submissions and well-researched arguments have significantly contributed to the just and proper adjudication of the issue raised in the aforesaid applications.

40. The applications warrant no indulgence of this Court, as no material irregularity has been found in the impugned summoning order. Accordingly, the present application, along with all connected applications, stands ***dismissed*** in the aforesaid terms, with liberty to the applicants to file fresh applications on merits at the appropriate stage, after compliance with Section 207 Cr.P.C. At that stage, the applicants will have the benefit of access to the entire case diary, enabling them to advance appropriate grounds for seeking quashing of the charge-sheet, if so advised.

41. The Registrar (Compliance) is hereby directed, through the Registrar General of this Court, to transmit a copy of this order forthwith to all the learned District Judges in the State. The District Judges shall, in turn, ensure that a copy of this order is circulated to all Judicial Officers within their respective judgeships. Additionally, a copy of this order shall be sent to the Director, Judicial Training and Research Institute (J.T.R.I.), Lucknow, Uttar Pradesh, for record and future reference.

(2025) 5 ILRA 1324
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 14.05.2025

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Writ-A No. 2717 of 2004

Jawahar Lal Gupta ...Petitioner

Versus

State of U.P. ...Respondent

Counsel for the Petitioner:
Vikas Singh, J.P. Tripathi

Counsel for the Respondent:
C.S.C.

A. Service Law – UP Government Servant (Discipline and Appeal) Rules, 1999 – Rules 3 & 7 – Disciplinary proceeding – Punishment – Censure – Principle of natural justice – Application – Allegation of submitting incorrect report was made – However, the respondent initiated proceeding after 17 years – No assertion in the Inquiry Report as to any date was fixed by Inquiry Officer, when the petitioner was called for personal hearing – Inquiry Officer has failed to examine any witness to prove photocopy of the documents – Effect – Held, strict adherence to the procedure prescribed under Rule 7 of Rules, 1999 is mandatory for imposing major penalty. The procedure as prescribed under Rule 7 is nothing but incorporation of principles of natural justice – Held further, the inquiry proceedings are vitiated for non-observance of procedure as prescribed under Rule 7 of Rules, 1999 as well as being in violation of principles of natural justice. (Para 20 and 57)

B. Service Law – UP Government Servant (Discipline and Appeal) Rules, 1999 – Rules 9 – Disciplinary proceeding – Punishment – Censure – Principle of natural justice – Non consideration of the representation – Effect – How can non-application of mind be reflected – Held, giving of reason for a decision is one of the fundamentals of good administration. It constitutes a safeguard against arbitrariness on the part of the decision-maker – Application of mind is only reflected by the reasons given in the judgment. An order supported by reasons ensures that the adjudicatory authority/court genuinely addressed itself to the arguments and evidence advanced

at the time of the hearing – Non-consideration of representation of the petitioner against the findings of the Inquiry Officer is in violation of sub-Rule 4 of Rule 9 of Rules, 1999 as well as also in violation of principles of natural justice. (Para 37, 39 and 57)

Writ petition allowed. (E-1)

List of Cases cited:

1. Mohd. Yunus Khan Vs St. of U.P.; (2010) 10 SCC 539

2. St. of Uttaranchal Vs Kharak Singh; 2008 (8) SCC 236

3. St. of U.P. & ors. Vs Saroj Kumar Sinha; 2010 (2) SCC 772

4. Writ Petition No. 1126 of 2011; Pragyesh Mishra Vs St. of U.P. & ors.

5. Ram Rekha Singh Vs St. of U.P. & ors.; 2014 (9) ADJ 425 (DB)

6. Mahesh Narain Gupta Vs St. of U.P. & ors.; 2011(5) ADJ 177

7. Mohd. Yunus Khan Vs St. of Uttar Pradesh & ors.; (2010) 10 SCC 539

8. St. of Uttaranchal Vs Kharak Singh; 2008 (8) SCC 236

9. St. of U.P. & ors. Vs Saroj Kumar Sinha; 2010 (2) SCC 772

10. Writ Petition No. 1126 of 2011; Pragyesh Mishra Vs St. of U.P. & ors. decided on 17.08.2012

11. Ram Rekha Singh Vs St. of U.P. & ors.; 2014 (9) ADJ 425 (DB)

12. Mahesh Narain Gupta Vs St. of U.P. & ors.; 2011(5) ADJ 177

13. Chairman-cum-Managing Director, Mahanadi Coalfields Limited Vs Rabindranath Choubey; reported in (2020) 18 SCC 71

14. Breen v. A.E.U. (1971) 2 QB 175

15. G. Vallikumari Vs Andhra Education Society & ors.; (2010) 2 SCC 497

16. Roop Singh Negi Vs Punjab National Bank; 2009 (3) SCC 570

17. St. of M.P. Vs Bani Singh & anr.; 1990 (Suppl) SCC 738

18. St. of Andhra Pradesh Vs N. Radhakishan; (1998) 4 SCC 154

19. P.V. Mahadevan Vs M.D., T.N. Housing Board; (2005) 6 SCC 636

20. UCO Bank & ors. Vs Rajendra Shankar Shukla; (2018) 14 SCC 92

(Delivered by Hon'ble Manish Kumar Nigam, J.)

1. This writ petition has been filed for issuance of writ, order or direction in the nature of certiorari quashing the impugned order dated 23.02.2004 (Annexure No. 1 to the writ petition.)

2. Brief facts of the case are that the petitioner was appointed as Supply Inspector on 16.05.1973. In the year 1984, the petitioner was posted as Supply Inspector at Kanpur. By the order dated 05.04.1999 passed by the Commissioner, Food & Civil Supplies, Uttar Pradesh-respondent no. 2, the petitioner was placed under suspension. The Regional Food Controller, Jhansi was appointed as Inquiry Officer by the order dated 05.04.1999. The Regional Food Controller, Jhansi issued a charge-sheet dated 21.01.2000 to the petitioner containing two charges. The petitioner was directed to submit its reply within two weeks from the date of receipt of the charge sheet and, in case, no reply was submitted by the petitioner within the time limit prescribed then, it will be deemed that petitioner has nothing to say in the matter. After receiving the charge-sheet, the petitioner wrote a letter to the Inquiry Officer on 06.04.2000 mentioning therein that the charge-sheet was received by the petitioner on 03.04.2000 and since matter is

17 years old, he will try to submit his reply within time frame or will request for further time. Thereafter, another letter dated 11.04.2000 was submitted by the petitioner to the Inquiry Officer requesting him to furnish documents mentioned in the letter dated 11.04.2000, so that, he may give effective reply to the charge-sheet. On 17.04.2000, the petitioner submitted another letter requesting for two weeks' further time to submit reply and has also requested that the documents mentioned in letter dated 11.04.2000 be provided to the petitioner. Again on 02.05.2000, the petitioner requested that the documents referred in letter dated 11.04.2000 be provided to the petitioner and as the time for submitting the reply is going to expire on 02.05.2000, he may be granted one month more time to submit his reply. By order dated 10.05.2000 passed by the Inquiry Officer, fifteen days' time was granted to the petitioner to submit his explanation with a rider that, in case, explanation is not submitted by petitioner, then on the basis of documents, Inquiry Report will be submitted. On 24.05.2000, the petitioner submitted his reply denying all the charges levelled against him and also giving his explanation to the charges. Along with his reply, petitioner submitted affidavit of Prem Narayan Gupta dated 23.05.2000, affidavit of Kasturi Lal dated 23.05.2000 and affidavit of Surenderjit Singh dated 23.05.2000 in support of his explanation as the documentary evidences. By letter dated 24.06.2000, the petitioner was directed to appear before the Inquiry Officer on 04.07.2000 for personal hearing. On 04.07.2000, the petitioner appeared before the Inquiry Officer for personal hearing but the inquiry could not be completed on that day. On 11.07.2000, the petitioner submitted certain documents in support of his case along with an application. By order dated 30.10.2000, the disciplinary authority i.e. respondent No. 2 called for a reply from the petitioner regarding Inquiry Officer's Report dated 21.08.2000. Along with the order dated 30.10.2000, the petitioner was served upon the Inquiry Report which was submitted by the Inquiry Officer on 21.08.2000. Copy of the Inquiry Report has been annexed as Annexure No. 11 to the writ petition. On 12.12.2000, the petitioner submitted his reply to the notice dated 30.10.2000 issued by respondent No. 2. Respondent No. 2 by order dated 23.07.2001 awarded following penalties:-

i) petitioner was reverted to his initial basic pay and he was also awarded a censure entry.

Against the order dated 23.07.2001, the petitioner preferred an appeal before respondent No. 1, the appeal filed by the petitioner was partly allowed and the punishment order dated 23.07.2001 given by respondent No. 2 was set aside. The petitioner was awarded punishment of stoppage of two annual increments permanently and also a censure entry by order dated 23.02.2004. Hence, the present writ petition.

3. Following submissions are made by the counsel for the petitioner challenging the order impugned:

i. the entire inquiry proceeding was vitiated for non-observance of principles of natural justice as well as procedure as prescribed under Rules 7 and 9 of The U.P. Government Servant (Discipline and Appeal) Rules, 1999 (hereinafter referred as 'Rules, 1999');

ii. the charges against the petitioner were stale as the report was allegedly submitted by the petitioner in the

year 1983 whereas the charge-sheet was issued to the petitioner in the year 2000, after lapse of 17 years;

iii. the disciplinary authority had passed the order imposing major penalty in violation of sub-Rule 4 of Rule 9 of Rules, 1999 and;

iv. lastly, it has been submitted by the counsel for the petitioner that penalty imposed on the petitioner was excessive.

4. Refuting the submissions made by counsel for the petitioner, learned Standing Counsel has submitted that the inquiry proceedings were carried out strictly in accordance with the procedure prescribed under Rule 7 of Rules, 1999 and in observance of principles of natural justice. The disciplinary authority has awarded punishment after considering reply submitted by the petitioner in accordance with sub-Rule 4 of Rule 9 of Rules, 1999. The punishment awarded is not excessive and learned Standing Counsel has also refuted the argument of the counsel for the petitioner that the charges against the petitioner are stale.

5. Before considering the rival submissions, it would be appropriate to look into the provisions as contained in The U.P. Government Servant (Discipline and Appeal) Rules, 1999.

6. Rule 3 of The U.P. Government Servant (Discipline and Appeal) Rules, 1999 provides for major penalties which are quoted as under:-

".....Major Penalties:

(i) Withholding of increments with cumulative effect;

(ii) Reduction to a lower post or grade or time scale or to a lower stage in a time scale;

(iii) Removal from the service which does not disqualify from future employment;

(iv) Dismissal from the service which disqualifies from future employment.

Explanation. - The following shall not amount to penalty within the meaning of this rule, namely:

(I) Withholding of increment of a Government servant for failure to pass a departmental examination or for failure to fulfil any other condition in accordance with the rules or orders governing tire service;

(ii) Stoppage at the efficiency bar in the time scale of pay on account of ones not being found fit to cross the efficiency bar;

(iii) Reversion of a person appointed on probation to the service during or at the end of the period of probation in accordance with the terms of appointment or the rules and orders governing such probation;

(iv) Termination of the service of a person appointed on probation during or at the end of the period of probation in accordance with the terms of the service or the rules and orders governing such probation."

7. The procedure for imposing major penalties is provided under Rule 7 of the Rules, 1999 and the same is quoted as under:

"7. Procedure for imposing major penalties. –

Before imposing any major penalty on a Government servant, an inquiry shall be held in the following manner :

(i)The disciplinary authority may himself inquire into the charges or appoint

an authority subordinate to him as Inquiry Officer to inquire into the charges.

(ii)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. The charge-sheet shall be approved by the disciplinary authority :

Provided that where the appointing authority is Governor, the charge-sheet may be approved by the Principal Secretary or the Secretary; as the case may be, of the concerned department.

(iii)The charges framed shall be so precise and clear as to give sufficient indication to the charged Government servant of the facts and circumstances against him. The proposed documentary evidence and the name of the witnesses proposed to prove the same alongwith oral evidence, if any, shall be mentioned in the charge-sheet.

(iv)The charged Government servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and Inquiry Officer shall proceed to complete the inquiry ex parte.

(v)The charge-sheet, alongwith the copy of the 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.

(vi)Where the charged Government servant appears and admits the charges, the Inquiry Officer shall submit his report to the disciplinary authority on the basis of such admission.

(vii)Where the charged Government servant denies the charges, the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidence, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to be produced in his defence :

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii)The Inquiry Officer may summon any witness to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1976.

(ix)The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(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.

(xi)The disciplinary authority, if it considers it necessary to do so, may, by an order appoint a Government servant or a legal practitioner, to be known as "Presenting Officer" to present on its behalf the case in support of the charge.

(xii)The Government servant may take the assistance of any other Government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner of the disciplinary authority having regard to the circumstances of the case so permits :

Provided that this rule shall not apply in following cases :

(i)Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or

(ii)Where the disciplinary authority is satisfied that for reason to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii)Where the Governor is satisfied that, in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules."

8. Rule 9 of the The U.P. Government Servant (Discipline and Appeal) Rules, 1999 provides for action on an Inquiry Report. Rule 9 of Rules, 1999 is quoted as under:

"9. Action on Inquiry Report. –

(1)The disciplinary authority may, for reasons to be recorded in writing, remit the case for re-inquiry to the same or any other Inquiry Officer under intimation to the charged Government servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the disciplinary authority, according to the provisions of Rule 7.

(2)The disciplinary authority shall, if it disagrees with the findings of the Inquiry Officer on any charge, record its own findings thereon for reasons to be recorded.

(3)In case the charges are not proved, the charged Government servant shall be exonerated by the disciplinary authority of the charges and inform him accordingly;

(4)If the disciplinary authority having regard to its findings on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charged Government servant, he shall give a copy of the inquiry report and his findings recorded under sub-rule (2) to the charged Government servant and require him to submit his representation if he so desires, within a reasonable specified time. The disciplinary authority shall, having regard to all the relevant records relating to the inquiry and representation of the charged Government servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged Government servant."

9. Elaborating his submissions, learned counsel for the petitioner submitted that on 04.07.2000, the petitioner was called by the Inquiry Officer for personal hearing. On 04.07.2000, the inquiry could

not be completed and petitioner was granted one week's further time to submit certain documents which were submitted by the petitioner on 11.07.2000. It has been further submitted that after 04.07.2000, no date was fixed in the inquiry by the Inquiry Officer and straight away, Inquiry Report was submitted by the Inquiry Officer on 21.08.2000.

10. To buttress his submissions, learned counsel for the petitioner has invited the attention of this Court to the averments made in paragraph Nos. 14, 15, 16 and 17 of the writ petition. Paragraph Nos. 14, 15, 16 and 17 of the writ petition are quoted as under:-

" 14. That on 24.6.2000, the Inquiry Officer sent a letter to the petitioner asking him to appear on 4.7.2000 for personal hearing. A photocopy of the letter dated 24.6.2000 sent by the Inquiry Officer to the petitioner asking him to appear on 4.7.2000 for personal hearing is being annexed herewith as Annexure No.9 to this writ petition.

15. That on 4.7.2000, the petitioner appeared before the Inquiry Officer for personal hearing but the Inquiry could not be completed on that date and the Inquiry Officer granted one week further time to the petitioner to submit certain documents.

It may be mentioned that before calling the petitioner for personal hearing on 4.7.2000, the Inquiry Officer had not conducted any inquiry except providing some partial oral hearing to the petitioner in respect of charge sheet dated 21.1.2000 in order to prove the charges levelled against the petitioner and the department had not proved the charges levelled against the petitioner in the charge sheet dated 21.1.2000.

16. That on 11.7.2000, the petitioner submitted the certain documents to the Inquiry Officer in pursuance of the oral instructions given by the Inquiry Officer on 4.7.2000 to the petitioner. A photocopy of the letter dated 11.7.2000 vide which the petitioner submitted certain documents to the Inquiry Officer is being annexed herewith as Annexure No.10 to this writ petition.

17. That except 4.7.2000, no other date was fixed by the Inquiry Officer in respect of the charge sheet dated 21.1.2000 to conduct the inquiry against the petitioner but all of a sudden without holding any inquiry, the Inquiry Officer submitted the inquiry report to the opposite party no.2 holding therein that the two charges levelled against the petitioner are partially proved."

11. Counsel for the petitioner also invited attention of the Court to the counter affidavit filed by respondents, especially to paragraph No. 5 of the counter affidavit and submitted that there is general denial of the averments made in paragraph Nos. 14 to 17 of the writ petition in paragraph No. 5. Paragraph No. 5 of the counter affidavit submitted by the respondents is quoted as under:-

"5. That the contents of Paragraphs 13,14,15,16,17,18,19,20 21 and 22 of the writ petition are not admitted at this juncture, because he was provided proper and full opportunity by the Enquiry Officer and all relevant documents were supplied to him during the pendency of enquiry and only, thereafter, the punishing authority passed the punishment order. It is also pertinent to mention here that after passing of the punishment order, the petitioner filed an appeal to Government and the matter was again examined by the

Government on the basis of the averments made by the petitioner in the said appeal. It is not proper on the part of the petitioner that the enquiry was initiated after 17 years because preliminary enquiry was conducted by the C. B. I. only the decision was taken the conduct departmental enquiry under Rules."

12. It has been submitted by counsel for the petitioner that there is no denial by the respondents in the counter affidavit and there is no assertion in the Inquiry Report as to any date was fixed by Inquiry Officer after or before 04.07.2000 when the petitioner was called for personal hearing. Inquiry could not be completed on that day, i.e. 04.07.2000, the inquiry was adjourned and no further date was fixed in the inquiry and straight away, a report has been submitted against the petitioner.

13. Learned counsel for the petitioner relied upon judgments of Supreme Court in cases of **Mohd. Yunus Khan Vs. State of Uttar Pradesh** and others reported in **(2010) 10 SCC 539, State of Uttaranchal Vs. Kharak Singh** reported in **2008 (8) SCC 236, State of U.P. and others Vs. Saroj Kumar Sinha** reported in **2010 (2) SCC 772**, the Division Bench of this Court in cases of **Pragyesh Mishra Vs. State of U.P. and others** in Writ Petition No. 1126 of 2011, **Ram Rekha Singh Vs. State of U.P. and others** reported in **2014 (9) ADJ 425 (DB), Mahesh Narain Gupta Vs. State of U.P. and others** reported in **2011(5) ADJ 177**.

14. The Supreme Court in case of **Mohd. Yunus Khan Vs. State of Uttar Pradesh** and others reported in **(2010) 10 SCC 539** held that disciplinary proceedings against a Government Employee is in the nature of quasi-judicial proceedings and the principles of natural justice required to be observed strictly. Paragraph No. 16 of Mohd. Yunus Khan Vs. State of U.P. (supra) is quoted as under:-

"16. We have to proceed, keeping in mind the trite law that holding disciplinary proceedings against a government employee and imposing a punishment on his being found guilty of misconduct under the statutory rules is in the nature of quasi-judicial proceedings. Though, the technical rules of procedure contained in the Code of Civil Procedure, 1908 and the provisions of the Indian Evidence Act, 1872 do not apply in a domestic enquiry, however, the principles of natural justice require to be observed strictly. Therefore, the enquiry is to be conducted fairly and reasonably and the enquiry report must contain reasons for reaching the conclusion that the charge framed against the delinquent stood proved against him. It cannot be an ipse dixit of the inquiry officer. Punishment for misconduct can be imposed in consonance with the statutory rules and principles of natural justice. (See Bachhittar Singh v. State of Punjab & Anr., AIR 1963 SC 395; Union of India v. H.C. Goel, AIR 1964 SC 364; Anil Kumar v. Presiding Officer, AIR 1985 SC 1121; Moni Shankar v. Union of India (2008) 3 SCC 484; and Union of India v. Prakash Kumar Tandon, (2009) 2 SCC 541."

15. The Supreme Court in case of **State of Uttaranchal Vs. Kharak Singh** reported in **2008 (8) SCC 236**, laid down following principles in paragraph No. 11 of the judgment, which is quoted as under:-

"11) 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, 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."

16. The Supreme Court in case of **State of U.P. and others Vs. Saroj Kumar Sinha** reported in **2010 (2) SCC 772** held that even, in case, where the delinquent employee failed to appear in the inquiry, the Inquiry Officer can proceed with the inquiry ex-parte but even in such case, the Inquiry Officer shall record the statement of witnesses mentioned in the chargesheet in absence of delinquent employee. Paragraph Nos. 25, 26, 27 and 28 of the judgment in case of State of U.P. Vs. Saroj Kumar Sinha (supra) are quoted as under:-

"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, 1953 345 US 206 (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."

17. The Division Bench of this Court in Pragyesh Mishra Vs. State of U.P. and others in Writ Petition No. 1126 of 2011 decided on 17.08.2012 interpreting the sub-Rule 7 of Rule 7 of Rules, 1999 held that provisions of Rule 7(v), (vii) and (x) has to be followed before imposing major penalty. The relevant paragraph Nos. 45, 46, 47, 48 and 49 of the judgment are quoted as under:-

"45. As already observed, sub-rule (vii) contemplates that Inquiry Officer must ensure supply of the list of documents and witnesses relied by opposite parties to support the charges. The Enquiry Officer did not place anything on record as to when the said list was made available to petitioner. Admittedly, no witness was examined by Enquiry Officer in support of charges, hence to hold the charges to be proved, is infact a finding recorded with no evidence whatsoever at all.

46. It is not in dispute that the disciplinary proceeding was started against the petitioner under the U.P. Government Servant (Discipline and Appeal) Rules,1999 in which there is a complete mechanism for conducting the disciplinary proceeding. Here in the present case, the major penalty of dismissal from service has been inflicted upon the petitioner, therefore, it would be imperative for us to ensure, before coming to ultimate conclusion of the writ petition that as to whether the procedure prescribed for imposing major penalty under Rule 7 (v), (vii) and 7(x) has been followed or not.

47. From the perusal of the Sub Rule 7 (vii) & (x) of the 1999 Rule, it reflects that if the charged Government servant denies the charges then in that eventuality the Inquiry Officer is under an obligation to call the witnesses proposed in the charge-sheet and record their oral

statements in presence of the charged employee, who shall be given an opportunity to cross-examine such witnesses. After recording the aforesaid statements, the Inquiry Officer is required to record the oral statements of the witnesses of charged Government servant if any, in case he desires to produce them in his defence.

48. After going through the provisions as provided under Sub Rule (vii) and (x) of 7 of Rules 1999, as we have noticed that in the event of denial of charges, the Inquiry Officer is under a legal obligation to call the witnesses and provide an opportunity to the charged Government servant to cross-examine the inquiry witnesses, enjoins a duty upon the Inquiry Officer to inform the charged employee about the date, place and time for holding the enquiry, as unless the charged employee is made aware of the date, place and time of the enquiry proceeding, he cannot make himself available to participate in the inquiry. It would further reveal that mere recording the statements of the witnesses will not be sufficient to submit an inquiry report unless each and every charge levelled against the charged employee is discussed separately and is proved or not proved after considering the material available on record including the oral statements given by the witnesses and their cross examination if any.

49. Here in the present case, as would appear from the perusal of the record and the submissions of learned counsel for the petitioner, which has not been disputed by the learned Standing Counsel, that the charged employee at no point of time was informed about the date, place and time for holding the inquiry. Otherwise also even if it is assumed that the charged employee was informed about the date, place and time for holding inquiry even then the Inquiry Officer has failed to deal with each and every charge separately and found them to be proved, in our considered opinion mere recording that the charges are proved cannot be said to be sufficient unless the charge is proved in accordance with the procedure prescribed under the Rules 1999 which is meant for conducting disciplinary proceeding."

18. Again the Division Bench of this Court in case of **Ram Rekha Singh Vs. State of U.P. and others** reported in **2014 (9) ADJ 425 (DB)** held that disciplinary proceedings in violation of provisions of U.P. Government Servant (Discipline and Appeal) Rules, 1999 and also in violation of basic principles of natural justice are liable to be quashed. The relevant paragraph Nos. 14, 15, and 16 of the judgment are quoted as under:-

"14. Having given anxious consideration to the rival submissions and having examined the record with reference to the law applicable, we are unable to approve the process of the disciplinary proceedings, as adopted by the respondents in this case; and we are clearly of the view that the punishment order consequent to these invalid proceedings deserve to be annulled while leaving it open for the respondents to take up the proceedings in accordance with law.

15. It remains trite that in departmental inquiry proceedings, the requirement of rules in particular and the principles of natural justice in general are required to be followed; and the proceedings held in violation thereof cannot be sustained. In the case of Saroj Kumar Sinha (supra) the Hon"ble Supreme Court, inter alia, said,

29. Apart from the above, by virtue of Article 311(2) of the Constitution

of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental 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 inquiry 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.

16. It is also not a matter of much debate that even if the delinquent does not submit his reply to the charge sheet the Inquiry Officer cannot conclude that the charges stood automatically proved. Recording of necessary evidence with participation of the delinquent in such a process is also the basic requirement of fair opportunity of hearing in such matters of disciplinary proceedings. ……."

19. The Division Bench of this Court in case of **Mahesh Narain Gupta Vs. State of U.P. and others** reported in **2011(5) ADJ 177** has held the department is just like a plaintiff in a suit and the initial burden lies on the department to prove the charges which can certainly be proved by collecting some oral evidence or documentary evidence in presence and notice of the charged employee. Paragraph Nos. 16 and 17 of the judgment are quoted as under:-

" 16. At this stage, we are to observe that in the disciplinary proceedings against a delinquent, the department is just like a plaintiff and initial burden lies on the department to prove the charges which can certainly be proved only by collecting some oral evidence or documentary evidence, in presence and notice of charged employee. Even if the department is to rely its own record/document which are already available, then also the enquiry officer by looking into them and by assigning his own reason after analysis , will have to record a finding that those documents are sufficient enough to prove the charges.

17. In no case, approach of the Enquiry Officer that as no reply has been submitted, the charges will have to be automatically proved can be approved. This will be erroneous. It has been repeatedly said that disciplinary authority has a right to proceed against delinquent employee in ex parte manner but some evidence will have to be collected and justification to sustain the charges will have to be stated in detail. The approach of the enquiry officer of automatic prove of charges on account of non filing of reply is clearly misconceived and erroneous. This is against the principle of natural justice, fair play, fair hearing and, thus, enquiry officer has to be cautioned in this respect."

20. From the perusal of the aforesaid judgments, it is clear that strict adherence to the procedure prescribed under Rule 7 of Rules, 1999 is mandatory for imposing major penalty. The procedure as prescribed under Rule 7 of Rules, 1999 is nothing but incorporation of principles of natural justice. It has also been held by this Court as well as by the Supreme Court that the

initial burden is on the State to prove the charges against the delinquent employee by leading evidence in support thereof in presence of charged employee. Even in cases where the delinquent has not contested/ participated in the inquiry, the Inquiry Officer can proceed with the inquiry ex-parte but it is incumbent upon the Inquiry Officer to collect the evidence against the employee by examining witnesses and other documentary evidences, if any. Further after the discharge of initial burden, the delinquent employee has to be called to offer an explanation to the charges as well as the evidence collected during inquiry and thereafter, the Inquiry Officer should record its own conclusion on the material as made available by the State as well as by the delinquent employee. Even in case where the inquiry is only on the basis of documentary evidence, the Inquiry Report must indicate that the Inquiry Officer has applied its mind to the documents sought to be relied upon against the delinquent employee.

21. For the purposes of inquiry, it is a condition precedent that the Inquiry officer must call delinquent employee by fixing a date, time and place for holding the inquiry. The inquiry cannot proceed behind the back of the delinquent employee and before proceeding further with the inquiry the delinquent employee has to be informed about the inquiry by fixing date, time and place of inquiry and only thereafter, the evidence has to be collected against the delinquent in his presence, in cases where the delinquent employee appears and contest the proceedings and in cases, where the delinquent employee does not appear or contest the inquiry, the Inquiry Officer must examine the witnesses to be relied upon and thereafter, only come to the conclusion as to the guilt of the delinquent employee.

22. In the present case, as averted by the petitioner in paragraph numbers 14, 15, 16 and 17 of the writ petition, except for 04.07.2000, no other date was fixed either prior to that or subsequent thereto. On 04.07.2000, straight away, the petitioner was called upon for personal hearing. According to the petitioner as the personal hearing could not be concluded on 04.07.2000 and the petitioner was directed to submit certain documents which were submitted by the petitioner on 11.07.2000. No further inquiry was held and straight away, an Inquiry Report was submitted against the petitioner. The averments made in paragraph Nos. 14, 15, 16 and 17 of the writ petition are not specifically denied by the respondents in their counter affidavit. There is only general denial that the aforesaid paragraphs are not admitted and the petitioner was provided proper and full opportunity by the Inquiry Officer. There is no averment in the counter affidavit and there is no recital in the Inquiry Officer's Report that any date was fixed before 04.07.2000 when the petitioner was called upon to appear for personal hearing and also there is no averment that after 04.07.2000, any date was fixed before submitting the Inquiry Report.

23. In my view, in the present case the Inquiry Report itself is vitiated for reason of non-compliance of Rule 7 of Rules, 1999 and for non-compliance of principles of natural justice as no date, time and place of inquiry was fixed by the Inquiry Officer.

24. Learned counsel for the petitioner also invited attention of this Court to the Inquiry Report submitted by the Inquiry Officer to demonstrate that no witness was

examined by the Inquiry Officer to prove the case of the department or to prove the documents which were relied upon by the Inquiry Officer in recording the finding against the petitioner and as such there was no evidence against the petitioner for holding the petitioner guilty of charges. It has been further submitted by learned counsel for the petitioner that after receiving the charge-sheet, the petitioner wrote letter dated 11.04.2000 by which the petitioner has asked certain documents from the Inquiry Officer in order to enable the petitioner to submit his reply. It has been submitted by counsel for the petitioner that the documents as referred in letter dated 11.04.2000 were never supplied to the petitioner and the petitioner was compelled to give his reply even without copy of the documents referred to in the aforesaid order. Learned counsel for the petitioner invited attention of this Court to the averments made in paragraph Nos. 9, 10, 11 and 12 of the writ petition which are quoted as under:-

"9. That on 6.4.2000, the petitioner sent a letter to the Inquiry Officer that the matter is 17 years old and therefore, he needs some time to make proper reply and he requested the inquiry officer to grant some time to make a reply to the charge sheet dated 21.1.2000, and subsequently on 11.4.2000, the petitioner wrote another letter to the Inquiry Officer asking therein to supply certain documents (which were mentioned in the letter dated 11.4.2000 itself) on the basis of which the charges were framed against the petitioner. A photocopy of the letters dated 6.4.2000 and 11.4.2000 sent by the petitioners to the Inquiry Officer to the above effect are being annexed herewith collectively as Annexure No.4 to this writ petition.

10. That on 17.4.2000, the petitioner sent another letter to the Inquiry Officer informing him that the documents which were asked for vide letter dated 11.4.2000 were not made available to the petitioner and as such, he may be granted 15 days more time to submit his reply to the charge sheet and further requested that the documents which were asked for vide letter dated 11.4.2000 may also be supplied to him to give appropriate reply. A photocopy of the letter dated 17.4.2000 sent by the petitioner to the Inquiry Officer to the above effect is being annexed herewith as Annexure No.5 to this writ petition.

11. That on 2.5.2000, the petitioner sent another letter to the Inquiry Officer that the petitioner had no knowledge about the orders passed by the Inquiry Officer on the letters submitted by him (the petitioner) on 6.4.2000, 11.4.2000 and 17.4.2000 and since the matter was of 17 years old, he was not in a position to submit his reply and he made further request to the Inquiry Officer to pass appropriate orders to make available to the petitioner the necessary documents as were asked for vide letter dated 11.4.2000 and further grant one month time thereafter to make reply to the charge sheet dated 21.1.2000. A photocopy of the letter dated 2.5.2000 sent by the petitioner to the Inquiry Officer to the above effect is being annexed herewith as Annexure No.6 to this writ petition.

12. That on 10.5.2000, the Inquiry Officer sent a letter to the petitioner in pursuance of the letter dated 17.4.2000 (Annexure No.5 to the writ petition) sent by the petitioner to the Inquiry Officer, asking the petitioner to reply to the charge sheet dated 21.1.2000 within 15 days without passing any order on the letters dated 6.4.2000, 11.4.2000 and 17.4.2000 (Annexure No.4 and 5 to the

writ petition). A photocopy of the letter dated 10.5.2000 sent by the Inquiry Officer to the petitioner to the above effect is being annexed herewith as Annexure No.7 to this writ petition."

25. Learned counsel also invited attention of the Court to the reply submitted by the respondents to the averments made in the aforesaid paragraphs of the writ petition, in paragraph No. 4 of the counter affidavit, which is quoted as under:-

"4. That contents of paragraphs 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the writ petition need no comments, because for the irregularities committed by the petitioner the departmental enquiry was initiated against the petitioner under Rules and full opportunity was provided to petitioner by Enquiry Officer."

26. It has been submitted that to the averments made in the aforesaid paragraphs, a reply has been submitted by the respondents that those paragraphs in the writ petition needs no comments, thus they have admitted that the documents asked for by the petitioner have not been given to the petitioner. It has also been submitted by the petitioner that the allegation against the petitioner was regarding submission of a report in the year 1983 when the petitioner was posted in Kanpur whereas, the petitioner was transferred soon thereafter from Kanpur to other place and the charge-sheet was given to the petitioner in the year 2000 after a lapse of 17 years and it was not possible for the petitioner to submit his reply on the basis of his memory as the petitioner was not there at Kanpur when the charge-sheet was given to him and therefore, he had no access to the documents relied upon by the respondents. The non-supply of the relevant documents as requested by the petitioner is also violative of principles of natural justice.

27. It has also been submitted by learned counsel for the petitioner that in order to prove charge No. 1, the affidavit of Satnam Singh son of Gurpal Singh dated 29.04.1983 was relied upon by the Inquiry Officer. The petitioner in his reply to the charge-sheet submitted his objections to the said affidavit to the effect that in the affidavit, which was submitted by Satnam Singh, at the time when the petitioner submitted its report, boundaries of the place of business were mentioned, in the affidavit, which were verified by the petitioner at the spot. It has also been submitted by counsel for the petitioner that defence of the petitioner before Inquiry Officer was that the photocopy of the affidavit which was given to the petitioner along with charge-sheet, was either forged or the boundaries given in the original affidavit, were removed with the help of ink remover. Considering the objection of the petitioner, Inquiry Officer held that from the photocopy of the license record, which was made available to the Inquiry Officer, by the department, it was not possible to come to any such conclusion as stated by the petitioner that in the original affidavit whether the boundaries were mentioned or not.

28. Learned counsel for the petitioner further submitted that even the original record was not available to the Inquiry Officer, who was holding inquiry. In this regard, learned counsel for the petitioner has referred findings of the Inquiry Officer which are at internal page Nos. 5 and 6 of the Inquiry Officer's report which is filed as Annexure No. 11 at Page No. 48 of the writ petition, and the same is quoted as under:

".....आरोप के अंश कि आवेदनपत्र के साथ संलग्न शपथपत्र में आवेदक द्वारा प्रार्थनापत्र में अंकित किये गये व्यापार स्थल की चौहद्दी नियमानुसार अंकित नहीं की गई थी तथा व्यापार स्थल के किराये का होना उल्लिखित किया गया था, अतः उनका दायित्व था कि वे आवेदक से सम्बन्धित मकान मालिक द्वारा निर्गत किराये की रसीद/अनुबन्धपत्र की प्रति प्राप्त करते हुए शपथपत्र में व्यापार स्थल की चौहद्दी नियमानुसार अंकित कराने के उपरान्त मौके पर जाकर जाँचकर अपनी निष्पक्ष आख्या प्रेषित करते किन्तु उन्होंने अपने निहित स्वार्थ पूर्ति हेतु मेसर्स नानक ट्रेडर्स को कोयला थोक लाइसेन्स दिलवाने हेतु बिना जाँच पड़ता किये गलत रूपसे सत्यापन रिपोर्ट प्रस्तुत करके उसे अनधिकृत रूप से लाइसेन्स दिलवाने में सहयोग देकर अपने पद का दुरुपयोग करते हुए अपने दायित्वों के प्रति घोर लापरवाही बरती, के प्रतिवाद में उन्होंने अपने स्पष्टीकरण में कहा है कि यह कहना असत्य है कि उन्होंने बिना जाँच किये हुए बिक्री स्थल की चौहद्दी सत्यापित कर दी। श्री सतनामसिंह द्वारा प्रस्तुत शपथपत्र दिनांक 29-4-83 में विक्रय स्थल की चौहद्दी अंकित थी, जिसे उन्होंने स्थल पर सत्यापित किया था तथा उनकी आख्या एवं शपथपत्र का परीक्षण क्षेत्रीय खाद्य अधिकारी एवं वरिष्ठ पूर्ति निरीक्षक कोयला अनुभाग द्वारा भी किया गया था। उन्हें दी गई कथित शपथपत्र की छायाप्रति या तो फर्जी है, इसलिए जनरल स्टाम्प के पीछे स्टाम्प बेचने वाले का कोई नोटिस अंकित नहीं है अथवा इसमें अंकित चौहद्दी इंकरिमूवल द्वारा अन्य व्यक्तियों ने मिटा दी है, जो श्री सतनामसिंह को अवैधानिक रूप से सहयोग कर रहे थे। नानक ट्रेडर्स, 171 हरजेन्दरनगर कानपुर नगर की लाइसेन्स पत्रावली की जो फोटो प्रति उपलब्ध कराई गई है, उससे यह निष्कर्ष निकाल पाना सम्भव नहीं है कि पत्रावली में लगे शपथपत्र की फोटो प्रति से सम्बन्धित मूल शपथपत्र का स्टैम्प किस तिथि को स्टाम्प बेन्डर से क्रय किया गया तथा चौहद्दी के कालम में चौहद्दी पूर्व में अंकित थी अथवा नहीं। अपचारी कर्मचारी द्वारा उल्लिखित उक्त कथन बचाव में पर्याप्त नहीं है। उनके द्वारा अपनी हस्तलिपि में चौहद्दी को अंकित करते हुए सत्यापन अंकित किया जाना चाहिए था।...."

29. Learned counsel for the petitioner further contended that the entire inquiry was conducted on the basis of photocopy of the file of the license which was given to the Inquiry Officer. Said photocopies were not proved by the Department by examining any witness nor the original file of the inquiry was ever made available to the Inquiry Officer and the entire inquiry proceedings are vitiated for want of evidence and for the reason that the documents, which were relied upon by the Inquiry Officer, were never proved. Finding adverse to the petitioner had been recorded only on the basis of photocopies which were made available to the Inquiry Officer, which were thoroughly objected by the petitioner before the Inquiry Officer.

30. Petitioner in his reply specifically challenged that the photocopy which was supplied to the petitioner along with chargesheet was not the correct copy of the affidavit as in the original affidavit, boundaries were mentioned which were verified by the petitioner but the Inquiry Officer has not made any effort to ascertain the facts as alleged by the petitioner and has believed the photocopy of documents even without examining the original record. The petitioner was not even permitted to inspect the record, though the petitioner made a specific request for the said purposes.

31. In case of **Chairman-cum-Managing Director, Mahanadi Coalfields Limited Vs. Rabindranath Choubey**; reported in (2020) 18 SCC 71, the Supreme Court in paragraph No. 63 held as under:-

"63. The purpose of holding an inquiry against a delinquent is not only with a view to establish the charge levelled against him or to impose a penalty, but is also conducted with the object of such an inquiry recording the truth of the matter, and in that sense, the outcome of an inquiry may either not establishing or vindicating his stand, hence result in his exoneration. Therefore, what is required is that there should be a fair action on the part of the authority concerned in holding disciplinary inquiry for the misconduct, if any, being committed by an employee in discharge of his duties even if retired from service

during pendency of disciplinary proceedings after adopting the procedure prescribed under the relevant disciplinary rules alike Rules, 1978 in the instant case and indeed the scheme of Rules, 1978 with which we are concerned is neither in derogation nor in contravention to the scheme of the Act, 1972."

32. From the perusal of the record, it is apparent that no witness was examined by the Inquiry Officer before submitting its report. It has also come that the original license file containing the report submitted by the petitioner as well as the affidavit, application filed by the Firm was not made available to the Inquiry Officer and only on the basis of photocopies of the said file, the entire inquiry proceedings concluded. The challenge made by the petitioner to the aforesaid documents to be forged has been brushed aside by the Inquiry officer without even calling for the original file. Thus, in my view, there was no evidence against the petitioner to hold him guilty.

33. Learned counsel for the petitioner contended that the petitioner was served with the show cause notice dated 30.10.2000 by the disciplinary authority calling for a reply from the petitioner to the findings recorded by the Inquiry Officer in its report dated 21.08.2000. The petitioner submitted reply to the show cause notice dated 30.10.2000 issued by the disciplinary authority on 12.12.2000. Copy of the same has been annexed as Annexure No. 12. The disciplinary authority by order dated 23.07.2001 awarded major penalty. Copy of the order dated 23.07.2001 is annexed as Annexure No. 13 to the writ petition. Counsel for the petitioner referred to the copy of the order of punishment dated 23.07.2001 and submitted that from the perusal of order it is apparent that in the order after noting the basic facts of the case, the charges against the petitioner, reply of the petitioner and the findings recorded by the Inquiry Officer, the disciplinary authority has held as under:

'.....मैंने श्री जवाहर लाल गुप्ता, पूर्ति निरीक्षक के विरुद्ध प्रचलित विभागीय कार्यवाही में उनके विरुद्ध लगाये गये दोनों आरोपों, आरोपी का उत्तर, जाँचाधिकारी की जाँचाख्या, जाँचाख्या पर अपचारी कर्मचारी का उत्तर एवं संगत साक्ष्यों/अभिलेखों का भलीभांति परीक्षणोपरान्त इस निष्कर्ष पर पहुँचा हूँ कि श्री जवाहर लाल गुप्ता, पूर्ति निरीक्षक के विरुद्ध गम्भीर प्रकृति के आरोप है, जिसे जाँचाधिकारी द्वारा आंशिक रूप से दोनों आरोपों को सिद्ध पाया गया है। मैं जाँचाधिकारी की विवेचना से सहमत हूँ। श्री जवाहर लाल गुप्ता, पूर्ति निरीक्षक के विरुद्ध प्रचलित विभागीय कार्यवाही उत्तर प्रदेश सरकारी सेवक अनुशासन एवं अपील (नियमावली, 1999 के नियम 3 के दीर्घ शक्तियाँ (दो) "किसी निम्नस्तर पद या श्रेणी या समय वेतनमान या किसी समय वेतनमान में निम्नतर प्रक्रम पर अवनति करना" में निहित प्राविधानों के अन्तर्गत आरोपों की गम्भीरता को दृष्टिगत रखते हुए निम्न दण्डों सहित एतदद्वारा विभागीय कार्यवाही समाप्त की जाती है।..."

34. It has been contended by counsel for the petitioner that no independent finding has been recorded by the disciplinary authority on the explanation submitted by the petitioner against the finding of the Inquiry Officer and has mechanically affirmed the report of the Inquiry Officer. Order passed by the disciplinary authority is an unreasoned order and as such arbitrary.

35. It has been further contended by counsel for the petitioner that against the order passed by the disciplinary authority, the petitioner preferred an appeal. In the appeal, petitioner has taken various grounds challenging the order passed by the disciplinary authority. The appeal filed by the petitioner has been partly allowed only on the question of quantum of punishment. The appellate authority has not

considered the objections/representation submitted by the petitioner and has not recorded any finding on the objections filed by the petitioner and as such the appellate order is also in violation of principles of natural justice.

36. Recording of reason is a principle of natural justice and every order must be supported by reasons recorded in writing. It ensures transparency and legality in decision-making. The person who is adversely affected comes to know as to why his application/ representation has been rejected. The recording of reason in cases where the order is subject to further appeal is very important from yet another angle. An appellate court or authority ought to have the advantage of examining the reasons that prevailed with the court or the authority making the order. Conversely, absence of reasons in a appealable order deprives the appellate court or authority of that advantage and casts and onorus responsibility upon it to examine and determine the question on its own.

37. As Lord DENNING has emphasized in **Breen v. A.E.U. (1971) 2 QB 175**, the giving of reason for a decision is one of the fundamentals of good administration. It constitutes a safeguard against arbitrariness on the part of the decision-maker. Articulating the basis of a decision can improve the quality of decision making in a number of significant ways such as if he is made to give reason for his decision, it will impose some restriction upon him in a matter involving personal rights. Secondly, if an adjudicator is obligated to give reason for his conclusions, it will make it necessary for him to consider the matter carefully. The condition to give reason introduces clarity, ensures objectivity and impartiality on the part of the decision-maker and minimizes unfairness and arbitrariness for "compulsion of disclosure guarantees consideration".

38. In India, the position is somewhat different but the Courts have shown a good deal of creativity in this area. A very significant reason of the Indian Courts is to develop the idea that natural justice demands that adjudicatory bodies give reasons for their decisions. The Supreme Court has also held that as several constitutional provisions guarantee judicial control of adjudicatory bodies, it is obligatory for such bodies to render reasoned decisions so as to make judicial control effective and meaningful. In administrative law the duty to assign reason is, however, a judge made law but in case of judicial authorities that includes Magistrates, Special Courts, who exercise the judicial powers under the various statutes, there is no dispute that their order must contain reasons to support the orders.

39. The application of mind is only reflected by the reasons given in the judgment. An order supported by reasons ensures that the adjudicatory authority/court genuinely addressed itself to the arguments and evidence advanced at the time of the hearing. It is the well-known principle that justice should not only be done but should also seen to be done. Unreasoned decisions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have the appearance of justice.

40. Learned counsel for the petitioner relied upon judgment of Supreme Court in **G. Vallikumari Vs. Andhra Education Society and others**, reported in **(2010) 2**

SCC 497 wherein Apex Court has held in paragraph No. 19 as under:-

"19. In his order, the Chairman of the Managing Committee did refer to the allegations leveled against the appellant and representation submitted by her in the light of the findings recorded by the inquiry officer but without even adverting to the contents of her representation and giving a semblance of indication of application of mind in the context of Rule 120(1)(iv) of the Rules, he directed her removal from service. Therefore, there is no escape from the conclusion that the order of punishment was passed by the Chairman without complying with the mandate of the relevant statutory rule and the principles of natural justice. The requirement of recording reasons by every quasi judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognized facets of the rules of natural justice and violation thereof has the effect of vitiating the order passed by the authority concerned."

41. Learned counsel for the petitioner also referred to paragraph No. 13 of the judgment wherein Rule 120 of Delhi School Education Rules, 1973 was quoted by the Apex Court, which is as under:-

"13……

12. Chapter not to apply to unaided minority schools.- Nothing contained in this Chapter shall apply to an unaided minority school.

The Delhi School Education Rules, 1973

120. Procedure for imposing major penalty.- (1) No order imposing on an employee any major penalty shall be made except after an inquiry, held, as far as may be, in the manner specified below:

(a) the disciplinary authority shall frame definite charges on the basis of the allegation on which the inquiry is proposed to be held and a copy of the charges together with the statement of the allegations on which they are based shall be furnished to the employee and he shall be required to submit within such time as may be specified by the disciplinary authority, but not later than two weeks, a written statement of his defense and also to state whether he desires to be heard in person;

(b) on receipt of the written statement of defence, or where no such statement is received within the specified time, the disciplinary authority may itself make inquiry into such of the charges as are not admitted or if considers it necessary so to do, appoint an inquiry officer for the purpose;

(c) at the conclusion of the inquiry, the inquiry officer shall prepare a report of the inquiry regarding his findings on each of the charges together with the reasons therefor;

(d) the disciplinary authority shall consider the record of the inquiry and record its findings on each charge and if the disciplinary authority is of opinion that any of the major penalties should be imposed, it shall-

(i) furnish to the employee a copy of the report of the inquiry officer, where an inquiry has been made by such officer;

(ii) give him notice in writing stating the action proposed to be taken in regard to him and calling upon him to submit within the specified time, not exceeding two weeks, such representation as he may wish to make against the proposed action;

(iii) on receipt of the representation, if any, made by the employee, the disciplinary authority shall determine what penalty, if any, should be imposed on the employee and communicate its tentative decision to impose the penalty to the Director for his prior approval;

(iv) after considering the representation made by the employee against the penalty, the disciplinary authority shall record its findings as to the penalty which it proposes to impose on the employee and send its findings and decision to the Director for his approval and while sending the case to the Director, the disciplinary authority shall furnish to him all relevant records of the case including the statement of allegation charges framed against the employee, representation made by the employee, a copy of the inquiry report, where such inquiry was made, and the proceedings of the disciplinary authority.

(2) No order with regard to the imposition of a major penalty shall be made by the disciplinary authority except after the receipt of the approval of the Director.

(3) Any employee of a recognised private school who is aggrieved by any order imposing on him the penalty of compulsory retirement or any major penalty may prefer an appeal to the Tribunal."

42. It has been submitted by counsel for the petitioner that Rule 120 (1)(d)(4) is pari materia to Rule 9 (4) of Rules, 1999 and submitted that in the present case also, the order of punishment has been passed by the disciplinary authority without complying the mandate of Rule 9(4) of Rules, 1999.

43. Learned counsel for the petitioner further relied upon the judgment of Apex Court in Case of **Roop Singh Negi Vs. Punjab National Bank** reported in **2009 (3) SCC 570**. Paragraph Nos. 5, 6, 7 and 17 of the judgment are quoted as under:-

"5. Before the disciplinary authority, the appellant contended that there was no evidence against him. The attention of the disciplinary authority was furthermore drawn to the fact that by an order dated 9.5.2000, the Criminal Court passed an order of his discharge. Only charges under Section 411 of the Indian Penal Code were framed against one Rajbir.

Neither the State nor the Bank preferred any revision petition thereagainst. The same attained finality. The Regional Manager acting as a disciplinary authority by an order dated 24.1.2001 without assigning any reason and without considering the contentions raised by the appellant including the fact that he had been discharged by the criminal court, directed the appellant to be dismissed from services, stating:

"That I have again gone through the facts carefully and I hold you responsible for gross misconduct in terms of Bipartite Settlement clause 19.5 (amended from time to time) and there is no justification to reduce the proposed punishment. Therefore, in terms of the Bipartite Settlement clause 19.6, I confirm the proposed punishment "Dismissal from Bank Service". As you are under suspension, therefore, I order that in terms of Bipartite Settlement Provisions you will be eligible for subsistence allowance only till your dismissal from bank service."

6. Appellant made a representation against the said order before the appellate authority. The appellate authority noticing his contentions in details. Inter alia, on the premise that appellant had been given an opportunity of

personal hearing, the appeal was dismissed, opining:

"In view of the above, the submissions made by the appellant in his appeal dated 23.02.2001 and his verbal submissions made during personal hearing are devoid of merits. As such I find no reasons to interfere or alter the order of Disciplinary Authority. Thus keeping in view the nature and gravity of the proven charges, punishment of "Dismissal from Bank Service", imposed upon Shri Negi by Disciplinary Authority vide its order dated 24.01.2001 is hereby confirmed and appeal of Shri Negi is rejected."

7. The appellate authority also did not apply his mind to the contentions raised by the appellant; no reason was assigned in support of his conclusion.

On what evidence, the appellant was found guilty was not stated.

17. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration…….."

44. The contention as made by counsel for the petitioner about non-consideration of reply/ representation submitted by the petitioner to the findings of the Inquiry Officer by the disciplinary authority is concerned, is correct. From the perusal of the order passed by the disciplinary authority, it is apparent that the disciplinary authority has not recorded any independent finding on the representation of the petitioner and has accepted the findings of the Inquiry Officer. From the perusal of the order passed by the appellate authority, which is impugned in the present writ petition, it is apparent that the appellate authority has interfered with the order passed by the disciplinary authority only on the ground of quantum of punishment. The appellate authority has not examined and recorded any finding on the objections taken by the petitioner in his appeal and has mechanically confirmed the order passed by the disciplinary authority.

45. It has been further contended by learned counsel for the petitioner that the charges against the petitioner are stale and do not warrant an inquiry on stale charges, in view of judgments of Apex Court in case of **State of Madhya Pradesh Vs. Bani Singh and Another** reported in **1990 (Suppl) SCC 738, State of Andhra Pradesh Vs. N. Radhakishan** reported in **(1998) 4 SCC 154**, and **P.V. Mahadevan Vs. M.D., T.N. Housing Board** reported in **(2005) 6 SCC 636**.

46. Learned counsel for the petitioner has referred to chargesheet which is annexed as Annexure No. 3 at page No. 21 of the writ petition. There are two charges against the petitioner in the aforesaid chargesheet, which are quoted as under:-

"आरोप संख्या 1 :-

जब आप वर्ष 1983 में आपूर्तिनिरीक्षक के पद पर जनपद कानपुर नगर में कार्यरत थे, उस दौरान दिनांक 29-4-83 को भी सतनामसिंह पत्र श्री गुरपालसिंह, मकान नं० 171 हरजेन्दरनगर कानपुर नगर के नाम से थोक कोयला लाइसेन्स प्राप्त करने के लिए आवेदनपत्र जिला पूर्ति अधिकारी को प्राप्त हुआ था, जिसकी जाँच कर आप द्वारा उक्त व्यक्ति को कोयला थोक लाइसेन्स दिये जाने की संस्तुति दिनांक 30-4-83 को की गई थी। उक्त आवेदनपत्र के साथ संलग्न शपथपत्र में आवेदक द्वारा प्रार्थनापत्र में अंकित किये गये व्यापार स्थल की चौहद्दी नियमानुसार अंकित नहीं की गई थी तथा व्यापार स्थल के किराये का होना उल्लिखित किया

गया था। अतः आपका दायित्व था कि आप आवेदक से सम्बन्धित मकान मालिक द्वारा निर्गत किराये की रसीद/अनुबन्धपत्र की प्रति प्राप्त करते हुए शपथपत्र में व्यापार स्थल की चौहद्दी नियमानुसार अंकित कराने के उपरान्त मौके पर जाकर जाँच कर अपनी निष्पक्ष आख्या प्रेषित करते किन्तु आपने अपने निहित स्वार्थ पूर्ति हेतु मेसर्स नानक ट्रेडर्स को कोयला थोक विक्रेता लाइसेन्स दिलवाने हेतु बिना जाँच पड़ताल किए गलत रूप से सत्यापन रिपोर्ट प्रस्तुत करके उसे अनधिकृत रूप से लाइसेन्स दिलवाने में सहयोग देकर अपने पद का दुरुपयोग करते हुए अपने दायित्वों के प्रति घोर लापरवाही बरती। अतः आप मेसर्स नानक ट्रेडर्स को अनधिकृत रूप से कोयला विक्रेता लाइसेन्स निर्गत कराने के दोषी हैं, जिसके कारण आपकी सत्यनिष्ठा भी संदिग्ध है।

उपरोक्त आरोप के समर्थन में निम्नलिखित साक्ष्य पढ़े जायेंगेः-

1- श्री सतनामसिंह पुत्र गुरपालसिंह 171, हरजेन्दरनगर कानपुर नगर द्वारा मेसर्स नानक ट्रेडर्स के नाम से कोयला थोक लाइसेन्स प्राप्त करने हेतु प्रेषित आवेदनपत्रदिनांक 29-4-83 एवं उस पर आपकी आख्या दिनांक 30-4-83।

2- श्री सतनामसिंह पुत्र श्री गुरपालसिंह, 171 हरजेन्दरनगर कानपुर नगर द्वारा प्रेषित शपथपत्र दिनांक 29-4-8

आरोप संख्या 2 :-

आपकी आख्या के आधार पर मेसर्स नानक ट्रेडर्स, 171 हरजेन्दरनगर, कानपुर को कोयला थोक लाइसेन्स संख्या 173 जिला पूर्ति अधिकारी कानपुर नगर द्वारा निर्गत किये जाने के उपरान्त उन्हें अक्टूबर 83 में 675 मि० टन स्टीम, नवम्बर 83 में 92 मि०टन साफूट एवं 450 मि०टन स्टीम, दिसम्बर 83 में 300 मि०टन साफूट एवं 75मि०टन स्टीम एवं मई 84 में 1199 मि० टन ब्लैक कोयले की स्पान्सरिंग की गई थी। जिसके सम्बन्ध में उक्त फर्म का दायित्व था कि वह स्पान्सरिंग के अनुसार जनपद में कोयले का आयात करके उसकी सूचना समय समय पर कार्यालय को देते, उसका वितरण करते तथा स्टाक रजिस्टर, बिक्री रजिस्टर, कैश मेमो आदि अभिलेख रखते तथा प्रत्येक माह की 7 तारीख तक नक्शा प्रस्तुत करते परन्तु उनके द्वाराउपरोक्तानुसार कार्यवाही करते हुए सूचनायें प्रेषित नहीं की गई। अतः अपर जिला मजिस्ट्रेट आपूर्ति के आदेशानुसार श्री०पी०के०सरकार पूर्तिनिरीक्षक कैन्ट ने उक्त लाइसेन्सी के यहाँ चेकिंग की। चेकिंग करने पर उन्होंने पाया कि उक्त फर्म आप द्वारा सत्यापित व्यापार स्थल 171 हरजेन्दरनगर कानपुर नगर में कार्यरत नहीं है और उक्त स्थान पर श्री कश्मीरासिंहके नाम से पूर्व में कोयले की दुकान थी तथा निरीक्षण के समय उक्त स्थान पर केवल भूसे का ढेर लगा पाया गया, जिसके फलस्वरूप उनके द्वारा उक्त फर्म के विरुद्ध प्रथम सूचना रिपोर्ट दर्ज करने हेतु आख्या प्रेषित की गई तथा अपर जिला मजिस्ट्रेट आपूर्ति, कानपुर नगर के आदेश संख्या 81डी/जिपूअ/कोल/84 दिनांक 23 अक्टूबर 1984 द्वारा उसके लाइसेन्स को निलम्बित करते हुए उसे कारण बताओ नोटिस संख्या 521डी/जिपूअ/कोल/84 दिनांक 9-11-84 निर्गत किया गया एवं तत्पश्चात् उसका लाइसेन्स अपर जिलाधिकारी (आपूर्ति) कानपुर नगर के आदेश संख्या 19-12-84 द्वारा निरस्त कर दिया गया। यदि आप द्वारा नियमानुसार जाँच करके अपनी आख्या प्रेषित की गई होती तो उक्त फर्म को अनधिकृत रूप से लाइसेन्स प्राप्त नहीं हो पाता तथा वह उक्त नियम विरुद्ध कार्य नहीं करती। अतः आप परोक्ष रूप से उक्त फर्म को कोयले का अवैध व्यापार कराने के दोषी हैं एवं आपकी सत्यनिष्ठा संदिग्ध है।

उपरोक्त आरोप के समर्थन मैं निम्नलिखित साक्ष्य पढ़े जायेगे :-

1- उक्त फर्म को लाइसेन्स निर्गत किये जाने हेतु आपकी संस्तुति दिनांक 30-4-83

2 श्री पी०के०सरकार, पूर्तिनिरीक्षक का थानाध्यक्ष को सम्बोधित पत्र

3-फर्म मैसर्स नानक ट्रेडर्स, 171 हरजेन्दरनगर कानपुर के लाइसेन्स संख्या 173 का निलम्बन आदेश संख्या 81डी/जिपूअ० /कोल/84 दिनांक 23 अक्टूबर 84

4- फर्म को निर्गत कारण बताओ नोटिस संख्या 521डी/जिपूअ० /कोल /84 युक्त रसद विभाग

5- फर्म मैसर्स नानक ट्रेडर्स के थोक कोयला लाडगेन्स संख्या 173 का निरस्तीकरण आदेश दिनांक 19-12-84

अतः आपसे अपेक्षा को जाती है कि उपरोक्त आरोप के सम्बन्ध मैं अपना लिखित उत्तरआरोपपत्र की प्राप्ति के 2 सप्ताह अथवा उसके पूर्व अध्धौहस्ताक्षरी को प्रेषित करें। यदि आप कारण कोई लिखित उत्तर उपरोक्त अवधि के अन्दर प्रस्तुत नहीं किया जा है तो यह समझा जायेगा कि आपको उक्त के सम्बन्ध मैं कुछ नहीं कहना है और अन्तिम आदेश तदनुतार पारित कर दिये जायेंगे ।"

47. The petitioner referred charge No. 1 and submitted that as per the charge No. 1, a report was submitted by the petitioner on 30.04.1983 allegedly for grant of license to one Satnam Singh. Referring to the charge No. 2, the counsel for the petitioner submitted that on the basis of inspection, it was found that the place of business of the Firm, which was certified by the petitioner, i.e. 171 Harjendra Nagar, Kanpur, was not

there and it was found that earlier at that place there was a shop of coal of one Kashmeera Singh and on inspection only the haystack was found at the spot and therefore, the first information report was lodged against the Firm and the Additional District Magistrate, Food & Civil Supplies, Kanpur Nagar vide order dated 23.10.1984 suspended the license and issued notice dated 09.11.1984 to the Firm as to why its license be not cancelled and thereafter by order dated 19.12.1984 , the licence of the said Firm was cancelled. It has been further contended by counsel for the petitioner that in the year 1984 itself, the respondents came to know that the report of the petitioner was allegedly incorrect and thereafter, the license of the Firm was cancelled on 19.12.1984. It has been further submitted that there is no explanation as to why the respondents did not initiate disciplinary proceedings, if any, against the petitioner then and waited till 1999 for initiating the proceedings and by order dated 05.04.1999, the petitioner was placed under suspension and thereafter, charge-sheet was issued on 21.01.2000 to the petitioner, which is referred above.

48. According to the petitioner, respondents came to know that alleged misconduct of the petitioner in submitting a report on 30.04.1983 in the year 1984 as it is evident from the charge no. 2 that the license of the Firm was cancelled on 09.11.1984 but the respondents did not initiate any disciplinary proceedings against the petitioner and the disciplinary proceedings were initiated after lapse of 17 years without their being any explanation for the same.

49. In case of **State of Madhya Pradesh Vs. Bani Singh (supra)**, the Apex Court held, in case, there is no satisfactory explanation for inordinate delay in issuing the chargesheet, it would be unfair to permit the departmental inquiry to proceed at such a late stage. Paragraph Nos. 3 and 4 of the State of Madhya Pradesh Vs. Bani Singh (supra) are quoted as under:

"3. O.A. 102 of 1987 was filed by the same officer against initiation of departmental enquiry proceedings and issue of charge sheet on 22.4.1987 in respect of certain incidents that happened in 1975-76 when the said officer was posted as Commandant 14th Battalion, SAF Gwalior, By the order dated 16.12.1987 the Tribunal quashed the charge memo and the departmental enquiry on the ground of inordinate delay of over 12 years in the initiation of the departmental proceedings with reference to an incident that took place in 1975-76. .....

4. The appeal against the order dated 16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate

delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

50. In case of **State of Andhra Pradesh Vs. N. Radhakishan (supra)**, the Apex Court in paragraph Nos. 18, 19, 20, has held as under:-

"18. In State of Punjab and others vs. Chaman Lal Goyal (1995 (2) SCC 570), state of Punjab was aggrieved by the order of the High Court of Punjab and Haryana quashing memo of charges against Goyal and also the order appointing Inquiry Officer to inquire into those charges. In this case the incident, which was the subject-matter of charge, happened in December, 1986 and in early January, 1987, when Goyal was working as Superintendent of Nabha High Security Jail. It was only on July 9, 1992 that memo of charges was issued to Goyal. He submitted his explanation of January 4, 1993 denying the charges. Inquiry Officer was appointed on July 20, 1993 and soon thereafter Goyal filed writ petition in the High Court on august 24, 1993. The High Court quashed the memo of charges on the principal ground of delay of five and a half years in serving the memo of charges, for which there was no acceptable explanation. This Court examined the factual position as to how the delay occurred and if Goyal had been prejudiced in any way on account of delay. This Court relied on the Principles laid down in A.r. Antulay vs. R.S. Nayak (1992 (1) SCC 225), and said, that though that case pertained to criminal prosecution the principles enunciated therein were broadly applicable to the pleas of delay in taking the disciplinary proceedings as well. Referring to decision in A.R. Antulay case this Court said:-

"In paragraph 86 of the judgment, this Court mentioned the propositions emerging from the several decisions considered therein and observed that "ultimately the court has to balance and weigh the several relevant factors - balancing test or balancing process - and determine in each case whether the right to speedy trial has been denied in a given case." It has also been held that, ordinarily speaking, where the court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges, or the conviction, as the case may be, will be quashed. At the same time, it has been observed that that is not the only course open to the court and that in a given case, the nature of the offence and other circumstances may be such that quashing of the proceedings may not be in the interest of justice. In such a case, it has been observed, it is open to the court to make such other appropriate order as it finds just and equitable in the circumstance of the case.

In that case this Court said that it was more appropriate and in interest of justice as well as in the interest of administration that the inquiry which has proceeded to a large extent be allowed to be completed. At the same time the Court directed that Goyal should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the inquiry, if he is found fit for promotion.

19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be

terminated each case has to be examined on the facts and circumstances in that case. the essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. if the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.

20. In the present case we find that without any reference to records merely on the report of the Director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others, all in verbatim and without particularizing the role played by each of the officers charged. There were four charges against the respondent. With three of them he was not concerned. He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor did it choose to appoint any inquiry officer even assuming that action was validly being initiated under 1991 Rules. There is no explanation whatsoever for delay in concluding the inquiry proceedings all these years. The case depended on records of the Department only and Director General, Anti Corruption Bureau had pointed out that no witnesses had been examined before he gave his report. The Inquiry Officers, who had been appointed one after the other, had just to examine the records to see if the alleged deviations and constructions were illegal and unauthorised and then as to who was responsible for condoning or approving the same against the bye-laws. It is nobody's case that respondent at any stage tried to obstruct or delay the inquiry proceedings. The Tribunal rightly did not accept the explanations of the State as to why delay occurred. In fact there was hardly any explanation worth consideration. In the circumstances the Tribunal was justified in quashing the charge memo dated July 31, 1995 and directing the state to promote the respondent as per recommendation of the DPC ignoring memos dated October 27, 1995 and June 1, 1996. The Tribunal rightly did not quash these two later memos. "

51. In case of **P.V. Mahadevan Vs. M.D., T.N. Housing (supra)** relevant paragraphs are paragraph Nos. 7, 8, 9, 10, 11, 12, which are quoted as under:-

"7. The very same ground has been specifically raised in this appeal

before this Court wherein it is stated that the delay of more than 10 years in initiating the disciplinary proceedings by issuance of charge memo would render the departmental proceedings vitiated and that in the absence of any explanation for the inordinate delay in initiating such proceedings of issuance of charge memo would justify the prayer for quashing the proceedings as made in the writ petition.

8. Our attention was also drawn to the counter affidavit filed by the respondent-Board in this appeal. Though some explanation was given, the explanation offered is not at all convincing. It is stated in the counter affidavit for the first time that the irregularity during the year 1990, for which disciplinary action had been initiated against the appellant in the year 2000, came to light in the audit report for the second half of 1994-1995.

9. Section 118 and 119 of the Tamil Nadu State Housing Board Act, 1961 (Tamil Nadu Act No. 17 of 1961 read thus :

"118. At the end of every year, the Board shall submit to the Government an abstract of the accounts of its receipts and expenditure for such year.

119. The accounts of the Board shall be examined and audited once in every year by such auditor as the Government may appoint in this behalf."

10. Section 118 specifically provides for submission of the abstracts of the accounts at the end of every year and Section 119 relates to annual audit of accounts. These two statutory provisions have not been complied with at all. In the instant case the transaction took place in the year 1990. The expenditure ought to have been considered in the accounts of the succeeding year. In the instant case the audit report was ultimately released in the 1994-1995. The explanation offered for the delay in finalising the audit account cannot stand scrutiny in view of the above two provisions of the Tamil Nadu Act 17. It is now stated that the appellant has retired from service. There is also no acceptable explanation on the side of the respondent explaining the inordinate delay in initiating departmental disciplinary proceedings. Mr. R. Venkataramani, learned Senior counsel is appearing for the respondent. His submission that the period from the date of commission of the irregularities by the appellant to the date on which it came to the knowledge of the Housing Board cannot be reckoned for the purpose of ascertaining whether there was any delay on the part of the Board in initiating disciplinary proceedings against the appellant has no merit and force. The stand now taken by the respondent in this Court in the counter affidavit is not convincing and is only an afterthought to give some explanation for the delay.

11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings

would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

12. We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefit shall be disbursed within three months from this date. No costs"

52. The Supreme Court in case of **UCO Bank and Others Vs. Rajendra Shankar Shukla** reported in **(2018) 14 SCC 92**, in paragraph No. 12 has held as under:-

"12. We do not find any reason to interfere with the judgment and order passed by the High Court. However, it is necessary for us to highlight a few facts which were brought to our notice during the course of submissions made by learned counsel. The first issue of concern is the enormous delay of about 7 years in issuing a charge sheet against Shukla. There is no explanation for this unexplained delay. It appears that some internal discussions were going on within the Bank but that it took the Bank 7 years to make up its mind is totally unreasonable and unacceptable. On this ground itself, the charge sheet against Shukla is liable to be set aside due to the inordinate and unexplained delay in its issuance."

53. In the facts of the present case, the report was submitted by the petitioner on 30.04.1983 and the respondent authority came to know that the report of the petitioner was incorrect in the year 1984, but no action was taken by the respondents to initiate disciplinary proceedings, if any, against the petitioner. At the relevant point of time, the petitioner was posted at Kanpur and was subsequently transferred from Kanpur and therefore, it cannot be said that the petitioner could be held responsible for delay in initiating the proceedings. There is no explanation by the respondents as to why the proceedings were initiated after the lapse of 17 years.

54. So far as contention of learned Standing Counsel that the inquiry was made as per the procedure prescribed under Rule 7 of Rules, 1999 and the order has been passed against the petitioner after providing adequate opportunity to the petitioner to defend his case, is misconceived.

55. Learned Standing Counsel further submitted that in case, there is procedural irregularity in conducting the inquiry and that the principles of natural justice have been violated, a fresh inquiry be directed to be instituted against the petitioner.

56. Now the question comes up before me, as to whether a fresh inquiry is to be directed to be instituted against the petitioner or not. This Court finds that on this aspect also there is one set of authorities which says that punishment order must be set aside and the employee should be granted relief with all consequential benefits. The second aspect is that where inquiry proceedings are vitiated on the ground of adequate opportunity to the delinquent employee, the courts should permit the employer to proceed against the employee afresh treating the employee under suspension, paying subsistence allowance and in respect of arrears of salary etc., decision is to be taken in the light of final decision in

the fresh proceedings. In the facts of the present case, the employee i.e. petitioner has retired way back. Further the charges against the petitioner are stale as the departmental proceedings were initiated after lapse of about 17 years from the date of alleged misconduct. In my view, no useful purpose would served in directing for fresh inquiry and it will be unfair to permit the departmental inquiry at this stage.

57. In the facts of the present case, I am of the view, the inquiry proceedings are vitiated for non-observance of procedure as prescribed under Rule 7 of Rules, 1999 as well as being in violation of principles of natural justice. Further, I am of the view that there was no evidence against the petitioner as the Inquiry Officer has failed to examine any witness to prove photocopy of the documents, which were given to the Inquiry Officer by the department. The Inquiry Officer has not even cared to examine the original record, especially, under the circumstances when the petitioner raised doubt to the correctness of photocopies which were made available to the petitioner as well as before the Inquiry Officer. The disciplinary authority as well as the appellate authority have also not recorded any independent finding on the representation submitted by the petitioner against the findings of the Inquiry Officer and has confirmed the findings recorded by the Inquiry Officer. Non-consideration of representation of the petitioner against the findings of the Inquiry Officer is in violation of sub-Rule 4 of Rule 9 of Rules, 1999 as well as also in violation of principles of natural justice that orders affecting the rights of the parties must contain reason.

58. Apart from all these, I am also of the view that the charges against the petitioner were stale as the alleged misconduct was committed by the petitioner in the year 1983 which came in the knowledge of the department-respondent in the year 1984 as per the charge-sheet itself but no effort was made by the respondent authority to initiate proceedings against the petitioner till 1999 and disciplinary proceedings were initiated against the petitioner after a lapse of 17 years.

59. For these reasons, I am of the considered opinion that the order impugned could not be sustained and is liable to be quashed. The writ petition is **allowed**. The order dated 23.02.2004 is set aside.

60. The petitioner will be entitled for all consequential benefits which shall be calculated and given to the petitioner by the respondents within a period of three months from the date of production of certified copy of this order before the respondents. In case, the consequential benefits are not given to the petitioner as indicated above, the petitioner will be entitled for payment of 7 per cent interest from the date of judgment till actual payment is made to the petitioner. No order as to costs.

(2025) 5 ILRA 1351
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.05.2025

BEFORE

THE HON'BLE SHAURABH SHYAM SHAMSHERY, J.

Writ-A No. 11837 of 2020
Connected with other cases

Prashant Rai ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner: