REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 254 OF 2008

STATE OF U.P. & ORS. .APPELLANT(S)

VERSUS

SAROJ KUMAR SINHA ....RESPONDENT(S)

J U D G M E N T

SURINDER SINGH NIJJAR, J.

This appeal has been filed by the State of U.P. challenging the order passed by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No.46 (S/B) of 2005 whereby the High Court allowed the writ petition of the respondent by quashing and setting aside the order of his removal dated 24.12.2004 and further directing his reinstatement in service with all consequential benefits.

2. The respondent had been in the service of the appellant since 17.5.1971. During the period 6.1.2001 to 12.2.2001 and from 17.3.2001 to 28.4.2003 he was posted as Executive Engineer at Construction Division-I, Public Works Department (P.W.D.), Rai Barielly. While functioning

at Rai Barielly, he was served with the charge sheet dated 24.2.2001 under Rule 7 of the U.P. Government Servant (Discipline & Appeal) Rules, 1999 (hereinafter referred to as 1999 Rules) making serious allegations of misconduct against him.

3. The respondent having been initially selected through the Lok Sewa Ayog, U.P. was appointed as an Assistant Engineer in the Public Works Department on 17.5.1971 in a substantive capacity. In due course he was promoted as Executive Engineer.

4. We may notice here that the 1999 Rules have been promulgated by the Governor of U.P. in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. The Rules prescribe detailed procedure to be followed in matters of enforcing discipline and imposing penalties/punishments against government servants in U.P., in cases of proven misconduct. Rule 3 gives a list of minor and major penalties that may be imposed by the appointing authority on the government servants. Removal from service is a major penalty. Rule 4 provides that the government servant may be suspended in case an enquiry is contemplated against him. In the present case, the respondent was suspended on 5.2.2001 prior to the

issue of the charge sheet dated 24.02.2001. We presume it was in contemplation of the forthcoming disciplinary proceedings against him. Rule 7 prescribes in detail, the procedure and the manner in which an enquiry shall be conducted before imposing any major penalty on a government servant. Rule 7 sub rule (2) provides the facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge sheet. This charge sheet has to be approved by the disciplinary authority. Rule 7 sub rule (3) further provides that the charge(s) framed shall be so precise and clear as to give sufficient indication to the charged government servant of the facts and circumstances against him. It is mandatory that the proposed documentary evidence and the name of witnesses proposed to prove the charges together with any oral evidence(s) that may be recorded be mentioned in the charge sheet. Thereafter under Rule 7 sub rule (4) the government servant is given an opportunity to put in a written statement, of his defence, within a specified period of time which shall not be less than 15 days. The government servant is also required to indicate whether he desires to cross examine any witnesses mentioned in charge sheet. Thereafter he is to be informed

that in case he does not appear or file the written statement it will be presumed that he does not intend to furnish any defence. In such circumstances the enquiry shall proceed *ex parte*. Sub rule 5 of Rule 7 mandates that the copies of the documentary evidence mentioned in the charge sheet has to be served on the government servant along with the charge sheet. The aforesaid sub rule is as under:

> "(v) The charge-sheet, along with the copy of documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government servant personally or by registered post at the address mentioned in the official records in case the charge-sheet could not be served in aforesaid manner the charge-sheet shall be served by publication in a daily newspaper having wide circulation:
>
> Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charged Government servant shall be permitted to inspect the same before the Inquiry Officer."

5. A perusal of the aforesaid rule would clearly show that the disciplinary authority is duty bound to make available all relevant documents which are sought to be relied upon against the government servant in proof of the charges. It is only when the charge sheet together with documents is supplied that the government servant can be said to have

had an effective and reasonable opportunity to present his written statement of defence.

6. Keeping in view the mandate of the aforesaid sub rule the respondent made a written request to the appellant demanding copies of the documents relied upon in the charge sheet. This representation was dated 10.6.2001. In spite of the mandate of the 1999 Rules neither the disciplinary authority nor the enquiry officer made the documents available to the respondent rather a reminder was issued to him by the enquiry officer on 15.6.2001 to submit the reply to the charge sheet.

7. Apprehending that the inquiry officer may be biased respondent submitted a representation on 19/6/2001 to the Government for change of the inquiry officer. This request of the respondent was accepted by the Government by office memo dated 22.9.2001. It later transpired that the inquiry officer, Mr. I.D. Singhal, had already completed the inquiry report on 3.8.2001 whereas the new inquiry officer, G.S. Kahlon was appointed on 22.9.2001. The respondent only came to know about the existence of inquiry report dated 3.8.2001 in the month of April, 2003.

8. Being unaware of the inquiry report dated 3.8.2001 respondent made the representation dated 6.10.2001 to the

new inquiry officer, G.S. Kahlon praying for supply of the relevant documents numbering 19 to enable him to prepare an appropriate reply to the charge sheet and to prepare his defence. Since, no response was received from the inquiry officer the respondent sent a reminder dated 22.11.2001. The last reminder submitted by the respondent is dated 3.3.2002.

9. The respondent later came to learn that the inquiry officer had addressed a communication to the Government dated 8.4.2002 stating that the inquiry report dated 3.8.2001 submitted by the former inquiry officer, Mr. I.D. Singhal "seems to be correct" because the delinquent officer should be deemed to have accepted the charges levelled against him inasmuch as he had not submitted the reply/explanation to the charge sheet. Based on the inquiry report dated 8.4.2002, which merely reiterated the findings in the inquiry report dated 3.8.2001, respondent was served a show cause notice dated 29.4.2003.

10. At this stage the respondent challenged the issuance of the show cause notice in Civil Writ Petition No.937 of 2003. The respondent had sought quashing of the two inquiry reports as well as the show cause notice. He also made a prayer that a fresh inquiry be conducted by giving

appropriate opportunity to him to submit his defence. The aforesaid writ petition was disposed of with the following order:

> "We do not intend to interfere with the matter but would like to observe that we have not adjudicated the matter of the petitioner on merits nor we intend to observe that the case set up by the petitioner is correct on merit, therefore, it will be open to the petitioner to put his case before the authority concerned while submitted his reply to the Show Cause Notice. In case such a reply is given within a period of 15 days, the same shall be considered before passing any final orders in the matter."

11. The respondent furnished the certified copy of the aforesaid order to the appellant on 25.7.2003. In this communication respondent also mentioned that he would soon submit a detailed representation/reply in response to the show cause notice dated 29.4.2003. He accordingly submitted the representation on 6.8.2003 briefly touching upon the circumstances in which the aforesaid two inquiries were held. He pointed out that the aforesaid two inquiries had been held in patent violation of principles of natural justice, fairness and justice, as well as the basic requirements of law relating to departmental inquiry. The respondent reiterated his utter helplessness in making an effective reply to the show cause notice as he had not been supplied the relevant documents in spite of numerous

representations and reminders. He again made a plea for supply of documents.

12. Ultimately the respondent was served a copy of communication dated 19.11.2003 from the office of the Executive Engineer (Prantiya Khand), P.W.D. Rai Bareilly addressed to the Executive Engineer (Nirman Khand-I), P.W.D., Rai Bareilly directing supply of the copies of the relevant documents to the respondent. A perusal of this letter would clearly show that the documents were not available in the office of the Executive Engineer (Nirman Khand-I). The observations made by the Executive Engineer (Prantiya Khand) in his communication dated 19.11.2003 are as under:

> "Therefore, you are requested to collect the aforesaid three letters issued from the Government level and five letters issued from the level of Engineer-in-Chief level and two letters from your own level and as per the direction by the Government send the same to Sh. S.K. Sinha, Executive Engineer at his Lucknow address."

13. Inspite of this direction the documents were not supplied. The respondent therefore again made a representation to the inquiry officer on 30.11.2003 for supply of certified photocopies of the relevant documents.

14. It was not disputed before the High court nor is it disputed before us that the documents were not supplied to the respondent. In fact, in the counter affidavit filed before the High Court, in reply to the grievance made by the respondent in the writ petition, about non-supply of the documents, it has been stated as under:

> "Petitioner has requested for supply of certain documents to the enquiry officer regarding which it is stated that the petitioner has been informed that the documents pertains to the division in which petitioner has been posted as Executive Engineer. Therefore, it was not required to supply the same as the documents were in his custody and the petitioner has deliberately delayed the filing of reply. Therefore, Enquiry Officer has sent the enquiry report after the completion of enquiry to the Govt. on the basis of documents on 03.08.2001."

15. Thereafter the then Principal Secretary, PWD, Shri Chandra Pal addressed a communication on 16.4.2004 to the Secretary of Public Service Commission, U.P., Allahabad recommending and proposing the punishment of removal from service as well as recovery of the sum of Rs.1,29,600/- be inflicted on the respondent. Aggrieved by the recommendation the respondent addressed a representation to the Commission setting out the entire factual situation vide communication dated 30.5.2004.

16. Further more, the respondent again moved the Allahabad High Court by preferring Civil Writ Petition No.793 (SB) of 2004. In this writ petition respondent had made a prayer to restrain the appellant from taking any final decision with regard to the proposed removal of the respondent from service. In the aforesaid writ petition, the Division Bench passed an interim order on 17.6.2004 with the observations as under:

> "In the meantime, opposite parties no.1 and 2 are expected to ensure the compliance of the order passes by the Division Bench of this Court on 23.7.2003 as contained in Annexure No.6 of this writ petition. Further representation of the petitioner, if submitted in pursuance of the order passed by this Court on 23.7.2003, shall be considered before conclusion of the departmental inquiry and passing final order."

17. It is the claim of the respondent that despite the pre-emptory direction of the High Court in the aforesaid order appellant-Government passed the order of removal dated 24.12.2004 removing the respondent from service and directed recovery of Rs.1,29,600/- from him. Passing of the aforesaid order was brought to the notice of the High Court by the respondent, which by order dated 12.1.2005 directed that no recovery shall be made from the respondent pursuant to the order of removal.

18. Upon due consideration of the extensive pleadings of the parties, the Division Bench has recorded the following conclusions:

> "After hearing the rival submission of learned counsel for the parties as well as the averments made in the affidavits, we are of the view that the inquiry officer has not afforded opportunities to the petitioner insofar as he fails to supply the documents to the petitioner which he has relied while framing the charges and further the petitioner was not afforded opportunity to lead the evidence and also denied the opportunities to cross-examination of the person. The inquiry officer has also failed to prove the charges during the inquiry proceedings by the recording any evidence. Thus, the inquiry is vitiated and is violation of principle of natural justice."

19. With these observations the writ petition has been allowed. The appellant has been directed to reinstate the respondent with all consequential benefits. However, the State was granted liberty to conduct fresh inquiry in accordance with law and the principles of natural justice.

20. We have heard the learned counsel for the parties.

21. We have noticed at some length the sequence of events and the efforts made by the respondent to receive copies of the documents which were relevant for the preparation of his defence in the departmental inquiry. As noticed earlier all the requests made by the respondent fell on deaf ears. In

such circumstances, the conclusions recorded by the High Court were fully justified.

22. Copies of the documents which formed the foundation of the charge sheet against the respondents have been denied to the respondent on the lame excuse, as projected in the pleadings of the appellant, at different stages before the High Court as well as this Court, that the respondent, at the relevant time, was posted in the same division and the documents could have been received by him and the reply could have been given. According to the appellant all the concerned documents were with the Division in which the petitioner (respondent herein) was posted as Executive Engineer. In the counter-affidavit filed in the High Court it is specifically mentioned that the documents pertain to the same division in which the respondent had been posted as Executive Engineer and therefore he being in knowledge and custody of the said documents, there was no requirement for the said documents to be supplied to the respondent. The very same submission has been reiterated before us by the learned Counsel of the Appellants. In our opinion, the submission is without any basis as the respondent had been suspended on 5.2.2001. Even if the respondent had continued in the same department it would not have been

possible for him to take the custody of the documents as he would no longer be in charge of the office. Further more, it is evident from the letter dated 19.11.2003 that the documents had to be collected from different offices and made available to the respondent. This fact is so mentioned in the letter of the Executive Engineer. In such circumstances, we are unable to accept the submission of the learned counsel for the appellants that it was possible for the respondent to make an effective representation against the charge sheet.

23. At this stage it would be appropriate to notice the charges that had been framed against the respondent which are as under:

> "I. Work pertaining to Salon Jagat Pur Road, had been given to Sri Jitendra Mohan Bajpai, Contractor vide Tender No.5/AE-2 dated 10.06.1996 through 3054-PW Work Plan. The last payment of the Tender has been paid by the then Executive Engineer Sri Akash Deep Sonkar and accordingly payment of Rs.193047/- was to be paid vide cheque No.13/256064 dated 02.08.1996. Thereafter you have made this payment through No.142 dated 31.12.1998 to the amount of Rs.193047 through Cheque No.78/001355 dated 31.12.1998. At page 138 of the Cash Book Part-73, Entry No. illegible has been made. You have deliberately made aforesaid entry in order to cause loss to the Govt. and had made the payment twice through voucher No.142 for the amount 193047 dated 31.12.1998 and the amount of Rs.193047 has been changed to 134305. Therefore the payment of Rs.58742 which has already made

has been shown to be not paid in the aforesaid entry.

In this manner you have deliberately caused loss to the Government by the fraudulent act conspiring for the same and had recovered Rs.58742/- from the contractor through voucher No.141 dated 21.3.2000, reason for which has been mentioned that Rs.58742 has been deducted due to excess payment made for the work at Salon Jagat Pur Road through voucher No.142 dated 31.12.1998. Nowhere in voucher No.142 dated 31.12.1998 it is mentioned that due to what reason deduction has been made after the issuing of cheque regarding the amount to be paid which shows bad intention on your part. You have made wrong entries regarding deduction mention in the voucher amount which is proved to be violation of financial handbook Section-5(Part-1) para 4 D and 83. Voucher No.141 dated 31.03.2000 and entry to such effect proves that the Divisional Accounts Officer has issued the cheque of Rs.0185777/- regarding the aforesaid payment through cheque and the cheque for amount Rs.0185777/- has been passed by the Assistant Engineer. At the time of issuing cheque deduction of Rs.58742/- from the amount to be paid makes your conduct suspicious and you are found responsible for the misconduct in this regard. Therefore, you are found guilty of misconduct according to Para 3 U.P. Govt. Servant Conduct Rules 1956.

II. You had passed order for supply of mobile patcher 6 to M/s B.N. Traders, Karhal Mainpuri through letter Memo-2/Camp-72-99 dated 17.07.1999, M/s B.N. Traders, Karhal Mainpuri had submitted receipt No.149 regarding the aforesaid supply. The supply has been passed for the amount of Rs.129600/- by the Asstt. Engineer and had been passed by you for the amount of Rs.129600/- vide Cheque No.96/002075 dated 16.11.1999. The Cheque dated 16.11.1999 has been issued

to your name which has been provided for the payment to B.N. Traders to Bank draft. In the place of this cheque you had issued Cheque No.005/003492 dated 13.11.1999 for Rs.129600/- to M/s B.N. Traders and had to be encashed by them. It is clear from the documents that the original cheque dated 31.11.1999 has been cut and self has been inserted and the cheque has been encashed by you. In the counter filed of cheque book name of M/s B.N. Trader had been mentioned. Therefore, the cheque has been wrongly encashed by you after making fraud entry by self name and the amount has not been taken in cash book. Therefore, the forgery in this regard is proved. You have made bank drafts in favour of M/s B.N. Traders on 08.03.2000 for Rs.129600/- from State Bank of India, Rai Bareilly. In the application of form of the draft the name of M/s B.N. Traders is mentioned whereas the order regarding supply of the draft to M/s B.N. Traders, Karhal, Mainpuri has been made in favour of the firm. Therefore bank draft was to be sent on the address of Mainpuri. M/s B.N. Traders, Karhal, Mainpuri had informed Chief Engineer, Lucknow on 28.07.2000 that you have made payment at the address of firm in Mainpuri. In this regard the bank draft has been made in the name of M/s B.N. Traders and the draft amount has been received in the name of your relative and no payment as such has been made to M/s B.N. Traders. You had cut the cheque and had violated Para 77 of the financial handbook Section 6 and Para 19-22 of financial handbook Section 5, Part-I. Receiving of payment after cutting the name of firm from the cheque and entering our own name (self) shows that the payment had been received after committing fraud. Again in order to conceal this Act you had made draft

No.PL00008/392289 dated 08.03.2000 for Rs.129600/- from SBI, Rai Bareilly. The bank draft had been made for the address of Lucknow of the firm not of the address Karhal, Mainpuri so that the fraud can be committed and no payment as such has been made to the firm. The firm has alleged that you had received payment after committing fraud therefore, you are found guilty and misconduct regarding the misappropriation of amount of Rs.129600/- after committing fraud on the documents and violating the financial rules. You are also held guilty for mis-conduct according to para 3 U.P. Govt. Servant Conduct Rules 1956.

III. Case No.37/98 has been instituted for adjudication between M/s Indian Coal Suppliers vs. Govt. of U.P. The case has been decided on 05.01.2000 according to which demand for Rs.26, 00,000/- along with interest has been made by the concerned firm from the Department. The fact has been in your knowledge that the option of appeal in the aforesaid case has been rejected by the Govt. In such situation you had not prepared the defence regarding validity of the agreement during framing of issues in proper manner. The case has been dismissed only on the ground of deficient Court Fees. You have deliberately appointed Special Advocate without permission of Govt., had not paid Court Fees and had colluded with M/s Indian Cola Suppliers to cause loss of Rs.26,00,000/- to the Govt. by presenting weak case before the court in order to cause benefit to the contractor. The aforesaid Act is violation of para 9.01, 9.02 and 9.03 of financial handbook and para 3 of U.P. Govt. Servant Conduct Rules 1956."

24. A bare perusal of the aforesaid charges shows that the three charges were based on official documents/official communications. We have earlier noticed the relentless efforts made by the respondent to secure copies of the documents, which was sought to be relied upon, to prove the charges. These were denied by the department in flagrant disregard of the mandate of Rule 7 sub rule 5. Therefore the inquiry proceedings are clearly vitiated having been held in breach of the mandatory sub rule (5) of Rule 7 of the 1999 Rules.

25. The first inquiry report is vitiated also on the ground that the inquiry officers failed to fix any date for the appearance of the respondent to answer the charges. Rule 7(x) clearly provides as under:

> "(x) Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry *ex parte*. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government servant."

26. A bare perusal of the aforesaid sub-Rule shows that when the respondent had failed to submit the explanation to the charge sheet it was incumbent upon the inquiry officer to

fix a date for his appearance in the inquiry. It is only in a case when the Government servant despite notice of the date fixed failed to appear that the enquiry officer can proceed with the inquiry *ex parte*. Even in such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in order to establish the charges the department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge. Enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been

taken into consideration to conclude that the charges have been proved against the respondents.

27. Apart from the above by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.

28. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. In the case of *Shaughnessy v. United States, 345 US 206 (1953) (Jackson J)*, a judge of the United States Supreme Court has said "procedural fairness and regularity are of the

indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied."

29. The affect of non disclosure of relevant documents has been stated in *Judicial Review of Administrative Action* by De Smith, Woolf and Jowell, Fifth Edition, Pg.442 as follows:

> "If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence *ex parte* which is not fully disclosed, or holds *ex parte* inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked."

30. In our opinion the aforesaid maxim is fully applicable in the facts and circumstances of this case.

31. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the enquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against

the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of principles natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge sheet.

32. This Court in the case of *Kashinath Dikshita vs. Union of India, (1986) 3 SCC page* 229, had clearly stated the rationale for the rule requiring supply of copies of the documents, sought to be relied upon by the authorities to prove the charges levelled against a Government servant. In that case the enquiry proceedings had been challenged on the ground that non supply of the statements of the witnesses and copies of the documents had resulted in the breach of rules of natural justice. The appellant therein had requested for supply of the copies of the documents as well as the statements of the witnesses at a preliminary enquiry. The request made by the appellant was in terms turned down by the disciplinary authority. In considering the importance of access to documents in statements of witnesses to meet the charges in an effective manner this Court observed as follows:

> "When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question: "What is the harm in making available the material?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it."

33. On an examination of the facts in that case, the submission on the behalf of the authority that no prejudice had been caused to the appellant, was rejected, with the following observations:

> "Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements

> throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself."

34. We are of the considered opinion that the aforesaid observations are fully applicable in the facts and circumstances of this case. Non-disclosure of documents having a potential to cause prejudice to a government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the government servant.

35. The aforesaid proposition of law has been reiterated in the case of *Trilok Nath vs. Union of India* 1967 SLR 759 (SC) wherein it was held that non–supply of the documents amounted to denial of reasonable opportunity. It was held as follows:

> "Had he decided to do so, the document would have been useful to the appellant for cross-examining the witnesses who deposed against

> him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the FIR and the statements recorded at Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry."

36. The proposition of law that a government employee facing a department enquiry is entitled to all the relevant statement, documents and other materials to enable him to have a reasonable opportunity to defend himself in the department enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in the case of *State of Punjab vs. Bhagat Ram (1975) 1 SCC 155*:

> "The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.
>
> The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The

> government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.
>
> It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken."

37. We may also notice here that the counsel for the appellant sought to argue that respondent had even failed to give reply to the show cause notice, issued under Rule 9. The removal order, according to him, was therefore justified. We are unable to accept the aforesaid submission. The first enquiry report dated 3.8.2001, is clearly vitiated, for the reasons stated earlier. The second enquiry report can not legally be termed as an enquiry report as it is a reiteration of the earlier, enquiry report. Asking the respondent to give reply to the enquiry report without supply of the documents is to add insult to injury. In our opinion the appellants have deliberately misconstrued the directions issued by the High

Court in Writ Petition 937/2003. In terms of the aforesaid order the respondents was required to submit a reply to the charge sheet upon supply of the necessary document by the appellant. It is for this reason that the High Court subsequently while passing an interim order on 7.6.2004 in Writ Petition No. 793/2004 directed the appellant to ensure compliance of the order passed by the Division Bench on 23.7.2003. In our opinion the actions of the enquiry officers in preparing the reports ex-parte without supplying the relevant documents has resulted in miscarriage of justice to the respondent. The conclusion is irresistible that the respondent has been denied a reasonable opportunity to defend himself in the enquiry proceedings.

38. In our opinion, the appellants have miserably failed to give any reasonable explanation as to why the documents have not been supplied to the respondent. The Division Bench of the High Court, therefore, very appropriately set aside the order of removal.

39. Taking into consideration the facts and circumstances of this case we have no hesitation in coming to the conclusion that the respondent had been denied a reasonable opportunity to defend himself the inquiry. We,

therefore, have no reason to interfere with the judgment of the High Court.

40. Appeal is dismissed.

.....J
(V.S. SIRPURKAR)

.....J
(SURINDER SINGH NIJJAR)

NEW DELHI,
FEBRUARY 02, 2010.