IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (L) No.2032 of 2005

Rajmuni Bhuinya S/o Late Bhaglu Bhuinya of Kankani Colliery, Hanuman Bazar P.O. Bansjora, P.S. Loyabad, District-Dhanbad, Jharkhand …… Petitioner

Versus

1.Employers in relation to the Management of Sijua Area of M/s Bharat Coking Coal Ltd., Sijua Area, P.O. Sijua District Dhanbad.

2. M/s Bharat Coking Coal Limited having its office at Koyala Nagar, Koyala Bhavan, P.O-Saraidhela, District Dhanbad.

……. Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Petitioner : Mr. Birendra Kumar, Advocate
For the Respondents : Mr. Anoop Kumar Mehta, Advocate
: Mr. Pratyush, Advocate

CAV Judgment **Pronounced on:21.08.2025**

This writ petition has been filed on behalf of the petitioner for issuance of appropriate writ in the nature of certiorari for quashing the Award passed on 19.02.2003 by the Central Government Industrial Tribunal No.2 at Dhanbad in Reference No.128 of 1995 by which the Reference has been answered in favour of the respondent and further for issuance of other appropriate writ/writs, order/orders, direction/directions.

2. The Schedule of the Reference before the learned Court below was as follows:-

> "Whether the action of the management of Kankanee Colliery under Sijua Area No.V of M/s. BCCL in dismissing Sri Rajmuni Bhuia from service w.e.f. 22.05.92 is justified ? If not, to what relief Shri Bhuia is entitled ?"

3. Heard Mr. Birendra Kumar, learned counsel for the petitioner and Mr. Anoop Kumar Mehta, learned counsel for the respondents-BCCL.

4. Learned counsel for the petitioner submitted that the impugned Award dated 19.02.2003 passed by the learned Central Government Industrial Tribunal No.2 at Dhanbad (in short 'C.G.I.T-2, Dhanbad') in Reference No.128 of 1995 is illegal, arbitrary and not sustainable in the eye of law. It is submitted that the learned Tribunal committed grave illegality by passing the Award in favour of the Management-Respondent and has answered the Award in negative against the petitioner. It is submitted that the learned Tribunal had mainly relied upon the preliminary hearing which was made on the issue for the domestic enquiry held against the concerned workman was unfair. The learned Tribunal relied on the submission made by the counsel of the workman at the stage of preliminary hearing that the counsel will not raise any question with regard to legality, propriety and fairness of the domestic enquiry.

5. It is submitted that the learned Tribunal has committed error by observing that the concession of the lawyer will prevail over the cause of the issue involved in the Industrial dispute. It is further submitted that the concession, of lawyer, can give any benefit to the Management particularly in a situation when the Industrial law is a beneficiary legislation and interest of the workman has to be looked into. It is submitted that the learned Tribunal ought to have found that during domestic enquiry the petitioner neither had been given reasonable opportunity nor document to defend his case and the preliminary hearing and decision of the Tribunal cannot finally prevent the workman for

highlighting the illegality in preliminary enquiry at the time of final conclusion of the reference proceeding.

6. It is submitted that the petitioner-workman was acquitted on 23.09.1995 in the criminal case instituted under Sections 379 and 411 of the IPC by the learned Judicial Magistrate, Ist Class, Dhanbad. However, the learned Tribunal failed to consider the effect of document W-1 in which he had been acquitted. It is submitted that the harsh and disproportionate punishment has been given to the petitioner. It is submitted that this is a case of alleged recovery of only one piece of Copper Wire measuring around 7 feet along with fire wood and for which a criminal case was instituted against the petitioner and in the said criminal case the workman was acquitted by the learned Judicial Magistrate, Ist Class, Dhanbad, vide Exhibit W-1. Therefore, the Award passed by the learned Tribunal is illegal and is fit to be set aside and the workman will be entitled to the relief with all the consequential benefits.

7. Learned counsel for the petitioner in support of his contention, has relied upon the judgments which are as follows:-

(i) (2012) 5 AD (Delhi) 691 (Sudesh Yadav vs. Oberoi Flight Services

8. On the other hand, learned counsel for the Management-Respondent submitted that the impugned Award passed by the learned Presiding Officer i.e. Central Government Industrial Tribunal No.2 at Dhanbad against the petitioner-workman is fit and proper and no interference is required from this Court. It is submitted that no illegality has been committed by the learned Tribunal while answering the Reference in favour of the Management. It is submitted that the Award of the Tribunal is based upon the finding of facts and this Court in exercise of its

extraordinary writ jurisdiction under Article 226 of the Constitution of India need not interfere with the finding of facts.

9. It is submitted that the learned Tribunal while upholding the order of dismissal of the concerned workman Sri Rajmuni Bhuiya with effect from 22.05.1992 has recorded cogent reasons. The Tribunal was fully satisfied that the enquiry was in accordance with the principles of natural justice. Even the preliminary issue raised by the Union regarding the fairness and propriety of the domestic enquiry was conceded and this issue was not pressed by the Union. Accordingly, the Tribunal has recorded in its finding that the domestic enquiry was fair and proper. It is submitted that the petitioner has miserably failed to demonstrate before this Court that the findings recorded by the Tribunal are based on error of fact, error of record or the Award is perverse. In absence of any such error, this Court may not interfere with the Award of the Tribunal. It is well settled principle of law that even if a person has been acquitted in a criminal case, it would not mean that the same person should be exonerated from the charges framed against him in departmental proceeding. It is submitted that the workman was dismissed from service on 22.05.1992 after holding a regular departmental enquiry. It is submitted that after more than three (03) years, the workman had been acquitted by the criminal court. It is submitted that neither before the domestic enquiry nor before the Tribunal, the petitioner had brought on record any material to show that the workman had been acquitted in the criminal case before being found guilty departmentally.

The petitioner has neither stated as to whether the concerned workman was acquitted before the finding of guilt was recorded by the Disciplinary Authority and an order of

dismissal was passed. It is also not clear that as to whether at the time of dismissal from service on 22.05.1992, the workman produced a copy of the judgment passed in the criminal case while leading evidence in defence from his side.

10. It is submitted that the petitioner has nothing brought before this Court regarding the order passed by the criminal court of acquitting the petitioner. It is denied that Award of the Tribunal is perverse. No finding has been recorded by the Tribunal that the findings recorded by the Enquiry Officer leading to dismissal of the concerned workman were perverse. The petitioner has miserably failed to demonstrate as to which fact have not been taken into account by the Tribunal. It is submitted that the Tribunal while upholding the order of dismissal, has taken into account the materials on record. It is submitted that it is an admitted fact that the domestic enquiry was found fair and proper by the learned Tribunal while passing the impugned Award. Once the domestic enquiry is found fair and proper then the Tribunal had to decide the issue only on the basis of quantum of punishment and the Tribunal has also concurred with the view of the disciplinary authority after submission of the enquiry report. In support of his contention, learned counsel for the Respondents has relied upon the judgment reported in ***2005 Lab IC 986 Jh (DB)*** *(Management of M/s Usha Breco and another vs. Presiding Officer, Labour Court, Jamshedpur and others****).***

11. It is submitted that Exhibit-ME-4 reveals that the workman was caught red handed while he was carrying the Copper Wire of seven (07) feet length in measurement. It is submitted that documents marked as ME-5 and ME-6 are the statement of B.K. Singh and Chintamani which clearly show that the petitioner was

caught for stealing the Copper Wire. It is submitted that the punishment order was passed on 22.05.1992 whereas the petitioner was acquitted in criminal case on 23.09.1995 i.e. much after the passing of the dismissal order passed by the Management Company-Respondent. It is submitted that the Exhibit-W1 i.e. the judgment passed by the Criminal Court was not binding upon the Management as well as the Tribunal as the workman had already been dismissed from his service on 22.05.1992 itself.

12. It is submitted that this Court cannot interfere with the finding of facts recorded by the Disciplinary Authority after the conclusion of the departmental proceeding against the workman-petitioner and also the impugned Award passed by the learned Tribunal i.e. C.G.I.T-2, Dhanbad.

13. In support of his contention, learned counsel for the respondents has relied upon the judgment reported in :

(i) (2014) 7 SCC 177 (para-20)

(ii) (2015) 4 SCC 270

Hence, in view of the above, this writ petition may be dismissed.

14. Perused the records of this writ petition, counter affidavit filed by the Respondents-Management Company and the records of the learned Tribunal and considered the submission of both the sides.

15. It appears that the petitioner was a workman who was working in the office of the Respondent as P/GM/Loader and was permanent employee of Kankani Colliery under Sijua Area No.6 of M/s B.C.C.L.

16. It has been alleged that the petitioner on 30.01.1990 while completing his first shift duty, came out of his mines then it was

detected that he was carrying a Gunibag and when he was intercepted by security it was found that the Guni bag contained a Copper Cable of 7 feet along with some rejected fire woods price of which was said to be Rs.600/-. It has also been indicated in the chargesheet that he had been arrested in connection with aforesaid act for offence under section 379 and 411 of the IPC.

17. It appears that the charge sheet had been issued on the ground of same set of charges and identical facts which was narrated in the FIR. It is submitted that the departmental enquiry was conducted and on the basis of enquiry report submitted by the Enquiry Officer the petitioner had been dismissed from the service with effect from 22.05.1992.

18. Thereafter the petitioner had denied the charges and had raised the Industrial Dispute and after failure of reconciliation a Reference was made to the C.G.I.T No.2, Dhanbad by the Union of India for adjudicating the dispute raised by the petitioner.

19. Before discussing the merit of the impugned Award, it would be relevant to discuss the finding of the disciplinary authority during domestic enquiry against the petitioner by the Enquiry Officer while submitting his report.

20. Although there is concurrent finding of fact against the petitioner but this Court is looking into the records of the Industrial Tribunal only to appreciate the relevant materials levelled against the petitioner for carrying seven (07) feet Copper Wire for which he was finally dismissed by the Management-Respondents.

21. From perusal of the records and the documents of the Management company which have been sent along with the record of the C.G.I.T No.2, Dhanbad, it reveals that vide order dated 12.01.1991 issued by the Deputy Chief Mining Engineer

i.e. the competent authority of the Management that a charge sheet/prosecution letter/report was submitted against the petitioner for carrying seven (07) feet armout cable along with fire wood in the bag of fertilizer while he was working on 30.01.1990 in the 1st half at 4-Pit Sendra. When the said wire was verified on upper floor then the said approx 7 feet armout cable was recovered which was volume approx Rs.700/- and thereafter he was handed over to Loyabad Police Station by the C.I.S.F officials and a case under Sections 379/411 IPC was instituted against the petitioner and which is a misconduct as per Certified Standing Order of colliery under Rule/Clause 26.1.11 "theft fraud or dishonesty in connection with company's business or property" and the petitioner was directed to file the explanation to the said show cause within 48 hours.

The said letter dated 12.01.1991 issued by Deputy Chief Mining Engineer was marked as ME-1 during the domestic enquiry.

22. It reveals that the petitioner in response to prosecution letter/report dated 12.01.1991 send correspondence to the Deputy Chief Mining Engineer stating therein that allegation levelled against him are false and concocted and he denied the same and further apprised that the prosecution letter has been issued for the occurrence taking place around one year ago. He further stated that he had not taken away any fertilizer bag and there is no question of keeping cable in the said bag. He further apprised that he had worked since long period and as such a false allegation has been levelled against him and prayed to exonerate him and allow him to do the work.

The said explanation dated 15.01.1991 was marked as Exhibit-ME-3.

23. Thereafter on receipt of said explanation dated 15.01.1991 from the petitioner the Deputy Personnel Manager was directed by said Deputy Chief Mining Engineer to enquire and submit report and also to see the 2nd para above as marked 'A'. The said para 'A' relates to the date of occurrence dated 30.01.1990.

24. Thereafter on 30.01.1991 i.e. ME-2, In-charge, Mining Engineer, Kankani Mines clarified that due to typographical error in the charge sheet vide letter dated 12.01.1991 (ME-1) the date has been mentioned as 30.01.1990 instead of 30.11.1990 in the original letter and he was again directed to file show cause within 48 hours.

The said letter dated 30.01.1991 was marked as Exhibit-ME-2 during domestic enquiry.

25. It reveals from the record that a domestic enquiry was conducted against the petitioner and the Enquiry Officer as well as the Presenting Officers were appointed by the Management. However, there is no record to show as to by which order the domestic enquiry was conducted and the Enquiry Officer as well as the Presenting Officers were appointed.

26. It is well settled that finding of fact recorded by the Disciplinary Authority as well as learned Tribunal need not be interfered by the High Court in exercise of power conferred under Article 226 of the Constitution of India unless the punishment so imposed is disproportionate to the gravity of offence. The scope of judicial review is limited but it has to be exercised if the Court finds that punishment imposed upon the delinquent employee is disproportionate to the gravity of offence and in violation of principles of natural justice as has been held by Hon'ble Supreme Court in the case of ***S.R.***

Tewari vs. union of India and Another reported in ***(2013) 6 SCC 602***.

27. The Award passed by the learned Tribunal reveals that the learned Tribunal was swayed by the fact that the petitioner was caught with the Armoured Copper wire and thereby he committed misconduct as per Clause 26 (i) (ii) of the Certified Standing order by the petitioner company and the said Armoured Copper wire was valued of Rs.6,00/-. However, the learned Court below did not consider the defence of the workman petitioner that he was acquitted in the criminal case vide judgment dated 23.09.1995. The learned Tribunal has not even looked into the enquiry report and order of dismissal passed by the Management. However, when the industrial dispute was raised and the matter came before the learned Tribunal then the matter remained pending before the learned Tribunal from the year 1995 till the year 2002 on the ground of fairness and propriety of domestic enquiry and which ultimately compelled the workman or the learned counsel for the workman to raise no grievance on the point of fairness and propriety in holding the domestic enquiry.

28. Hence, this Court, in such situation, has no other option but to look into the enquiry report as well as the order of dismissal and the proceedings of enquiry conducted before the Enquiry Officer.

29. Page-41 is the letter dated 12.01.1991 by which charge sheet has been issued upon the petitioner for allegedly committing theft of approx 7 feet Armoured Copper cable on 30.01.1990 valuing Rs.700/- and for which he was sent to Loyabad P.S by the CISF personnels and for which case under section 379/411 IPC was instituted against him. The said letter

dated 12.01.1991 is marked as Exhibit-M-1 and which was earlier marked as ME-1 during the domestic enquiry. Page-42 is blank which is reverse of page-41.

Page-43 is another letter dated 30.01.1991 i.e. correction letter issued by the Dy. Chief Mining Engineer to the petitioner modifying the date of theft from 30.01.1990 to 30.11.1990 due to typographical error. The said letter dated 30.01.1991 was marked as Exhibit-M-1/1 and which was marked as ME-2 during the domestic enquiry. Page 44 is blank.

Page-45 is explanation dated 15.01.1991 sent by the petitioner to Dy. Chief Mining Engineer, which was marked as Exhibit-M-2 and which has been marked as ME-3 by which he has stated that he has not kept any cable in the said basket and he has been falsely implicated. Page-46 is blank. Page 47 to page 61 are the proceedings of enquiry committee for the period 15.2 (it should have been mentioned as 15.02.1991 during the enquiry proceeding). There is no document to show as to when the Enquiry Officer and the Management representative was appointed.

30. It further reveals that the 1st meeting of enquiry was held on 15.02.1991 and the petitioner Rajmuni Bhuinya was shown absent. Even in the 2nd proceeding held on 20.02.1991 and the 3rd proceeding was held on 21.02.1991 but the petitioner was shown absent. However, in the 4th proceeding held on 16.03.1991 the petitioner participated and the charges were handed over to him and to which he pleaded not guilty and prayed that he may be allowed to keep on Sri Hari Krishna for his help as his Tromer. Thereafter the said statement of Sri N.K. Shukla (i.e. Management Representative) was recorded which starts from page 50, 51 and 52.

During his evidence, he proved charge sheet dated 12.01.1991 as ME-1. He further proved corrected letter dated 30.01.1991 as ME-2. He further proved explanation dated 15.01.1991 submitted by the petitioner as ME-3.

He also stated that on his explanation the Deputy Chief Mining Engineer ordered for enquiry as the reply of the petitioner was found unsatisfactory. He further stated during his evidence that the petitioner was caught red-handed with one Armoured Copper cable of approx two (02) Meter having value of Rs.700/-. He has proved the report of ACM as ME-4. He further proved the statement of B.K. Singh (Fitter) marked as ME-5. He also proved the photo copy of statement of C.M Sarkar, Electric Mistry as ME-6 (vi) and photo copy of statement of Ram Prasad Nonia as ME-7 (vii). He also proved report of Sri P.N. Singh, Post Commandant, Kankani Colliery as ME-8 (viii). Then the Management decided to further examine five (05) persons namely (i) Sri Yodhan Singh i.e. ACM (ii) Sri Ram Prasad Nonia (iii) Sri C.M Prasad (iv) Sri B.K. Singh (v) Post Commandant, CISF, Kankani.

However, surprisingly the petitioner declined to cross-examine said Management Representative Sri N.K. Shukla, which reveals from page 54 of Lower Court Records. Then next meeting was fixed on 25.03.1991.

31. Page-55 to 58 is sheets of enquiry proceeding held on 26.06.1992. However, during pendency of enquiry proceeding Sri N.K. Shukla was replaced by Sri S.K. Haldhar as Management representative. On 26.06.1991, the statement of Ram Prasad Nonia, Sri C.M. Sarkar were recorded. Even the petitioner is said to have declined to cross-examine both R.P Nonia and C.M. Sarkar. It was informed that other three persons

as mentioned were not present and hence the date of enquiry was fixed on 08.07.1991 in the 5th meeting. However, on 08.07.1991 the Management failed to produce Sri Yodhan Singh and Sri N.N Singh as they were on leave. It was stated that there evidence is not required and the petitioner was directed to give his evidence which reveals from page 58 of LCR.

32. Page 59 to 61 are the statement of petitioner Rajmuni Bhuinya in which he denied the charges levelled against him and stated that he was falsely implicated by Ram Prasad Nonia who took him to Assistant Manager and then they took him to Sri Yodhan Singh and from where he was handed over to CISF and the he was handed over to Loyabad P.S and in which he remained in jail for around six months and had pointed out that criminal case is pending against him in Civil Court, Dhanbad.

During cross-examination, he denied the charges for carrying the said cable.

Page 62 of the LCR is blank. Page 63 is the letter sent to Agent, Kankani Colliery by which he was informed that on 30.11.1990 the petitioner Rajmuni Bhuinya was caught by Sri Ram Prasad Nonia, Sri C.M. Sarkar and Sri B.K. Singh along with Armoured Cable approx Two (02) Meter. Page 64 is blank but page- 65 is photo copy of statement of Braj Kishore Singh and page- 67 is the photo copy of the statement of Sri Chintamani Sarkar and page 69 is the photo copy of statement of Ram Prasad Nonia and which were marked as ME-5, ME-6 and ME-7 respectively. Page 66, Page 68 and Page-70 are blank.

33. Page 71 is the written report submitted by Sri N.N Singh, Post Commandant, CISF to Officer In-charge, Loyabad Police Station for theft of Copper Cable committed by the petitioner and which has been marked as ME-8 whereas page 72 is blank.

Page 73 to Page-76 are the note sheet of BCCL on which enquiry report was prepared by the Enquiry Officer, Sri B.P. Shahi but date has not been mentioned. The enquiry report from page 73 to 76 reveals that Enquiry Officer had found that the charge levelled against the petitioner is proved. Thereafter page 77 dated 25.03.1992 is the noting sheet of the Disciplinary Authority i.e. the Agent in Kankani Colliery by which the Agent recommended for dismissal of the petitioner from services after having concurrent finding by the Enquiry Officer. Page-78 is blank. Thereafter Page-79 is the letter dated 21/22.05.1992 issued by the Agent, Kankani Colliery, Sijua Area to the petitioner by which the petitioner has been dismissed form the services with immediate effect on account of misconduct.

34. Thus, from going through the above, it is abundantly clear that the entire enquiry was held against the petitioner in complete violation of principles of natural justice. It is clear that neither the enquiry report was served upon the petitioner nor the second show cause was given to the petitioner regarding the proposed punishment. Even the photo copy of statements of Sri B.K. Singh, Sri C.M. Sarkar and Sri. Ram Prasad Nonia were not given to the petitioner although they had taken his signature on the same.

35. Even if the learned Tribunal on the basis of concession given by the learned counsel for the petitioner, has held that the domestic enquiry was proper, this Court, is of the view that the domestic enquiry was unfair and improper and serious prejudice has been caused to the petitioner for non-supply of enquiry report and also for non-supply of second show cause notice to the petitioner which is in complete violation of judgment rendered

by Hon'ble Supreme Court in the case ***Managing Director ECIL Hyderbad Versus B. Karunakar*** reported in ***1993 (4) SCC 727.***

36. It further transpires that the entire enquiry proceeding from page-47 to 79 has been marked as Exhibit-M-3 series before the learned Tribunal but the same has not been considered by the learned Tribunal.

37. It further transpires that for the 1st charge sheet dated 12.01.1991 which has been marked as Exhibit-M-1 whereas corrected charge sheet dated 30.01.1991 has been marked as Exhibit-M-1/1. Even the explanation dated 15.01.1991 submitted by the petitioner was marked as M-2 before the learned Tribunal.

38. On the one hand, the learned Tribunal has gone through the statement of Sri B.K. Singh, Sri C.M. Sarkar and Sri Ram Prasad Nonia which are at Page-65, 66 and 67 respectively. But on the other hand, the learned Tribunal failed to consider the enquiry report as well as the noting sheet dated 25.03.1992 by which the authority has recommended for dismissal of the petitioner and issued the dismissal letter dated 21/22.05.1992.

39. Page 79 i.e. the discharge/dismissal dated 21/22.05.1992 order was served to someone (named not properly readable). However, the dismissal letter was served upon the petitioner on 14.08.1993 i.e. after delay of more than one year which reveals at page 80 which is reverse of page 79 and merely bears the signature of the petitioner without having any date, although two officers/personnels of the Management have put their respective initials on 23.05.1992 itself.

40. Therefore, it is evident that the departmental proceeding was in complete violation of principles of natural justice as neither the documents marked as ME-I to ME-VIII were served upon the petitioner nor the statement of Sri Ram Prasad Nonia,

Sri C.M Sarkar and Sri B.K. Singh were served upon him rather the photo copies of the statement of Braj Kishore Singh marked as ME-V, statement of Chandramani Sarkar marked as ME-VI and Ram Prasad marked as ME-VII were used as evidence during domestic enquiry against the petitioner.

41. It further transpires that although the petitioner had requested for keeping Sri Hare Krishna Jha as his associate to defend his case. However, it is evident from the enquiry proceeding dated 08.07.1991 that Management side was required to produce his three witnesses namely Sri Yodhan Singh and Sri N.N. Singh and one P.Com. and the Enquiry Officer closed the evidence of Management by taking the signature of the Workman petitioner Rajmuni Bhuinya (sic) and the Enquiry Officer (name not disclosed).

42. Thereafter the Enquiry Officer suddenly recorded the purported statement of the petitioner Rajmuni Bhuinya and cross-examined him by taking his signature and who is said to have inculpated himself and surprisingly no date is mentioned neither before the signature of Enquiry Officer nor before the signature of petitioner.

43. It is further evident that though the dismissal order was passed on 21/22.05.1992, neither the copy of enquiry report nor the second show cause notice were served upon the petitioner to defend himself and which is in complete violation of law laid down in the case of ***Managing Director ECIL Hyderabad Versus B. Karunakar*** reported in ***1993 (4) SCC 727.***

44. It has been held in the case of ***Managing Director ECIL Hyderbad Versus B. Karunakar*** reported in ***1993 (4) SCC 727*** at para- 61, 62 and 63 as follows:-

> ***"Para-61:-*** *It is now settled law that the proceedings must be just, fair and reasonable and negation thereof*

offends Articles 14 and 21. It is well-settled law that the principles of natural justice are integral part of Article 14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post-mortem certificate with putrefying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Articles 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice. The contention on behalf of the Government/management that the report is not evidence adduced during such inquiry envisaged under proviso to Article 311(2) is also devoid of substance. It is settled law that the Evidence Act has no application to the inquiry conducted during the disciplinary proceedings. The evidence adduced is not in strict conformity with the Indian Evidence Act, though the essential principles of fair play envisaged in the Evidence Act are applicable. What was meant by 'evidence' in the proviso to Article 311(2) is the totality of the material collected during the inquiry including the report of the enquiry officer forming part of that material. Therefore, when reliance is sought to be placed by the disciplinary authority, on the report of the enquiry officer for proof of the charge or for imposition of the penalty, then it is incumbent that the copy thereof should be supplied before reaching any conclusion either on proof of the charge or the nature of the penalty to be imposed on the proved charge or on both.

Para-62:- *Shri P.P. Rao obviously realising this effect, contended that the enquiry officer being a delegate of the disciplinary authority is not bound by the delegatee's recommendations and it is not a material unless it is used by the disciplinary authority. Therefore, the need for its supply does not arise and the principles of natural justice need not be extended to that stage as the officer/workman had opportunity*

at the inquiry. In support thereof he placed strong reliance on Suresh Koshy George v. University of Kerala [(1969) 1 SCR 317 : AIR 1969 SC 198] ; Shadi Lal Gupta v. State of Punjab [(1973) 1 SCC 680 : 1973 SCC (L&S) 293 : (1973) 3 SCR 637] ; Hira Nath Misra v. Principal, Rajendra Medical College, Ranchi [(1973) 1 SCC 805 : AIR 1973 SC 1260] ; Satyavir Singh v. Union of India [(1985) 4 SCC 252 : 1986 SCC (L&S) 1 : AIR 1986 SC 555] ; Secretary, Central Board of Excise & Customs v. K.S. Mahalingam [(1986) 3 SCC 35 : 1986 SCC (L&S) 374] and Union of India v. Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] . I am unable to agree with his contentions. Doubtless that the enquiry officer is a delegate of the disciplinary authority, he conducts the inquiry into the misconduct and submits his report, but his findings or conclusions on the proof of charges and his recommendations on the penalty would create formidable impressions almost to be believed and acceptable unless they are controverted vehemently by the delinquent officer. At this stage non-supply of the copy of the report to the delinquent would cause him grave prejudice. S.K. George case [(1969) 1 SCR 317 : AIR 1969 SC 198] renders no assistance. It is only an inquiry against malpractice at an examination conducted by the University under executive instruction. Therein the students were given an opportunity of hearing and they were supplied with all the material, the foundation for the report. The observations of the Bench of two Judges with regard to the theory of two stages in the Inquiry under Article 311 also bears little importance for the foregoing consideration in this case. It is already seen that this Court held that the inquiry from the stage of charge-sheet till the stage of punishment is a continuous one and cannot be split into two. The reliance in Keshav Mills Co. Ltd. v. Union of India [(1973) 1 SCC 380 : (1973) 3 SCR 22] is also of no avail. Therein it was pointed out that under Section 18-A of the I.D.R. Act there was no scope of enquiry at two stages and the omission to

supply enquiry report, before taking the action, did not vitiate the ultimate decision taken. In Shadi Lal case [(1973) 1 SCC 680 : 1973 SCC (L&S) 293 : (1973) 3 SCR 637] Rule 8 of the Punjab Civil Service (Punishment and Appeal) Rules did not provide for the supply of copy of the report of an inquiry conducted by the fact finding authority before inquiry. It was held that the delinquent officer was supplied with all the materials and was given opportunity to make representation and the same was considered. The report did not indicate anything in addition to what was already supplied to him. Under those circumstances it was held that the principles of natural justice cannot be put into an iron cast or a strait-jacket formula. Each case has to be considered and the principles applied in the light of the facts in each case. The effect of the violation of the principles of natural justice on the facts of the case on hand needs to be considered and visualised. The effect of Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] ratio was considered by my brother Sawant, J. and it needs no reiteration. The reliance on S.K. George case [(1969) 1 SCR 317 : AIR 1969 SC 198] in Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] ratio renders no assistance in the light of the above discussion. Since Mahalingam case [(1986) 3 SCC 35 : 1986 SCC (L&S) 374] which was after the Forty-second Amendment Act, the need to supply second show-cause notice was dispensed with, regarding punishment and therefore, that ratio renders no assistance to the case. Hira Nath Misra case [(1973) 1 SCC 805 : AIR 1973 SC 1260] also is of no avail since the inquiry was conducted relating to misbehaviour with the girl students by the erring boys. The security of the girls was of paramount consideration and therefore, the disclosure of the names of the girl students given in the report or their evidence would jeopardise their safety and so was withheld. Accordingly this Court on the fact situation upheld the action of the Medical College. Satyavir

Singh [(1985) 4 SCC 252 : 1986 SCC (L&S) 1 : AIR 1986 SC 555] ratio also is of no assistance as the action was taken under proviso to Article 311(2) and Rule 199 of the CCA Rules. The inquiry into insubordination by police force was dispensed with as the offending acts of the police force would generate deleterious effect on the discipline of the service. Asthana case [(1988) 3 SCC 600 : 1988 SCC (L&S) 869] was considered by my brother Sawant, J. in which the report was not supplied and it was upheld. It should, thus be concluded that the supply of the copy of the enquiry report is an integral part of the penultimate stage of the inquiry before the disciplinary authority considers the material and the report on the proof of the charge and the nature of the punishment to be imposed. Non-compliance is denial of reasonable opportunity, violating Article 311(2) and unfair, unjust and illegal procedure offending Articles 14 and 21 of the Constitution and the principles of natural justice.

Para-63:- *The emerging effect of our holding that the delinquent is entitled to the supply of the copy of the report would generate yearning for hearing before deciding on proof of charge or penalty which Forty-second Amendment Act had advisedly avoided. So while interpreting Article 311(2) or relevant rule the court/tribunal should make no attempt to bring on the rail by back track the opportunity of hearing as was portended by the Gujarat High Court. The attempt must be nailed squarely. Prior to the Forty-second Amendment Act the delinquent had no right of hearing before disciplinary authority either on proof of charge or penalty. So after Forty-second Amendment Act it would not be put on higher pedestal. The Gujarat High Court's decision is, therefore, not good law. However, the disciplinary authority has an objective duty and adjudicatory responsibility to consider and impose proper penalty consistent with the magnitude or the gravity of the misconduct. The statute or statutory rules gave graded power and authority to the disciplinary authority to impose either of the penalties enumerated*

> *in the relevant provisions. It is not necessarily the maximum or the minimum. Based on the facts, circumstances, the nature of imputation, the gravity of misconduct, the indelible effect or impact on the discipline or morale of the employees, the previous record or conduct of the delinquent and the severity to which the delinquent will be subjected to, may be some of the factors to be considered. They cannot be eulogised but could be visualised. Each case must be considered in the light of its own scenario. Therefore, a duty and responsibility has been cast on the disciplinary authority to weigh the pros and cons, consider the case and impose appropriate punishment. In a given case if the penalty was proved to be disproportionate or there is no case even to find the charges proved or the charges are based on no evidence, that would be for the court/the tribunal to consider on merits, not as court of appeal, but within its parameters of supervisory jurisdiction and to give appropriate relief. But this would not be a ground to extend hearing at the stage of consideration by the disciplinary authority either on proof of the charge or on imposition of the penalty. I respectfully agree with my brother Sawant, J. in other respects in the draft judgment proposed by him."*

45. It transpires from the Lower Court Records that Page-81 to Page-84 are the certified copy of judgment passed in G.R. Case No.3853 of 1990 (judgment dated 23.09.1995) passed by Pradeep Nath Tiwari, then learned Judicial Magistrate, Ist Class, Dhanbad (arising out of Loyabad P.S. Case No.140/1990) and the petitioner was acquitted on failure of prosecution to examine the witnesses for the offence under Section 379/411 of IPC.

46. It transpires that after much endeavour and after failure of conciliation proceeding Reference Case No.128 of 1995 was instituted before the Central Government Industrial Tribunal No.2 at Dhanbad and the case was finally heard by Sri B.

Biswas, then learned Presiding Officer, Central Government Industrial Tribunal No.2 at Dhanbad.

47. It further reveals from the order sheet of the learned Tribunal that on 31.01.2002, when the case was fixed for hearing workman on the preliminary point to the effect as to whether domestic enquiry done by the Enquiry Officer was fair, proper and in accordance with the principles of natural justice then his lawyer has conceded on the point of fairness and propriety of the domestic enquiry and on concession of the lawyer of the workman petitioner, the Presiding Officer held that the domestic enquiry held against the concerned workman was fair, proper and in accordance with the principles of natural justice and fixed the date for hearing the workman on 13.03.2002.

48. What disturbs this Court is the manner of recording finding by the learned Presiding Officer of the Central Government Industrial Tribunal No.2 at Dhanbad because from perusal of the order dated 17.10.1995 till 25.05.2001 the case remained pending before the Central Government Industrial Tribunal No.2 at Dhanbad for evidence of Management on preliminary point. Thereafter on 19.07.2001 MW-1 namely Sri R.B.P. Sahi was examined and cross-examined in part and M.W-1 had proved the documents marked as Exhibit-M to M-3 series. Thereafter MW-1 was finally cross-examined and discharged on 25.07.2001 and case was again fixed for evidence of the workman on preliminary point. The workman got proved the judgment of Criminal Court as Exhibit-W-1 and the evidence on 11.10.2001 and the evidence of workman was closed on 11.10.2001 itself and the case remained pending for argument on the point of preliminary issue on 01.01.2002, 23.01.2002 and finally on 31.01.2002. Although the argument was heard on 23.01.2002 on behalf of both the

sides and the case was fixed for order on 31.01.2002 in which the concession of the lawyer of the workman petitioner was recorded.

49. Therefore, it is evident that though the workman was allegedly caught hold by one Ram Prasad Nonia for carrying approx seven (07) feet Copper wire valued around Rs.700/- but the defence of the petitioner was neither considered by the Enquiry Officer nor by the Disciplinary Authority i.e. the Agent of Kankani Colliery nor even by the learned Tribunal.

50. Apart from this, the Tribunal failed to consider as to whether the concession of the concerned lawyer of the petitioner was given in presence of the petitioner or not or it was obtained under coercion due to the delay in the proceeding before the C.G.I.T.-2, Dhanbad. Although the entire enquiry proceeding was in violation of principles of natural justice which is evident from the record itself neither the document marked as Exhibit-M-2 - M-3 series were served upon the workman petitioner nor the documents marked as ME-I to ME-VIII respectively during domestic enquiry were served upon the petitioner even during course of hearing on the point of fairness of domestic enquiry.

51. The Tribunal was swayed by the fact that the workman had to appear during departmental proceeding but Tribunal failed to consider the effect of the acquittal in the criminal case instituted by the Management. The basis of charge sheet was criminal case instituted against the workman petitioner for allegedly committing theft of seven (07) feet Copper wire valued of Rs.700/ but the same got demolished in view of the acquittal of the petitioner in Loyabad P.S. Case No.140 of 1990, G.R. Case No.3853 of 1990 and the petitioner was acquitted vide

judgment dated 23.09.1995 passed by Sri Pradeep Nath Tiwari, then learned Judicial Magistrate, Ist Class, Dhanbad.

52. Though the acquittal of the petitioner was no doubt technical in nature but at the same time, the Tribunal should have considered that the Management has failed to examine any witness on the point of committing theft by the petitioner before the learned Judicial Magistrate, Ist Class, Dhanbad despite issuance of summons on non-bailable warrant of arrest against the witnesses, who failed to appear for evidence before the Court below although they were Workmen in the same mines in the district of Dhanbad where the petitioner was working i.e. the Kankani Colliery.

53. It is not the case of the Management that the witnesses of the said criminal case were working at some far away place or were transferred or had retired.

54. Apart from this, the Tribunal failed to consider that there was non-supply of enquiry report as well as the service of second show cause notice to the petitioner.

55. The judgment passed by Division Bench of the Jharkhand High Court in the case of ***Management of M/s Usha Breco and another vs. Presiding Officer, Labour Court, Jamshedpur, and others*** reported in ***2004 (4) L.L.N 1066*** is not applicable in the facts and circumstances of this case and even in the above case this High Court remitted the case to the Labour Court below because the Labour Court had answered the Award in favour of the Workman with full back wages and all consequential benefits and the back wages was reduced to 50% by the learned Single Judge of this Court.

56. Recently, in the case of ***Maharana Pratap Singh vs. State of Bihar and Ors.*** reported in ***2025 SCC OnLine SC 890*** the

Hon'ble Supreme Court has held that if an employee is dismissed on account of pendency of criminal case but if he is acquitted then in case of acquittal of a delinquent employee from the criminal case, he would be entitled for reinstatement.

57. It has been held by Hon'ble Supreme Court in the case of ***Maharana Pratap Singh vs. State of Bihar and Ors.*** reported in ***2025 SCC OnLine SC 890*** at para- 47 as follows:-

> *"**Para-47**:- While an acquittal in a criminal case does not automatically entitle the accused to have an order of setting aside of his dismissal from public service following disciplinary proceedings, it is well-established that when the charges, evidence, witnesses, and circumstances in both the departmental inquiry and the criminal proceedings are identical or substantially similar, the situation assumes a different context. In such cases, upholding the findings in the disciplinary proceedings would be unjust, unfair, and oppressive. This is a position settled by the decision in G. M. Tank (supra), since reinforced by a decision of recent origin in Ram Lal v. State of Rajasthan."*

58. Thus, in view of the judgment of Hon'ble Supreme Court, it is evident that the learned Tribunal has committed grave error by passing the reference in favour of the Management and against the workman in complete violation of judgment of Hon'ble Supreme Court. The Hon'ble Supreme Court has settled the issue much earlier that after acquittal of an employee in a criminal case, the said delinquent employee can be reinstated into service and the scope of such reinstatement has been further enlarged in the light of the recent judgment of the Hon'ble Supreme Court passed in the case of ***Maharana Pratap Singh vs. State of Bihar and Ors.*** reported in ***2025 SCC OnLine SC 890.***

59. In the meanwhile, more than 33 years has elapsed after dismissal of the petitioner and as such this Court is not remitting the matter before the learned Tribunal to consider the matter afresh on the point of quantum of punishment.

60. Thus, in view discussions made above and the law laid down by the Hon'ble Supreme Court, the Award dated 19.02.2003 by the Central Government Industrial Tribunal No.2 at Dhanbad in Reference No.128 of 1995 by which the Reference has been answered in favour of the Respondent, is set aside and the writ petitioner is directed to be reinstated forthwith with all the consequential benefits.

However, if the petitioner has crossed the age of superannuation then he will be entitled to 75% back wages till his age of superannuation with all consequential benefits from the Respondents-BCCL.

61. Accordingly, the W.P.(L) No.2032 of 2005 is allowed.

(Sanjay Prasad, J.)

Saket/-

AFR