A STATE BANK OF INDIA & ORS.

v.

MOHAMMAD BADRUDDIN

(Civil Appeal No.5604 of 2019).

B JULY 16, 2019

[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]

Service Law:

Punishment of reversion – Propriety of – Disciplinary C *proceedings – Departmental enquiry – Punishment of compulsory retirement – Appellate Authority altered the punishment to one of reversion – Reviewing Authority sustained the punishment of reversion – Writ petition by the delinquent dismissed by Single Judge of High Court – Division Bench of High Court in writ appeal relying on* Ramzan Khan *case set aside the order of punishment* D *holding that copy of Inquiry Report was not supplied to the delinquent before passing order of punishment and hence violative of principles of natural justice – Appeal to Supreme Court – Held: The judgment relied on by the Division Bench, whereby non-furnishing of inquiry report was held to be violative of rules of* E *natural justice, since was given prospective effect, the inquiries conducted prior to date of that judgment (i.e. 20.11.1990) would not be affected by the law laid down in that judgment – The order of punishment in the present case was passed prior to 20.11.1990, it could not have been set aside on the ground of non-furnishing of copy of inquiry report – Punishment of reversion is restored.*

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Removal from service – Propriety of – Disciplinary inquiry – 5 charges levelled against the delinquent – Inquiry Officer found only charge No. 4 as proved while other charges (charge Nos. 1, 2, 3 & 5) were not found proved – Disciplinary Authority disagreed G *with the findings in respect of charge Nos. 1 and 5 – Thus on the basis of charge Nos. 1,4 and 5 and also on the basis of punishment of reversion in earlier departmental proceedings, inflicted penalty/ punishment of removal from service – Order was confirmed in departmental appeal – Single Judge of High Court dismissed the writ petition – Division Bench of High Court, in writ appeal, held*

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that punishment of removal stands vitiated because the reasons for disagreement with the Inquiry Report in respect of charge Nos. 1 and 5 was not supplied to the delinquent and because the previous punishment of reversion was taken into consideration without bringing it to the notice of the delinquent – Appeal to Supreme Court – Held: There is no mandatory requirement of communicating the proposed punishment after 42nd Constitutional amendment – Therefore, there cannot be any bar in the constitutional scheme to take into consideration previous punishments – Thus, non-communication of previous punishments in the show cause notice will not vitiate the punishment imposed – Non-communication of reasons for disagreement recorded in respect of charge Nos. 1 and 5 also cannot be faulted with – However, in exercise of power of judicial review, Supreme Court cannot maintain the punishment of removal from service in view of findings recorded on charge No. 4 – It is for the Disciplinary Authority to consider whether punishment of removal on the basis of charge No. 4 alone was sustainable or not – Matter is remitted back to Disciplinary Authority.

Disposing of the appeals, the Court

HELD:

Civil Appeal No. 5605/2019

1. The Division Bench by impugned order set aside the order of punishment on the ground that copy of the Inquiry Report was not supplied to the delinquent, before the Disciplinary Authority passed an order of punishment, but was supplied along with the order of punishment, therefore, there is complete violation of cardinal principle of natural justice. In *Mohd. Ramzan Khan case (case relied on by Division Bench) laid down that wherever Inquiry Officer has furnished a report to the Disciplinary Authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it. A non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter. However, the said judgment itself has been given

prospective effect i.e. the inquiries concluded prior to the judgment dated November 20, 1990 will not be affected by the law laid down in the said judgment. Since the order of punishment was passed by the Disciplinary Authority prior to November 20, 1990, therefore, the same could not be set aside only for the reason that the copy of the Inquiry Report was not supplied to the delinquent. Consequently, the order of the High Court in LPA No. 261 of 2007 is set aside and the order of punishment of reversion to the post of Junior Management Grade at the lowest stage, as modified by the Appellate Authority, is ordered to be restored. [Paras 4, 5 and 7] [1021-E-H; 1022-F]

*Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors. (***1993) 4 SCC 727 : [1993] 2 Suppl. SCR 576***; Union of India & Ors. v. Mohd. Ramzan Khan* **(1991) 1 SCC 588 : [1990] 3 Suppl. SCR 248 – held inapplicable.**

Civil Appeal No. 5604/2019

2.1 The previous punishments could not be subject matter of the charge-sheet as it is beyond the scope of inquiry to be conducted by the Inquiry Officer as such punishments have attained finality in the proceedings. The requirement of second show cause notice stands specifically omitted by 42nd Amendment of the Constitution of India. Therefore, the only requirement now is to send a copy of Inquiry Report to the delinquent to meet the principle of natural justice being the adverse material against the delinquent. There is no mandatory requirement of communicating the proposed punishment which was specifically contemplated by clause (2) of Art. 311 of the Constitution prior to 42nd Constitutional amendment. Therefore, there cannot be any bar to take into consideration previous punishments in the constitutional scheme as interpreted by this Court. Thus, the non-communication of the previous punishments in the show cause notice will not vitiate the punishment imposed. [Paras 23 and 24] [1031-E-H; 1032-A]

2.2 The findings recorded by the Division Bench that the order of punishment passed on the basis of uncommunicated reasons of disagreement recorded in respect of charge Nos. 1

and 5 cannot be faulted with. The High Court has set aside the order of punishment on the ground that it violates the principle of natural justice. Though, charge No. 4 may be sufficient to inflict punishment but it is not necessary that charge No. 4 alone will entail punishment of removal from service. While exercising the power of judicial review, it will not be within jurisdiction of this Court to maintain the order of punishment of removal from service in view of findings recorded on charge No. 4 itself. It is for the Disciplinary Authority to inflict punishment as it may consider appropriate after finding the charge No. 4 proved against the delinquent. [Paras 28 and 29] [1033-F-H; 1034-A-C]

2.3 Since the delinquent has attained the age of superannuation, there cannot be any order of reinstatement or of suspension. In view thereof, the order of punishment dated November 4, 1993 as also the order of the Appellate Authority are set aside and the matter is remanded back to the Disciplinary Authority to consider as to whether it would like to record reasons of disagreement on charge Nos. 1 and 5 and/or impose punishment on the basis of charge No. 4 with which there is no disagreement, as it may consider appropriate. [Para 32] [1035-D-E]

P.D. Agrawal v. State Bank of India & Ors. **(2006) 8 SCC 776 : [2006] 1 Suppl. SCR 454;** *Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors.* **(1993) 4 SCC 727 : [1993] 2 Suppl. SCR 576 – followed.**

Punjab National Bank and Others v. K. K. Verma **(2010) 13 SCC494 : [2010] 11 SCR 311***;Union of India & Ors. v. Mohd. Ramzan Khan* **(1991) 1 SCC 588 *:* [1990] 3 Suppl. SCR 248;** *Punjab National Bank & Ors.* v. *Kunj Behari Misra* **(1998) 7 SCC 84 : [1998] 1 Suppl. SCR 22 – relied on.**

State of Orissa & Ors. v. *Bidyabhushan Mohapatra* **AIR 1963 SC 779 : [1963] Suppl. SCR 648;** *Nicholas Piramal India Limited* v. *Harisingh* **(2015) 8 SCC 272 – distinguished**

State of Mysore v. *K. Manche Gowda* **AIR 1964 SC 506 : [1964] SCR 540 – held inapplicable.**

A *Govt. of A.P. & Ors. v. Mohd. Taher Ali* **(2007) 8 SCC 656 : [2007] 10 SCR 929 ;** *Union of India & Ors. v. Bishamber Das Dogra* **(2009) 13 SCC 102 – referred to.**

Case Law Reference

B	**[1993] 2 Suppl. SCR 576**	**held inapplicable Para 5**
		followed Para 16
	[1990] 3 Suppl. SCR 248	**held inapplicable Para 5**
		relied on Para 16
C	**[1998] 1 Suppl. SCR 22**	**relied on Para 12**
	[1963] Suppl. SCR 648	**distinguished Para 13**
	[2006] 1 Suppl. SCR 454	**followed Para 13**
D	**[2007] 10 SCR 929**	**referred to Para 13**
	(2009) 13 SCC 102	**referred to Para 13**
	[1964] SCR 540	**held inapplicable Para 14**
	(2015) 8 SCC 272	**distinguished Para 15**
E	**[2010] 11 SCR 311**	**relied on Para 22**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5604 of 2019

F From the Judgment and Order dated 18.04.2017 of the High Court of Jharkhand at Ranchi in L.P.A. No. 258 of 2007

With

Civil Appeal No. 5605 of 2019.

G K.V. Vishwanathan, Sr. Adv., Sanjay Kapur, AOR Ms. Megha Karnwal, Harshal Narayan, Ms. Shubhra Kapur, Kauser Husain, Advs. for the Appellants.

Sanjeev Kumar Choudhary, Ms. Shradha Choudhary, Aniruddha P. Mayee, Advs. for the Respondent.

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The Judgment of the Court was delivered by

HEMANT GUPTA, J. 1. Leave granted.

2. The present civil appeals arise out of an order passed by the High Court of Jharkhand at Ranchi on April 18, 2017, whereby the intra court appeals filed by the respondent Mohammad Badruddin were allowed and the orders of punishment were set aside. The respondent was granted all consequential benefits including back wages.

3. The High Court has dealt with two appeals arising out of two separate writ petitions imposing separate punishments.

4. Firstly, we take up Civil Appeal arising out of Special Leave Petition (Civil) No. 20770 of 2017. The said appeal is directed against an order passed by the High Court in Letters Patent Appeal No. 261 of 2007 wherein the Appellate Authority altered the punishment of compulsory retirement in terms of Rule 49(1) of the State Bank of India (Supervising Staff) Service Rules[1] to one of reversion to the post of Junior Management Grade at the lowest stage vide order dated October 12, 1988. Such order became the subject matter of challenge in C.W.J.C. No. 444 of 1989. The writ petition was dismissed but the letters patent appeal was allowed. The Division Bench set aside the order of punishment on the ground that copy of the Inquiry Report was not supplied to the delinquent before the Disciplinary Authority passed an order of punishment, but was supplied along with the order of punishment, therefore, there is complete violation of cardinal principle of natural justice.

5. We find that the Constitution Bench judgment reported in ***Managing Director, ECIL, Hyderabad & Ors.*** v. ***B. Karunakar & Ors.***[2] though quoted by the High Court, had been applied wrongly. The Disciplinary Authority has passed an order of punishment on August 12, 1988 i.e. before this Court in ***Union of India & Ors.*** v. ***Mohd. Ramzan Khan***[3] laid down that wherever Inquiry Officer has furnished a report to the Disciplinary Authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it. A non-furnishing of the report would amount to violation of rules of natural

[1] 'Rules'.
[2] (1993) 4 SCC 727[3]
[3] (1991) 1 SCC 588

A justice and make the final order liable to challenge hereafter. However, the said judgment itself has given prospective effect i.e. that the inquiries concluded prior to the judgment dated November 20, 1990 will not be affected by the law laid down in the said judgment.

6. The judgment in ***Mohd. Ramzan*** case was approved by the B Constitution Bench in ***B. Karunakar***, wherein it was held as under:

> "34. However, it cannot be gainsaid that while *Mohd. Ramzan Khan case* [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] made the law laid down there prospective in operation, while disposing of the cases which were before the Court, the C Court through inadvertence gave relief to the employees concerned in those cases by allowing their appeals and setting aside the disciplinary proceedings. The relief granted was obviously per incuriam. The said relief has, therefore, to be confined only to the employees concerned in those appeals. The law which is expressly made prospective in operation there, cannot be applied D retrospectively on account of the said error. It is now well settled that the courts can make the law laid down by them prospective in operation to prevent unsettlement of the settled positions, to prevent administrative chaos and to meet the ends of justice. In this connection, we may refer to some well-known decisions on E the point."

7. Since the order of punishment was passed by the Disciplinary Authority prior to November 20, 1990, therefore, the same could not be set aside only for the reason that the copy of the Inquiry Report was not supplied to the delinquent. Consequently, the order of the High Court in F LPA No. 261 of 2007 is set aside and the order of punishment of reversion to the post of Junior Management Grade at the lowest stage, as modified by the Appellate Authority, is ordered to be restored.

8. In view of the aforesaid, Civil Appeal arising out of Special Leave Petition (Civil) No. 20770 of 2017 is allowed.

G 9. The Civil Appeal arising out of Special Leave Petition (Civil) No. 20488 of 2017, is directed against an order passed by the High Court in Letters Patent Appeal No. 258 of 2007 arising out of C.W.J.C. No. 2310 of 1995 filed by the respondent Mohammad Badruddin. The challenge in the writ petition is to an order dated November 4, 1993 by

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which the respondent was inflicted penalty of removal from service. The Division Bench set aside the order of removal on the ground of violation of principle of natural justice as the reasons of disagreement in respect of charge Nos. 1 and 5 were not communicated to the delinquent.

10. The memo of charge was served upon the respondent (delinquent) on June 13, 1989 in respect of the following five charges:

"CHARGE-1.

On 15.12.1983, he opened a Savings Bank Account No. 11945 in a fake name viz. Shri Ajit Kumar Agrawal and also verified the forged signature appearing on the relative account opening form. He thus showed gross negligence in opening the said account through which a series of frauds involving Rs.2,52,000/- were perpetrated, causing the Bank a pecuniary loss of the same amount. The list of fraudulent payment manipulated through the said account is given in Annexure 'A'.

CHARGE-2.

He passed the following payments (a to k) from different Savings Bank Accounts although the relative instruments had not been posted in the concerned accounts:-

Moreover, the balance of account no. 10586 at the time of making payments mentioned against b, c, d, e and f was Rs.875.44 only. All the aforementioned payments turned out to be fraudulent once. Had he cared to refer to the concerned ledgers before passing the instruments, frauds amounting to Rs.1,12,000/- could have been averted.

CHARGE-3

He passed the aforementioned payment without satisfying himself that the relative instruments were in order in every particular and thereby violated the instructions contained in para 3(c), Chapter2 of the Bank's Book of Instructions, Volume-II.

CHARGE-4

On the following dates (a to g of the charge sheet) while checking the Clean Cash Book, he failed to notice that the figures of Savings Bank Account appearing therein did not tally with those of Savings

A Bank Summary Day Book. His perfunctory checking of the Clean Cash Book resulted in suppression of frauds amounting to Rs.70,000/-.

CHARGE-5

B He has thus not only failed to discharge his duties with devotion and diligence, much against Rule 32(4) of State Bank of India (Supervising Staff) Service Rules but also caused a heavy pecuniary loss to the Bank."

11. The Inquiry Officer in his Report dated February 5, 1992 held that charge Nos. 1, 2, 3 and 5 were not proved against the delinquent C though charge No. 4 stands proved. The Disciplinary Authority disagreed with the findings in respect of charge Nos. 1 and 5 and held as under:

"(i) The appellant failed to discharge his duties with devotion and diligence;

D (ii) The appellant failed to interview the depositor before opening Savings Bank Account No. 11945 and he also did not ensure completion of particulars by the depositors on the reverse side of the Account Opening – cum – Specimen signature form, as a result a fake Savings Bank Account in the name of Shri Ajit Kumar Agrawal was opened through which a series of frauds involving E Rs.2,52,000/- were perpetrated. The said action indicated gross negligence which caused substantial financial loss to the Bank.

(iii)The appellant was found guilty of perfunctory checking of Clean Cash Book which resulted in suppression of frauds amounting to Rs.70,000/-. As a Branch Manager, he also failed to notice all the F figures of Savings Bank Account appearing in the Clean Cash Book did not tally with the figures shown in the summary of Savings Bank day books on several dates. Had he carefully checked the Clean Cash Book, the difference would have come to light on the same day."

G 12. On the basis of the findings recorded and keeping in view punishment of reversion to Junior Manager Grade at the lowest stage earlier, the delinquent was inflicted penalty of removal from service in terms of Rule 67(g) of the Rules. The appeal against such order of punishment was dismissed on March 8, 1995. The writ petition was dismissed by the learned Single Bench on June 15, 2007. But in an intra H

court appeal, the Division Bench set aside the order passed by the learned Single Bench as also the order of punishment imposed by the Disciplinary Authority. The Division Bench relied upon ***Punjab National Bank & Ors.*** v. ***Kunj Behari Misra***[4] to hold that the order of punishment stands vitiated as the reasons for disagreement with the Inquiry Report have not been supplied to the delinquent. The Bank is in appeal before this Court against such order passed by the Division Bench.

13. Learned counsel for the appellants submitted that the delinquent faced Departmental Inquiry on five charges. There is no disagreement in respect of the findings recorded on charge No. 4. The charge No. 4 is a grave and independent charge and, therefore, the order of punishment will not warrant interference as the order of removal from service on such charge alone cannot be said to be disproportionate to the misconduct. The reliance is placed upon Constitution Bench judgment in the case of ***State of Orissa & Ors.*** v. ***Bidyabhushan Mohapatra***[5] and ***P.D. Agrawal*** v. ***State Bank of India & Ors.***[6] to contend that in view of principle of severability of charges, the order of punishment will not warrant interference in exercise of the power of judicial review vested with the High Court under Article 226 of the Constitution of India. Another reason which weighed with the High Court was that previous punishment of reversion to the Junior Manager in the lowest grade was taken into consideration though the delinquent was not made aware of such fact in the proceedings. It is contended that such reasoning is not tenable in view of judgment of this Court in ***Govt. of A.P. & Ors.*** v. ***Mohd. Taher Ali***[7] as also in ***Union of India & Ors.*** v. ***Bishamber Das Dogra***[8]. It is also argued that since the allegation against the delinquent relates to gross negligence of fraud and fraudulent conduct while dealing with the affairs of the Bank, therefore, such delinquent who was entrusted not only with public money but also with the money of customers, does not warrant any indulgence.

14. On the other hand, learned counsel for the delinquent relies upon the Constitution Bench judgment of this Court in ***State of Mysore*** v. ***K. Manche Gowda***[9] to contend that before the past punishment is

[4](1998) 7 SCC 84
[5]AIR 1963 SC 779
[6](2006) 8 SCC 776
[7](2007) 8 SCC 656
[8](2009) 13 SCC 102
[9]AIR 1964 SC 506

A taken into consideration, the delinquent has to be made aware of such fact. The reliance is on the following:

> "8. BeforeTop of Form we close, it would be necessary to make one point clear. It is suggested that the past record of a government servant, if it is intended to be relied upon for imposing a punishment, should be made specific charge in the first stage of the enquiry itself and, if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject-matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry. But, nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it relates more to the domain of punishment rather than to that of guilt. But what is essential is that the government servant shall be given a reasonable opportunity to know that fact and meet the same."

15.Learned counsel also relied upon the judgment in ***Nicholas Piramal India Limited*** v. ***Harisingh***[10] to support the said argument that the past record could not be taken into consideration without notice to the delinquent, therefore, the punishment of removal by taking into consideration previous punishments, is not tenable.

16. The argument of Mr. Vishwanathan, learned senior counsel for the appellants is that the Constitution Bench judgment in ***K. Manche Gowda*** is in respect of provisions of Article 311 as they existed prior to amendment of the said provision by the 42nd Constitutional Amendment. The reliance is placed upon ***Mohd. Ramzan Khan's*** caseas affirmed by the Constitution Bench in ***B. Karunakar's*** case to contend that after the constitutional amendment, no notice of the proposed punishment is required to be served. Therefore, the ratio of the judgment relating to

[10](2015) 8 SCC 272

pre 42nd constitutional amendment will not be applicable to the post amendment proceedings.

17. We have heard the learned counsel for the parties and find merit in the arguments raised by Mr. Vishwanathan, learned senior counsel for the appellants, to some extent. The 42nd Constitutional Amendment deleted the following words appearing in clause (2) of Article 311 of the Constitution of India, which reads as under:

> "and where it is proposed, after such inquiry to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry."

18. A perusal of such omitted provisions would show that an opportunity was required to be given to submit a representation on penalty proposed but such requirement had been omitted by 42nd Constitutional Amendment. This Court in ***Mohd. Ramzan*** case considered the effect of amendment and held as under:

> "9. Where, however, the Inquiry Officer furnishes a report with or without proposal of punishment the report of the Inquiry Officer does constitute an additional material which would be taken into account by the disciplinary authority in dealing with the matter. In cases where punishment is proposed there is an assessment of the material and a tentative conclusion is reached for consideration of the disciplinary authority and that action is one where the prejudicial material against the delinquent is all the more pronounced.
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> 12. We have already noticed the position that the Forty-second Amendment has deleted the second stage of the inquiry which would commence with the service of a notice proposing one of the three punishments mentioned in Article 311(1) and the delinquent officer would represent against the same and on the basis of such representation and/or oral hearing granted the disciplinary authority decides about the punishment. Deletion of this part from the concept of reasonable opportunity in Article 311(2), in our opinion, does not bring about any material change in

A regard to requiring the copy of the report to be provided to the delinquent.

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15. Deletion of the second opportunity from the scheme of Article 311(2) of the Constitution has nothing to do with providing of a B copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are C established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced D by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by E the Forty-second Amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendation, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-second Amendment has not brought about any F change in this position."

19. Later, the Constitution Bench in ***B. Karunakar*** affirmed the said judgment to hold that it was no longer necessary to issue a notice to the delinquent employee to show cause against the punishment proposed. The Court held as under:

G "19. *In Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] the question squarely fell for consideration before a Bench of three learned Judges of this Court, viz., that although on account of the Forty-second Amendment of the Constitution, it was no longer*

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necessary to issue a notice to the delinquent employee to show cause against the punishment proposed and, therefore, to furnish a copy of the enquiry officer's report along with the notice to make representation against the penalty, whether it was still necessary to furnish a copy of the report to him to enable him to make representation against the findings recorded against him in the report before the disciplinary authority took its own decision with regard to the guilt or otherwise of the employee by taking into consideration the said report. The Court held that whenever the enquiry officer is other than the disciplinary authority and the report of the enquiry officer holds the employee guilty of all or any of the charges with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the disciplinary authority against it and the non-furnishing of the report amounts to a violation of the rules of natural justice.

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

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Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or

A innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

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

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(Emphasis supplied)

20. In ***K. Manche Gowda's*** case, the Inquiry Officer recommended that the delinquent may be reduced in rank. But while serving show cause notice after the report of the Inquiry Officer, the Disciplinary Authority proposed punishment of dismissal from service. The order of punishment considered the previous punishments imposed upon the delinquent to come to the conclusion that the delinquent is unfit to continue in Government service and, therefore, he was ordered to be dismissed from service. It was, in these circumstances, the Court ordered that the past conduct can be taken into consideration during the second stage of inquiry, which essentially relates more to the domain of punishment rather than to that of guilt. An opportunity should be given to the delinquent to know that fact and meet the same.

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21. The omission of the words from clause (2) of Article 311 of the Constitution reproduced above completely changes the requirement of serving notice in respect of the proposed punishment. The amended provisions of Article 311 of the Constitution of India have been considered in ***Mohd. Ramzan's*** case and later in ***B. Karunakar's*** case. The judgment of this Court in ***Nicholas Piramal India Limited*** arises out of an Award passed by the Labour Court under the Industrial Disputes Act, 1947. The jurisdiction of the Labour Court is much wider where the punishment can be reviewed by the Labour Court in terms of Section 11-A of the said Act.

22. This Court in ***Punjab National Bank and Others v. K. K. Verma***[11] has taken the same view that right to represent against the proposed penalty has been taken away by the 42nd Amendment. It was so held:

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

23.Thus, the requirement of second show cause notice of proposed punishment has been dispensed with. The mandate now is only to apprise the delinquent of the Inquiry Officer's report. There is no necessity of communicating proposed punishment which was specifically contemplated by clause (2) of Article 311 prior to 42nd Amendment.

24. The previous punishments could not be subject matter of the charge sheet as it is beyond the scope of inquiry to be conducted by the Inquiry Officer as such punishments have attained finality in the proceedings. The requirement of second show cause notice stands specifically omitted by 42nd Amendment. Therefore, the only requirement now is to send a copy of Inquiry Report to the delinquent to meet the principle of natural justice being the adverse material against the delinquent. There is no mandatory requirement of communicating the proposed punishment. Therefore, there cannot be any bar to take into consideration previous punishments in the constitutional scheme as

[11](2010) 13 SCC 494

A interpreted by this Court. Thus, the non-communication of the previous punishments in the show cause notice will not vitiate the punishment imposed.

25. In ***Kunj Behari Misra***, it is categorically held that when the Inquiry Report is in favour of the delinquent officer but the Disciplinary B Authority proposes to differ with such conclusions then that Authority must give the delinquent an opportunity of being heard, for otherwise he would be condemned unheard. The Court held as under:

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

26. The judgment of this Court in ***Bidyabhushan Mohapatra's*** H case is not applicable to the facts of the present case as in the aforesaid

case, the High Court has held that the findings of the Tribunal on charges 1(a) and 1(e) were vitiated because it had failed to observe the rules of natural justice. In the present case, the delinquent has not been apprised of reasons of disagreement which were required to be communicated to the delinquent in view of the judgment of this Court in ***Kunj Behari Misra's*** case prior to the stage of imposing punishment. Since the reasons of disagreement were not communicated, the order of removal from service would be in realm of conjectures as to whether punishment of removal would be sustainable on charge No. 4 alone. The judgment referred to is only in respect of punishment which is the second stage after recording of finding of the guilt. In the present case, the pre-requisite condition of communicating reasons of disagreement has not been complied with, which is leading to finding of guilt. Therefore, the judgment is not applicable to the facts of the present case.

27. In ***P.D. Agrawal's*** case, the delinquent was in appeal against an order whereby the action against the delinquent was maintained. This Court in ***P.D. Agrawal's*** case held as under:

> "50. We are, therefore, of the opinion that charge 2 being severable, this Court can proceed on the basis that the charges against the appellant in respect of charge 2 were not proved.
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> xx xx xx
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> 54. For the reasons aforementioned, we are of the opinion that it is not a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution. This appeal is, therefore, dismissed. However, in the facts and circumstances of this case, there shall be no order as to costs."

28. In the present case, the High Court has set aside the order of punishment on the ground that it violates the principle of natural justice. This Court has not found reasons to set aside the order of punishment whereas in a case where order of punishment has been set aside, the principles of natural justice would warrant that the matter is remitted back to the Disciplinary Authority to consider whether the removal of the delinquent on the basis of charge No. 4 alone can be sustained or not.

29. In view of the said judgment, the findings recorded by the Division Bench that the order of punishment passed on the basis of

A uncommunicated reasons of disagreement recorded in respect of charge Nos. 1 and 5 cannot be faulted with. In fact, the argument of Mr. Vishwanathan is that charge No. 4 alone is sufficient to maintain the order of punishment of removal from service. Though, charge No. 4 may be sufficient to inflict punishment but it is not necessary that the charge No. 4 alone will entail punishment of removal from service. While B exercising the power of judicial review, it will not be within our jurisdiction to maintain the order of punishment of removal from service in view of findings recorded on charge No. 4 itself. It is for the Disciplinary Authority to inflict punishment as it may consider appropriate after finding the charge No. 4 proved against the delinquent.

C 30. It is admitted that the delinquent has attained the age of superannuation. Though, the parties are at variance on the date of superannuation but the fact remains that in view of the finding on charge No. 4 proved against the delinquent to which there was no disagreement, we find that the order of the High Court granting consequential benefits D to the delinquent is not justified. However, the question required to be examined is what are the options available at this stage.

31. In ***B. Karunakar*** case, the Constitution Bench examined the question as to what should be the order if the principle of natural justice has not been applied with and the order of punishment stands vitiated on E that account. The Court held that if the order of punishment stands vitiated, the proper relief is to direct reinstatement with liberty to the 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. The question of back wages and other benefits should invariably be left to be decided by the authority concerned according to F law, after the culmination of the proceedings and depending upon the final outcome. The Court held as under:

> "31. …….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 G 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

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under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

32. Since the delinquent has attained the age of superannuation, there cannot be any order of reinstatement or of suspension. In view thereof, the order of punishment dated November 4, 1993 as also the order of the Appellate Authority are set aside and the matter is remanded back to the Disciplinary Authority to consider as to whether it would like to record reasons of disagreement on charge Nos. 1 and 5 and/or impose punishment on the basis of charge No. 4 with which there is no disagreement, as it may consider appropriate.

33. In view of the aforesaid, Civil Appeal arising out of Special Leave Petition (Civil) No. 20488 of 2017 is allowed. Since, admittedly the delinquent has attained the age of superannuation, we direct the Disciplinary Authority to pass an appropriate order within three months of the receipt of copy of this judgment in respect of payment of back wages as well as terminal benefits, if any, payable to the delinquent.

34. With the said directions and liberty, the appeals stand disposed of.

Kalpana K. Tripathy Appeals disposed of.