South Bengal State Transport Corpn vs Swapan Kumar Mitra And Ors on 3 February, 2006

Equivalent citations: AIR 2006 SUPREME COURT 3533, 2006 (2) SCC 584, 2006 AIR SCW 768, 2006 (2) AIR JHAR R 165, 2006 (2) SCALE 141, 2006 LAB LR 326, (2006) 41 ALLINDCAS 622 (SC), (2006) 4 ALLMR 79 (SC), (2006) 5 ALL WC 4785, 2006 (3) SRJ 200, (2006) 2 LAB LN 94, (2006) 2 SCJ 390, (2006) 2 SERVLR 568, (2006) 2 SCALE 141, (2006) 3 CAL HN 104, (2006) 1 LABLJ 1087, (2006) 1 SUPREME 697, (2006) 109 FACLR 1, MANU/SC/871/2006

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Bench: Arijit Pasayat, Tarun Chatterjee

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           CASE NO.:
Appeal (civil)  1015 of 2005

PETITIONER:
SOUTH BENGAL STATE TRANSPORT CORPN.

RESPONDENT:
SWAPAN KUMAR MITRA AND ORS.

DATE OF JUDGMENT: 03/02/2006

BENCH:
ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:
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JUDGMENT TARUN CHATTERJEE, J.

Shri Sapan Kumar Mitra, who is Respondent No. 1 in this appeal was employed by the Appellant, South Bengal State Transport Corporation (in short Corporation) as a bus drive. On 21st April 1994 the bus which the Respondent No. 1 was driving left Durgapur for Malda. In early hours of 22nd April 1994, i.e. at around 0030 hours, the bus met with an accident on the Farakka Barrage and fell into the bay. The accident had occurred when a truck approached the bus from the opposite side on the barrage and finding that the truck was approaching the bus from the opposite side, the bus driver turned it sharply towards left and as a result, it dashed into the lock-gate and the railings of the barrage, by which process, the bus fell into the day.

Due to this accident, 15 precious lives were lost and a number of other passengers were seriously injured. A departmental inquiry as well as a criminal proceeding was initiated against respondent No. 1. The criminal proceeding was at the instance of one of the bus passengers who got injured and

later succumbed to injuries. This criminal case came to be registered as Farakka Police case No. 34 of 1994 under Sections 279, 338, 427 and 301 A-of India Penal Code. The departmental inquiry at the same time was also initiated against Respondent No. 1.

So far as the criminal case is concerned, it ended in acquittal of Respondent No. 1 on the ground that sufficient evidence was not available to the Court to come to a conclusion of guilt of Respondent No. 1.

As noted hereinafter, the Respondent No. 1 was removed from service after holding the departmental inquiry into the incident that had occurred on 22nd April 1994 by which, 15 bus passengers died and some others had serious injuries. Be it mentioned herein, the Transport Department of the State Government by a Notification, directed the District Magistrate, Murshidabad, West Bengal to hold an enquiry as to who was responsible for this accident and the death of 15 passengers and injury to other bus passengers. A report was submitted by the District Magistrate holding Respondent No. 1 responsible. Considering the report of the District Magistrate, depositions relied upon by him and also the depositions before the Inquiry Officer, the inquiry officer came to the conclusion that the Respondent No. 1 due to his rash and negligent driving, caused the accident resulting in death of 15 persons and also serious injuries to other bus passengers. The Disciplinary authority passed an order of removal from service of Respondent No. 1 relying on the report of the Inquiry Officer. The order of removal was challenged by Respondent No. 1 by filing a Writ Petition in the High Court at Calcutta. In this connection, we may notice that although a statutory appeal was available to Respondent No. 1 for filing an appeal before an appellate authority, he chose to move the High Court in its Writ Jurisdiction challenging the order of removal. The order of removal from service was challenged by the respondent No. 1 in the High Court mainly on two grounds.

The first ground on which the order of removal was said to be bad and invalid in law was that, as the documents relied on by the inquiry officer did not at all feature in the list of documents annexed to the charge sheet nor copies of the same were supplied to Respondent No. 1, no reliance could be placed on such documents and, therefore, the order of removal from service of the respondent No. 1 was liable to be set aside. The second ground of challenge was that the Disciplinary Authority could not continue with the departmental proceeding and impose punishment of removal from service against the respondent No. 1 after his acquittal in the criminal case.

The learned Single Judge has upheld the first ground namely, non-supply of the copies of the report of the District. Magistrate and other allied documents relied on by him and the enquiry report submitted by the Inquiry Officer, vitiates the departmental proceedings. It was also had held by the learned Single Judge that since the degree of proof in a criminal proceeding is much higher than in a departmental proceeding, acquittal in the criminal case cannot be a bar for the disciplinary authorities either for imitating a departmental proceeding against the employee, i.e. respondent No. 1 or from proceeding with the same and imposing penalty of removal from service against the respondent No. 1 However, the learned Single Judge thought it fit to set aside the order of removal and directed the disciplinary authority to supply the copies of the documents referred to hereinbefore, to the respondent No. 1 for filing comments against the said documents and thereafter

to reach a fresh conclusion of the question of removal of respondent No. 1 from service after giving a reasonable opportunity of hearing to him. In view of the above findings arrived at by the learned Single Judge, the final order was passed in the following manner:-

> In the result, the writ petition succeeds in part. The order of the disciplinary authority, appearing at page 46 of the writ petition is quashed and set side. The writ petitioner is given liberty to ask for the copies of the documents which he wants for the purpose of the present proceeding. Such request must be made by tomorrow to the learned Advocate appearing for the respondent authority. Respondent authority would furnish copies of the same within three days thereafter. The writ petitioner would be entitled to offer his comments on the said documents to the disciplinary authority. The disciplinary authority upon receipt of such explanation and would pass a final order and give adequate opportunity of hearing to the petitioner.
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> Needless to say that the petitioner must submit his explanation as early as possible and not later than two weeks from date. In case the explanation is offered the disciplinary authority would pass a final order and communicate the same within a period of four weeks thereafter.
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> The writ petitioner is put under deemed suspension till the matter is finally decided by the disciplinary authority.
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> The disciplinary authority while passing the final order would also decide the issue of back wages and/or the subsistence allowance payable to the petitioner.
>
> Writ petition is disposed of accordingly without any order as to costs."

Feeling aggrieved, the respondent No. 1 instead of appearing before the disciplinary authority, had preferred an appeal before the Division Bench of the High Court. In appeal, however, the Division Bench did not say that after acquittal in the criminal case, departmental proceeding could not be continued and thereby no order of removal could be passed by the disciplinary authority. But it was held by the Division Bench that, whether the delinquent had asked for the copies of the documents relied on by enquiry officer as well as by the disciplinary authority was not at all material. According to the Division Bench, unless a document is included in the list of documents annexed to the charge sheet, the same cannot be used without giving sufficient opportunity to the delinquent and without obtaining leave for relying on the same. As this was not followed, according to the Division Bench, the disciplinary proceeding itself was liable to be quashed. At this juncture, we may remind ourselves that the learned Single Judge had also held that no reliance could be placed on the documents not supplied to the respondent No. 1 unless such documents were supplied and sufficient opportunity was given to the Respondent No. 1 for filing representation and/or comments against such documents. It is for this reason that the learned single Judge directed the disciplinary authority to supply copies of the

documents to the respondent No. 1, allow respondent No. 1 to file his comments and then reach a fresh and final conclusion on the issue referred to hereinearlier after giving respondent No. 1 a fair hearing. It was further held by the Division Bench that, since the District Magistrate was not examined and no one had proved the reliability and authenticity of his report, it was not open to the enquiry officer or to the disciplinary authority to rely on the said report of the District Magistrate on the basis of which a finding was arrived at by the disciplinary authority. The Division Bench had also drawn an adverse inference by holding that the Inquiry Officer had exceeded his jurisdiction by relying on the depositions of witnesses alleged to have been examined and relied on by the District Magistrate without examining such witnesses, in making his report. Accordingly, the Division Bench held that reliance on such depositions was wholly illegal and void, leading to perversity. Thereafter, the Division Bench also had taken into consideration the fact of non-mentioning of rash and negligent driving of respondent No.1 in the Firs Information Report (FIR). Going into the facts and circumstances of the case leading to the filing of a FIR, the division Bench held that since the FIR did not mention about the rash and negligent driving, no reliance could be placed. It was also finding of the Division Bench that since only a xerox copy of the District Magistrate's report was filed before the Inquiry Officer, such xerox copy of the report of the District Magistrate was inadmissible in evidence. On the above findings, the Division Bench came to a conclusion that the findings of the disciplinary authority as well as the Inquiry Officer were wholly perverse. Accordingly, the Division Bench had set aside the judgment of the learned Single Judge and the order of removal of the respondent. No. 1 and directed the Corporation to reinstate the respondent No. 1 with full back wages and also suspension allowance from a particular date.

Against this final order of the Division Bench setting aside the order of removal and directing reinstatement of the respondent No. 1, this appeal has been preferred by the Corporation and the same was heard in presence of the learned counsel for the parties after grant of leave.

We have heard the learned counsel for the parties and also examined the relevant records of this case. Although the Division Bench had not categorically said that the departmental proceeding could not be continued and punishment could not be imposed on the delinquent employee when the criminal case ended in acquittal, even then the learned counsel for the respondents sought to argue this ground before us. In our view, this ground is no longer res-integra. In Nelson Motis v. Union of India and Ors., [1992] 4 SCC 711 a three-Judge Bench of this Court observed at paragraph 5, as follows:

"So far the first point is concerned, namely whether the disciplinary proceedings could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those

of a departmental disciplinary proceeding and an order of acquittal therefore, cannot conclude the departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject matter of the criminal case." (Emphasis supplied) Similarly in Senior Superintendent of Post Officer, Pathamthitta and Ors., v. A. Gopalan, [1997] 11 SCC 239 the view expressed in Nelason Motis v. Union of India and Ors. (supra) was fully endorsed by this Court and similarly it was held that nature and scope of proof in a criminal case is very different from that of a departmental disciplinary proceeding and order of acquittal in the former, cannot conclude departmental proceedings. This Court has further held that in a criminal case charge has to be proved by proof beyond reasonable doubt while in departmental proceeding the standard of proof for proving the charge is mere preponderance of probabilities. Such being the position of law now settled by various decisions of this Court, two of which have already been referred to earlier, we need not deal in detail with the question whether acquittal in a criminal case will lead to holding that the departmental proceedings should also be discontinued. That being the position, an order of removal from service emanating from a departmental proceeding can very well be passed even after acquittal of the delinquent employee in a criminal case. In any case, the learned Single Judge as well as the Division Bench did not base their decisions relying on the proposition that after acquittal in the criminal case departmental proceedings could not be continued and order of removal could not be passed.

On the question, whether copies of the documents relied on by the Inquiry Officer and the disciplinary authority must be served on respondent No. 1. Before passing any order of removal from service, it is no doubt true that such order of punishment, ought not be passed without supplying the copies of the documents to the respondent No. 1. Now the question is whether non- supply of the documents, as referred to herein before, would vitiate the departmental proceeding in its entirely and directions for reinstatement should be passed or directions to supply copies of documents relied on by the authorities should be made and thereafter direct reinstatement of respondent No. 1. into service on condition that the disciplinary authority shall continue with the disciplinary proceeding from the stage of supplying copies of the documents to the respondent No. 1. To reach a fresh and final conclusion. It cannot be disputed that serious prejudice would be caused to the respondent No. 1. If the documents on which reliance was placed by the authorities in removing him from service were not supplied to him. This will cause denial of reasonable opportunity of hearing to him. This view was also expressed by the decision of this Court in the case of Union of India v. Mohd. Ramzan Khan, [1991] 1 SCC 588, which was approved by the Constitution Bench of this Court in Managing Director ECIL Hyderabad and Ors. v. B. Karunakar and Ors., [1993] 4 SCC 727. This Court in Ramzan Khan's case (supra) at Paragraph 18, has clearly observed as follows:

"...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 entitiled 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) As noted, this decision was approved by the Constitution Bench of this Court in the case of Managing Director ECIV Hyderabad and Ors. v. B. Karunakar and Ors., [1993] 1 SCC 727. The Constitution Bench has clearly held that in order to impose punishment of removal on a delinquent employee, it is necessary to supply a copy of the inquiry report to him before such punishment is imposed by the disciplinary authority. The Constitution Bench on the issue of non-supply of inquiry report, observed as follows:

``The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extend the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have ben recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the enquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusion. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent

employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it.'' (Emphasis supplied).

In view of the Constitution Bench decision of this Court, as referred to herein earlier, we, therefore, cannot have any dispute that the respondent No. 1 was entitled to a copy of the inquiry report, report of the District Magistrate and all allied documents, including depositions of witnesses relied on by the District Magistrate. What should be the effect of non- supply of copies of these documents to respondent No. 1 ? Was it open to the Court to set aside the order of removal, quash the departmental proceedings and order reinstatement mechanically on the ground that the copies of documents, as referred to herein earlier, were not supplied to the respondent No. 1 or a direction be give to the disciplinary authority, as was done by the learned Single Judge to supply copes of the documents and then permit the delinquent employee to make a representation or to file a comment on the same and thereafter to proceed from that stage to reach a fresh conclusion on the question of removal from service of Respondent No. 1 after taking into consideration the comments made by him and also the inquiry report and other evidences placed before the disciplinary authority. This aspect was also taken into consideration by the Consitition Bench of this Court in the case of Managing Director ECIL (supra) and it was held as under:

``The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to upholds the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to, stretching the concept of justice to illogical and exasperating limits. It amounts to an ``unnatural expansion of natural justice'' which in itself is antithetical to justice.

Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Courts/Tribunals find that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law." (Emphasis supplied).

Applying the principles laid down by the Constitution Bench, it cannot be denied that the learned Single Judge was justified in sending the case back to the disciplinary authority and ordering him to supply a copy of the inquiry report along with the repot of the District Magistrate and other documents relied upon by him to respondent No. 1 and thereafter to proceed from that stage after seeking comments on those reports from respondent no. 1 to reach a fresh conclusion. We are of the view that at the appellate stage, the Division Bench was not justified to short cut the procedure by going into the merits on the question of removal from service of the respondent No. 1 particularly when the learned Single Judge had not decided the came of respondent No. 1 on the question of removal on merits and when the disciplinary authority had

passed the order of removal practically relying on the Inquiry Report, a copy of which was not supplied to the respondent No. 1 for filing comments. It is well settled that the Inquiry Officer and disciplinary authority are the sole judges of facts. Adequacy and reliability of the evidence is not a matter that can be canvassed before a High Court in a writ proceeding under Article 226 of the Constitution (See: State of A.P. and Ors. v. S. Sree Rama Rao, AIR (1963) SC 1723).

It is true that a copy of the report, which was filed before the Inquiry Officer, was examined by the respondent No. 1 and his helper and thereafter they accepted the documents and deposed before the Inquiry Officer. It is also true that after inspection of the report of the District Magistrate neither his helper nor the respondent No. 1 asked for an opportunity to file comments nor raised any objection as to the admissibility of the same as not being the original of the report. This aspect may not be gone in to at this stage in view of our findings and directions made herein above. Mr. Das appearing on behalf of the Corporation urged that since the respondent No. 1 had inspected the report and other documents on which reliance was placed by the disciplinary authority, it was not incumbent for the disciplinary authority to supply copy of the enquiry report for filing comments. In support of this contention, reliance was placed on the decision of this court in the case of Debotosh Pal Choudhury v. Punjab National Bank and Ors., reported in [2002] 8 SCC 68. In view of the Constitution Bench decision and in view of our directions made herein above to the effect that the disciplinary authority shall now proceed to dispose of the departmental proceeding after supplying a copy of the inquiry report and other documents relied on by the Inquiry Officer, it would not be necessary to go into this question at all.

In any view of the matter, the grounds on which the Division Bench had set aside the judgment of the learned Single Judge and the order of removal and quashed the departmental proceedings as referred to herein earlier, were not open to it in the exercise of their supervisory power of Article 226 of the Constitution. One of the many grounds to quash the departmental proceeding was that since in the list of documents that was attached to the charge-sheet, the report of the District Magistrate was not mentioned, no reliance could be placed on the said report of the District Magistrate and therefore the order of removal that was passed relying on the said report, was liable to be set aside and order of reinstatement must be passed without any further inquiry. Furthermore, according to the respondent No. 1, since the original copy of the Inquiry Report was not filed and only a xerox copy of the same was filed, such xerox copy could not at all be taken into consideration for the purpose of passing the order of removal of the respondent No. 1. It is well settled position now that the disciplinary authority or the inquiry officer are not Courts and therefore the strict procedures that are to be followed in courts may not be strictly adhered to. In B.C. Chaturvedi v. Union of India and Ors., [1995] 6 SCC 749, it has been laid down by this court that in a departmental proceeding, the strict proof of legal evidence and findings on that evidence are not relevant. Apart from that, in view of our directions made herein earlier, that is, when the copies of the documents have been directed to

be supplied by the learned Single Judge and thereafter proceeding will continue, it was not at all necessary for the Division Bench to decide this issue as was wrongly done by it.

Again on the question whether the respondent No. 1 was responsible for rash and negligent driving on account of which 15 bus passengers had died and some others received serious injuries, in view of our discussions made herein above, we do not think, at this stage, such questions need to be gone into.

Therefore, we are of the view that the Division Bench had committed a grave error to decide the question as referred to herein earlier at the appellate stage before directing the disciplinary authority to decide such question on facts. Furthermore, when the learned Single Judge had directed fresh disposal of the disciplinary proceeding in the manner indicated in the order, we are of the view that the Division Bench should not have pre- empted decision of the disciplinary authority on facts on a prima-facie finding on the subject matter of enquiry when the disciplinary authority was to make up its mind (See: AIR India Ltd. v. M. Yogeshwar Raj, [2000] 5 SCC 467).

There is yet another aspect which is to be considered by us before we conclude this judgment. From a bare perusal of the order of the Division Bench, we find that the Division Bench also found that the findings of the disciplinary authority in passing the order of removal were perverse. We are unable to agree with this view of the Division Bench. In Roshan Di Hatti v. Commissioner of Income-tax, Delhi, [1977] 2 SCC 378, this Court, while considering the question of perversity of a finding, held that when the finding of fact was arrived at without any material or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law would have come to that determination, the decision can be said to be perverse. It is, however, true that if perversity is shown and proved, it would be open to the Writ Court to hold as such. But, in our view, this was not a case of perverse finding. It appears that disciplinary authority on consideration of the reports of the Inquiry Officer and the District Magistrate and evidences adduced before them, came to a conclusion of fact that it was due to rash and negligent driving of the respondent No. 1, the accident had occurred and as a result of this, 15 lives were lost and some passengers were seriously injured. However, it cannot be said that for non supply of the inquiry report, it can legitimately be held that such a finding of the disciplinary authority was perverse in nature. In any view of the matter, when copies of the inquiry report have ben directed, by the learned Single Judge, to be supplied to the respondent No. 1, and thereafter the departmental proceedings to continue thereas no earthy reason for the Division Bench to interfere with such an order and decide the matter by going into the merits and direct quashing of the departmental proceeding at the appellate stage.

The decision in Kuldeep Singh v. Commissioner of Police, [1999] 2 SCC 10 as relied on by Mr. Ganguly appearing for the respondent No. 1 in the question of perversity of

the finding is, in our view, not at all applicable in view of our finding made hereinafter. Therefore, on his account also, the findings of the Division Bench on the question of perversity cannot, at all, be accepted and therefore liable to be set aside.

We have already indicated that the learned Single Judge was fully justified in directing the disciplinary authority to proceed from the stage of supplying the Inquiry Report and other documents to the respondent No. 1. It has now been stated before us that after the order of the learned Single Judge, the copies of the documents on which the disciplinary authority placed reliance have been supplied to the delinquent employee. Even if such documents have not been supplied in terms of the order of the learned Single Judge, they may be supplied to the respondent No. 1 within a period of fortnight from the date of applying a copy of this judgment to the authorities. As directed by the learned Single Judge, it would be open to the respondent No. 1 to file comments ore representation against the findings made in the Inquiry Report including the report of the District Magistrate. After considering these comments, the disciplinary authority is directed to reach a fresh and final conclusion, on the question whether an order of removal from service of the respondent No. 1 can be passed. It is needless to say that it would be open to the respondent No. 1 or his authorised representative to cross-examine the witnesses, and also to raise the question of admissibility of the zerox copy of the report of the District Magistrate before the disciplinary authority. Accordingly, the judgment of the Division Bench of the High Court is set aside and the order of the learned Single Judge is restored subject to modifications made herein above. It is also directed that the respondent No. 1 during the pendency of the departmental proceeding shall be paid subsistence allowance in accordance with the rules of the Corporation. The appeal is allowed to the extent indicate above.

There will be no order as to costs.