

CIVIL APPEAL NO. 3233 OF 2005

.. APPELLANTS

.. RESPONDENTS

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“If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in rule 67 should be imposed on the officer, it shall, notwithstanding anything contained in sub-rule (4), make an order imposing such penalty.

Provided that where the Disciplinary Authority is of the opinion that the penalty to be imposed is any of the major penalties specified in clauses (e), (f), (g) and (h) of rule 67 and it is lower in rank to the Appointing Authority in respect of the category of officers to which the officer belongs, it shall submit to the Appointing Authority the records of the enquiry specified in clause (xxi) (b) of sub-rule (2), together with its recommendations regarding the penalty that may be imposed and the Appointing Authority shall make an order imposing such penalty as it considers in its opinion appropriate.”

In this case the respondent was punished with a major penalty was not heard. Therefore, the order of removal was set aside. We have been taken through the Rule 68(3)(iii) and we are in full agreement with the view taken by the High Court. When the Disciplinary Authority is not competent to pass a major penalty, that is, of the removal or other major penalty prescribed in the Rule, the papers are required to be placed by the Disciplinary Authority to the Appointing Authority who is competent to pass a major penalty. In the present case Disciplinary Authority was not

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competent to pass major penalty, therefore, matter was placed before the Appointing Authority & Appointing Authority passed major penalty of dismissal without hearing delinquent. Such order which is on the face of it is against the

principles of natural justice, cannot be countenanced as it is void ab initio. The proviso certainly says that the Appointing Authority, on the recommendation given by the Disciplinary Authority, shall be competent to pass the major penalty. Simply by recommending the matter and sending the papers to the Appointing Authority, does not mean that the incumbent who is going to be served with the major penalty is not required to be heard in the matter. It is now settled principle that where ever the Rule is silent the principles of natural justice shall be read in it. A hearing should be given to a person who is being punished with a major penalty. Therefore, the principle of natural justice has to be read in this Rule. A notice ought to have been issued to the delinquent by the Authority to whom papers were sent to show cause why the major penalty may not be imposed on

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him. It is true that the competent authority could pass the order of major penalty but not without hearing the incumbent. Therefore, in this context of the matter, we are of the opinion that the view taken by the Division Bench of the Calcutta High Court is correct and there is no ground for interference in this appeal.

Accordingly, the appeal is dismissed.

No order as to costs.

.....J.
(A.K. MATHUR)

.....J.
(P. SATHASIVAM)

NEW DELHI;
JULY 30, 2008.