H.P. State Electricity Board Ltd vs Mahesh Dahiya on 18 November, 2016

Equivalent citations: AIR 2016 SUPREME COURT 5341, AIR 2017 SC (CIVIL) 186

Bench: Ashok Bhushan, S. A. Bobde

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.10913 OF 2016
(ARISING OUT OF SLP(C) NO. 25742 OF 2015)

H.P. STATE ELECTRICITY
BOARD LTD. .... APPELLANT

VERSUS

MAHESH DAHIYA .... RESPONDENT

JUDGMENT

ASHOK BHUSHAN. J Leave granted.

2. This Appeal has been filed by H. P. State Electricity Board, questioning the judgment of Division Bench of Himachal Pradesh High Court dated 09.04.2015 in LPA No. 340 of 2012. Letters Patent Appeal was filed by appellant against the judgment and order of learned Single Judge dated 09.04.2012 in Writ Petition CWP No.522 of 2010 by which judgment the writ petition filed by the respondent challenging the order of punishment of compulsory retirement as well as order of the Appellate Authority, dismissing the appeal were set-aside with direction to reinstate the writ petitioner forthwith with all consequential benefits. Board was also directed to open the sealed cover and promote the writ petitioner to the post of Superintending Engineer, if he is found suitable by the Departmental Promotion Committee. The brief facts necessary for deciding this appeal are:

> The appellant shall be referred to hereinafter as 'Board' and the respondent as the 'writ petitioner'. The writ petitioner, a native of District Rohtak, Haryana was appointed as Assistant Engineer in the Corporation in the year 1983. He was promoted as Assistant Executive Engineer in 1989. He was sent on deputation to the Rural Electrification Corporation of India and posted at Delhi. In the year 2005, writ

> petitioner was repatriated and posted at H. P. State Electricity Board, Shimla as Senior Executive Engineer. After repatriation, he remained on leave for 103 days. On 04.06.2005, writ petitioner was admitted in IGMC Hospital, Shimla from where, he was discharged on 16.06.2005. Writ petitioner obtained fitness certificate on 23.07.2005 from IGMC Hospital and joined his duties on 25.07.2005. After joining, he submitted leave application upto 23.07.2005 for post-facto sanction which was granted. On 30.07.2005, writ petitioner submitted a leave application on medical ground with permission to leave station. Without awaiting for sanction of the leave, writ petitioner left the station. With reference to leave application dated 30.07.2005 submitted by the writ petitioner, he was advised vide letter dated 25.08.2005 of the Chief Engineer to appear before the Medical Board.

The Chief Medical Officer D.D.U. Hospital, Shimla was requested to constitute a Medical Board to examine and confirm about the illness. Writ petitioner was advised that joining will be accepted only on production of the medical certificate of the Medical Board. The letter was sent to his hometown Rohtak. When nothing was heard from writ petitioner, telegrams were further sent on 07.09.2005, 30.09.2005 and 21.10.2005, asking the writ petitioner to appear before the Medical Board. On 30.09.2005, writ petitioner was also given warning that disobedience will invite the disciplinary action. Lastly, on 02.12.2005, writ petitioner was again directed to appear before Medical Board, Shimla otherwise disciplinary action will be initiated and the matter has been viewed seriously by Board authorities. Writ petitioner did not appear before the Board, and consequently, he was placed under suspension by order dated 21.01.2006. The writ petitioner obtained a Medical-cum-Fitness Certificate from Rohtak and he visited IGMC Shimla on 18.02.2006 for obtaining a Medical Certificate. IGMC Shimla issued a medical certificate on 18.02.2006. Joining report dated 20.02.2006 was submitted before the Superintending Engineer (Op.) Circle, HPSEB. Writ petitioner on 27.02.2006 submitted a representation for revocation of his suspension.

3. The Board decided to hold a disciplinary proceeding against the writ petitioner under Rule 14 of CCS(CCA) Rules, 1965 (hereinafter referred to as 'Rules'). A Memo and Article of Charge dated 21.09.2006 was served on the writ petitioner. Writ petitioner submitted a reply to the charges on 15.10.2006. An Inquiry Officer was appointed by Disciplinary Authority who conducted the inquiry. In the inquiry the department has produced oral evidence of two witnesses, namely, Mr. S. D. Rattan, Director (Comm.) (PW-

> 1) and Shri Brij Lal Kiashta Section Officer (PW-2). writ petitioner produced P.C. Sardana, retired Chief Engineer as defence witness. Various documents were produced by the department and the Inquiry Officer after holding eight hearings submitted an inquiry report dated 29.12.2007.

Inquiry Officer in his report after considering the evidence held the charge proved by stating the following:

> “Therefore, in my opinion Delinquent Officer failed to comply with the direction of his superiors for appearing before the Medical Board. As such the charge leveled

against Er. Dahiya stands proved that he has willfully absented himself from official duties and has disobeyed the directions of his superiors.

Charge No.1 Proved."

4. The Disciplinary Authority-cum-Whole Time Members of the Board considered the inquiry report on 25.02.2008 and took following decision:

"The findings of the Enquiry Report were accepted by the WTM and it was decided toaward major penalty of removal from service after following proper codal formalities."

5. By letter dated 02.04.2009, a copy of the inquiry report was forwarded to the writ petitioner, asking him to submit his representation within fifteen days. Writ petitioner submitted a reply dated 15.04.2008.

Apart from other pleas, it was also stated that writ petitioner had been supplied the decision of Whole Time Members of the Board where findings of the inquiry report have been accepted and it was decided to award major penalty of removal from service. The Disciplinary Authority considered his explanation dated 15.04.2008 and came to the opinion that charges against the writ petitioner are proved, and a penalty of removal be imposed. However, before imposing the penalty an opportunity was provided to make a representation within fifteen days by order dated 06.07.2009. Writ petitioner submitted a representation on 21.07.2009. Disciplinary Authority passed an order dated 21.08.2009. Disciplinary Authority considered the representation dated 21.07.2009 and took a decision to compulsory retire the writ petitioner and his period of absence was to be treated as dies non. Against the order communicated vide order dated 25.08.2009, writ petitioner filed an appeal on 09.09.2009 which appeal was dismissed by the Appellate Authority vide its order dated 10.12.2009. Aggrieved by the order dated 25.08.2009 and 09.09.2009, writ petitioner filed the writ petition before learned Single Judge which writ petition had been allowed by Single Judge by order dated 09.04.2012, challenging the said judgment Letters Patent Appeal was filed which too has been dismissed. Division Bench, while dismissing the appeal came to the conclusion that Inquiry Officer and the Disciplinary Authority have violated the principle of natural justice, hence, the appeal deserved to be dismissed. Appellate Court had further observed that Inquiry Officer, while submitting his report has not discussed the statement of the defence witnesses who supported the case of the writ petitioner.

6. Learned Single Judge and the Division Bench both came to the conclusion that copy of the inquiry report was supplied to the writ petitioner on 02.04.2008 whereas Disciplinary Authority-cum-Whole Time Members of the Board had already made up their mind to impose a major penalty on the writ petitioner even without supplying the copy of the inquiry report which has prejudiced the writ petitioner. The learned Single Judge has also held that Disciplinary Authority failed to prove that absence from the duty was willful nor any such findings have been recorded by the Inquiry Officer, whereas, the writ petitioner has submitted the medical certificate to prove that he was suffering from Tuberculosis(T.B.). Learned Single Judge had also issued notice to Doctor

Sharma of Rohtak who had issued the certificate to the writ petitioner who appeared before the learned Single Judge and proved his certificate.

7. This court issued notice on 31.08.2015 and has also stayed operation of the judgment dated 09.04.2015.

8. Learned counsel for the appellant in support of appeal contends that Article of Charge against writ petitioner consisted two parts of charge i.e. (i) Willful absentation from official duty and (ii) disobeying the directions of the superiors. He submitted that even if it is assumed for the arguments sake that writ petitioner was absent from his official duties on account of the illness, there is no answer to the second charge of disobedience of the directions of the superiors. He contends that writ petitioner submitted an application on 30.07.2005 for grant of medical leave with seeking permission to leave station and without awaiting sanction of the leave had left Shimla and continued to be absent for more than six months without leave having been sanctioned and in spite of written order from the Chief Engineer dated 25.08.2005, 07.09.2005, 30.9.2005, 21.10.2005 and 02.12.2005 failed to appear before the Medical Board disobeying the orders.

9. He submitted that the charge regarding disobedience of orders of superiors having been proved in the inquiry, there is no error in the punishment awarded on the writ petitioner. He submitted that entire proceeding before the Inquiry Officer and the Disciplinary Authority were conducted in accordance with principle of natural justice. A copy of the inquiry report was duly served to the writ petitioner and he was given opportunity to represent against the inquiry report. He submitted that the mis-conduct on behalf of such senior officer cannot be condoned and both the Courts below committed error in setting-aside the orders of the punishment and directing the reinstatement with all consequential benefits.

10. Learned counsel for the respondent submitted that there being ample material on record to indicate that writ petitioner was suffering from tuberculosis, his absence from duty cannot be said to be willful and such absence is not mis-conduct on which punishment can be awarded. He further submitted that writ petitioner could not appear before the Medical Board due to his continued illness, which cannot be taken as factor against writ petitioner. He submitted that there was violation of principle of natural justice in the proceeding as have found by courts below. Present is not the case in which this Court may interfere with the judgment of High Court.

11. We have considered the submission of the learned counsel for the parties and perused the records.

12. The Division Bench after referring to several judgments of this court, which we shall notice hereinafter recorded its conclusion in paragraph 33, 34, 36 and 37 which are to the following effect:

> “33. Applying the test to the instant case, admittedly, the Inquiry Officer has not discussed the evidence of the defence witness, who though was a senior officer of the writ respondent-appellant.” “34. The specific case of the writ petitioner is that the Inquiry Officer/WTM and the Disciplinary Authority have violated the principles of

> natural justice and had made up a mind to remove the writ petitioner- respondent herein from service and to throw him out, even without hearing him. Meaning thereby prejudice has been caused to the writ petitioner- respondent herein." "36. Applying the test to the instant case, one comes to an inescapable conclusion that the Inquiry Officer and the Disciplinary Authority have violated the principle of natural justice." "37. In view of the discussions made hereinabove, no case for interference is made out. Accordingly, the appeal is dismissed and the impugned judgment is upheld for the reasons recorded hereinabove. Pending applications, if any, are also disposed of."

13. The learned Single Judge heavily relied on the fact that the copy of the inquiry report was sent along-with letter dated 02.04.2008, whereas Disciplinary Authority-cum-Whole Time Members had already made up their mind to impose a major penalty. It shall be useful to refer to following observations of learned Single Judge made in para 18 and 19:

> "18. The facts do disclose that WTM had made up a mind to pass removal order without hearing the writ petitioner. The grounds (G) and (H) contained in the writ petition have not been denied by the writ respondent-appellant herein specifically, thus, admitted. It stand s corroborated and proved by the statement of Dr. Brij Sharma. Abovesaid facts read with order, dated 03.1.2011, passed by the learned Single Judge are factors leading to the conclusion that the absence of the writ petitioner was not deliberate or willful, but was beyond his control." "19. The writ petitioner has filed rejoinder and has explained all circumstances which have been taken as grounds by the appellant-writ respondent in the reply for conducting the inquiry and imposing the penalty upon the writ writ petitioner-respondent."

14. The charge against the writ petitioner as framed was to the following effect:

> "That the said Er. Mahesh Dahiya while functioning as Sr. Executive Engineer [Elect] in the office of the Chief Engineer (Comm.] HPSEB, Shimla- 4 during the period from 2005-06 proceeded on leave on 30.07.2005 on medical ground. Er. Dahiya was repeatedly directed vide Chief Engineer [Comm.] HPSEB, Shimla-4 letter dated 25.08.2005, 07.09.2005, 26.10.2005 and 02.12.2005 to appear before the Medical Board but Respondent failed to do so. Thus, Dr. Dahiya has willfully absented himself from official duties and has disobeyed the directions of his superiors. Respondent has therefore acted in a manner which is unbecoming of an officer of his status. The said Er. Mahesh Dahiya, Sr. Executive Engineer [Elect.] has thus violated the provisions of Rule-3[1](i)(ii) (iii) of CCS Conduct Rules, 1964 and which made him liable for disciplinary action under Rule-14 of CCS[CCA] Rules-1965."

15. From the facts of the present case, it is clear that disciplinary proceedings were initiated against the writ petitioner, after he has submitted an application on 30.07.2005 for grant of medical leave with permission to leave the station. According to Rule 7 of Central Civil Services Leave Rules, leave cannot be claimed as of right Rule 7 is as to the following effect:

> "7.Right to leave (1) Leave cannot be claimed as of right.
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> (2) When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant of it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant to."

16. It has also come on record that application for leave on medical ground dated 30.07.2005 was not supported by any medical certificate and medical certificates from Rohtak and IGMC Shimla which have been claimed by the writ petitioner, were claimed to have been submitted after 20.02.2006, after the writ petitioner was placed under the suspension. The writ petitioner who was a senior officer in the H. P. Electricity Board was asked to appear before the Medical Board in reference to his leave application dated 30.07.2005. The sequence of events indicates that first letter was written by the Chief Engineer directing writ petitioner to appear before the Medical Board on 25.08.2005 and thereafter there have been repeated telegrams and directions to appear before the Medical Board and warning was also issued on 30.09.2005 that disobedience will invite disciplinary action.

17. The charges, which have been leveled against the writ petitioner were in two parts, as noted above i.e. willful absence from duties and disobedience of the orders of the superiors. Learned counsel for appellant confined his submission only to second charge that is willful disobedience of superior officers. He submitted that, even if, on account of illness of the writ petitioner, his absence is not treated as willful, the second part of the charge is fully proved in the inquiry. During the inquiry, writ petitioner was also asked, as to whether, at any point of time he has requested for constitution of a Medical Board at Rohtak which suggestion was replied in negative by him. As noted above, the Division Bench in para 31 to 33 has come to the conclusion that the Inquiry Officer has not discussed the evidence of defence witnesses. The report of the Inquiry Officer has been brought on record as annexure P-7, only one defence witness appeared, namely, Engineer P. C. Sardana. In the inquiry report, the statement of P. C. Sardana was specifically noted in following words:

> "Defence witness Er.P. C. Sardana Retd. Chief Engineer intimated that Er. Dahiya was suffering from Tuberculosis during June/July, 2005. Er. Sardana was also intimated that Er. Dahiya showed his inability to attend his superannuation, farewell party as he had to rush to hospital for check up."

> 18. Having noticed by the Inquiry Officer the statement of defence witness, the Division Bench was not correct in its conclusion that defence was not considered. The Inquiry Officer in his report has extracted entire statement of Er. P.C. Sardana. The defence witness has only stated that 30th July was his last day in the office on which date the writ petitioner has expressed his inability to attend farewell party since the writ petitioner had to go to Hospital for check up. The charges against the writ petitioner were all based on events subsequent to making leave application on 30th July, 2005. We, thus, do not find any infirmity in the Inquiry Officer's report in respect to consideration of evidence of defence witness Er. P.C. Sardana.

> 19. The Division Bench further in para 36, as noted above has come to the conclusion that Inquiry Officer/Disciplinary Authority has violated the principle of natural justice, but nothing has been referred to in the judgment, either of the Division Bench or learned Single Judge that how the principle of natural justice have been violated by the Inquiry Officer.

Before Inquiry Officer, both parties led oral and documentary evidence and were heard. The observation of the Division Bench that natural justice has been violated by the Inquiry Officer is based on no materials.

20. The basis of coming to the conclusion by both learned Single Judge and the Division Bench that Disciplinary Authority has violated the principle of natural justice is based on the fact that although the inquiry report was sent to the writ petitioner by letter dated 02.04.2008, the Disciplinary Authority-cum-Whole Time Members have already came to the opinion on 25.2.2008 that writ petitioner be punished with major penalty. The Division Bench of the High Court has placed reliance on Union of India and others v. R. P. Singh 2014 AIR SCW 3475.

21. In the above case the issue was, as to whether non-supply of the copy of advise of U.P.S.C. to delinquent officer at pre-decision stage violates the principle of natural justice. This Court placed reliance on the Constitution Bench judgment in Managing Director, ECIL, HYDERABAD AND OTHERS Versus B. KARUNAKAR AND OTHERS (1993) 4 SCC 727 and laid down following in para 23:

> "23. At this juncture, we would like to give our reasons for our respectful concurrence with S.K. Kapoor (supra). There is no cavil over the proposition that the language engrafted in Article 320(3)(c) does not make the said Article mandatory. As we find, in the T.V.Patel's case, the Court has based its finding on the language employed in Rule 32 of the Rules. It is not in dispute that the said Rule from the very inception is a part of the 1965 Rules. With the efflux of time, there has been a change of perception as regards the applicability of the principles of natural justice. An inquiry report in a disciplinary proceeding is required to be furnished to the delinquent employee so that he can make an adequate representation explaining his own stand/stance. That is what precisely has been laid down in the B.Karnukara's(AIR 1994 SC 1074) case. We may reproduce the relevant passage with profit: -
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> "Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."" There can be no dispute to the above preposition. The Constitution Bench

in Managing Director, ECIL, HYDERABAD AND OTHERS Versus B. KARUNAKAR AND OTHERS (1993) 4 SCC 727 after elaborately considering the principle of natural justice in the context of the disciplinary inquiry laid down following in para 29, 30 (iv)(v):

"29. Hence it has to be held that when the enquiry officer is not the Disciplinary Authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the Disciplinary Authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a par t of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the Disciplinary Authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice." "30. "(iv). In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question

(iv) is answered accordingly." "(v). The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the 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 uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the

dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice"

22. Present is not a case of not serving the inquiry report before awarding the punishment rather the complaint has been made that before sending the inquiry report to the delinquent officer, Disciplinary Authority has already made up its mind to accept the findings of the inquiry report and decided to award punishment of dismissal. Both the learned Single Judge and the Division Bench on the aforesaid premise came to the conclusion that principle of natural justice have been violated by the Disciplinary Authority. The Division Bench itself was conscious of the issue, as to whether, inquiry is to be quashed from the stage where the Inquiry Officer\Disciplinary Authority has committed fault i.e. from the stage of Rule 15 of the CCS (CCA) Rules as non-supply of the report. Following observations have been made in the impugned judgment by Division Bench in para 21:

> "Having said so, the core question is – whether the inquiry is to be quashed from the stage where the Inquiry Officer/Disciplinary Authority has committed fault, i.e. from the stage of Rule 15 of the CCS (CCA) Rules, i.e. non-supply of inquiry report, findings and other material relied upon by the Inquiry Officer/Disciplinary Authority to the writ writ petitioner- respondent herein to explain the circumstances, which were made basis for making foundation of inquiry report or is it a case for closure of the inquiry in view of the fact that there is not even a single iota of evidence, prima facie, not to speak of proving by preponderance of probabilities, that the writ petitioner has absented himself willfully and he has disobeyed the directions?"

23. The above observation clearly indicates that Division Bench was well aware that fault has occurred on the stage of Rule 15 of the CCS (CCA) Rules. The Division Bench had also relied on the judgment of this Court in KRUSHNAKANT B. PARMAR Versus UNION OF INDIA AND ANOTHER (2012) 3 SCC 178 where this Court had laid down that absence from duty without any application on prior permission may amount to unauthorised absence but it does not always mean willful. Learned counsel for the appellant, as noted above, has confined his submission on the proof of the second part of the charge and he has not invited us to enter into the issue as to whether absence of the writ petitioner was willful or not.

24. As noted above, the Division Bench, having posed the question, as to whether, inquiry is to be quashed from the stage whether the Disciplinary Authority committed fault i.e. from the Rule 15, has not further dwelt upon the question nor has given any reason as to why the opportunity for holding the inquiry from the stage fault was found be not given. On the scope of judicial review, the Division Bench itself has referred to judgment of this Court reported in M.V. BIJLANI VERSUS UNION OF INDIA AND OTHERS (2006) 5 SCC 88. This Court, noticing the scope of judicial review in context of disciplinary proceeding made following observations in para 25:

> "It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not

> required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

25. The three Judge Bench of this Court in B.C. CHATURVEDI VERSUS UNION OF INDIA AND OTHERS 1995 (6) SCC 749 had noticed the scope of judicial review with regard to disciplinary proceeding. Following observations have been made in paras 12 and 13:

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case." "13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India V. H.C. Goel this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no

evidence at all, a writ of certiorari could issued."

26. Both the learned Single Judge and the Division Bench have heavily relied on the fact that before forwarding the copy of the report by letter dated 02.04.2008 the Disciplinary Authority-cum-Whole Time Members have already formed an opinion on 25.02.2008 to punish the writ petitioner with major penalty which is a clear violation of principle of natural justice. We are of the view that before making opinion with regard to punishment which is to be imposed on a delinquent, the delinquent has to be given an opportunity to submit the representation/reply on the inquiry report which finds a charge proved against the delinquent. The opinion formed by the Disciplinary Authority-cum-Whole Time Members on 25.02.2008 was formed without there being benefit of comments of the writ petitioner on the inquiry report. The writ petitioner in his representation to the inquiry report is entitled to point out any defect in the procedure, a defect of substantial nature in appreciation of evidence, any misleading of evidence both oral or documentary. In his representation any inputs and explanation given by the delinquent are also entitled to be considered by the Disciplinary Authority before it embarks with further proceedings as per statutory rules. We are, thus, of the view that there was violation of principle of natural justice at the level of Disciplinary Authority when opinion was formed to punish the writ petitioner with dismissal without forwarding the inquiry report to the delinquent and before obtaining his comments on the inquiry report. We are, thus, of the view that the order of the High Court setting aside the punishment order as well as the Appellate order has to be maintained.

27. In view of the above discussion, we are of the view that present is the case where the High Court while quashing the punishment order as well as Appellate order ought to have permitted the Disciplinary Authority to have proceeded with the inquiry from the stage in which fault was noticed i.e. the Stage under Rule 15 of Rules. We are conscious that sufficient time has elapsed during the pendency of the writ petition before learned Single Judge, Division Bench and before this Court, however, in view of the interim order passed by this Court dated 31.08.2015 no further steps have been taken regarding implementation of the order of the High Court. The ends of justice be served in disposing of this appeal by fixing a time frame for completing the proceeding from the stage of Rule 15.

28. We having found that principles of natural justice have been violated after submission of the inquiry report dated 29.12.2007 all proceedings taken by the Disciplinary Authority after 29.12.2007 have to be set aside and the Disciplinary Authority is to be directed to forward the copy of the inquiry report in accordance with Rule 15(2) of Rules 1965 and further proceedings, if any, are to be taken thereafter.

29. In the result, the appeal is partly allowed, the judgment of the High Court is modified in the following manner:

(1) All proceedings of Disciplinary Authority after submission of the inquiry report dated 29.12.2007 including punishment order dated 25.8.2009 and Appellate order dated 10.12.2009 are set aside.

(2) The Disciplinary Authority shall forward the inquiry report as per Rule 15(2) of 1965 Rules. The writ petitioner be allowed 15 days' time to submit his representation to the inquiry report.

(3) After receipt of representation of the writ petitioner to the inquiry report, the Disciplinary Authority may proceed and take a decision in accordance with Rule 15 of 1965 Rules.

(4) The Disciplinary Authority shall complete the proceedings and pass appropriate orders within a period of three months from the date of receipt of representation of the writ petitioner to the inquiry report.

.....J. (S. A. BOBDE) .....J. (ASHOK BHUSHAN) NEW DELHI, NOVEMBER 18 , 2016.