Chairman-Cum-M.D.,Coal India Ld.& Ors vs Ananta Saha & Ors on 6 April, 2011

Author: B. S. Chauhan

Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2958 OF 2011

(Arising out of SLP (C) NO. 1100 OF 2009)

Chairman-Cum-M.D.,

Coal India Ltd., & Ors. ...Appell

Versus

Ananta Saha & Ors. ...Responden

J U D G M E N T

Dr. B. S. CHAUHAN, J.

1. Leave granted.

2. This appeal has been preferred against the judgment and order dated 22.7.2008 passed in M.A.T. No. 2852 of 2007 by the Calcutta High Court dismissing the appeal of the present appellants against the judgment and order of the learned single Judge dated 16.8.2007, passed in Writ Petition No.

22658(W) of 2005, by which the learned single Judge had quashed the punishment order of dismissal from service as well as the disciplinary proceeding against respondent no.1 (hereinafter called the delinquent), giving liberty to the present appellants to initiate the proceedings afresh, if the disciplinary authority so desired.

3. Facts and circumstances giving rise to this case are that the delinquent has been employed as a Medical Officer (E-2 grade) in Coal India Limited (hereinafter called as `CIL'). On 29.6.1991, when the delinquent was posted at Central Hospital, Asansol, established under the control of Eastern Coalfields Limited (hereinafter called as ECL), he abused and made an attempt to physically assault his senior officer Dr. P.K. Roy, the then Chief Medical Officer, unprovoked. In this process, other officers who tried to intervene stood assaulted.

Disciplinary proceedings were initiated against the delinquent by issuing a chargesheet dated 26.7.1991. After the conclusion of the proceedings, the inquiry officer submitted the report holding that the charge stood proved against him. After considering the inquiry report, the delinquent was dismissed from service, vide order dated 17.6.1993, by the Chief Managing Director (hereinafter called as CMD) of the ECL, a subsidiary of the CIL. The said order of dismissal was challenged by the delinquent by filing Writ Petition CR No. 11177(W) of 1993 and the same stood allowed by the learned single Judge vide judgment and order dated 22.2.2001 on the ground that the order of dismissal had been passed in contravention of the Statutory Rules. The competent authority under the disciplinary rules was the CMD, CIL, who had not passed the order of punishment. All other issues raised by the delinquent were left open. The appellants-

employers were given liberty to initiate the proceedings de-novo, giving adequate opportunity to the delinquent to defend himself.

4. Being aggrieved, the appellants challenged the said judgment and order dated 22.2.2001 by filing MA No. 1081 of 2001. The said appeal was dismissed vide judgment and order dated 8.8.2001 observing that CMD, CIL was the only competent authority to award a major punishment like dismissal. The court further held that the delinquent would be treated in the light of the judgment of this court in Managing Director, ECIL, Hyderabad etc. etc. v. B. Karunakar etc. etc., AIR 1994 SC 1074. However, the direction for holding the disciplinary proceedings de-novo was not altered.

5. In view of the Division Bench judgment and order dated 8.8.2001, the delinquent was reinstated. The disciplinary proceedings were initiated and a fresh suspension order was passed. On conclusion of the proceedings ex-parte, as the delinquent did not participate in the proceedings, the inquiry officer found the charges proved against the delinquent vide report dated 18.9.2003. A copy of the inquiry report along with a second show-cause notice was sent to the delinquent by registered post on 26.9.2003, giving him an opportunity to make a representation on the same. However, the delinquent did not avail of the opportunity to file the objections thereupon. After considering the inquiry report, the CMD, CIL, the disciplinary authority, passed the punishment order of "dismissal from service" of the delinquent vide order dated 24.2.2004. A copy of the order of dismissal was served upon the delinquent immediately thereafter.

6. The delinquent filed the appeal prescribed under the Statutory Rules on 27.5.2005, i.e., after the expiry of more than one year and three months from the date of receipt of the order of dismissal.

Without waiting for the result or outcome of the appeal pending before the Board of Directors, CIL, the delinquent filed Writ Petition No. 22658(W) of 2005 challenging the said order of punishment. The said writ petition was allowed by the learned single Judge vide order dated 16.8.2007 on the ground that the disciplinary authority did not ensure compliance with the orders of the High Court dated 8.8.2001, which stood confirmed by the Division Bench and also on the ground that the fresh inquiry was not initiated by the competent authority as it was initiated by the Officer on Special Duty (hereinafter called as OSD) and had been merely seen by the CMD, ECL. The proceedings could have been initiated only by the CMD, CIL, thus, entire proceedings stood vitiated. The impugned order dated 24.2.2004, imposing the order of punishment of dismissal from the service, was quashed. However, the appellants were given liberty to initiate fresh inquiry in accordance with law and to conclude the same within a stipulated period.

7. Being aggrieved, the appellants preferred M.A.T. No. 2852 of 2007, however, the Division Bench dismissed the said appeal observing that the disciplinary proceedings had been initiated by an authority not competent to initiate such proceedings and no person other than the CMD, CIL could initiate the same. In fact, the inquiry had been initiated by the OSD, of the ECL and CMD, ECL also did not even approve it, rather he put his signature without making any observation whatsoever. The CMD, ECL was not the Competent Authority. The court had also made an observation that the disciplinary authority had been biased and prejudiced towards the delinquent and proceedings had been initiated with pre-determined mind to punish him. Hence, this appeal.

8. Shri K.K. Bandopadhyay, learned senior counsel appearing for the appellants, has submitted that as per the statutory rules, namely, Coal India Executives' Conduct Discipline and Appeal Rules, 1978 (hereinafter called `the Rules 1978') as the delinquent was an officer in E-2 Grade, the CMD, ECL was competent to initiate the proceedings. The Schedule framed under Rule 27 of the said Rules 1978 specifically provided for it. The CMD, CIL was competent to impose any major penalty and against the order of punishment, appeal is provided to the Board of Directors, CIL. In view of the provisions of Rules 27 and 28 of the Rules 1978, proceedings could be initiated even by the CMD, ECL and after conclusion of the inquiry, if the facts warrant imposition of major penalty, the matter could be referred to the CMD, CIL for the purpose of awarding the punishment, as he was the only competent authority to award major punishments. During the pendency of the appeal before the Board of Directors, CIL, writ petition could not have been entertained by the High Court, particularly, when such a fact had been disclosed by the delinquent in his writ petition. As the earlier disciplinary proceedings had been quashed and the appellants had been given liberty to proceed de-novo against the delinquent, there was no occasion for the appellants to issue a fresh chargesheet. The chargesheet had been issued by the CMD, ECL, but the High Court has wrongly construed it to have been issued by OSD of the company. The High Court failed to appreciate that the chargesheet had been duly approved by the CMD, ECL. The High Court ought to have refused to entertain the writ petition on the grounds that the delinquent had also been found guilty of serious misconduct earlier; did not participate in the inquiry and it was concluded ex-parte. More so, the delinquent did not file reply/comments to the second show-cause in spite of having received the

same. The High Court erred in recording a finding that proceedings had been initiated in this case with pre-determined mind just to punish the delinquent. Thus, the appeal deserves to be allowed.

9. Per contra, the delinquent-in-person has opposed the appeal on the grounds that the rules in force at the time of his initial appointments, provided that the proceedings could be initiated only by the CMD, CIL not by the CMD of the subsidiary company. A subsequent change/amendment in law would not be applicable so far as the delinquent was concerned. He did not participate in the inquiry on all the dates and did not submit the reply to the second show-cause as he had not been informed in accordance with law and, in such a fact-situation, there was no obligation on his part either to participate in the inquiry or to submit a reply to the second show cause. Once, in the first round of litigation, the High Court had given liberty to the disciplinary authority to proceed de-novo, a fresh chargesheet ought to have been issued to him by the disciplinary authority. In the instant case, proceedings had been initiated only by the OSD of the Company. The CMD, ECL was not the Competent Authority, even otherwise, he had merely signed the order without making any observation whatsoever. The appellants had a grudge against him, hence proceedings were initiated because of malice. The appeal lacks merit and is liable to be dismissed.

10. We have considered the rival submissions made by learned Senior counsel for the appellants and the delinquent-in-person.

11. The chargesheet dated 26.7.1991 reveals a very serious misconduct by the delinquent, as on 29.6.1991 the delinquent approached Dr. P.K. Roy, CMO, Central Hospital Kalla, and asked why he had marked him absent for 3 days in June, 1991, though the delinquent had applied for compensatory leave through proper channel and then used abusive language and threatened the CMO to the extent of saying that he (the delinquent) would kill the CMO. He took his shoes in hand and rushed towards the CMO, to hit him but other officers present there at that time caught hold of the delinquent with great difficulty and prevented him from assaulting the CMO.

Even at that stage, he made all attempts to get rid of them. In this process other employees were beaten by the delinquent.

The chargesheet further reveals that the delinquent had also been found guilty of serious misconduct in respect of chargesheet dated 18.4.1989. However, the management was watching his behaviour and during this time, the delinquent committed the misconduct again on 29.6.1991.

12. The submission made by the delinquent that at the time of his initial appointment, the CMD, CIL was the competent authority to initiate the disciplinary proceedings and if the rules have subsequently been amended, that would not be applicable in his case as the amendment made unilaterally cannot govern the service conditions of the employees appointed prior to the date of amendment, and that such amendment would not apply retrospectively, is preposterous.

13. A Constitution Bench of this Court in Roshan Lal Tandon v.

Union of India & Anr., AIR 1967 SC 1889, examined a similar issue and observed as under:-

> ".....The legal position of a Government servant is more one of status than of contract. The Hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the government servant and his terms of service are governed by Statute or statutory Rules which may be unilaterally altered by the Government without the consent of the employee."

14. In State of Mysore v. Krishna Murthy & Ors., AIR 1973 SC 1146; Raj Kumar v. Union of India & Ors., AIR 1975 SC 1116;

and Ex-Capt. K.C. Arora & Anr. v. State of Haryana & Ors., (1984) 3 SCC 281, this Court observed that it was well-established that Rules made under the proviso to Article 309 of the Constitution of India, being legislative in nature and character, could be given effect to retrospectively.

15. A Constitution Bench of this Court in State of Gujarat & Anr.

v. Raman Lal Keshav Lal Soni & Ors., AIR 1984 SC 161, observed as under:-

> "The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do's & dont's of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today."

16. In K. Nagaraj & Ors. v. State of Andhra Pradesh & Anr.

etc., AIR 1985 SC 551, this Court upheld the amendment in the Andhra Pradesh Public Employees (Regulation of Conditions of Service) Ordinance, 1983 by which the age of retirement was reduced from 58 to 55 years holding it was neither arbitrary nor irrational. The court held that as it would apply in future to the existing employees and does not take away the rights of the persons who have already retired, the amendment was not retrospective and those persons who were already in service and were expecting to retire at the age of 58 years and would now be required to retire at the age of 55, cannot claim that the Rules have been amended with retrospective effect taking away their accrued rights.

(See also : State of Jammu & Kashmir v. Shiv Ram Sharma & Ors., AIR 1999 SC 2012; and State of U.P. & Ors. v. Hirendra Pal Singh etc. JT (2010) 13 SC 610).

17. Similarly, in State of Karnataka & Anr. v. Mangalore University Non-Teaching Employees Association & Ors., AIR 2002 SC 1223, this Court held that conditions of service can be altered unilaterally by the employer but it should be in conformity with legal and constitutional provisions.

18. This Court in State of Tamil Nadu v. M/s. Hind Stone etc. etc., AIR 1981 SC 711; V. Karnal Durai v. District Collector, Tuticorin & Anr., (1999) 1 SCC 475; Union of India & Ors. v.

Indian Charge Chrome & Anr., (1999) 7 SCC 314; and Howrah Municipal Corporation & Ors. v. Ganges Rope Company Ltd. & Ors., (2004) 1 SCC 663, has clearly held that the law which is to be applied in a case is the law prevailing on the date of decision making.

Thus, in view of the above, submissions made by the delinquent are not worth consideration.

19. So far as the competence to initiate the disciplinary proceedings is concerned, the Rules 1978 provide complete guidance and Rules 27 and 28 thereof, if read together, cumulatively provide that major penalties, i.e., compulsory retirement, removal or dismissal from service can be made only by CMD, CIL. Rule 28.3 clearly stipulates that the disciplinary proceedings can be initiated by the authorities shown in the Schedule framed under Rule 27. However, in a case where major penalty is to be imposed, the matter be referred to the CMD, CIL. Therefore, in order to find out as to whether any officer other than the CMD, CIL, could initiate the disciplinary proceedings and issue the chargesheet, we have to examine the Schedule framed under Rule 27. The relevant part thereof reads as under:

> SCHEDULE UNDER RULE 27.0 Sl. Grade of Employee Disciplinary Penalties Appellate No. Authority which it may Authority impose
>
> 1. 2. 3. 4. 5.
>
> 1. .....
>
> 2. (a) Officers in Grade Chairman- All penalties Board of E-1 to M-3 posted in cum Directors CIL or any of the Managing Coal India Subsidiary Director, Ltd.
>
> Companies Coal India
>
> Ltd.
>
> (b) .....
>
> (c) .....
>
> 3. (a) Officers in grade CMD of the All penalties Chairman-
>
> E-1 to M-3 posted in concerned except those cum Subsidiary Subsidiary under Rule Managing Companies Company 27.1(iii)(b) to Director, CIL 27.1(iii)(d)
>
> (b) .....
>
> (c) .....

The jurisdiction of the Disciplinary Authority shall be determined with reference to the Company/Unit where the alleged misconduct was conducted.

20. This Court while interpreting the provisions of Article 311(1) of the Constitution of India, has consistently held that as per the requirement of the said provisions, a person holding a civil post under the State cannot be dismissed or removed from service by an authority subordinate to that by which he was appointed. "However, that Article does not in terms require that the authority empowered under the provision to dismiss or remove an official, should itself initiate or conduct enquiry proceeding".

(See: Sampuran Singh v. State of Punjab, AIR 1982 SC 1407; and State of U.P. & Anr. v. Chandrapal Singh & Anr., (2003) 4 SCC

670)

21. Admittedly, the delinquent has been an officer in E-2 Grade and has been posted in Subsidiary Company, i.e. ECL. Therefore, there is no doubt that disciplinary proceedings could be initiated by the CMD, CIL or by the CMD of the concerned Subsidiary Company, i.e., ECL.

As the delinquent was working in the Subsidiary Company, the High Court erred in holding that in such an eventuality the CMD of the concerned Subsidiary Company was not competent to initiate the proceedings.

22. Similarly, we find no force in the submission made by the delinquent that he did not participate in the disciplinary proceedings and did not make any comment on receiving the inquiry report along with the second show cause notice as the notices had not been served upon him in accordance with law. The second show cause notice and the copy of the inquiry report had been sent to him under registered post. Therefore, there is a presumption in law, particularly, under Section 27 of the General Clauses Act, 1897 and Section 114 Illustration (f) of the Evidence Act, 1872 that the addressee has received the materials sent by post. (vide: Greater Mohali Area Development Authority & Ors. v. Manju Jain & Ors., AIR 2010 SC 3817).

23. In the instant case, proceedings were held ex-parte against the delinquent as he failed to appear in spite of notice and such a course of the inquiry officer was justified (See: State of U.P. v. Saroj Kumar Sinha, AIR 2010 SC 3131). There is no averment by the delinquent that he did not receive the said notice and the copy of the inquiry report. The plea taken by the delinquent shows that he has adopted a belligerent attitude and kept the litigation alive for more than two decades merely on technical grounds. The delinquent waited till the conclusion of the purported fresh enquiry initiated on 17.1.2002, even though he could have challenged the same having been initiated by a person not competent to initiate the proceedings and being in contravention of the orders passed by the High Court earlier. In such a fact-situation, the High Court ought to have refused to entertain his writ petition. More so, the writ petition could not have been proceeded with and heard on merit when the statutory appeal was pending before the Board of Directors, CIL. (See: Transport and Dock Workers Union & Ors. v. Mumbai Port Trust & Anr., (2011) 2 SCC 575).

Unfortunately, both the parties proceeded with the case without any sense of responsibility, as subsequent to disposal of the writ petition and appeal by the High Court, the statutory appeal filed by the delinquent after 15 months of imposition of punishment was entertained, though the limitation prescribed under the Rules 1978 is only 30 days and appeal has been dismissed on merit without dealing with the issue of limitation. It clearly shows that both sides considered the litigation as a luxury and that the appellants have been wasting public time and money without taking the matter seriously.

24. The Statutory rules clearly stipulate that the enquiry could be initiated either by the CMD, CIL or by the CMD of the Subsidiary Company. In the first round of litigation, the learned Single Judge of the High Court vide judgment and order dated 22.2.2001 after quashing the orders impugned therein, had given liberty to the appellants to start the proceedings de-novo giving adequate opportunity to the delinquent. The Division Bench vide judgment and order dated 8.8.2001 dismissed the appeal filed by the present appellants. Therefore, the question does arise as to what is the meaning of de-novo enquiry.

25. There can be no quarrel with the settled legal proposition that the disciplinary proceedings commence only when a chargesheet is issued to the delinquent employee. (Vide: Union of India etc. etc. v.

K.V. Jankiraman etc. etc., AIR 1991 SC 2010; and UCO Bank & Anr. v. Rajinder Lal Capoor, (2007) 6 SCC 694).

26. The High Court had given liberty to the appellants to hold de-

novo enquiry, meaning thereby that the entire earlier proceedings including the chargesheet issued earlier stood quashed. In such a fact-

situation, it was not permissible for the appellants to proceed on the basis of the chargesheet issued earlier. In view thereof, the question of initiating a fresh enquiry without giving a fresh chargesheet could not arise.

27. The proceedings were purported to have been revived by the CMD, ECL and the said order dated 17.1.2002 reads as under:

> "In the matter of C.R. No.11177/W of 1993, Dr. Ananta Saha Vs. ECL & Ors., Hon'ble High Court, Calcutta has passed an order upon the appellant to start enquiry proceedings, de-novo, giving adequate opportunity to the petitioner and in the light of the order passed by the Hon'ble High Court Calcutta on 8.8.2001, it will depend on a fresh order to be passed by the Disciplinary Authority/CMD, ECL.
>
> In the above circumstances, it is proposed that an Inquiring Authority and a Presenting Officer may be appointed to conduct the departmental enquiry in terms of the order dated 8.8.2001 of Division Bench of Calcutta High Court for a fresh enquiry

into the chargesheet No.ECL-5(D)/113/1070/320 dated 26.7.1991 issued to Dr. Ananta Saha, M,O. Kalla Hospital, for this purpose the following names are furnished.

1. Dr. R.N. Kobat, CMO, Sanctoria Hospital - Inquiring Authority

2. Sri M.N. Chatterjee, S.O., Admn. Dept. - Presenting Officer Put up for kind approval.

Sd/-

CMD OSD(PA & PR)Sd/-

Sd/- 17.8.2002"

28. The aforesaid order reveals that the OSD had prepared the note which has merely been signed by the CMD, ECL. The proposal has been signed by the CMD, ECL in a routine manner and there is nothing on record to show that he had put his signature after applying his mind. Therefore, it cannot be held in strict legal sense that the proceedings had been properly revived even from the stage subsequent to the issuance of the charge sheet. The law requires that the disciplinary authority should pass some positive order taking into consideration the material on record.

29. This Court has repeatedly held that an order of dismissal from service passed against a delinquent employee after holding him guilty of misconduct may be an administrative order, nevertheless proceedings held against such a public servant under the Statutory Rules to determine whether he is guilty of the charges framed against him are in the nature of quasi-judicial proceedings. The authority has to give some reason, which may be very brief, for initiation of the inquiry and conclusion thereof. It has to pass a speaking order and cannot be an ipse dixit either of the inquiry officer or the authority. (Vide Bachhittar Singh v. State of Punjab & Anr., AIR 1963 SC 395; Union of India v. H.C. Goel, AIR 1964 SC 364; Anil Kumar v. Presiding Officer & Ors., AIR 1985 SC 1121; and Union of India & Ors. v. Prakash Kumar Tandon, (2009) 2 SCC 541).

Thus, the above referred to order could not be sufficient to initiate any disciplinary proceedings.

30. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact-situation, the legal maxim "sublato fundamento cadit opus" is applicable, meaning thereby, in case

a foundation is removed, the superstructure falls.

31. In Badrinath v. Govt. of Tamil Nadu & Ors., AIR 2000 SC 3243, this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders. (See also State of Kerala v. Puthenkavu N.S.S. Karayogam & Anr., (2001) 10 SCC 191; and Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors. AIR 2010 SC 3745).

32. As in the instant case, there had been no proper initiation of disciplinary proceedings after the first round of litigation, all other consequential proceedings stood vitiated and on that count no fault can be found with the impugned judgment and order of the High Court.

33. In respect of the allegation of bias/prejudice/malafide, ground no.9 has been taken by the delinquent in his writ petition before the High Court, which reads as under:-

"For that the charge sheet was recommended with pre-determination of inflicting punishment of major penalty for which it can be proved by the remarks of the authority concerned on the situation report dated 29.6.1991 and as such, the sanctity and integrity of the proceedings are lost."

The delinquent could not point out any material on record to substantiate the said averment.

34. The issue of "malus animus" was considered by this Court in Tara Chand Khatri v. Municipal Corporation of Delhi & Ors., AIR 1977 SC 567, wherein it was held that the Court would be justified in refusing to carry on an investigation into the allegation of mala fides, if necessary particulars of the charge making out a prima facie case are not given in the writ petition and the burden of establishing mala fides lies very heavily on the person who alleges it and that there must be sufficient material to establish malus animus.

35. Similarly, in E.P. Royappa v. State of Tamil Nadu & Anr., AIR 1974 SC 555, this Court observed:

"Secondly, we must not also over-look that the burden of establishing mala fides is very heavy on the person who alleges it..... The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other, not because of any special status.... but because otherwise, functioning effectively would become difficult in a democracy."

36. In M. Sankaranarayanan, IAS v. State of Karnataka & Ors., AIR 1993 SC 763, this Court observed that the Court may "draw a reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture."

37. There has to be a very strong and convincing evidence to establish the allegations of mala fides specifically alleged in the petition, as the same cannot merely be presumed. The presumption is in favour of the bona fides of the order unless contradicted by acceptable material. (Vide: M/s. Sukhwinder Pal Bipan Kumar & Ors. v. State of Punjab & Ors., AIR 1982 SC 65; Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi & Ors., AIR 1987 SC 294; and Samant & Anr. v. Bombay Stock Exchange & Ors., (2001) 5 SCC 323).

38. In State of Punjab v. V.K. Khanna & Ors., (2001) 2 SCC 330, this Court examined the issue of bias and mala fide and observed as under:-

> "Whereas fairness is synonymous with reasonableness- bias stands included within the attributes and broader purview of the word 'malice' which in common acceptation means and implies 'spite' or 'ill will'. One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact, there was existing a bias or a mala fide move which results in the miscarriage of justice..... In almost all legal inquiries, 'intention as distinguished from motive is the all-important factor' and in common parlance a malicious act stands equated with an intentional act without just cause or excuse." (Emphasis added)

39. In Jasvinder Singh & Ors. v. State of J & K & Ors., (2003) 2 SCC 132, this Court held that the burden of proving mala fides lies very heavily on the person who alleges it. A mere allegation is not enough. The party making such allegations is under the legal obligation to place specific materials before the Court to substantiate the said allegations.

40. We could not find any material on record on the basis of which the High Court could be justified in recording a finding of fact that disciplinary proceedings had been initiated against the delinquent with pre-determined mind only to punish him. In view of the fact that inquiry officers have consistently found the delinquent guilty of committing a serious misconduct, such an observation was totally unwarranted, particularly in view of the fact that there is nothing on record to substantiate such an averment made by the delinquent.

41. Even in criminal law a complaint cannot be "thrown over board on some unsubstantiated plea of malafides". That "a criminal prosecution, if otherwise, justifiable and based upon adequate evidence does not become vitiated on account of malafides or political vendetta of the first informant or the complainant." (See Sheo Nandan Paswan v. State of Bihar & Ors., AIR 1987 SC 877; and State of Haryana & Ors. v. Ch. Bhajan Lal & Ors., AIR 1992 SC

604).

42. Therefore, the finding of bias i.e. predetermination of the disciplinary authority to punish the delinquent is set aside holding that it is totally perverse being based on no evidence.

43. In the facts and circumstances of the case, the appeal stands allowed to the extent explained hereinabove. The finding recorded by the High Court regarding malice is unwarranted and hereby set aside.

Further, the finding that CMD, ECL was not competent to initiate the proceeding is also not sustainable in the eyes of law and thus, hereby set aside. It is open to the appellants to initiate fresh disciplinary proceedings, i.e., issuing a fresh chargesheet by the competent authority as per the Rules 1978 and concluding the proceedings under all circumstances within a period of 6 months from today. It is made clear that in case the delinquent does not participate or co-operate in the inquiry, the inquiry officer, may proceed ex-parte passing such an order recording reasons.

44. In the last, the delinquent has submitted that this Court must issue directions for his reinstatement and payment of arrears of salary till date. Shri Bandopadhyay, learned senior counsel appearing for the appellants, has vehemently opposed the relief sought by the delinquent contending that the delinquent has to be deprived of the back wages on the principle of "no work - no pay". The delinquent had been practicing privately i.e. has been gainfully employed, thus, not entitled for back wages. Even if this Court comes to the conclusion that the High Court was justified in setting aside the order of punishment and a fresh enquiry is to be held now, the delinquent can simply be reinstated and put under suspension and would be entitled to subsistence allowance as per the Service Rules applicable in his case. The question of back wages shall be determined by the disciplinary authority in accordance with law only on the conclusion of the fresh enquiry. It is settled legal proposition that result of the fresh inquiry in such a case relates back to the date of termination.

45. The submissions advanced on behalf of the appellants that the result of the inquiry in such a fact-situation relates back to the date of imposition of punishment, earlier stands fortified by the large number of judgments of this Court and particularly in R. Thiruvirkolam v.

Presiding Officer & Anr., AIR 1997 SC 637; Punjab Dairy Development Corporation Ltd. & Anr. v. Kala Singh etc., AIR 1997 SC 2661; and Graphite India Ltd. & Ors. v. Durgapur Project Ltd. & Ors., (1999) 7 SCC 645.

46. In Managing Director, ECIL, Hyderbad etc. etc. v. B. Karunakar etc. etc., (Supra); and Union of India v. Y.S. Sandhu, Ex. Inspector, AIR 2009 SC 161, this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the inquiry afresh from the stage where it stood before alleged vulnerability surfaced. However, for the purpose of holding the fresh inquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages etc. is determined by the disciplinary authority in accordance with law after the fresh inquiry is

concluded.

47. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary.

Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is re-instated, it would not automatically make him entitled for back wages as entitlement to get back wages is independent of re-instatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide: U.P.SRTC v. Mitthu Singh, AIR 2006 SCC 3018; Secy., Akola Taluka Education Society & Anr. v.

Shivaji & Ors., (2007) 9 SCC 564; and Managing Director, Balasaheb Desai Sahakari S.K. Limited v. Kashinath Ganapati Kambale, (2009) 2 SCC 288).

48. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh inquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled for subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs.

.....J. (P. SATHASIVAM) .....J. (Dr. B.S. CHAUHAN) New Delhi, April 6, 2011