Karnataka High Court V.K. Gopal vs H.M.T. Limited on 30 August, 1994 Equivalent citations: ILR 1994 KAR 3018, 1995 (1) KarLJ 15 Author: T S Thakur Bench: T S Thakur JUDGMENT Tirath Singh Thakur, J. 1. In this Petition under Article 226 of the Constitution of India, the petitioner challenges the validity of an order of dismissal passed against him by the Chairman and the Managing Director of the Respondent-Company and that passed by the Board of Directors dismissing an appeal filed by the petitioner against the same. The petitioner has also prayed for a Writ of Mandamus directing the Respondents to reinstate him against the post originally held by him with continuity of service and payment of salary and allowances etc. 2. A few facts necessary for the disposal of this Petition may be stated first: The petitioner was at the relevant time working as the Joint General Manager of H.M.T. Factory-I and II at Bangalore. Being qualified to get a motor car advance for the purchase of a Motor Car, the petitioner made a request for such an advance, which request was granted and a loan of Rs. 45,000/- sanctioned by the competent authority in his favour. The petitioner drew the loan amount on the 22nd February, 1988. Some time later, the petitioner signed an indenture dated 11th May, 1988 in favour of the Company wherein he inter alia stated that he had purchased a Motor Car bearing Registration No. 7242 and paid the purchase price thereof in full. The petitioner also stated that consequent upon the purchase of the Car by him he had become the absolute owner of the same. By the terms of the indenture the vehicle in question was assigned by the petitioner in favour of the Company for guaranteeing the repayment of the loan amount. In the schedule appended to the indenture the petitioner gave the details of the vehicle to be a Premium Padmini Car bearing registration No. MEN 7242 purchased at a total price of Rs. 47,000/-. 3. The petitioner it appears had to furnish the Registration Certificate and other documents pertaining to the purchase of the vehicle by him in accordance with the Rules governing the advance of such loans to the employees of the Company. These documents not having been furnished by him, the Respondent Company by a letter dated 4th May, 1991 asked him to do the needful. On receipt of this intimation the petitioner by a letter dated 7th May, 1991, intimated to the Chief Administrative Manager of the Respondent-Company that he had purchased Car No. CKN 6449 for which he had made the requisite payment on 29th of December, 1989. The documents pertaining to the purchase of this car namely CKN 6449 appear to have been furnished by the petitioner from which the Company appears to have noticed that the said car was transferred in the petitioner's name by the Regional Transport Authority only on 29th April, 1991. It also appeared to the Company that the loan amount of Rs. 45,000/- advanced to the petitioner had remained unutilised, between February, 1988 to April, 1991. 4. Upon verification from the Assistant Regional Transport Officer, Bangalore Central, Respondent-Company collected information to the effect that vehicle bearing registration No. MEN 7242 which the petitioner had earlier claimed to have purchased and assigned in favour of the Company was in fact an 'Enfield' motor cycle registered on the 27th July 1977 in the name of one C.K. Babu. It was also noticed that the said registration number did not belong to any light vehicle/Car as was claimed by the plain-

tiff in the indenture executed by him in favour of the Company on 11th May, 1988. 5. The Company-Respondent through its Chief Administrative Manager, thereafter wrote a letter dated 14th May, 1991 asking the petitioner to furnish original documents pertaining to the Fiat Car -Premium Padmini bearing Registration No. MEN 7242 which the petitioner had claimed to have purchased on the Second of February 1988 by utilising the Car advance loan secured by him. In response to the said letter, the petitioner by his letter dated 25th May, 1991 Annexure-'H' to the Writ Petition came out with an explanation to the effect that for the purchase of a suitable Car he had contacted a broker as the petitioner could not spare time for the said purpose due to some domestic problems. He also pointed out that certain mistake had occurred in giving the vehicle number in the indenture as the said vehicle number had been furnished to him by the broker. He further stated that the deal which he had struck through the broker for the purchase of vehicle MEN-7242 had not materialised and that he had informed the Unit General Manager verbally to that effect. He further pointed out that in December, 1989, he had purchased a Car bearing registration CKN-6449 documents pertaining to which had already been furnished and the Car hypothecated in favour of the Company. He requested for condonation of the delay in the purchase of the vehicle by him. 6. The respondent apparently was not satisfied with the version given by the petitioner, resulting in the issue of a charge sheet against him, in which he was charged on three distinct counts, in the following words: "Charge No. 1:- In the above mentioned act of drawing a sum of Rs. 45,000/- as Car loan from the Company, in the manner indicated above, you are alleged to have committed an act of fraud and dishonesty, which is a misconduct under Clause 23.1.4 of the Conduct, Discipline and Appeal Rules of the Company applicable to you. You were at that time working as Chief of Finance and Accounts Department of HMT I & II and you were responsible for protecting the interests of the Company in all such financial dealings concerning about 4000 employees of the Unit. Such a fraudulent and dishonest act on your part at that time all the more serious. This not only a serious misconduct on your part, but this act also caused injury to the Company's image. Charge No. 2:- In the above mentioned indenture dated 11-5-1988, you are further alleged to have made deliberate false statements about the purchase of a Car, which is an act of misconduct on your part under Clause 23.1.24 of the Conduct, Discipline and Appeal Rules of the Company applicable to you. Charge No. 3:- It is further alleged that in the said act you unauthorisedly kept and used the Company's money with you, thereby causing wrongful gain for you and wrongful loss to the Company, which is also an act subversive of discipline and of good behaviour. These are misconducts under Clause 23.1.5 and 23.1.2 of the Conduct, Discipline and Appeal Rules of the Company applicable to you." 7. The petitioner appears to have submitted a reply to the charge-sheet which too was found unsatisfactory resulting in the appointment of one Shri S.K. Ghosh as an Enquiry Officer for holding a proper enquiry into the matter. 8. The Enquiry Officer, conducted an enquiry and submitted a Report dated 20-3-1993 in which he came to the following conclusions: "According to judgment of mine, the case hinges on the benefit of doubt as stated in II stage.

The competent Authority may decide the benefit of doubt or any other future course of action. Incorrect information on indenture has been proved without doubt. It certainly points out callous and casual approach of Mr. V.K. Gopal. 1. Charges of fraud, dishonesty depends on the 'benefit of doubt' element from Competent Authority. 2. Deliberate false statement may be partially attributed to incorrect information of Indenture. 3. Delay in purchase of Car from the date of receipt of money, will certainly speak partially of this third charge. This is for Chairman's kind information. Yours faithfully, Sd/- (Syamal Kumar Ghosh) Executive Director & Enquiry Officer. 9. I may at this stage point out, that the Report of the Enquiry Officer, is an extremely cryptic, evasive and confused document which reflects upon the sincerity and the seriousness of the person preparing the same; towards the assignment given to him. The Report appears to be more an attempt to conceal the truth than to lay it bare on the basis of the evidence that was adduced before the Enquiry Officer, for otherwise, it is difficult to appreciate as to what, the same purports to convey by referring to the charges framed against the delinquent as Stages-I, II & III, rather than Charges-I, II & III. Again while dealing with the so called Stage-II of the case, the Enquiry Officer, enlists what he terms three doubts and requests the Competent Authority to judge them and"grant favour" (to borrow the expression used in the Report) accordingly. Similarly the Report while dealing with Stage-III by which it apparently means Charge-III, repeats that "Competent Authority may decide the benefit of doubt or any future course of action". If all that the Enquiry Officer was required to do was to point out certain doubts about matters subjected to inquiry, he did no better than waste the valuable time and energy of all concerned. Nor is the treatment given to the subject satisfactory, looking to the fact that the Enquiry was being conducted against a General Manager of a Public Sector undertaking, and the person entrusted to do so was no less than an Executive Director of the respondent-Company, who could be legitimatety expected to bring his own experience, knowledge and erudition to bear upon the exercise meant to unfold the truth. Suffice it to say that the Report regardless whether it was destined to favour one or the other party leaves much to be desired at least in so far as its form, content and treatment of the subject is concerned. Even the learned Counsel appearing for the parties appeared to be doubtful, as to whether, the Report favoured one or the other. Both the parties carry the impression that the Report favours them, for while Mr. Subba Rao contended that the conclusions drawn by the Enquiry Officer could not be altered by the Disciplinary Authority, Mr. Kasturi, appearing for the respondents, interpreted the Report to be a case of clear indictment of the petitioner; which was only elaborated and explained by the Disciplinary Authority in his final order. The Enquiry Officer has thus been successful in keeping both the sides happy at their respective places, by choosing the middle course and avoiding any clear cut finding one way or the other. That indeed is the hallmark of the Report. 10. A copy of the Report was furnished to the petitioner who was asked to file a representation against the same if he so desired. The petitioner, however, by his letter dated 11th August, 1993, instead of submitting a representation against the Report, prayed for permission to examine

Shri P. Ramakrishna Bhat as a witness. In his letter the petitioner stated that he had made efforts to examine the said Shri Bhat but had failed to do so on account of his non-availability in Bangalore. He also relied upon the offer made by the Presenting Officer in his written arguments on behalf of Respondent that the Management will not have any objection to the re-opening of the enquiry for purposes of allowing the petitioner to produce Shri Bhat as his witness. 11. The request made by the petitioner was considered by the Chairman and Managing Director of the Respondent-Company but was rejected by his order dated 24th August, 1993. By the same order, the Chairman held the petitioner guilty on account of all the three charges framed against him and dismissed him from service with immediate effect under Clause 23.2.2 (c) of the Conduct and Disciplinary Appeal Rules, of the Company. 12. Aggrieved of the order of dismissal the petitioner filed an appeal before the Board of Directors in terms of Rule 23.4.a of the Conduct, Discipline & Appeal Rules. In the memo of appeal filed by him he made a specific grievance to the effect that the petitioner had not been given an adequate opportunity to either cross examine the witnesses produced by the Management or to examine his witness Shri P.R. Bhat. The appeal was however, upon, consideration dismissed by the Board of Directors and a communication dated 6th October 1993 to that effect sent to the petitioner under the signatures of the Company Secretary of the Respondent. It is against the aforesaid order of dismissal passed by Respondent No. 2 dated 24th August 1992, and the dismissal of the appeal by the Board of Directors of the Respondent-Company as evidenced by communication dated 6th October, 1993 that the present Writ Petition has been filed by the petitioner in this Court. 13. I have heared the learned Counsel for parties at length and perused the records. 14. Shri K. Subba Rao, learned Counsel appearing for the petitioner strenuously argued that the Enquiry conducted by the Inquiry Officer was vitiated on account of the violation of principles of Natural Justice. He submitted that Shri P.R. Bhat the then Unit Head was an important witness who was cited by the petitioner in his defence but who could not be examined on account of his non-availability at Bangalore. He contended that the Inquiry Officer did not provide to the petitioner a fair and reasonable opportunity to examine the said witness notwithstanding the fact that a request for further opportunity was made not only on the 15th of December, 1992 when the matter was fixed for recording the evidence of Shri Bhat but even subsequently by the petitioner's letter dated 11th December, 1992 when it was pointed out to the Inquiry Officer that Shri Bhat was available in Bangalore and could therefore be examined. Shri Subba Rao further argued that the endorsement made by Shri Bhat on the petitioner's letter dated 25th of May 1988 was held by the Inquiry Officer to be genuine, but Respondent No. 2 the Disciplinary Authority had disagreed with the said conclusion and returned a finding that the said endorsement as also the letter on which the same is said to have been made were doubtful. He submitted that the authenticity of the endorsement made on the letter dated 25th May 1991, having been suspected by the Disciplinary Authority, it was all the more necessary for the petitioner to have proved the said endorsement to be authentic by examining Shri Bhat as a witness. According to Mr. Subba Rao, the en-

tire reasoning advanced by the Disciplinary Authority for holding the petitioner guilty turned on the authenticity or otherwise of the endorsement made by Shri Bhat and therefore the denial of an opportunity to the petitioner to prove the said endorsement was fatal to the proceedings and the orders impugned. 15. Shri Kasturi, learned Counsel for the Respondent, on the contrary argued that the Inquiry Officer had given to the petitioner more than reasonable and fair opportunity of producing all the evidence that he wanted to produce including Shri Bhat. He submitted that Shri Bhat was not produced by the petitioner before the Inquiry Officer even when he was admittedly available in Bangalore on the 21st December, 1992 as is apparent from the petitioner's own letter dated 21st December, 1992 addressed to the Inquiry Officer. He urged that since Shri Bhat was available in Bangalore and the presenting Officer had agreed to the re-opening of the Enquiry in case Shri Bhat was produced as a witness within a week or 10 days of the closure of the Enquiry, it was open to the petitioner to have produced him if he was really keen to rely upon his testimony. In the alternative Mr. Kasturi submitted that the question whether or not Shri Bhat had made an endorsement on the letter dated 25th of May 1988 allegedly written by the petitioner pales into insignificance keeping in view the fact that the Disciplinary Authority had upon appreciation of the attendant circumstances come to the conclusion that the genuineness of the letter and the authenticity of the endorsement was extremely doubtful. This Mr. Kasturi, contended was in the realm of appreciation of evidence which this Court could not embark upon in exercise of its extraordinary jurisdiction. 16. He further urged that the endorsement and the letter being relied upon by the petitioner was inconsequential looking to the fact that the Disciplinary Authority, had found that the Unit General Manager to whom the letter is alleged to have been addressed had no power to grant any extension in time under the Rules for purchasing the Car in question. It was therefore immaterial according to Mr. Kasturi, whether the letter was addressed to the General Manager and whether any endorsement on the same was made by him extending time for regularising the transaction. Mr. Kasturi, depending on these circumstances urged that there was no violation of the principles of Natural Justice as alleged. 17. The question that squarely falls for consideration is: Whether the Inquiry Officer had granted a fair and reasonable opportunity to the petitioner to produce Shri P.R. Bhat as a defence witness. An answer to this question would necessarily take us to the proceedings of the Enquiry Officer. A perusal of these proceedings held on the 6th of December, 1992, shows that the petitioner's Counsel after concluding his cross-examination made a request to the Enquiry Officer to allow the petitioner to produce Shri P.R. Bhat, as a defence witness. This request was accepted by the Inquiry Officer and the Inquiry adjourned to 15th of December, 1992, for the petitioner to produce the witness cited by him. The Inquiry Officer, however made it clear that in the event of the witness not being produced on the date fixed, the Enquiry proceedings will be deemed to have been closed on that date. It is fruitful in this connection to quote from the proceedings of the Enquiry Officer recorded on the 6th of December, 1992. "The request of the defendant's advocate to produce Shri P.R. Bhat as defence witness was accepted by EO

and accordingly adjourned the enquiry to 15-12-1992 at 5.30 p.m. to meet at the same venue. The EO further informed that in the event of the said witness not being produced in the next hearing on 15-12-1992 the proceedings of the enquiry will be deemed to have been closed on that date. Thereafter the PO will be allowed to submit his written arguments within seven days, i.e., on or before 22-12-1992. A copy thereof shall be delivered to the defendant simultaneously. The defendant shall there after submit his counter arguments within seven days, i.e., on or before 29-12-1992. The defendant shall also send a copy thereof to the PO simultaneously. Finally the PO may submit any additional arguments on or before 5-1-1993. The EO also informed that in any case the enquiry will be closed on 15-12-1992." 18. On 15th of December, 1992, when the matter came up once again before the Inquiry Officer, Shri P.R. Bhat, was not produced. Learned Counsel for petitioner, however, pointed out to the Enquiry Officer that a telegram had been sent by the petitioner on 11th December, 1992 to Mr. Bhat's son at South Canara where Shri Bhat was residing requesting Shri Bhat to come over to Bangalore on 15th December, 1992 to meet the Inquiry Officer. It was also pointed out on behalf of the petitioner that Mr. Bhat perhaps could not come to Bangalore due to disturbances. The Presenting Officer appearing on behalf of the Management however resisted any further adjournment and requested the Inquiry Officer to conclude the same in terms of the previous order dated 6th December, 1992. The Inquiry Officer agreeing with this submission closed the enquiry on the 15th December, 1992. It appears that while closing the enquiry proceedings on the said date, it was informally agreed between the parties that in case the petitioner made a written request for producing Shri P.R. Bhat as a witness, any time before the 29th of December, 1992, the Management would have no objection to the re-opening of the Enquiry or recording of the testimony of Shri Bhat. This is apparent from the additional written arguments submitted by the Management before the Inquiry Officer in para-9 whereof, it has been stated thus:- "If Shri P.R. Bhat was available at Bangalore, the proper course for the defendant was to produce him in the enquiry and allow the normal course of action, i.e., his examination by the defendant as his witness and cross examination by the Presenting Officer. In this connection, it is pertinent to point out that when the enquiry was concluded on 15-12-1992, there was an informal understanding among the participants before the Enquiry Officer that the Enquiry Officer would reopen the proceedings of the enquiry and allow the defendant to produce Shri P.R. Bhat as his witness on or before 29-12-1992, if a written request to that effect is made by the defendant to the Enquiry Officer. In the background of that understanding, it is surprising to note that in spite of Shri P.R. Bhat being apparently available at Bangalore, the defendant did not choose to produce him in the enquiry as his witness. On 23-12-1992 all the parties were available at Bangalore. In view of this the Enquiry Officer is requested not to take cognizance of any such alleged information which is outside the purview of the normal enquiry." 19. A week after closure of the Inquiry Proceedings, the petitioner sent a letter to the Inquiry Officer dated 21st December, 1992 by which he conveyed to the Inquiry Officer that Shri Bhat is available in Bangalore and was perhaps planning to go to back to

his native place in a couple of days. He requested the Inquiry Officer to get the necessary confirmation of Shri Bhat's noting on the document dated 25th May 1988, original whereof had already been produced before the Inquiry Officer. Since the context in which the request was made has assumed importance, it is fruitful to re-produce the said letter in extenso. 21st Dec. 1992 ED(I) HMT(I) Ltd.. Dear Sir, Shri P.R. Bhat is now in Bangalore. I understand that he is planning to go back to his native place in a couple of days. He is available on his residential telephone No. 335759. I request that ED(f) may kindly get necessary confirmation of his notings on the document dated 25-5-1988 original of which is in your possession. Yours faithfully, Sd/- (V.K. Gopal)" 20. A plain reading of the letter aforesaid, would show that the petitioner never intended to examine Shri Bhat as a witness in the case either by way of re-opening of the Inquiry proceedings which were already closed or otherwise. No request for re-opening of the Inquiry proceedings or for permission to produce Shri Bhat was made by the petitioner in the aforesaid communication. It is also clear that Shri Bhat was available in Bangalore on 21st December, 1992 and if the petitioner so wanted he could have produced him or made a request to the Inquiry Officer to examine him as a witness and subject him to the cross-examination by the Presenting Officer. As against this, all that the petitioner wanted the Inquiry Officer to do was to get the confirmation from Shri Bhat of the notings allegedly made by him on the letter dated 25th May 1988. This confirmation was suggested by the petitioner apparently with a view to provide to the Inquiry Officer the moral conviction that the endorsement in question had actually been made by Mr. Bhat, without producing Shri Bhat as witness. 21. That apart, the fact that the petitioner did not take any serious steps to produce Shri Bhat on 15th of December, 1992 before the Inquiry Officer, cannot also be over looked. As noticed earlier, the Inquiry Officer had on 6th December, 1992 made it more than clear that if Mr. Bhat was not produced on 15th December, 1992, for any reason, the enquiry shall stand concluded. Notwithstanding such a clear cut warning to the petitioner, he slept over the matter for five days out of a total of nine days available to him to secure the presence of Shri Bhat before the Inquiry Officer. Even after five days, what the petitioner did was simply send a telegram to Shri Bhat, son in Mangalore. This was clearly a very unsatisfactory and non-serious attempt on his part for securing the presence of Shri Bhat, whose testimony, according to him was very vital for proving his innocence. An opportunity having been granted by the Enquiry Officer, on the condition that the witness must be produced on 15th December failing which the enquiry was to stand closed, the petitioner ought to have taken all possible steps to secure his presence from Mangalore, instead of making a casual and indifferent attempt by means of a telegram sent to Shri Bhat's son. 22. That apart the informal understanding between the petitioner, the Management and the Inquiry Officer, reference whereto has been made in para-9 of the Additional written arguments filed before the Inquiry Officer by the Respondent, has not been questioned. Even though the petitioner filed a reply to the additional arguments on 16th January 1993 ANNEXURE-U, to the Writ Petition, he did not controvert the specific assertion made by the Presenting Officer about such an understanding

having been arrived at. On the contrary the petitioner supported the action of the Inquiry Officer in having informally ascertained the genuiness of the document dated 25th May 1988 and the endorsement of the same. There is nothing on record however to show that the Inquiry Officer had actually called Shri Bhat for getting the genuineness of the document ascertained. The fact that any such thing had happened appears only from the petitioner's written reply dated 16th January 1993 to the additional arguments. In his report even the Inquiry Officer has not referred to any such meeting between him and Shri Bhat. 23. Be that as it may, what is clear from the facts stated above is that on 15th December 1992 when the enquiry was closed by the Inquiry Officer, there was an informal understanding between the parties that if the petitioner made a written request for re-opening the Enquiry to examine Shri Bhat, within a period of a week or 10 days the said Enquiry shall be re-opened and Shri Bhat examined. No such request for re-opening the Enquiry or examining Shri Bhat was however made by the petitioner except the letter written by him on 21st December 1992 to the Inquiry Officer in which all that was suggested was that the Inquiry Officer may get the necessary confirmation of the notings on the document in question. 24. That being so, it is difficult for me to accept the submission made by Mr. Subba Rao that a fair and reasonable opportunity to examine Shri P.R. Bhat was not given to the petitioner. Such an opportunity was given not only on the 6th December, 1992 and 15th December 1992, but the same was available to him even later provided the petitioner made a written application in that regard. Raving failed to avail of the opportunity available to him it is not open to the petitioner to make any grievance about the non-examination of Shri Bhat as a witness in defence. 25. Natural Justice is a humanising concept, it operates to undo and prevent manifest injustice in the process of determination of rights or liabilities of citizens. Its application is not regulated by a doctrinaire approach nor can the concept be put in a strait jacket. The principles apply differently to different situations. In the words of the Supreme Court it is neither an unruly horse nor a lurking landmine. In every case where the question whether or not the principles of Natural Justice have been complied with arises, it is the satisfaction of the Court as to whether the alleged violation has caused any prejudice that makes the difference. Indifference, lack of diligence or such other conduct suggestive of acquiescence on the part of the person concerned in the process or the procedure adopted by the authority determining his rights are important factors which weigh with the Court in deciding whether the process leading to the impugned action should be reversed. 25. In RAVI S. NAIK v. UNION OF INDIA AND ORS. , the Supreme Court while dealing with a similar question quoted with approval the following passage from Prof. Wade's Book on Administrative law; "The judges, anxious as always to preserve some freedom of manoeuvre, emphasise that it is not possible to lay down rigid rules as to when the principles of natural justice are to apply nor as to their scope and extent. Everything depends on the subject-matter. The so-called rules of natural justice are not engraved on tablets of stone. Their application, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of

fair play there must also have been some real flexibility. These must also have been some real prejudice to the complainant there is no such thing as a merely technical infringement of natural justice" (H.W.R. Wade: Administrative Law, 6th Edn.,p.530). Their Lordships in the same Judgment relied upon the following passage from Clive Lewis' Book on Judicial Remedies in Public Law: The fact that the applicant has suffered no prejudice as a result of the error complained of may be a reason for refusing him relief. It is necessary to keep in mind the purpose of the public law principle that has technically been violated, and ask whether that underlying purpose has in any event been achieved in the circumstances of the case. If so, the courts may decide that the breach has caused no injustice or prejudice and there is no need to grant relief. The courts may, for example, refuse relief if there has been a breach of natural justice but where the breach has in fact not prevented the individual from having a fair hearing" [Clive Lewis : Judicial Remedies in Public Law (1992) page 290]. 26. To the same effect is the view taken by the Apex Court in A.M. ALLISON AND ANR. v. B.L SEN AND ORS. AIR 1057 SC 227, where it was held that while exercising jurisdiction under Article 226 the High Court can refuse to issue a Writ if it is satisfied that there has been no failure of Justice. 27. In the case before me, not only was an opportunity provided to the petitioner but the same was both fair and reasonable. It was the petitioner who did not act diligently in availing of the said opportunity. His conduct lacked seriousness and anxiety on his part, in making use of what he now considers was so important for his defence. Having thus neglected at the stage of enquiry, he cannot either claim prejudice or seek the reversal of the events that have gone by. Natural justice after all only implies "fair play in action" and I do not see any unfairness in what was done by the Enquiry Officer or the respondents so as to warrant any interference with the same. 28. There is yet another aspect of the matter with which I must deal at this stage and which was argued by Mr. Kasturi at some length. This pertains to the facts which were either admitted on both sides or otherwise proved at the Enquiry. These are: (i) That an indenture dated 11-5-1988 was executed by the petitioner in favour of the respondent Company by which the motor Car allegedly purchased by the petitioner out of the loan amount advanced to him was hypothecated in favour of the respondent; (ii) that the particulars of the vehicle given in the indenture were incorrect (false according to the respondents) as the particulars given in fact related to a Motor Cycle and not a Motor Car, which showed in some one else's name; (iii) that absolute ownership was claimed by the petitioner over the said non-existing motor Car and the same was hypothecated in favour of the respondent by the instrument/indenture executed by the petitioner; (iv) that no Car had in fact been purchased out of the loan amount secured by the petitioner in February 1988 till 29-12-1989 according to the petitioner and 29-4-1991 according to the respondent; and (v) that during the period of nearly 2 years or so the loan amount remained un-utilised with the petitioner even when in terms of Clauses 1.6 & 1.9 of the Vehicle Advance Rules the vehicle had to be purchased within one month from the date the advance was taken. Based on these facts the respondent Disciplinary Authority returned the following finding; "The Second

Charge relates to your making deliberate false statement about the transaction. It has already been mentioned in the preceding paragraphs that you admitted in the enquiry that you did not actually purchase 'Car No. MEN 7242'. Based on this admission and the fact proved in the enquiry, this charge has been substantiated. It was clearly stated by you in the indenture that you had purchased the vehicle, paid the amount in full and the said vehicle had become your 'absolute property'. However, during the enquiry you took the stand that the said indenture dated 11-5-1988 was incorrectly made in good faith at the instance of the broker. The vehicle No. MEN 7242 mentioned in the indenture, later turned out to be that of a Motorcycle. During cross-examination, you stated that the said indenture is only an intention to purchase and you had neither made any real purchase nor any payment. You have not been able to explain at any stage during the enquiry as to which of these two statements is the true one. You are aware that such indentures are made only after total completion of the transactions of sale and purchase. This indenture is, thus, a ready instance of prevarication on your part. I do not, therefore, agree with the Enquiry Officer's view that the act of your"deliberate false statement may be partially attributed to incorrect information of indenture", as the declaration in the indenture itself are deliberate statements, from you, now found to be false. The proceedings of the Enquiry clearly reveal that it was a deliberate act on your part to have submitted false information to cover up the transaction." 29. Regarding misuse of the loan amount, by the petitioner, the Disciplinary Authority proceeded on the admitted premise, that the vehicle had not been registered in favour of the petitioner, till as late as April 1991, i.e., nearly three years from the date the loan was disbursed to him. Relying on Clause 1.6 & 1.9 of the Vehicle Advance Rules the charge regarding misuse of the loan amount was held proved against the petitioner in view of the requirement of the aforesaid Rules that the vehicle should be purchased within one month of the drawal of the advance which was not done admittedly for nearly 2 years if not three as found by the Disciplinary Authority. 30. Mr. Kasturi, learned Counsel for the petitioner was therefore correct in arguing that the charges framed against the petitioner, stood proved from the admissions on record and no amount of evidence to the contrary could help the petitioner in dislodging those admissions. A deliberate false statement in an indenture executed by the petitioner purporting to hypothecate or assign a vehicle which was never purchased and a false representation that the vehicle has become his absolute property was enough to bring home the charge particularly when it is not denied that the vehicle was not purchased till the year 1990, even if we were to accept the petitioner's case that it was purchased in December 1989 and not April 1991 as found by the Disciplinary Authority. 31. Let us then see the significance which the petitioner's defence would bear to the above factual backdrop. The petitioner's version in defence was that after he had realised that the deal for the purchase of the vehicle through the broker engaged for that purpose had failed, he informed the General Manager of the Unit who had authorised him in writing by his endorsement on the petitioner's letter dated 25-5-1988, to regularise the transaction early. This endorsement is said to have been made by Shri. P.R. Bhat, on 1-6-1988. Now the genuineness

of any such letter and the authenticity of the endorsement was disbelieved by the Disciplinary Authority who held that the letter had not been produced by the petitioner at the earliest available opportunity even when it was admitted that the same was in his personal possession. The Disciplinary Authority further found that the petitioner had given contradictory versions about the letter at different steps rendering the whole thing doubtful. 32. The question whether the letter was a genuine document coming from proper custody, whether the same is an acceptable piece of evidence, whether there is any contradiction in the stand of the petitioner are matters in the realm of appreciation of evidence which cannot be Judicially reviewed by this Court in exercise of its Writ jurisdiction. The Competent Authority having gone into these matters and turned down the version of the petitioner, on an appreciation of all the circumstances, it is not open to this Court to interfere with that finding particularly when there is no perversity in the view taken by the Authority. That apart, the production of Shri. P.R. Bhat as witness would not have conclusively resulted in a positive finding in favour of the petitioner. The Disciplinary Authority would have been even in the face of Shri. Bhat's testimony entitled to disbelieve the petitioner's version in defence. That being so, the non-examination of Shri. Bhat, cannot amount to shutting out of conclusive evidence so as to cause any serious prejudice to the delinquent. The very fact that a piece of evidence whether oral or otherwise which the delinquent could have produced in the course of the enquiry in support of his defence, and which he did not or could not produce will not make any material difference particularly when the Disciplinary Authority has disbelieved the version of the petitioner/delinquent on other grounds. 33. Mr. Subba Rao, next contended that the Disciplinary Authority, has differed with the findings of the Inquiry Officer, which according to him, was not legally open to it. He vehemently argued that the findings returned by an Inquiry Officer, are binding upon the Disciplinary Authority and therefore the impugned order passed by the Disciplinary Authority based on findings other than those recorded by the Inquiry Officer, was legally bad. I do not find any merit even in this submission of Mr. Subba Rao. It is well settled that an Inquiry Officer acts as a delegate of the Disciplinary Authority. The Disciplinary Authority has the option of conducting an enquiry itself or entrusting the same to an Inquiry Officer, appointed for that purpose. The findings recorded by the Inquiry Officer, on the basis of the material produced before me, however, carry only persuasive value for the Disciplinary Authority who may either concur with the said findings or disagree with the same wholly or in part. As a matter of fact, upon the submission of the Report by the Inquiry Officer, the Disciplinary Authority is supposed to apply his mind independently, to the material assembled at the Enquiry and arrive at his own independent findings. While doing so, the findings recorded by the Inquiry Officer may also be kept in view by him. But, there is no question of any such findings being binding upon him, as contended by Mr. Subba Rao. (Refer: MANAGING DIRECTOR, ECIL, HYDERABAD v. B. KARUNAKAR JT 1993 (6) SC 1). Inasmuch as the Disciplinary Authority has examined the entire material independently and arrived at its own findings, it did not commit any error so as to warrant any interference from

this Court, with the final order passed by it. 34. That apart, a closer look at the Report submitted by the Inquiry Officer, would show that while the same is not a very elaborate and satisfactory document, in the sense that it does not discuss the evidence or record reasons in comprehensive terms it all the same holds the petitioner guilty of the charges framed against the petitioner subject of course to the Inquiry Officer's impression that it was a case where the Competent Authority will have to consider the effect of the doubts that the Inquiry Officer had expressed about certain matters. Whatever may be the interpretation of the Report of the Inquiry Officer, it is incapable of being read as a document totally absolving the petitioner of the charges framed against him. The Inquiry Officer has in fact left the entire thing to be looked into by the Competent Authority. There is therefore no material, difference of opinion between the view taken by the Inquiry Officer and that taken by the Disciplinary Authority, except that the Disciplinary Authority has in clear cut terms held that the charges were proved against the petitioner on the basis of his own admissions and that there is no question of giving any benefit of doubt to him, as recommended by the Inquiry Officer. In that view of the matter, no fault can be found with the order passed by the Disciplinary Authority or the findings recorded by him. 35. That takes me to the third and the last submission made by Mr. Subba Rao in support of his case. Mr. Rao, contended that the punishment imposed upon the petitioner was excessive and totally disproportionate to the gravity of the mis-conduct allegedly committed by him. He urged that this Court can in exercise of its powers under Article 226 interfere with the orders impugned if it comes to the conclusion that the punishment imposed upon the petitioner was disproportionate. Relying upon the Judgment of the Supreme Court in RANJITH THAKUR v. UNION OF INDIA , and Doctrine of Proportionality adumbrated therein Mr. Rao, strenuously urged that the orders impugned should be interfered with so as to reduce the punishment which was highly excessive in nature. 36. The question whether the High Court can in exercise of its powers under Article 226 of the Constitution, examine the adequacy or otherwise of the punishment imposed upon a delinquent-employee, was first considered by the Supreme Court in STATE OF ORISSA v. BIDYABHUSHAN MOHAPATRA . That was a case in which the High Court had in Writ Proceedings launched before it found that the findings returned by the Competent Authority, in regard to charges 1 (a) and 1 (c) framed against the delinquent employee were liable to be set aside as being opposed to the principles of Natural Justice. Findings in regard to the remaining two charges namely charges 1(b) and 1 (d) and charge No. 2 were however confirmed by the High Court. Having found thus, the High Court had remitted the matter back to the Government to decide whether on the basis of the charges which were proved the punishment of dismissal should be maintained or a lesser punishment imposed. In an Appeal against the said Judgment before the Supreme Court, the view taken by the High Court was reversed and it was held thus:- "in our view the High Court had no power to direct the Governor of Orissa to reconsider the order of dismissal. The constitutional guarantee afforded to a public servant is that he shall not be dismissed or removed by an authority subordinate to that by which

he was appointed, and that he shall not be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The reasonable opportunity contemplated has manifestly to be in accordance with the rules framed under Article 309 of the Constitution. But the court in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of misdemeanour established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, is not justifiable; nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were 'unassailable', the order of the Governor, on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty, for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore, if the order may be supported on any finding as to substantial misdemeanour for which punishment can lawfully be imposed, it is not for the court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The court has no jurisdiction if the findings of the enquiry officer or the Tribunal prima-facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice. The High Court was, in our judgment, in error in directing the Governor of Orissa to reconsider the question." 37. The above view has been reiterated in subsequent Judgments of the Apex Court, in RAILWAY BOARD v. NIRANJAN SINGH ; O.P. GUPTA's case and UNION OF INDIA v. SARDAR BAHADUR , In Sardar Bahadur's case the Court observed thus:- "Now it is settled by the decision of this court in State of Orissa v. Bidyabhusan Mohapatra, , that if the order of a punishing authority can be supported on any findings as to substantial misdemeanour for which, the punishment can be imposed, it is not for the court to consider whether the charge proved alone would have weighed with the authority in imposing the punishment. The Court is not concerned to decide whether the punishment imposed, provided it is justified by the rules, is appropriate having regard to the misdemeanour established." 38. In UNION OF INDIA v. PARMANAND AND ORS. 74 Factories Journal Reports 168, the question that arose was: Whether the Central Administrative Tribunal could in exercise of its powers under the Administrative Tribunals Act, 1985, examine the question of adequacy of punishment. That was a case where the Administrative Tribunal had reduced punishment of dismissal imposed upon the petitioner to stoppage of five increments for a period of 5 years. Aggrieved by the said order, the Union of India appealed to the Supreme Court, In support of the Appeal, it was contended on behalf of the Appellant that the Administrative Tribunal, was subject to the same limitations, restrictions and control as the High Courts in exercise of the powers under Article 226 of the Constitution.

The Apex Court after a review of the entire Case Law on the subject stated the legal position thus:- "If there has been an enquiry consistent with the rules and accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter." 39. To the above Rule, the Apex Court made only one exception namely a case where the penalty is imposed against an employee under Clause (a) of the Second Proviso to Article 311(2) of the Constitution. In such a case, the Tribunal was held entitled to examine the question of adequacy of the penalty imposed in the light of the conviction and the sentence inflicted on the person. The view taken by the Apex Court in regard to the powers of the Administrative Tribunal, will apply with equal force to the powers of the High Court also. In view of the following observations made by the Supreme Court in UNION OF INDIA AND ORS. v. UPENDRA SINGH : "It may be recalled that the jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. If the original application of the respondent were to be filed in the High Court it would have been termed, properly speaking as a writ of prohibition. A Writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view, as observed by this Court in T.C. Basappa v. T. Nagappa." 40. Mr. Subba Rao, however, placed heavy reliance upon a Judgment of the Supreme Court in Ranjit Thakur's case. That was a case where the petitioner who was serving in the Army while undergoing rigorous imprisonment imposed upon him, is alleged to have committed another offence for which also he was summarily tried and sentenced to a rigorous imprisonment of one year, besides removal from service. The charge levelled against the petitioner for his later conviction was that while in custody he disobeyed a lawful command given to him by his superior Officer in that when asked to eat food he had declined to do so. The order of conviction and sentence was unsuccessfully challenged by the petitioner before the High Court at Patna. In a Special Leave Petition filed against the said order, it was inter alia urged that the proceedings of the Court-Martial were vitiated on account of the bias on the part of one of the Respondents who participated in the same and that the punishment imposed upon the petitioner was in any case totally disproportionate to the offence alleged to have been committed by him. 41. The Supreme Court found that the procedural safeguards provided by Section 130 of the Army Act had been violated and therefore the proceedings

of the summary Court-Martial had been rendered infirm in law. As regards the allegations of bias against one of the members of the Court-Martial the Apex Court found that proof of actual bias was wholly unnecessary and that having regarding to the antecedent events, the participation of Respondent No. 4 against whom bias was alleged had rendered the proceedings coram non judice. It was in that back-ground that the question whether the punishment handed down to the petitioner in that case was totally disproportionate fell for consideration of their Lordships. As a matter of fact one of the submissions made was that the irrationality of the punishment imposed was by itself an indication of the existence of bias in the mind of Respondent No. 4. The Court in that, background found that while the question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial, it should not be vindictive or unduly harsh nor should the same be so disproportionate to the offence as to shock the conscience of the Court and amount in itself to conclusive evidence of bias. Their Lordships further found that the Doctrine of Proportionality as part of the concept of Judicial Review would ensure that even on an aspect which is otherwise within the exclusive province of the Court-Martial if the Decision of the Court as to sentence is an outrageous defiance of logic then the sentence would not be immune from correction. It was held that irrationality and perversity were recognised grounds of Judicial Review. Having held so, the Court set aside the order passed by the High Court, quashed the proceedings of the summary Court-Martial as also the order of sentence passed by it. 42. In BHAGAT RAM v. STATE OF HIMACHAL PRADESH AND ORS. , after quashing the enquiry, the Supreme Court proceeded to impose an appropriate punishment in exercise of its jurisdiction under Article 136 of the Constitution. Their Lordships relied on an earlier Judgment of that Court in HINDUSTAN STEELS LTD. ROURKELA v. A.K. ROY , in following that course of action. This case may not be of much assistance to Mr. Subba Rao, because the jurisdiction exercised by the Supreme Court was in terms of Article 136 wider in its sweep than Article 226 available to the High Court. 43. In SHANKAR DASS v. UNION OF INDIA AND ANR. , the Apex Court was considering the fairness of a penalty imposed upon the petitioner in that case in terms of Clause (a) of the second Proviso to Article 311(2) of the Constitution. That was a case where an order of dismissal had followed without an enquiry in consequence of an order of conviction recorded by a Criminal Court. The Supreme Court while dealing with the question whether the penalty imposed was fair held that the right to impose the penalty carried with it the duty to act justly. This view is obviously consistent with that taken in Union of India v. Parmananda and Ors.(supra) where their Lordships have drawn an exception in favour of penalties imposed upon a delinquent employee in terms of Clause (a) of the Proviso to Article 311(2). 44. The only other Case, reference to which may be made on the question of the Court's power to interfere with the quantum of punishment imposed is Ex.NAIK SARDAR SINGH v. UNION OF INDIA AND ORS. AIR 1992 SC 417. That was a case in which the petitioner was found carrying 7 bottles of rum instead of 4 bottles which he was permitted under the Unit Regulations. For having been found in possession of three

bottles in excess of his entitlement, he was tried by a summary Court-Martial, found guilty and sentenced to 3 months rigorous imprisonment besides dismissal from service. Having failed before the High Court, the petitioner appealed to the Supreme Court under Article 136 where the main point urged was that the punishment was totally disproportionate to the nature of the offence committed by the petitioner relying upon its earlier Judgment in Bhagat Ram v. State of Himachal Pradesh, the Supreme Court found that the punishment imposed was highly excessive. While setting aside the punishment it remanded the matter back to the Court-Martial with a direction to impose a lesser punishment. 45. A conspectus of the Judgments referred to above would, therefore, show that the power of Judicial Review enjoyed by the High Court under Article 226 is directed not against the decision but against the decision making process. If the process adopted for taking the decision is found to be valid and suffering from no infirmity, the Court is not concerned with the quantum of punishment which is imposed upon the delinquent on proof of the charge against him. As to what punishment should be imposed upon a delinquent employee is a matter which is primarily within the domain of the employer. To this general proposition of law, there appear, to be two well defined exceptions, namely: 1) cases where punishment is imposed otherwise than on the basis of an enquiry namely penalties imposed upon employees on the basis of the convictions by Criminal Courts. In such cases, the power to impose the penalty goes hand in hand with the duty to act fairly and justly, An exception to the general Rule has been carved out by the Supreme Court in favour of such cases in Parmananda's case(supra). The other exception relates to cases which the punishment imposed is such as may be an outrageous defiance of logic so as to shock the conscience of the Court. Two cases of this species with which the Supreme Court dealt were such where the Court found the punishment to be so outrageously disproportionate that it felt impelled to exercise its power of Judicial Review to correct the error committed by the Competent Authority. In one case, as pointed out earlier, a person in Military custody refusing to eat food was sentenced to one year's rigorous imprisonment. The Court-Martial was found to have been improperly constituted and the allegation of bias against one of those constituting the same were accepted. In that view of the matter, sentence of one year's rigorous imprisonment for what could be said to be a petty act of misdemeanour was held to be wholly disproportionate. In the second case, an Army man found carrying home 3 bottles of rum in excess of his entitlement, suffered punishment of three months rigorous imprisonment plus dismissal from service. Even this was found by the Apex Court to be disproportionate to the act of misconduct committed by the delinquent. 46. The question then is, does the case in hand fall in one of the two exceptions indicated above? In so far as the first exception is concerned, it is not a case where the penalty of dismissal has been imposed upon the petitioner without enquiry and on the basis of his conviction by a Criminal Court. As a matter of fact Mr. Subba Rao's entire effort was to bring his case within the second exception namely, cases where the punishment was so outrageously disproportionate that it would shock the conscience of the Court. I regret my inability to accept this submission of the learned Counsel. The petitioner was

a high ranking Officer in the Respondent-Corporation and was, according to the Respondent fully conversant with the Rules and Regulations relating to the grant and utilisation of the vehicle advances made to the employees of the Company. Not only that the Respondents' case is that the petitioner was charged with the duty of implementing the Loan Scheme and ensuring that the same was not misused or abused by the employees. What appears to have induced the Respondent to impose the punishment of dismissal was the fact that a high ranking officer charged with the duty of preventing others from misusing the benefit under the Scheme was found to have himself indulged in such a misuse. The punishment of dismissal was in such circumstances perhaps not only meant to be a deterrent for others who would similarly indulge in such abuse but also to convey the disapproval of the Respondent-Company in the strongest possible terms. This, in my opinion, is the price one pays for rise in life. The higher one rises, the higher are the standards of scruples expected. The misconduct of this type coming from a lesser mortal may not have perhaps attracted such a severe reprimand from the Respondent. Be that as it may, it is not a case comparable either with the Ranjith Thakur's or Sardar Singh's case. It is difficult to accept Mr. Subba Rao's submission that the punishment is so outrageously disproportionate as to shock the conscience of the Court and warrant interference with the same. 47. I also find no merit in Mr. Subba Rao's submission that the facts of the present case are identical to those in A.L. KALRA v. THE PROJECT AND EQUIPMENT CORPORATION . That was a case where the House building advance taken by the employee was regulated by specific Rules. The advance had to be returned in the prescribed fashion and the consequences of the failure to do so were also properly provided for. All the same, the petitioner was accused of having committed misconduct in that he did not return the advance secured by him. He was pursuant to an enquiry held guilty and dismissed from service. The Supreme Court on appeal found the dismissal to be improper but directed reinstatement only on payment of 50% of the backwages. 48. The case on hand is however different. Here the allegation did not relate to the non-return of the loan as in Kalra's case. The charge against the petitioner was that he had created a document in which it was falsely suggested that he had purchased the Car even when no such Car had been purchased by him and the loan amount secured had been misused by him for nearly 3 years. No analogy can therefore be drawn between the petitioner's case and the case mentioned above. 49. All the submissions made by Mr. Subba Rao, thus having failed, the Petition must also fail which is accordingly dismissed. In the circumstances of the case, however, I leave the parties to bear their own costs.