RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH, ALLAHABAD

(THIS THE 6th DAY OF ~~AUGUST~~ Sept, 2011)

Hon'ble Mr.D.C Lakha, Member (A)

Hon'ble Mr. A.K. Bhardwaj, Member (J)

Original Application No. 318 of 2004
{U/s 19, Administrative Tribunal Act, 1985)

Jagdish Babu Dubey, S/o Late Ram Karan Dubey,
Section Engineer/Train Lighting,
North Central Railway, Kanpur.

...Applicant

Present for Applicant Shri. S.S.Sharma, Advocate

Versus

1. Union of India, owning and representing North Central Railway, Notice to be served upon the General Manager, North Central Railway, H.Q.Office, Allahabad.

2. The Addl.Divisional Railway Manager, North Central Railway, DRM's Office Allahabad (The Alleged Appellate Authority)

3. The Senior Divisional Electrical Engineer/General North Central Railway, Allahabad (The alleged Disciplinary Authority)

...Respondents

Present for Respondents: Shri...P.N.Rai,Advocate

ORDER

(Delivered by Hon'ble Mr.A.K.Bhardwaj, Member (J)

Vide memo dated 23.11.1990 (standard form no.5), the applicant was charged for committing misconduct of not verifying Casual Labour Card of S/Sh. Sita Ram, Son of Vidyaram, Dal Chand, S/o Vijayram, Bachchu Singh, S/o Sunder Singh, Anand Kumar Jha, S/o Singheshwar Jha, Satish Chandra Chaturvedi, S/o Dharam Narain, Satish Chand, S/o Sone Lal, Vinod Kumar Sharma, S/o Mata Prasad Sharma and Ram Pal Nai, S/o Ram Swaroop who could be recruited on the basis of forged Casual Labour Card due to non verification of their card before engaging them. It is alleged in the charge sheet that the said Casual Labourers completed required service period and attained the eligibility for grant of temporary status, thus their services could be discontinued and the matter could be taken up before Labour Court. Vide aforementioned Memo the applicant was charged for acquiring immovable property exceeding over Rs.2000/- and not intimating the administration about the same. In order to give a reply to said charge sheet the applicant asked the Enquiry officer to supply certain documents to him. Documents are enlisted in the representation dated 30.3.1997 made by the applicant and placed on record as Annexure A-14 to Original Application. Mr.R.C.Sharma,E.O.C.E.I/H.Q./Room No.406, 4th Floor DRM's Annexe, New Delhi conducted enquiry into charges. The Presenting Officer examined Sh.B.L.Arora Insp./CBI/ (DYSP/CBI/Bhuj) (at the time of enquiry) . The Defence Helper did not turn up in the enquiry and the applicant i.e. charged officer continued participating in the same. The charged officer i.e. the applicant did not submit any defence statement and also refused to examine himself in his defence. Mr.B.L. Arora, Insp./CBI deposed during enquiry proceedings that

Exhibit P-3 contained the signature of the applicant which indicated that the applicant had ordered appointment of casual labour concerned. Similarly, the said P.W.1 Mr.B.L. Arora, Insp./CBI also indicated that the Exhibit P 2/5 bear endorsement of the applicant to the effect that Sh.Satish Chand, S/o Sone Lal may be kept on trial. Statement of P.W.1 reads as under:-

P.W.-1

"When I was working as CVI/WR Kota/Ajmer I investigated case against Sh.J.B.Dubey relating to the appointment of Casual Labourers on forged Cards. During investigation I found that Sh.Dubey has engaged eight casual labourers without making any verification on their services mentioned in the cards as per Railway Rules in vogue at that time and thus he engaged the casual labourers who did not work in past at all and their cards were bogus. During investigation it was also found that Sh.Dubey did not intimate about the valuable articles which he purchased and did not intimate as per departmental rules."

Since C.O. had not submitted any defence statement and had not turned up for his examination in his defence, the Enquiry Officer concluded the finding holding the charges against the applicant. Para-12 of the enquiry report reads as under:-

"12.Conclusion & Findings.

On the basis of evidence, oral and documentary the finding is as under:-

(a) Article No.(i) is proved to the extent that CO appointed S/Sh.Vinod Kumar, S/o Mata Prasad, Satish Chand, S/o Sone Lal and Sh.ram Pal, S/o Ram Swaroop without verification of S/Card which were bogus.

(b) Article No.(ii) is proved."

Accepting the report of Enquiry Officer, Disciplinary Authority passed the order dated 31.12.1997, imposing the penalty of reduction of pay of applicant to the lowest stage in the time scale of Rs.5000-8000 for a period

of two years with cumulative effect. Against the said penalty order the applicant preferred an appeal dated 1.1.1998 before the Appellate Authority contending therein:

(i) The penalty order is non-speaking;

(ii) During enquiry no relevant documents relating to Sita Ram, S/o Vidyaram, Satish Chand Chaturvedi, S/o Dharam Narain was made available and the charge against the applicant for not verifying their casual labour cards was found not proved in the enquiry but in penalty order a reference of said two casual labourers has been made.

(iii) S/Sh.Vinod Kumar, S/o Mata Prasad, Satish Chand, S/o Sone Lal, Ram pal, S/o Ram Swaroop were recruited by Sh. Ramesh Chandra Dohrey, the then A.E. for illegal rectification which fact was indicated by applicant in his defence statement and the Investigating Officer has viewed that the applicant had not filed any written statement.

(iv) He had intimated about the purchase of articles and the proof of the same were produced before the Enquiry Authority by him at the time of personal hearing.

(v) No opportunity of hearing was given to applicant during the course of enquiry.

(vi) Enquiry was held after a gap of three years.

(vii) The applicant was not in a position to defend himself properly;

(viii) Only four relied upon documents were made available to the applicant

and said documents are also not referred to in charge sheet relied upon by Enquiry Officer which resulted in vitiation of entire proceedings. Applicant was not allowed to inspect the relied upon documents. Appellate Authority passed the order dated 24.3.1998 rejecting the aforementioned appeal of the applicant. Assailing the order of penalty, order passed by Appellate Authority and the speaking order passed in appeal, the applicant has filed the present O.A.

1. We have heard the parties counsel and perused the pleadings on record. The speaking order dated 28.7.2003 reveal that

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the contention of the applicant of denial of opportunity by non supplying the documents was rejected by the Appellate Authority taking the view that the applicant unnecessarily tried to divert the course of enquiry on technical points. The Appellate Authority rejected the contention of the applicant for not providing him defence helper in enquiry recording finding that the services of Sh. J.B.Singh, Chief Controller Engg./TDL were made available to him. A perusal of order of Appellate Authority reveals that Mr. Dubey had given defence notice dated 28.8.1997 raising 12 points but the order of Appellate Authority does not find mention of said points and the same are not found to be dealt with by the said authority in any manner. The denial of making services of O.P. Gupta available to applicant as defence helper are justified by the Appellate Authority taking the view that Sh.J.B. Dubey had since been removed from service. No rules or instructions are quoted by the Appellate Authority to justify the stand of the department that the services of removed government servant cannot be made available to a serving government servant as defence helper. The contention of the applicant that he had taken scooter advance to purchase scooter is not accepted by Appellate Authority, taking a view that the sanction of that advance cannot be an intimation in itself. Appellate Authority has also viewed that the applicant was not justified in initiating appointment of S/Sh. Satish Chand and Ram Pal subject to their furnishing an affidavit and it was for him to discharge the obligation of verification of casual labour cards before appointing the casual labourers. The Appellate Authority also rejected the contention of the applicant that the regularisation of the casual labourers would render the disciplinary action against him as infructuous. The various grounds raised by the applicant before the

Appellate Authority are reiterated in the OA. Para 5 of the OA reads as under:-

(I) (No facility of defence helper was provided.

(II) Charge-sheet was time barred.

(III) Charge-sheet was served by the void Disciplinary Authority as for the time of incidence he had no relation with the charged officer.

(IV) No any relied upon documents and Additional documents defended by the court has been supplied.

(V) No defence witness has been called.

(VI) Common procedure has snot been adopted.

(VII) Considering of documents which was not relied upon documents in he charge sheet and never has been brought in the proceedings of the inquiry.

(VIIII) Enquiry officer was junior to the charged officer.

(IX) Post Facto sanction of the G.M. has not been considered.

(X) In the charge-sheet regarding charge No.2,no any RVD evidence.

(XI) Regarding purchase of scooter the LPC was not considered.

(XII) Purchase of National Saving Certificate- it is a saving not a commodities purchase though it was intimated to the administration and it was recorded informs-16 for that particular year.

(XIII) Purchase of Television-no any evidence has been brought.

(XIV) For booking of Maruti Gypsy no evidence on record has been brought.

(XV) The appeal has not been decided as per Rule 22 and its sub-rules- Railway Servants Discipline and Appeal Rules, 1968.

(XVI) The I.O. and P.O. both were legally trained so equal facility to defence the matter with the help of the legal practitioner was not provided to me which is a violation of Ruling (1988) 6 Administrative Tribunals Cases 176 K.Venkatraman-applicant Vs. Union of India & Ors.

(XVII) I.O. was bias. The Appellate Authority regretted representation.

2. When the applicant raised various contentions in the OA such as no facility of defence helper was provided, charge sheet was not

served by the Disciplinary Authority, relied upon documents were not supplied, defence witnesses were not called, the common procedure had not been adopted, documents which were not cited in the charge sheet are relied upon, Enquiry officer was junior to charged officer.etc, he has not established any prejudice if any caused to him on account of various irregularities alleged by him. In the case of 'CANARA BANK 7 ORS. VS. DEBASIS DAS 7 ORS, ATJ (2003) (3) page-235, Hon'ble Supreme Court viewed that the residual and crucial question need to be determined and adjudicated while pronouncing on violation of principles of natural justice is, whether any prejudice has been caused to affected party and to what extent. It is settled position of law that where grant of opportunity in terms of principles of natural justice do not improve the situation, "useless formality theory" can be pressed into service. Natural Justice is another name for common sense justice, rules of natural justice are not codified canons, but they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense in liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical necessities. It is the substance of justice which has to determine its form.

3. The expressions "natural justice" and "legal justice" do not present a water tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication.. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

4. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of Cooper Vs Wandsworth Board of Works 1963 (143) ER 414, the principles was thus stated: "Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat".

In the case of Board of Education Vs. Rice 1911 AC 179:80 LJK 796, where Lord Loreburn, L.C. observed as follows:

"Comparatively recent statues have extended, if they have originated, the practice of imposing upon departments or offices of State the duty of deciding or determining questions of various kinds . It will, I suppose usually be of an administrative kind, but sometimes, it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases, the board of education will have to ascertain the law and also to ascertain the facts. I need not and that in doing either they must act in good faith and fairly listen to both sides for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial..... The board is in the nature of the arbitral tribunal, and a court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the court is satisfied either that the board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari".

5. The concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed there under. They may be implied from

the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' en-compasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life".

6. Natural justice has been variously defined by different judges. A few instances will suffice. In Drew Vs. Drew and Lebura 1855 (2) Macg. 1.8, Lord Cranworth defined it as 'universal justice'. In James Dunber Smith Vs. Her Majesty the Queen 1877-78 (3) App. Case 614 JC, Sir Robort P. Collier, speaking for the judicial committee of Privy Council, used the phrase 'the requirements of substantial justice', while Arthur John Specman Vs. Plumstead District Board of Works (1884-85 (10) App. Case 229, 240), Earl of Selbourne, S.C. preferred the phrase 'the substantial requirements of justice'. In Vionet Vs. Barrett 1885 (55) LJRD 39, 41, Lord Esher, MR defined natural justice as 'the natural sense of what is right and wrong'. While, however, deciding Hookings Vs. Smethick Local Board of Health 1890 (24) QBD 712, Lord Fasher, M.R. instead of using the definition given earlier by him in Vionet's case (supra) chose to define natural justice as 'fundamental justice'. In Ridge Vs. Baldwin 1963 (10 WB 569, 578, Harman LJ, in the court of appeal countered natural justice with 'fairplay in action' a phrase favoured by Bhagwati, J. in Maneka Gandhi Vs. Union of India 1978 (2) SCR 621. In re R.N. (An infoat) 1967 (2) B 617, 530 Lord Parker, CJ, preferred to describe natural justice as a'a duty to act fairly'. In Fairmount Investments Ltd. V. Secretary to State for Environment 1976 WLR 1255 Lord Russell of Willowan somewhat picturesquely described

natural justice as ' a duty foir crack of the whip' while Geoffrey Lane, LJ. In Regina V. Secretary of State for Home Arrairs Ex parte Hosenball 1977 (1) WLR 766 preferred the homely phrase 'common fairness'.

7. How the principles of natural justice has been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is 'nemo judex in causa sua' or 'nemo debet esse judex in propria causa sua' as stated in (1605) 12 Co. Rep.114 that is, ' no man shall be a judge in his own cause'. Coke used the form 'aliquis non debet esse judex in propria cuasa quia non protest esse judex at pars' (Co.Litt.1418), that is, ' no man ought to be a judge in his own case, because he cananaot act as judge and all the same time be a party' The form 'nemo protest esse simul actor et judex', that is, 'no one can be at once suitor and judge' is also at times used. The second rule is 'audi alteram partem', that is 'hear the other side'. At times and particularly in continental countries, the form 'audietur at altera pars' is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particulary the audi alteram partem rule, namely 'qui aliquid statuerit parte inaudita alteram actquam licet dixerit, haud acquum facerit' that is, he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right' (See Bosewell's (1605) 6 Co.Rep.48-b, 52-a case or in other wards, as it is now expressed, 'justice should not only be done as invalid being in violation of principles of natural justice, there is no final decisions of the case and fresh proceedings are left upon. All

that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated".

8. In the present case the applicant preferred to not file any written statement rebutting in the charges. He also did not prefer to examine himself or any other witness in his defence. When he demanded certain documents he did not plead in what way he was realised to spot the said documents in his defence. Thus we need not to prefer "useless formality theory". The said theory has received consideration of this court in 'M.C.Mehta Vs. Union of India 1999 (6) SCC 237, wherein it was observed as under:-

> "Before we go into the final aspect of this contention, we would line to state that case relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of 'real substance' or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed (See Malloch V.Aberdeen Corpn. (1971) 2 All ER 1278, HL) (Per Lord Reid and Lord Wilberforce), Glynn V.Keele University☹1971) All ER 89; Cinnamond V. British Airports Authority: (1980) 2 All ER 368, CA) and other cases where such a view has been held. The latest addition to this view is R V. Ealing Magistrates' Court, exp.Fannaran (1996) (8) Admn.LR 351,358) (See de Smith, Suppl.P.89 (1998) where Straughton, LJ.held that there must be 'demonstrable beyond doubt' that the result would have been different. Lord Woolf in Lloyd V.McMohan (1987(1) All ER 1118,CA) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in McCarthy V.Grant (1959 NZLR 1014) however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real likelihood-not certainty of prejudice'. On the other hand, Garner Administrative Law (8th Edn.1996.pp.271-72) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from Ridge V.Baldwin (1964 AC 40: (1963) 2 All ER 66, HL), Megarry, J. in John V.Rees (1969 (2) All ER 274) stating that there are always 'open and shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner J has said that the 'useless formality theory' is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that 'convenience and justice are often not on speaking terms'. More recently, Lord Bingham has deprecated the 'useless formality theory' in R. V Chief Constable of the Thames Valley Police Forces, Ex.p.cotton (1990 IRLR 344) by giving six reasons (see also his article 'Should Public

Law Remedies be Discretionary?" 1991 PL p.64). A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in 'Natural justice, Substance or Shadow' by Prof. D.H. Clark of Canada (see 1975 PL pp.27-63) contending that Malloch (supra) and Glynn (supra) were wrongly decided. Foulkes (Administrative Law, 8th Edn.1996, p.323). Craig (Administrative Law, 3rd Edn.p.596) and others say that the court cannot prejudge what is to be decided by the decision-making authority. De Smith (5th Edn.1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade Administrative Law, 5th Edn.1994.pp.526-530) says that futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of sustenance or if he can prove a 'real likelihood' of success or if he is entitled to relief even if there is some remote change of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their 'discretion', refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in 'STATE BANK OF PATIALA VS. S.K.SHARMA (JT 1996 (3) SC 722), Rajendra Singh Vs. State of M.P. (JT 1996 (7) SC 216) that even in relating to statutory provision requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

We do not propose to express any opinion on the correctness or otherwise of the 'useless formality theory' and leave the matter for decision in an appropriate case. Inasmuch as the case before us, 'admitted and indisputable' facts show that grant of a writ will be in vain as pointed by Chinnappa Reddy,J."

9. As can be seen from the aforementioned, futile writ may not be issued a distinction has to be made according to the nature of the decision, thus in relation to cases other than those relating to admitted or indisputable fact. There is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome

will be in his favour or he has to prove a case of sustenance or if he can prove a 'real likelihood' of success or if he is entitled to relief even if there is some remote change of success. Even in cases where the facts are not at all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their 'discretion', refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed.

Besides "useless formality theory", there is another theory which need to be kept in mind while applying the principles of natural justice is theory of prejudice. 'The position was illuminatingly stated by this Court in **'Managing Director, ECIL, Hyderabad and Ors. Vs.B.Karunakara and Ors.** 1993 (4) SCC 727 which reads as follows:

> "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 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 snot 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 appellant 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. Where after following the above procedure, the court/Tribunal sets aside the order of punishment, the proper relief that should be is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and

continuing the inquiry from the state of furnishing him with the report. The question whether the employee would be entitled to the backwages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should variably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position of law".

10. While examining the importance of theory of prejudice in considering the plea of natural justice, we need to unavoidably refer to in the case of 'State Bank of Patiala & Ors Vs. S.K. Sharma, JT 1996 (3) SC 722. In the said case Hon'ble Supreme Court ruled that while testing the prejudice i.e. whether prejudice is caused or not, what is to be seen and ascertain is whether the delinquent officer has waived the requirement either expressly or by his conduct and if he is found to have waived cannot be set aside on the ground of violation alleged before court. Para 15 to 34 of the judgment of Hon'ble Supreme Court in 'State Bank of Patiala & Ors Vs. S.K. Sharma & Ors reads as under:-

"Al Mehdawi v. Secretary of State for the Home Department (1990 (1) R.C.876) was an interesting case. On the ground of overstaying in United Kingdom, the appellant was given a notice proposing to deport him. The appellant's solicitors lodged a notice of appeal and informed the appellants on his correct address, of the action taken by them. When the solicitors were notified of the date of hearing, they wrote to the appellant informing him of the date of hearing, but this letter was sent on the old address. The appellant did not receive it. The solicitors, finding no response from the appellants took no steps in the matter and the appeal was dismissed. The solicitors again wrote to the appellant but on the old address again. When sought to be deported, the appellant applied for judicial review of the deportation order on the ground of absence of notice; to him. The High

Court and the Court of Appeal upheld his plea holding that notwithstanding absence of fault by the Tribunals there had been a breach of the principle of audi alteram partem, which constituted a fundamental flaw in the decision- making since the fault lay entirely with the appellant's solicitors there was a clear case for quashing the Tribunal's decision. On appeal to the House of Lords, the decision of High Court and Court of Appeal was reversed. The House of Lords [Lord Bridge] observed: "a party to the dispute who has last the opportunity to have his case heard through the default of his own advisers to whom he has entrusted the conduct of the dispute on his behalf cannot complain that he has been the victim of the procedural impropriety or that natural justice has been denied to him .....". In other words, the House of Lords was of the opinion that natural justice merely imposed standards of procedural fairness on the decision-making authority and that natural justice does not demand that the person affected should actually receive a fair hearing. We must, however, makeit clear that it may be difficult to find uniformity in the large number of decided cases in United Kingdom. For example, take the decision of the House of Lords in Malloch v. Aberdeen Corporation [1971 (2) All.E.R.1278]. It was a case ***This reminds us of what the Supreme Court of Canada said with respect to the meaning of the words "principles of fundamental justice". Section 7 of the Canadian Charter of Rights and Freedoms, 1982 declares "every one has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the Principles of fundamental justice" In R v. Beare [1988 (2) S.C.R.387], the Supreme Court of Canada while interpreting the words "principles of fundamental justice" said that it "guarantees fair procedure but does not guarantee the most favourable procedure that ca possibly be imagined". Also see Grewal v. Canada [1992 (1) Canada Federal Court Reports 581. where the concerned statute mandated that no resolution of a school Board far the dismissal of a certificated teacher was to be valid unless notice of the motion for dismissal was sent to the teacher not less than three weeks previous to the meeting. And, further that the resolution for the dismissal was not to be valid unless agreed to by the majority of the full members of the Board. The teacher concerned, Malloch, was informed more than three weeks in advance. But his written request for an opportunity to submit counter representations was not granted and though he was present at the decisive meeting, he was not permitted to state his case. The Court held that the statutory requirement ofthree weeks notice before the decision was taken, conferred an implied right to be

heard. It was not done. By the notice dated March 19, 1969, the service off the teacher was terminated with effect from April 24, 1969. The House of Lords held that the concerned teacher was denied by the education authority, which employed him, the hearing to which he was entitled. It was further found that the hearing to be afforded would not be a useless formality, as there was an arguable case for the teacher. Nonetheless, it was observed by Lord Reid [at P.1283]: "..... it 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. Lord Guest[at P.1291] not only agreed with the above statement but also applied the test of prejudice. He observed:

"A great many arguments might have been put forward but forward but if none of them had any chance of success then I can see no good reason whythe respondents should have given the appellant a hearing nor can I see that he was prejudiced in any way." Lord Wilberforce too stated the principle in the following words [at P.1294]:

'The appellant has first to show that his position was such that he had, in principle, a right to make representations before a decision against him was taken. But to show this is not necessarily enough,unless he was also show that if admitted to state his case he had a case of substance to make . A breach of procedure, whether failure of natural justice, administrative fault, cannot give him a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain." In R.v. Secretary of state for Transport, ex parte Gwent County Council [1987 (1) All.E.R.161],the Court of Appeal too applied the test of prejudice in 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 another case, Bushell v. Secretary of State for Environment [1981 A.C.75 the House of Lords held that in the absence of statutory rules as to the conduct of a local enquiry under the Highways Acts 1959 the procedure to be followed was a matter of discretion for the Secretary of State and the Inspector - the only requirement being that

the procedure followed should be fair to all concerned including the general public. It is thus clear that the approach of the Court depended upon the facts and circumstances of each case, the law applicable the nature of the right claimed by the person affected and so on. Having considered the principles emerging from the above cases, we are inclined to say that the aforesaid statement of law in Calvin v. Carr,stated with reference to Vasudevan Pillai, is the appropriate one to adopt as a general rule - and we are supported by the decisions of this Court in saying so. We must s however, forewarn that decisions on the applicability of the principles of possible nor necessary to refer to all of them, particularly in view of the recent Constitution Bench judgments. We will refer only to a few of them to explain our view point. In State of Uttar Pradesh v. Mohd.Nooh (1958 S.C.R. 595] S.R.Das,CJ., speaking for the Constitution Bench, had this to say: "If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play, the superior court may, we thinks quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to its it confirmed what ex-facie was a nullity for reasons aforementioned." In Janakinath Sarangi v. State of Orissa [1969(3) S.C.C.392], Hidayatullah,CJ. [speaking for the Bench comprising himself and G.K.Mitter,J.] made the following pertinent observations:

"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 guilt. In support of these contentions a number of rulings are cited chief among which are State of Bombay v. Narul Latif Khan (1965) 3 SCR 135; State of Uttar Pradesh & Another v. Sri C.S. Sharma (1967) 3 SCR 49.There is no doubt that if the principles of natural justice are violated and there is 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 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 representation 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 his case by not examining the two retired Superintending Engineers whom he had cited or any one of them." (Emphasis added). Pausing here, we may notice two decisions of this Court where the test of prejudice was rejected, viz., Chintapalli Agency T.A.S.C.S. Limited v. Secretary (I&A) Government of Andhra Pradesh (1977 A.P. 2313) and S.L.Kapoor v. Jagmohan (1981 (1) 3.C.R.746) both rendered by three-Judge Benches. But if one notices the facts of those cases, it would be evident that they were cases of total absence of notice as in the case of Ridge v. Baldwin. In the former case, the Government allowed a revision filed under Section 77 of the Andhra Pradesh Cooperative Societies Act, 1964 without notice to opposite party, in spite of a request therefor. Para-9 brings out the factual position and Para-11 the legal proposition. They read thus:

"On the very day, viz., 6th October, 1976 when the respondents filed their revision before the Government, the appellant filed an application to the Government disputing the claim of the village societies. The appellant also filed before the Government on 28th October, 1976. On 5th November, 1976, the appellant prayed to the Government for an opportunity to file counter in the revision petition filed by the respondents. The Government, however, without any notice to the appellant, passed final orders on 4th December, 1976, allowing the Registrar dated 10th December, 1975..... The short question that arises for decision is whether the order of the Government in revision which was passed under section 77 of the Act is invalid for non-compliance with section 77(2) which provides that no order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representation. It is submitted that the Government did not afford any opportunity to the appellant for making representation before it. The High Court rejected this plea on the ground that from a perusal of the voluntary application filed by the appellant it was clear that the appellant had anyhow met with the points urged by the respondents in their revision petition before the

Government. We are, however, unable to accept the view of the High Court as correct." Similarly, S.L.Kapoor's case was one where a Municipal Committee was superseded even without a notice to the committee, again a case like Ridge v. Baldwin. After referring to certain English and Indian decisions, Chinnappa Reddy ,J.made the following observation:

"In our view the principle of natural justice know of justice know difference if natural justice had natural justice been observed. The non-observance of natural justice is itself prejudice to any man proof of prejudice independently of proof of denial of natural justice is unnecessary. It will comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its write to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Course do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgement under appeal." The observations made in S. L . Kapoor have to be understood in the context of the facts of thatcase and, of course, subject to the dicta of the Constitution Bench referred to hereinafter. In Hiravath Misra v. Rajendra Medical College (1973) (1) S.C.C.805),the denial of opportunity to cross- examine the material witnesses was held not to vitiate the order made. It was acase where certain male students entered a girls' hostel during the night and misbehaved with the girls. The committee appointed to enquire into the matter recorded the statements of girls in camera and used them [on the question of identity of miscreants] against the appellants without allowing them to cross-examine the girls on the ground that such a course would reveal the identity of the girls and would expose them to further indignities and also because the enquiry was held by a committee of responsible persons. In K.L. Tripathi v. State Band of India & Ors. (1984 (1)S.C.C.43), Sabyasachi Mukharji, J., speaking for a three-Judge Bench, considered the question whether violation of each and very facet of principles of natural justice has the effect of vitiating the enquiry. The learned Judge observed:

'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 of 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 leis 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 anorder has been passed does not dispute the facts and does not demand to test the veracity of the version of the credibility of the statement. The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation to the acts, absence of opportunity to cross-examination does not create any prejudice in such cases. The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case. We have set out hereinbefore, the actual facts and circumstances of the case. The appellant was associated with the preliminary investigation that was conducted against him. He does not deny or dispute that. Information and materials undoubtedly were gathered not in his presence butwhatever formation was there and gathered namely, the versions of the persons, the particular entries which required examination were shown to him. He was conveyed the information given and his explanation was asked for. He participated in that investigation. He gave his explanation but he did not dispute any of the facts nor did he ask for any opportunity to call any evidence to rebut these facts."

It was accordingly held that the enquiry held and the punishment imposed cannot be said to have been vitiated on account of an opportunity to cross-examine certain witnesses not having been afforded to him.* In Managing Director, E.C.I.L. V. B Karunkar [1993 (4) S.C.C.727], a Constitution Bench did take the view that before an employee is punished in a disciplinary enquiry, a copy of the enquiry report should be furnished to him (i.e., wherever an enquiry officer is appointed and he submits a report to

the Disciplinary Authority). It was held that not furnishing the report amounts to denial of natural justice. At thesame time, it was held that just because it is shown that a copy of the enquiry officer's report is not furnished, the punishment ought not be set aside as a matter of course. It was directed that in such cases, a copy af the report should be furnished to the delinquent officer and his comments obtained in that behalf and that the court should interfere with the punishment order only if it is satisfied that there has been a failure of justice. The *The very same test is applied by a three-Judge Bench in Sunil Kumar Banerjee v. State of West Bengal & Ors. (1980 (3) S.C.R.179). Liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry form the stage of furnishing him with the report ****** (Emphasis added). To the same effect is the decision of another Constitution Bench in C.B. Gautam v. Union of India & Ors. (1993 (1) S.C.C.78), a case arising under Chapter XX-C of the income Tax Act. At pages 110-111, the following observations are relevant: 'This brings us to the question of relief. We find that the order of compulsory purchase under Section 269-UD(1) of the income Tax Act which was served on the petitioner in the night of December 15, 1986, has been made without any show cause notice being served on the petitioner and without the petitioner or other affected parties having been given any opportunity to show cause against an order of compulsory purchase nor were the reasons for the said order set out in the order or communicated to the petitioner or other concerned parties with the order. In view of what we have stated earlier the order is clearly bad in law and is set aside." Even so, this Court did not set aside the order of compulsory purchase but devised an appropriate procedure so that the "laudable object" underlying Chapter XX-C is not defeated and at the same time the persons affected get an opportunity to put forward their case against the ******** the decision in State of Orissa v. Dr. Binapani Devi (1967(2) S.C.R.625), it is obvious, has to be read subject to this decision, following paragraph [applicable in cases where the order of punishment is subsequent to November 20, 1990, the date of judgment in Union of Indio v. Mohd. Ramzan Khan (1991(1) S.C.C. 588) is apposite: "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 befurnished 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. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with proposed acquisition. The decisions cited above make one thing clear, viz., principles of natural justice cannot be to reduced to any hard and fast formulae. As said in Russell c. Duke of Norfolk [1949 (1) All.E.R.109] way back in1949, these principle cannot be put in a straight-jacket. Their applicability depends upon the context and the facts and circumstances of each case. [See Mahender Singh Gill v. Chief Election commissioner (1978 (2) S.C.R.272)]. The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. [See A.K.Roy v. Union of India 1982 (1) S.C.C.271) and Swadeshi Cotton Mills v. Union (1981 (1) S.C.C.664)]. As pointed out by this Court in A.K.Kraipak L Ors. v. Union d India & Ors. (1969 (2) S.C.C.262), the dividing line between quasi-judicial function and administrative function [affecting the rights of a party] has become quite thin and almost indistinguishable a fact also emphasized by House of Lords in C.C.C.U. v. Civil Service Union[supra] where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the Cases it is from the standpoint of fair hearing - applying the test of prejudice, as it may be called - that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/no hearing may defeat the very proceeding - which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice

wasevolved in some of the cases, e.g., Liberty Oil Mills v. Union of India (1984 (3) S.C.C.465). There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether [as in the case of situations contemplated by clauses (b) and(c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foreseen . In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate - take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin]. It would be a case falling under the first category and the order of dismissal would be invalid or void, if one chooses to use that expression [Calvin v.Carr]. But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report [Managing Director,E.C.I.L. v.B.Karunkar] or without affording him a due opportunity of cross-examining a witness [K.L.Tripathi] it would be a case falling in the latter category- violation of a facet of the said rule of natural justice - in which case, the validity of the order has to be tested on the touch-stone of prejudice, i.e., whether, all in all, the person concerned did nor did not have a fair hearing. It would not be correct - in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B.Karunkar should govern all cases where the complaint is not that there was no hearing [no notice, no opportunity and no hearing] but one of not affording a proper hearing [i.e.,adequate or a full hearing] or of violation of a procedural rule orrequirement governing the enquiry; the complaint should be examined onthe touch-stone of prejudice as aforesaid. The matter can be looked at from the angle of justice or of natural justice also. The object of the principles of natural justice - which are now understood as synonymous with the obligation to provide a fair hearing***** - is to ensure that justice is done, that there is no failure of justice and that every person whose rights are

going to be affected by the proposed action gets a fair hearing. The said objective can be tested with reference to sub-clause (iii) concerned herein. It says that copies of statements of witnesses should be furnished to the delinquent officer "not later than three days before the commencement of the examination of the witnesses by the Inquiring Authority". Now take a case - not the one before us where the copies of statements are supplied only two ----------***** See the discussion of this aspect at Page 515 of Wade:

Administrative Law (Seventh Edition). In particular, he refers to the speech of Lord Scarman in C.C.S.U. v. Minister for the Civil Service [1985 A.C.374 at 407] where he used both these concepts as signifying the same thing. days before The commencement of examination of witnesses instead of three days. The delinquent officer does not object; he does not say that two days are not sufficient for him to prepare himself for cross-examining the witnesses. The enquiry is concluded and he is punished. only ground that instead of three days before, the statements were supplied only two days before the commencement of the examination of witnesses? It is suggested by the Appellate Court that sub-clause (iii) is mandatory since it uses the expression "shall". Merely because, word "shall" is used, it is not possible to agree that it is mandatory. We shall, however, assume it to be so for the purpose of this discussion. But then even a mandatory requirement can be waived by the person concerned if such mandatory provision is his interest a & not in public interest, vide Dhirendra Nath Gorai v. Sudhir Chandra Ghosh &Ors. (1964 (6) S.C.R.1001). Subba Rao,J., speaking for the Court, held:

"Where the court acts without inherent jurisdiction, a party affected cannot by waiver confer jurisdiction on it, which it has not. Where such jurisdiction is not wanting, a directory provision can obviously be waived. But a mandatory provision can obviously be waived. But a mandatory provision can only be waived if it is not conceived in the public interests, but in the interests of the party that waives it. In the present case the executing court had inherent jurisdiction to sell the property. We have assumed that s.35 of the Act is a mandatory provision. If so, the question is whether the said provision is conceived in the interests of the public or in the interests of the person many provisions of the Act were conceived in the interests of the public, but the same cannot be said of s.35 of the Act, which is really intended to protect the interests of a judgment-debtor and to see that a larger extent of his property than is necessary to discharge the debt is not sold. Many situations may be visualized when

the judgment-debtor does not seek to take advantage of the benefit conferred on him under S.35 of the Act." The principle of the above decision was applied by this Court in Krishan Lal State of Jammu & Kashmir [1994 (4) S.C.C.422) in the case of an express statutory provision governing a disciplinary enquiry. It was a case where the employee was dismissed without supplying him a copy of the enquiry officer's report as required by Section 17(5) of the Jammu and Kashmir (Government Servants) Prevention of Corruption Act,1962. This was treated as mandatory. The question was how should the said complaint be dealt with. This Court held:

"Let it now be seen whether the requirement of giving copy of the proceeding of the inquiry mandated by Section17(5) of the Act is one which is for the benefit of the individual concerned or serves a public purpose. If it be former, it is apparent, in view of the aforesaid legal position, that the same can be waived; if it be latter, it cannot be. Though Shri Mehta has urged that this requirement serves a put benefit of the person concerned which is to enable him to know as to what had taken place during the cause of the proceedings so that he is better situated to show his cause as to why the proposed penalty should not be imposed. Such a requirement cannot be said to be relatable to public policy or one concerned with public interest, or to serve a public purpose. 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 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 [1993 (4) SCC 727]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 officer's report would be enough to set aside the order. Instead, it directed the matter to be examined as stated in paragraph 31.....

According to us, therefore, the legal and proper order to be passed inthe present case also, despite a mandatory provision having been violated, is to require the employer to furnish a copy of the proceeding

and to call upon the High Court to decide thereafter as to whether non-furnishing of the copy prejudice the appellant/petitioner and the same has made difference to the ultimate finding and punishment given. If this question would be answered in affirmative, the High Court would set aside the dismissal order by granting such consequential reliefs as deemed just and proper." Sub-clause (iii) is, without a doubt, conceived in the interest of the delinquent officer and hence, The could waive it. From his conduct, the respondent must be deemed to have waived it. This is an aspect which must be borne in mind while examining a complaint of non-observance of procedural rules governing such enquiries. It is trite to remember that, of a rule, all such procedure; rules are designed to afford a full and proper opportunity to the delinquent officer/employee to defend himself and are, therefore, conceived in his interest. Hence, whether mandatory or directory, they would normally be conceived in his interest only. Now, coming back to the illustration given by us in the preceding paragraph, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise. We may summarise the principles emerging from the above discussion. [These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employee upon the employee]: (1) order passed imposing a punishment on an employee consequent upon the rules/regulationsules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character. (2) A substantive provision has normally to be complied with as explained hereinbefore and thetheory of substantial compliance or the test of prejudice would not be applicable in such a case. (3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry

held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether suchviolation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudicate, including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted there from, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision g expressly providing that after the evidence of the employer/government is over,the employee shall be given an opportunity to lead defence in his evidence, and in a given case the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such acase. To repeat, the test is one of prejudice, i.e. ,whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) herein below is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle. (4)(a) In the case of a procedural provision which is not o a mandatory characters the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee. (b) In the case of violationof a procedural provisional which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirements either expressly or by his conduct. If he is found to have waived its then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could no be waived by him, then the Court or Tribunal should make appropriate directions [include these thing aside of the order of punishment], keeping in mind the approach adopted by the Constitution Bench in

B.Karunkar. The ultimate test is always the same viz., test of prejudice or the test of fair hearing, as it may be called. (5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice -or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action the Court or the Tribunal should make a distinction between a total violation of natural justice [rule of audi alteram] and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid [one may call it "void" or a nullity if one chooses to]. In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule [audi alteram partem]. (b) But in a examined from the standpoint of prejudice; I other word in other words, what the Court or Tribunal has to see is whether in the totality of hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle [No.5] does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.] (6) While applying the rule of audi alteram partem [the primary principle of natural justice] the Court/ Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure applying the rule to varying situations that arise before thern. (7) There may be situations where the interests of state or public interest may call for a curtailing of the rule o audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.

11. Since the Appellate Authority has already examined the matter and passed the speaking order dealing with the contentions of the applicant and charges against the applicant were found proved on the basis of the material available on record remitting the matter back to disciplinary authority again for having a re-look into the matter would be a "useless formality theory".

12. As can be seen from the report of Enquiry Officer, the applicant preferred to not plead in defence. He also preferred to not examine himself in his defence. Thus, he waived the opportunity to defend himself. He has also

not pleaded any prejudice caused to him by non following of procedure. Again as far as the plea of the applicant for non issuance of charge sheet by Competent Authority is concerned, when it is alleged that the charge sheet was served by the void Disciplinary Authority, it is not indicated that how the Disciplinary Authority was void. We find that the charge sheet was issued to the applicant by Senior Divisional Electrical Engineer, who has also imposed penalty upon him being Disciplinary Authority, thus no infirmity can be found in issuance of charge sheet by said authority and impugned orders cannot be interfered on this ground. It is specifically pleaded by the applicant in the OA that the Enquiry Officer who conducted the inquiry was junior to him. Said plea was not rebutted by the respondents in their counter.

13. In view of the aforementioned, we quash the order passed by Appellate Authority and direct the said Authority to examine:-

(i) whether the Enquiry Officer was junior to applicant or not.

(ii) Under what rule the removed government servant is barred from being defence helper.

Having examined the said facts, Appellate Authority should pass suitable order. While doing so, the Appellate Authority would also examine the 12 points raised by applicant in his defence note.

14. The Original Application is disposed of with no order as to costs.

Member (J) Member (A)

Uv/-