the Counsel for the

appellant that in the letters dated 19th June, 1964 (page 2593 Vol.V) 3rd October, 1964 (page 2598 Vol.V) and 14th December, 1964 (page

1566 Vol. IV) addressed to the authorities concerned and the Enquiry Officer the appellant stated that he had misgivings in his mind that the

Enquiry Officer might take some prejudicial action against him as was personally expressed by the Enquiry Officer on 17th June, 1964 when the

delinquent officer got the impression that the Enquiry Officer was determined to give adverse findings in this case. The Enquiry Officer as has been

complained by the appellant in the said letters had said to him during the enquiry that the delinquent officer would have to approach the higher

authorities for redress of his grievances. The learned Judge has held that the allegations made in the complaint are not supported by

contemporaneous documents. On the basis of the various letters and documents it has been contended by the appellant"s counsel that the bias of

the Enquiry Officer is manifest on records and no one has given any evidence on behalf of the respondents to controvert the statement contained in

the aforesaid letters. It was submitted that the learned Trial Judge completely failed to appreciate the facts and circumstances of the case, and

particularly the letter dated 3rd October, 1964 (pages 2598-2600 Vol.V) wherein the appellant had placed on record that the Enquiry Officer was

determined to give adverse findings in this case.

114. Counsel for the respondents has submitted that the said remark about going to higher authority was made in connection with the proceedings,

i.e., inspection of documents which could not be found, expunging of statements from evidence etc. Counsel further sought to argue this question as

a legal issue. He submitted that the Enquiry Officer had no personal, pecuniary and official bias which would be evident on a reading of the Enquiry

Officer"s report.

115. It appears that no reply was given to the appellant"s said letters containing allegation of bias against the Enquiry Officer. No explanation has

been given as to why the Enquiry Officer did not reply to any of the letters wherein the appellant recorded the fact about his making up of his mind

and the injustice which was meted to him. On this aspect of the matter nothing has been said in the enquiry report. It may also be mentioned that

the appellant protested against the appointment of the Enquiry Officer. In the enquiry proceedings the way the Enquiry Officer was putting or

allowed to be put loading questions to some of the witnesses and his refusal to allow the appellant to put questions to S.N. Banerji give us the

impression that the Enquiry Officer was with the prosecution and was not acting independently. The evidence of the appellant in this Court also

remains uncontroverted. In cross-examination in question 519 the appellant stated emphatically that whatever he had stated in his aforesaid three

letters were correct and if his allegations were not correct then the Enquiry Officer would have certainly refuted the same. No contrary evidence

has been given on behalf of the respondent to contradict the said allegations. In that view of the matter we are therefore unable to agree with the

conclusion of the learned Judge that the appellant has failed to support his allegations of bias. In the premises we are to hold that this issue should

be answered in the affirmative and in favour of the appellant. As we have taken the view with regard to the existence of factual bias of the Enquiry

Officer, it is not necessary for us to discuss the cases cited by the respondent"s Counsel on the question of pecuniary, personal or official bias.

116. The next Issue, i.e., Issue No. 5 relates to the leading questions put to the witnesses of the prosecution at the enquiry. The learned Judge after

setting out the various questions which according to the appellant were leading questions held that it did not appear to him that the questions put

were particularly objectionable or caused any prejudice to the appellant. The learned Judge also stated that the appellant did not raise any

contemporaneous protest. A few questions which were alleged to be leading could not be held to have vitiated the entire enquiry. The appellant

has not been seriously prejudiced nor there has been any gross failure of justice (pages 236-37 of Vol.1).

117. Appellant''s Counsel has brought to our attention various letters and applications which are included in Volume V of the paper book wherein

the delinquent officer had protested with regard to the manner in which the enquiry was being conducted and leading questions were put to the

prosecution witnesses being adverse to the interest of the delinquent officer. Some of such applications are dated 6th November, 1963 (V.

Sp.2499), 29th February, 1964 (V. Sp.2514), 13/16th March, 1964 (V. Sp.2570). According to Counsel, the following few illustrations would

show how the leading questions were put and how that affected the defence of the appellant. After the cross-examination of the prosecution

witnesses was over the Enquiry Officer put the following questions:

Q.I: Mr. Montgomery, please look into Exhibit No. 6 very carefully and say whether the inventory was prepared by you after proper and careful

verification of the description quantity and details ...the items?

Similarly, the Presenting Officer also asked the following leading question to Haslam:

Q.7: Did you notice that time, articles, textile and miscellaneous being brought out from the suit-cases and a bundle wrapped with cloth?

To S.N. Srivastava:

Q.7: During our supervision there, did you find that the inventories prepared by Shri Vaswani were not correct and there was much excess goods

detected in the packages seized from the passenger?

118. According to Counsel the appellant was dissatisfied and repeatedly complained to the Enquiry Officer as well as to the Collector of Customs

about the manner in which the enquiry was being conducted, The Collector of Customs by his letter dated 12th December, 1973 (page 2621

Vol.V) directed the Enquiry Officer to ''. conduct the enquiry properly and not to ask leading questions. It shows that the enquiry proceedings

were not properly conducted by the enquiry officer.

119. Counsel for the respondents has contended that it is true that some of the questions put by the Enquiry Officer were leading questions but the

Enquiry Officer like a Judge is entitled to ask question leading or otherwise. It did not seriously prejudice the delinquent officer nor there was any

gross failure of justice. It was submitted that rules of evidence do not apply to departmental proceedings, lie has relied on the Supreme Court''s

judgment in the case of 1967 II L L.J. 715 Employers of the Firestone Tyre and Rubber Co. (P) Ltd. v. Workmen. He wanted to contend on the

basis of the said judgment that the Supreme Court held that leading questions in a departmental proceedings do not vitiate the proceedings and too

much legalism cannot be expected from a domestic enquiry.

120. In 1967 II L.L.J. 715 at page. 719 Supreme Court observed as follows:

No doubt some of the questions appeared to be leading but they were respecting the matter of record and too much legalism cannot be expected

from a domestic enquiry of this character. The Officer asked Subramaniam again and again whether he was defending himself properly or not and

Subramanian in a way expressed his satisfaction.

121. It is true that in this case some leading questions were put to the prosecution witness and upon the appellant''s complaint - Collector of

Customs directed the Enquiry Officer not to ask leading question. But the question to he considered is whether such leading questions complained

of have gone to the root of the matter so as to vitiate the enquiry proceedings. It cannot be said that whenever leading questions are put to

witnesses by the Enquiry Officer that would vitiate the enquiry proceedings. Rules of evidence do not apply to the departmental proceedings.

Further, Enquiry Officer being in the position of a Judge is entitled to ask leading questions to elicit the truth. After considering the submissions of

the parties and going through the records and proceedings of this case it appears to us that the leading questions put to the prosecution witness do

not go to the root of the matter or have vitiated the enquiry proceedings. In the aforesaid view of the matter we accept learned Judge''s answer to

Issue No. 5.

122. The next Issue, i.e., Issue No. 6 relates to the disallowance of relevant questions put by the appellant to the departmental witnesses in cross-

examination. According to the appellant such questions were arbitrarily disallowed. The learned Judge has considered the questions which were

disallowed. The questions were put to W, Haslem, Radhakissan Khemka, S.N. Banerjee, the prosecution witnesses. Learned Judge has also

stated the grounds of disallowance of those questions. The learned Judge held that at the relevant time the appellant only complained about the

disallowance of questions put by him to Khemka and no other witnesses. His Lordship also held that looking at the questions disallowed and the

reasons recorded for such disallowance, it could not be said that such disallowance was entirely unjustified. The learned Judge further held that a

domestic Tribunal was not bound by the rules of evidence and it could not be said that there had been failure of justice.

123. It has been contended by the appellant''s counsel that in various applications made from time to time before the Enquiry Officer and the

Collector the appellant had said that the questions put by the appellant to the departmental witnesses were being disallowed without any basis. The

reasons given therefore are not tenable at all. It has been further argued that all the relevant questions which were asked to find out whether the

witnesses produced by the prosecution were independent witnesses or not, had been disallowed. The said disallowance was made arbitrarily. It is

submitted that from the appellant''s evidence in Court (Qs. I 40-48 and 491-506) it appears that the appellant complained of the disallowance of

the questions put by him and how that affected him. It is in evidence that in his various applications he explained why the questions were very

relevant for his defence.

124. Counsel for the respondent on the other hand contended that the learned Judge rightly came to the conclusion that the appellant was not

prejudiced by the disallowance of the questions. He has further submitted that allegations about disallowance of the questions or not recording of

evidence have been dealt with by the Enquiry Officer in his report (pp. 1687-1692 and pp. 1800-1803 of Vol.IV). According to Counsel, the

questions that have been disallowed have been done so because they were argumentative, repetitive or irrelevant to the charge. The questions

however have been recorded in almost all cases with the exception of one or two cases and simultaneously with the recording of the disallowed

questions the Enquiry Officer has given reasons for such disallowance. Counsel relied on the judgment of the Supreme Court reported in Purohit

and Purohit Vs. Sarva Shramik Sangh and Another, and of this Court in Ujjal Talukdar Vs. Netai Chand Koley, . These cases however, have no

application to the facts of this case inasmuch as the decisions are only concerned with the principles of natural justice. The Supreme Court held that

in the enquiry the rules of natural justice must be observed.

125. It is true that no hard and fast rule can be laid down in the matter of disallowance of the questions put by the delinquent officer to the

prosecution witnesses. Rules of evidence also do not apply in case of departmental proceedings. On this aspect of the case one has to see if

disallowance of the questions by the Enquiry Officer is of such a nature as would go to the root of the matter and thereby would vitiate the enquiry

proceedings. Further, whether disallowance of such questions would amount to violation of the principle of natural justice. Having regard to the

facts and circumstances of this case in its perspective and having gone through the records carefully it cannot be said that by disallowance of the

questions natural justice has been denied to the delinquent officer or that it has vitiated the enquiry proceedings. On this issue we agree with the

findings of the learned Trial Judge and his reasonings for the same.

126. The next issue, i.e.. Issue No. 7 relates to the refusal to record the evidence at the enquiry of Wali Md. Khan, the Taxi Driver, who according

to the appellant was the most important witness for the prosecution. Appellant"s case is that the question and the answer of the said witness in

examination-in-chief were not recorded and those were material and favourable to the defence of the appellant. In his application dated 28th

September. 1963 (Vol.5, p.2551) to the Enquiry Officer on the date when the taxi driver Wali Md. Khan was examined the appellant for the first

time made a grievance that following question and answer of the taxi driver, Wali Md. Khan, was not recorded by the Enquiry Officer.

What did the Sahib do?

The Sahib asked the gentleman to come out of the taxi. The gentleman got out of the taxi. The Sahib then asked the gentleman to open the

packages. The gentleman opened the packages. After the Sahib examined the packages, the gentleman repacked the goods and then he put the

packages back in the packages as ordered by the Sahib. Then the Sahib asked me to go to the godown.

127. It appears that in the cross-examination the appellant asked the same questions to the said witness as follows:

Q.7: What did the Sahib do there at the "Exit Gate" of the Customs House?

Answer: ""The Sahib asked the gentleman what were the goods in the taxi and the gentleman replied there were certain goods. The Sahib asked the

gentleman to take out the packages from the taxi, The gentleman took out the packages. Sahib examined the goods, then he asked the gentleman

to put the goods inside the taxi. Sahib also got into the taxi.

Learned Trial Judge in his judgment observed as follows:

This answer having been recorded in cross-examination it is of little importance whether it was recorded in the examination-in-chief or not. I hold

that there was no failure of justice as alleged by the plaintiff and I answer the issue in the negative and against the plaintiff.

128. Counsel for the appellant has contended that the finding of the learned Judge is not correct. He has referred to the various applications made

by the appellant from time to time with regard to his said complaint. He was also thoroughly examined in this Court and cross-examined on the said

issue. It was further submitted that the fact remains that the learned Judge overlooked the finding of the Enquiry Officer in this regard. At page

1723 Vol.4 the Enquiry Officer commented on the evidence of the said witness, Wali Md. Khan as follows:

I have already recorded my finding that whatever this witness stated in cross-examination was not true.

129. According to appellants Counsel if what the said witness stated in cross-examination was not true then how could the learned Judge come to

the conclusion that there was no failure of justice because what was not recorded in examination-in-chief was recorded in cross-examination.

According to Counsel, after the said Wali Md. Khan replied to the said question put to him in cross-examination by the appellant the Enquiry

Officer put questions again and wanted to nullify the reply elicited from the witness by the appellant in cross-examination. It was also the

submission of the Counsel that the Enquiry Officer recorded the statement of Wali Md. Khan behind the back of the appellant which is evident

from the report of the Enquiry Officer at page 1693 of Vol.4 of the Paper Book. It was also contended by the appellant''s Counsel that in this

Court in reply to the question No. 541 the appellant said no statement of Wali Md. Khan was, ever recorded in his presence and he was not given

any opportunity to cross-examine Wali Md. Khan on the said submission and that was obtained by the Enquiry Officer behind his back. This

evidence of appellant remained uncontroverted.

130. Therefore, according to Counsel, it is clear that the learned Judge has completely ignored the aforesaid facts in arriving at his conclusion that

there was no failure of justice because the question recorded in cross-examination would serve the purpose even though it was not recorded in the

examination-in-chief.

131. Counsel for the respondents supported the finding of the learned Judge on this issue. He has submitted that inasmuch as the question put to

the witness in examination-in-chief which according to. the appellant was not recorded by the Enquiry Officer was put by the appellant in cross-

examination to the witness it could not be said that the appellant suffered any prejudice or there was any failure of justice. It was further submitted

that the Enquiry Officer in his report (Vol.IV pp.1688-1691) has dealt with the question and has given reason why the witness''s answer should not

be believed. It was also the submission of the counsel that the failure to record the question in examination-in-chief cannot affect the ultimate result

specially in view of the fact that the question was put to the witness in cross-examination. In this connection counsel has relied on the cases of

Major U.R. Bhatt v. Union of India 1962 I L.L.J. 656 Dr. Bhool Chand v. Chancellor, Kurukshetra University, (supra) and Ujjal Talukdar Vs.

Netai Chand Koley, . It was further submitted that in State of Haryana and Another Vs. Rattan Singh, , Supreme Court has held that when some

statements of passengers were not recorded that will not vitiate the enquiry.

132. We are unable to accept the contentions of the appellant''s counsel on this issue. As stated earlier that the question in examination-in-chief

which, according to the appellant, was not recorded by the Enquiry Officer was put to the witness by the appellant in cross-examination. The

Enquiry Officer for reasons recorded in his report did not believe the answer of the witness. His reasons may or may not be correct but since we

are not sitting in appeal over the enquiry report it is not open to us to express any view in respect thereof. It further appears from the enquiry report

that the Enquiry Officer read out and explained to the witness the appellant''s said two letters dated 28th September, 1963 and obtained his

answer thereon. From the enquiry report it does not appear that any statement of the witness was recorded behind the back of the appellant. In his

report Vol.IV p. 1693 the Enquiry Officer observed as follows:

I have already explained the circumstances under which I filed as baseless two petitions that were submitted on 28th September, 1963 by Shri

Vaswani after keeping a note vide Annexure ""W"" that Shri Khan denied the allegations contained therein. This note could not, undoubtedly be

regarded as a statement of Shri Khan. I deny having recorded any statement of Shri Khan behind the back and in the absence of Shri Vaswani.

Had I recorded any, the same would have been brought on record.

133. It therefore appears that what was recorded by the Enquiry Officer was a note in respect of the said two applications dated 28th September,

1963 and not any statement of the witness.

134. Considering the facts and circumstances of this case including the enquiry report and for reasons stated above it appears to us that by reason

of non-recording of the question and answer of the witness, Wali Md. Khan as stated in the appellant''s application dated 28th September, 1963

justice was not denied to appellant or that it has in any way vitiated the enquiry report. We, therefore, uphold the finding of the learned Trial Judge

on this issue.

135. The next issue, i.e., Issue No. 8 relates to the appellant''s complaint that by introduction of the extraneous matters viz., stories of coolies who

carried the goods and informer and the information received from such"" informer which did not find place in the charge-sheet or the statement of

allegations, a new case was made out by the prosecution. On this issue learned Trial Judge in his Judgment observed as follows:

The enquiry cannot be held to be vitiated because witnesses spoke about matters not relevant or beyond the charge. The informer and the coolies

were not called to give evidence in support of the prosecution and therefore the plaintiff had no right to cross-examine them. A number of

questions were put by the plaintiff himself to elicit the name of the informer which was for obvious reasons not disclosed. It cannot be said that

statement by witnesses in evidence that they had acted on the basis of information received from an undisclosed informer and that certain coolies

were engaged to shift the goods introduced a new case or has vitiated the proceedings as alleged by the plaintiff. I answer this issue in the negative

and against the plaintiff.

136. It was submitted on behalf of the appellant that apart from the various applications made before the authorities concerned and the Enquiry

Officer the appellant also gave evidence before this Court (questions 169 to 171) where he said that various extraneous matters like informer and

the coolies were mentioned and the informer and the coolies were not produced before the Enquiry Officer for being cross-examined by the

appellant. It has been further submitted that the story of the informer and coolies was made out by the prosecution witnesses. The story of the

coolies was made by Wali Md. Khan. It was, therefore, the duty of the prosecution to produce him. Similarly, the story of the informer was

introduced by Sri S.N. Banerjee, the principal prosecution witness. Counsel has argued that the whole basis of the evidence given by Wali Md.

Khan and Sri S.N. Banerjee depended on whether, as a matter of fact, there were coolies or informer in existence. In the extent the evidence of

the. two prosecution witnesses Wali Md. Khan and Sri S.N. Banerjee was not corroborated by the coolies or the informer. Neither the coolies

nor the informer could have been produced or examined by Vaswani It was the duty of the prosecution to bring those persons whom they

introduced in their evidence.

137. Counsel for the respondents submitted that the fact of the informer was stated by Sri S.N. Banerjee in his evidence (Q.5 Vol.2 p.594) and

appellant cross-examined him about this informer in Q.16 to 18 (Vol.2 p.604). The coolies figured in the evidence of Wali Md. Khan (Q.10-12,

Vol.2 p.580). Questions about the coolies were also asked in cross-examination (See.Q.3 Vol.2 p.587).

138. According to counsel there were two contemporaneous letters written to the Enquiry Officer about the conduct of the enquiry; one is dated

13th March, 1964, when Wali Md. Khan was being examined (Vol.5 p.2569) and the other is dated 13/16th March. 1964 (Vol.5 pp.2570

2573). Although various complaints were made in these letters by the appellant there was no complaint about introduction of any story about any

coolies. Similarly immediately after the examination or evidence of S.N. Banerjee on 21st January. 1964 the appellant addressed a latter dated

22/24th January, 1964 to the Enquiry Officer (Vol.3 p. 2360) about the evidence given by Sri S.N. Banerjee asking that certain portions of his

evidence should be expunged but no reference was made in that letter to the introduction of the informer in his evidence. Further in cross-

examination in Court the appellant has admitted that the seizure shed very rarely hires coolies and he does not know whether a separate book or

register is kept in respect of payment to coolies (Q.344-353 Vol.1 p.110-111).

139. It is the submission of the Counsel that the learned Judge in his judgment on this issue rightly points out that the enquiry cannot be held to be

vitiated because witness spoke about matters not relevant or beyond the charge. The learned Judge held that the fact that the department had

acted on an information or that coolies were engaged to shift the goods did not introduce any new case so as to vitiate the proceedings (Vol.1

p.244). According to Counsel so far as the informer is concerned the department was not bound to produce him. Besides, ample opportunity was

given to test the information so supplied by cross-examination of S.N. Banerjee and other witnesses and certain questions in appellant''s cross-

examination were directed towards that end. The witnesses deposed to the same effect in respect of the information supplied by the informer. So

far as the coolies were concerned, they were not under control of the department nor were they servants of the Government but were hired for the

occasion. If the appellant required them he could have produced them himself and examined them. The Enquiry Officer cannot be made

responsible if the witnesses while giving evidence told about informer or coolies.

140. Relying on the case of Khem Chand Vs. The Union of India (UOI)and Others, it was submitted that so long as the charge is specific and

clear there need not be any reference to the witnesses who are to prove the charge on behalf of the department. The doctrine of reasonable

opportunity does not require that the witnesses who are to prove the charges should be named in the charge or statement of allegations. It is

sufficient if the delinquent officer is told what are the allegations on which the charges are based.

141. We are unable to accept the contentions of the learned Counsel for" the appellant. The question about the informer and the information

supplied by him as also the question of coolies came out of the evidence of the prosecution witnesses viz., S.N. Banerjee and Wali Md. Khan. It

was for the defence to cross-examine the witnesses regarding facts which came out in the evidence and that was done in this case in the enquiry

proceeding. If some persons are mentioned by the witnesses giving evidence but they are not called as witnesses, that would be a ground for

making comment or for drawing adverse inference. It is for the prosecution to decide which witnesses are to be called in support of the charge.

The defence cannot compel the prosecution to call any particular witness. If any witness which, according to defence, should have been called by

the prosecution but has not been called then it is a matter for making comments by the defence. In the facts and circumstances of this case the

mention about informer or of his giving information and of coolies cannot be said to be extraneous matters amounting to making out a new case not

made out in the charge sheet or the statement of allegations. These are matters of evidence for consideration of the Enquiry Officer. In the

aforesaid view of the matter we respectfully agree with the finding of the learned Trial Judge on this issue.

Issue No. 9: The next Issue, i.e., Issue No. 9 relates to the question whether the Enquiry Officer took into consideration and relied upon the report

of the police investigation against the appellant not disclosed at the enquiry. This aspect of this case has already been dealt with under Issue No. 3.

For reasons stated therein we are unable to agree with the finding of the learned Trial Judge on this issue and answer the same in favour of the

appellant.

142. The next Issue, i.e., Issue No. 10(a) relates to the validity of the second show cause notice dated 20th April, 1965, (Vol.IV p. 1749). The

appellant in his plaint has challenged the said notice on the ground that it was issued on a consideration of the findings in the enquiry report but

without considering the records of the enquiry viz., the appellants deposition, final statement of defence, evidence of the departmental witnesses as

well as documentary evidence at the enquiry. It was further alleged that the said notice was issued mechanically without applying the mind and

without observing the procedure laid down by law. It was further alleged that as the Collector has not given reasons for his finding in the said notice

the appellant has been deprived of reasonable opportunity. In the written statement the said allegation were denied. It was stated that the show

cause notice was issued by the Collector after fully applying his mind and considering the records of the enquiry including the statement of defence

and the evidence of the witnesses. Further, it was not necessary for the Collector to give reasons for his finding in the show cause notice.

143. Learned Trial Judge relying on two Supreme Court cases namely, the State of Assam and Another Vs. Bimal Kumar Pandit, and Union of

India (UOI) and Others Vs. K. Rajappa Menon, answered the said issvie against the appellant. According to His Lordship, it cannot be held that

the notice dated 20th April, 1965 was issued without considering the results of the enquiry or without following the procedure laid down by law or

that there was failure of justice as no separate reasons were stated in the notice,

144. It has been contended by the appellant''s counsel that the said show cause notice was issued by the Collector without applying his mind and

without complying with the provision of Rule 15(8) and 15(9) of the Central Civil Services (Classification. Control and Appeal) Rules, 1957, It has

been submitted that in the said show cause notice the disciplinary authority had only mentioned the report of the Enquiry Officer but no mention

was made of the records of the inquiry at all. It is true that in the order of dismissal he had mentioned about the record of inquiry, but according to

Counsel that cannot cure the lacuna which remained in the second show cause notice and which is manifest on the face of it. Rule 15(8) of the said

Rules provides that the records of the inquiry shall include the charge-sheet, written statement of defence, the oral evidence, documentary

evidence, orders of the disciplinary authority and the enquiry authority in regard to the enquiry and the report of the Enquiry Officer. Rule 15(9)

provides that the disciplinary authority shall consider the record of the enquiry and record findings of each charge. The submission of the counsel is

that the disciplinary authority has acted mechanically without applying his mind to the records of enquiry. He only looked into the report of the

Enquiry Officer.

145. Counsel for the respondent on the other hand has submitted that it is evident from the final order of the Collector dismissing the delinquent

Officer that at the time of issuing the second show cause notice records were considered by him. There is no evidence that he has not applied his

mind in this respect. It is not necessary that in the show cause notice he should give reasons for the conclusions he has arrived at. The appellant

does not say in what respects the procedure laid down by law has not been followed. Again, the notice says that the Collector agrees with the

findings and holds that the charge is proved. This again shows that the punishing authority has gone through the records and has considered the

evidence in proof of the charge. There is nothing to show that when the Disciplinary Authority says that ""the charge is proved"", he has not

considered the proof which has gone into it to sustain the charges. According to counsel it is not also necessary to give reasons in the second show

cause notice as to how and why the authority has come to agree with the findings. Counsel has submitted that in the written statement it has been

said that the records were considered. It will also appear from the final order of the Collector (Vol.IV p.2178) that at the time of issuing the

second show cause notice the records were considered by him.

146. According to counsel all that the second show cause notice should do is that it must tentatively or provisionally propose to inflict any of the

three kinds of punishments. The present show cause notice has done this exactly. There is no question of accepting any recommendation of the

enquiry report as to punishment because the present Enquiry Report does not recommend any punishment. Reference was made to the Khem

Chand Vs. The Union of India (UOI)and Others, and State of Bombay (Now State of Gujarat) Vs. Amarsinh Raval, .

147. Relying on the case of State of Assam v. Bimal Kumar (supra) it has been submitted that in the second show cause notice the dismissing

authority should merely indicate its concurrence with conclusions of the Enquiry Officer and that it is not necessary for the dismissing authority to

specify the reasons in support of the findings of the Enquiry Officer. Reference was also made to the case of Union of India (UOI) and Others Vs.

K. Rajappa Menon, . It has been submitted that it is not necessary in the second show cause notice to specify the evidence or the reasons for the

conclusion arrived at nor is it necessary to make a summary of the evidence and furnish the reasons or grounds for arriving at the conclusion it

does. Counsel has also submitted that in Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others, it has been held that where the

disciplinary authority concurs with the findings of the Enquiry Authority it is not even necessary to record its provisional conclusion although that

has been done in the instant case.

148. Before proceeding further we would like to set out the relevant portions of the second show cause notice and the order of dismissal.

Second Show Cause Notice:

Shri A.J. Vaswani, P.O. Gr.I (under suspension), is informed that the Officer appointed to inquire into the charge framed against him has submitted

his report. A copy of the report of the Inquiry Officer is enclosed.

2. On a careful consideration of the report and in particular of the conclusion reached against Shri. A.J. Vaswani, the undersigned agrees with the

findings of the Inquiry Officer and holds that the charge is proved. The undersigned has, therefore, provisionally come to the conclusion that Shri

A.J. Vaswani is not a fit person to be retained in service and that he should be dismissed therefrom. Shri A.J. Vaswani is hereby given an

opportunity of showing cause against the action proposed to be taken. Any representation which he may make in that connection will be

considered by the undersigned. Such representation, if any, should be in writing and submitted so as to reach the undersigned not later than fifteen

days from the date of receipt of this Memorandum by Shri A.J. Vaswani.

Dismissal Order

After conclusion of the enquiry the Inquiry Officer submitted his inquiry report on 6th April, 1965 in which he recorded his findings that the charge

framed against Shri Vaswani was proved.

Thereupon, after having carefully gone through the records of the case and the Inquiry Officer''s report I agreed with the findings of the Inquiry

Officer and held that the charge was proved. I therefore came to the provisional conclusion that Shri A.J. Vaswani was not a fit person to be

retained in service and that he should be dismissed therefrom. Accordingly a second show cause notice was issued under this office memo of even

number dated 20th April, 1965 and he was given, thereunder, an opportunity of showing cause against the action proposed to be taken against

him. Shri Vaswani''s written representation in reply to the 2nd show cause notice was received on 10th June, 1965. Thereafter, he was granted

personal hearing on 29th June, 1965 and 30th June, 1965.

149. Rule 15(8) and 15(9) of the Central Civil Services (Classification, Control and Appeal) Rules 1957 provide as follows:

R. 15(8): The record of the inquiry shall include (i) the charges framed against the Government servant and the statement of allegations furnished to

him under Sub-rule (2);

(ii) his written statement of defence, if any;

(iii) the oral evidence taken in the course of the inquiry;

(iv) the documentary evidence considered in the course of the inquiry;

(v) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry; and

(vi) a report setting out the findings on each charge and the reasons therefor.

(9): The Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the inquiry and record its findings on each charge.

150. Appellant''s main grievance is that before issuing the second show cause notice the Collector as would appear from the said notice only

considered the enquiry report and not the records of the inquiry proceedings. Further, mentioning of ''records'' in the dismissal order cannot cure

the lacuna in the second show cause notice.

151. In the case of State of Assam v. Bimal Kumar, (supra) the Supreme Court has observed that it is no doubt desirable that the dismissing

authority should indicate in the second notice its concurrence with the conclusions of the Enquiry Officer before it issues the notice under Article

311(2) of the Constitution. But the failure to so state expressly in the notice does not necessarily justify the conclusion that the notice given in that

behalf does not afford a reasonable opportunity to the delinquent officer under Article 311(2) and amounts to a contravention of Article 311(2). If

the dismissing authority differs from the findings either wholly or partially, recorded in the enquiry report it is essential that the provisional

conclusions reached by the dismissing authority must be stated in the notice in order to give the delinquent officer a reasonable opportunity to show

cause under Article 311(2). But where the dismissing authority purported to proceed to issue the notice after accepting the enquiry report in its

entirety (as in the instant case) and a copy of the enquiry report was also enclosed along with the notice, it must have been obvious to the

delinquent officer that the findings recorded against him by the enquiring officer had been accepted, and so it would not be reasonable to accept

the view that the civil servant concerned had no reasonable opportunity as required by Article 311(2).

152. In Union of India (UOI) and Others Vs. K. Rajappa Menon, in connection with Rule 1713 of the Railway Servants Conduct and Disciplinary

Rules, which provides that if the disciplinary authority is not the Enquiring Authority it shall consider the record of the enquiry and record its findings

on each charge, the Supreme Court has observed that Rule 1713 does not lay down any particular form or manner in which the disciplinary

authority should record its findings on each charge. All that the Rule requires is that the record of the enquiry should be considered and the

disciplinary authority should proceed to give its findings on each charge. This does not and cannot mean that it is obligatory on the disciplinary

authority to discuss the evidence and the facts and circumstances established at the departmental enquiry in details and write as if it were an order

or a judgment of a judicial tribunal.

153. Where the disciplinary authority after giving consideration to the record of the proceedings of the departmental inquiry agreed with the

findings of the Enquiry Officer that all the charges mentioned in the charge-sheet had been established, it meant that he was affirming the findings on

each charge and that fulfils the requirement of the Rule. The Rule after all has to be read not in a pedantic manner but in a practical and reasonable

way.

154. In the case of Tara Chand Khatori v. Municipal Corporation of Delhi (supra), the Supreme Court has observed that although it may be

necessary for the disciplinary authority to record its provisional conclusions in the notice calling upon the delinquent officer to show cause why the

proposed punishment be not imposed upon him if it differs from the findings arrived at by the enquiring officer with regard to the charge, it is not

obligatory to do so in case the disciplinary authority concurs with the findings of the Enquiring Officer.

155. We are unable to accept the contentions of the appellant. No doubt in the second show cause notice the Collector has stated that upon

consideration of the report and in particular of the conclusion reached against the appellant the Collector agrees with the finding of Inquiry Officer

but in his final order dated 22nd July, 1965 it is stated that the Collector has gone through the records and the report of the Inquiry Officer before

issuing the said notice. Hence there is the statement by the Disciplinary Authority that he has gone through the record before issuing the notice. In

our view, the notice should not be read in an isolated manner but in a reasonable way and along with other relevant documents. The said notice

read in the context of or along with the order makes it amply clear that the Collector before issuing the said notice had gone through the records

and the report of the Inquiry Officer. Further records are mentioned in the inquiry report. In the above view of the matter we are unable to accept

the contentions of the appellant''s counsel and uphold the finding of the learned Trial Judge on this issue.

156. In view of our finding that the enquiry report is vitiated due to perversity and of our findings on Issue Nos. 1, 2, 3, 4 and 9 we have to hold

that the order of dismissal dated 22nd July, 1965 is wrongful and illegal. Therefore, the question remains as to what relief the appellant is entitled

to. In issue No. 12 a question has been raised as to whether the appellant is entitled to damages. Elaborate argument has been advanced by the

Counsel of both sides as to whether damages can be awarded to the Government servant if the dismissal order is struck down. Various decisions

have been cited from the Bar in support of the respective contentions. Because of the view we have taken as to the entitlement of the appellant as

stated hereinafter, it is not necessary for us to go into the questions as to whether the appellant is entitled to damages.'' The appellant was

dismissed from the service on 22nd July 1965 and he retired during the pendency of the proceedings in this Court in December, 1973. It has been

laid down by the Supreme Court in the case of Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh, that if the dismissal of a public

servant is declared invalid by a Civil Court, the public servant would be entitled to all the remuneration which he would have earned had he been

permitted to work. In that case the Supreme Court in para 14 at page 270 observed as follows:

But in this case the order of dismissal was declared invalid in a Civil Suit. The effect of the decree of the Civil Suit was that the appellant was never

deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous. The effect of the adjudication of the Civil

Court is to declare that the appellant had been wrongfully prevented from attending to his duties as a public servant. It would not in such a

contingency be open to the authority to deprive the public servant of the remuneration which he would have earned had he been permitted to

work.

157. Thus, it is evident that in the absence of any specific Rule the Supreme Court held that the person concerned was entitled to all remuneration

which he would have earned had he been permitted to work. A specific Rule has been provided in Fundamental Rules, being Rule 54A(3).

Inasmuch as the appellant has succeeded in the appeal and the suit is now decreed in his favour, we direct that the appellant would be entitled to all

the benefits in terms of Rule 54A(3) of the Fundamental Rules.

158. As the Counsel for the respondent has not pressed the issue with regard to the service of the notice under S. 80 - it is not necessary to

express any view in the matter.

159. So far as the Issue No. 14 is concerned, i.e., whether the Suit is maintainable against the respondent No. 2, that is, Collector of Customs,

Counsel for the appellant has not seriously disputed the fact that in such a Suit against Union of India, the Collector cannot be imploded as

defendant. We therefore, answer the issue against the appellant.

160. We hold that the order of dismissal dated 22nd July, 1965 is invalid. The appellant is thus never deemed to have been lawfully dismissed from

service. The appeal is therefore allowed. Since the appellant was wrongfully prevented from discharging his duties as a public-servant, he will be

entitled to all the benefits and payments in terms of Rule 54A(3) of the Fundamental Rules against the respondent No. 1. The appellant will be

entitled to the costs of this appeal as well as the costs of the suit against the respondent No. 1

S.C. Ghose, C.J.

161. I agree.