A STATE BANK OF PATIALA AND ORS.

v.

S.K. SHARMA

MARCH 27, 1996

B [B.P. JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.]

Service Law :

State Bank of Patiala (Officers') Service Regulations, 1979 : Regulation C *68(ii)(x)(b)(iii).*

Departmental enquiry—Natural justice—Statements of two witnesses—Copies of—Not supplied to delinquent—However, he was permitted to peruse them and take notes therefrom more than three days prior to their examination—No objection raised by delinquent during enquiry—Held : D *Regulation substantially complied with—No prejudice caused to delinquent—No interference with enquiry and order of removal called for.*

Departmental enquiry—Temporary misappropriation—By bank officer—Statements of witnesses and complainant—Recorded at preliminary enquiry—Charges established by enquiry officer inspite of non-examination of E *complainant—Held : Finding by High Court that it was a case of 'no evidence as complainant was not examined, unsustainable in law.*

Administrative law :

Natural Justice—Action in violation of rules/regulations/statutory F *provisions—Incorporating principles of natural justice (audi alteram partem)—Validity of—Principles laid down—Substantive provisions—Normally to be complied with—Procedural provision—Neither substantial nor mandatory—If no prejudice caused no interference of court called for—Substantial compliance with such provision enough.*

G *Natural justice—Rules/Regulations/Statutory provisions—Not incorporating principles of—But such principles implied by nature of order/action—Held : "no opportunity"/"no hearing"—Amounted to total violation of such principles—"No adequate opportunity"/"no fair hearing"—Amounted to violation of only a facet of such principles—Order/action—Former case would* H *be invalid—Latter case—Test of prejudice to be applied—If no prejudice*

caused, order action would be valid. A

Natural Justice—Principles of—Mere technical violation of—Held : setting aside punishment and entire enquiry would be negation of justice and not justified.

Natural justice—Audi alteram partem—Object of—To ensure fair hearing and no failure of justice—Where State or public interest called for curtailing of rule, court must balance such interest with requirement of natural justice before arriving at an appropriate decision. B

Judicial review—Scope of—Natural Justice—Principles of—Question of compliance with—Held : scope was the same whether it was writ petition under Article 226 or civil suit. C

Mandatory provision—Waiver of—Could be waived by person concerned if it was in public interest.

D

Words and Phrases : "Waiver"—Meaning of.

The respondent was working as Manager of a branch of the appellant-Bank. Father of one B had taken loan from handed the appellant-Bank and after his death B came and handed over the amount to the respondent in discharge of the loan. The respondent was subsequently E **transferred to another branch. B discovered that the amount paid by him to the respondent was not credited to his/his father's account. Soon thereafter the amount was deposited in the Bank in the name of B. The Appellant-Bank's case was that having received the amount from B, the respondent did not credit the said amount into Bank account immediately,** F **though he issued a letter to the effect that since the crop loan amount had been adjusted, the entry regarding mortgage of land of the loanee in favour of the Bank be revoked.**

Before ordering a regular oral enquiry, the Bank had directed two G **of its officers to conduct a preliminary enquiry against the respondent. The said officers examined witnesses including B and the Patwari of the village and also gathered necessary documentary evidence. On the basis of the preliminary report, a regular enquiry was ordered. The Bank and the respondent examined their respective witnesses. B, who was the complainant, did not appear as a witness at the regular enquiry. However, the** H

A Patwari was examined as a witness at the regular enquiry. Though the copies of the statements of B and the Patwari were not supplied to the respondent, he was permitted to peruse the same more than three days prior to the commencement of the examination of witnesses.

At the conclusion of the enquiry, a report was submitted by the B enquiry officer holding the charges of temporary misappropriation established. The competent authority accepted the report and ordered the removal of the respondent from service. An appeal and a review submitted by the respondent were dismissed. The respondent thereupon instituted a suit challenging the order of removal. The Trial Court decreed the suit on C ground of violation of Rule 68(ii)(x)(b)(iii) of the State Bank of Patiala (Officers') Service Regulations, 1979 because of non-supply of the statements of witnesses and documents to the delinquent. The appellate Court confirmed the decree. The second appeal filed by the appellant-Bank was dismissed by the High Court which, while affirming the findings of the courts below, assigned one more ground that inasmuch as B was not D examined, it was a case of 'no evidence'. Aggrieved by the High Court's judgment the appellant-Bank preferred the present appeal.

Allowing the appeal, this Court

E HELD : 1.1. The scope of judicial review regarding compliance with principles of natural justice is the same whether it was a writ petition filed under Article 226 of the Constitution of India or a suit filed in the civil court. [982-G]

1.2. Since B, the complainant, was not examined, it cannot be said F to be a case of no evidence. Witnesses were examined including two officers of the Bank who conducted the preliminary enquiry and had recorded the statements of witnesses including B. They spoke to the preliminary enquiry conducted by them and the statement of B recorded by them. Other Bank officials were examined to establish that the letter addressed to the Tehsildar in fact written by and bears signature of the respondent. The G Patwari was also examined. It is on the basis of this evidence that the enquiry officer had come to the conclusion that both charges were established inspite of non-examination of B. Neither the Trial Court nor the first Appellate Court have found that it is a case of no evidence. The additional ground assigned by the High Court is, therefore, unsustainable H in law. [983-A-C]

2.1. The several procedural provisions governing the disciplinary enquiries (whether provided by rules made under the proviso to Article 309 of the Constitution, under regulations made by statutory bodies in exercise of the power conferred by a statute or for that matter, by way of a statute) are nothing but elaboration of the principles of natural justice and their several facets. It is a case of codification of the several facets of rule of *audi alteram partem* or the rule against bias. Regulation 68(ii)(x)(b)(iii) of the State Bank of Patiala (Officers') Service Regulations, 1979 is part of a regulation made in exercise of statutory authority. The sub-clause incorporates a facet of the principles of natural justice. It is designed to provide an adequate opportunity to the delinquent officer to cross-examine the witnesses effectively and thereby defend himself properly. It is a procedural provision. Merely because, word "shall" is used therein it cannot be held to be mandatory. Moreover, even a mandatory requirement can be waived by the person concerned if such mandatory provision is conceived in his interest and not in public interest. From his conduct, the respondent must be deemed to have waived it. This is an aspect which must be borne in mind while examining a complaint of non-observance of procedural rules governing such enquiries. As a rule, all such procedural rules are designed to afford a full and proper opportunity to the delinquent officer/employee to defend himself and are, therefore, conceived in his interest. Hence, whether mandatory or directory, they would normally be conceived in his interest only. Thus sub-clause (iii) is conceived in the interest of the delinquent officer and hence, he could waive it. [987-D-E; 985-C-D; 1001-E-F; 1003-E-G]

Dhirendra Nath Gorai v. *Sudhir Chandra Ghosh & Ors.*, [1964] 4 S.C.R. 1001 and *Krishan Lal* v. *State of Jammu & Kashmir,* [1994] 4 S.C.C. 422, relied on.

2.2. In the instant case though the copies of the statements of two witnesses (Patwari and B) were not furnished, the respondent was permitted to peruse them and take notes therefrom more than three days prior to their examination. Of the two witnesses, B was not examined and only Patwari was examined. The respondent did not raise any objection during the enquiry that the non-furnishing of the copies of the statements is disabling him or has disabled him, as the case may be, from effectively cross-examining the witnesses or to defend himself. No prejudice has resulted to the respondent on account of not furnishing him the copies of

A the statements of witnesses. In the circumstances there has been a substantial compliance of. Regulation 68(ii)(x)(b)(iii) of the Regulations, though not a full compliance. Therefore, failure to literally comply with Regulation 68(ii)(x)(b)(iii) would not vitiate the enquiry altogether. Setting aside the punishment and the entire enquiry on the ground of violation of sub-clause (iii) would not be in the interest of justice, but would be its negation.

B [1006-F-H; 1007-B]

3.1. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat ends of justice. Principles of natural justice are but the C means to achieve the ends of justice. They cannot be perverted to achieve the opposite end. That would be a counter-productive exercise. Principles of natural justice cannot be reduced to any hard and fast formulae and cannot be put in a straight-jacket. Their applicability depends upon the context and the facts and circumstances of each case. [1003-H; 1004-A; 999-E]

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Mahendra Singh Gill v. *Chief Election Commissioner,* [1978] 2 S.C.R. 272 and *Russel* v. *Duke of Norfolk,* (1949) 1 All. E.R. 109, referred to.

3.2. It would not be correct to say that for any and every violation of a E facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. The approach and test adopted in B. Karunakar should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or require- F ment governing the enquiry; the complaint should be examined on the touch-stone of prejudice. It is from the stand point of fair hearing - applying the test of prejudice, as it may be called - that any and every complaint of violation of the rule of *audi alteram partem* should be examined. The test is : all things taken together whether the delinquent officer/employee had or did not have a fair hearing. [1000-F-G; 999-H; 1000-F]

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Managing Director E.C.I.L. v. *B. Karunakar,* [1993] 4 S.C.C. 727, followed.

4.1. An order passed imposing a punishment on an employee upon a H disciplinary/departmental enquiry in violation of the rules/regula-

tions/statutory provisions governing such enquiries should not be set aside automatically. The Court or Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character. [1004-C-D]

4.2. A substantive provision has normally to be complied with and the theory of substantial compliance or the test of prejudice would not be applicable in such a case. [1004-D-E]

4.3. In the case of violation of a procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the stand point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including the setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. There may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. Whether there is a provision expressely providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence and in a given case, the enquiry officer does not give that opportunity inspite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. Thus, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. The very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle. [1004-E-H; 1005-A-C]

4.4. In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the

A standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee. [1005-C-D]

4.5. In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is B conceived in the interest of the person proceeded against or in public interest. If it in found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either explicitly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it C is found that the delinquent officer/employee has not or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (including the setting aside of the order of punishment). The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as the case may be. [1005-D-F]

D *Managing Director, E.C.I.L.* v. *B. Karunakar,* [1993] 4 S.C.C. 727, followed.

4.6. Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the prin- E ciples of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of *Audi alteram partem*) and violation of a facet of the said rule. A distinction must be made between "no opportunity" and "no adequate opportunity", i.e., between "no notice"/"no hearing" and "no fair F hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to.) In such cases, normally, liberty will be reserved for the authority to take proceedings afresh according to law, i.e., in accordance with the said rule (*audi alteram partem*). (b) But in the latter case, the effect of violation (of a facet of the rule G of *audi alteram partem*) has to be examined from the standpoint of prejudice; it is to be seen by the Court or Tribunal whether in the totality of the circumstances. the delinquent officer/employee did or did not have a fair hearing and the order to be made shall depend upon the answer to the said query. [1005-G-H; 1006-A-B]

H 4.7. While applying the rule of *audi alteram partem* (the primary

principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them. [1006-D-E] A

4.8. There may be situations where the interests of State or public interest may call for curtailing of the rule of *audi alteram partem*. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision. [1006-E-F] B

4.9. The principles stated above are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee. [1004-B] C

State of Uttar Pradesh v. *Mohd. Nooh*, [1958] S.C.R. 595; *G.B. Gautam* v. *Union of India & Ors.*, [1993] 1 S.C.C. 78; *Sunil Kumar Banerjee* v. *State of West Bengal & Ors.*, [1980] 3 S.C.R. 179, *Chintapalli Agency T.A.S.C.S. Limited* v. *Secretary (F&A) Government of Andhra Pradesh*, AIR (1977) SC 2313 and *S.L. Kapoor* v. *Jagmohan*, [1981] 1 S.C.R. 746, followed. D

A.K. Roy v. *Union of India*, [1982] 1 S.C.C. 271; *Swadeshi Cotton Mills* v. *Union of India*, [1981] 1 S.C.C. 664; *A.K. Kraipak & Ors.* v. *Union of India & Ors.*, [1969] 2 S.C.C. 262; *Liberty Oil Mills* v. *Union of India*, [1984] 3 S.C.C. 465; *K.L. Tripathi* v. *State Bank of India & Ors.*, [1984] 1 S.C.C. 43; *Hiranath Misra* v. *Rajendra Medical College*, [1973] 1 S.C.C. 805; *Janakinath Sarangi* v. *State of Orissa*, [1969] 3 S.C.C. 392; *Ridge* v. *Baldwin*, (1964) A.C. 40; *M. Vasudevan Pillai* v. *City Council of Singapore*, [1968] 1 W.L.R. 1278; *Calvin* v. *Carr*, (1980) A.C. 574; *Al Mehdawi* v. *Secretary of State for the Home Department*, (1990) 1 A.C. 876; *Malloch* v. *Aberdeen Corporation*, (1971) 2 All. E.R. 1278; *R.* v. *Secretary of State for Transport ex parte Gwent County Council*, (1987) 1 All E.R. 161; *Bushell* v. *Secretary of State for Environment*, (1981) A.C. 75 and *C.C.S.U.* v. *Minister for the Civil Service*, (1985) A.C. 374, referred to/Wade on Administrative Law (Seventh Edition) P. 515, referred to. E F G

Union of India v. *Mohd. Ramzan Khan*, [1991] 1 S.C.C. 588; *State of Bombay* v. *Narul Latif Khan*, [1965] 3 S.C.R. 135; *State of Uttar Pradesh & Anr.* v. *Sri G.S. Sharma*, (1967) 3 S.C.R. 848; *Union of India* v. *T.R. Varma*, H

[1958] S.C.R. 499; *State of Orissa* **v.** *Dr. Binapani Devi*, **[1967] 2 S.C.R. 625;** *R.* **v.** *Beare*, **[1988] 2 S.C.R. 387,** *Grewal* **v.** *Canada*, **[1992] 1 Canada Federal Court Reports 581 and** *Maradana Mosque Trustees* **v.** *Mahmud*, **(1967) 1 A.C. 13 and** *Wood* **v.** *Woad*, **(1874) LR 9 Ex. 190, cited.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5129 of 1996.

From the Judgment and Order dated 23.5.95 of the Punjab & Haryana High Court in R.S.A. No. 2529 of 1994.

S.P. Goyal and Ms. Amita Gupta for the Appellants.

O.P. Rana and R.C. Gubrele for the Respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Leave granted. Heard counsel for the parties.

This appeal preferred against the judgment and decree of the Punjab and Haryana High Court dismissing the second appeal filed by the appellant raises certain basic question concerning natural justice in the context of disciplinary proceedings.

A disciplinary enquiry was held against the respondent in respect of two charges. They are :

"*Charge No. 1*

'That he did not deposit the sum of Rs. 10,000 handed over to him by Sh. Balwant Singh in December 1985, in the crop loan account of Sh. Jarnail Singh S/o. Sh. Lahra Singh. Later on the entire amount of R. 11,517-50 outstanding in the account was deposited by someone on the 22nd March 1986 under the signature of Sh. Balwant Singh. He thus utilised the amount of Rs. 10,000 for approximately 3 months for his own advantage.'

Charge No. II

'That he, in contravention of Regulation 50(4) of the State Bank of Patiala (Officers') Service Regulations 1979, issued an undated letter in his own handwriting addressed to the Tehsildar, Bhatinda

for revocation of Mutation on the land mortgaged to the Bank even when the crop loan account of Shri Jarnail Singh was not adjusted. He thus jeopardised the interests of the Bank'."

At the relevant time, the respondent was working as the Manager of Kot Fatta branch of the appellant-Bank. The charge against the respondent, in short, is one of temporary misappropriation. One Jarnail Singh had taken a loan of Rupees ten thousand from the Bank. After Jarnail Singh's death, his son, Balwant Singh' came and handed over a sum of Rupees ten thousand to the respondent in December, 1985 in discharge of the said loan. In February, 1986, the respondent was transferred to another branch. In March, Balwant Singh went to the Bank and discovered that the amount paid by him to the respondent was not credited to his/his father's account. Soon thereafter, a sum of Rs. 11,517.50p was deposited in the Bank in the name of Balwant Singh. The *appellant-Bank's* case is that having received the amount from Balwant Singh in December, 1985, the respondent did not credit the said amount into the Bank account until March, 1986, though he issued a letter addressed to Tehsildar, Bhatinda in December, 1985 itself to the effect that since the crop loan amount has been adjusted, the entry regarding mortgage of land of Jarnail Singh in favour of the Bank be revoked.

Before ordering a regular oral enquiry, the Bank had directed Sri K.J. Wadhan and Sri P.N. Garg to conduct a preliminary enquiry. The said officers examined witnesses including Balwant Singh and the Patwari of the village, Sri Kaur Singh, and also gathered necessary documentary evidence. It is on the basis of the material so gathered and the preliminary report they submitted that the regular oral enquiry was ordered. In the enquiry, six witnesses (PWs. 1 to 6) were examined on behalf of the Bank and three witnesses (DWs. 1 to 3) on behalf of the respondent. The Bank examined Sri K.J. Wadhan and Sri P.N. Garg who had conducted the preliminary enquiry and recorded the statements of Balwant Singh among others. The Patwari, Kaur Singh, was examined as PW-5. The other three witnesses, PWs.3, 4 and 6 are the employees of the Bank who spoke to the various aspects of the Bank's case. Balwant Singh who was the complainant did not appear as a witness at the regular enquiry inspite of several attempts made to procure his presence, though his statement had been recorded during the preliminary enquiry.

At the conclusion of the enquiry, a report was submitted by the

A enquiry officer holding both the charges established. The competent authority accepted the report and ordered the removal of the respondent from the service. An appeal and a review submitted by the respondent were dismissed. The respondent thereupon instituted a suit in the court of learned Sub-Judge, IInd Class, Bhatinda for a declaration that the order of removal is void and illegal and for a declaration that he continues to be B in service with all consequential benefits. The Trial Court rejected all the grounds urged by the respondent in support of his case except one, viz., that "the list of witnesses and list of documents were not supplied along with charge-sheet and then the same were not supplied by the presenting officer during the course of enquiry". On the only ground that "this argu- C ment of the learned counsel for the plaintiff was not meted out by the learned counsel for the defendants in his written arguments", the Trial Court held the allegation established. It found that the said failure to supply is violative of Regulation 68(x)(b)(iii) of the State Bank of Patiala (Officers') Service Regulations, 1979 and on that basis, decreed the suit. D On appeal, the judgment and the decree of the Trial Court was affirmed. The Appellate Court found the following facts: during the course of enquiry, the presenting officer filed a provisional list of documents/witnesses (P-2) on June 2, 1987. The list contained nine documents including the statements of Kaur Singh, Patwari, and Balwant Singh, complainant. The said documents were marked as P-3 to P-11. Though a copy of the list E of documents/statements was supplied to the respondent-plaintiff, copies of the documents P-3 to P-11 were not supplied to him. He was, however, advised to peruse, examine and take notes of the said documents/statements. This opportunity was given only half an hour before the commencement of the enquiry proceedings. The Appellate Court found that in the F above circumstances, there was a clear violation of Regulation 68 which has prejudicially affected the respondent's defence. The second appeal filed by the Bank was dismissed by a learned single Judge of the High Court affirming the said finding. The learned Judge in fact assigned one more ground in support of the respondent's case, viz., that inasmuch as Balwant Singh was not examined, it is a case of 'no evidence'. Before G entering upon the discussion of issues arising herein, it is well to reiterate the well-accepted proposition that the scope of judicial review in these matters is the same whether it is a writ petition filed under Article 226 of the Constitution of India or a suit filed in the civil court.

H To clear the ground for considering the main question arising herein,

we may first dispose of the additional ground assigned by the High Court. Because Balwant Singh, the complainant, was not examined, it cannot be said to be a case of no evidence. As stated above, as many as six witnesses were examined including two officers of the Bank who conducted the preliminary enquiry and had recorded the statements of witnesses including Balwant Singh. They spoke to the preliminary enquiry conducted by them and the statement of Balwant Singh recorded by them. Other Bank officials were examined to establish that the letter Exh. P-6 addressed to the Tehsildar, Bhatinda was in fact written by and bears the signature of the respondent. Kaur Singh, Patwari, was also examined. It is on the basis of this evidence that the enquiry officer had come to the conclusion that both the charges were established inspite of non-examination of Balwant Singh. Neither the Trial Court nor the first Appellate Court have found that it is a case of no evidence . The additional ground assigned by the High Court is, therefore, unsustainable in law.

Now, coming to the main ground upon which the plaintiff's case has been decreed, viz., the non-furnishing of the copies of the statements of witnesses and documents, the factual position as found by the Appellate Court is to the following effect: though a list of documents/witnesses was furnished to the respondent before the commencement of the enquiry, the copies of the documents and statements recorded during the preliminary enquiry were not supplied to the respondent. Half an hour before the commencement of the enquiry proceedings, the respondent was advised to peruse the said documents and the statements of witnesses which he did. Balwant Singh was not examined at the regular enquiry. The other witness who was examined during the preliminary enquiry, Kaur Singh, Patwari, was examined at the regular enquiry. The question is whether on the above facts, it can be held that there is a violation of Regulation 68 and whether the violation, if any, vitiates the enquiry. Regulation 68, insofar as is relevant reads thus :

> "(a) The inquiring authority shall where the officer does not admit all or any of the articles of charge furnish to such officer a list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be proved.
>
> (b) The inquiring authority shall also record an order that the officer may for the purpose of preparing his defence :

A (i) Inspect and take notes of the *documents listed* within five days of the order or within such further time not exceeding five days as the inquiring authority may allow:

(ii) submit a list of documents and witnesses that he wants for enquiry.

B

(iii) be supplied with *copies of statements of witnesses,* if any, recorded earlier and the Inquiring Authority shall furnish such copies *not later than three days before the commencement of the examination of the witnesses by the Inquiring Authority.*

C

(Emphasis added)

(iv) gave a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery of production of the documents

D referred to at (ii) above."

(Taken from the Judgment of the Appellate Court)

It is sub-clause (iii) which is said to have been violated in this case, The sub-clause provides that copies of the statements of witnesses, if any,

E recorded earlier shall be furnished to the delinquent officer "not later three days before the commencement of the examination of witnesses by the Inquiring Authority." From the appellate Court judgment, it appears that on June 2, 1987, the respondent was given an opportunity of perusing and taking notes from the said documents and statements of witnesses and that

F the enquiry also commenced on that day. It, however, appears from a copy of the enquiry report that the six witnesses for the Bank were examined on the following dates: S/Sri K. S. Wadhan and P.N. Garg (PWs.1 and 2) on July 6, 1987, S/Sri Mangat Rai Verma, Prakash Singh and Kaur Singh (PWs. 3, 4 and 5) on July 7, 1987 and Sri Ashwini Kumar (PW-6) on July 27, 1987. The three defence witnesses were also examined on July 27, 1987.

G It is thus evident that though copies of the statements of Kaur Singh and Balwant Singh were not supplied to the respondent, he was permitted to peruse the same more than three days prior to the examination of witnesses. It is necessary to emphasise that sub-clause (iii) aforesaid only speaks of copies of statements of witnesses recorded earlier and does not

H refer to documents. So far as the documents are concerned, the only right

given to the delinquent officer by Regulation 68 is to inspect and take notes and that has been done. Coming back to the statements of witnesses, Balwant Singh was not examined at the oral enquiry at all as stated above. Only Kaur Singh, Patwari, was examined. The issue boils down to this : whether the failure to literally comply with sub-clause (iii) of clause (b) of regulation 68(ii) (x) vitiates the enquiry altogether *or* whether it can be held in the circumstances that there has been a substantial compliance with the said sub- clause and that on that account, the enquiry and the punishment awarded cannot be said to have been vitiated.

Sub-clause (iii) aforesaid is indisputably part of a regulation made in exercise of statutory authority. The sub-clause incorporates a facet of the principle of natural justice. It is designed to provide an adequate opportunity to the delinquent officer to cross-examine the witnesses effectively and thereby defend himself properly. It is relevant to note in this behalf that neither the enquiry officer's report nor the judgment of the Trial Court, Appellate Court or High Court say that the respondent had protested at the relevant time that he was denied of an adequate opportunity to cross-examine the witnesses effectively or to defend himself properly on account of non-supply of the statements of witnesses. The Appellate Court, on the contrary, has recorded that when he was advised to peruse, examine and take notes from the documents including the statements of witnesses (Kaur Singh and Balwant Singh), the only objection raised by the respondent was that "the documents marked Exh. P-6, P-10 and P-11 were only photostat copies and not originals and should not be considered or marked exhibits". (Exhs. P-6, P-10 and P-11 are documents other than the statements of witnesses, i.e., of Kaur Singh and Balwant Singh) Moreover, as pointed out above, the examination of witnesses began long after the expiry of three days from the day on which the respondent was advised to and he did peruse the documents and statements of witnesses. In the circumstances, it is possible to say that there has been a substantial compliance with the aforesaid sub-clause (iii) in the facts and circumstances of this case, though not a full compliance. This, in turn, raises the question whether each and every violation of rules or regulations governing the enquiry automatically vitiates the enquiry and the punishment awarded *or* whether the test of substantial compliance can be invoked in cases of such violation and whether the issue has to be examined from the point of view of prejudice. So far as the position obtaining under the Code of Civil Procedure and code of Criminal Procedure is concerned,

A there are specific provisions thereunder providing for such situation. There is Section 99 of the Code of Civil Procedure and Chapter 35 of the Code of Criminal Procedure. Section 99 C.P.C. says, "no decree shall be reversed or substantially varied nor shall any case be remanded in appeal on account of any misjoinder or non-joinder of parties or causes of action *or* B *any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of Court*." Section 465(1) of the Criminal Procedure Code, which occurs in Chapter 35 similarly provides that "subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal, confirmation or revision on account of any error, C omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment *or other proceedings before or during trial or in any enquiry or other proceeding under this Code* or any error or irregularity in any sanction for the prosecution unless in the opinion of that court a failure of justice has in fact been occasioned thereby."

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It is not brought to our notice that the State Bank of Patiala (Officers') Service Regulation contains provision corresponding to Section 99 C.P.C. or Section 465 Cr. P.C. Does it mean that any and every violation of the regulations renders the enquiry and the punishment void *or* whether the principle underlying Section 99 C.P.C. and Section 465 Cr. P.C. is E applicable in the case of disciplinary proceedings as well. In our opinion, the test in such cases should be one of prejudice, as would be later explained in this judgment. But this statement is subject to a rider. The regulations may contain certain substantive provisions, e.g., who is the authority competent to impose a particular punishment on a particular F employee/officer. Such provisions must be strictly complied with. But there may be any number of procedural provisions which stand on a different footing. We must hasten to add that even among procedural provisions, there may be some provisions which are of a fundamental nature in the case of which the theory of substantial compliance may not be applicable. For example, take a case where a rule expressly provides that the delin- G quent officer/employee shall be given an opportunity to produce evidence/material in support of his case after the close of evidence of the other side. If no such opportunity is given at all inspite of a request therefor, it will be difficult to say that the enquiry is not vitiated. But in respect of many procedural provisions, it would be possible to apply the H theory of substantial compliance or the test of prejudice, as the case may

be. The position can be stated in the following words: (1) Regulations which are of a substantive nature have to be complied with and in case of such provisions, the theory of substantial compliance would not be available. (2) Even among procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case, the theory of substantial compliance may not be available. (3) In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available. In such cases, complaint/objection on this scope have to be judged on the touch-stone of *prejudice*, as explained later in this judgment. In other words, the test is: *all things taken together whether the delinquent officer/employee had or did not have a fair hearing*. We may clarify that which provision falls in which of the aforesaid categories is a matter to be decided in each case having regard to the nature and character of the relevant provision.

It would be appropriate to pause here and clarify a doubt which one may entertain with respect to the principles aforestated. The several procedural provisions governing the disciplinary enquiries (whether provided by rules made under the proviso to Article 309 of the Constitution, under regulations made by statutory bodies in exercise of the power conferred by a statute or for that matter, by way of a statute) are nothing but elaboration of the principles of natural justice and their several facets. It is a case of codifition of the several facets of rule of *audi alteram partem* or the rule against bias. One may ask, if a decision arrived at in violation of principles of natural justice is void, how come a decision arrived at in violation of rules/regulations/statutory provisions incorporating the said rules can be said to be not void in certain situations. It is this doubt which needs a clarification - which in turn calls for a discussion of the question whether a decision arrived at in violation of any and every facet of principles of natural justice is void.

The first decision on this aspect is that of the House of Lords in *Ridge* v. *Baldwin*, (1964) A.C. 40 and the oft- quoted words are that of Lord Reid, to wit :

> "Then there was considerable argument whether in the result the watch committee's decision was void or merely voidable. Time and time again in the cases I have cited it has been stated that a decision given without regard to the principles of natural justice is void and

A that was expressly decided in *Wood* v. *Woad*, (1874) LR 9 Ex. 190. I see no reason to doubt these authorities. The body with the power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected a proper opportunity to state his case."

B It must, however, be remembered that that was a case where the appellant-chief constable was dismissed without notice and without enquiry. He was tried and acquitted on a criminal charge of conspiracy to obstruct the course of justice. Two other police constables, who were tried alongwith him, were convicted. While acquitting the appellant, the learned Judge C commented adversely at more than one place upon the leadership qualities of the chief constable suggesting that he was found wanting in that respect. Thereupon, the Brighton Watch Committee, without giving any notice or hearing to him, dismissed him from service. The violation was thus of a fundamental nature. It was a case of total violation of the principle of D natural justice*. There could not be a greater violation of natural justice than that.

We may now consider the decision of the Privy Council in *M. Vasudevan Pillai* v. *City Council of Singapore*, [1968] 1 W.L.R. 1278. The E facts of this case are rather involved. The Singapore Municipal Ordinance provided that in a case of misconduct which in the opinion of the head of the department merited dismissal, the head of the department should outline the case to the president or the deputy president and hold an enquiry. The record of enquiry shall thereafter be considered by the president or the deputy president who was entitled to cause such further F enquiry as he may think appropriate and then make his final decision. If the decision was to dismiss the employee, the decision was to be conveyed by the head of the department to the employee who was given a right of appeal to the Establishments Committee. The appellants were daily rated unskilled labourers. On the allegation of misconduct, an enquiry was held G by the head of the department wherein the appellants participated. There-

* It is in this context, it was observed that it is not open to an authority which has not given a notice or hearing to the affected person to say that even if it had given such an opportunity, the affected person had nothing worthwhile to say *or* that the result would not have been different even if such a notice or hearing is given. Of course, no definite opinion was expressed on this aspect in *Ridge* v. *Baldwin*, as pointed out by H the Privy Council in *Maradana Mosque Trustees* v. *Mahmud*, (1967) 1 A.C. 13 at 24.

after, the deputy president asked certain questions from the head of the department and the latter supplied the necessary information. This was not disclosed to the appellants. They were dismissed. On appeal, a *de novo* hearing was afforded to the appellants by the Establishments Committee. Thereupon, the appellants brought an action in Singapore Courts which ultimately reached the Privy Council. The Privy Council recalled, in the first instance, the statement of law on this subject as stated by Lord Reid in Ridge v. *Baldwin* to the effect that unless the conditions of service are governed by a statute or statutory rules, principles of natural justice have no place in a dispute between master and servant. The statement from *Ridge* runs thus :

> "The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence; it depends on whether the facts emerging at the trial prove breach of contract. But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servants, or the grounds on which it can dismiss them."

On the facts of the appeal before them, the Privy Council held, in the first instance, that at the stage of the deputy president asking questions and the head of the department supplying him information, the principles of natural justice had no application. Alternately, they held that even if the said principles did apply, even then it must be held that the said violation was cured by what happened before the Establishments Committee (i.e., on appeal). Since there was a re-hearing before the Establishments Committee and evidence was called *de novo* and also because no grievance was made with respect to the proceedings before the Establishments Committee, the invalidity arising from the violation of principles of natural justice at the earlier stage was cured. This decision was referred with approval in 1980 by the Privy Council in *Calvin* v. *Carr***, (1980) A.C. 574 in the

A following words :

> "Their Lordships regard this as a decision that in the context, namely one of regulations concerning establishments procedures, *justice can be held to be done if, after all these procedures had been gone through, the dismissed person has had a fair hearing and put his case.* It is thus an authority in favouring the existence of the intermediate category, but not necessarily one in favour of a general rule that first instance defects are cured by an appeal. Their Lordships are also of opinion that the phrase 'hearing of evidence *de novo*' though useful in that case, does not provide a universal solvent. *What is required is examination of the hearing process, original and appeal as a whole, and a decision on the question whether after it has been gone through the complainant has had a fair deal of the kind that he bargained for.*"
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> (Emphasis added)

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

** *Calvin*, v. *Carr* was a case where the first contention of the plaintiff was that since the decision against him was arrived at in violation of the principle of natural justice, it was void and no appeal lay against an order which was void. "A condition precedent, it was said, of an appeal was the existence of a real, even though voidable decision". The Privy Council dealt with the argument in the following words: "This argument has led necessarily into the difficult area of what is void and what is voidable, as to which some confusion exists in the authorities. Their Lordships' opinion would be, if it become necessary to fix upon one or other of these expressions, that a decision made contrary to natural justice is void, but that, until it is so declared by a competent body or court, it may have some effect, or existence, in law. This condition might be better expressed by saying that the decision is invalid or vitiated. In the present context, where the question is whether an appeal lies, the impugned decision cannot be considered as totally void, in the sense of being legally non- existent. So to hold would be wholly unreal."

sought to be deported, the appellant applied for judicial review of the deportation order on the ground of absence of notice to him. The High Court and the Court of Appeal upheld his plea holding that notwithstanding absence of fault by the Tribunal, there had been a breach of the principle of *audi alteram partem*, which constituted a fundamental flaw in the decision-making process and that since the fault lay entirely with the appellant's solicitors, there was a clear case for quashing the Tribunal's decision. On appeal to the House of Lords, the decision of High Court and Court of Appeal was reversed. The House of Lords (Lord Bridge) observed: "a party to the dispute who has lost the opportunity to have his case heard through the default of his own advisers to whom he has entrusted the conduct of the dispute on his behalf cannot complain that he has been the victim of the procedural impropriety or that natural justice has been denied to him.....". In other words, the House of Lords was of the opinion that natural justice merely imposed standards of procedural fairness on the decision-making authority and that natural justice does not demand that the person affected should *actually* receive a fair hearing.***

A B C D

We must, however, make it clear that it may be difficult to find uniformity in the large number of decided cases in United Kingdom. For example, take the decision of the House of Lords in *Malloch* v. *Aberdeen Corporation*, [1971] 2 All. E.R. 1278. It was a case where the concerned statute mandated that no resolution of a school Board for the dismissal of a certificated teacher was to be valid unless notice of the motion for dismissal was sent to the teacher not less than three weeks previous to the meeting. And, further that the resolution for the dismissal was not to be valid unless agreed to by the majority of the full members of the Board. The teacher concerned, Malloch, was informed more than three weeks in advance. But his written request for an opportunity to submit counter representations was not granted and though he was present at the decisive meeting, he was not permitted to state his case. The Court held that the

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*** This reminds us of what the Supreme Court of Canada said with respect to the meaning of the words "principles of fundamental justice". Section 7 of the Canadian Charter of Rights and Freedoms, 1982 declares "every one has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with *the principles of fundamental Justice*". *In R.* v. *Beare*, [1988] 2 S.C.R. 387, the Supreme Court of Canada while interpreting the words "principles of fundamental justice" said that it "guarantees fair procedure but does not guarantee the most favourable procedure that can possibly be imagined". Also see *Grewal* v. *Canada*, [1992] 1 Canada Federal Court Reports 581.

G H

A statutory requirement of three weeks' notice before the decision was taken, conferred an implied right to be heard. It was not done. By the notice dated March 19, 1969, the service of the teacher was terminated with effect from April 24, 1969. The House of Lords held that the concerned teacher was denied by the education authority, which employed him, the hearing to which he was entitled. It was further found that the hearing to be afforded B would not be a useless formality, as there was an arguable case for the teacher. Nonetheless, it was observed by Lord Reid (at P. 1283) :

> ".....it was argued that to have afforded a hearing to the appellant before dismissing him would have been a useless formality because C whatever he might have said could have made no difference. *If that could be clearly demonstrated it might be a good answer.*"

Lord Guest (at P. 1291) not only agreed with the above statement but also applied the test of prejudice. He observed :

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> "A great many arguments might have been put forward but *if none of them had any chance of success then I can see no good reason why the respondents should have given the appellant a hearing, nor can I see that he was prejudiced in any way.*"

E Lord Wilberforce too stated the principle in the following words (at P. 1294) :

> "The appellant has first to show that his position was such that he had, in principle, a right to make representations before a decision against him was taken. But to show this is not necessarily enough, F unless he can also show that if admitted to state his case he had a case *of substance to make*. A breach of procedure, whether called a failure of natural justice, or an essential administrative fault, cannot give him a remedy in the courts, *unless behind it there is something of substance* which has been lost by the failure. *The court* G *does not act in vain.*"

In *R.* v. *Secretary of State for Transport, ex parte Gwent County Council*, [1987] 1 All. E.R. 161, the Court of Appeal too applied the test of prejudice in a case of enhancement of toll charges over a bridge. The Act provided for a public hearing before effecting increase. Dealing with H a complaint of procedural impropriety, the Court of Appeal held that

unless prejudice is established to have resulted from the procedural impropriety, no interference was called for. In another case, *Bushell* v. *Secretary of State for Environment*, [1981] A.C. 75 the House of Lords held that in the absence of statutory rules as to the conduct of a local enquiry under the Highways Act, 1959, the procedure to be followed was a matter of discretion for the Secretary of State and the Inspector the only requirement being that the procedure followed should be fair to all concerned including the general public. It is thus clear that the approach of the Court depended upon the facts and circumstances of each case, the law applicable, the nature of the right claimed by the person affected and so on. Having considered the principles emerging from the above cases, we are inclined to say that the aforesaid statement of law in *Calvin* v. *Carr*, stated with reference to *Vasudevan Pillai*, is the appropriate one to adopt as a general rule - and we are supported by the decisions of this Court in saying so. We must, however, forewarn that decisions on the applicability of the principles of natural justice by this Court are legion. It is neither possible nor necessary to refer to all of them, particularly in view of the recent Constitution Bench judgments. We will refer only to a few of them to explain our view point.

In *State of Uttar Pradesh* v. *Mohd. Nooh*, [1958] S.C.R. 595, S.R. Das, CJ., speaking for the Constitution Bench, had this to say :

> "If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure *and which offends the superior court's sense of fair play*, the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex-facie was a nullity for reasons aforementioned."

In *Janakinath Sarangi* v. *State of Orissa*, [1969] 3 S.C.C. 392, Hidayatullah, CJ. (speaking for the Bench comprising himself and G.K. Mitter, J.) made the following pertinent observations :

> "From this material it is argued that the principles of natural justice

A were violated because the right of the appellant to have his own evidence recorded was denied to him and further that the material which was gathered behind his back was used in determining his guilt. In support of these contentions a number of rulings are cited chief among which are *State of Bombay* v. *Nanul Latif Khan*, (1965) 3 SCR 135; *State of Uttar Pradesh & Another* v. *Sri C.S. Sharma*, [1967] 3 SCR 848 and *Union of India* v. *T.R. Varma*, [1958] SCR 499. There is no doubt that if the principles of natural justice are violated and there is a gross case this Court would interfere by striking down the order of dismissal; but there are cases and cases. *We have to took to what actual prejudice has been caused to a person by the supposed denial to him of a particular right*..... Anyway the questions which were put to the witnesses were recorded and sent to the Chief Engineer and his replies were received. No doubt the replies were not put in the hands of the appellant but he saw them at the time when he was making the representation and curiously enough he used those replies in his defence. In other words, they were not collected behind his back and could be used to his advantage and he had an opportunity of so using them in his defence. We do not think that any prejudice was caused to the appellant in his case by not examining the two retired Superintending Engineers whom he had cited or any one of them."

(Emphasis added)

Pausing here, we may notice two decisions of this Court where the test of prejudice was rejected, viz., *Chintapalli Agency T.A.S.C.S. Limited* v. *Secretary (F&A) Government of Andhra Pradesh*, (1977) AIR SC 2313 and *S.L. Kapoor* v. *Jagmohan*, [1981] 1 S.C.R. 746 both rendered by three-Judge Benches. But if one notices the facts of those cases, it would be evident that they were cases of total absence of notice as in the case of *Ridge* v. *Baldwin*. In the former case, the Government allowed revision filed under Section 77 of the Andhra Pradesh Cooperative Societies Act, 1964 without notice to the opposite party, inspite of a request therefor. Para-9 brings out the factual position and Para-11 the legal proposition. They read thus :

"On the very day, viz., 6th October, 1976 when the respondents

filed their revision before the Government, the appellant filed an application to the Government disputing the claim of the village societies. The appellant also filed before the Government a similar application on 28th October, 1976. On 5th November, 1976, the appellant prayed to the Government for an opportunity to file counter in the revision petition filed by the respondents. The Government, however, without any notice to the appellant, passed final orders on 4th December 1976, allowing the two review petitions filed by the village societies and set aside the order of the Registrar dated 10th December, 1975.....

The short question that arises for decision is whether the order of the Government in revision which was passed under section 77 of the Act is invalid for non-compliance with section 77(2) which provides that no order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representation. It is submitted that the Government did not afford any opportunity to the appellant for making representation before it. The High Court rejected this plea on the ground that from a perusal of the voluntary applications filed by the appellant it was clear that the appellant had anyhow met with the points urged by the respondents in their revision petition before the Government. We are, however, unable to accept the view of the High Court as correct."

Similarly, *S.L. Kapoor's* case was one where a Municipal Committee was superseded even without a notice to the Committee, again a case like *Ridge* v. *Baldwin*. After referring to certain English and Indian decisions, Chinnappa Reddy, J. made the following observations :

"In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It will come from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the

A Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal."

B The observations made in *S.L. Kapoor* have to be understood in the context of the facts of that case - and, of course, subject to the dicta of the Constitution Bench referred to hereinafter.

In *Hiranath Misra* v. *Rajendra Medical College*, [1973] 1 S.C.C. 805, C the denial of opportunity to cross-examine the material witnesses was held not to vitiate the order made. It was a case where certain male students entered a girls' hostel during the night and misbehaved with the girls. The committee appointed to enquire into the matter recorded the statements of girls in camera and used them (on the question of identity of miscreants) against the appellants without allowing them to cross-examine the girls on D the ground that such a course would reveal the identity of the girls and would expose them to further indignities and also because the enquiry was held by a committee of responsible persons.

In *K.L. Tripathi* v. *State Bank of India & Ors.*, [1984] 1 S.C.C. 43, E Sabyasachi Mukharji, J., speaking for a three-Judge Bench, considered the question whether violation of each and every facet of principles of natural justice has the effect of vitiating the enquiry. The learned Judge observed:

"The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon F the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitable form part of fair play in action but where there is no lis G regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination *per se* does not invalidate or vitiate the decision H arrived at fairly. This is more so when the party against whom an

order has been passed does not dispute the facts and does not demand to test the veracity of the version of the credibility of the statement.

The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation to the acts, absence of opportunity to cross-examination does not create any prejudice in such cases.

The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case. We have set out hereinbefore the actual facts and circumstances of the case. The appellant was associated with the preliminary investigation that was conducted against him. He does not deny or dispute that. Information and materials undoubtedly were gathered not in his presense but whatever information was there and gathered namely, the versions of the persons, the particular entries which required examination were shown to him. He was conveyed the information given and his explanation was asked for. He participated in that investigation. He gave his explanation but he did not dispute any of the facts nor did he ask for any opportunity to call any evidence to rebut these facts."

It was accordingly held that the enquiry held and the punishment imposed cannot be said to have been vitiated on account of an opportunity to cross-examine certain witnesses not having been afforded to him.*

In *Managing Director, E.C.I.L.* v. *B. Karunakar*, [1993] 4 S.C.C. 727, a Constitution Bench did take the view that before an employee is punished in a disciplinary enquiry, a copy of the enquiry report should be furnished to him (i.e., wherever an enquiry officer is appointed and he submits a report to the Disciplinary Authority). It was held that not furnishing the report amount to denial of natural justice. At the same time, it was held that just because it is shown that a copy of the enquiry officer's report is

* The very same test is applied by a three-Judge Bench in *Sunil Kumar Banerjee* v. *State of West Bengal & Ors.*, [1980] 3 S.C.R. 179.

not furnished, the punishment ought not be set aside as a matter of course. It was directed that in such cases, a copy of the report should be furnished to the delinquent officer and his comments obtained in that behalf and that the court should interfere with the punishment order only if it is satisfied that there has been a failure of justice. The following paragraph (applicable in cases where the order of punishment is subsequent to November 20, 1990, the date of judgment in *Union of India* v. *Mohd. Ramzan Khan*, [1991] S.C.C. 588 is apposite :

> "Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non- supply of the report. *If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present.* The court should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. *It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.* Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report****."
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> (Emphasis added)

**** The decision in *State of Orissa* v. *Dr. Binapani Devi*, [1967] 2 S.C.R. 625, it is obvious, has to be read subject to this decision.

To the same effect is the decision of another Constitution Bench in *C.B. Gautam* v. *Union of India & Ors.*, [1993] 1 S.C.C. 78, a case arising under Chapter XX-C of the Income Tax Act. At Pages 110-111, the following observations are relevant :

> "This brings us to the question of relief. We find that the order of compulsory purchase under Section 269-UD(1) of the Income Tax Act which was served on the petitioner in the night of December 15, 1986, has been made *without any show-cause notice being served on the* petitioner and without the petitioner or other affected parties having been given any opportunity to show cause against an order of compulsory purchase nor were the reasons for the said order set out in the order or communicated to the petitioner or other concerned parties with the order. In view of what we have stated earlier the order is clearly bad in law and is set aside."

Even so, this Court did not set aside the order of compulsory purchase but devised an appropriate procedure so that the "laudable object" underlying Chapter XX-C is not defeated and at the same time the persons affected get an opportunity to put forward their case against the proposed acquisition.

The decisions cited above make one thing clear, viz., principles of natural justice cannot be to reduced to any hard and fast formula. As said in *Russell* v. *Duke of Norfolk*, [1949] All. E.R. 109 way back in 1949, these principles cannot be put in a straight-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See *Mahender Singh Gill* v. *Chief Election Commissioner*, [1978] 2 S.C.R. 272. The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See *A.K. Roy* v. *Union of India* , [1982] 1 S.C.C. 271 and *Swadeshi Cotton Mills* v. *Union of India*, [1981] 1 S.C.C. 664. As pointed out by this Court in *A.K. Kraipak & Ors.* v. *Union of India & Ors.*, [1969] 2 S.C.C. 262, the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable - a fact also emphasised by House of Lords in *C.C.C.U.* v. *Civil Services Union* (supra) where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing - applying the test of prejudice, as it may be called - that any and every complaint of violation of the rule of *audi alteram partem* should be examined. Indeed, there may be situations where observance of the requirement of prior

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

H The matter can be looked at from the angle of justice or of natural

justice also. The object of the principles of natural justice - which are now understood as synonymous with the obligation to provide a fair hearing***** - is to ensure that justice is done, that there is no failure of justice and that every person whose rights are going to be affected by the proposed action gets a fair hearing. The said objective can be tested with reference to sub-clause (iii) concerned herein. It says that copies of statements of witnesses should be furnished to the delinquent officer "not later than three days before the commencement of the examination of the witnesses by the inquiring Authority". Now take a case - not the one before us - where the copies of statements are supplied only two days before the commencement of examination of witnesses instead of three days. The delinquent officer does not object; he does not say that two days are not sufficient for him to prepare himself for cross-examining the witnesses. The enquiry is concluded and he is punished. Is the enquiry and the punishment awarded to be set aside on the only ground that instead of three days before, the statements were supplied only two days before the commencement of the examination of witnesses? It is suggested by the Appellate Court that sub-clause (iii) is mandatory since it uses the expression "shall". Merely because, word "shall" is used, it is not possible to agree that it is mandatory. We shall, however, assume it to be so for the purpose of this discussion. But then even a mandatory requirement can be waived by the person concerned if such mandatory provision is conceived in his interest and not in public interest, *vide Dhirendra Nath Gorai* v. *Sudhir Chandra Ghosh & Ors.*, [1964] 6 S.C.R. 1001. Subba Rao, J., speaking for the Court, held :

> "Where the court acts without inherent jurisdiction, a party affected cannot by waiver confer jurisdiction on it, which it has not. Where such jurisdiction is not wanting, a directory provision can obviously be waived. But a mandatory provision can only be waived if it is not conceived in the public interests, but in the interests of the party that waives it. In the present case the executing court had inherent jurisdiction to sell the property. We have assumed that s.35 of the Act is a mandatory provision. If so, the question is whether the said provision is conceived in the interests of the public or in the interests of the person affected by the non-obser-

***** See the discussion of the is aspect at Page 515 of Wade: Administrative Law (Seventh Edition). In particular, he refers to the speech of Lord Scarman in *C.C.S.U.* v. *Minister for the Civil Service*, [1985] A.C. 374 at 407 where he used both these concepts as signifying the same thing.

A vance of the provision. It is true that many provisions of the Act were conceived in the interests of the public, but the same cannot be said of s.35 of the Act, which is really intended to protect the interests of a judgment-debtor and to see that a larger extent of his property then is necessary to discharge the debt is not sold. Many situations may be visualized when the judgment-debtor does not seek to take advantage of the benefit conferred on him under s.35 of the Act."

The principle of the above decision was applied by this Court in *Krishan Lal* v. *State of Jammu & Kashmir*, [1994] 4 S.C.C. 422 in the case C of an express statutory provision governing a disciplinary enquiry. It was a case where the employee was dismissed without supplying him a copy of the enquiry officer's report as required by Section 17(5) of the Jammu and Kashmir (Government Servants) Prevention of Corruption Act, 1962. This provision was treated as mandatory. The question was how should the said D complaint be dealt with. This Court held:

"Let it now be seen whether the requirement of giving copy of the proceeding of the inquiry mandated by Section 17(5) of the Act is one which is for the benefit of the individual concerned or serves a public purpose. If it be former, it is apparent, in view of the E aforesaid legal position, that the same can be waived; If it be latter, it cannot be. Though Shri Mehta has urged that this requirement serves a public purpose, we do not agree. According to us, the requirement is for the benefit of the person concerned which is to enable him to know as to what had taken place during the course F of the proceedings so that he is better situated to show his cause as to why the proposed penalty should not be imposed. Such a requirement cannot be said to be relatable to public policy or one concerned with public interest, or to serve a public purpose.

G We, therefore, hold that the requirement mentioned in Section 17(5) of the Act despite being mandatory is one which can be waived. If, however, the requirement has not been waived any act or action in violation of the same would be a nullity. In the present case as the appellant had far from waiving the benefit, asked for the copy of the proceeding despite which the same was not made H available, it has to be held that the order of dismissal was invalid

in law. A

The aforesaid, however, is not sufficient to demand setting aside of the dismissal order in this proceeding it self because what has been stated in *ECIL case*, [1993] 4 SCC 727 in this context would nonetheless apply. This is for the reason that violation of natural justice which was dealt with in that case, also renders an B order invalid despite which the Constitution Bench did not concede that the order of dismissal passed without furnishing copy of the inquiry officer's report would be enough to set aside the order. Instead, it directed the matter to be examined as stated in paragraph 31 C

According to us, therefore, the legal and proper order to be passed in the present case also, despite a mandatory provision having been violated, is to require the employer to furnish a copy of the proceeding and to call upon the High Court to decide thereafter as to whether non-furnishing of the copy prejudiced the D appellant/petitioner and the same has made difference to the ultimate finding and punishment given. If this question would be answered in affirmative, the High Court would set aside the dismissal order by granting such consequential reliefs as deemed just and proper." E

Sub-clause (iii) is, without a doubt, conceived in the interest of the delinquent officer and hence, he could waive it. From his conduct, the respondent must be deemed to have waived it. This is an aspect which must be borne in mind while examining a complaint or non-observance of procedural rules governing such enquiries. It is trite to remember that, as F a rule, all such procedural rules are designed to afford a full and proper opportunity to be delinquent officer/employee to defend himself and are, therefore, conceived in his interest. Hence, whether mandatory or directory, they would normally be conceived in his interest only.

Now, coming back to the illustration given by us in the preceding G paragraph, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice *or* would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that tech- H

A nicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise.

B We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee) :

C (1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature of (b) whether it is procedural in character.

D (2) A substantive provision has *normally* to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is
E this : Procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no
F opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or
G the order of punishment. If no prejudice in established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases.
H As explained in the body of the judgment, take a case where there is a

provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence and in a given case, the enquiry officer does not give that opportunity inspite of the delinquent officer/employee asking for it. The prejudice is self- evident. No proof of prejudice as such need be called for in such a case. To report, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can *also* be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it *or* that the provision could not be waived by him, then the Court on Tribunal should make appropriate directions (include the setting aside of the order of punishment) keeping in mind the approach adopted by the Constitution Bench in *B. Karunakar*. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the Tribunal should make a distinction between a total violation of natural justice (*rule of audi alteram partem*) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a

A distinction must be made between "no opportunity" and no *adequate* opportunity, i.e., between "no notice"/no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (*audi alteram partem*). (b) But in the latter case, the effect of violation (of a facet of the rule *audi alteram partem*) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No.5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.

(6) While applying the rule of *audi alteram partem* (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arises before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of *audi alteram partem*. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.

Now, in which of the above principles does not violation of sub-clause (iii) concerned herein fall? In our opinion, it falls under Principles No. 3 and 4(a) mentioned above. Though the copies of the statements of two witnesses (Kaur Singh, Patwari and Balwant Singh) were not furnished, the respondent was permitted to peruse them and take notes therefrom more than three days prior to their examination. Of the two witnesses, Balwant Singh was not examined and only Kaur Singh was examined. The respondent did not raise any objection during the enquiry that the non-furnishing of the copies of the statements is disabling him or has disabled him, as the case may be, from effectively cross-examining the witnesses or to defend himself. the Trial Court has not found that any prejudice has resulted from the said violation. The Appellate Court has no

doubt said that it has prejudiced the respondent's case but except merely, mentioning the same, it has not specified in what manner and in what sense was the respondent prejudiced in his defence. The High Court, of course, has not referred to the aspect of prejudice at all. A

For the above reasons, we hold that no prejudice has resulted to the respondent on account of not furnishing him the copies of the statements of witnesses. We are satisfied that on account of the said violation, it cannot be said that the respondent did not have a fair hearing or that the disciplinary enquiry against him was not a fair enquiry. Accordingly, we allow the appeal and set aside the judgment of the High Court affirming the judgments of the Trial Court and appellate Court. The suit filed by the respondent shall stand dismissed. B C

No costs.

V.S.S. Appeal allowed.