IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/02/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

Writ Petition No. 776 of 2000

M.Venkatachalam
Type IV (TNA) House NO.3,
Alangulam Cement Factory Colony
TANCEM P.O.626 127 ..Petitioner

-Vs-

1. Tamil nadu Cements Corporation
rep. by its Chairman and Managing Director
LLA Building, 735, Anna Salai
Chennai-2

2. Tamil Nadu Cements Corporation
rep. by its Board of Directors
LLA Building, 735, Anna Salai
Chennai-2 ..Respondents

Writ Petitions are preferred under Art.226 of The Constitution of India seeking for a writ of certiorari, as stated therein.

For petitioners :: Mr.Balan Haridass

For respondents :: Mr.R.Viduthalai

:O R D E R

The writ petitioner has prayed for the issue of a writ of certiorari calling for the records relating to the order of the first respondent dated 5.4.1999 bearing Proceedings No.1800/A3-98-1 as confirmed by the order of the second respondent confirmed in their 177th Meeting held on 8.9.1999 communicated to the Petitioner on 6.10.1999 by the order dated 10.9.1999 bearing Proceedings No.2266/A3/99-1 imposing on the petitioner the punishment of stoppage of two increments with cumulative effect and quash both the orders as without jurisdiction, illegal, arbitrary and in violation of principles of natural justice and in violative of Article 14 of The Constitution.

2. Heard Mr.Balan Haridass, learned counsel appearing for the writ petitioner and Mr.R.Viduthalai, learned counsel appearing for the respondents.

3. Practically there is no controversy in the factual matrix. However, the factual matrix could be summarised briefly:-

4. The writ petitioner was the Manager (Tech-Mech) in Tamil Nadu Cements Factory, Alangulam Cement Works. On 9.10.1997 at about 10.00 pm., fire broke out in the said Cement Factory resulting heavy damage to the internal parts of Electro Static Precipitator (ESP) resulting twist/bend to the entire internal system which disturbed the original alignment leading to distortion, as a result of which the Kiln was stopped for 118 days. The recommissioning of the Kiln could be done after a lapse of four months resulting in loss to the tune of Rs.16.4 5 lakhs towards purchase of the steel materials, emitting electrodes and consumables besides loss of production of 20,000 Matric Tonnes of clinker. Relating to the said accident charges were framed against the petitioner and other staff members in the said Alangulam Cement Plant. In respect of the other two Executive Officials namely,

M.Anthonysamy, Assistant Manager and C.Paraman, they were placed under suspension for 18 days and the suspension period was treated as substantial punishment by order dated 21.1.1999 and 3.2.1999.

5. In respect of the petitioner charges were framed for negligence, omission and neglect of duty under Rule 5.2(k) of the TANCEM Service Rules. As the explanations offered by the delinquent officer was not satisfactory, enquiry was ordered and conducted. The Enquiry Officer reported a finding that charges levelled against the petitioner and two other delinquent officials were not established. It is alleged that the petitioner and the other two officials were not able to fix up the responsibility on the persons concerned on account of negligence and neglect of duty for the fire mishap and they tried to evade the responsibility, which has caused a heavy financial loss to the tune of Rs.16.14 lakhs to the Corporation.

6. Domestic enquiry was conducted and a report was submitted to the respondent on 23.5.1998. Without communicating the report, without affording an opportunity and without issuing a show cause notice as to why the finding should not be dissented by the respondents, the disciplinary authority by the impugned proceedings dated 5.4.1999 imposed a punishment of stoppage of increment for a period of two years with cumulative effect. The material portion of the impugned order which is relevant in this writ petition reads thus:

"It is found that the entire system of reporting the fire mishap has not been properly one and what was attempted was only shielding of the persons concerned at all levels and I do not agree with the observation of the Enquiry Officer that Th.M.Venkitachalam alone cannot be blamed for the incident. It is established that pumping of excess coal into the kiln without having proper/timely check over the same has resulted in accumulation of unburnt coal in the ESP chambers and the same was the main cause of the fire mishap. After taking into consideration , the facts and perusal of the connected documents, Enquiry Report/findings, including the explanation offered by Th.M.Venkitachalam, Manager (Tech-Mech) and on the basis of the circumstantial evidences both Th.M.Venkitachalam, Manager (Tech-Mech) and

Th.M.Antonysam, Dy.Manager (Process Control-Kiln) (i/c) who are the Head of Department and Section Head are vicariously liable for the fire accident caused due to their negligence and neglect of work. Hence, as per Rule 5.3(c) of the Service Rules of Tancem, I give an order that the annual increment of Th.M.Venkitachalam, Manager (Tech-Mech) is stopped for a period of two years with cumulative effect. He is also severely warned to guard himself against such lapses in future and this will be recorded in his personal file."

7. After the imposition of punishment by the order dated 12.4.1999 , the petitioner requested the first respondent to furnish the enquiry report dated 7.10.1998. In the report submitted the enquiry officer, has reported thus:-
"As otherwise Thiru M.Venkatachalam has taken prompt action against erred persons, has not shown negligence and neglect of duty, a lenient, lethargic and careless attitude which are detrimental to the interest of the organisation.
Under the above circumstances, I came to the conclusion that the charges No.1 and 4 were not proved and proper evidences are not provided to prove the charges, with respect to charges 2 and 3 against Thiru M.Venkatachalam, Manager (Tech-Mech) the respondent as per the charges mentioned in the charge memo ref.R.C.no.1800/A3, dated 2.4.1998 ."

8. The petitioner preferred an appeal before the second respondent and the appeal was placed before the Board, which the Board discussed. But the Board confirmed the order of punishment awarded by the first respondent on 5.4.1999. The second respondent appellate authority has not discussed the merits of various contentions advanced in the appeal before it.

9. In the light of the above facts, the learned counsel appearing for the petitioner contended that the failure to communicate a copy of the enquiry report, the failure to issue a show cause notice as to why the findings reported should not be dissented and the failure of the appellate authority to consider the material points, vitiate the impugned proceedings. Mr.Balan Haridas, learned counsel contended that the enquiry report which was not communicated to the petitioner has exonerated the petitioner. So also the report of the expert committee. Therefore before finding the petitioner guilty of one or more of the charges, the disciplinary authority should have issued a show cause notice as to why he is dissenting from the report and should have called upon the petitioner to state his objections or make a representation. Admittedly such a notice has not been issued. But straightway the punishment of stoppage of increment for two years with cumulative effect has been imposed.

10. Per contra, Mr.R.Viduthalai, learned counsel for the respondent contends that the punishment imposed against the petitioner being minor, it is not necessary either to communicate a copy of the enquiry officer's report nor it is necessary to issue a show cause notice before dissenting with the findings reported by the enquiry officer or expert committee and therefore there is no violation of principles of natural justice. Mr.R.Viduthalai, learned counsel further contended that for the imposition of minor punishment there is no necessity at all to issue a notice even after holding an enquiry.

The learned counsel further contended that the writ petitioner has reached the age of superanuation and has received all the benefits including gratuity and other terminal benefits and therefore no purpose will be served in affording an opportunity at this juncture and persuaded this court to adopt the principle of useless theory as has been laid down by the Supreme Court and relied upon the pronouncement of the Apex Court in this respect.

11. According to the learned counsel for the respondents, at this point of time if the order impugned is to be interfered the same will serve no purpose as the petitioner is no longer in service, he was permitted to retire, he has received all the benefits and the matter should not be reopened nor could be proceeded by the respondent any longer. Mr.Viduthalai, leaned counsel also contended that no prejudice has been caused to the petitioner by non furnishing the enquiry officer's report or by not issue of show cause notice as he has received all the benefits, excepting the monetary value of two increments and while he has received the maximum gratuity and other benefits for the service so far rendered by him. However, Mr.Balan Haridas, learned counsel for the petitioner contended that the imposition of punishment to the petitioner who was a member of the Executive Cadre has caused a stigma and reflected in his career and as a result of which he had lost valuable opportunities or further avenues and denial in this case has resulted substantial loss to the petitioner as it reflects on the efficiency or supervisory capacity or managerial capacity of the petitioner who was in charge of the factory. However, it is pointed out that when the Expert Committee as well as the enquiry officer have already reported that the cause for the fire could not be found and the petitioner has been exonerated of the charges, it is rather extraordinary on the part of the first respondent to have imposed the punishment of stoppage of increment by two years with cumulative effect without affording an opportunity before dissenting with the enquiry officer's report which report, is clearly in favour of the petitioner.

12. It is also alleged that there is violation of principles of natural justice and it has resulted in serious prejudice and hardship, besides loss to the petitioner. It is also contended that principles of natural justice has not been excluded to the present case. While Mr.R.Viduthalai, learned counsel for the respondents contended that the principles of natural justice is excluded by the service rules.

13. On the above facts, the following points arise for consideration:-
(a) Whether the failure to issue a show cause notice before dissenting with the enquiry officer's report and finding the petitioner guilty of one or more charges is illegal, arbitrary and violative of Art.14?

(b) Whether the failure to issue a show cause notice by the first respondent and follow the principles of natural justice has resulted in hardship or prejudice or substantial loss to the writ petitioner?

(c.) Whether the principles of natural justice is excluded by the

service rules framed by the respondent corporation?

(d) Whether the principle namely, useless theory of natural justice is required to be adopted at all in the present case?

(e) To what relief, the petitioner is entitled to even after superannuation?

14. The facts extracted above are not in controversy. The expert committee went in to the matter. So also enquiry officer appointed in the disciplinary proceedings. As seen from the said reports the petitioner has been practically exonerated from the four charges. Yet, the first respondent has not issued a show cause notice while dissenting with the findings and finding that the petitioner is guilty of some of the imputations and imposed the punishment of stoppage of increment with cumulative increments for two years. Mr.R.Viduthalai, learned counsel contended that being a minor punishment, it is not necessary to call upon the petitioner to state his objections or explanation as the case may be. It is true that a disciplinary proceedings could be initiated either for imposing a minor punishment or for a major penalty, but when once the respondent proceeded to impose a major penalty an enquiry officer has been appointed, a full-fledged enquiry has been conducted, the enquiry report has been submitted and on the basis of the report either the disciplinary authority could either accept the findings or dissent from the findings, for reasons to be recorded by him. When once the disciplinary authority accepts the findings, then there is no requirement at all to issue a show cause as the proceedings may stand concluded in favour of the charged officer. Per contra, if the disciplinary authority dissents with some of the findings reported, yet, before imposing punishment, the; disciplinary authority should afford an opportunity. The point at which the disciplinary authority makes up his mind to impose the punishment matters and equally it is open tot he disciplinary authority to impose either a major punishment or minor punishment even in a case where proceedings were initiated for a major punishment. It is being contended by Mr.Balan Haridas that the proceedings are illegal, violative of principles of natural justice while Mr.R.Viduthalai, contends that being a minor punishment and there is no violation of principles of natural justice, nor the service rules contemplates issue of notice.

15. The contentions advanced by Mr.R.Viduthalai in this respect cannot be sustained. If principles of natural justice or the law as laid down by the Supreme Court in ECIL Vs. B.Karunakar (1993(4) SCC 721) and other earlier pronouncements are not followed, it follows automatically that there is violation of Art.14 as well as service regulations. It is also rightly pointed that service regulations do not exclude the operation of principles of natural justice, nor it specifically provides that it is not necessary to issue a show cause notice or communicate the findings of the delinquent before ever imposing the penalty and that too in a case where proceedings were initiated for imposing a major penalty.

16. Chapter 5 of the Service Rules provides for conduct of discipline and appeal. The scope of the Rules are set out in Rule 5(1). Misconduct is

defined in Rule 5(2). Rule 5(3) provides for penalties. Rules 5(3)(a)(b)(c)(d) provides for imposition of warning, censure, stoppage of increment with or without cumulative effect and imposition of fine respectively.

17. The above are classified as minor penalties, while recovery from pay, reduction to a lower rank, suspension, removal from service or dismissal from service are classified as major penalties. Rule 5.3 .2 provides for the imposition of major punishments which provides for framing of charges, being served together with a statement of allegations, appointment of enquiry officer, calling upon the delinquent to state his objection or explanation, appointment of enquiry officer, recording the evidence oral and documentary, examination and cross examination of witnesses, the conduct of proceedings by the enquiry officer and the records to be maintained thereon, which includes the findings as to the charges and grounds thereron. On the basis of such report or proceedings the concerned disciplinary authority has to pass orders. Rule 5.5 and 5.7 provide for the right of appeal. Rule 5.12 provides for consideration of appeal.

18. In view of the provisions contained in Chapter 5, it is well open to the disciplinary authority either to agree with the findings reported by the enquiry officer or disagree with those findings if the disciplinary authority disagree with the findings reported by the enquiry officer, however it has to record reasons for dissent. Where the enquiry officer finds the delinquent guilty and the disciplinary authority agrees with the said finding, no difficulty would arise. However, if the disciplinary authority disagrees with the report of "not guilty" and records a dissenting finding that the charges are not established, then again it would not give rise to any difficulty. But, when the enquiry officer recorded a positive finding reporting that charges are not established, but the disciplinary authority disagree with those findings and record his own findings holding that the charges are established and the delinquent is liable to be punished, this warrants affording an opportunity of hearing to the delinquent at that stage. However, where the rules are silent and the disciplinary authority also does not given an opportunity of hearing to the delinquent and records a finding different from that of the enquiry officer that the charges were established, definitely an opportunity of hearing or raising objection is required, less it would be violative of the principles of natural justice. If a delinquent is found not guilty by the enquiry officer, and when the disciplinary authority dissents and find the delinquent guilty without affording an opportunity of hearing on the basis of same material on which the enquiry officer has reported not guilty, then the requirement is an opportunity should be afforded. This is the requirement of the principles of natural justice.

19. A Three Judges Bench of the Supreme Court on a reference made to resolve apparent difference in view, had occasion to consider the identical point and held in Punjab National Bank Vs. Kunj Behari Misra, reported in 1998 (7) SCC 84 and held thus:-

"16.....The Court explained that 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, the 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. It is the second right which was taken away by the 42nd Amendment but the right of the charged officer to receive the report of the enquiry officer was an essential part of the first stage itself. This was expressed by the Court in the following words: (SCC p. 754, para 26)
"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 enquiry, 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 an 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."

17.These observations are clearly in tune with the observations in Bimal Kumar Pandit case quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar case the first stage required an opportunity to be given to the

employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

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19.....The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a re presentation before the disciplinary authority records its findings on the charges framed against the officer." (Emphasis supplied)
This pronouncement squarely applies to the facts of this case and there is no escape for the respondents.

20. In Yoginath D.Bagde Vs. State of Maharashtra, reported in 1999 (7) SCC 739, the Apex Court held thus:-

"30. Recently, a three-Judge Bench of this Court in Punjab National Bank v. Kunj Behari Misra relying upon the earlier decisions of this Court in State of Assam v. Bimal Kumar Pandit, Institute of Chartered Accountants of India v. L.K. Ratna as also the Constitution Bench decision in Managing Director, ECIL v. B. Karunakar and the decision in Ram Kishan v. Union of India has held that: (SCC p. 96, para 17)
"It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to

differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority."
The Court further observed as under: (SCC p. 96, para 18)
"When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed."

The Court further held that the contrary view expressed by this Court in State Bank of India v. S.S. Koshal and State of Rajasthan v. M.C. Saxena was not correct.

31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer....."

21. While respectfully following the above pronouncements this court holds that when the disciplinary authority has reported that the petitioner is not guilty of the imputations and it had taken a decision without affording an opportunity of hearing or state objections to the petitioner, at the stage at which it propose to differ with the findings of the enquiry officer, the proceedings stand vitiated.

22. In the present case the petitioner is being accused of his failure to discharge the responsibility or negligence/neglect of duty. But the enquiry officer has in effect exonerated the petitioner. Thereafter without affording an opportunity, the disciplinary authority dissented from

the findings reported and found the petitioner guilty as against the petitioner and concluded thus:-

"After taking into consideration, the facts and perusal of the connected documents, Enqiry Report/findings, including the explanation offered by Th.M.Venkitachalam, Manager (Tech-Mech) and on the basis of the circumstantial evidences both Th.M.Venkitachalam, Manager (Tech-Mech) and Th.M.Antonysam, Dy.Manager (Process Control-Kiln) (i/c) who are the Head of Department and Section Head are vicariously liable for the fire accident caused due to their negligence and neglect of work. Hence, as per Rule 5.3(c) of the Service Rules of Tancem, I give an order that the annual increment of Th.M.Venkitachalam, Manager (Tech-Mech) is stopped for a period of two years with cumulative effect. He is also severely warned to guard himself against such lapses in future and this will be recorded in his personal file."

23. It is seen from the above passage, the the petitioner had been held vicariously liable for the fire accident caused due to alleged negligence and neglect of work by unknown or undetedcted. But the charges of negligence and neglect of duty (charge No.2), the petitioner had been exonerated as seen from the enquiry report. The question of vicarious liability is not the charge for which the petitioner was proceeded. Nor such a charge has been framed. It is also clear from the conclusion of the disciplinary authority that the petitioner has been held vicariously liable which is not the charge at all as it is different from negligence or neglect of duty or failure to supervise. Vicarious liability was not the subject matter of charge or imputation. Nor it could be the subject matter. That apart, the petitioner has been found guilty of misconduct falling under Rule 5.3(c) of the Service Rules. The definition what is "misconduct", "negligence or neglect of work" fall under the category of misconduct as defined in Rule 5.2(k). The entirety of Rule 5.3 do not take in vicarious liability as misconduct and it is not one of the misconduct which is enumerated. What has been charged is negligence or neglect of work which has resulted in the accident of fire. But as seen from the above passage as against the petitioner who was the Manager, there is no finding of negligence or neglect of work. Therefore the very conclusion is based on surmises and not on any materials. Even on ground of vicarious liability also there cannot be any action under the Service Rules. The petitioner has been found guilty of alleged lapse or vicarious liability for which no charge has been framed. That being so, the very conclusion that the petitioner is guilty of charges and therefore he is imposed with the penalty of stoppage of increment also cannot be sustained as it demonstrates non application of mind besides arbitrary exercise of power.

24. The petitioner being found guilty of even a portion of the charges or imputations, as held by the Apex Court, the petitioner should have been afforded an opportunity. That apart, when the Domestic Enquiry Officer exonerated the petitioner, before dissenting, an opportunity should have been afforded to the petitioner. Thus there is a failure to follow the principles of natural justice. The said failure has resulted in serious prejudice, hardship and substantial loss to the petitioner.

25. The principles of natural justice as has been held by the catena of decisions of the Apex Court are not excluded by the service rules governing the service. Though the stoppage of increment with or without cumulative effect is a minor punishment, in the present case, the proceedings were initiated for imposing major penalty in terms of Rule 5.3.2. It may be that ultimately, the disciplinary authority has imposed a minor punishment, but till the stage of imposition or till the disciplinary authority makes up his mind to impose any one of the penalty either minor or major under Rule 5.3, the proceedings has to be in terms of Rule 5.3.2 namely for major penalty for all purposes. For any reason if the disciplinary authority decides to convert the proceedings from 5.3.2 to 5.3.1, at least, a notice should have been given to the delinquent indicating that the disciplinary authority has converted the proceedings. In fact, even in respect of minor penalty, in terms of Rule 5.3, what is contemplated is "found guilty of any misconduct on the basis of the records available or enquiry". Even in respect minor penalty also applicability of principles of natural justice has not been excluded. An elaborate procedure is prescribed in Rule 5.3 for imposition of major penalties. But in respect of minor penalties no procedure has been prescribed. That does not mean rules exclude principles of natural justice or when delinquent demands an enquiry, the same could be denied as Rule 5.3 contemplates an enquiry even in respect of proceedings initiated for imposition of minor penalty. Therefore Rule 5.3 has been violated

26. According to Mr.R.Viduthalai, learned counsel for the respondent, no prejudice has been caused to the petitioner as ultimately penalty of stoppage of increment which is a minor penalty for one year has been imposed. According to Mr.R.Viduthalai, for imposition of minor penalty, a show cause notice calling upon the delinquent to state his objections alone is sufficient and nothing prevents the delinquent officer even if he is proceeded for imposition of minor penalty to seek for an enquiry, in case if he denies the imputation or the gravity of the misconduct warrants an enquiry. Normally, every service rules provides for setting out the imputations, opportunity of being heard to state objections and thereafter to pass orders when the proposal is to impose minor penalty. In this case the proposal was not for imposition of minor penalty, but, it is for major penalty. That apart, the final conclusion is not in respect of what has been the subject matter of enquiry, namely the charge or imputations forming the part of the charges, but the petitioner has been found guilty of being vicariously liable. Therefore assuming for purpose of argument that the ultimate order is for imposition of minor punishment and therefore no violation of principle natural justice could be complained of, in the considered view of this court the same cannot be sustained as the petitioner has been found guilty of vicarious liability for which no notice has been issued, nor he was put on notice. Here again, the principles of natural justice has been violated. So also Rule 5.3.

27. The learned counsel for the petitioner contended that principles of natural justice has no application as already the petitioner had been permitted to retire, he has received all the terminal benefits which are maximum and therefore even assuming natural justice has been violated is of little consequence. This again cannot be countenanced. The petitioner was the General Manager of the Unit at Aalangulam. To hold that he is vicariously

liable also is not an ordinary accusation, but it amounts to finding the petitioner guilty, being negligent for the alleged accident and therefore it follows that a serious prejudice is caused to the petitioner by not following the principles of natural justice. The contention of Mr.R.Viduthalai that the non furnishing of enquiry report would not be fatal as there is no prejudice and that every infraction of statutory provision or rules or regulation does not render such decision fatal. The learned counsel relied upon the pronouncement of STATE OF U.P. V. HARENDRA ARORA reported in 2001(3) CTC 176 (S.C). The fact of this case is clearly distinguishable to the said pronouncement. In the said pronouncement the Supreme Court after referring to the seven questions enunciated earlier in 1988 (3) SCC 600 held thus:-

"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 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 or not setting aside the order of punishment (and not any internal appellate or revisional authority), there would be neither 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."

28. On the facts of this case, this court holds that non supply of report has prejudiced the petitioner and the petitioner being found guilty of imputation, which is different from those charges for which proceedings were initiated. It is not as if mere punishment alone that would save the respondent from furnishing copy of the report or issuing a notice before dissenting from the findings reported or imposing a punishment in respect of imputations for which the delinquent was not proceeded at all. Therefore the contention of Mr.R. Viduthalai that the principles of natural justice need not been followed cannot be countenanced.

29. The appellate authority also merely confirmed the order of punishment and it has failed to advert to or consider the contentions urged by the petitioner in the appeal petition. Though at the hearing one of the contentions advanced being that the very same Chairman cum Managing Director has taken part in the Board Proceedings while deciding the appeal as part of the Board of Directors, as such a contention has not been raised in the affidavit, this court will not be justified in examining this matter. Further in the light of the above discussions disposal of the appeal by the appellate authority is also not in accordance with Rule 5.12 as the appellate authority has not considered neither Rule 5.12 (a) or (b). This vitiates both the proceedings.

30. In the foregoing circumstances and in the light of the above discussions, all the points (a) to (e) are answered in favour of the petitioner. In the result, the writ petition is allowed. The impugned proceedings of the respondents 1 and 2 are quashed. The parties shall bear their respective costs.

Index:yes
Internet:Yes
gkv

To

1. Tamil Nadu Cements Corporation
rep. by its Chairman and Managing Director
LLA Building, 735, Anna Salai
Chennai-2

2. Tamil Nadu Cements Corporation
rep. by its Board of Directors
LLA Building, 735, Anna Salai
Chennai-2