Punjab National Bank & Ors vs K.K.Verma on 7 September, 2010

Equivalent citations: AIR 2011 SUPREME COURT 120, 2010 AIR SCW 6306, 2011 LAB. I. C. 31, 2011 (2) AIR JHAR R 366, (2010) 127 FACLR 750, (2010) 4 LAB LN 75, (2011) 1 PAT LJR 46, (2011) 1 SCT 112, 2010 (13) SCC 494, (2010) 5 SERVLR 625, (2010) 4 ESC 600, (2011) 1 ALL WC 940, (2010) 3 CURLR 388, (2010) 9 SCALE 107, (2010) 8 MAD LJ 583, (2010) 6 ALLMR 420 (SC)

Bench: H.L. Gokhale, R.V. Raveendran

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Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 7416/2010

ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 12823 OF 2008

Punjab National Bank & Ors. ...Appellants

Versus

K.K. Verma ...Respondent

JUDGMENT

Gokhale J.

1. Leave granted.

2. This appeal by the appellant Bank seeks to challenge the judgment and order dated 31.1.2008 rendered by Division Bench of the Punjab and Haryana High Court dismissing LPA No. 17 of 2008 filed by the appellant Bank with costs. The impugned judgment was rendered in an appeal arising out of the judgment dated 26.11.2007 by a Single Judge of that court whereby the Learned Single Judge had allowed the Writ Petition No. 2756 of 1986 filed by the respondent challenging his removal from service by the order of the appellant dated 17.4.1985.

3. The two impugned judgments have interfered with the order of removal on the ground of not furnishing the respondent a copy of the inquiry report before issuing the order of punishment and thereby not affording him an appropriate opportunity to defend resulting into denial of principles of natural justice causing him great prejudice. The appellant Bank has raised the question in this appeal as to whether the respondent was entitled either in law or as per the rules governing his service conditions to a copy of the inquiry report before issuance of the order of punishment.

4. Short facts leading to the appeal are as follows:

> The respondent was working as a Manager of appellant's branch at Jallianwalan Bagh, Amritsar. He was served with a Charge Sheet dated 12.8.1983 which contained in all four charges. They were principally as follows:
>
> (1.) He connived with the borrowers and showed undue favour to them by throwing bank's norms to winds. In that, amongst others particulars, it was alleged that when he has on leave from 09.02.1982 to 17.02.1982, he visited the office to issue the bank guarantee in the favour of Income Tax Officer, Amritsar on behalf of M/s Des Raj Aggarwal & Co.

(2.) The second charge was that he submitted wrong information to the authorities thereby concealed the factual state of affairs of the branch from the authorities.

(3.) The third charge was that he allowed unauthorized facilities to various parties during the period of credit squeeze for which his powers had been withdrawn.

(4.) The fourth charge consisting of three parts reads as follows:

> (i) He misused his official position to secure undue benefit for himself.

He was given a personal allowance of Rs. 147/- per month from 01.07.1979 at the time of fitment of the salary under PNB Officer Employees (Service) Regulations, 1979, which was to be adjusted out of annual grades increment @ 1/3rd of the increment of the year. He did not allow the person concerned to make any adjustment from the increments released in his favour.

(ii) He was sanctioned a refundable loan by the Trustees of the Provident Fund against his Provident Fund in 1973. He did not pay instalments. The balance as on 30.6.1981 was 5291/-.

(iii)The Regional Office, Amritsar sanctioned a consumer loan of Rs. 5000/- to Shri Verma for purchase of fridge. He showed the purchase of the said item from M/s Electronics Services Centre having cash credit limits with the Branch without actually purchasing the fridge. The firm M/s Electronics Service Centre is not dealing in refrigerators/fridges. The amount of fridge was paid cash through a cash order at the counter.

5. The respondent denied these allegations. According to him they were vague and general in nature. At the highest they may be considered as procedural lapses/minor irregularities during the discharge of duties. They would certainly not amount to moral turpitude, requiring a departmental enquiry for a major penalty.

6. A regular departmental inquiry was held thereafter into those allegations in terms of the Punjab National Bank Officers Employees (Discipline and Appeal) Regulations 1977, framed under Section 19 of the Banking Companies (Acquisition and Transfer of Undertaking Act) 1970. The inquiry officer submitted his report dated 7.2.1985 returning a finding that the first three charges were established but not the fourth one.

7. As can be seen from the earlier narration, Charge No. 4 was in three parts. The first part of this charge was that the respondent used his official position to secure undue benefit for himself. In that it is alleged that he was given a personal allowance of Rs. 147/- from 01.07.1979 which was to be adjusted out of annual grades increment at one-third of the increment of the year. The respondent did not allow the person concerned to make any adjustment from the increments released in his favour. As far as this aspect is concerned the inquiry officer held as follows:-

> Non-adjustment of the personal allowance Mr. Verma was given a personal allowance of Rs. 147/- per month with effect from 01.07.1979 i.e. at the time of fitment of salary under the PCT which was to be adjusted out of the annual graded increment at the rate 1/3 rd of the increment of the year but did not adjust as per the above norms.
>
> This fact cannot be proved as he can never give such things in writing for not deducting 1/3rd of the graded increment. He might have verbally asked the Establishment Clerk not to adjust, but here it is doubtful and the benefit of this should go to Mr. Verma.
>
> The salary bill is sent every month for post audit to Regional Manager Office and it should have been pointed out by the Regional Officer of this lapse, whereas it was pointed out on 29.05.1981, followed by reminders of date 17.07.1981, 08.09.1981, and finally on 21.4.1982 exhibit page 32 which was duly deposited by Verma in three instalments with the kind permission of the R.M. Amritsar exhibit page 31.

8. The second part of this Charge No. 4 was that the respondent was sanctioned a refundable loan from the Provident Fund Department but he did not pay the instalments and the balance as on 30.6.1983 was Rs. 6381/-. The inquiry officer held that this charge was proved. (This is however a situation of not refunding a small portion of the advance which could be adjusted later on).

9. The third part of charge No. 4 was that the respondent had taken consumer loan of Rs. 5000/- for purchasing a refrigerator. It was alleged that he had purchased the item from M/s Electronic Service Centre which was having cash credit limits with the Bank. Infact he had not purchased the fridge and that firm was not dealing with refrigerators at all. The inquiry officer held that the respondent came from a well to do family and was financially of good means. He is living in a bungalow owned

by himself and it was difficult to believe that he was not already having any refrigerator. He, therefore, held that no refrigerator was purchased by him from that concern.

10. The disciplinary authority vide its order dated 30.3.1985 accepted the finding of the inquiry officer in respect of the first three charges but differed with its finding on charge No. 4. He was of the view that the charges were serious and therefore decided to impose the major penalty of removal of respondent from service. In the said order, as regards Charge No. 4 (i) the Disciplinary Authority observed as follows:-

> "As regards the findings of Enquiry Officer with regard to non-deduction and adjustment of 1/3rd of the graded increment towards personal allowance, I do not agree with him that there is nothing on record which could show that Shri Verma had instructed the Establishment Clerk not to adjust this part of increment towards personal allowance. Shri Verma must have been signing salary bill as a final signatory and if deductions were not adjusted towards adjustment of personal allowance he could point out to the office. It shows, he intentionally did not permit this adjustment to get personal benefit."

11. The impugned order of removal passed by the disciplinary authority reads as follows:-

> "Punjab National Bank Zonal Office Chandigarh.
>
> Ref:ZO:DAC: Dated 17.4.1985
>
> Shri K.K. Verma,
> 215-Green Avanue,
> Amritsar
>
> Reg: Departmental Enquiry against you - chargesheet Dated 12.8.83.
>
> You were served with chargesheet dated 12.8.83 for the serious irregularities/lapses committed by you while working as manager, BO:
>
> Jallianwala Bagh, Amritsar. To know the truth of imputations of lapses on your part, enquiry proceedings were initiated against you in terms of PNB Officer employees (D & A) Regulations, 1977 (Clause-6) and for this purpose Shri A.L. Pahwa, Manager, BC:Akali Market, Amritsar, was appointed as Enquiry Officer and Shri A.K. Aggarwal, Manager PF Deptt., HO, New Delhi was appointed as Presenting Officer. The Enquiry officer has since submitted his report alongwith relevant records of the proceedings in the above matter. I have carefully gone through the report alongwith the entire record of the enquiry proceedings and agree with the findings of the Enquiry Officer and hold you guilty of the aforesaid serious irregularities/lapses.

Keeping in view the above, I decide to impose upon you the major penalty of your removal from the service of the Bank with immediate effect.

A copy of the detailed orders passed by the undersigned in regard to the above matter alongwith a copy of the Enquiry report is enclosed herewith.

Sd/-

Disciplinary Authority Deputy General Manager"

12. The respondent thereafter preferred a Departmental appeal and then a review petition, both of which came to be rejected. Being aggrieved by that order, the respondent filed the above referred Writ Petition to a Single Judge of the Punjab and Haryana High Court who allowed that Writ Petition. The learned Single Judge set aside the order of removal. He has further observed that it will be open to the competent authority to decide the question of proposed punishment after following principles of natural justice by furnishing the respondent a copy of the enquiry report and affording him opportunity of hearing in the context of proposed punishment. As stated above, the appeal filed by the appellants herein from that judgment also came to be dismissed. Being aggrieved by both these judgments, the appellant has filed the present appeal by special leave. The main submission of the appellant has been that the appellant was not required to give a copy of the inquiry report prior to the decision of the disciplinary authority, and the order of removal could not be interfered on that ground.

13. Now, what is material to note is, that the respondent was not furnished with a copy of the inquiry report, and the disciplinary authority straightforward passed the order of removal which has been quoted earlier. The report of the inquiry officer and the detailed order of the Disciplinary Authority became available to the respondent only alongwith the order of removal, and he did not have any opportunity to make his submissions on that report to defend the charges anytime prior to the punishment of removal being decided and imposed. It was therefore, canvassed on behalf of the respondent before the Learned Single Judge that the action of the appellant was violative of principles of natural justice. He had not been furnished with the copy of the report any time prior to his removal and it was particularly necessary when the disciplinary authority had ultimately differed with the finding on Charge No. 4 rendered by the inquiry officer which became known only after the inquiry report and the detailed order of the Disciplinary Authority was received alongwith the removal order. He would have made submissions on his innocence and would have pointed out to the disciplinary authority that even the first three charges were not established. There is no dispute with respect to the fact that the inquiry report was not furnished to the respondent earlier. The Learned Single Judge had specifically asked the appellant whether they had furnished a copy of the inquiry report to the respondent and he recorded in this order that they could not produce any material from the concerned file to show that a copy of the report had been furnished to the respondent. That apart, the Division Bench also held that the order of removal was a mechanical order passed without going into the findings referred in the report, (which were in favour of the respondent at least on charge No. 4) and without explaining as to why the disciplinary authority had differed from the inquiry officer on Charge No. 4.

14. It was canvassed on behalf of the appellant that it was not mandatory for them to furnish the inquiry report, which had become necessary only after the judgment of the Apex Court dated 20.11.1990 rendered in the case of Union of India vs. Mohd. Ramzan Khan [1991 (1) SCC 588]. The judgment in Mohd. Ramzan (supra) would not apply to the present case since the order of removal in the present case was passed prior to this judgment on 17.4.1985 and the judgment in Mohd. Ramzan itself declared that the law declared therein was to be applied as a prospective one. This plea was raised by the appellant before the Division Bench but it was turned down holding that the principles of natural justice were always there to protect the right of hearing to be provided to the delinquent official, before awarding him the punishment, and that the judgment in Mohd. Ramzan Khan had only recognized this position and made it mandatory.

15. The learned counsel for the appellant pressed into service the following observations in para 33 of the Judgment of the Constitution Bench in Managing Director, ECIL, Hyderabad and Ors. versus B. Karunakar and Ors. reported in 1993 (4) SCC 727.

> "..... It is for the first time in Mohd. Ramzan Khan case that this court laid down the law. That decision made the law laid down there prospective in operation i.e. applicable to the orders of punishment passed after November 20, 1990. The law laid down was not applicable to the orders of punishment passed before that date notwithstanding the fact that the proceedings arising out of the same were pending in courts after that date. The said proceedings had to be decided according to the law prevalent prior to the said date which did not require the authority to supply a copy of the enquiry officer's report to the employee. The only exception to this was where the service rules with regard to the disciplinary proceedings themselves made it obligatory to supply a copy of the report to the employee." (emphasis supplied)

16. The counsel for the respondent on the other hand submitted that the right to receive the inquiry report and to make submissions thereon to prove one's innocence was always available to the employees of Government and Public Bodies. All that the judgment in Mohd. Ramzan Khan's case did was to remove the doubts which arose due to the changes brought into Article 311(2) by the 42nd Constitutional amendments. The judgment made the law declared prospective only to avoid the difficulties that would arise in inquiries held prior thereto.

17. In this connection, it is to be noted that as far as the right of an employee to represent against the adverse findings in an inquiry report is concerned, the same is referrable to Article 311(2) of the Constitution of India. Article 311 (2) in the original Constitution read as follows:-

> "311. (2) No such person as aforesaid shall 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 import of this provision was explained by a Constitution Bench of this Court in Khem Chand v. Union of India [AIR 1958 SC 300]. It held that it included both the opportunities to an employee, namely to deny one's guilt and establish innocence, which he can, only if he is informed about the

charges and the imputations in support, and secondly an opportunity to make a representation on the proposed punishment.

18. The Fifteenth Amendment to the Constitution w.e.f 6th October, 1963 amended Article 311 (2), and further clarified the position in this behalf. The amended Article 311 (2) reads as follows:-

> "311. (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry."

The import of this change was explained by another Constitution Bench in Union of India v. H.C. Goel [AIR 1964 SC 364] which in terms noted that it is well settled that the public servant who is entitled to the protection of Article 311, must get two opportunities to defend himself. First, to defend the charge against him and prove his innocence, which opportunity is to be given by giving him the report against him, and then a second notice when the government decides provisionally about the proposed punishment, as to why the same should not be imposed.

19. The 42nd Amendment effected in 1976 once again amended sub- article 311 (2) as follows:-

> "311. (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.
>
> Provided 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:"

20. In Mohd. Ramzan Khan's case (supra) the Court was concerned with the question as to whether the 42nd Amendment brought about any change in the matter of supply of a copy of the report which is a part of the first stage, and the effect of non-supply thereof on the punishment proposed. The Court considered the various judgments on this aspect and held in paragraph 18 of the judgment as follows:-

> "We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter." (emphasis supplied) It is only with

> a view not to affect the inquiries which were conducted in the meanwhile that the Court held that those inquiries will not be affected, and though it was only declaring the law, the propositions laid down therein will apply prospectively. This was basically to protect the actions which were taken during the interregnum i.e after the 42nd Amendment became effective until it was explained as above in this judgment.

21. Counsel for the appellant submitted that appellant's action was protected since the impugned order of removal was passed during this interregnum. On the other hand, the counsel for the respondent pointed out that though the observations in Karunakar (extracted above) explained the prospective application of the propositions in Mohd. Ramzan Khan, it also made it clear that where the service rules themselves made it obligatory, it was necessary to furnish a copy of the inquiry report to the employee. In this connection, counsel for the respondent pressed into service regulation 7 (2) and regulation 9 of the above referred service regulations under which the inquiry was held. (Regulation 8 is about minor penalties with which we are not concerned in this matter). These two regulations read as follows:-

> 7. Action on the Inquiry Report:
>
> (1) The Disciplinary Authority, if it is not itself the Inquiry Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Regulation 6 as far as may be.
>
> (2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.
>
> (3) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in the regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in regulation 8, make an order imposing such penalty.
>
> (4) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned.

9. Communication of orders Orders made by the Disciplinary Authority under Regulation 7 or Regulation 8 shall be communicated to the officer employee concerned, who shall also be supplied with a copy of the report of inquiry, if any."

22. Regulation 7 thus, speaks of four kinds of orders to be passed by the Disciplinary Authority after receiving the report of the inquiry. (1) Order once again remitting the case to the inquiry officer, (2) Order recording disagreement with the inquiry officer, (3) Order imposing a penalty and (4) an

order exonerating the employee. Regulation 7 (2) makes it clear that where the disciplinary authority disagrees with the findings of the inquiry officer on any article of charge, it must record its reasons for such disagreement. Regulation 9 provides that the orders made by the disciplinary authority under article 7 have to be communicated to the officer / employee concerned. He is also to be supplied with a copy of the report of the inquiry, if any. The counsel for the respondent submitted with much force that both these regulations when read together provide that when the disciplinary authority was differing with the inquiry officer, the report of the inquiry officer must be furnished to the employee before the decision on penalty was arrived at.

23. Regulation 7 (2) requires the Disciplinary Authority to record its reasons for disagreement wherever it disagrees with the findings of the inquiry officer. Regulation 9 provides for communicating to the employee concerned, the orders passed under Regulation 7, apart from providing him with a copy of the inquiry report. These regulations will have to be read as laid down only with a view to provide an opportunity to the employee to represent against the findings to the extent they are adverse to him. Then only they will become meaningful. The service regulations of the appellant are concerning the discipline and conduct in a nationalized bank which is an instrumentality of the state. The instrumentalities of the state have always been expected to act in fairness, and following the principles of natural justice has always been considered as a minimum expectation in that behalf. The above regulations will, therefore, have to be read as containing the requirement to furnish a copy of the inquiry report and the order of the Disciplinary Authority recording its disagreement therewith to the employee prior to any decision on the penalty being arrived at. That will secure to the delinquent employee an opportunity to make his submissions on the adverse findings and to prove his innocence.

24. The interpretation of regulation 7 (2) of the appellant bank is no longer res integra. In Punjab National Bank v. Kunj Behari Misra [1998 (7) SCC 84] this very question came up before this Court. Two Assistant Managers at the Lucknow Branch of the appellant bank viz. Kunj Behari Misra and S.P. Goel were charged for misconduct, when shortage of Rs. 1 lakh was detected in the branch on 10.11.1981. The inquiry officer held Mr. Misra guilty of only one out of the six charges viz. that he had not signed the concerned register at the relevant time. He exonerated Mr. Goel of all the charges. The disciplinary authority reversed the findings of the inquiry officer and held that the charges were proved. By his orders dated 12.12.83 and 15.12.83 he directed proportionate recovery of Rs. 1 lakh from both the officers.

25. In that case also the appellant bank canvassed the same submission viz. that since the inquiry was during the period prior to the judgment in Mohd. Ramzan Khan (supra) the appellant was not required to give the inquiry report or the report of the disciplinary authority differing with the inquiry officer. The very regulation 7 (2) came up for consideration. A bench of three judges of this Court held that the requirement to give these reports to the employee will have to be read into regulation 7 (2). The Court referred to and relied upon an earlier judgment of the constitution bench in State of Assam vs. Vimal Kumar Pandit [AIR 1963 SC 1612] and para 26 of Karunakar (supra) and specifically ruled in para 19 as follows:-

> "19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

26. Apart from this, as seen from the legal position enunciated in para 33 of Karunakar (supra), earlier extracted, it is clear that where the service rules with regard to the disciplinary proceedings themselves made it obligatory to supply a copy of the report to the employees, it would act as an exception. The direction that the judgment in Mohd. Ramzan Khan will not apply retrospectively, will not cover such service regulations and the concerned employers will have to continue to give a copy of the inquiry report to the delinquent employees, as provided in their service regulations.

27. The counsel for the appellant relied upon the judgment of this Court in National Fertilizers Ltd. and Anr. v. P.K. Khanna [AIR 2005 SC 3742] where the disciplinary rules were pari-materia to the rules in the present case as can be seen from para 10 of that judgment. Counsel relied on para 13 of the judgment which reads as follows:-

> "As far as the second question is concerned, neither the decision in Karunakar nor Rule 33 quoted earlier postulate that the delinquent employee should be given an opportunity to show cause after the finding of guilt as to the quantum of the punishment. The Rules envisage the passing of an order by the Disciplinary Authority not only finding the delinquent guilty, but also imposing punishment after the delinquent has been given a copy of the Enquiry report and had an opportunity of challenging the same." (emphasis supplied) This paragraph make it clear that there is no second opportunity available to the delinquent employee after the finding of guilt on the quantum of punishment. At the same time, the second sentence of this para clearly states that a copy of the inquiry report is to be given to the delinquent employee prior to the decision of the disciplinary authority for providing him with an opportunity to challenge the report. It is also material to note from this judgment that since the employee had contended in that case, that the Disciplinary Authority had not considered his objections correctly, this Court directed the Appellate Authority (and not the Disciplinary Authority) to reconsider the objections of the respondent.

28. This being the position, in the instant case it is clear that the appellant had not followed their own regulations which clearly require the disciplinary authority to record the reasons where it differed from the inquiry officer. The regulations also clearly lay down that a copy of the inquiry report and the order of disagreement are to be provided to the employee. In the present case, we are concerned with the stage where the Disciplinary Authority differs with the inquiry officer on his findings. This is prior to arriving at the guilt of the employee. His right to receive the report and defend at that stage before the guilt is established is very much recognized as seen above. Counsel for the appellant submitted that Constitution Bench has held in Union of India & Anr. v. Tulsiram Patel [1985 (3) SCC 398] that after the 42nd Amendment, the employees are not entitled in law to be heard in the matter of penalty. In Karunakar's case (supra), another Constitution Bench has referred to Tulsiram Patel in paragraph 4 and then explained the legal position in this behalf in paragraph 7 as follows:-

> "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 42nd Amendment."

Thus, the right to represent against the findings in the inquiry report to prove one's innocence is distinct from the right to represent against the proposed penalty. It is only the second right to represent against the proposed penalty which is taken away by the 42nd Amendment. The right to represent against the findings in the report is not disturbed in any way. In fact, any denial thereof will make the final order vulnerable.

29. Counsel for the respondent relied upon the judgment in State of Maharashtra v. B.K. Takkamore & Ors. [AIR 1967 SC 1353] to submit that if the impugned order can be sustained excluding the disputed charge, this Court should not interfere. In our view, it is not possible for us to pre-judge the issue in the present case. As seen from the order of Disciplinary Authority quoted above, the appellant has considered it to be a serious charge and therefore the respondent ought to have been given the opportunity to challenge the adverse finding of the Disciplinary Authority where it differed from the inquiry officer to establish his innocence.

30. It was then submitted that non supply of inquiry report is inconsequential if the employee does not show as to how he is prejudiced thereby. Karunakar (supra), S.K. Singh v. Central Bank of India and Ors. [1996 (6) SCC 415] and Haryana Financial Corporation and Anr. v. Kailash Chandra Ahuja [2008 (9) SCC 31] were relied upon in support. There cannot be any grievance with respect to the proposition. In the present case however, we are concerned with a situation where the finding of the inquiry officer on a charge has been reversed by the Disciplinary Authority, which was not the case

in any of the three cases. Besides, by not giving the inquiry report and the adverse order of the disciplinary authority, the respondent was denied the opportunity to represent before the finding of guilt was arrived at and thereby he was certainly prejudiced.

31. Thus, there is no error on the part of the learned Single Judge in interfering with the order of removal of the respondent from the service. The Court was ultimately dealing with the removal of an employee from his service which is a very serious matter. The regulations are, therefore, required to be followed in letter as well as in spirit. The Learned Single Judge was, therefore, right in directing the appellant to furnish the respondent a copy of the inquiry report, and afford him opportunity of hearing. The Learned Division Bench was equally right in leaving the order of the Learned Single Judge undisturbed. In our view, there is no reason to take a different view from the one taken by the learned judges of the High Court.

32. In the circumstances, though in principle, we uphold the order of the learned Single Judge, we modify the same to a limited extent by observing that the respondent is to be given a copy of the report of the Inquiry Officer and the detailed order of the Disciplinary Authority differing therewith, basically to afford him the opportunity to explain his position with respect to the charges and prove his innocence. The Learned Single Judge has directed that the competent authority will keep in mind that the respondent is out of job since 1985 and in that context it should also consider the factor of the service put in by him. We may also add that the competent authority may as well consider that when the respondent was removed, his date of retirement viz. 30.9.1987 was round the corner. We however, make it clear that it is for the competent authority to consider these aspects, when he takes steps in accordance with the impugned judgments which we confirm with the modification as above.

33. The appeal is disposed of accordingly. The Interim order stands vacated. There will no order as to costs.

.....J. (R.V. Raveendran) .....J. (H.L. Gokhale) New Delhi Dated : September 7, 2010