Haryana Financial Corporation & Anr vs Kailash Chandra Ahuja on 8 July, 2008

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Bench: D.K. Jain, C.K. Thakker

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4222 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (CIVIL) NO. 5950 OF 2007

HARYANA FINANCIAL
CORPORATION & ANR. ... APPELLANTS

VERSUS

KAILASH CHANDRA AHUJA ... RESPONDENT

J U D G M E N T

C.K. THAKKER, J.

1. Leave granted.

2. The Haryana Financial Corporation (hereinafter referred to as `the Corporation'), being aggrieved by the decision of the High Court of Punjab & Haryana dated November 6, 2006 in Civil Writ Petition No. 8299 of 2005 has approached this Court. According to the appellant, the order passed by the High Court is not in consonance with law laid down by this Court in several cases, particularly, a decision of the Constitution Bench of this Court in Managing Director, ECIL, Hyderabad & Ors. V. B. Karunakar & Ors., (1993) 4 SCC 727.

3. To appreciate the grievance voiced by the Corporation, few relevant facts may be stated;

4. The respondent herein (writ petitioner before the High Court) Kailash Chandra Ahuja was appointed as Technical Officer in the Corporation in June, 1979. According to the

appellant-Corporation, he was given `warning' in 1984. In 1993, he was working as Deputy General Manager. In 1997, he was reprimanded. On August 17, 1999, he was working as Branch Manager at Branch Office, Rewari. The Corporation initiated proceedings against the writ-petitioner in accordance with Regulation 41 (1) and (2) of Punjab Financial Corporation (Staff) Regulations, 1961 (hereinafter referred to as `the Regulations') on the allegations enumerated in the Statement of Charges. The statement related to commission and omission on the part of the writ-petitioner. The writ- petitioner submitted a reply on December 14, 1999. An Inquiry Officer was appointed who submitted his report on December 15, 2000 and exonerated the writ-petitioner of all the charges. According to the Corporation, however, the report of the Inquiry Officer suffered from certain deficiencies. Hence, the Managing Director of the Corporation asked the Inquiry Officer vide a communication dated June 19, 2001 and sought clarification. The matter was remanded to the Inquiry Officer with the advice to clarify the points within 15 days. The Inquiry Officer called the delinquent to appear before him on August 7, 2001. The delinquent appeared and participated in the proceedings without any protest. The Inquiry Officer then submitted his findings vide his report dated September 5, 2001 holding the delinquent guilty. A notice was thereafter issued by the Managing Director of the Corporation to the delinquent on December 18/20, 2001 to show cause why he should not be dismissed from service under Regulation 41 (1) (e) of the Regulations. The delinquent filed his reply on February 8, 2002. He was granted personal hearing and was dismissed from service by a speaking order dated April 4, 2002. The delinquent preferred an appeal before the Board of Directors of the Corporation under the Regulations but the said appeal was also dismissed by the Board by an order dated January 27, 2005. The delinquent, therefore, filed a writ petition in the High Court of Punjab & Haryana which, as stated above, was allowed by the High Court setting aside the order dated April 4, 2002 passed by the Corporation. It is this order which is challenged by the Corporation in the present appeal.

5. Notice was issued by this Court on April 9, 2007. The respondent-writ petitioner appeared through an advocate and waived service of notice upon him. Time was granted to file affidavit-in-reply as well as rejoinder. Meanwhile, the order passed by the High Court impugned in the present appeal was also stayed. On January 10, 2008, the Registry was directed to place the matter for final hearing on a non- miscellaneous day. The matter thus has been placed for final disposal before us.

6. We have heard learned counsel for the parties.

7. The learned counsel for the Corporation submitted that as is clear from the order passed by the High Court, the respondent- writ petitioner had raised a "short issue"

> before the Court. It was contended that the Disciplinary Authority i.e. Managing Director did not furnish a copy of the inquiry report before recording a finding that he had accepted the finding of guilt recorded by the Inquiry Officer in his inquiry report dated September 5, 2001. According to the learned counsel, supply of inquiry report after the respondent had been found guilty by the Inquiry Officer was mandatory, in view of the fact that the writ-petitioner had been exonerated by the Inquiry Officer earlier vide his report dated December 15, 2000. Reliance in this

connection was placed by the learned counsel for the writ-

petitioner on B. Karunakar, as on also two decisions of the High Court of Punjab & Haryana in M.S. Sandhu v. Haryana Vidyut Parsaran Nigam Ltd., (2005) 4 SCT 628 and Ramesh Kumar v. State of Haryana & Ors., (2006) 3 SCT 799.

8. On behalf of the Corporation, the learned counsel contended that there was no whisper in the writ petition that any prejudice had been caused to the case of the writ petitioner which was required to be shown as per the ratio laid down in B. Karunakar cited by the counsel for the writ-petitioner. It was urged that it is only in those cases where a Court or Tribunal comes to the conclusion that non-supply of the report of the Inquiry Officer had caused prejudice to the delinquent that it would vitiate the action. If, on the other hand, non-supply of report would have made `no difference' to the ultimate finding and punishment imposed, the order of punishment could not be interfered with.

9. The High Court held that supply of report of the Inquiry Officer was an `essential requirement' and non-supply thereof resulted in violation of principles of natural justice. It, therefore, set aside the order of dismissal. According to the counsel for the Corporation, the High Court was wholly wrong in taking the above view which is contrary to the decision of the Constitution Bench of this Court in B. Karunakar and the appeal deserves to be allowed.

10. The learned counsel for the writ- petitioner, on the other hand, supported the order passed by the High Court. He contended that the High Court was right in relying upon various decisions referred to therein and in setting aside the order of punishment by granting liberty to the Corporation to take appropriate proceedings in accordance with law. No interference, therefore, is called for against the said order in exercise of discretionary jurisdiction under Article 136 of the Constitution.

11. Having heard learned counsel for the parties and having considered the rival contentions, in our opinion, the appeal deserves to be allowed.

12. Since only one question had been raised before the High Court as well as before us, we may clarify at the outset that we are not entering into merits of the matter and allegations and counter allegations by the parties. A limited controversy before us is whether the High Court was right in setting aside the order of punishment merely on the ground of non-supply of report of the Inquiry Officer to the delinquent.

13. As held by this Court in Union of India & Ors. V. Mohd. Ramzan Khan, (1991) 1 SCC 588, when Inquiring Authority and Disciplinary Authority is not one and the same and the Disciplinary Authority appoints an Inquiring Authority to inquire into charges levelled against a delinquent-officer who holds inquiry, finds him guilty and submits a report to that effect to the Disciplinary Authority, a copy of such report is required to be supplied by the Disciplinary Authority to the delinquent- employee before an order of punishment is imposed on him. It was also held that non- supply of report of the Inquiry Officer to a delinquent employee would be violative of principles of natural justice. The Court observed that after the Constitution (42nd Amendment) Act, 1976,

second opportunity contemplated by Article 311(2) of the Constitution had been abolished, but principles of natural justice and fair play required supply of adverse material to the delinquent who was likely to be affected by such material. Non-supply of report of Inquiry Officer to the delinquent would constitute infringement of doctrine of natural justice. In B. Karunakar, a three Judge Bench of this Court was called upon to consider the effect of non-supply of Inquiry Officer's report to the delinquent. The attention of the Court was invited to certain decisions wherein a different note had been struck by this Court. Reference was made in this regard to a three Judge Bench decision of this Court in Kailash Chander Asthana v. State of U.P., (1988) 3 SCC 600, wherein it was held that non-supply of the report would not `ipso facto' vitiate the order of punishment in absence of prejudice to the delinquent. Though Mohd. Ramzan Khan was decided subsequently, Kailash Chander Asthana was not brought to the notice of the Court. The Bench, therefore, felt that the matter should be placed before a larger Bench and accordingly the Registry was directed to place the papers before Hon'ble Chief Justice of India so that an appropriate action can be taken [vide Managing Director, ECIL v. B. Karunakar, (1992) 1 SCC 709]. Accordingly, the mater was placed before the Constitution Bench.

14. The Constitution Bench observed that the basic question of law which arose in the matters was whether the report of the Inquiry Officer appointed by the Disciplinary Authority to hold an inquiry into the charges against the delinquent employee was required to be furnished to the employee to enable him to make representation to the Disciplinary Authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. On the basis of the above fundamental issue, certain other incidental questions were also raised by the Constitution Bench which included the effect of non-supply of Inquiry Officer's report.

15. So far as the supply of report of the Inquiry Officer is concerned, it was held by the Constitution Bench that the delinquent employee had a right to receive the Inquiry Officer's report and a denial thereof would constitute breach of natural justice.

16. Speaking for the majority, Sawant J. stated:

> "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".

(emphasis supplied)

17. The Court then considered the effect of non-supply of Inquiry Officer's report on the delinquent.

18. The majority stated;

> "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".

(emphasis supplied)

19. Holding that it was incumbent on the delinquent employee to show prejudice, the majority held that non-supply of report of the Inquiry Officer to the delinquent employee would not by itself make the order of punishment null and void or non est.

20. The majority concluded;

> "Hence, in all cases where the enquiry 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 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 supplied)

21. From the ratio laid down in B. Karunakar, it is explicitly clear that the doctrine of natural justice requires supply of a copy of the Inquiry Officer's report to the delinquent if such Inquiry Officer is other than the Disciplinary Authority. It is also clear that non-supply of report of Inquiry Officer is in the breach of natural justice. But it is equally clear that failure to supply a report of Inquiry Officer to the delinquent employee would not ipso facto result in proceedings being declared null and void and order of punishment non est and ineffective. It is for the delinquent-employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the Court on that point, the order of punishment cannot automatically be set aside.

22. In the instant case, it is not in dispute by and between the parties either before the High Court or before us that a copy of the report of Inquiry Officer was not supplied to the delinquent-writ-petitioner. While the contention of the writ petitioner is that since failure to supply Inquiry Officer's report had resulted in violation of natural justice and the order was, therefore, liable to be quashed, the submission on behalf of the Corporation is that no material whatsoever has been placed nor a finding is recorded by the High Court that failure to supply Inquiry Officer's report had resulted in prejudice to the delinquent and the order of punishment was, therefore, liable to be quashed.

23. The High Court, unfortunately, failed to appreciate and apply in its proper perspective the ratio laid down in B. Karunakar, though the High Court was conscious of the controversy before it. The Court also noted the submission of the Corporation that there was `no whisper' in the writ petition showing any prejudice to the delinquent as required by B. Karunakar, but allowed the writ petition and set aside the order of punishment observing that in such cases, prejudice is `writ large'.

24. In our considered view, the High Court was wrong in making the above observation and virtually in ignoring the ratio of B. Karunakar that prejudice should be shown by the delinquent. To repeat, in B. Karunakar, this Court stated;

> "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".

25. It is settled law that principles of natural justice have to be complied with. One of the principles of natural justice is audi alteram partem ("Hear the other side"). But it is equally well settled that the concept `natural justice' is not a fixed one. It has meant many things to many writers, lawyers, jurists and systems of law. It has many colours, shades, shapes and forms. Rules of natural justice

are not embodied rules and they cannot be imprisoned within the strait-jacket of a rigid formula.

26. Before about six decades, in Russel v. Duke of Norfolk, (1949) 1 AllER 109 : 65 TLR 225, Tucker, L.J. stated:

> "There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject- matter that is being dealt with, and so forth".

27. In the oft-quoted passage from Byrne v. Kinematograph Renters Society, (1958) 2 AllER 579, Lord Harman enunciated;

> "What, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more".

(emphasis supplied)

28. This Court has also taken similar view. In Union of India v. P.K. Roy, AIR 1968 SC 850 : (1968) 2 SCR 196, speaking for the Court, Ramaswami, J. observed:

> "(T)he extent and application of the doctrine of natural justice cannot be imprisoned within the strait jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case".

29. In the leading case of A.K. Kraipak v. Union of India, (1969) 2 SCC 262, Hegde, J. stated;

> "What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case".

30. Again, in R.S. Dass v. Union of India, 1986 Supp SCC 617, this Court said;

> "It is well established that rules of natural justice are not rigid rules;

> they are flexible and their application depends upon the setting and the background of statutory provision, nature of the right which may be affected and the consequences which may entail, its application depends upon the facts and circumstances of each case".

31. At the same time, however, effect of violation of rule of audi alteram partem has to be considered. Even if hearing is not afforded to the person who is sought to be affected or penalized, can it not be argued that notice would have served no purpose" or "hearing could not have made difference" or "the person could not have offered any defence whatsoever".

32. In this connection, it is interesting to note that under the English Law, it was held before few years that non-compliance with principles of natural justice would make the order null and void and no further inquiry was necessary.

33. In the celebrated decision of Ridge v. Baldwin, 1964 AC 40 : (1963) 2 AllER 66, it was contended that an opportunity of hearing to the delinquent would have served no purpose. Negativing the contention, however, Lord Reid stated;

> "It may be convenient at this point to deal with an argument that, even if as a general rule a watch committee must hear a constable in his own defence before dismissing him, this case was so clear that nothing that the appellant could have said could have made any difference. It is at least very doubtful whether that could be accepted as an excuse".

(emphasis supplied)

34. Wade and Forsyth in their classic work, Administrative Law, (9th Edn.) pp. 506- 509 also stated that if such argument is upheld, the Judges may be tempted to refuse relief on the ground that a fair hearing could have made no difference to the result. "But in principle it is vital that the procedure and the merits should be kept strictly apart, since otherwise the merits may be prejudiced unfairly". (emphasis supplied)

35. This Court expressed the same opinion. In Board of High School v. Kumari Chitra, (1970) 1 SCC 121, the Board cancelled the examination of the petitioner who had actually appeared at the examination on the ground that there was shortage in attendance at lectures. Admittedly, no notice was given to her before taking the action. On behalf of the Board it was contended that the facts were not in dispute and therefore, `no useful purpose would have been served' by giving a show cause notice to the petitioner. This Court, however, set aside the decision of the Board, holding that the Board was acting in a quasi-judicial capacity and, therefore, it ought to have observed the principles of natural justice.

36. In S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379, rejecting the argument that observance of natural justice would have made no difference, this Court said;

> "The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It 'll comes from a person who has denied justice that the person who has been denied justice is not prejudiced". (emphasis supplied)

37. The recent trend, however, is of `prejudice'. Even in those cases where procedural requirements have not been complied with, the action has not been held ipso facto illegal, unlawful or void unless it is shown that non-observance had prejudicially affected the applicant.

38. In Malloch v. Aberdeen Corporation, (1971) 2 AllER 1278, Lord Reid said;

> "(I)t was argued that to have afforded a hearing to the appellant before dismissing him would have been a useless formality because whatever he might have said could have made no difference. If that could be clearly demonstrated it might be a good answer". (emphasis supplied)

39. Lord Guest agreed with the above statement, went further and stated;

> "A great many arguments might have been put forward but if none of them had any chance of success then I can see no good reason why the respondents should have given the appellant a hearing, nor can I see that he was prejudiced in any way".

40. In Jankinath v. State of Orissa, (1969) 3 SCC 392, it was contended that natural justice was violated inasmuch as the petitioner was not allowed to lead evidence and the material gathered behind his back was used in determining his guilt. Dealing with the contention, the Court stated;

> "We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right". (emphasis supplied)

41. In B. Karunakar, this Court considered several cases and held that it was 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. The law laid down in B. Karunakar was reiterated and followed in subsequent cases also [vide State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 363; M.C. Mehta v. nion of India, (1999) 6 SCC 237].

42. In Aligarh Muslim University v. Mansoor Ali Khan, (2000) 7 SCC 529, the relevant rule provided automatic termination of service of an employee on unauthorized absence for certain period. M remained absent for more than five years and, hence, the post was deemed to have been vacated by him. M challenged the order being violative of natural justice as no opportunity of hearing was afforded before taking the action.

43. Though the Court held that the rules of natural justice were violated, it refused to set aside the order on the ground that no prejudice was caused to M. Referring to several cases, considering theory of `useless' or `empty' formality and noting "admitted or undisputed" facts, the Court held

that the only conclusion which could be drawn was that had M been given a notice, it "would not have made any difference" and, hence, no prejudice had been caused to M.

44. In Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corporation Ltd, Haldia & Ors., (2005) 7 SCC 764, speaking for a three Judge Bench, one of us (C.K. Thakker, J.) stated:

> "We are aware of the normal rule that a person must have a fair trial and a fair appeal and he cannot be asked to be satisfied with an unfair trial and a fair appeal. We are also conscious of the general principle that pre- decisional hearing is better and should always be preferred to post- decisional hearing. We are further aware that it has been stated that apart from Laws of Men, Laws of God also observe the rule of audi alteram partem. It has been stated that the first hearing in human history was given in the Garden of Eden. God did not pass sentence upon Adam and Eve before giving an opportunity to show cause as to why they had eaten the forbidden fruit. [See R. v. University of Cambridge, (1723) 1 Str 557] But we are also aware that the principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straitjacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. It has been stated: " `To do a great right' after all, it is permissible sometimes `to do a little wrong'." [Per Mukharji, C.J. in Charan Lal Sahu v. Union of India, (1990) 1 SCC 613 (Bhopal Gas Disaster), SCC p. 705,para
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> 124.] While interpreting legal provisions, a court of law cannot be unmindful of the hard realities of life. In our opinion, the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than precedential". (emphasis supplied)

45. Recently, in P.D. Agrawal v. State Bank of India & Ors., (2006) 8 SCC 776, this Court restated the principles of natural justice and indicated that they are flexible and in the recent times, they had undergone a `sea change'. If there is no prejudice to the employee, an action cannot be set aside merely on the ground that no hearing was afforded before taking a decision by the authority.

46. In Ranjit Singh v. Union of India, (2006) 4 SCC 153, referring to the relevant case-law, this Court said;

> "In view of the aforementioned decisions of this Court, it is now well settled that the principles of natural justice were required to be complied with by the disciplinary authority. He was also required to apply his mind to the materials on record. The enquiry officer arrived at findings which were in favour of the appellant. Such findings were required (sic sought) to be overturned by the disciplinary authority. It is in that view of the matter, the power sought to be exercised by the disciplinary authority, although not as that of an Appellate Authority, but is akin thereto. The inquiry report was in favour of the appellant but the disciplinary authority proposed

> to differ with such conclusions and, thus, apart from complying with the principles of natural justice it was obligatory on his part, in the absence of any show-cause filed by the appellant, to analyse the materials on record afresh. It was all the more necessary because even CBI, after a thorough investigation in the matter, did not find any case against the appellant and thus, filed a closure report. It is, therefore, not a case where the appellant was exonerated by a criminal court after a full-fledged trial by giving benefit of doubt. It was also not a case where the appellant could be held guilty in the disciplinary proceedings applying the standard of proof as preponderance of the probability as contrasted with the standard of proof in a criminal trial i.e. proof beyond all reasonable doubt. When a final form was filed in favour of the appellant, CBI even did not find a prima facie case against him. The disciplinary authority in the aforementioned peculiar situation was obligated to apply its mind on the materials brought on record by the parties in the light of the findings arrived at by the inquiry officer. It should not have relied only on the reasons disclosed by him in his show-cause notice which, it will bear repetition to state, was only tentative in nature. As the Appellate Authority in arriving at its finding, laid emphasis on the fact that the appellant has not filed any objection to the show- cause notice; ordinarily, this Court would not have exercised its power of judicial review in such a matter, but the case in hand appears to be an exceptional one as the appellant was exonerated by the inquiry officer. He filed a show-cause but, albeit after some time the said cause was available with the disciplinary authority before he issued the order of dismissal. Even if he had prepared the order of dismissal, he could have considered the show-cause as he did not leave his office by then. The expression "communication" in respect of an order of dismissal or removal from service would mean that the same is served upon the delinquent officer".

(See State of Punjab v. Amar Singh Harika, AIR 1966 SC 1313)

47. From the aforesaid decisions, it is clear that though supply of report of Inquiry Officer is part and parcel of natural justice and must be furnished to the delinquent- employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show `prejudice'. Unless he is able to show that non-supply of report of the Inquiry Officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent- employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down.

48. In the instant case, no finding has been recorded by the High Court that prejudice had been caused to the delinquent-employee- writ-petitioner. According to the High Court, such prejudice is `writ large'. In our view, the above observation and conclusion is not in consonance with the decisions referred to above, including a decision of the Constitution Bench in B. Karunakar. The view of the High Court, hence, cannot be upheld. The impugned order, therefore, deserves to be set aside and is accordingly set aside.

49. Since the High Court has not considered the second question, namely, whether failure to supply the report of the Inquiry Officer had or had not resulted in prejudice to the delinquent employee, ends of justice would be met with if we remit the matter to the High Court to decide the said question.

50. For the foregoing reasons, the appeal deserves to be allowed and is accordingly allowed with the above observations. On the facts and in the circumstances of the case, however, there shall be no order as to costs.

.....J. (C.K. THAKKER) NEW DELHI,
.....J. JULY 08, 2008. (D.K. JAIN)