



2025:AHC:213888-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 1470 of 2012

Ramesh Chandra Malviya

.....Appellant(s)

Versus

State of U.P. and Others

.....Respondent(s)

Counsel for Appellant(s) : Siddharth Khare

Counsel for Respondent(s) : Pranjal Mehrotra, Ayank Mishra,
C.S.C., Sandeep Kumar Srivastava

Court No. - 29

HON'BLE MAHESH CHANDRA TRIPATHI, J.

HON'BLE ANISH KUMAR GUPTA, J.

(Per: Anish Kumar Gupta, J.)

1. Heard Sri Siddharth Khare, learned counsel for the appellant, Sri Devesh Vikram, learned Additional Chief Standing Counsel for the State respondents and Sri Pranjal Mehrotra, learned counsel for the respondents no. 3 and 4.

2. The instant special appeal has been filed by the appellant feeling aggrieved by the judgement and order dated 23.7.2012 passed by the Learned Single Judge in Civil Misc. Writ Petition No. 21356 of 2000 (Ramesh Chandra Malviya Vs. State of U.P. and others) dismissing the writ petition filed by the appellant herein, challenging the order dated 23.3.2000 passed by the Superintending Engineer, Electricity Transmission Circle, UP Power Corporation Limited, Allahabad whereby the appellant herein has been dismissed from service and further a direction has been issued for the recovery of Rs.186.603 lacs.

3. The order impugned in the instant special appeal reads as under:

"By means of the present writ petition, the petitioner is challenging the order dated 23.3.2000 passed by the Superintending Engineer, Electricity Transmission Circle, U.P. Power Corporation Limited, Allahabad whereby the petitioner has been dismissed from service and a direction has been issued for the recovery of Rs.186.603 lacs.

The brief facts of the case are that the petitioner was the storekeeper at Sahupuri Godown, district Varanasi. when Sri Daya Shankar HM along with Sri R.S. Upadhyaya RPC and Sri C.P. Gupt, Assistant Storekeeper went to the Godown Sahupuri for the purposes of the delivery of tower parts to River Crossing Tower Kanpur, the tower parts of river crossing weighing 64 M.T. valuing Rs.19.50 lacs were found missing. The first information report was lodged on 23.6.1997 in this regard. Further on a physical verification during the period 3.7.1997 to 30.9.1997, the goods valuing Rs.1,49,62,868/- were found missing and further goods T. & D. valuing Rs. 7,23,799/- were also found missing and some of the goods were found in excess than mentioned in the record. On these irregularities, the petitioner was suspended and the inquiry proceeding has been initiated. Sri R.P. Singh, Superintending Engineer has been appointed as the inquiry officer. The petitioner has been given chargesheet dated 11.12.1997 in respect of the aforesaid irregularities. The petitioner filed reply to the chargesheet. On a consideration of the charges and the reply of the petitioner, the inquiry report dated 22.9.1999 has been submitted and the petitioner was found guilty. On inspection, 68.96 M.T. river crossing tower valuing Rs.19.50 lacs were found missing and further on physical verification goods valuing Rs. 1,49,62,868/- were also found missing. On a receipt of the inquiry report, a show cause notice dated 18.12.1999 was issued. The petitioner filed reply to the said show cause notice. The Superintending Engineer on the basis of the inquiry report has dismissed the petitioner from service and also ordered for the recovery of the amount in respect of which the petitioner was found guilty. The order of dismissal is being challenged.

Heard Sri Abhishek Tripathi, learned counsel appearing on behalf of the petitioner and Sri Sandeep Kumar Srivastava, learned counsel appearing on behalf of the respondents.

Learned counsel for the petitioner challenged the impugned order mainly on two grounds, firstly, that the copy of the inquiry report has not been provided to the petitioner, secondly, the impugned order suffers from malafide. He further submitted that the impugned order is biased inasmuch as Sri K.P. Tripathi, Superintending Engineer, who has passed the impugned order, was the Executive Engineer, during the period when

the petitioner was storekeeper at Sahupuri Godown, Varanasi and the petitioner alleged that on the invoice Sri K.P. Tripathi has pressurised him to sign. He submitted that the inquiry report ought to have been provided. In support of the contention he relied upon the Constitution Bench decisions of the Apex Court in the case of Managing Director, ECIL, Hyderabad and others vs. B. Karunakar and others, reported in (1993) 4 SCC 727 and Ratan Lal Sharma vs. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School and others, reported in (1993) 4 SCC 10.

Learned counsel for the respondents submitted that the petitioner had a statutory alternative remedy by way of filing of appeal before the next higher authority under Rule 2 of U.P. State Electricity Board (Officers and Servants) (Conditions of Service) Regulations, 1975 read with U.P. Disciplinary and Appeal Rules, 1999, which the petitioner has not availed. He submitted that the charges framed against the petitioner have been established and proved from the record itself. The petitioner has himself signed the invoice no. Nil of 2011 dated 15.3.1995, and acknowledged the receipt of 68.96 M.T. Tower parts sent by Sri D.S. Seth, Assistant Storekeeper Nayak, Vidyut Preshan Tantupath Nirman Up-Ikai, Allahabad. The plea of the petitioner that the said goods have not been received at Sahupuri Godown, Varanasi and the signature on the invoice has been forcefully obtained by Sri K.P. Tripathi, the then Executive Engineer, Varanasi, has not been accepted by the enquiry officer inasmuch as it was not substantiated. The shortage of other goods worth Rs. Rs.1,49,62,868/- and Rs.7,23,799/- are proved from the record itself for which no proper explanation has been furnished. The inquiry officer submitted that on consideration of the entire facts and circumstances he has found the charges levelled against the petitioner stand proved. He submitted that the charges against the petitioner for the financial irregularity and misappropriation of the goods are proved and for such charges the services of the petitioner have rightly been terminated. The findings recorded by the inquiry officer are finding of fact, based on the materials on record and the dismissal of the petitioner from service on the basis of the inquiry report, by the impugned order, is wholly justified. He submitted that the petitioner is not able to make out any case of malafide

and bias.

I have considered the rival submissions.

The Apex Court in the case of Managing Director, ECIL, Hyderabad and others vs. B. Karunakar and others (supra) has held that the inquiry report must be provided to the charged person. However, the Apex Court held that in a case where the report of the inquiry officer is not furnished to the employee it has to be seen that what prejudice has been caused to the employee on account of non-furnishing of inquiry report. In case if the Court comes to the conclusion that the non-supply of report would have made no difference to the ultimate findings and the punishment given, the Court should not interfere with the order of the punishment. Though it is the allegation of the petitioner that the inquiry report has not been furnished to him but it is not the case that the same could not be procured by him. He is also not able to make out a case that any prejudice has been caused to him on account of non-furnishing of the inquiry report. In the present case, the petitioner has been given opportunity by the inquiry officer and also by the disciplinary officer while awarding the punishment. The petitioner had got fullest opportunity to file the reply and to meet the allegations. Therefore, mere non-furnishing of the inquiry report no prejudice is caused to the petitioner.

I have perused the inquiry report. The inquiry officer has dealt with the charges and the reply of the petitioner. The charges against the petitioner are fully proved from the record itself. The present is the case of a high level embezzlement on the part of the petitioner where the goods for more than crores of rupees have been misappropriated causing substantial loss to the respondents. The shortage of goods at the time of inspection is fully proved from the record. In the facts and circumstances, I am of the view that the findings of the inquiry officer are based on the material on record which cannot be said to be perverse and arbitrary. On the basis of the inquiry report, the punishment awarded is wholly justified. The Apex Court in the case of Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant and others, reported in (2001) 1 SCC 182 has held that the factual findings given in departmental enquiry should not be subject to judicial review except when based on no evidence or are totally perverse or

legally untenable.

In the result, the writ petition fails and is dismissed."

4. Learned counsel for the appellant submitted that it is the admitted position in the instant case that the inquiry report of the inquiry officer has never been served to the appellant, herein, by the Superintending Engineer who has issued the show cause notice. It is further submitted that even while submitting the reply to the show cause notice issued by the Superintending Engineer, the appellant has made a request for supply of the copy of the inquiry report to enable him to file the proper reply to the show cause notice, despite the same at no point of time before passing the final order of termination, the inquiry report was supplied to the appellant herein. He further submitted that supply of inquiry report is mandatory requirement in terms of the Constitution Bench judgement of the Apex Court in the case of ***Managing Director, ECIL, Hyderabad and others Vs. B Karunakar and others reported in (1993) 4 SCC 727***. He has also relied upon the judgement of the Apex Court in the case of ***Ratan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School and others reported in (1993) 4 SCC 10*** and recent ***judgement dated 23.4.2025 of the Apex Court in Civil Appeal No. 14724 of 2024 State of U.P. Vs. Ram Prakash Singh***, wherein, the Division Bench of the Apex Court has clarified that non supply of the inquiry report itself is a prejudice, therefore, the employee is not required to prove any prejudice to be caused. Learned counsel for the appellant further submitted that the Apex Court in the case of Ram Prakash Singh (supra) has categorically held that no proof of prejudice for breach of a statutory rule or the principles of natural justice and fair play need be proved unless there is a waiver, either express or by conduct to of the right to receive the report. Thus in the light of the aforesaid judgement, learned counsel for the appellant submitted that the observations of the Learned Single Judge that merely because of non furnishing of the inquiry report no prejudice is cause to the petitioner is unwarranted.

5. On facts, learned counsel for the appellant submitted that the goods which are alleged to have been found missing were infact never received at Sahupuri godown at Varanasi. However, at the behest of Shri K.P. Tripathi

the then Executive Engineer, the appellant had to put his signature on the invoice with regard to receipt of the aforesaid goods.

6. Per contra, Shri Pranjal Mehrotra, learned counsel for the respondents no. 3 and 4 submitted that the allegations of the appellant herein that he was forced to sign on the acknowledgement receipts of the goods in the godown under the pressure of Shri K.P. Tripathi the then Executive Engineer is unfounded as there is no material available on record with regard to the aforesaid allegation made by the appellant herein. Contrary to the same, the categorical acknowledgement of the receipt of the goods in the godown which were later on found missing from the godown is available on record and the same could not be disputed by the appellant. The appellant has been dismissed from service on the basis of the material available on record which has been duly considered by the authority while passing the final order of dismissal of the appellant herein. He further submitted that in Constitution Bench judgement in the case of ***Managing Director, ECIL, Hyderabad and others Vs. B Karunakar and others reported in (1993) 4 SCC 727*** there is no mandatory requirement of service of inquiry report. Even if the inquiry report has not been served upon the delinquent employee and an opportunity had been granted to him to show cause by the disciplinary authority and unless he is able to prove on record that a prejudice has been caused to him due to non supply of the inquiry report, the disciplinary proceedings cannot be questioned. He further submitted that against the impugned order of dismissal dated 23.3.2000 the appellant had a statutory alternative remedy by way of filing an appeal before the next higher authority under Rule 2 of UP State Electricity Board (Officers and Servants) (Conditions of Service) Regulations, 1975 read with U.P. Disciplinary and Appeal Rules, 1999 which the petitioner has not availed. Shortfall of the goods in the Go-down has been proved from the record itself for which no explanation has been furnished by the appellant herein. Thus the disciplinary authority has rightly dismissed the services of the appellant herein and the Learned Single Judge has rightly dismissed the writ petition filed by the appellant herein. Therefore, he submitted that no interference is called for in the instant appeal.

7. Shri Devesh Vikram, learned Addl. C.S.C. appearing for the State also supports the submissions advanced by Shri Pranjal Mehrotra, learned

counsel for the respondents no. 3 and 4. However, he further submitted that during the proceedings before the Learned Single Judge, copy of the inquiry report was made available to the petitioner through the counter affidavit and before the Learned Single Judge he has not been able to question the findings recorded by the inquiry officer which were based on the basis of the material available on record. Thus non supply of inquiry report before passing the final order of dismissal in such a huge embezzlement does not vitiate the proceedings against the appellant herein.

8. Having heard the learned counsel for the parties this Court has carefully gone through the records of the case. From the record it is undisputed that the appellant herein was the Incharge Store Keeper at Sahupuri godown in District Varanasi and the goods which have been later on found missing from the godown were supplied to the aforesaid godown, receipt of which was duly acknowledged by the appellant. On the basis of the aforesaid fact the disciplinary proceedings have been initiated against the appellant. Having surfaced the shortcoming in the goods of the godown, an FIR was also lodged against the appellant by the then Executive Engineer on 20.6.1999. Subsequently thereto disciplinary proceedings were initiated against the appellant, enquiry officer was appointed and the charge sheet was issued and the response of the appellant was called for. A detailed reply to the charge sheet was submitted by the appellant. Thereafter the evidence was recorded by the inquiry officer. There is no dispute in the instant case that during cross examination of the witnesses opportunity has not been afforded to the appellant and vide inquiry report dated 22.9.1999 the inquiry officer has found all the charges proved against the appellant. Thereafter a show cause notice was issued by the disciplinary authority i.e. Superintending Engineer to the appellant on 18.12.1999. The informant has stated that he has found the appellant guilty of three charges for which three charges were framed and he has been asked to show cause as to why his services be not terminated and as to why the amount of Rs.186.603 lakhs which has been misappropriated be not recovered from him. The appellant has filed a detailed reply on 10.1.2000 to the aforesaid show cause notice and after considering the reply, the disciplinary authority has passed the impugned order dated 23.3.2000 whereby the services of the appellant were terminated and a direction for recovery of an amount of Rs. 186.603 lakhs from the appellant has been issued. Against the aforesaid order of dismissal

from services the appellant has filed a writ petition before this Court, though statutory remedy of appeal before the next higher authority under Rule 2 of UP State Electricity Board (Officers and Servants) (Conditions of Service) Regulations, 1975 read with U.P. Disciplinary and Appeal Rules, 1999 was available to him, which he has not availed.

9. From perusal of the record of the instant case it is apparent that the material which were supplied to the Go-down has been duly acknowledged by the appellant. However, later on the same was found missing from the said Go-down of which the appellant was the Incharge. The plea of the appellant that without supplying the aforesaid goods in the Store he had to give the receipt of the same on the direction of the then Executive Engineer does not inspire confidence and the same is nothing but a lame excuse on the part of the appellant. Even in the reply to the show cause notice issued by the disciplinary authority after the inquiry was concluded against the appellant he could not dispute the finding of fact that the goods found missing were actually supplied to the Go-down for which acknowledgement has been issued by the appellant. The appellant has failed to bring on record any Rule which mandates the supply of inquiry report to the delinquent employee after conclusion of the inquiry proceedings. With regard to the supply of inquiry report the following observations of the Constitution Bench judgement in the case B. Karunakar (supra) are relevant to be taken note of in paragraphs 24, 25, 26, 27 28, 29, 30 and 31, which read as under:

" 24. Since the Government of India Act, 1935 till the Forty-second Amendment of the Constitution, the Government servant had always the right to receive the report of the enquiry officer/authority and to represent against the findings recorded in it when the enquiry officer/authority was not the disciplinary authority. This right was however, exercisable by him at the second stage of the disciplinary proceedings viz., when he was served with a notice to show cause against the proposed penalty. The issuance of the notice to show cause against the penalty necessarily required the furnishing of a copy of the enquiry officer's report since, as held by the Courts, the right to show cause against the penalty also implied the right to represent against the findings on the charges. This was considered to be an essential part of the 'reasonable opportunity' incorporated earlier in Section 240(3) of the GOI Act and later in Article 311(2) of the Constitution as originally enacted. The right to receive the enquiry officer's report and to show cause against the findings in the report was independent of the right to show cause against the penalty proposed. The two rights came to be

confused with each other because as the law stood prior to the Forty-second Amendment of the Constitution, the two rights arose simultaneously only at the stage when a notice to show cause against the proposed penalty was issued. If the disciplinary authority after considering the enquiry officer's report had dropped the proceedings or had decided to impose a penalty other than that of dismissal, removal or reduction in rank, there was no occasion for issuance of the notice to show cause against the proposed penalty. In that case, the employee had neither the right to receive the report and represent against the finding of guilt nor the right to show cause against the proposed penalty. The right to receive the report and to represent against the findings recorded in it was thus inextricably connected with the acceptance of the report by the disciplinary authority and the nature of the penalty proposed. Since the Forty-second Amendment of the Constitution dispensed with the issuance of the notice to show cause against the penalty proposed even if it was dismissal, removal or reduction in rank, some courts took the view that the Government servant was deprived of his right to represent against the findings of guilt as well. The error occurred on account of the failure to distinguish the two rights which were independent of each other.

25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment.

26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority,

the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

27. It will thus be seen that where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.

28. The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by

the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that “where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed”, it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

30. Hence the incidental questions raised above may be answered as follows:

[i] Since the denial of the report of the enquiry officer is a denial of reasonable

opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

[ii] The relevant portion of Article [Article 311](#) of the Constitution, (iii) the employee does not ask for it, and (iv) the burden is cast on a private employer too, and the law requiring furnishing of the report being made to operate prospectively from the date the decision in [Mohd. Ramzan Khan](#) (supra) was rendered, thereby reinforcing the legal position that prevailed after the GoI Act was enacted but became unsettled later, there can be no two opinions that on and from 20th November, 1990 [i.e., when [Mohd. Ramzan Khan](#) (supra) was decided] it is the mandatory requirement of law that the report of enquiry has to be furnished to the delinquent employee. Taking a cue from [S. K. Sharma](#) (supra), we are inclined to the view that the requirement of furnishing the report of enquiry, though procedural, is of a mandatory character and the bogey argument of the employer to apply the test of 'prejudice' when the report of enquiry is not furnished cannot be of any avail to thwart the challenge of the delinquent employee. Such test could call for application, if from the facts and circumstances, it can be established that the delinquent employee waived his right to have the report furnished. Should satisfactory explanation be not proffered by the employer for its failure/omission/neglect to furnish the enquiry report, that ought to be sufficient for invalidating the proceedings and directing resumption from the stage of furnishing the report. No proof of prejudice for breach of a statutory rule or the principles of natural justice and fair play need be proved, unless there is a waiver, either express or by conduct, to of the right to receive the report. And, it is only in specific and not in all circumstances that proof of 'prejudice' ought to be insisted upon.

53. While concluding our discussion, we repeat what has been observed earlier. This discourse is intended, not to doubt existing points of view, but to contribute to the understanding of the law. To prevent misunderstandings and to provide clarity, we wish to make it clear that it would be open for all courts, bound by [Article 141](#) of the Constitution, to decide matters coming up before them on the relevant topic in accordance with what they perceive is the law declared in [B. Karunakar](#) (supra)."

Article 311(2) of the Constitution is as follows:

“(2) No such person as aforesaid shall be dismissed or removed or

reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.”

Thus the article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The article, however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all-India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded and when the enquiry officer is not the disciplinary authority the delinquent employee will have the right to receive the enquiry officer's report notwithstanding the nature of the punishment.

[iii] Since it is the right of the employee to have the report to defend himself effectively and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

[iv] In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee

is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an “unnatural expansion of natural justice” which in itself is antithetical to justice.

31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if

ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

(emphasis supplied)

10. By giving his separate opinion Hon'ble Ramaswamy, J in Constitution Bench judgement in B. Karunakar (supra) has also observed in paragraph 61 as under:

"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."

11. From the reading of the majority opinion in the aforesaid judgement it is apparent that in paragraph 29 of the aforesaid judgement, the Apex Court has held that a delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him, that a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice. However, in paragraph 30 and 31 the Apex court has further categorically observed that where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunal should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment.

12. In the recent judgement in the case of Ram Prakash Singh (supra), the Apex Court has explained the Constitution Bench judgement in the case of B. Karunakar (supra) and has relied upon paragraph 30 of the Constitution bench judgement and observed that non furnishing of the inquiry report itself is a prejudice to the delinquent employee and there is no requirement to prove any further prejudice. It is noteworthy that in the case of Ram Prakash Singh (supra) the inquiry report was not served upon the delinquent employee before the disciplinary authority passed the final order and even before the Court the copy of the enquiry report was not brought on record. In that view of the matter, the Apex Court while drawing adverse inference, had set aside the order of punishment and reinstatement. The Division Bench of the Apex Court in Ram Prakash Singh (supra) has clarified in paragraph 53 that the observation made in the judgment are clarificatory only and it is open for the courts to decide the matters coming up before them on the relevant topic in accordance with what they perceive is the law declared in B. Karunakar (supra). The relevant observations of the Apex

Court in Ram Prakash Singh (supra) are as follows:

"52. We now sum up our understanding of the law declared in [B. Karunakar](#) (supra) and answer the four questions delineated in paragraph 26 (supra) compositely. Reading the declaration of law by the Constitution Bench regarding the imperative need to furnish the report of enquiry to the delinquent employee even when: (i) the relevant statutory rules are silent or against it, (ii) the punishment to be imposed is other than the punishment referred to in clause (2) of [Article 311](#) of the Constitution, (iii) the employee does not ask for it, and (iv) the burden is cast on a private employer too, and the law requiring furnishing of the report being made to operate prospectively from the date the decision in [Mohd. Ramzan Khan](#) (supra) was rendered, thereby reinforcing the legal position that prevailed after the GoI Act was enacted but became unsettled later, there can be no two opinions that on and from 20th November, 1990 [i.e., when [Mohd. Ramzan Khan](#) (supra) was decided] it is the mandatory requirement of law that the report of enquiry has to be furnished to the delinquent employee. Taking a cue from [S. K. Sharma](#) (supra), we are inclined to the view that the requirement of furnishing the report of enquiry, though procedural, is of a mandatory character and the bogey argument of the employer to apply the test of 'prejudice' when the report of enquiry is not furnished cannot be of any avail to thwart the challenge of the delinquent employee. Such test could call for application, if from the facts and circumstances, it can be established that the delinquent employee waived his right to have the report furnished. Should satisfactory explanation be not proffered by the employer for its failure/omission/neglect to furnish the enquiry report, that ought to be sufficient for invalidating the proceedings and directing resumption from the stage of furnishing the report. No proof of prejudice for breach of a statutory rule or the principles of natural justice and fair play need be proved, unless there is a waiver, either express or by conduct, to of the right to receive the report. And, it is only in specific and not in all circumstances that proof of 'prejudice' ought to be insisted upon.

53. While concluding our discussion, we repeat what has been observed earlier. This discourse is intended, not to doubt existing points of view, but to contribute to the understanding of the law. To prevent misunderstandings and to provide clarity, we wish to make it clear that it would be open for all courts, bound by [Article 141](#) of the Constitution, to decide matters coming up before them on the relevant topic in accordance with what they perceive is the law declared in [B. Karunakar](#) (supra)."

13. However, the facts of the instant case are entirely different. In the writ petition before the Single Judge the inquiry report was brought on record by way of counter affidavit filed in the writ petition. Thus the appellant herein had an opportunity to question the findings record by the inquiry officer but he has not made any such attempt before the writ court. The only explanation coming forward is that he was forced to sign the acknowledgement receipt of the goods in the godown. He has not made any other submission qua any shortcoming or illegality in the inquiry proceedings. The aforesaid explanation cannot be relied upon when the evidence is available on record to show that he had acknowledged the receipt of the goods in the godown. Thus the observations made in **Ram Prakash Singh (supra)** will not apply in the instant case. Therefore, in our considered opinion, the instant case would be governed by the observations of the Apex Court in the case of **B. Karunakar (supra)** particularly observations made in paragraphs 30 and 31. In the instant case the inquiry report was made available to the appellant before the writ court by way of counter affidavit filed by the respondents annexing the copy of the inquiry report but instead of questioning the findings recorded in the inquiry report, the appellant/petitioner has come with an explanation that he has been forced by then Executive Engineer to put his signature on the receipt of the goods which were never supplied in the Store. Thus merely because of the non supply of the inquiry report, the findings of the inquiry officer with regard to the guilt of the appellant herein cannot be questioned. Considering the facts and circumstances of the instant case and high level embezzlement involved, this Court finds that even if the inquiry report, would have been supplied to the appellant, it would had no material bearing regarding the finding of the guilt arrived at by the disciplinary authority.

14. After considering the submissions made by the learned counsels for the parties and upon perusing the impugned judgment and order, we notice that the same has been rendered by the Learned Single Judge with cogent and justifiable reasons. In an Intra-Court Special Appeal, no interference is usually warranted unless palpable infirmities or perversities are noticed on a plain reading of the impugned judgment and order. In the facts and circumstances of the instant case, on a plain reading of the impugned judgement and order, we do not notice any such palpable infirmity or perversity. As such, we are not inclined to interfere with the impugned

judgment and order.

15. In view of the above, the special appeal sans merit and is, accordingly, **dismissed.**

(Anish Kumar Gupta,J.) (Mahesh Chandra Tripathi,J.)

November 28, 2025
o.k.