[2025] 5 S.C.R. 275 : 2025 INSC 555

State of Uttar Pradesh through Principal Secretary, Department of Panchayati Raj, Lucknow
v.
Ram Prakash Singh

(Civil Appeal No. 14724 of 2024)

23 April 2025

[Dipankar Datta* and Prashant Kumar Mishra, JJ.]

Issue for Consideration

Whether, in pursuance of a purported enquiry where there was none to present the case of the department, no witness was examined in support of the charges and no document was formally proved, any order of punishment could validly be made; whether the disciplinary authority was justified in placing reliance on a report of enquiry prepared by the Enquiry Officer who had looked into documents which were not provided to the respondent and had arrived at findings of guilt only on the basis of the charge-sheet, the reply thereto of the respondent and such documents; whether failure or omission or neglect of the disciplinary authority to furnish the enquiry report had the effect of vitiating the enquiry; whether the enquiry not having been completed within the time stipulated by the Tribunal in its order dated 23rd January, 2014, the disciplinary proceedings could have been continued beyond May, 2014; whether, and if at all, the appellant should be granted one more opportunity to conclude the enquiry against the respondent within the time to be stipulated by this Court.

Headnotes†

U.P. Government Servants (Discipline and Appeal) Rules, 1999 – r.9(4) – Civil Service Regulations – Art. 351-A – According to the appellant, the respondent had engaged in embezzlement of panchayat funds – High Court dismissed the writ petition filed by the appellant challenging the order of the Uttar Pradesh State Public Services Tribunal (Tribunal) whereby it had set aside the order of punishment imposing on the respondent a penalty of Rs.10.25 lakh with 5% reduction in pension for five years – Whether on facts, the enquiry was conducted by the Enquiry Officer in disregard of the 1999 Rules – Respondent, if

* Author

was punished by the disciplinary authority without due process being followed in taking disciplinary action against him:

Held: Yes – Impugned order of the High Court does not suffer from any legal infirmity, upheld – Enquiry was conducted by the Enquiry Officer in clear disregard of the 1999 Rules relating to conduct of disciplinary proceedings against the employees of the appellant – After the first round of litigation before the Tribunal leading to quashing of the order of dismissal, the Enquiry officer could not have repeated the same mistake by not calling witnesses to record their oral statements as well as to prove the documents generated in course of the preliminary enquiry – Respondent was thus, punished by the disciplinary authority without due process being followed in taking disciplinary action against him – Further, there was blatant disregard by the appellant of not only principles of natural justice and the judicial command in B. Karunakar's case by not furnishing the enquiry report but also by not following the applicable statutory rule – Therefore, the enquiry was wholly vitiated – Furthermore, the enquiry not having been completed within the time stipulated by the Tribunal in its order dtd. 23.01.2014, the disciplinary proceedings could not have been continued beyond May, 2014 – Thus, without an extension of time, no order of punishment could have been validly made – Lastly, the appellant despite being given an opportunity to proceed in accordance with law failed to utilise such opportunity – Tribunal and the High Court were justified in not granting one more opportunity to the appellant to resume proceedings from the stage invalidity in the proceedings was detected – Respondent entitled to full retiral benefits from the date of his superannuation without deduction. [Paras 9, 10, 59, 64, 71, 72]

Disciplinary action for misconduct – Departmental Enquiry – Non-service of Enquiry report – Right to receive the enquiry report fundamental safeguard in disciplinary proceedings – Test of prejudice – What is the effect and impact of non-furnishing the report of enquiry by the disciplinary authority to a delinquent employee before he is punished; Does he have to plead and prove 'prejudice'; Is it in all or specific circumstances that the courts would insist on the delinquent employee to demonstrate 'prejudice'; Is furnishing of the report of enquiry merely a procedural step in the disciplinary proceedings or something more – Law declared in Constitution Bench judgment in B. Karunakar's case – Interpretation of –

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Shifting of trend towards the 'prejudice' principle; insistence on the pleading and proof of 'prejudice' – Constitution of India – Article 311. [Paras 37-44, 52]

Departmental Enquiry – Furnishing of enquiry report – Mandatory – Test of 'prejudice':

Held: The requirement of furnishing the report of enquiry, though procedural, is mandatory 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 – It is only in specific and not in all circumstances that proof of 'prejudice' ought to be insisted upon. [Para 52]

Departmental Enquiry – Evidence Act, 1872 – Applicability of – Infirmity in the process of decision making in the present case:

Held: 'Materials brought on record by the parties' (to which consideration in the enquiry ought to be confined) mean only such materials can be considered which are brought on record in a manner known to law – Such materials can then be considered legal evidence, which can be acted upon – Though the Evidence Act, 1872 is not strictly applicable to departmental enquiries, which are not judicial proceedings, nevertheless, the principles flowing therefrom can be applied in specific cases – Evidence tendered by witnesses must be recorded in the presence of the delinquent employee, he should be given opportunity to cross-examine the witnesses and no document should be relied on by the prosecution without giving copy thereof to the delinquent – All these basic principles of fair play have their root in such Act – In the present case, the documents referred to in the list of documents forming part of the annexures to the chargesheet, on which the department seeks to rely in the enquiry, cannot be treated as legal evidence

worthy of forming the basis for a finding of guilt if the contents of such documents are not spoken to by persons competent to speak about them – A document does not prove itself – In the enquiry, therefore, the contents of the relied-on documents have to be proved by examining a witness having knowledge of the contents of such document and who can depose as regards its authenticity – In the present case, no such exercise was undertaken by producing any witness – The enquiry conducted by the Enquiry Officer in a manner not authorised by law could not have formed the basis of the order of punishment dated 24.03.2015 imposed on the respondent. [Paras 14, 18]

Departmental Enquiry – Challenge to order of punishment – Non-furnishing of the report of enquiry to the employee – 'Test of prejudice' – Applicability – Proper course for the tribunal/ court to adopt:

Held: Whenever a challenge is made to an order of punishment on, inter alia, the ground that the report of enquiry has not been furnished, the tribunal/court should require the employer (Government, public or private) to justify non-furnishing of such report – If no valid explanation is proffered and the tribunal/court suspects unfair motives (report has not been furnished as part of a strategic ploy or to advance an unholy cause or prompted by extraneous reasons) or carelessness, without much ado and without insisting for 'prejudice' to be demonstrated, the order of punishment should be set aside and the proceedings directed to resume from the stage of offering opportunity to the delinquent employee to respond to the enquiry report – Irrespective of 'prejudice' being demonstrated, no employer or for that matter anyone should be permitted to gain any benefit by violating the law – In case the tribunal/court is satisfied that real effort was made by the employer but such effort remained abortive because the report could not be furnished to the employee for reason(s) beyond its control, or some other justification is placed on record, which is acceptable to the tribunal/court, the test of 'prejudice' is open to be applied but only after ensuring service of a copy of the enquiry report on the employee – In a case where the employee either expressly or by his conduct appears to have waived the requirement of having access to the report, it would be open to the tribunal/court to deal with the situation as per its discretion – However, the simplicitor application of the 'prejudice' test absent a query to the employer,

would be in the teeth of the law laid down by the Constitution Bench in B. Karunakar's case. [Para 51]

U.P. Government Servants (Discipline and Appeal) Rules, 1999 – r.9(4) – Departmental Enquiry – Non-furnishing of the report of enquiry to the respondent-employee – "Test of prejudice" – Plea of the appellant that the test of 'prejudice' ought to be applied in this case since the respondent did not participate in the enquiry and, therefore, there was no obligation for the disciplinary authority to furnish such report:

Held: Except that the respondent had not participated in the second round of enquiry and, hence, the disciplinary authority was not under obligation to furnish him the enquiry report, there is no other explanation as to why such report was not furnished to the respondent – Even assuming that the respondent had without justification stayed away from the enquiry, the disciplinary authority could not have considered the report of the Enquiry Officer in view of what has been held in paragraph 26 in B. Karunakar as well as Rule 9(4) of the 1999 Rules – Also, since the report of enquiry has been withheld by the appellant at all three tiers, it is preposterous that he would be in a position to plead and prove prejudice – Relying on the law declared in S.K. Sharma which, had relied on B. Karunakar, the prejudice is self-evident and no proof of prejudice as such is called for in this case – Adverse presumption drawn that there was a purpose behind withholding the report. [Paras 55, 59]

Practice and Procedure – Remittance of case – Requirements of 'due process' not satisfied – Breach of statutory rules – Whether present case be remitted to disciplinary authority:

Held: No – Remitting would mean reverting to the stage of production of witnesses on behalf of the department – When not a single witness could be produced for examination in 2010 and 2014, now witnesses would not be available to support the charges – Proceedings have certain incidents of 2004-05 as the origin – Having regard to the lapse of time since then coupled with the retirement of the respondent from service in 2010 and, more particularly, when the appellant despite an earlier opportunity granted by the Tribunal has failed to avail the same by continuing the enquiry in accordance with law, it would be highly unfair and unjust to subject the respondent to face the enquiry once again –

Gravity of the offence alleged to have been committed is certainly a vital consideration; however, repeated opportunities cannot be claimed without there being overwhelming public interest warranting such opportunity – On facts, second opportunity was not required to be given – Also, two of the respondent's colleagues (one of them a senior officer) who were also proceeded against were practically let off with no punishment or punishment of stoppage of increments – No useful purpose will be served by reviving the disciplinary proceedings and in remitting the case to the appellant. [Para 71]

Departmental Enquiry – Fixed time stipulated by tribunal/court to conclude the proceedings – Extension of time:

Held: It may not always be possible for the disciplinary authority in each such case where a fixed time has been stipulated by a tribunal/court to conclude the proceedings to apply and seek extension of time before expiry of such time although there can be no gainsaying that applying and obtaining an extension before expiry is eminently desirable – In exceptional cases, even after expiry of the stipulated time, such an application can be moved; and, depending on the cause shown for inability or failure to conclude the proceedings within the time stipulated and also for not applying for extension before expiry, the tribunal/court may, in its discretion, allow or reject the prayer for extension – If the application is rejected, the proceedings cannot be carried forward unless a superior court, reversing the order of rejection, permits the disciplinary authority to so proceed – If the delinquent employee objects to continuation of proceedings beyond the time stipulated, the disciplinary authority without proceeding further ought to apply for extension of time and may not go ahead till such time its prayer for extension is granted on such application – Proceeding despite objection and without there being an extension could give rise to apprehensions of bias – Therefore, applying for extension upon halting the proceedings awaiting order on the application would be an advisable course of action to balance the interests of both the employer and the employee – Even if the delinquent employee has not objected to continuation of proceedings beyond the time stipulated by the tribunal/court but before the final order is passed in the proceedings, the disciplinary authority would be bound to seek and obtain extension of time – If a tribunal/court stipulates a fixed time by which an enquiry or proceedings for disciplinary action ought

to be concluded coupled with a rider that, in default, the enquiry/ proceedings will stand lapsed, the disciplinary authority in such a case would cease to have the jurisdiction to proceed further unless, citing genuine grounds, a recall of such default clause is sought and obtained to proceed further in accordance with law. [Para 62]

Case Law Cited

Managing Director, ECIL, Hyderabad v. B. Karunakar **[1993] Supp. 2 SCR 576** *:* **(1993) 4 SCC 727 – followed.**

State Bank of Patiala v. S.K. Sharma **[1996] 3 SCR 972 : (1996) 3 SCC 364 – relied on.**

Board of Directors Himachal Pradesh Transport Corporation v. HC Rahi **[2008] 3 SCR 97 : (2008) 11 SCC 502;** *M/s. Bareilly Electricity Supply Company Limited v. The Workmen and Others* **(1971) 2 SCC 617;** *Roop Singh Negi v. Punjab National Bank and Others* **[2008] 17 SCR 1476 : (2009) 2 SCC 570;** *State of Uttar Pradesh and Others v. Saroj Kumar Sinha* **[2010] 2 SCR 326 : (2010) 2 SCC 772;** *Nirmala J. Jhala v. State of Gujarat and Another* **[2013] 5 SCR 200 : (2013) 4 SCC 301;** *Haryana Financial Corporation v. Kailash Chandra Ahuja* **[2008] 10 SCR 222 : (2008) 9 SCC 31;** *Union of India v. Bishamber Das Dogra* **[2009] 9 SCR 828 : (2009) 13 SCC 102;** *Sarva U.P. Gramin Bank v. Manoj Kumar Sinha* **[2010] 2 SCR 512 : (2010) 3 SCC 556;** *Union of India v. Alok Kumar* **[2010] 5 SCR 35 : (2010) 5 SCC 349;** *Punjab National Bank v. K.K. Verma* **[2010] 11 SCR 311 : (2010) 13 SCC 494;** *Union of India v. R.P Singh* **[2014] 6 SCR 351 : (2014) 7 SCC 340;** *SBI v. B.R. Saini* **(2018) 11 SCC 83;** *Union of India and Others v. Dilip Paul* **[2023] 13 SCR 473 : 2023 SCC OnLine SC 1423;** *Dharampal Satyapal Ltd. v. CCE* **[2015] 6 SCR 437 : (2015) 8 SCC 519;** *Swamy Devi Dayal Hospital & Dental College v. Union of India* **[2013] 14 SCR 105 : (2014) 13 SCC 506;** *Vijayakumaran C.P.V. v. Central University of Kerala* **[2020] 3 SCR 374 : (2020) 12 SCC 426;** *Mineral Area Development Authority of India & Anr. v. Steel Authority of India & Anr.* **[2024] 7 SCR 1549 : (2024) 10 SCC 257;** *Securities Exchange Board of India v. Mega Corporation Limited* **[2022] 2 SCR 546 : (2023) 12 SCC 802;** *T. Takano v. Securities and Exchange Board of India and Anr.* **[2022] 16 SCR 212 : (2022) 8 SCC 162;** *State of U.P. v. Sudhir Kumar Singh* **[2020] 13 SCR 571 : (2021) 19 SCC 706;** *Gorkha Security Services v. Govt. (NCT of Delhi)* **[2014] 13 SCR 617 : (2014) 9 SCC 105;** *Kailash Chander Asthana v. State*

of U.P. **(1988) 3 SCC 600***; Union of India v. Mohd. Ramzan Khan* **[1990] Supp. 3 SCR 248 : (1991) 1 SCC 588;** *Union of India v. E. Bashyan* **[1988] 3 SCR 209 : (1988) 2 SCC 196;** *Union of India v. Tulsiram Patel* **[1985] Supp. 2 SCR 131 : (1985) 3 SCC 398;** *Olga Tellis v. Bombay Municipal Corporation* **[1985] Supp. 2 SCR 51 : (1985) 3 SCC 545;** *A.R. Antulay v. R.S. Nayak* **[1988] Supp. 1 SCR 1 : (1988) 2 SCC 602;** *S.L. Kapoor v. Jagmohan* **[1981] 1 SCR 746 : (1980) 4 SCC 379;** *Union of India and Others v. Satyendra Kumar Sahai and Another* **(2005) 12 SCC 355;** *A. Masilamani v. LIC* **(2013) 6 SCC 530;** *Allahabad Bank v. Krishna Narayan Tiwari* **[2017] 1 SCR 389 : (2017) 2 SCC 308 – referred to.**

Abhishek Prabhakar Awasthy v. New India Assurance Co. Ltd., **2013 SCC OnLine All 14267 – approved.**

List of Acts

U.P. Government Servants (Discipline and Appeal) Rules, 1999; Evidence Act, 1872; Government of India Act, 1935; Constitution (42nd Amendment) Act, 1976.

List of Keywords

U.P. Government Servants (Discipline and Appeal) Rules, 1999; Embezzlement of panchayat funds; Disciplinary proceedings; Enquiry report not furnished/supplied; Non-furnishing of enquiry report; Documents not supplied; Reliance on enquiry report; Enquiry vitiated; Disciplinary action; Government of Uttar Pradesh, Panchayati Raj Section; Uttar Pradesh State Public Services Tribunal; No witnesses examined; No documents formally proved; Order of dismissal; Order of punishment; "Irregular" enquiry; Second round of disciplinary proceedings; Time stipulated to conclude enquiry; Time period stipulated by the Tribunal expired; No extension of time prayed; *Functus officio*; Sanction of Governor; Article 351-A of the Constitution; Order quashed; Statutory compliance; Clear disregard of the 1999 Rules relating to conduct of disciplinary proceedings; Due process not followed; Test of 'prejudice'; *Ratio decidendi* of B. Karunakar case; Jurisprudence on non-furnishing of the report of enquiry; Delinquent employee to demonstrate 'prejudice'; Right to raise a fair defence; Fundamental safeguard in disciplinary proceedings; Integral part of natural justice; 'Reasonable opportunity to defend'; Article 141 of the Constitution; *Res ipsa loquitur*; Enquiry stands vitiated; Remitting the case.

State of Uttar Pradesh through Principal Secretary, Department of Panchayati Raj, Lucknow v. Ram Prakash Singh

Case Arising From

Civil Appellate Jurisdiction: Civil Appeal No. 14724 of 2024

From the Judgment and Order dated 19.10.2019 of the High Court of Judicature at Allahabad, Lucknow Bench in SB No. 28859 of 2019

Appearances for Parties

Advs. for the Appellant:
Shaurya Sahay, Aditya Kumar, Ms. Ruchil Raj.

Adv. for the Respondent:
Anil Kumar Mishra.

Judgment / Order of the Supreme Court

Judgment

Dipankar Datta, J.

THE CHALLENGE

1. The challenge in this appeal, by special leave, is to a judgment and order dated 19th October, 2019[1] of the High Court of Judicature at Allahabad.[2] It is laid by the State of Uttar Pradesh, the unsuccessful writ petitioner.[3] The impugned order dismissed the writ petition[4] of the appellant, wherein the final order of the Uttar Pradesh State Public Services Tribunal[5] dated 19th November, 2018 was under challenge. The Tribunal set aside the order of punishment dated 24th March, 2015 imposing a penalty of Rs. 10.25 lakh along with a 5% reduction in pension for five years on Ram Prakash Singh.[6]

FACTUAL MATRIX

2. The facts of the case are of great significance given the key arguments advanced by the parties. Hence, we find it appropriate

1 impugned order
2 High Court
3 appellant
4 Writ Petition (S/B) No. 28859/2019
5 Tribunal
6 Respondent

to briefly narrate the events having a bearing on our decision before proceeding to examine the merits of the rival claims. The vital facts, as culled out from the records, to decide the appeal are as follows:

I. The respondent was serving as an Assistant Engineer in District Panchayat, Kushinagar in 2004-2005.

II. According to the appellant, the respondent had engaged in embezzlement of panchayat funds to the tune of Rs. 2.5 crore in relation to certain drainage and road construction projects. In cahoots with the incumbent Junior Engineer, Ram Kripal Singh, the respondent had created sham work records and siphoned off panchayat funds.

III. Consequently, in December, 2005, the Commissioner, Gorakhpur Division[7] was appointed to make a preliminary enquiry. He directed the Technical Audit Cell and Divisional Technical Examiner to determine the existence and extent of financial irregularities committed by the respondent.

IV. The Technical Audit Cell submitted the financial audit report dated 16th January, 2006, which found the respondent to have verified fake records of work created by the said Ram Kripal, Junior Engineer. *Vide* another report dated 23rd February 2006, it was opined that there was a loss of Rs. 30.083 lakh to the exchequer on account of the misconduct committed by the respondent and others and that the respondent being responsible for 35% of the said loss, Rs. 10.25 lakh was the amount recoverable from him.

V. On 12th April, 2006, the respondent was placed under suspension in contemplation of disciplinary proceedings.

VI. Respondent was served with a chargesheet dated 24th August, 2006. Five charges were framed against him. The audit reports dated 16th January, 2006 and 23rd February 2006 constituted the basis for the charges.

VII. A challenge laid by the respondent to the order of suspension dated 12th April, 2006 before the High Court in its writ jurisdiction resulted in his reinstatement in service on 24th November, 2006.

7 Enquiry Officer

VIII. The documents sought to be relied on by the appellant against the respondent to drive home the charges were not supplied to the respondent. Respondent, thus, furnished his reply on 2nd January, 2008 denying the charges against him in addition to praying for a personal hearing.

IX. The enquiry officer submitted his report of enquiry to the appellant on 18th February, 2008 holding the respondent guilty of all the charges.

X. *Per* the respondent, there was no enquiry at all. No witness was examined in support of the charges and he was not put on notice. None proved the documents forming part of the charge-sheet, which were also not supplied to him. Relying on the charge-sheet, his reply thereto and the enquiry reports obtained from Technical Audit Cell, the enquiry officer held him guilty. Even copy of the enquiry report was not furnished.

XI. Respondent reached the age of superannuation on 2nd August, 2010.

XII. Almost after two and half years of submission of the enquiry report by the Enquiry Officer, the respondent received on 2nd August, 2010 an order dismissing him from service dated 26th July, 2010 passed by the Principal Secretary to the Government of Uttar Pradesh, Panchayati Raj Section.

XIII. Apart from being dismissed, a penalty of Rs. 10.52 lakh was imposed on the respondent.

XIV. Crestfallen with the order of dismissal received by him a couple of days after the date of superannuation, the respondent challenged such order by lodging a claim[8] before the Tribunal. The Tribunal, *vide* judgment and order dated 23rd January, 2014, *inter alia*, returned findings on perusal of the enquiry report that no enquiry was conducted by the Enquiry Officer in accordance with Rule 7(vii) of the U.P. Government Servants (Discipline and Appeal) Rules, 1999[9] ordaining that when a charge is denied by the charged officer, the Enquiry Officer

8 Claim Petition No. 1563/2010

9 1999 Rules

shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged officer who shall then be given opportunity to cross-examine the witnesses. Holding that the order of dismissal could not be sustained based on an "irregular" enquiry, the Tribunal ordered the appellant to initiate enquiry proceedings against the respondent from the stage of submission of reply within three weeks from date of receipt of the judgment and conclude the same within a period of an additional three months.

XV. The three-month period stipulated by the Tribunal for concluding the enquiry expired in April, 2014.

XVI. In the wake of the decision of the Tribunal, the Enquiry Officer addressed a letter dated 16th May, 2014 to the respondent extending to him another opportunity to present any statement or additional evidence within 15 days of receiving such letter.

XVII. However, according to the appellant, instead of participating, the respondent refused to join the enquiry and raised frivolous grounds to derail the same.

XVIII. Through a letter dated 23rd May 2014, the respondent replied to the letter dated 16th May, 2014 stating that the time period stipulated by the Tribunal had expired and no extension of time having been prayed, the proceedings initiated against him had lapsed. Respondent also contended that since he had retired in 2010, no proceedings could be continued against him.

XIX. *Vide* his letter dated 05th June, 2014, the Enquiry Officer once again called upon the respondent to file his additional reply/explanation.

XX. Respondent *vide* his letter dated 13th June, 2014 reiterated that the Enquiry Officer had become *functus officio* and, therefore, without any extension of time granted by the Tribunal, he had no authority to proceed.

XXI. Once again, the Enquiry Officer without recording the oral evidence of any witness and merely on the basis of the charge-sheet, reply and the documents gathered during preliminary enquiry submitted a report of enquiry dated 15th September, 2014, holding the respondent guilty of all the charges.

XXII. After receiving the sanction of the Governor under Article 351-A, Civil Service Regulations[10] on 05th January, 2015 (which was required because the respondent had retired), the Joint Secretary to the Government of Uttar Pradesh, Panchayati Raj Section issued a fresh order of punishment on 24th March, 2015 reducing the pension of the respondent by 5% for a period of five years and requiring recovery of Rs. 10.52 lakh from his retiral benefits.

XXIII. Interestingly, the aforesaid order dated 24th March, 2015 though briefly refers to and summarises the enquiry report, it is clear on perusal thereof that the Enquiry Officer proceeded to hold the charges against the respondent established only on the basis of the allegations in the charge-sheet and the reply of the respondent. There is absolutely no reference to statement of any witness being recorded or as to who proved the documents which, in the opinion of the Enquiry Officer, did support the case of the department that the respondent had by his acts of omission/commission indulged in draining the public exchequer in excess of Rs. 2 crore. Further, the said order is completely silent as to whether the documents relied on by the Enquiry Officer were at all made over to the respondent. Also, the Principal Secretary quashed the earlier order of punishment dated 26th July, 2010 and closed the proceedings ordering fresh punishment, but little did he realise that such order had been quashed earlier by the Tribunal *vide* judgment and order dated 23rd January, 2014; hence such order did not survive for being quashed.

XXIV. Dissatisfied with the order of punishment dated 24th March, 2015, the respondent once again invoked the jurisdiction of the Tribunal to assail the order of the appellant by lodging a fresh claim.[11] The Tribunal, *vide* judgment and order dated 12th November, 2018, allowed the claim of the respondent by setting aside the impugned order dated 24th March, 2015. The Tribunal noted that, admittedly, copy of the enquiry report was not supplied to the respondent; hence, the procedure adopted by the appellant was in the teeth of Rule 9(4) of the

10 CSR

11 Claim Petition No. 471/2016

1999 Rules. Further, it found that the enquiry had not been conducted in terms of the 1999 Rules. Additionally, it was recorded that the Tribunal on the earlier occasion having granted three months' time to conclude the enquiry, submission of the enquiry report dated 15th September, 2014 and the final order of punishment dated 24th March, 2015 should have been preceded by a permission being sought from the Tribunal which, unfortunately, the appellant did not seek. Reliance was placed by the Tribunal on the Full Bench decision of the High Court in ***Abhishek Prabhakar Awasthy v. New India Assurance Co. Ltd.***[12]. It was laid down therein that if the court stipulates a time for concluding the proceedings, it will not be open to the employer to disregard that stipulation and an extension of time must be sought. Based on such reasons, the order of punishment dated 24th March, 2015 under challenge was set aside and the respondent was held entitled to all service benefits that were stopped in terms thereof. Compliance was directed to be ensured within a period of three months.

XXV. Aggrieved by the order of the Tribunal, the appellant moved the High Court in its writ jurisdiction *albeit* unsuccessfully. The High Court, *vide* the impugned order, dismissed the appellant's writ petition and upheld the order of the Tribunal.

CONTENTIONS OF THE PARTIES

3. Learned counsel for the appellant, seeking quashing of the impugned order and the order passed by the Tribunal, vigorously contended that:

I. Immense gravity of the offence committed by the respondent was not appreciated either by the High Court or the Tribunal. Further, the respondent overtly refused to participate in the second round of disciplinary proceedings; hence, the respondent cannot be permitted to take advantage of his own wrong.

II. This Court in ***Board of Directors Himachal Pradesh Transport Corporation v. HC Rahi,***[13] has held that the

12 2013 SCC OnLine All 14267

13 (2008) 11 SCC 502

principles of natural justice cannot be viewed in a rigid manner. The application of these principles depends on the facts and circumstances of each individual case. To sustain the plea of violation of principles of natural justice, one must establish how he has been prejudiced by the violation. In the present case, Respondent was aware of the disciplinary proceedings, yet, refused to participate in the same. It can be inferred from the respondent's actions that he had waived any right to natural justice.

III. The Tribunal, *vide* order dt. 23rd January, 2014, in the first round of litigation, had overruled the respondent's contention that the entirety of the disciplinary proceedings should be set aside. However, the respondent chose to raise the same issues in his letters dated 23rd May, 2014 and 13th June, 2014.

IV. The second round of enquiry was not a fresh proceeding; rather, it was a continuation of the disciplinary proceeding which was initiated in 2006. Additionally, a fresh enquiry can be initiated against a retired employee within four years of his retirement under Regulation 351-A of the CSR. Respondent retired on 31st July, 2010 and the office order directing resumption of disciplinary proceedings was passed on 10th April, 2014, which is well within four years of the respondent's retirement. In any event, the Government, *vide* office order dated 16th October 2014, granted sanction under Regulation 351A of the CSR to continue the proceedings. *In arguendo*, even if the non-supply of enquiry report is a violation of principles of natural justice, it could not have resulted in quashing of the proceedings *per* the Constitution Bench decision of this Court in ***Managing Director, ECIL, Hyderabad v. B. Karunakar.***[14] It was held therein that in the event that there is a non-supply of the enquiry report, the courts and tribunals shall cause the enquiry report to be furnished to the employee and he be given an opportunity to make his case. If after hearing the parties, the court comes to a conclusion that the non-supply has made no difference to the findings and punishment meted out to the charged

14 (1993) 4 SCC 727

employee, the court should not interfere with the punishment order. It was also held that the court should not mechanically set aside a punishment order on the ground of non-supply of enquiry report to the charged employee.

V. The correct procedure *per* ***B. Karunakar*** (supra) has not been followed by the High Court and, accordingly, the impugned order ought to be set aside.

4. *Per contra*, in support of the impugned order and pressing for dismissal of the appeal, learned counsel for the respondent assiduously contended that:

I. The appellant has tried to mislead this Court by painting the present case as an instance of non-cooperation of the respondent whereas, in actuality, the present case is a demonstration of flagrant violation of the rules. Further, the appellant has supressed from this Court the fact that the second round of disciplinary proceedings were conducted in breach of the timeline provided by the Tribunal.

II. Rule 7(v) of the 1999 Rules require the disciplinary authority to provide to the employee, the chargesheet along with the copy of all documentary evidence mentioned therein. The appellant has not been able to prove before the Tribunal and the High Court as well as before this Court that the documents sought to be relied on in the enquiry were furnished to him.

III. Moreover, Rule 9(4) of the 1999 Rules mandates that if the disciplinary authority is of the opinion that punishment is required to be imposed on the employee, the employee has to be supplied with the enquiry report and given an opportunity to make a representation. Admittedly, no copy of the enquiry report was furnished to the respondent and, therefore, he had no opportunity to represent thereagainst.

IV. Surprisingly, not only copy of the enquiry report dated 15th September, 2014 was not furnished to the respondent, even the copy of such report was neither placed on record before the Tribunal as well as before this Court.

V. The dictum in ***B. Karunakar*** (supra), relied upon, does not apply to the present facts and circumstances. The appellant

has violated the principles of natural justice as well as the 1999 Rules,

VI. Finally, the Tribunal and the High Court were bound by the ruling of the Full bench of the High Court in ***Abhishek Prabhakar Awasthy*** (supra) and, therefore, the proceedings could not have been carried forward beyond April, 2014 without applying for and obtaining permission to proceed. Having not concluded the enquiry as per the timeline provided by the Tribunal, the order of punishment dated is *non-est* in law and cannot be given effect. The same was, thus, rightly interdicted by the Tribunal.

IMPUGNED ORDER

5. The High Court took notice of the fact that copy of the enquiry report had not been furnished to the respondent in the second round of disciplinary proceedings and this action of the appellant is repugnant to the provisions contained in Rule 9(4) of the Rules. The High Court held that the Tribunal's order does not suffer from any infirmity while holding that the appellant's order dated 24th March 2015 is illegal on the ground of non-supply of the enquiry report. The High Court also noticed the fact that the Tribunal's order dated 12th November, 2018 directed the appellant to conclude the disciplinary proceedings within a time-frame and the appellant failed to do so. Prior to the time-frame expiring, the appellant should have approached the Tribunal seeking suitable extension. The conclusion of the disciplinary proceedings beyond the time-frame fixed by the Tribunal is impermissible in law. That apart, the order of punishment is also unsustainable as the same was discriminatory. While the co-charged employee Baliram was let off and not punished, the respondent was punished for the same act.

6. For the reasons thus assigned, the High Court upheld the order of the Tribunal.

ISSUES

7. The present case tasks us to decide the following issues: -

(i) Whether, in pursuance of a purported enquiry where there was none to present the case of the department, no witness

was examined in support of the charges and no document was formally proved, any order of punishment could validly be made?

(ii) Whether the disciplinary authority was justified in placing reliance on a report of enquiry prepared by the Enquiry Officer who had looked into documents which were not provided to the respondent and had arrived at findings of guilt only on the basis of the charge-sheet, the reply thereto of the respondent and such documents?

(iii) Whether failure or omission or neglect of the disciplinary authority to furnish the enquiry report had the effect of vitiating the enquiry?

(iv) Whether the enquiry not having been completed within the time stipulated by the Tribunal in its order dated 23rd January, 2014, the disciplinary proceedings could have been continued beyond May, 2014? And

(v) Whether, and if at all, the appellant should be granted one more opportunity to conclude the enquiry against the respondent within the time to be stipulated by us?

ANALYSIS

8. The first two issues being related are taken up for consideration together.

9. There could be no iota of doubt that the enquiry in the present case was conducted by the Enquiry Officer in clear disregard of the 1999 Rules relating to conduct of disciplinary proceedings against the employees of the appellant.

10. We are at loss to comprehend as to how, after the first round of litigation before the Tribunal leading to quashing of the order of dismissal dated 27th July, 2010, the same mistake could be repeated by the Enquiry officer by not calling for witnesses to record their oral statements as well as to prove the documents generated in course of the preliminary enquiry. The procedure followed is plainly indefensible and, therefore, we hold that the respondent has been punished by the disciplinary authority without due process being followed in taking disciplinary action against him.

11. Useful reference can be made to certain decisions of this Court to show the infirmity in the process of decision making which led to the order of punishment being passed against the respondent.

12. ***M/s. Bareilly Electricity Supply Company Limited v. The Workmen and Others***[15] is a decision arising from an award under the Industrial Disputes Act, 1947. Law has been laid down therein as follows:

> "**9.** … Innumerable statements, letters, balance-sheet, profit and loss account and other documents called for or otherwise were filed on behalf of the appellants. It cannot be denied that the mere filing of any of the aforementioned documents does not amount to proof of them and unless these are either admitted by the respondents or proved they do not become evidence in the case.
>
> ***
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> **14.** … But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained therein true. When the appellant produced the balance-sheet and profit and loss account of the company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. … "
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> (emphasis ours)

15 (1971) 2 SCC 617

13. In ***Roop Singh Negi v. Punjab National Bank and Others,***[16] it was held that an officer conducting an enquiry has a duty to arrive at findings in respect of the charges upon taking into consideration the materials brought on record by the parties. It has also been held therein that any evidence collected during investigation by an investigating officer against the accused by itself could not be treated to be evidence in the disciplinary proceedings.

14. What follows from a conjoint reading of the above two decisions is and what applies here is that, 'materials brought on record by the parties' (to which consideration in the enquiry ought to be confined) mean only such materials can be considered which are brought on record in a manner known to law. Such materials can then be considered legal evidence, which can be acted upon. Though the Indian Evidence Act, 1872 is not strictly applicable to departmental enquiries, which are not judicial proceedings, nevertheless, the principles flowing therefrom can be applied in specific cases. Evidence tendered by witnesses must be recorded in the presence of the delinquent employee, he should be given opportunity to cross-examine the witnesses and no document should be relied on by the prosecution without giving copy thereof to the delinquent - all these basic principles of fair play have their root in such Act. In such light, the documents referred to in the list of documents forming part of the annexures to the chargesheet, on which the department seeks to rely in the enquiry, cannot be treated as legal evidence worthy of forming the basis for a finding of guilt if the contents of such documents are not spoken to by persons competent to speak about them. A document does not prove itself. In the enquiry, therefore, the contents of the relied-on documents have to be proved by examining a witness having knowledge of the contents of such document and who can depose as regards its authenticity. In the present case, no such exercise was undertaken by producing any witness.

15. We may further refer to the decision of this Court in ***State of Uttar Pradesh and Others v. Saroj Kumar Sinha***[17] where disciplinary proceedings were drawn up against the respondent, Saroj Kumar Sinha, under the 1999 Rules itself with which we are concerned.

16 (2009) 2 SCC 570

17 (2010) 2 SCC 772

Paragraphs 26 to 30 and 33 of the said decision being relevant are quoted below:

> "**26.** The first inquiry report is vitiated also on the ground that the inquiry officers failed to fix any date for the appearance of the respondent to answer the charges. Rule 7(*x*) clearly provides as under:
>
> > '7. (*x*) Where the charged government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the inquiry officer shall proceed with the inquiry ex parte. In such a case the inquiry officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged government servant.'
>
> **27.** A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.
>
> **28.** An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/ disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure

has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

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33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet."

(emphasis ours)

16. It appears that the appellant is yet to take lessons despite the admonition in ***Saroj Kumar Sinha*** (supra). The same kind of omissions and commissions that led to setting aside of the order of punishment imposed being upheld by this Court were repeated in the present case.

17. Next, the decision in ***Nirmala J. Jhala v. State of Gujarat and Another***[18] deserves consideration where the concept of preliminary enquiry being distinct from a regular enquiry was noticed and discussed. Paragraphs 45 and 51 from such decision read as follows:

> "**42.** A Constitution Bench of this Court in *Amalendu Ghosh* v. *North Eastern Railway*, AIR 1960 SC 992, held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.
>
> **43.** Similarly in *Champaklal Chimanlal Shah* v. *Union of India,* AIR 1964 SC 1854*,* a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. …
>
> ***
>
> **45.** In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular

18 (2013) 4 SCC 301

> inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice."

18. Guided by the law declared in the aforesaid decisions, we can safely conclude that the enquiry conducted by the Enquiry Officer in a manner not authorised by law could not have formed the basis of the order of punishment dated 24th March, 2015 imposed on the respondent. The first two issues are, therefore, answered in the negative.

19. In view of our answers to the first two issues and the glaring fact of the report of enquiry not having seen the light of the day, the third issue may not detain us for long. However, before specifically answering this issue, we need to deal with the argument of learned counsel for the appellant that the test of 'prejudice' ought to be applied in this case since the respondent did not participate in the enquiry and, therefore, there was no obligation for the disciplinary authority to furnish such report. This argument has necessitated a study of the law declared in ***B. Karunakar*** (supra), in some depth, to assess how the jurisprudence has developed on the issue of non-furnishing of the report of enquiry in the light of such decision.

20. Multiple decisions have been rendered by different Benches of this Court where, considering ***B. Karunakar*** (supra), views have been expressed placing the burden of proof on the delinquent employee to demonstrate the 'prejudice' that he has suffered owing to non-furnishing of the report of enquiry as a pre-requisite to succeed in his challenge to the order of punishment on the ground of violation of natural justice, with which we find ourselves in respectful disagreement. We may be mistaken; but our reading suggests that the articulation of law in ***B. Karunakar*** (supra) has been subject to varying interpretations, and in some cases the key ruling has been overlooked so much so that in the process its core principle stands overshadowed. Though judicial discipline, propriety and decorum demand that we follow the precedents bearing in mind the rule of *stare decisis*, or formulate the issue(s) on which we disagree and refer the same for consideration by a larger Bench, we propose not to walk that way since, on other fronts, the violations/breaches in this case are so obtrusive, as already found, that the respondent is entitled to grant of relief irrespective of the legal position on the point, and what we express hereafter on the effect and impact of non-furnishing of the report of enquiry.

21. A random search for precedents over the past 20 (twenty) years' reveals that in umpteen decisions in relation to service law (as well as non-service law disputes), this Court has consistently accepted the principle of law enunciated in ***B. Karunakar*** (supra) that non-furnishing of the report of enquiry to the delinquent employee constitutes violation of his right to raise an effective defence. However, in the same breath, it has been observed in such precedents that even if the report is not furnished in any particular case, the court seized of the matter must make an independent examination whether non-furnishing of the report has caused any prejudice to him. The common thread running through all these decisions is that quashing of the proceedings does not follow as a ritual if the claim for obtaining relief is that the report of enquiry has not been furnished; on the contrary, grant of relief in such a case must be preceded by a satisfaction to be recorded by the court that non-furnishing of the report did 'prejudice' the delinquent employee amounting to the due process of law not being followed and thereby causing a failure of justice; and, for such a finding to be recorded, 'prejudice' has to be pleaded and proved. Indeed, an onerous burden placed on a delinquent employee!

22. In relation to service law disputes, *inter alia*, the decisions in ***Haryana Financial Corporation v. Kailash Chandra Ahuja;***[19] ***Union of India v. Bishamber Das Dogra;***[20] ***Sarva U.P. Gramin Bank v. Manoj Kumar Sinha;***[21] ***Union of India v. Alok Kumar;***[22] ***Punjab National Bank v. K.K. Verma,***[23] ***Union of India v. R.P Singh***[24]; ***SBI v. B.R. Saini;***[25] and ***Union of India and Others v. Dilip Paul***[26] hold the field.

23. This Court has also noticed the decision in ***B. Karunakar*** (supra) in a wide variety of cases raising disputes other than service, largely focusing on the elucidation of principles of natural justice. Reference may be made, *inter alia*, to the decisions in ***Dharampal Satyapal***

19 (2008) 9 SCC 31

20 (2009) 13 SCC 102

21 (2010) 3 SCC 556

22 (2010) 5 SCC 349

23 (2010) 13 SCC 494

24 (2014) 7 SCC 340

25 (2018) 11 SCC 83

26 2023 SCC OnLine SC 1423

Ltd. v. CCE,[27] ***Swamy Devi Dayal Hospital & Dental College v. Union of India,***[28] ***Vijayakumaran C.P.V. v. Central University of Kerala,***[29] ***Mineral Area Development Authority of India & Anr. v. Steel Authority of India & Anr.,***[30] ***Securities Exchange Board of India v. Mega Corporation Limited***[31], ***T. Takano v. Securities and Exchange Board of India and Anr.,***[32] ***State of U.P. v. Sudhir Kumar Singh***[33] and ***Gorkha Security Services v. Govt. (NCT of Delhi).***[34]

24. Lest we be misunderstood, we clarify that our intention is to offer insights and not to dispute or critique established views. We aim here to present an alternative perspective on the law declared by the Constitution Bench in ***B. Karunakar*** (supra) analysing the basic question and the incidental questions that emerged for answers before it, moving away from the prevailing perspective available in decisions so far rendered by diverse Benches. As different understandings have emerged, this endeavour may facilitate further clarification or reconsideration by a relevant Bench, allowing for potential re-evaluation in future cases which could ultimately lead to further development and refinement of the law on the topic.

25. We propose to begin the discussion by referring to the decision in ***State Bank of Patiala v. S.K. Sharma***[35], which was rendered by a coordinate Bench of this Court close on the heels of the decision in ***B. Karunakar*** (supra). Upon consideration thereof, this Court in ***S.K. Sharma*** (supra) held that while applying the rule of *audi alteram partem* (the primary principle of natural justice) the courts/tribunals must always bear in mind the ultimate and overriding objective underlying the said rule, viz. to ensure a fair hearing and to ensure that there is no failure of justice. It was also authoritatively held that:

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27 (2015) 8 SCC 519

28 (2014) 13 SCC 506

29 (2020) 12 SCC 426

30 (2024) 10 SCC 257

31 (2023) 12 SCC 802

32 (2022) 8 SCC 162

33 (2021) 19 SCC 706

34 (2014) 9 SCC 105

35 (1996) 3 SCC 364

"**33.** We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (*a*) the provision violated is of a substantive nature or (*b*) whether it is procedural in character.

(2) A substantive provision has *normally* to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is

a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can *also* be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(*a*) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(*b*) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it *or* that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in *B. Karunakar*. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called. … "

26. Having regard to the statement of law in ***S.K. Sharma*** (supra), certain questions fall for answers, viz. what would be the effect and impact

of non-furnishing the report of enquiry by the disciplinary authority to a delinquent employee before he is punished? Does he have to plead and prove 'prejudice'? Is it in all or specific circumstances that the courts would insist on the delinquent employee to demonstrate 'prejudice'? Is furnishing of the report of enquiry merely a procedural step in the disciplinary proceedings or something more? We may proceed to find the answers to these questions referring to ***B. Karunakar*** (supra).

27. Due to an apparent conflict between the decisions in ***Kailash Chander Asthana v. State of U.P.***[36] and ***Union of India v. Mohd. Ramzan Khan***[37]—both delivered by Benches comprising three Judges—a reference was made to a Constitution Bench for authoritative resolution. ***Kailash Chander Asthana*** (supra) was a case where the enquiry had been conducted by an Administrative Tribunal under applicable disciplinary rules. It was held that the failure to serve a copy of the enquiry report was not material. In contrast, ***Mohd. Ramzan Khan*** (supra) marked a momentous progress in the jurisprudence on disciplinary proceedings by holding that a delinquent employee is entitled to receive a copy of the enquiry report before the disciplinary authority decides on the charges against them. Observing the divergence in these rulings, a Bench of co-equal strength referred several cases to a Constitution Bench through an order dated 5th August, 1991, which was decided in ***B. Karunakar*** (supra). Notably, ***Mohd. Ramzan Khan*** (supra) judgment heralded a watershed moment in disciplinary law, declaring that withholding the enquiry report before the disciplinary authority's decision strikes at the very heart of natural justice. It firmly entrenched the employee's right to be heard before a final decision to punish him is taken.

28. The majority opinion in the Constitution Bench decision of ***B. Karunakar*** (supra) was authored by Hon'ble P.B. Sawant, J. The questions which this Court considered are as under:

> "2. The basic question of law which arises in these matters is whether the report of the enquiry officer/authority who/ which is appointed by the disciplinary authority to hold an enquiry into the charges against the delinquent employee,

36 (1988) 3 SCC 600

37 (1991) 1 SCC 588

is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. This question in turn gives rise to the following incidental questions:

i. Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary enquiry are silent on the subject or are against it?

ii. Whether the report of the enquiry officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

iii. Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?

iv. Whether the law laid down in Mohd. Ramzan Khan case will apply to all establishments — Government and non-Government, public and private sector undertakings?

v. What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?

vi. From what date the law requiring furnishing of the report, should come into operation?

vii. Since the decision in Mohd. Ramzan Khan case has made the law laid down there prospective in operation, i.e., applicable to the orders of punishment passed after November 20, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz., what was the law prevailing prior to November 20, 1990?"

(emphasis ours)

29. At paragraph 18 of the judgment, this Court after examining the decision in ***Kailash Chander Asthana*** (supra), ***Union of India v.***

E. Bashyan[38] and ***Mohd. Ramzan Khan*** (supra) found no conflict between ***Kailash Chander Asthana*** (supra) and the two others.

30. In view of the above, ordinarily, the Constitution Bench might not have proceeded further; however, it found it necessary to do so in light of the observations recorded in paragraph 19:

> "19. In Mohd. Ramzan Khan case the question squarely fell for consideration before a Bench of three learned Judges of this Court, viz., that although on account of the Forty-second Amendment of the Constitution, it was no longer necessary to issue a notice to the delinquent employee to show cause against the punishment proposed and, therefore, to furnish a copy of the enquiry officer's report along with the notice to make representation against the penalty, whether it was still necessary to furnish a copy of the report to him to enable him to make representation against the findings recorded against him in the report before the disciplinary authority took its own decision with regard to the guilt or otherwise of the employee by taking into consideration the said report. The Court held that whenever the enquiry officer is other than the disciplinary authority and the report of the enquiry officer holds the employee guilty of all or any of the charges with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the disciplinary authority against it and the non-furnishing of the report amounts to a violation of the rules of natural justice. However, after taking this view, the Court directed that the law laid down there shall have prospective application and the punishment which is already imposed shall not be open to challenge on that ground. Unfortunately, the Court by mistake allowed all the appeals which were before it and thus set aside the disciplinary action in every case, by failing to notice that the actions in those cases were prior to the said decision. This anomaly was noticed at a later stage but before the final order could be reviewed and rectified, the present reference was already made, as stated above, by

38 (1988) 2 SCC 196

> a Bench of three learned Judges. The anomaly has thus lent another dimension to the question to be resolved in the present case."
>
> (emphasis ours)

31. Hon'ble K. Ramaswamy, J. agreed with the view expressed by Hon'ble P.B. Sawant, J. on all but one of the points. His Lordship opined that no mistake was made by the Bench in ***Mohd. Ramzan Khan*** (supra) in granting relief to the employees, even though the judgment said that the rule requiring the enquiry report to be given to the employee would apply only in future cases. Importantly, both Hon'ble Sawant and Hon'ble Ramaswamy, JJ. were on the three-Judge Bench that decided ***Mohd. Ramzan Khan*** (supra). This Court was aware that several appeals were pending, where high courts had struck down disciplinary actions just because the enquiry report was not furnished—relying on ***Mohd. Ramzan Khan*** (supra), even though that ruling was meant to apply only to future cases. Because of this confusion, the Constitution Bench had to clarify the law to properly address those pending cases where disciplinary action was taken before the decision in ***Mohd. Ramzan Khan*** (supra) was rendered. The inconsistency mentioned in paragraph 19 of that ruling also led to several related legal issues [questions (v), (vi), and (vii)] that needed settlement.

32. Upon a survey of the legal position from the time the Government of India Act, 1935[39] was enacted till the 42nd Amendment of the Constitution of India came into effect, the Constitution Bench had the occasion to observe as follows:

> "**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

39 GoI Act

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 afair 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 alongwith 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.

(emphasis ours)

33. Resting on the aforesaid reasoning, the answer to the basic question (majority view) in ***B. Karunakar*** (supra) is found in paragraph 29 reading as follows:

> "**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."
>
> (emphasis ours)

34. Hon'ble Ramaswamy, J. answered the basic question as follows:

> "**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 enquiry 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 enquiry 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 enquiry 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."
>
> (emphasis ours)

35. The answers to the incidental questions are found in paragraph 30.

A brief summary of the same is as follows:

i. Question (i): it was held that even if the disciplinary rules are silent on providing the enquiry report to the delinquent employee or prohibit it—the employee still has a right to get the enquiry report. Denying the report means denying a fair chance to defend oneself, which violates natural justice. So, any rule that prevents giving the report is invalid.

ii. Question (ii): If someone other than the disciplinary authority conducts the enquiry, the report must be shared with the employee.

iii. Question (iii): The enquiry report must be given whether or not the employee asks for it. It is his right, and not asking for it does not mean he has given up that right.

iv. Question (iv): The law laid down in ***Mohd. Ramzan Khan*** (supra) applies to all employees—Government, private, or public sector.

v. Question (v): discussed in the next paragraph.

vi. Question (vi): the requirement to provide the enquiry report would take effect from November 20, 1990—the date of the decision in ***Mohd. Ramzan Khan*** (supra).

vii. Question (vii): The rule requiring the enquiry report to be given to the employee was established for the first time in ***Mohd.***

Ramzan Khan (supra), i.e., 20th November, 1990 and applies only to disciplinary orders made after that date; orders passed before it would be governed by the earlier law, which did not mandate furnishing the report—even if related cases were still pending in court.

36. The Constitution Bench's answer to question (v), referring to the 'prejudice' principle, reads:

> "[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 enquiry 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."
>
> (emphasis ours)

The Constitution Bench further proceeded to hold that:

> "**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 enquiry, by placing the employee under suspension and continuing the enquiry 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 enquiry

> 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 enquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh enquiry from the stage of furnishing the report and no more, where such fresh enquiry is held. That will also be the correct position in law."
>
> (emphasis ours)

Ultimately, the Constitution Bench at paragraph 44 observed:

> "**44.** The need to make the law laid down in *Mohd. Ramzan Khan case* prospective in operation requires no emphasis. As pointed out above, in view of the unsettled position of the law on the subject, the authorities/managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the enquiry officer to the delinquent employee and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in courts at different stages. In many of the cases, the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not, therefore, require that the orders of punishment passed prior to the decision in *Mohd. Ramzan Khan case* without furnishing the report of the enquiry officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account. Hence we hold as above."
>
> (emphasis ours)

37. Plain reading of the questions posed and the answers thereto together with the underlying reasons highlight the Constitution Bench's anxiety to safeguard the delinquent employee's right to raise a fair defence, especially in cases where the enquiry is conducted by someone other than the disciplinary authority. This Court carefully reviewed the legal framework, including Article 311 of the Constitution—both in its original form and as amended by the 42nd Amendment, effective from 1st January, 1977. Notwithstanding that the law was in a nebulous state at one point of time, the decision in ***B. Karunakar*** (supra) brought clarity and settled the law without ambiguity.

38. Thus, the right to receive the enquiry report as a fundamental safeguard in disciplinary proceedings, where such report holds the charges against the delinquent employee to be established, was firmly entrenched by the Constitution Bench in the jurisprudence relating to proceedings initiated for disciplinary action for misconduct. This valuable right applies uniformly, regardless of who the employer is (Government, public or private) and regardless of what the rules governing the service ordain. Even if the rules are silent or do not require furnishing of the enquiry report, the same has to be furnished. Additionally, the report must be furnished to the employee even without a request, as it forms an integral part of ensuring a fair and reasonable opportunity to defend against the charges. By not furnishing the report, an employer cannot scuttle the rights of the delinquent employee.

39. Reading the passage from S.K. Sharma (supra) highlighted above bearing in mind the guidance received from the dicta in ***B. Karunakar*** (supra), one can safely conclude that furnishing of a report of enquiry though is a procedural step, it is of a mandatory character. However, such a requirement can be waived by the delinquent employee, expressly or by conduct, but if on facts he is found not to have waived his right to receive the report, the theory of substantial compliance or the test of 'prejudice' would not be applicable.

40. In the decisions of this Court, referred to at the beginning of the discussion, it is revealed that some of the Benches of this Court have not invalidated the employers' acts of withholding the reports of enquiry on the ground that the delinquent employees have not been able to demonstrate how they suffered 'prejudice' by reason of the reports not being furnished, notwithstanding that such decisions of the employers clearly violated the precedential significance of the

Constitution Bench decision in ***B. Karunakar*** (supra) while answering question (i).

41. Application of the test of 'prejudice', when the requirement is mandatory in character and where admittedly the report of enquiry has not been furnished, goes against the very grain of the answer rendered by the Constitution Bench in ***B. Karunakar*** (supra) to the basic issue that was under consideration before it. It is proposed to discuss, a little later in this judgment, why the test of 'prejudice' may not be made applicable in respect of disciplinary action, proceedings wherefor have commenced after the decision in ***B. Karunakar*** (supra) was rendered, appreciating the deleterious effects likely to befall employees who have been punished without furnishing of the enquiry reports. We consider it reasonable to think that in every case of failure/omission/neglect to furnish the report of enquiry, which is an act of the employer certainly in utter disregard of the *ratio decidendi* of the decision in ***B. Karunakar*** (supra), calling upon the employer to justify why the judicial mandate of the Constitution Bench had not been followed could have eased the situation.

42. Be that as it may, the question that troubles us is this: does the law laid down while answering incidental questions have the effect of overriding or prevailing over or modifying the law declared on the main issue by the Constitution Bench? Questions (v), (vi) and (vii) framed by the Constitution Bench in ***B. Karunakar*** (supra), to our mind, were necessitated because of the error/anomaly that was noticed in the ultimate direction in ***Mohd. Ramzan Khan*** (supra). As we read and understand the law laid down in ***B. Karunakar*** (supra), the answers to questions (v), (vi) and (vii) were intended to have limited application, that is, to matters which were already pending before this Court or before the high courts as on date the Constitution Bench rendered its decision, where the challenge was laid to punishment orders passed, both prior to and post November 20, 1990, i.e., the day when ***Mohd. Rizwan Khan*** (supra) was decided. And the answer to question (i), which was to apply prospectively, was intended to guide decisions in future cases making it imperative that the employer has to furnish such report to the delinquent employee, no matter who the employer is, what the rules say or whether the delinquent employee asks for it. Whatever be the legal (non)requirement or the factual position, the report has to be furnished. That is the law. The report has to be furnished because it is an integral part of natural justice

and consideration of the report behind the back of the delinquent employee would effectively deprive him of the protective shield of 'reasonable opportunity to defend' the charges. We are anchored in our conviction that any other interpretation of the Constitution Bench decision would result in diluting the law declared therein.

43. Interpretation of ***B. Karunakar*** (supra), particularly bearing in mind the shifting trend towards the 'prejudice' principle and the insistence on the pleading and proof of 'prejudice', may have unintended consequences for delinquent employees which have not been visualized hitherto, therefore, having the potential of rendering the law laid down by the Constitution Bench a dead letter.

44. To recapitulate, ***B. Karunakar*** (supra) has unequivocally held that non-furnishing of the enquiry report would deprive the employee of the opportunity and disable him to demonstrate before the disciplinary authority the perversity in such report by filing a representation. The object that is sought to be achieved by furnishing of the enquiry report is this. If the report were furnished, the delinquent employee could persuade the disciplinary authority to hold that either he is innocent and/or that he does not deserve any punishment, or may be let off with a minor punishment. Providing a delinquent employee with an opportunity to respond to the enquiry report is, thus, a crucial procedural step that must precede disciplinary action. Failure to do so, such as imposing punishment without furnishing the report, could severely handicap the employee's ability to effectively question or challenge the decision in an appeal/appropriate proceedings, as he would be unaware of the materials against him. In such a case, at best, nothing more than a plain and simple plea can be urged that non-furnishing of the enquiry report has deprived him of reasonable opportunity to counter the findings of guilt without, however, he being able to demonstrate prejudice. It is axiomatic that without reading the enquiry report, there cannot be an effective and meaningful challenge to the findings contained therein.

45. That apart, the right to receive the report of enquiry being available prior to a final decision being taken in the disciplinary proceedings cannot be postponed by any arbitrary act of the employer in not following the law, which can be or should be validated by the court, and what was intended to be a pre-decisional opportunity cannot be made to partake the character of a post-decisional opportunity.

46. Imagine a scenario where the employer seeking to get rid of an inconvenient employee succeeds in its endeavour and dismisses him following an enquiry, flawed in itself, by relying on the report of enquiry without furnishing copy of the same to him. In such an eventuality, the dismissed employee while approaching a tribunal/ court for redress has to do so without having access to the materials considered in the report. This is best exemplified by the present case where the report of enquiry has neither been furnished to the respondent nor placed on record before all the adjudicatory fora. In the absence of such access, can the delinquent employee be expected to demonstrate prejudice suffered by him? We are not sure how the burden can be discharged by the employee in such a case. This lack of access to the report would severely hamper the ability of the employee to demonstrate 'prejudice' and to build a strong case for succeeding in his challenge to the order of punishment. Besides, the lengthy legal process could be agonizing, and especially without any earning, may not only lead to financial strain and diminished resolve but could eventually end up with the employee abandoning the challenge. Drawing from experience, we understand how employers take advantage and employ methods to drag on proceedings for years and thereby ensure that through the process of 'wear and tear', the employee (if he has been either dismissed or removed from service) loses steam and, inevitably, lacking interest in the challenge effectively gets thrown out of the legal arena by forces beyond his control.

47. These are vital considerations which, in our considered opinion, need to engage the mind of every court while deciding to apply the test of 'prejudice'. In a battle between the mighty lion and the weak lamb when the former is in an overpowering position, should the courts lean in its favour and put the weak to the sword for not having demonstrated 'prejudice' when a brazen violation of the law declared by the Constitution Bench is brought to its notice? Why should the mighty not be made answerable as to why the report of enquiry has not been furnished and to bear whatever consequences that are bound to follow its failure, omission or neglect in this behalf? In a society governed by the rule of law and when the preambular promise is to secure equality and justice for all, the weak lamb is certainly entitled in law to demand that the *ratio decidendi* of ***B. Karunakar*** (supra) be followed to the 'T'. We regret, reliance placed in some of the decisions primarily on certain English decisions on

whether 'opportunity would have served any purpose', may not be appropriate for acceptance in our service jurisprudence.

48. Looked at from a different angle, it is unheard of and simply unacceptable to us that employers could brazenly disregard the law declared by the Constitution Bench and/or act in derogation of statutory rules, yet, argue that no prejudice was caused to the dismissed employee by reason of not giving him access to the enquiry report. If the answer to question (v) given in ***B. Karunakar*** (supra) is to be regarded as the final word, we are left to wonder whether it would have at all been necessary for the Constitution Bench to elaborately discuss the law on the subject, stress on the importance and need for the enquiry report to be furnished to the delinquent employee and to introduce a new regime with prospective effect. If the test of 'prejudice' were to be given primordial importance, the Constitution Bench could have, on the contrary, simply observed that post 20th November, 1990 [the date on which ***Mohd. Ramzan Khan*** (supra) was decided], if in case report of enquiry in a particular case were not furnished to the delinquent employee and upon the matter reaching the tribunal/court for adjudication at a subsequent stage, the employer is under no obligation to explain why the report has not been furnished and its action of taking disciplinary action has to be judged and could be interdicted only in the event the employee, on the touchstone of 'prejudice', were to succeed in proving that he had been denied reasonable opportunity to defend. The Constitution Bench's careful consideration of question (i), *viz*. the need to furnish the enquiry report to a delinquent employee before disciplinary action is taken being an integral part of natural justice, the answer thereto would be rendered redundant if such an approach by the employers is permitted. Allowing employers to circumvent the law declared by the Constitution Bench and dilution of such declared law regarding the necessity, nay imperative, to furnish the enquiry report by interpretative exercises subsequently undertaken by Benches of lesser strength without bearing in mind other Constitution Bench decisions (we propose to refer to them briefly, immediately after this discussion) on the effect of breach of natural justice principles and the consequences that could visit an employee whose service is terminated if the report were not furnished in the first place is an unfortunate development which undermines the rule of law.

49. Just as Articles 14, 19 and 21 of the Constitution constitute a triumvirate of rights of citizens conceived as charters on equality,

freedom and liberty, the trio of decisions of Constitution Benches of this Court in ***Union of India v. Tulsiram Patel,***[40] ***Olga Tellis v. Bombay Municipal Corporation***[41] and ***A.R. Antulay v. R.S. Nayak***[42] form the bedrock of natural justice principles being regarded as part of Article 14 of the Constitution and obviating the need to demonstrate 'prejudice' if a challenge were laid on the ground of breach of Article 14. In ***Tulsiram Patel*** (supra), it was held that violation of a principle of natural justice is violation of Article 14. The dictum of the three-Judge Bench in ***S.L. Kapoor v. Jagmohan***[43] that non-observance of natural justice is itself prejudice to any man and proof of prejudice, independently of proof of denial of natural justice is unnecessary, was approved by the Constitution Bench in ***Olga Tellis*** (supra). No prejudice need be proved for enforcing the Fundamental Rights is the emphatic assertion in ***A.R. Antulay*** (supra).

50. These Constitution Bench decisions have stood the test of time. Without being overruled in any subsequent decision, the law continues to bind all Benches of lesser strength. Equally, it cannot be gainsaid that with the march of time and the progress made in the years since then, nuanced or refined approaches to applying natural justice principles may be necessary and appropriate in specific cases. There can be no quarrel with this approach. However, we find it difficult for us to be guided by the decisions insisting on application of the 'prejudice' principle in the wake of the aforesaid Constitution Bench decisions. Accepting such decisions of lesser strength would signal re-imposition of the legal regime pre-***Mohd. Ramzan Khan*** (supra) when the employer was under no obligation to furnish the enquiry report. We are afraid, this could encourage mischievous employers to drain out its terminated employee by ensuring that copy of the enquiry report is not furnished.

51. Thus said, what is the way for reconciling the law laid down in the precedents discussed so far? Attempting to clear the confusion arising out of different understandings of the *ratio decidendi* of the decision in ***B. Karunakar*** (supra), we proceed to focus on the proper course for the tribunal/court to adopt when the issue reaches it for

40 (1985) 3 SCC 398

41 (1985) 3 SCC 545

42 (1988) 2 SCC 602

43 (1980) 4 SCC 379

adjudication. In our opinion, whenever a challenge is mounted to an order of punishment on, *inter alia*, the ground that the report of enquiry has not been furnished, the tribunal/court should require the employer (Government, public or private) to justify non-furnishing of such report. This is a course, which again experience has shown, is seldom followed. If no valid explanation is proffered and the tribunal/court suspects unfair motives (report has not been furnished as part of a strategic ploy or to advance an unholy cause or prompted by extraneous reasons) or carelessness, without much ado and without insisting for 'prejudice' to be demonstrated, the order of punishment should be set aside and the proceedings directed to resume from the stage of offering opportunity to the delinquent employee to respond to the enquiry report. Irrespective of 'prejudice' being demonstrated, no employer or for that matter anyone should be permitted to steal a march and gain any benefit by violating the law. In case the tribunal/court is satisfied that real effort was made by the employer but such effort remained abortive because the report could not be furnished to the employee for reason(s) beyond its control, or some other justification is placed on record, which is acceptable to the tribunal/court, the test of 'prejudice' is open to be applied but only after ensuring service of a copy of the enquiry report on the employee. In a case where the employee either expressly or by his conduct appears to have waived the requirement of having access to the report, it would be open to the tribunal/court to deal with the situation as per its discretion. However, the simplicitor application of the 'prejudice' test absent a query to the employer, as indicated above, in our opinion, would be in the teeth of the law laid down in ***B. Karunakar*** (supra).

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).

54. Turning to the facts of the present appeal, we have noted how the appellant has conducted itself in proceeding against the respondent. *Res ipsa loquitur*. We have noted earlier that the report of enquiry dated 15th September, 2014 has never seen the light of the day.

55. Relying on the law declared in ***S.K. Sharma*** (supra) which, in turn, relied on ***B. Karunakar*** (supra), we hold that prejudice is self-evident and no proof of prejudice as such is called for in this case.

56. Assuming that 'prejudice' has to be additionally shown, such question at least does not arise here because we are also disabled from looking into the said report. Much of what has been argued by

learned counsel for the appellant pales into insignificance by reason of the neglect of the appellant to even place on record before us the report of enquiry. We draw adverse presumption and hold that there is a purpose behind withholding the report. The report, if produced, would have supported the contention of the respondent and hence, conveniently, it has not been produced before any fora.

57. It would also be beneficial at this juncture to read the rules and regulations which govern the respondent's employment with the appellant. Rule 9 of the 1999 Rules ordains that:

> 9. Action on Enquiry Report –
>
> (1) ***
>
> (2) ***
>
> (3) ***
>
> (4) If the disciplinary authority having regard to its findings on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charged Government servant, he shall give a copy of the enquiry report and his findings recorded under sub-rule (2) to the charged Government servant and require him to submit his representation if he so desires, within a reasonable specified time. The disciplinary authority shall, having regard to all the relevant records relating to the enquiry and representation of the charged Government servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged Government servant.
>
> (emphasis ours)

58. It is clear, on a bare reading of Rule 9, that the procedure contemplated therein corresponds to the procedure that was ordinarily followed in conducting disciplinary proceedings prior to amendment of Article 311 by the Constitution (42nd Amendment) Act, 1976. As held in paragraph 27 of ***B. Karunakar*** (supra), 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 with regard to his alleged guilt. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions reached at the first stage. 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 enquiry. 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.

59. In the present case, except that the respondent had not participated in the second round of enquiry and, hence, the disciplinary authority was not under obligation to furnish him the enquiry report, no other worthy explanation is forthcoming as to why such report was not furnished to the respondent. Assuming *arguendo* that the respondent had without justification stayed away from the enquiry, the disciplinary authority could not have considered the report of the Enquiry Officer in view of what has been held in paragraph 26 of ***B. Karunakar*** (supra) as well as Rule 9(4) of the 1999 Rules. Also, since the report of enquiry has been withheld by the appellant at all three tiers, it is preposterous that he would be in a position to plead and prove prejudice. No such question does arise here.

60. We, thus, hold while answering the third issue that there has been blatant disregard by the appellant of not only principles of natural justice and the judicial command in ***B. Karunakar*** (supra) by not furnishing the enquiry report but also by not following the applicable statutory rule. The enquiry, therefore, stands wholly vitiated.

61. The fourth issue requires us to consider ***Abhishek Prabhakar Awasthi*** (supra), a decision of the Full Bench of the High Court. Being a Full Bench decision, obviously the Tribunal as well as the Division Bench of the High Court was bound thereby. The Full Bench rendered such decision upon considering, *inter alia,* the decision of this Court in ***Union of India and Others v. Satyendra Kumar Sahai and Another.***[44] We may only notice the answers to the questions referred to the Full Bench, reading as follows:

44 (2005) 12 SCC 355

"(A) Question No. (a): We hold that if an enquiry is not concluded within the time which has been fixed by the Court, it is open to the employer to seek an extension of time by making an appropriate application to the Court setting out the reasons for the delay in the conclusion of the enquiry. In such an event, it is for the Court to consider whether time should be extended, based on the facts and circumstances of the case. However, where there is a stipulation of time by the Court, it will not be open to the employer to disregard that stipulation and an extension of time must be sought;

(B) Question No. (b): The judgment of the Supreme Court in the case of Suresh Chandra (supra) as well as the judgment of the Division Bench of this Court in the case of Satyendra Kumar Sahai (supra) clearly indicate that a mere delay on the part of the employer in concluding a disciplinary enquiry will not ipso facto nullify the entire proceedings in every case. The Court which has fixed a stipulation of time has jurisdiction to extend the time and it is open to the Court, while exercising that jurisdiction, to consider whether the delay has been satisfactorily explained. The Court can suitably extend time for conclusion of the enquiry either in a proceeding instituted by the employee challenging the enquiry on the ground that it was not completed within the stipulated period or even upon an independent application moved by the employer. The Court has the inherent jurisdiction to grant an extension of time, the original stipulation of time having been fixed by the Court itself. Such an extension of time has to be considered in the interests of justice balancing both the need for expeditious conclusion of the enquiry in the interests of fairness and an honest administration. In an appropriate case, it would be open to the Court to extend time suo motu in order to ensure that a serious charge of misconduct does not go unpunished leading to a serious detriment to the public interest. The Court has sufficient powers to grant an extension of time both before and after the period stipulated by the Court has come to an end".

62. While affirming the aforesaid view of the Full Bench, we would like to provide clarification on certain points not touched by such

bench. First, in view of unseen institutional hurdles that can slow down swift action, it may not always be possible for the disciplinary authority in each such case where a fixed time has been stipulated by a tribunal/court to conclude the proceedings to apply and seek extension of time before expiry of such time although there can be no gainsaying that applying and obtaining an extension before expiry is eminently desirable. In exceptional cases, even after expiry of the stipulated time, such an application can be moved; and, depending on the cause shown for inability or failure to conclude the proceedings within the time stipulated and also for not applying for extension before expiry, the tribunal/court may, in its discretion, allow or reject the prayer for extension. If the application is rejected, the proceedings cannot be carried forward unless a superior court, reversing the order of rejection, permits the disciplinary authority to so proceed. Secondly, if the delinquent employee objects to continuation of proceedings beyond the time stipulated, the disciplinary authority without proceeding further ought to apply for extension of time and may not go ahead till such time its prayer for extension is granted on such application. Proceeding despite objection and without there being an extension could give rise to apprehensions of bias. Therefore, applying for extension upon halting the proceedings awaiting order on the application would be an advisable course of action to balance the interests of both the employer and the employee. Thirdly, even if the delinquent employee has not objected to continuation of proceedings beyond the time stipulated by the tribunal/court but before the final order is passed in the proceedings, the disciplinary authority would be bound to seek and obtain extension of time. This is for the simple reason that the sanctity of the orders of tribunals/courts cannot be disrespected by errant parties. The dignity of the judicial process would be seriously eroded and there would be nothing left of the rule of law if orders of tribunals/courts, validly made, are disobeyed and the disobedience is encouraged by being indulgent. Finally, we hasten to add that if a tribunal/court stipulates a fixed time by which an enquiry or proceedings for disciplinary action ought to be concluded coupled with a rider that, in default, the enquiry/ proceedings will stand lapsed, the disciplinary authority in such a case would cease to have the jurisdiction to proceed further unless, of course, citing genuine grounds, a recall of such default clause is sought and obtained to proceed further in accordance with law.

63. We also hold that continuation of disciplinary proceedings beyond the time stipulated by a tribunal/court could invite interdiction if no *bona fide* attempt is shown to have been made to seek an extension of time. However, much would depend on the facts of each case and it may not be possible to lay down a common formula applicable to each case. In an exceptional case, the tribunal/court would have the discretion to overlook the laxity and make such direction as it deems fit in the circumstances.

64. The answer to the fourth issue, in view of our discussion, has to be in favour of the respondent and against the appellant. Without an extension of time, no order of punishment could have been validly made and the grievance of the respondent in this behalf is absolutely legitimate.

65. What survives for decision is now the fifth and final issue.

66. It is clear as day-light that the appellant despite being given an opportunity to proceed in accordance with law failed to utilise such opportunity. The respondent has experienced 75 (seventy-five) summers, and is now in the winter years of his life.

67. There are two decisions of this Court, from which guidance could be had.

68. In ***A. Masilamani v. LIC,***[45] this Court held:

> "**16.** It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same."

69. The decision of this Court in ***Allahabad Bank v. Krishna Narayan Tiwari***[46] also throws light on the approach to be adopted but in a more nuanced manner than what was held in ***A. Masilamani*** (supra). Paragraph 8 of the decision reads as follows:

> "**8.** There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient, either

45 (2013) 6 SCC 530

46 (2017) 2 SCC 308

> procedurally or otherwise, the proper course always is to remand the matter back to the authority concerned to redo the same afresh. That course could have been followed even in the present case. The matter could be remanded back to the disciplinary authority or to the enquiry officer for a proper enquiry and a fresh report and order. But that course may not have been the only course open in a given situation. There may be situations where because of a long time-lag or such other supervening circumstances the writ court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority. That is precisely what the High Court has done in the case at hand."
>
> (emphasis ours)

70. Respondent, undoubtedly, was denied a reasonable opportunity to defend himself in the enquiry by the appellant, as ordained by the 1999 Rules. The manner in which the disciplinary proceedings were conducted and continued against the respondent did not satisfy the requirements of 'due process'. The flaws creeping in such proceedings have rendered the same wholly illegal. The routine course of action in a case, such as the present, where an order of punishment is set aside on grounds of breach of statutory rules and the charged officer is not acquitted on merits, is to remit the case to the disciplinary authority and direct resumption from the stage the proceedings is found to stand vitiated.

71. This, in this case, would mean reverting to the stage of production of witnesses on behalf of the department. When not a single witness could be produced for examination in 2010 and 2014, we do not think that witnesses would now be available to support the charges. Even otherwise, these proceedings have certain incidents of 2004-05 as the origin. Having regard to the lapse of time since then coupled with the retirement of the respondent from service in 2010 and, more particularly, when the appellant despite an earlier opportunity granted by the Tribunal has failed to avail the same by continuing the enquiry in accordance with law, it would be highly unfair and unjust to subject the respondent to face the enquiry once again. Gravity of the offence alleged to have been committed is certainly a vital consideration; however, repeated opportunities cannot be claimed without there being overwhelming public interest warranting such

opportunity. No doubt, the respondent was charged with involvement in a financial scam but a line has to be drawn. Or else, it could be an unending affair till such time based on a legal and valid report of enquiry, the disciplinary authority passes an appropriate order. On facts, we are satisfied that second opportunity was not required to be given. Also, we have noticed from the materials on record that two of the respondent's colleagues (one of them a senior officer) who were also proceeded against have been practically let off with no punishment or punishment of stoppage of increments. Thus, we are satisfied that no useful purpose will be served by reviving the disciplinary proceedings and in remitting the case to the appellant. On the contrary, the issue must be given a quietus because the Tribunal or the High Court did not commit any illegality. We hold that the Tribunal and the High Court were correct and justified in not granting one more opportunity to the appellant to resume proceedings from the stage invalidity in the proceedings was detected. The impugned order of the High Court, not suffering from any legal infirmity, does not warrant any interference and deserves to be upheld.

CONCLUSION

72. For the foregoing reasons, we find no merit in this appeal. The same is, accordingly, dismissed. Interim order stands vacated.

73. The respondent shall be entitled to full retiral benefits from the date of his superannuation without any sum being deducted. However, provisional pension received by him may be adjusted with the arrears. Let the pensionary benefits be computed and the balance sum of pension together with other retiral benefits be released in favour of the respondent as early as possible, but positively within three months from date of receipt of a copy of this judgment and order. In default, the sum payable to the respondent shall carry interest @ 6% per annum and the High Court too shall be free to carry the contempt proceedings forward.

74. Parties shall, however, bear their own costs.

Result of the case: Appeal dismissed.

†*Headnotes prepared by:* Divya Pandey