State Of U.P vs Harendra Arora & Anr on 2 May, 2001

Equivalent citations: AIR 2001 SUPREME COURT 2319, 2001 (6) SCC 392, 2001 AIR SCW 2029, 2001 LAB. I. C. 1805, 2001 ALL. L. J. 1185, 2001 (3) SERVLJ 421 SC, 2001 (1) JT (SUPP) 70, 2001 (2) LRI 1364, 2001 (6) SRJ 106, (2001) 3 SERVLJ 421, (2002) 95 FACLR 451, (2001) 2 CURLR 905, (2001) 4 SERVLR 558, (2001) 99 FJR 8, (2001) 3 SCALE 659, (2001) 3 LAB LN 42, (2002) 3 LABLJ 1124, (2001) 2 SCT 1091, (2001) 4 SUPREME 314, (2002) 4 ALL WC 2979, (2002) ILR (KANT) (3) 4025

Author: B.N. Agrawal

Bench: B.N. Agrawal

CASE NO.:
Appeal (civil) 5241 of 1998

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
HARENDRA ARORA & ANR.

DATE OF JUDGMENT: 02/05/2001

BENCH:
G.B. Pattanaik & B.N. Agrawal

JUDGMENT:

B.N. AGRAWAL,J.

L...I...T.....T.....T.....T.....T.....T.....T..J Judgment passed by a Division Bench of the Allahabad High Court in a writ application dismissing the same has been challenged in this appeal whereby order passed by Uttar Pradesh Public Services Tribunal quashing order of dismissal of the respondent no. 1 from service has been upheld.

Respondent No. 1 Harendra Arora (hereinafter referred to as `the respondent), who was temporarily appointed in the year 1960 as Assistant Engineer in the Irrigation Department of the

Uttar Pradesh Government, was confirmed on the said post and in the year 1963 he was promoted as Executive Engineer. On 31.3.1970 the respondent was served with a chargesheet by the Administrative Tribunal incorporating therein various irregularities committed by him with regard to the purchase of goods while he was posted as Executive Engineer at the concerned station, requiring him to submit his explanation relating thereto which was duly submitted. Upon receipt of the show cause, full-fledged enquiry was conducted whereafter the Administrative Tribunal submitted its report to the State Government recording a finding therein that the charge was substantiated and recommending dismissal of the respondent from service, upon receipt of which the State Government issued a show cause to the respondent as to why he be not dismissed from service. Pursuant to the said notice, the respondent submitted his reply to the show cause notice whereupon the State Government sent the reply to the Administrative Tribunal for its comments and upon receipt of the same, order was passed on 13.3.1973 dismissing the respondent from service which order was challenged by the respondent before the High Court by filing a writ application and the same having abated in view of the coming into force of the U.P. State Public Services Tribunal Act, 1976, a claim petition was filed by the respondent before the U.P. State Public Services Tribunal challenging his aforesaid order of dismissal. The Tribunal allowed the claim petition and quashed the order of dismissal principally on the ground that copy of the enquiry report, as required under Rule 55-A of Civil Services (Classification, Control and Appeal) Rules, 1930 as amended by the Government of Uttar Pradesh, was not furnished to the delinquent against which order when a writ application was filed on behalf of the State, a Division Bench of the High Court dismissed the same upholding order of the Tribunal. Hence this appeal by special leave.

Learned counsel appearing on behalf of the appellant in support of the appeal submitted that in view of the judgment rendered by a Constitution Bench of this Court in the case of Managing Director, ECIL, Hyderabad & Ors., vs. B. Karunakar & Ors., (1993) 4 SCC 727, merely because an enquiry report has not been furnished to the delinquent the same would not invalidate the order of dismissal unless it is shown that the delinquent has been prejudiced thereby and in the present case there is nothing to show that the respondent has been prejudiced, as such setting aside the order of dismissal of the respondent from service was uncalled for. Learned counsel appearing on behalf of the respondent, on the other hand, submitted that the law laid down in the case of ECIL has no application to this case as according to the set of rules governing service condition of the respondent, there was requirement of furnishing copy of proceedings of enquiry, which would obviously include the enquiry report, whereas in the case of ECIL there was no such requirement under the statutory rules, rather the requirement was by virtue of interpretation put forth upon Article 311(2) of the Constitution of India by a three Judge Bench of this Court in the case of Union of India & Ors. Vs. Mohd. Ramzan Khan, (1991) 1 SCC 588, as approved in the case of ECIL, and consequently the prejudice theory as laid down in the case of ECIL will not apply to the present case and the order was rightly quashed for mere infraction of the rule in not furnishing copy of the enquiry report. Thus, in view of the rival contentions, the following question arises for our consideration:-

> Whether law laid down in the case of ECIL, to the effect that the order awarding punishment shall not be liable to be set aside ipso facto on the ground of non-furnishing of copy of the enquiry report to the delinquent unless he has been

prejudiced thereby, would apply to those cases also where under the statutory rules there is requirement of furnishing copy of the enquiry report to the delinquent.

For appreciating the question, it would be necessary to refer to the genesis of the law on the subject of furnishing the report of enquiry officer to the delinquent. The law on the subject can be classified in two compartments one is requirement to furnish the enquiry report under the statute and another will be according to the principles of natural justice. So far as statutory requirement is concerned, under Public Servants (Inquiries) Act, 1850 a provision was made for a formal and public inquiry into the imputation of misbehaviour against pubilc servants. While the said Act continued to be on the statute book, the Government of India Act, 1919 was enacted and sub-section (2) of Section 96-B thereof authorised the Secretary of State in Council to make rules regulating their conditions of service, inter alia, discipline and conduct pursuant to which the Civil Services Classification Rules, 1920 were framed and Rule XIV whereof provided that order awarding punishment of dismissal, removal or reduction in rank shall not be passed without a departmental inquiry in which a definite charge in writing has to be framed, opportunity has to be given to adduce evidence and thereafter finding has to be recorded on each charge, but there was no requirement under the Rules for hearing the delinquent against the action proposed to be taken on the basis of finding arrived at in the inquiry. The aforesaid Rules were followed by Civil Services (Classification, Control and Appeal) Rules, 1930 wherein similar provision was made in rule 55 thereof. Thereafter, in Section 240 sub-section (3) of the Government of India Act, 1935, on the same lines, it was provided that the civil servant shall not be dismissed or reduced in rank unless he had been given `reasonable opportunity to show cause against action proposed to be taken in regard to him. It was, therefore, held that in order that the employee had an effective opportunity to show cause against the finding of guilt and the punishment proposed, he should, at that stage, be furnished with a copy of finding of the enquiry authority.

The aforesaid provision was virtually incorporated in Article 311(2) of the Constitution. By the Constitution (Fifteenth Amendment) Act of 1963, the scope of `reasonable opportunity was explained and expanded and for the expression until he has been given reasonable opportunity to show cause against the action proposed to be taken in regard to him, the expression except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given reasonable opportunity of making representation on the penalty proposed, but only on the basis of evidence adduced during such inquiry was substituted. It would thus appear that the Fifteenth Amendment, for the first time, in terms provided for holding an inquiry into the specific charges of which information was given to the delinquent employee in advance and in which he was given reasonable opportunity to defend himself against those charges. The Amendment also provided for a second opportunity to the delinquent employee to show cause against the penalty if it was proposed as a result

of the inquiry. The courts held that while exercising the second opportunity of showing cause against the penalty, the delinquent employee was also entitled to represent against the finding on charges as well. It appears that in spite of this change, the stage at which the delinquent employee was held to be entitled to a copy of the enquiry report was the stage at which the penalty was proposed which was the law prevailing prior to the Amendment.

The provisions of Article 311(2) were further amended by the Constitution (Forty-second Amendment) Act, 1976 in which it was expressly stated that it shall not be necessary to give such person any opportunity of making representation on the penalty proposed. The 42nd Amendment while retaining the expanded scope of the reasonable opportunity at the first stage, viz., during the inquiry, as introduced by the Fifteenth Amendment of the Constitution, had taken away the opportunity of making representation against the penalty proposed after the inquiry. After the 42nd Amendment, a controversy arose as to whether when the enquiry officer is other than the disciplinary authority, the employee is entitled to a copy of the findings recorded by him before the disciplinary authority applied its mind to the findings and evidence recorded or whether the employee is entitled to the copy of the findings of the enquiry officer only when disciplinary authority had arrived at its conclusion and proposed the penalty. After the 42nd Amendment, there were conflicting decisions of various High Courts on the point in issue and in some of the two Judge bench decisions of this Court, it was held that it was not necessary to furnish copy of the enquiry report. Thus for an authoritative pronouncement, the matter was placed for consideration before a three Judge bench in the case of Mohd. Ramzan (supra) in which it was categorically laid down that a delinquent employee is entitled to be furnished with a copy of the enquiry report for affording him reasonable opportunity as required under Article 311(2) of the Constitution and in compliance of the principles of natural justice, and in case no such report was furnished, the order was fit to be quashed, but it was directed that the judgment shall be prospective and had no application to orders passed prior to the date of judgment in Mohd. Ramzans case.

Thereupon, as it was found that there was a conflict in the decisions of this Court in the case of Kailash Chander Asthana v. State of U.P. (1988) 3 SCC 600, and Mohd. Ramzans case, the matter was referred to the Constitution Bench in the case of ECIL which formulated seven questions for its consideration which are enumerated hereunder:-

(I) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?

(ii) Whether the report of the enquiry officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

(iii) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?

(iv) Whether the law laid down in Mohd. Ramzan Khan case will apply to all establishments Government and non-

Government, public and private sector undertakings?

(v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?

(vi) From what date the law requiring furnishing of the report, should come into operation?

(vii) Since the decision in Mohd. Ramzan Khan case has made the law laid down there prospective in operation, i.e., applicable to the orders of punishment passed after November 20, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz., what was the law prevailing prior to November 20, 1990?.

Interpreting Article 311(2) even after 42nd Amendment, it has been laid down categorically by the Constitution Bench that when the enquiry officer is other than the disciplinary authority, the disciplinary proceeding breaks into two stages. The first stage ends when the disciplinary authority arrived at its conclusion on the basis of evidence, enquiry officers report and delinquent officers reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusion. The employees right to receive the report has been held to be a part of the reasonable opportunity of defending himself in the first stage of the inquiry and after this right is denied to him, he is, in fact, denied the right to defend himself and to prove his innocence in the disciplinary proceeding. The Court held that denial of enquiry officers report before the disciplinary authority takes its decision on the charges is not only a denial of reasonable opportunity to the employee to prove his innocence as required under Article 311(2) of the Constitution, but is also a breach of the principles of natural justice which has been regarded as a part of Article 14 of the Constitution by the two Constitution Benches in the cases of Union of India vs. Tulsiram Patel, (1985) 3 SCC 398, and Charan Lal Sahu vs. Union of India, (1990) 1 SCC 613. According to the decision in ECIL, said principle will apply even to those cases where the statutory rules on the question of furnishing copy of the enquiry report are either silent or prohibit the same. In view of the aforesaid discussions, question no. [i] was answered by the Constitution Bench as follows:-

> Since the denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

Question no. (v), i.e., the effect of the non-furnishing of the enquiry report on the order of punishment, has been answered by the Constitution Bench in paragraphs 30 and 31 of the judgment, relevant portion whereof reads thus:-

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.

Hence, in all cases where the enquiry officers 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 Court/Tribunal finds 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.

[Emphasis added] Question nos. (vi) and (vii), i.e., from what date the law requiring furnishing of the enquiry report should come into operation, whether from November 20, 1990 the date when judgment was delivered in the case of Mohd. Ramzan, or even earlier to it and in case it was held to apply prospectively, what was the law prevailing prior to November 20, 1990, have been answered specifically in paragraph 33, relevant portion whereof reads thus:-

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

[Emphasis added] Thus, according to the decisions of this Court in the case of Mohd. Ramzan, as approved by the Constitution Bench in the case of ECIL, denial of enquiry officers report would amount to denial of equal opportunity to the employee within the meaning of Article 311(2) of the Constitution and is a breach of principles of natural justice. Both the aforesaid decisions were dealing with a case where there was no requirement under the rules to furnish copy of the enquiry report to the delinquent and the decision in the ECIL case is silent on the question as to what would be the effect of non-furnishing of copy of enquiry report in cases where it is required to be furnished under the statutory rules.

In the present case, the competent authority passed the order of dismissal on 13.3.1973, as stated above, on which date, undisputedly, rule 55-A of Civil Services (Classification, Control and Appeal) Rules, 1930 as amended and substituted by the U.P. amendment (hereinafter referred to as the rules), was as follows:-

R.55-A.- After the inquiry against a government servant has been completed, and after the punishing authority has arrived at provisional conclusions in regard to the penalty to be imposed, the government servant charged shall, if the penalty proposed is dismissal, removal or reduction, be supplied with a copy of the proceedings prepared under rule 55 excluding the recommendations, if any, in regard to punishment, made by the officer conducting the inquiry and asked to show cause by a particular date, which affords him reasonable time, why the proposed penalty should not be imposed on him:

Provided that, if for sufficient reasons, the punishing authority disagrees with any part or whole of the proceedings prepared under rule 55, the point or points of such

disagreement, together with a brief statement of the grounds thereof, shall also be communicated to the government servant charged, along with the copy of the proceedings under rule 55.

[Emphasis added] Perusal of the aforesaid rule would show that in a case of dismissal, like the present one, a government servant is entitled to be supplied with a copy of the proceeding prepared under rule 55, meaning thereby the enquiry report as well.

From a minute reading of the decision in the case of ECIL, it would appear that out of the seven questions framed, while answering question nos. (vi) and (vii), the Constitution Bench laid down that the only exception to the answer given in relation to those questions was where the service rules with regard to the enquiry proceedings themselves made it obligatory to supply a copy of the report to the employee. While answering the other questions, much less answer to question no. (v) which relates to prejudice, the Bench has nowhere categorically stated that the answer given would apply even in a case where there is requirement of furnishing a copy of the enquiry report under the statutory rules. As stated above, while answering question nos. (vi) and (vii), the Bench has expressly excluded the applicability of the same to the cases covered by statutory rules whereas such exception has not been carved out in answer to question no. (v) which shows that the Bench having found no difference in the two contingencies one covered by Article 311(2) and another covered by statutory rules has not made any distinction and would be deemed to have laid down the law uniformly in both the contingencies to the effect that if enquiry report is not furnished, the same ipso facto would not invalidate the order of punishment unless the delinquent officer has been prejudiced thereby more so when there is no rationale for making any distinction therein.

Thus, from the case of ECIL, it would be plain that in cases covered by the constitutional mandate, i.e., Article 311(2), non- furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. If for infraction of a constitutional provision an order would not be invalid unless prejudice is shown, we fail to understand how requirement in the statutory rules of furnishing copy of enquiry report would stand on a higher footing by laying down that question of prejudice is not material therein.

The matter may be examined from another view point. There may be cases where there are infractions of statutory provisions, rules and regulations. Can it be said that every such infraction would make the consequent action void and/or invalid? The statute may contain certain substantive provisions, e.g., who is the competent authority to impose a particular punishment on a particular employee. Such provision must be strictly complied with as in these cases the theory of substantial compliance may not be available. For example, where a rule specifically provides that the delinquent officer shall be given an opportunity to produce evidence in support of

his case after the close of the evidence of the other side and if no such opportunity is given, it would not be possible to say that the inquiry was not vitiated. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touchstone of prejudice. The test would be, whether the delinquent officer had or did not have a fair hearing. In the case of Russel vs. Duke of Norfolk & Ors., 1949 (1) All E.R. 109, it was laid down by the Court of Appeal that the principle of natural justice cannot be reduced to any hard and fast formulae and the same cannot be put in a straitjacket as its applicability depends upon the context and the facts and circumstances of each case.

Even under general law, i.e., the Code of Civil Procedure, there are various provisions, viz., Sections 99-A and 115 besides Order 21 Rule 90 where merely because there is defect, error or irregularity in the order, the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the Code of Criminal Procedure also, Section 465 lays down that no finding, sentence or order passed by a competent court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the court a failure of justice has, in fact, been occasioned thereby. We do not find any reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions like Rule 55-A of the Rules in relation to disciplinary proceeding. Rule 55-A referred to above embodies in it nothing but the principles of reasonable opportunity and natural justice.

Some decisions in this regard may be referred to. In the case of Ridge vs. Baldwin & Ors., 1964 Appeal Cases 40, the House of Lords was considering a case where a Chief Constable was dismissed from service without notice and inquiry by the Watch Committee. The question was raised whether the decision was void or merely voidable. The House of Lords laid down that such a decision given without regard to the principles of natural justice was void. The violation in that case, though a procedural one, was of a fundamental nature as it was a case of total violation of the principles of natural justice.

In the case of R v. Secretary of State for Transport, ex parte Gwent County Council, [1987] 1 All E.R. 161, the Court of Appeal applied the test of prejudice in a case of enhancement of toll charges over a bridge. The Act provided for a public hearing before effecting increase. Dealing with a complaint of procedural impropriety, the Court of Appeal held that unless prejudice is established to have resulted from the procedural impropriety, no interference was called for.

In the case of Davis v. Carew-Pole & Ors., [1956] 1 Weekly Law Reports 833, it was laid down that mere fact that a person appearing before a domestic Tribunal had not been given formal notice of all the matters in which his conduct was to be called in question, did not necessarily entitle him to contend successfully that the proceedings were not conducted in accordance with the principles of natural justice as in that case, no fact was in dispute in relation to the other matters raised and in the circumstances it was held that the plaintiff was not prejudiced by the lack of notice.

In the case of Jankinath Sarangi vs. State of Orissa, 1969 (3) SCC 392, Hidayatullah, C.J., speaking for the Court, while considering the question of prejudice in a departmental proceeding, approved judgment of the High Court refusing to grant relief in favour of the delinquent government servant on the ground that no prejudice was caused to him and observed thus:-

From this material it is argued that the principles of natural justice were violated because the right of the appellant to have his own evidence recorded was denied to him and further that the material which was gathered behind his back was used in determining his guiltThere is no doubt that if the principles of natural justice are violated and there is a gross case this Court would interfere by striking down the order of dismissal; but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right...Anyway the questions which were put to the witnesses were recorded and sent to the Chief Engineer and his replies were received. No doubt the replies were not put in the hands of the appellant but he saw them at the time when he was making the representations and curiously enough he used those replies in his defence. In other words, they were not collected behind his back and could be used to his advantage and he had an opportunity of so using them in his defence. We do not think that any prejudice was caused to the appellant in this case by not examining the two retired Superintending Engineers whom he had cited or any one of them.

[Emphasis added] In the case of K.L. Tripathi vs. State Bank of India & Ors., (1984) 1 SCC 43, while considering the question whether violation of each and every facet of principles of natural justice has the effect of vitiating the inquiry, this Court laid down that the inquiry held and the punishment imposed cannot be said to be vitiated on account of an opportunity of cross-examination of certain witnesses not having been afforded to the delinquent and observed thus:-

The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitable form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to

justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement.

[Emphasis added] In the case of Sunil Kumar Banerjee vs. State of West Bengal & Ors. (1980) 3 SCC 304, in a departmental proceeding a question was raised that the delinquent who had not examined himself was not questioned by the enquiry officer on the circumstances appearing against him in the evidence for the purpose of enabling him to explain the same as required under rule 8(19) of the relevant rules. The Court held that as the delinquent was fully alive to the allegations against him and had dealt with all aspects of the allegations in his written defence, he was not prejudiced by the failure of the enquiry officer to question him. As such, the Court refused to interfere with the punishment awarded.

In the case of State Bank of Patiala & Ors. Vs. S.K. Sharma, (1996) 3 SCC 364, there was a departmental proceeding against an officer in which the punishment awarded was challenged on the ground that there was violation of regulation 68(b)(iii) of the Bank Regulations which had statutory force under which copies of statement of witnesses recorded earlier were required to be furnished to a delinquent not later than three days before the commencement of examination of witnesses by the enquiry officer, but no such copy was at all supplied and a stand was taken that opportunity was afforded to the delinquent to peruse the same and take notes therefrom though only half an hour before the commencement of the enquiry proceedings. In these circumstances, it was held that there was substantial compliance of the regulation as such, the punishment awarded cannot be vitiated on account of infractions of the aforesaid regulation in view of the fact that the delinquent, expressly or by his conduct, would be deemed to have waived the procedural provision which was of a mandatory character which was conceived in his interest and not public interest and was not prejudiced thereby, following the decision of this Court in the case of ECIL.

In the case of Krishan Lal vs. State of J&K, (1994) 4 SCC 422, this Court was dealing with a case where under Section 17(5) of Jammu & Kashmir (Government Servants) Prevention of Corruption Act, 1962 before awarding punishment of dismissal a government servant was entitled to be furnished with a copy of the enquiry report which provision having been violated, the question had arisen whether the order awarding punishment was vitiated. Following the Constitution Bench decision in the case of ECIL, this Court laid down that if the delinquent has not suffered any prejudice by non-furnishing of the report, the same would not vitiate the order of punishment and observed thus:-

We, therefore, hold that the requirement mentioned in Section 17(5) of the Act despite being mandatory is one which can be waived. If, however, the requirement has not been waived any act or action in violation of the same would be a nullity. In the present case as the appellant had far from waiving the benefit, asked for the copy of the proceeding despite which the same was not made available, it has to be held that the order of dismissal was invalid in law.

The aforesaid, however, is not sufficient to demand setting aside of the dismissal order in this proceeding itself because what has been stated in ECIL case in this context would nonetheless apply. This is for the reason that violation of natural justice which was dealt with in that case, also renders an order invalid despite which the Constitution Bench did not concede that the order of dismissal passed without furnishing copy of the inquiry officers report would be enough to set aside the order. Instead, it directed the matter to be examined as stated in paragraph 31.

[Emphasis added] Thus, from a conspectus of the aforesaid decisions and different provisions of law noticed, we hold that provision in Rule 55- A of the Rules for furnishing copy of enquiry report is procedural one and of a mandatory character, but even then a delinquent has to show that he has been prejudiced by its non observance and consequently the law laid down by the Constitution Bench in the case of ECIL, to the effect that an order passed in a disciplinary proceeding cannot ipso facto be quashed merely because a copy of the enquiry report has not been furnished to the delinquent officer, but he is obliged to show that by non-furnishing of such a report he has been prejudiced, would apply even to cases where there is requirement of furnishing copy of enquiry report under the statutory provisions and/or service rules.

Turning now to the facts of the case on hand, it has to be seen whether by non-furnishing of the enquiry report the delinquent officer has suffered any prejudice. Undisputedly, after submission of enquiry report the State Government sent a show cause notice to the delinquent pursuant to which he had shown cause and the disciplinary authority after considering the said show cause, passed the order of dismissal. It is not stand of the respondent that in absence of the enquiry report he could not submit an effective show cause before the order of dismissal was passed. Neither from the order passed by the Tribunal nor the High Court it would appear that the respondent had raised this point there that he could not file an effective show cause in the absence of enquiry report nor it has been stated that in the show cause reply it was complained that the delinquent had not been served with a copy of the enquiry report. From these facts, it is not possible to hold that the respondent has been prejudiced by non-furnishing of enquiry report.

For the foregoing reasons, we are of the opinion that the High Court was not justified in upholding order of the Tribunal whereby order of dismissal of the respondent from service was quashed. Accordingly, the appeal is allowed and the impugned orders are

set aside, but there shall be no order as to costs.