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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.01.2022

DELIVERED ON : 11.02.2022

Coram

The Hon'ble Mr. Justice **V.PARTHIBAN**

W.P.No.4607 of 2021 &
W.M.P.Nos.5244 and 5246 of 2021

Prof.M.K.Surappa
Vice-Chancellor
Anna University
Chennai ...Petitioner

Vs.

1. The Joint Secretary
   Department of Higher Education
   Ministry of Education of Union of India
   Sastri Bhavan
   Dr.Rajendra Prasad Road
   New Delhi

2. The Chair Person
   All India Council for Technical Education (AICTE)
   Nelson Mandela Marg
   Vasant Kunj
   New Delhi – 110 070

3. The Chair Person
   University Grants Commission
   35 Feroz Shab Road
   New Delhi – 110 002

4. The Principal Secretary
   Higher Education Department of

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Government of Tamil Nadu
Secretariat, Fort St. George
Chennai – 600 009

5. The Registrar
The Anna University
Guindy, Chennai

6. The Chancellor
Anna University
Chennai

7. The Inquiry Officer
(Allegations Against the Vice-Chancellor, Anna University)
Podhigai Campus, P.S.Kumarasamy Rajaji Salai
Greenways Road, Chennai – 600 128
Represented through Member Secretary ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus seeking direction particularly in the nature of a writ calling for the records pertaining to the impugned G.O (Rt) No.138, Higher Education (11) Department, dated 11.11.2020 on the file of the 4th respondent and quash the same.

For Petitioner .. Mr.N.Vijayaraghavan
for Mr.N.P.Vijay Kumar

For Respondents .. Mr.R.Shankara Narayanan
Addl. Solicitor General of
Southern India

Assisted by
Mr.D.Simon for R1 (CGSC)

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Mr.B.Babu Manohar for R2

Ms.V.Sudha CGSC for R3

Mr.R.Shanmugha Sundaram
Advocate General
Assisted by
Mr.v.Veluchamy
Addl. Government Pleader for R4

Mr.M.Vijayakumar
Standing Counsel
for R5 and R6

Mr.L.S.M.Hasan Fizal
Addl. Government Pleader for R7

ORDER

The brief facts which gave rise to filing of the writ petition are stated hereunder:

(i) The petitioner herein was appointed as Vice Chancellor in the fifth respondent University and he took charge of the post in April 2018. According to the petitioner, his academic credentials were par excellence along with his experience, having studied and researched in most reputed institutions in the world and worked in various premier institutions, as Professor. According to him, in his subject of specialization he had the maximum citations, the highest in the country in the last 50 years. He is a

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highly dedicated professor and has been passionate to achieve excellence in the field of his expertise and work.

(ii) In view of his extraordinary standing and reputation in the academic world, he had been hand-picked for the prestigious post in the 5th respondent Anna University as its Vice Chancellor and joined in the post in April 2018. After he took charge of the University, he introduced innovative initiatives, both in the academic sphere as well as in the administrative side with the singular objective to secure an Institute of Eminence (IoE) status for the University during his tenure. According to him, that if the University achieved the status of Eminence, it would have paved the way for enhanced funding, scholarships and increased impact in the field of research, teaching and innovation. His actions in propelling the University to the status of IoE was not to the liking of some people at the higher level.

(iii) According to him, being a stickler, he ensured strict administration resulting in disgruntlement and disaffection amongst some section of staff of the University. This gave rise to some motivated false complaints in some quarters and on the purported basis of the so called complaint, the Government issued notification vide G.O (Rt) No.138, Higher Education Department, dated 11.11.2020 appointing an Inquiry

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Officer to conduct inquiry against the petitioner into the complaints. The Government vide its order date 11.11.2020 appointed a Hon'ble retired Judge of this Court, Justice P.Kalaiyarasan as the Inquiry Officer and the appointment was stated to be in terms of the amended sub-section (4A) and (4B) of Section 11 of Anna University Act, 1978 as amended by Tamil Nadu University Laws (amendment & Repeal) Act, 2011. The G.O appointing the former Hon'ble Judge of this Court and the terms of reference delineated therein are extracted hereunder:

"ORDER:

The following complaints have been received in Government against Prof.M.K.Surappa, Vice-Chancellor, Anna University, Chennai.

i)Thiru.A.Suresh, Tiruchirappalli, in his representation dated 21.02.2020 sent to Chief Minister's Special Cell, has changed that corruption is rampant in Anna University, with Professors appointing crores of rupees of Government funds and Thiru.Sakthinathan, Deputy Director (CCC), Anna University and Dr.Surappa, Vice-Chancellor, are involved in corruption to the tune of Rs.200 crores. He has also alleged that Thiru.Sakthinathan and Dr.Surappa have collected a sum total of nearly Rs.80 crores by taking bribes of Rs.13 lakh to 15 lakh per candidate for the recruitment of Temporary Teaching fellows of the constituent colleges and Anna

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University main campus.

ii) In a petition received from one Thiru.C.Varadharajan, he has stated that the examination office indulged in various scams and office Assistants Promotions have been give by using forged certificates and accepting illegal grafts.

iii) In another petition received from 'Save Anna University' by e-mail, it is alleged that Thiru Seladurai was appointed as Director (CCC), an Additional Registrar Post without Syndicate Approval.

iv) Prof.M.K.Surappa has mailed wrong information to AICTE that the final year students were passed without conducting examinations.

v) In the petition received from Thiru.R.Adhikesavan, he has stated that Prof.Surappa, Vice-Chancellor, Anna University has appointed his daughter in Anna University by misusing the powers vested with him. He has further stated that there is a scam in purchase of machineries for Constituent Colleges.

vi) Apart from this, many complaints regarding financial irregularities and malpractices in semester examination and revaluation were also received.

Since Prima-facie in the above allegations are serious in nature, the Government have decided to conduct an Inquiry against Prof.M.K.Surappa, Vice-Chancellor, Anna University,

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Chennai and to inquire into the above allegations. Government hereby appoint Hon'ble Thiru Justice P.Kalaiyarason, Retired Judge, High Court of Madras as the Inquiry officer, as per sub-section (4-A) and (4-B) of Section 11 of Anna University Act 1978 (as amended in Tamil Nadu University Laws (Amendment and Repeal) Act 2011).

3.The Inquiry officer is requested to conduct the inquiry as per the following terms of reference:-

a) To inquire into the functioning of the Anna University and whether its activities in all respects conform to the Anna University Act, 1978 and the various statues framed thereunder under which it is functioning during the tenure of Prof.M.K.Surappa.

b) To inquire into the temporary appointments and other recruitments made in the academic as well as adminstrative side of the University during the tenure of Prof.M.K.Surappa and to inquire into the allegations of non-adherence to the prescribed provisions of law and rules in such appointments including the qualifications of appointees and such other prescriptions as well as criminal misconduct and violation of Prevention of Corruption Act/ Indian Penal Code, etc., as well as the alleged scam in Anna University's Career advancement Scheme (CAS).

c) To inquire into all the amounts received by the University during the tenure of Prof.M.K.Surappa in the form

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of fees, assistance, donations, grants etc., and also the amounts paid out by the University under any head whatsoever during such period and to inquire into the allegations of financial misfeasance, fraud, misappropriation and any other allegations in that regard.

d) To inquire into the contracts and agreements entered into by the University during the tenure of Prof.M.K.Surappa with any person including an individual, firm, company, trust, society, LLP and such other entities.

e) To enquire whether there was any lapse or abuse of official position on the part of any of the persons connected with the university during the tenure of Prof.M.K.Surappa.

f) During the course of the inquiry, the inquiry officer shall, if he deems it fit, also look into the allegations in the above referred matters pertaining to any previous period.

g) If such allegations are proved to be true, then suggest such suitable ways and means to prevent such recurrences in future.

h) To make appropriate recommendations as the inquiry officer may deem fit and proper.

i) The inquiry officer is specifically empowered, with the concurrence of the Government of Tamil Nadu, to utilize the services of its officers and investigating agencies considering the exigencies of the inquiry.

j) The inquiry officer will be provided with adequate secretarial facilities as required.

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k) The inquiry officer shall submit his report within a period of 3 months."

2. Challenging the above G.O, the present writ petition has been filed.

3. Notice was ordered in the writ petition. In response to the same, Mr.D.Simon, learned Central Government Standing Counsel entered appearance for first respondent, Mr.B.Rabu Manohar, learned Standing Counsel for second respondent, Ms.V.Sudha, learned Central Government Standing Counsel for third respondent, Mr.V.Veluchamy, learned Additional Government Pleader for fourth respondent, Mr.M.Vijayakumar, learned Standing Counsel for fifth and sixth respondents and Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader for seventh respondent.

4. During the pendency of the writ petition before this Court, the petitioner demitted office as Vice Chancellor on 12.04.2021 on expiry of his term of office for a period of 3 years.

5. In the meanwhile, inquiry initiated against the petitioner vide G.O (Rt) No.138 dated 11.11.2020 was proceeded with. This Court was informed that the Inquiry Officer completed the inquiry and submitted his report on 28.06.2021. On specific direction from this Court, gist of the report of the Inquiry Officer has been produced before this Court.

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6. While matters stood thus, in view of the fact that the petitioner has already demitted office as Vice Chancellor of the University on 12.04.2021, two memoranda have been filed on his behalf, dated 22.11.2021 and 03.01.2022. In the memo dated 22.11.2021, a request was made that since the the petitioner is no more in the Office and the very purpose for which the inquiry was constituted does not exist, the inquiry should be ordered to be closed. In fact, a brief submission has been made in this regard by the learned counsel Mr.N.Vijayaraghavan appearing on behalf of the petitioner.

7. The learned Advocate General appearing for the Higher Education Department has strongly objected to the contents of the memo stating that it is not for the petitioner to seek closure of the inquiry and it is for the Government to take a final call in the matter after weighing the pros and cons of the ultimate findings of the Inquiry Officer, who is none other than the former Judge of this Court. The learned Advocate General also added that there are quite few disturbing findings in the report against the functioning of the petitioner as Vice Chancellor during his tenure and therefore, a simple closure of the inquiry may not be the option.

8. Taking cue from the above submission of the learned Advocate General, the second memo dated 03.01.2022 came to be filed. In this memo, it is submitted that the writ petition may be disposed of by directing

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the Government to furnish a copy of the report of the Inquiry Officer with all enclosures to the petitioner within a time to be stipulated by this Court and the petitioner may be granted a reasonable time to submit his objections to the findings of the learned Inquiry Officer. After obtaining the objection and explanation from the petitioner, the Government may be directed to forward both the report as well as the objection/explanation of the petitioner to the sixth respondent Chancellor for his final decision in accordance with the mandate under Section 11 of the Anna University Act, 1978.

9. The counsel Mr.N.Vijayaraghavan appeared and submitted that the Government may be directed to furnish a copy of the entire report along with the enclosures relied upon in the inquiry. According to the learned counsel, the petitioner cannot be kept in the dark of the findings of the learned Inquiry Officer and Government cannot form any opinion behind his back and forward the report to the Chancellor along with its opinion / advice.

10. The learned Advocate General, however objected to the request seeking furnishing of a copy of the inquiry report stating that such procedure is not contemplated in the Act, as such requirement has not been explicitly spelt out therein. Even otherwise, according to the learned Advocate General furnishing of a copy of the report of the learned Inquiry

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Officer would set a wrong precedent. The learned Advocate General finally submitted that it is always open to the petitioner to approach 6th respondent and seek furnishing of the copy as he is the final authority in taking a decision in the matter.

11. According to him, the Chancellor would be taking a call in the matter after the report is forwarded to him by the Government in terms of relevant provision of the Anna University Act, 1978.

12. Heard Shri. N.Vijayaraghavan the learned counsel for the petitioner, Mr.R.Shankara Narayanan, learned Additional Solicitor General of India for the first respondent, Mr.R.Shanmugha Sundaram learned Advocate General for the fourth respondent and Mr.M.Vijayakumar, learned Standing Counsel for the fifth respondent University,

13. The scope of consideration of this Court in view of the above factual narrative is restricted to the aspect as to whether the petitioner, in law is entitled to be furnished with a copy of the inquiry report dated 28.06.2021 or not? As a matter of compliance with one of the fundamental legal principles of natural justice 'No one should be condemned unheard', the 11th respondent ought to have conceded to the request of the petitioner by furnishing a copy of the inquiry report. Compliance with the basic principles of natural justice is synonymous with fairness and justness. But

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for some reason, the fourth respondent representing the State Government appeared to have developed cold feet conveying its outlandish stand in the matter that furnishing of the enquiry report would herald a wrong precedent. On the other hand, conversely refusing to furnish the inquiry report in the circumstances of the case is an ingenious attempt to rewrite the law on the subject matter, opposed to the established constitutional values. This Court is therefore felt impelled to refer to a few decisions, of the Hon'ble Supreme Court of India in order to dispell any misconception on the said legal aspect.

14. Beginning with Constitution Bench of the Hon'ble Supreme Court in the matter of ***Managing Director, ECIL, Hyderabad and others Vs. B.Karunakar and Others*** reported in ***(1993) 4 SCC 727,*** few other pointed case laws are referred to hereunder in order to enlighten the Government on the most obvious and discernible law of the land. The Constitution Bench has held in no certain terms that the right to receive the report is considered as the essential part of reasonable opportunity to be extended to the person affected by the report, refusal to furnish report amounted to denial of the right to defend himself and prove his innocence in the disciplinary proceedings. The Hon'ble Supreme Court has held that even if such right is not explicitly stated in any regulations or statute, that

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right being a fundamental and essential part of the natural justice, must be read into every regulation or rules. The Hon'ble Supreme Court has subsequently rendered several decisions following the well laid down cast iron legal principles on the subject.

15. With the view to open their eyes to the sacrosanct constitutional mandate, observations and ruling of the Hon'ble Supreme Court are extracted hereunder. The very bone of contention has been dealt with by the Constitution Bench in paragraph 2 as under:

> *"**2.** The basic question of law which arises in these matters is whether the report of the enquiry officer/authority who/which is appointed by the disciplinary authority to hold an inquiry into the charges against the delinquent employee, is required to be furnished to the employee to enable him to make proper 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. This question in turn gives rise to the following incidental questions:*
>
> *(i) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?*
>
> *(ii) Whether the report of the enquiry officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?*

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

16. After framing the above questions that touch upon the central theme of consideration of this Court, the Hon'ble Supreme Court referred to various decisions in Paragraphs 9, 10, 12, 16 and 19, which are extracted as follows:

*"**9.** In Avtar Singh, Police Constable v. Inspector General of Police, Punjab [1968 SLR 131 (SC)] admittedly the findings of the enquiry officer were not communicated to the delinquent employee and he was only orally told that it was proposed to dismiss him. The Court in this context held that every public servant is entitled to have the whole of the matter brought to his notice before he was asked to show cause why particular punishment should not be meted out to him. The Court has explained what it meant by "the whole of the matter" by stating that it is the findings on the charges against him which should be made known to him.*

*1**0.** In State of Gujarat v. R.G. Teredesai [(1969) 2 SCC 128 : (1970) 1 SCR 251] this Court held that the requirement of a reasonable opportunity would not be satisfied unless the entire report of the enquiry officer including his views in the matter of punishment were disclosed to the delinquent public servant. The enquiry officer is under no obligation or duty to make any recommendations in the matter of punishment and his function merely is to conduct the inquiry in accordance with law and to submit the record along with his findings. But if he has also made recommendations in the matter of*

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punishment "that is likely to affect the mind of the punishing authority with regard to penalty or punishment to be imposed" it must be disclosed to the delinquent officer. Since "such recommendations form part of the record and constitute appropriate material for consideration of the Government it would be essential that that material should not be withheld from him so that he could, while showing cause against the proposed punishment, make a proper representation. The entire object of supplying a copy of the report of the enquiry officer is to enable the delinquent officer to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved, the punishment proposed to be inflicted is unduly severe." (SCC pp. 130-31)

12.*In Uttar Pradesh Government v. Sabir Hussain [(1975) 4 SCC 703 : 1975 SCC (L&S) 401 : 1975 Supp SCR 354] it was held that in the absence of furnishing the copy of the report of the enquiry officer, the plaintiff had been denied a reasonable opportunity of showing cause against his removal. It was also held that although Section 240(3) of the GOI Act did not cover a case of "removal", it did not mean that the protection given by the said section did not cover the case of "removal". From the constitutional standpoint "removal" and "dismissal" stand on the same footing except as to future employment. In the context of Section 240(3), removal and dismissal are synonymous terms — the former being only species of the latter. The broad test of "reasonable opportunity" is whether in the given case the show-cause notice issued to the delinquent servant contained or was accompanied by so much information as was necessary to enable him to clear himself of the guilt, if possible, even*

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at that stage or in the alternative to show that the penalty proposed was much too harsh and disproportionate to the nature of the charge established against him.

16.*In Union of India v.E. Bashyan [(1988) 2 SCC 196 : 1988 SCC (L&S) 531 : (1988) 7 ATC 285 : (1988) 3 SCR 209] the question squarely arose before a Bench of two learned Judges of this Court as to whether the failure to supply a copy of the report of the enquiry officer to the delinquent employee before the disciplinary authority makes up its mind and records the finding of guilt, would constitute violation of Article 311(2) of the Constitution and also of the principles of natural justice. It was opined that in the event of failure to furnish the report of the enquiry officer, the delinquent employee is deprived of crucial and critical material which is taken into account by the real authority which holds him guilty, viz., the disciplinary authority. According to the Court, it is the real authority because the enquiry officer does no more than act as a delegate and furnishes the relevant material including his own assessment regarding the guilt, to assist the disciplinary authority who alone records the effective finding. The non-supply of the copy of the report would, therefore, constitute violation of the principles of natural justice and accordingly will be tantamount to denial of reasonable opportunity within the meaning of Article 311(2) of the Constitution. It was observed that there could be glaring errors and omissions in the report or it may have been based on no evidence or rendered in disregard of or by overlooking evidence. If the report is not made available to the delinquent employee, this crucial material which enters into the consideration of the disciplinary authority never comes to be known to the delinquent and he gets no opportunity to point out such errors and*

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omissions and to disabuse the mind of the disciplinary authority before he is held guilty. The Court then specifically pointed out that serving a copy of the enquiry report on the delinquent employee to enable him to point out anomaly, if any, before finding of guilt is recorded by the disciplinary authority, is altogether a different matter from serving a second show-cause notice against the penalty to be imposed which has been dispensed with by virtue of the amendment of Article 311(2) by the Forty-second Amendment of the Constitution. The Court then found that the said point required consideration by a larger Bench and referred the matter to the Hon'ble the Chief Justice for placing it before a larger Bench.

19.*In Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] the question squarely fell for consideration before a Bench of three learned Judges of this Court, viz., that although on account of the Forty-second Amendment of the Constitution, it was no longer necessary to issue a notice to the delinquent employee to show cause against the punishment proposed and, therefore, to furnish a copy of the enquiry officer's report along with the notice to make representation against the penalty, whether it was still necessary to furnish a copy of the report to him to enable him to make representation against the findings recorded against him in the report before the disciplinary authority took its own decision with regard to the guilt or otherwise of the employee by taking into consideration the said report. The Court held that whenever the enquiry officer is other than the disciplinary authority and the report of the enquiry officer holds the employee guilty of all or any of the charges with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a*

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representation to the disciplinary authority against it and the non-furnishing of the report amounts to a violation of the rules of natural justice. However, after taking this view, the Court directed that the law laid down there shall have prospective application and the punishment which is already imposed shall not be open to challenge on that ground. Unfortunately, the Court by mistake allowed all the appeals which were before it and thus set aside the disciplinary action in every case, by failing to notice that the actions in those cases were prior to the said decision. This anomaly was noticed at a later stage but before the final order could be reviewed and rectified, the present reference was already made, as stated above, by a Bench of three learned Judges. The anomaly has thus lent another dimension to the question to be resolved in the present case."

17. After adverting to the above decisions, the Hon'ble Supreme Court has rendered elaborate findings on the issue on hand in Paragraphs 25 to 29, which are extracted hereunder:

*"**25.** While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right*

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exercisable at the second stage which was taken away by the Forty-second Amendment.

26. *The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the*

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same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

27. *It will thus be seen that where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.*

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***28.** The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of*

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considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

***29.** Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a 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."*

18. Pursuant to the above findings, the final conclusion and the ruling of the Court are found in Paragraphs 30 and 31, which are extracted hereunder:

*"**30.** Hence the incidental questions raised above may be answered as follows:*

[i] Since the denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural

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

[ii] The relevant portion of Article 311(2) of the Constitution is as follows:

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."

Thus the article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The article, however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all-India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded and when the enquiry officer is not the disciplinary authority the delinquent employee will have the right to receive the enquiry officer's report notwithstanding the nature of the punishment.

[iii] Since it is the right of the employee to have the report to

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defend himself effectively and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

[iv] In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.......

***31.** 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*

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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......"

19. In the same decision, one of the learned judges while broadly agreeing with the ruling of the Court, has added his own perspective on the phrase what is "reasonable opportunity of being heard" in paragraphs 57 and 61 to 63 as under:

***"57.** The findings or recommended punishment by the enquiry officer are likely to affect the mind of the disciplinary authority in his concluding the guilt or penalty to be imposed. The delinquent is, therefore, entitled to meet the reasoning, controvert the conclusions reached by the enquiry officer or is entitled to explain the effect of the evidence recorded. Unless the copy of the report is supplied to him, he would be in the dark to know the findings, the reasons in support thereof or nature of the recommendation on penalty. He would point out all the factual or legal errors committed by the enquiry officer. He may also persuade the disciplinary authority that the finding is based on no evidence or the relevant material evidence was not considered or overlooked by the enquiry officer in coming to the conclusions, with a view to persuade the disciplinary authority to disagree with the enquiry officer and to consider his innocence of the charge, or even that the guilt as to the misconduct has not been*

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established on the evidence on records or to disabuse the initial impression formed in the minds of the disciplinary authority on consideration of the enquiry report. Even if the disciplinary authority comes to the conclusion that the charge or charges is/are proved, the case may not warrant imposition of any penalty. He may plead mitigating or extenuating circumstances to impose no punishment or a lesser punishment. For this purpose the delinquent needs reasonable opportunity or fair play in action. The supply of the copy of the report is neither an empty formality, nor a ritual, but aims to digress the direction of the disciplinary authority from his derivative conclusions from the report to the palliative path of fair consideration. The denial of the supply of the copy, therefore, causes to the delinquent a grave prejudice and avoidable injustice which cannot be cured or mitigated in appeal or at a challenge under Article 226 of the Constitution or Section 19 of the Tribunal Act or other relevant provisions. Ex post facto opportunity does not efface the past impression formed by the disciplinary authority against the delinquent, however, professedly to be fair to the delinquent. The lurking suspicion always lingers in the mind of the delinquent that the disciplinary authority was not objective and he was treated unfairly. To alleviate such an impression and to prevent injustice or miscarriage of justice at the threshold, the disciplinary authority should supply the copy of the report, consider objectively the records, the evidence, the report and the explanation offered by the delinquent and make up his mind on proof of the charge or the nature of the penalty. The supply of the copy of the report is, thus, a sine qua non for a valid, fair, just and proper procedure to defend the delinquent himself effectively and efficaciously. The denial

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thereof is not only offending Article 311(2) but also violates Articles 14 and 21 of the Constitution.

61. *It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offends Articles 14 and 21. It is well-settled law that the principles of natural justice are integral part of Article 14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post-mortem certificate with putrefying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Articles 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice. The contention on behalf of the Government/management that the report is not evidence adduced during such inquiry envisaged under proviso to Article 311(2) is also devoid of substance. It is settled law that the Evidence Act has no application to the inquiry conducted during the disciplinary proceedings. The evidence adduced is not in strict conformity with the Indian Evidence Act, though the essential principles of fair play envisaged in the Evidence Act are applicable. What was meant by 'evidence' in the proviso to Article 311(2) is the totality of the material collected during the inquiry including the report of the enquiry officer forming part of that material. Therefore, when reliance is sought to be placed by the disciplinary authority, on the report of the enquiry officer for proof of the charge or for imposition of the penalty, then it is incumbent that the copy thereof should be supplied before reaching any conclusion either on proof of*

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the charge or the nature of the penalty to be imposed on the proved charge or on both.

62. *Shri P.P. Rao obviously realising this effect, contended that the enquiry officer being a delegate of the disciplinary authority is not bound by the delegatee's recommendations and it is not a material unless it is used by the disciplinary authority. Therefore, the need for its supply does not arise and the principles of natural justice need not be extended to that stage as the officer/workman had opportunity at the inquiry. In support thereof he placed strong reliance on Suresh Koshy George v. University of Kerala [(1969) 1 SCR 317 : AIR 1969 SC 198] ; Shadi Lal Gupta v. State of Punjab [(1973) 1 SCC 680 : 1973 SCC (L&S) 293 : (1973) 3 SCR 637] ; Hira Nath Misra v. Principal, Rajendra Medical College, Ranchi [(1973) 1 SCC 805 : AIR 1973 SC 1260] ; Satyavir Singh v. Union of India [(1985) 4 SCC 252 : 1986 SCC (L&S) 1 : AIR 1986 SC 555] ; Secretary, Central Board of Excise & Customs v. K.S. Mahalingam [(1986) 3 SCC 35 : 1986 SCC (L&S) 374] and Union of India v. Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] . I am unable to agree with his contentions. Doubtless that the enquiry officer is a delegate of the disciplinary authority, he conducts the inquiry into the misconduct and submits his report, but his findings or conclusions on the proof of charges and his recommendations on the penalty would create formidable impressions almost to be believed and acceptable unless they are controverted vehemently by the delinquent officer. At this stage non-supply of the copy of the report to the delinquent would cause him grave prejudice. S.K. George case [(1969) 1 SCR 317 : AIR 1969 SC 198] renders no assistance.*

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It is only an inquiry against malpractice at an examination conducted by the University under executive instruction. Therein the students were given an opportunity of hearing and they were supplied with all the material, the foundation for the report. The observations of the Bench of two Judges with regard to the theory of two stages in the Inquiry under Article 311 also bears little importance for the foregoing consideration in this case. It is already seen that this Court held that the inquiry from the stage of charge-sheet till the stage of punishment is a continuous one and cannot be split into two. The reliance in Keshav Mills Co. Ltd. v. Union of India [(1973) 1 SCC 380 : (1973) 3 SCR 22] is also of no avail. Therein it was pointed out that under Section 18-A of the I.D.R. Act there was no scope of enquiry at two stages and the omission to supply enquiry report, before taking the action, did not vitiate the ultimate decision taken. In Shadi Lal case [(1973) 1 SCC 680 : 1973 SCC (L&S) 293 : (1973) 3 SCR 637] Rule 8 of the Punjab Civil Service (Punishment and Appeal) Rules did not provide for the supply of copy of the report of an inquiry conducted by the fact finding authority before inquiry. It was held that the delinquent officer was supplied with all the materials and was given opportunity to make representation and the same was considered. The report did not indicate anything in addition to what was already supplied to him. Under those circumstances it was held that the principles of natural justice cannot be put into an iron cast or a strait-jacket formula. Each case has to be considered and the principles applied in the light of the facts in each case. The effect of the violation of the principles of natural justice on the facts of the case on hand needs to be considered and visualised. The effect

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of Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] ratio was considered by my brother Sawant, J. and it needs no reiteration. The reliance on S.K. George case [(1969) 1 SCR 317 : AIR 1969 SC 198] in Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] ratio renders no assistance in the light of the above discussion. Since Mahalingam case [(1986) 3 SCC 35 : 1986 SCC (L&S) 374] which was after the Forty-second Amendment Act, the need to supply second show-cause notice was dispensed with, regarding punishment and therefore, that ratio renders no assistance to the case. Hira Nath Misra case [(1973) 1 SCC 805 : AIR 1973 SC 1260] also is of no avail since the inquiry was conducted relating to misbehaviour with the girl students by the erring boys. The security of the girls was of paramount consideration and therefore, the disclosure of the names of the girl students given in the report or their evidence would jeopardise their safety and so was withheld. Accordingly this Court on the fact situation upheld the action of the Medical College. Satyavir Singh [(1985) 4 SCC 252 : 1986 SCC (L&S) 1 : AIR 1986 SC 555] ratio also is of no assistance as the action was taken under proviso to Article 311(2) and Rule 199 of the CCA Rules. The inquiry into insubordination by police force was dispensed with as the offending acts of the police force would generate deleterious effect on the discipline of the service. Asthana case [(1988) 3 SCC 600 : 1988 SCC (L&S) 869] was considered by my brother Sawant, J. in which the report was not supplied and it was upheld. It should, thus be concluded that the supply of the copy of the enquiry report is an integral part of the penultimate stage of the inquiry before the disciplinary authority considers the material

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and the report on the proof of the charge and the nature of the punishment to be imposed. Non-compliance is denial of reasonable opportunity, violating Article 311(2) and unfair, unjust and illegal procedure offending Articles 14 and 21 of the Constitution and the principles of natural justice.

63. *The emerging effect of our holding that the delinquent is entitled to the supply of the copy of the report would generate yearning for hearing before deciding on proof of charge or penalty which Forty-second Amendment Act had advisedly avoided. So while interpreting Article 311(2) or relevant rule the court/tribunal should make no attempt to bring on the rail by back track the opportunity of hearing as was portended by the Gujarat High Court. The attempt must be nailed squarely. Prior to the Forty-second Amendment Act the delinquent had no right of hearing before disciplinary authority either on proof of charge or penalty. So after Forty-second Amendment Act it would not be put on higher pedestal. The Gujarat High Court's decision is, therefore, not good law. However, the disciplinary authority has an objective duty and adjudicatory responsibility to consider and impose proper penalty consistent with the magnitude or the gravity of the misconduct. The statute or statutory rules gave graded power and authority to the disciplinary authority to impose either of the penalties enumerated in the relevant provisions. It is not necessarily the maximum or the minimum. Based on the facts, circumstances, the nature of imputation, the gravity of misconduct, the indelible effect or impact on the discipline or morale of the employees, the previous record or conduct of the delinquent and the severity to which the delinquent will be subjected to, may be some of the factors to be considered.*

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They cannot be eulogised but could be visualised. Each case must be considered in the light of its own scenario. Therefore, a duty and responsibility has been cast on the disciplinary authority to weigh the pros and cons, consider the case and impose appropriate punishment. In a given case if the penalty was proved to be disproportionate or there is no case even to find the charges proved or the charges are based on no evidence, that would be for the court/the tribunal to consider on merits, not as court of appeal, but within its parameters of supervisory jurisdiction and to give appropriate relief. But this would not be a ground to extend hearing at the stage of consideration by the disciplinary authority either on proof of the charge or on imposition of the penalty. I respectfully agree with my brother Sawant, J. in other respects in the draft judgment proposed by him."

20. The learned Judge has extensively dealt with the concept "what is reasonable opportunity" and why it is to be mandatorily followed. The learned Judge has succinctly held that furnishing of Inquiry Report before the Disciplinary Authority takes a decision on the report is an essential part of the complying with the principles of natural justice and such principles have to be read as integral part of Constitution of India.

21. Following the Constitution Bench judgement, a two judge Bench of the Supreme Court in its decision in ***Punjab National Bank and Others***

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Vs. Kunj Behari Misra reported in ***(1998) 7 SCC 84*** has ruled as under in Paragraphs 17 to 19:

> ***"17.*** *These observations are clearly in tune with the observations in Bimal Kumar Pandit case [AIR 1963 SC 1612 : (1964) 2 SCR 1 : (1963) 1 LLJ 295] quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an*

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opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

18. *Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in* Karunakar *case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] .*

19. *The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As*

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a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

22. The Hon'ble Supreme Court in the above decision has categorically affirmed the legal principle that it will be most unfair and iniquitous that if the Disciplinary Authority is to take a decision on the imposition of penalty without obtaining the objections to the findings of the Inquiry Officer. Although in this case the findings of the Inquiry Officer is in favour of delinquent officer, but the essence of the ruling is that the right to represent against the inquiry report is held to be inalienable.

23. Subsequently in ***NTC (WBAB &O) Ltd., and Another Vs. Anjan K. Saha*** reported in ***(2004) 7 SCC 581,*** Hon'ble Supreme Court in paragraph 5 of the judgment has extracted the ruling of the Constitution

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Bench in ***Managing Director, ECIL, Hyderabad and others Vs. B.Karunakar and Others*** and has held as under:

> *"**11.** As a result of the discussion aforesaid, this appeal preferred by the employer is partly allowed. The impugned orders of the High Court to the extent they direct reinstatement in service of the respondent with full monetary dues are set aside. It is directed that in accordance with the legal position explained in the case of B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] (in paragraph 31 as quoted above), there would be a formal reinstatement of the employee for the limited purpose of enabling the employer to proceed with the enquiry from the stage of furnishing him with the copy of the enquiry report. The employer can place him under suspension for completing the enquiry. After conclusion of the enquiry in the manner as directed in the case of B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] if the employee is exonerated, the authority shall decide according to law how the intervening period from the date of his dismissal to the date of his reinstatement shall be treated and what consequential benefits should be granted. If on the contrary, the employee is found to be guilty, before taking final decision he should be heard on the proposed penalty in accordance with clause 14(4)(c) of the Model Standing Orders on the quantum of punishment.*

24. Thereafter in ***State of Uttaranchal and Others Vs. Kharak Singh*** reported in ***(2008) 8 SCC 236***, the Hon'ble Supreme Court has had an occasion to deal with the issue and the Court has once again referred to Constitution Bench decision rendered in ***Managing Director, ECIL,***

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Hyderabad and others Vs. B.Karunakar and Others and has finally formulated the legal principles that would emerge from the earlier legal precedents on the subject matter as under:

> *"**15.** From the above decisions, the following principles would emerge:*
>
> *(i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.*
>
> *(ii) If an officer is a witness to any of the incidents which is the subject-matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the enquiry officer. If the said position becomes known after the appointment of the enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.*
>
> *(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.*
>
> *(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any."*

25. Hon'ble Supreme Court once again in ***Punjab National Bank and Others Vs. K.K.Verma*** reported in ***(2010) 13 SCC 494*** has referred the

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succinct observation of the Constitution Bench decision in ***Managing Director, ECIL, Hyderabad and others Vs. B.Karunakar and Others*** in paragraph 31 and ruled in Paragraph 32. According to Hon'ble Supreme Court, in this case the right to represent against the findings in the report is not disturbed by the 42nd amendment, but denial thereof will make the final order vulnerable. Paragraphs 31 and 32 are extracted hereunder:

> *"**31.** In Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , another Constitution Bench has referred to Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672] in para 13 and then explained the legal position in this behalf in para 25 as follows : (Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , SCC pp. 753-54, para 25)*
> *"25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz. before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment."*

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> ***32.*** *Thus the right to represent against the findings in the enquiry report to prove one's innocence is distinct from the right to represent against the proposed penalty. It is only the second right to represent against the proposed penalty which is taken away by the 42nd Amendment. The right to represent against the findings in the report is not disturbed in any way. In fact, any denial thereof will make the final order vulnerable."*

26. In ***Nisha Priya Bhatia Vs. Ajit Seth and Others*** reported in ***(2016) 12 SCC 451*** wherein a senior Government Officer was proceeded against on the basis of a sexual complaint against him. While the issue of non-supply of copy of the inquiry report based on the complaint was raised, the Union Government claimed privilege under Sections 123 and 124 of the Evidence Act. The Supreme Court repelled the privilege claim and held that the Government Officers were entitled to the inquiry report. The operative portion of the observation and ruling of the Supreme Court in Paragraphs 12 and 13 are extracted hereunder:

> ***"12.*** *We find it very odd that in a matter of an enquiry in respect of an allegation of sexual harassment, the Union of India should claim privilege under Sections 123 and 124 of the Evidence Act. The contents of reports alleging sexual harassment can hardly relate to affairs of State or anything concerning national security. In any event, absolutely nothing has been shown to us to warrant withholding the reports and the documents from the appellant in*

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relation to the enquiry of allegations of sexual harassment made by the appellant against Sunil Uke and Ashok Chaturvedi.

13. The report relating to allegations of sexual harassment made by the appellant against Sunil Uke is not the subject-matter of any dispute or controversy before us. However, since that report has also been filed in this Court in a sealed cover, we did go through it and find nothing in the report that would require it to be withheld from the appellant on any ground whatsoever. We, accordingly, dispose of this appeal by holding that the appellant is entitled to the reports in respect of the allegations made by her of sexual harassment by Sunil Uke and Ashok Chaturvedi and that none of the respondents have committed any contempt of court. In any case Ashok Chaturvedi has since passed away."

27. Lastly, it is relevant to extract paragraphs 24 and 25 and the conclusion in Paragraph 31 in ***Himachal Pradesh State Electricity Board Limited Vs. Mahesh Dahiya*** reported in ***(2017) 1 SCC 768*** as under:

24. *In the above case the issue was as to whether non-supply of the copy of advice of UPSC to the delinquent officer at pre-decision stage violates the principle of natural justice. This Court placed reliance on the Constitution Bench judgment in ECIL v. B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] and laid down the following in para 21: (R.P. Singh case [Union of India v. R.P. Singh, (2014) 7 SCC 340 : (2014) 2 SCC (L&S) 494] , SCC p. 349)*

"21. At this juncture, we would like to give our reasons for our respectful concurrence with S.K. Kapoor [Union of

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India v. S.K. Kapoor, (2011) 4 SCC 589 : (2011) 1 SCC (L&S) 725] . There is no cavil over the proposition that the language engrafted in Article 320(3)(c) does not make the said article mandatory. As we find, in T.V. Patel case [Union of India v. T.V. Patel, (2007) 4 SCC 785 : (2007) 2 SCC (L&S) 98] , the Court has based its finding on the language employed in Rule 32 of the Rules. It is not in dispute that the said Rule from the very inception is a part of the 1965 Rules. With the efflux of time, there has been a change of perception as regards the applicability of the principles of natural justice. An enquiry report in a disciplinary proceeding is required to be furnished to the delinquent employee so that he can make an adequate representation explaining his own stand/stance. That is precisely what has been laid down in B. Karunakar case [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] . We may reproduce the relevant passage with profit: (B. Karunakar case [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] , SCC p. 756, para 29)

'29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry

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officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

There can be no dispute to the above proposition.

*"**25.** The Constitution Bench in ECIL v. B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] after elaborately considering the principle of natural justice in the context of the disciplinary inquiry laid down the following in paras 29, 30(iv) and (v): (SCC pp. 756-58)*

"29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a 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.

30. ... (iv) In the view that we have taken viz. that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd.

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Ramzan case [Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588 : 1991 SCC (L&S) 612] should apply to employees in all establishments whether Government or non-government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

(v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been

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> *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."*

31. *Both the learned Single Judge and the Division Bench have heavily relied on the fact that before forwarding the copy of the report by the letter dated 2-4-2008 the disciplinary authority-cum-whole-time members have already formed an opinion on 25-2-2008 to punish the writ petitioner with major penalty which is a clear violation of the principles of natural justice. We are of the view that before making opinion with regard to punishment which is to be imposed on a delinquent, the delinquent has to be given an opportunity to submit the representation/reply on the enquiry report which finds a charge proved against the delinquent. The opinion formed by the disciplinary authority-cum-whole-time members on 25-2-2008 was formed without there being benefit of comments of the writ petitioner on the enquiry report. The writ petitioner in his representation to the enquiry report is entitled to point out any defect in the procedure, a defect of*

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substantial nature in appreciation of evidence, any misleading of evidence both oral or documentary. In his representation any inputs and explanation given by the delinquent are also entitled to be considered by the disciplinary authority before it embarks with further proceedings as per statutory rules. We are, thus, of the view that there was violation of principle of natural justice at the level of disciplinary authority when opinion was formed to punish the writ petitioner with dismissal without forwarding the enquiry report to the delinquent and before obtaining his comments on the enquiry report. We are, thus, of the view that the order of the High Court setting aside the punishment order as well as the appellate order has to be maintained."

28. The above case is also one of the instances wherein the Hon'ble Supreme Court followed its landmark ruling in ***Managing Director, ECIL, Hyderabad and others Vs. B.Karunakar and Others*** and held that the opinion formed to punish a person without forwarding a copy of the inquriy report and obtaining his comments on the report amounted to violation of principles of natural justice. From the conjoined reading of the case laws, the Courts have consistently ruled that there cannot be any slightest departure from complying with the principles of natural justice, namely furnishing of copy of the inquiry Report before the disciplinary authority forms an opinion on the inquiry Report. Such mandate in the opinion of this Court is the sublimest hallmark of fair play and good

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conscience in action consistent with the constitutional imperatives.

29. Now coming to the objection of the learned Advocate General that there is no explicit requirement in the Act, for furnishing of the inquiry report to the petitioner, a specific reference needed to be drawn to the relevant provisions of the Act empowering the Government to appointment an Inquiry Officer for inquiring into any allegation against Vice Chancellor of the University. The Government vide the impugned G.O has appointed the Inquiry Officer, a retired Hon'ble Judge of this Court in terms of Section 11(4A) and (4B) of the Anna University Act, 1978, which read as under:

> *"(4-A) The Vice-Chancellor shall not be removed from his office except by an order of the Chancellor passed on the ground of wilful omission or refusal to carry out the provisions of this Act or for abuse of the powers vested in him and on the advice tendered by the Government on consideration of the report of any inquiry ordered by them under sub-section (4-B)"*
>
> *"(4-B) for the purposes of holding an inquiry under section (4-A), the Government shall appoint a person who is or has been a judge of the High Court or who is or has been an officer of the Government not below the rank of Chief Secretary to Government. The inquiry authority shall hold the inquiry after giving an opportunity to make representation by the Vice-chancellor and shall submit a report to the Government on the action to be taken including penalty, if any to be imposed and the Government shall on consideration of the report advise the Chancellor. The Chancellor*

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shall Act in accordance with such advice, as far as maybe, in any case within three months."

30. In terms of sub-section (4B) of Section 11, after the completion of inquiry, the report shall be submitted to the Government on the action to be taken, including penalty, if any, to be imposed and the Government shall, on consideration of the report, advice the Chancellor. The section further reads that the Chancellor "shall" act in accordance with such advice as far as may be. What flows from the language of the above provision is the Government would have to take action on the report, including recommendation of penalty, if any to be imposed. On taking a decision the Government shall thereafter shall advice the Chancellor. If the Government stand were to be accepted and applied, the same would amount to judicial imprimaturs for its unconstitutional action. In effect, the Government claim right to take a furtive action on the report behind the back of the petitioner, notwithstanding certain adverse findings by the learned Inquiry Officer against him. When the provision uses the expression, Chancellor 'shall' act in accordance with such advice, the mandate of the law is that the inquiry report needed to be furnished and the objection if any from the petitioner to be obtained before accepting the finding of the learned Inquiry Officer. Although the decision of the Chancellor is final, nonetheless the advice by

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the Government would certainly have far reaching and profound influence on the ultimate decision by the Chancellor.

31. The stand of the Government that there is no express provision in the Act mandating furnishing of enquiry report is a sordid reflection of lack of legal awareness as to the mandate of the law of the land in terms of Article 141 of the Constitution of India. When the Section is very clear that the Chancellor "shall" act in accordance with such advice by the Government, before formulating the advice on the basis of the report, it is mandatory that the Government furnishes a copy of the inquiry report along with the enclosures to the petitioner and obtain his objections before it proceeds further in the matter. From the reading of the provision, it can be deduced without any pale of doubt that the Government is the prime and the principal decision maker and the advice emanating for such decision may have domineering influence on the eventual decision to be taken by the Chancellor. As a matter of fact, the Hon'ble Supreme Court has consistently held that the furnishing of inquiry report is integral part of compliance with Article 311 of the Constitution of India.

32. In any event, the requirement to comply with the fundamental principles of natural justice, namely that no one should be condemned unheard is not optional and even in the absence of specific provision, the

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principle must be read into every statute and regulations as held by the Courts. It is very strange that the Government for no valid reason has come up with a rigid stand against furnishing of report to the petitioner, unmindful of its legal implication that any decision taken at the end of the day would certainly became too vulnerable to judicial interference. The view of the Government is antithetical to the concept of reasonableness and fairness in action as embedded in Article 14 of the Constitution of India.

33. As a matter of fact, this Court does not see any rationale as to why the Government is shying away from furnishing a copy of the report to the petitioner when in every Departmental disciplinary proceedings, the procedure towards furnishing of inquiry report is being followed scrupulously, fearing judicial intervention. When such is the practice and the procedure adopted, the contrived stand of the Government in this case is

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unacceptable in law, presumably because the person involved is the former Vice Chancellor of the State University. The Constitution and the laws of the land are applicable across the spectrum regardless of the position the litigant holds.

34. To sum up, failure to furnish inquiry report at this stage would inexorably lead to travesty of justice, opposed to fair play and good conscience. Last but not the least, what adverse action could be taken presently after demitting of office by the petitioner in April 2021, is in the realm of speculation. Nevertheless, on the face of certain detrimental findings in the report, the petitioner explanation and his version must be part of the inquiry proceedings, as his vindication.

35. In view of the memo filed on behalf of the petitioner and also the fact that the petitioner has already demitted office on completion of tenure of three year period, various grounds raised in the writ petition are not specifically addressed herein.

36. For the above said reasons, this writ petition is disposed of, directing the fourth respondent herein to furnish a copy of the inquiry report dated 28.06.2021 submitted by the learned Inquiry Officer to the petitioner,

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along with the enclosures within a period of 15 days from the date of receipt of a copy of this order.

37. On such receipt of the inquiry report with enclosures, it is open to the petitioner to submit his objections/explanation within a period of four weeks thereafter.

38. In case the Government is still interested in pursuing the matter, any action culminating in the advice to the Chancellor in terms of Section 11(4B) of the Anna University Act, 1978, the same shall be done after receipt of the objections / explanation from the petitioner within the time stipulated by this Court, as above. No costs. Consequently, the connected miscellaneous petitions are closed.

11. 02.2022

Index:Yes/No
Internet:Yes

gpa/tri

To

1. The Joint Secretary
Department of Higher Education
Ministry of Education of Union of India
Sastri Bhavan
Dr.Rajendra Prasad Road
New Delhi

VERDICTUM.IN

2. The Chair Person
   All India Council for Technical Education (AICTE)
   Nelson Mandela Marg
   Vasant Kunj
   New Delhi – 110 070

3. The Chair Person
   University Grants Commission
   35 Feroz Shab Road
   New Delhi – 110 002

4. The Principal Secretary
   Higher Education Department of
   Government of Tamil Nadu
   Secretariat, Fort St. George
   Chennai – 600 009

5. The Registrar
   The Anna University
   Guindy, Chennai

6. The Chancellor
   Anna University
   Chennai

7. The Inquiry Officer
   (Allegations Against the Vice-Chancellor, Anna University)
   Podhigai Campus, P.S.Kumarasamy Rajaji Salai
   Greenways Road, Chennai – 600 128
   Represented through Member Secretary

VERDICTUM.IN

V.PARTHIBAN.J.,

gpa/tri

Order in
W.P.No.4607 of 2021 &
W.M.P.Nos.5244 and 5246 of 2021

11.02 .2022