I. Introduction

Article 311 contains two limitations on doctrine of pleasure in its two clauses (clause (1) and clause (2)) respectively. Clause (1) has already been discussed in the previous chapter. Clause (2) is discussed in this chapter.

It is to be noted here that the limitations or protections provided in Article 311 are only for civil servants. Clause (2) of Article 311 runs as under -

'(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed.'

After the enactment of the Constitution, the original Article 311(2) consisted that opportunity must be given to show cause against the 'action proposed'. The interpretation drawn was the obligation to offer opportunity to show cause at two stages, firstly, at inquiry into the charges and secondly, at awarding punishment. Such interpretation was drawn by the Supreme Court of India in Khem Chand v. Union of India 1. A. 1958 S.C. 300 (306).
following the opinion of the Privy Council expressed in Lall's case while interpreting corresponding provisions of section 240 (3) of the Government of India Act, 1935. This Article was firstly amended by the Fifteenth Amendment Act, 1963, making changes in clauses (2) and (3). The material effect of the amendment was the substitution of the word 'inquiry' for the words 'reasonable opportunity of showing cause against the action proposed'. Another effect was the granting of 'reasonable opportunity' of showing cause during enquiry as well as at post inquiry stage. It means reasonable opportunity of making representation on the 'penalty proposed' also.

This Article was secondly amended by the Forty Second Amendment Act, 1976. The effects were:

(i) certain words at the end of clause (2) have been omitted; and

(ii) the proviso to clause (2) has been substituted, with the object of doing away with the second opportunity of making a representation at the stage of imposing penalty, after conclusion of inquiry.


According to numerous decisions following factors constitutes 'reasonable opportunity' -

(i) frame specific charges with the allegations on which they are based;

(ii) communicate those charges to the concerned Government servant;

(iii) give him an opportunity to answer those charges;

(iv) give him an opportunity to defend himself against those charges by cross-examining witnesses produced against him and by examining himself or any other witnesses in support of his defence;

(v) after considering his answers take its decision;

(vi) observe the rules of natural justice in coming to the finding against the delinquent. Even it has been held that the expression 'reasonable opportunity' embodies the principles of natural justice, which would be applicable to disciplinary proceedings.

against an employee even apart from Article 311(2).

For imposition of even a minor penalty must be preceded by the enquiry as prescribed by the rules.

In a recent case Charen Jit Khurana v. Union of India, the Central Administrative Tribunal observed that the norm 'justice should not merely be done but should seem to be done' squarely applies to disciplinary proceedings as they are quasi-judicial in nature.

In Jai Kumar Singh v. Inspector General of Police, C.R.P.F. where a constable was appointed in CRPF on the basis of a claim that he is a domicile of Gujarat State, Claim was found to be false on enquiry. Termination of service was ordered. The A.P. High Court held that termination is invalid as no opportunity of hearing was given to the employee to explain his position, hence action of the Government has violated principles of natural justice.

II. Various stages of inquiry

1. Show cause against the allegations

The words 'showing cause against the action proposed to be taken in regard to him' have been omitted by 15th Amendment Act, 1963, from Article 311(2) and the words 'a reasonable opportunity of being heard in respect of those charges' were substituted which means a civil servant has

right to submit a written statement denying the charges or explaining the allegations alleged against him. Hence, before initiation of inquiry upon various charges, the civil servant must be given an opportunity to show cause why such inquiry should not be held. In Khem Chand v. Union of India, it was held that he must be given an opportunity to deny the charges and to make his written defence.

2. **Who can be inquiry officer**

There is no requirement of law that departmental inquiry should be held by the disciplinary authority itself. The disciplinary authority may nominate an officer to hold the departmental inquiry and make a report to it unless statutory rules provide specific officer to be an enquiry officer. Violation of such statutory rules would vitiate the entire proceedings. So long as the final decision is taken by the statutory functionary, the mere deputation of an officer to make enquiry and to report does not render the final order passed by a competent authority invalid. The disciplinary authority may itself conduct the inquiry or it may appoint another officer or officers to conduct an inquiry into the charges and report.

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14. E.g. r. 11 (2) of the Mysore Civil Services (classification, and Control) Rules; Rule 1710 Rly. Establishment Code.

In a recent case Manjit Ahluwalia v. Union of India where the petitioner a Grade VI employee was charge sheeted and Deputy General Manager was appointed as Inquiry Officer on 12.12.87. The Deputy General Manager was to retire on 9.1.88. He was re-appointed with the same designation on contract basis for a period of one year effective from 10.1.88 at a consolidated fee of Rs. 3,400/- per month. The Division Bench of Delhi High Court held that he ceased to be a public servant after his superannuation on 9.1.88 and was therefore, incompetent to continue inquiry.

3. Biased inquiry officer

An enquiry is termed as fair, if it is conducted by an enquiry officer who is free from bias attitude. The enquiry by biased enquiry officer must be invalid owing to contravention of the principles of natural justice. Enquiry officer should not be personally interested in the matter.

The test to find out the existence of bias is when a delinquent civil servant expresses a reasonable apprehension that the enquiry officer was biased against him and that there was sufficient ground for such apprehension, the entire

16. 1994(2) S.L.R.292 (Delhi)(D.B.)
enquiry proceedings stand vitiated. Also if a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision. This follows from the principle that justice not only is to be done but should seem to be done.

A government servant who being aware of all the material facts, failed to raise the charge of bias against the inquiry officer cannot be permitted to challenge the proceedings on the ground of bias in writ proceedings.

Bias element can be inferred when superior officer holds an inter-departmental inquiry and records a finding of misconduct and thereafter an inquiry officer subordinate to him is appointed to hold a regular inquiry, it is reasonable to believe that the inquiry officer would be influenced by the opinion of the superior officer. Such an inquiry is invalid. Yet an officer who conducted the preliminary investigation and who has not formed an opinion as to the guilt of the concerned government servant but only recommends that there is a prima facie case for a departmental inquiry cannot be considered as a person unfit to be appointed

as an inquiry officer to conduct a departmental inquiry against the civil servant concerned. Similarly, the appointment of a subordinate officer as an inquiry officer does not demonstrate official bias on the ground that the subordinate officer usually sustains the findings of the preliminary inquiry. The contention that a departmental disciplinary authority cannot appoint an officer belonging to another department as inquiring authority is untenable. Hence disciplinary authority can appoint any government officer belonging to other government department.

In short, the bias element is inferred from circumstances of a particular case where a fact in question may be termed as bias if a reasonable man would in the circumstances infer that there is likelihood of bias.

An objection as to the bias of the inquiry officer or other tribunal must be raised at the earliest opportunity after the person aggrieved comes to know of the facts constituting the bias and not when report is unfavourable to him.

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Where cross examination was done by inquiry officer himself and type of cross examination the enquiry officer indulged in has not been demonstrated. And no exception need be taken to the enquiry officer putting some questions for the purpose of getting a point clarified and getting at the truth. Therefore no prejudice caused to appellant and inquiry is not vitiated.

4. Preliminary Inquiry

Preliminary enquiry or fact finding inquiry is not mandatory prior to the initiation of disciplinary inquiry. It depends upon facts of each case which necessitates preliminary inquiry. A departmental inquiry (disciplinary inquiry) proceeding cannot be challenged on the ground that no preliminary inquiry was held. A preliminary inquiry or fact finding inquiry is held for the very object of determining whether there is prima facie case for making a formal departmental inquiry against the delinquent. Article 311(2) is attracted to the latter inquiry but not to the preceding inquiry, the object of which is not to punish the


delinquent but only to decide whether a formal proceeding to punish the delinquent should be initiated. It was further held that Article 311(2) has to be complied with only where disciplinary proceedings are instituted in order that one of the three major punishments mentioned in that clause may be inflicted on the Government servant.

In short, a government servant cannot be punished on the findings of a preliminary inquiry, without holding a disciplinary inquiry after serving a charge sheet.

Regarding evidentiary value of preliminary inquiry, it was held by the Privy Council that the report of the preliminary inquiry cannot be used at the departmental inquiry, without furnishing a copy thereof to the delinquent. The evidence taken at the preliminary inquiry cannot be used at the disciplinary inquiry unless the witnesses are examined afresh or, at least, they are tendered for cross-examination.

5. Procedure of inquiry

No particular mode of inquiry has been provided by the Constitution of India. A civil servant has no right to insist that the inquiry should be held only by departmental

officers under the normal procedure and not by the vigilance commission.\textsuperscript{32} Hence it is the sweet discretion of the Government to choose the procedure of inquiry out of the procedures provided for. But when there are two set of rules regulating disciplinary proceedings (like the Tribunal Rules and the Classification, Control and Appeal Rules) and the Rules give an option to a specified class of government servants to request that these cases should be tried under one set of rules, it is obligatory for the State to grant the option. An order rejecting such a request is illegal.\textsuperscript{33}

If two sets of rules relating to disciplinary proceedings are open to the Government for taking action against an employee, the action taken will be violative of Article 14 if the rules resorted to are substantially more drastic or prejudicial than the other set of rules available in the matter.

There is no question of malafides where the Government uses one of two powers equally, e.g. the power to discharge under the rules instead of holding a disciplinary inquiry.\textsuperscript{34,35}

\begin{itemize}
\item \textsuperscript{34} State of Orissa v. Dhirendranath, A. 1961 S.C. 1715.
\item \textsuperscript{35} Tata Engineering Co. v. Prasad, (1969) 19 F.L.R. 150(156) S.C.
\end{itemize}
6. **Joint Inquiry**

Where there is case against two or more co-delinquents, a common inquiry can be initiated against all. Yet there are some disciplinary rules which provide for the same. But joint inquiry can be initiated where the evidence is common and there is no prejudice caused, for instance, there should be no denial of a right of cross examination to any delinquent.

7. **Charges**

It is essential that specific and definite charges should be framed with a statement of allegations on which they are based and with such particulars as are necessary to give the delinquent a reasonable opportunity of defence. Hence, the proceedings is, vitiated where the charges are so vague that it was difficult for any accused to meet the charges fairly.

15th Amendment Act, 1963 inserted the words "informed of the charges against him" in Article 311(2) which were retained by 42nd Amendment Act, 1976. The intention was that the charges must be communicated to the delinquent. It is

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36. Eg. 18(1) of the Central Civil Services Classification, Control and Appeal Rules, 1965 (G.6, Vol. 8, p. 1964).
wrong where the charges do not give sufficient particulars to apprise the delinquent of the case he has to meet.

If the State wants to add to the charges, a fresh opportunity to show cause against the added or amended charges must be offered.

'Charge' - in the context of a disciplinary proceeding should not be construed in the technical sense in which it is understood in the Criminal Procedure Code. Also the strict rule of a criminal trial that an offence is not established unless it is proved beyond doubt does not apply to departmental proceedings.

The most important aspect is that a Government servant cannot be punished in a departmental proceeding unless the charge is brought home to the delinquent fairly and in accordance with the requirements of natural justice.

Once the opportunity of hearing is given, the obligation of the Government is discharged.

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delinquent admits his guilt or does not avail of the opportunity, he is not entitled to complain - and there is no need to hold any further inquiry. But the admission must be clear and unequivocal.

3. **Framing of Charges**

There was controversy among various High Courts over the question that whether charges be framed by the punishing authority. The Supreme Court has removed such conflict and established that Article 311(1) only guarantees that civil servant shall not be dismissed or removed by an authority subordinate to the appointing authority. It does not further require that the disciplinary proceedings should be initiated or conducted by an authority not subordinate to the appointing authority. The charges can accordingly be issued by any other person provided the punishment is eventually imposed by the disciplinary authority not being subordinate in rank to the appointing authority. Some departmental rules provide about by whom the charges can be framed. For instance, rule 1709 of the Railway

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Establishment Code, Reg. 228 of the C.P. and Berar Police Regulations. In case of violation of these rules, the proceedings initiated by such charges would be ultra vires.

In A.R. Singh, P.S.I. v. District Superintendent of Police, Kheda where person not cited in charge sheet alleged to have been examined during inquiry as witness. The Gujarat High Court held that record shows that he was not at all examined to prove any allegation. He was summoned only to produce the diary. Failure to mention his name as witness in the charge sheet, therefore, of no consequence because no prejudice was caused to appellant on that account.

9. Confession or admission of guilt

It is the trend in disciplinary proceedings that whenever the delinquent admits the guilt by his statement or in reply containing admission of guilt, the enquiry officer records his statement or treats that reply as confession and no further enquiry is proceeded. Such confession or admission of guilt is reported in his inquiry report to the punishing authority who later on inflicts punishment. This trend is existing, because it has been held in many cases.

that the enquiry officer is not bound by the strict rules of the law of evidence.

It is submitted that this trend is incorrect, because confession is a serious statement, after which there would be stoppage of inquiry and such person is liable for punishment, definitely. Suppose, if such alleged confession is not a real confession and is recorded due to inducement, threat or promise, the whole procedural safeguard of reasonable opportunity of hearing provided under Article 311 (2) remains futile.

In *Krishan Kumar v. State of Haryana*, where the petitioner Krishan Kumar was a constable in H.A.P. at Madhuban, Distt. Karnal in Haryana. It was alleged that he remained absent from duty without leave for a long period. It was reported by the inquiry officer in his inquiry report that he has made confession of the guilt and hence, inquiry was stopped. Relying upon the alleged confession, the punishing authority dismissed him from service. The delinquent made appeals to the Director General of Police, Inspector General of Police which were also dismissed. He also filed writ petition in Punjab and Haryana High Court, the same was dismissed in limine. In reality, that was not confession in real sense. It was the inquiry officer who assured the petitioner to admit the guilt and to do prayer in the

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52. S.L.P. Civil no. 6562 of 1990, decided on 15.1.1993 by Supreme Court.
application to pardon him so that he would be pardoned. In other words, such pardon-application was treated as confession—due to inducement by the biased inquiry officer. Ultimately, the Supreme Court, made an order of re-instatement on 15.1.93 of the petitioner.

It is submitted that confession being a serious statement, must be recorded by the punishing authority and before recording the confession, the punishing authority must go through the following procedure—

(a) to inform him that he is not bound to make confession,
(b) if he does so, it may be used as evidence against him,
(c) upon questioning the delinquent, he has reason to believe that it is being made voluntarily.
(d) after recording of such statement, it must be read over to the person making it and after admitted by him to be correct, it must be signed by the delinquent.

After following the above procedure which is extracted from section 24 of the Indian Evidence Act, 1872 and Section 164 of the Code of Criminal Procedure, 1973 a statement recorded is in true sense a confession. And also in confessional cases the punishment be provided liberally.

10. Interrogation of the delinquent officer

It is permissible to interrogate the delinquent not only where he volunteers to make a statement in his defence. 

but also where such interrogation at the beginning of the inquiry may be to his advantage by way of explaining an admission he may have made or the accusation is raised on matters of record.

11. Oral inquiry

It is natural, when the Government relies its case upon oral testimony, then witnesses are produced and their statements are recorded by an enquiry officer. Where there is statutory rule requiring an oral inquiry, which is mandatory, an oral inquiry must be held otherwise whole proceedings will be invalid. It depends upon the nature of each case, whether it is relied upon documentary evidence or upon oral evidence. But when any witness is tendered, cross examination may have to be offered in order to give a reasonable opportunity to the person charged to defend himself.

12. Right of delinquent to defend

'Defence' tendered by the delinquent consists of many valuable rights of the delinquents which are as under:

A. Right to proper notice of hearing

The delinquent must be given a reasonable notice of date of inquiry when prosecution witnesses would be examined

56. See, rule 55 of the Civil Services (Classification, Control and Appeal Rules.
so that the delinquent may have the opportunity to cross-
examine them and also to examine his own witnesses, if any.

It means, the proceeding would be quashed when the disciplinary
authority proceeded exparte and imposed penalty on the basis
of evidence taken in the absence of the delinquent who
received notice of the date of inquiry after it was held.

Hence, the delinquent must be given reasonable time
and opportunity to defend himself against them, in an
effective manner.

B. Right to receive copies of documents, etc.

If any document, not being a secret document, is
withheld by the State from the delinquent officer and such
document is necessary to enable the latter to exercise his
right to cross examine the prosecution witnesses, or to
plead in his defence, there is a denial of natural justice.

These documents are the documents on the strength of which
the preliminary inquiry was started, the first information
report of the complaint, copies of the statements of
witnesses examined against him at a preliminary inquiry, if

60. Kashinath v. Union of India, (1986) 3 S.C.C. 229 (para 13);
dt. 1.11.1960).
same witnesses are tendered for examination at formal (regular) inquiry.

Reasonable opportunity of hearing requires that copies of all relevant documents must be supplied to the delinquent at the stage of formal inquiry and at appellate stage.

The delinquent has no right to a disclosure of confidential or secret documents; it is sufficient compliance with the principles of natural justice if the substance of such report is communicated to the delinquent. 65

Whether the delinquent was prejudiced by reason of non-supply of any material will depend upon the facts of each case.

Delinquent officer must be supplied with a copy of the inquiry report along with recommendation if any, in the matter of proposed punishment to be inflicted. 66

C. Right to cross-examination of witnesses

After recording the examination or statements, as prosecution witnesses, the delinquent has a valuable right to do cross examination with each witness. In Union of India v. T.R. Verma 68, the Supreme Court observed:

'Rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given an opportunity of cross-examining the witnesses examined by that party, and that no material should be relied on against him without his being given an opportunity of explaining them.'

Although, delinquent has the right to cross-examine a prosecution witness, the inquiry officer has the right to stop irrelevant cross-examination, recording his reason.

The requirement of reasonable opportunity is satisfied if a witness examined in the absence of the delinquent at an earlier stage of the proceeding, is offered for cross-examination when the charge is being inquired into, after supplying copies of his previous deposition.

In *State of Madhya Pradesh v. Chintaman Sadashiva Vaishampagan*, the Supreme Court opined:

'It is hardly necessary to emphasise that the right to cross-examine the witness who gives evidence against him is a very valuable right, and, if it appears that effective exercise of this right has been prevented by the inquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the inquiry had not been held in accordance with rules of natural justice.'

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In a recent case Indrani Bai v. Union of India, where the delinquent was a turner in Gum Carriage Factory. The allegation against her was of attempt to commit that in the factory. The delinquent employee was not given an opportunity to cross-examine the witnesses. The Supreme Court quashed the enquiry proceedings and order of dismissal passed as a consequence thereto.

D. Right to produce defence evidence

A delinquent has right to produce documentary evidence as well as oral evidence in support his defence, after prosecution evidence is closed. He has also right to make arguments with reference to such evidence, to show that the allegations are incredible.

As regards the expenses of defence witnesses, natural justice demands that where a witness cited by the delinquent is permitted by the inquiry officer of Tribunal to be examined as relevant, the responsibility of paying travelling allowance to such witness is that of the Government. The reason is that it is impossible for the employee to bear such expenses where he is under suspension upon a subsistence allowance.

The rule of natural justice is denied where the delinquent is not allowed to call or examine material

72. 1994(2) S.L.R. 672(S.C.).
defence witnesses or to examine himself. Yet the inquiry officer may refuse to call a witness whose evidence is irrelevant to the charges.

2. Right to defence helper

Unless the rules so provide expressly, Government cannot refuse permission to the delinquent's nominee to act as defence helper. Defence helper is different from a lawyer. The Government may require the delinquent to nominate more than one persons out of which the Government can make a selection. The reason is that the right to engage a defence helper cannot be denied where the Department employs an officer to represent the prosecution.

Some rules direct that the person nominated by the delinquent must be approved by the Disciplinary Authority but the High Court has held that such approval should not be capriciously denied unless the nominee, on inquiry by the authority, expresses that he is not agreeable to assist the delinquent.

Unless rules explicitly permit, no retired government servant may provide assistance at an inquiry.

In Rajinder Kumar Sood v. Junior Engineer v. State of
Punjab where Junior Engineer in Public Works Department
was charge-sheeted. He was not allowed to take assistance
of a retired employee of his choice in disciplinary proceeding.
The High Court held that there has been violation of
mandatory provisions of Rule 8(8) of the Rules and principles
of natural justice, hence inquiry proceedings vitiated.

F. Right to assistance by a lawyer

As a general rule, no civil servant can claim legal
assistance as of right. But the rules of natural justice
require that in particular circumstances should have
professional help, if the delinquent so desires. Some of
these particular circumstances are:

(a) where the subject matter is technical (where the
question is of opinion of medical board; 87-88
(b) where the evidence is voluminous 88

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85. 1994 (1) S.L.R. 367 (P. and H.).
   607; Bhagat v. State of H.P. A. 1983 S.C. 454 (para. 5);
   1743 (1746)
(c) where the prosecution examines a handwriting 
expert,
(d) where charge involves a question of law,
(e) where a lawyer is engaged on behalf of the 
prosecution or co-accused.

But request for engaging a lawyer would not be 
entertained where the request is belated or where the 
petitioner has himself been conducting his case admirably.

In a recent case Shri Asl-Mohammed v. Union of 
India, the CAT held that the inquiry officer had used 
discretion fairly and judiciously in disallowing the services 
of a lawyer as no legal question was involved in the matter 
and the person who represented the employee at the proceedings 
was well conversant with the art of cross-examination.

13. Submission of 'Inquiry Report'

The findings made by the inquiry officer upon each 
charge must be specific. The findings or report of the 
inquiry officer is not binding on disciplinary authority.

90. Mody v. State of Bombay, A. 1962 (Guj. 197(202))
(paras 7, 13, 17, 22)
Hence even where the inquiry officer has found the government servant concerned not guilty, it is competent for the disciplinary authority to disagree with the findings and find the officer guilty. The reason is that the Report of the inquiry officer is merely advisory and is not binding upon the Government or the punishing authority, who acts on behalf of the President or Governor according to Article 311.

The inquiry officer is not required to specify the punishment which may be imposed on the delinquent officer, unless the rules or statutory provisions provide otherwise. The reason is that it is for the punishing authority to propose the punishment and not for the inquiring authority. Even, if any recommendation is made about punishment by the inquiry officer, it was held that neither the findings nor the recommendations are binding on the Government, because such recommendations are at par with the findings.


The duty of the inquiry officer is to hold an inquiry, make his report setting forth his conclusions in respect of the said charges, with reasons and founded on the evidence on record. A finding based on no evidence cannot be sustained.

14. Copy of inquiry report be supplied to delinquent

After the final order in disciplinary proceedings, if the employee concerned is desirous to file an administrative appeal, he must have copy of inquiry report, final order, statements of witnesses and documents etc. The rules of natural justice require that the persons discharged must be apprised of all the statements or reports upon which the order of discharge is based.

He cannot complain if copy of a preliminary report which is not taken into consideration at the departmental inquiry is not supplied to him. But if the report of that confidential inquiry is sought to be used in the proceeding,


the petitioner must be given full opportunity of meeting the allegations contained therein. There is no right to a disclosure of confidential or secret documents, such as those of the Anti Corruption Department; it is sufficient compliance with the principles of natural justice if the substance of such reports is communicated to the delinquent.

Some of the service also provide for the same.

Rule 15(4) (1) (a) of the Central Civil Service (classification, Control and appeal) Rules, 1966 is an instance to the point. It provides:

"If the disciplinary authority, having regard to its findings on the charges, is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 1 should be imposed, it shall - (a) furnish to the Government servant a copy of the report of the inquiry authority and, where the disciplinary authority is not the inquiring authority, a statement of its findings together with brief reasons for disagreement, if any, with the findings of the inquiring authority...""

In a recent case Chain Singh v. State of Rajasthan, where copy of inquiry report was not furnished before passing

7. See C 5, Vol. 8, P. 1463; see also rule 5(9) of the All India Services (Discipline and Appeal Rules, 1955).
8. 1994 (2) S.L.R. 495.
the order of dismissal. The Rajasthan High Court held that it is violation of provision of Article 311 and Rule 16 of the Rajasthan Civil Services (classification, Control and Appeal) Rules, 1958, hence disciplinary proceedings are liable to be quashed. However, disciplinary authority is allowed to initiate fresh proceedings as per law.

In a recent case Sri Tapan Kumar Day v. United Bank of India, it has been held that deletion of second opportunity from the scheme of Article 311(2) of the Constitution has nothing to do with providing of a copy of the inquiry report to the delinquent in the making of representation, even though the second stage of 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 the delinquent guilty. For doing away with the effect of the inquiry report or to meet recommendations of inquiry officer in the matter of imposition of punishment furnishing a copy of the report becomes necessary. It is also necessary to avoid the use of any material against delinquent without his knowledge.

In Union of India v. Mohd. Samzan Khan where the disciplinary authority himself is the inquiry officer, there is no necessity of furnishing report. The Supreme Court held

9. 1994 (2) S.L.R. 449(Calcutta ) (D.B.)
that the disciplinary proceedings are not vitiated on account of the fact that the disciplinary authority himself is the inquiry officer.

In *Union of India v. Mohd. Ramzan Khan*, the Supreme Court expanded the application of principles of natural justice in new dimension. In this case the Court has drawn a distinction between the disciplinary inquiry conducted by the disciplinary authority and by the inquiry officer. In the later case principles of natural justice require that the report of the inquiry officer submitted to the disciplinary authority, on the basis of which that authority is going to take its decision about the delinquent servant, be made available to that servant and he should be given an opportunity to make a representation against any adverse remarks in it. In the former case, however, no report is prepared and therefore this rule does not apply. In subsequent cases, it has been clarified that Ramzan Khan's case decided on 20.11.90, has only prospective application and the cases already concluded are not affected by it.

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11. Ibid.
Whether the report of the inquiry officer/authority who/which is appointed by the disciplinary authority to hold inquiry into the charges against the delinquent employee, is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. The above question came before Constitution Bench of Supreme Court in Managing Director, ECIL, Hyderabad v. B. Karunakar. The Supreme Court opined that the above basic question gives rise to the following incidental questions:

(i) whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it.

(ii) whether the report of the inquiry officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank.

(iii) whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise.

Whether the law laid down in Mohd. Ramzan Khan’s case will apply to all establishments - Government and non-Government, public and private sector undertakings.

What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases.

From what date the law requiring furnishing of the report should come into operation.

Since the decision in Ramzan Khan’s case has made the law laid down there operation, i.e., applicable to the order of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question viz., what was the law prevailing prior to 20th November, 1990.

The Supreme Court answered the question as under -

"...It is difficult to say in advance to what effect the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusion. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet,

explain and controvert it before he is condemned.... However, when the inquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions..... the delinquent employee should have an opportunity to reply to the inquiry officer's findings. The disciplinary authority is then required to consider the evidence report of the inquiry officer and the representation the employee against it..... The first stage ends when the disciplinary authority arrives at conclusions on the basis of the evidence, inquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusion. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached.... The findings on the charges given by a third person like the inquiry officer, particularly when they are born out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations..... Hence it has to be held that when the inquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the inquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or 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 inquiry 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 breach of the principles of natural justice.....
Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded, and when the inquiry officer is not the disciplinary authority the delinquent employee will have the right to receive the inquiry officer's report notwithstanding the nature of the punishment.

The Supreme Court further observed regarding question Nos. (i), (iii) and (iv) as under:

"The delinquent employee is entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject. The law laid down in Mohd. Ramzan Khan's case (1991(1) SLR 159) 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 proceedings or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Copy of report must be furnished to the employee even if he does not ask for the report."

Further, the Supreme Court also observed in the above case regarding the question that what is the effect on the order of punishment when the report of the inquiry officer is not furnished to the employee and what relief should be granted to him in such cases (Q.No. V).

"Hence, in all cases where the inquiry 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 shortcuts. 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. When 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. 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 correct position in law.
From what date the law requiring furnishing of the report, should come into operation. And what was the law prevailing prior to 20th November, 1990. The Supreme Court also answered these questions in the above case (Q.Nos. vi and vii) -

"It was for the first time in Mohd Ramzan Khan's case that the question squarely fell for decision before this Court. Hence till 20th November, 1990, i.e. the day on which Mohd. Ramzan Khan's case was decided, the position of law on the subject was not settled by this Court. It is for the first time in Mohd. Ramzan Khan's case that this Court laid down the law. That decision made the law laid down there prospective in operation i.e. applicable to the orders of punishment passed after 20th November, 1990. The law laid down was not applicable to the orders of punishment passed before that date notwithstanding the fact that the proceedings arising out of the same were pending in courts after that date. The said proceedings had to be decided according to law prevalent prior to the said date which did not require the authority to supply a copy of the inquiry officer's report to the employee. The only exception to his was where the service rules with regard to the disciplinary proceedings themselves made it obligatory to supply a copy of the report to the employee."

15. No representation on penalty proposed

In fact, this was the second opportunity to a delinquent after holding of an inquiry, prior to the 42nd Amendment Act, 1976. But by the 1976 Amendment, this second opportunity has been taken away as per clearly mentioned in first proviso to §11(2).

The Supreme Court, in Tulsiram case\textsuperscript{16} observed that punishing authority can award the penalty only on the evidence adduced during the inquiry.

Yet the 42nd Amendment prohibits the punishing authority to take into account any materials not forming part of the evidence at the inquiry. Because the delinquent's right to defend against such material has been curtailed and hence reasonable opportunity was not given.

16. Final order by punishing authority

After submission of the inquiry report by the inquiry officer, the punishing authority is to prepare final order according to his personal observations taking into considerations the evidence placed in the inquiry report.

In\textit{ Railway Board v. Niranjjan Singh} \textsuperscript{17}, the Supreme Court observed the following aspects:

(a) it is competent for the punishing authority to differ from the findings of fact arrived at by the inquiry officer and to hold the employee guilty of the charges even though the inquiry officer has held that the charges have not been proved.

(b) punishing authority is free to accept the findings of the inquiry officer on some of the charges and reject others remaining.

\textsuperscript{16}\textit{ Union of India v. Tulsiram Patel, A.I.R. 1985 S.C. 1416 at 1437-38.}

\textsuperscript{17} A. 1969 S.C. 966(968).
punishing authority is not entitled to come to its conclusion on no evidence at all. High Court is entitled under Article 226 to quash the order where it is not based on any evidence whatever, withholding any further proof of malafides.

where the punishing authority holds the employee guilty, differing from the finding of the inquiry officer, the High Court, in a proceeding under Article 226, cannot interfere unless the finding is perverse or based on no evidence at all.

mere suspicion should not be allowed to take place of proof even in domestic inquiries. Communication of the order to the delinquent is also necessary. Once the punishing authority awards the punishment and communicates it to the delinquent officer, it cannot be varied at the will of the authority. When an order of dismissal is passed the delinquent is entitled to his salary during the period between the date when the order was passed and the date when it was communicated to him.

In State of Orissa v. Bidyabhusan, the Supreme Court observed that the propriety of a punishment, in relation to the charge cannot be reviewed by the Court.

When the punishing authority agrees with the findings of the inquiry officer and punishes the delinquent

in accordance with such findings, it is not necessary for
the punishing authority to record its reasons in every case.\(^{21}\) It is enough to say that he agrees with the inquiry officer
that all the charges have been established.\(^{22}\) But when
punishing authority differs from the view of inquiry officer
he must record his own reasons. There are certain
Departmental Rules\(^{23}\) which provide that when the punishing
authority is not disagree with the inquiry officer, still
he is to record his own findings on each charge.

When reliance is made on past record for awarding
higher punishment, it was held that failure to refer to the
past record in the show cause notice and placing reliance
on the same in passing the final order is opposed to the
principles of natural justice.\(^{24}\) Yet where the past record
is relied on for imposing a lesser punishment and not for
increasing the quantum or nature of punishment, it is not
necessary for the authority to state in the show cause notice
that his past record will be taken into consideration.\(^{25}\)

It was held by High Court of Punjab and Haryana
that an order passed by the punishing authority with

\(^{23}\) Rule 1713 of the Railway Establishment Code.
Whenever an order of dismissal is passed, it must be communicated to the delinquent. The delinquent is entitled to his salary during the period between the date when the order was passed and the date when it was communicated to him.

17. **Effect of the final order**

After making final order by the disciplinary authority, it will take effect from the date of the communication to the delinquent. In *Baghitar v. State of Punjab* 28, the Supreme Court observed:

"it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be found by that order."

It means that the Government is free to revise or change the order till it is communicated.

It has also been held 29 that an order of dismissal cannot be made retrospective so as to give it effect from any date earlier than the date of the order (if this order is communicated on the same day).

Hence, the final order cannot be given effect to from any date earlier than the date of its communication to the Government servant.

18. Administrative appeal

Administrative appeal to a higher administrative authority can lie against the final order made in disciplinary proceedings, only if departmental rules provide appellate provision. Because an appeal is a creature of statute. Hence, the parties have no inherent right of appeal. Many Departmental Rules contain the appellate provisions.

After filing the appeal, the employee is entitled to a full and complete hearing in an appeal or revision on all the points involved in the disciplinary proceeding, applying the rules of natural justice.

19. Hearing before the appellate authority

(Appellate authority must give a reasonable opportunity to the parties to place their respective cases before him.) It means that he must give notice to the parties to the appeal. He should appoint a time and place of hearing and allow them to appear with such further materials as they like and to present arguments in support.


32. Rule 23 of the Central Services (Classification, Control and Appeal) Rules, 1957.


In Ram Chander v. Union of India\textsuperscript{37}, the Supreme Court observed about opportunity of personal hearing:

"it is of utmost importance after the 42nd Amendment as interpreted by the majority in Tulsiram's case\textsuperscript{38} that the appellate authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal.... An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given.

The appeal or revision should be disposed of expeditiously\textsuperscript{39}.

20. Appellate authority's powers and orders

Because the Appellate authority is administratively superior, therefore, the general principle that an appellate authority has the same powers as the original authority will apply. At the same time, the appellate authority will be subject to the same procedural or other limitations as the primary authority was.\textsuperscript{40} It means appellate authority is

\begin{itemize}
\item \textsuperscript{37} (1986) 3 S.C.C.103 (para 25).
\item \textsuperscript{38} Union of India v. Tuliram, A. 1985 S.C. 1416.
\item \textsuperscript{39} Satyavir v. Union of India, (1985) 4 S.C.C. 252(paras 7-8).
\item \textsuperscript{40} Nagendra v. Commr., A. 1968 S.C. 398(407-8).
\end{itemize}
free to pronounce any order according to its own observation.

But there are certain Rules which prescribe the matters to be considered by the appellate authority while disposing an appeal. Therefore, if any of these conditions is not fulfilled, his order will be ultra vires. (In an appeal filed against an order imposing penalty on a civil servant, the rules require that the appellate authority should consider -

(i) whether the procedure laid down has been complied with and if not whether such non-compliance has resulted in the violation of any provisions of the Constitution or failure of justice;
(ii) whether the findings of the disciplinary authority are warranted by the findings on record; and
(iii) whether the penalty imposed is adequate, inadequate or severe.

An appeal against an order of penalty has to be disposed of on merits. There is no power to dismiss the appeal for default of appearance of the appellant on a specified date even if the appellant was called upon to appear in person.

41. Rule 27(2) of the Central Civil Services (C.C.A.) Rules, 1965; Rule 422(2) of the Railway Servants (Discipline and Appeal) Rules, 1968.


Disposal of an appeal presented to the President, by the concerned minister under the rules regulating disciplinary proceedings is equivalent to the disposal of the appeal by the President as the President is only a constitutional head. The Minister's order is valid.

21. **Recording of reasons in appellate order**

Appellate authority discharges the functions as quasi-judicial. In *Bhatt v. Union of India*, the Supreme Court observed that where the Appellate authority agrees with the order of the punishing authority, he need not give reasons, unless there is statutory Rule which required it, directly or indirectly.

Although Supreme Court has observed in many cases that recording of reasons in the appellate order is a must and it is a good symptom of application of mind. In *Ram Chander v. Union of India*, the Supreme Court opined that an authority, hearing a statutory appeal from a disciplinary order, must give reasons, so that the supervisory jurisdiction of the superior Courts may not be rendered nugatory.

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22. Review

In judicial proceedings, the review of an order is exercised by the same court who has pronounced the original order against which review is filed. But it is strange to note that in disciplinary proceedings, power of review may be exercised by higher authority other than the disciplinary authority as prescribed by the relevant rules.

When according to the rules, only the appellate authority is vested with the power to review an order made by a disciplinary authority, it is not open to any other authority including a higher authority not mentioned under the rules to review the order.

When the power to review an order made in disciplinary proceedings is conferred on more than one authority and one of the authorities exercises the power, no other authority can exercise the power of review.

As per relevant rules, opportunity of review may be available for both parties.

In the absence of any specific rule authorising the authority to review an order passed in disciplinary proceedings it is not permissible for an authority to embark upon such a review. Also, the review of proceedings must

47. Nayak S.H. v. Assistant Executive Engineer, 1981(1)SLR 121.
be initiated within the period of limitation.

In case where punishment imposed by a disciplinary authority is stoppage of five increments and the reviewing authority after several years, enhanced the punishment to one of dismissal, the civil servant is entitled to the refund of the amounts already withheld from his pay. 50

As regards enhancement of punishment, the power of enhancement of punishment cannot be implied. Such a power must be specifically conferred by the rules. In the absence of such specific conferment of power it is not competent for an authority to enhance the punishment. 51

23. Revision

When at the time a final order in a disciplinary proceeding was made and when the appellate orders were made, no power of revision existed and such a power was conferred subsequently, the power of revision cannot be exercised retrospectively as against the proceedings which had come to a close before the conferment of the revisional power. 52

A power of revision to enhance the penalty imposed on a government servant cannot be conferred on an authority, unless the Act under which the rule is framed authorised the

conferment of such revisional power. In the absence of such a provision in the Act a rule creating the revisional power is invalid and an order passed thereunder is also invalid. It is not competent for the revising authority to enhance the punishment unless power is specifically conferred for enhancing the punishment.

III. Statutory directions

Departmental Rules and other statutory directions, restrictions must be complied with in disciplinary proceedings. If the rules provide that no proceedings should be instituted without informing the designated authority, any non-compliant action would be illegal and any order of dismissal passed against a civil servant would be invalid.

Where a statutory provision requires that no civil or criminal proceedings should be instituted against a civil servant without the sanction of the specified authority. Such provisions must be complied with.

In Punjab State through Collector v. Gurdip Singh where a constable found drunk while on duty. He was dismissed

from service. The order of dismissal was set aside, being illegal due to non accordance with the provisions of Rule 16.2 of the Punjab Police Rules, 1934, Volume II, prescribing inquiry procedure.

IV. 'Natural Justice' in disciplinary proceedings

There is sound place of principles of natural justice in disciplinary proceedings. Following are the principles:

(i) notice of initiation of inquiry must be served on the delinquent. In the absence of a specific proof that the delinquent refused to receive the notice, department cannot proceed ex-parte;

(ii) delinquent should be given an opportunity to cross examine the witnesses examined by that party;

(iii) delinquent should be given an opportunity to cross examine the witnesses examined by that party;

(iv) no material should be relied on against the delinquent without giving him an opportunity of explaining them.

(v) the delinquent should have the opportunity of adducing all relevant evidence which he relies on;

(vi) in a departmental inquiry, in which the delinquent official is examined in the first instance is opposed to natural justice and is invalid. It is

also against natural justice if defence witnesses are asked to give evidence before the examination of prosecution witnesses;\(^58\)

(vii) the examination of witnesses should in its entirety take place before the party charged and he should have the opportunity to cross examine those witnesses.\(^59\)

Where the witnesses who gave earlier statements did not appear before the inquiring authority and did not admit the correctness of the statements, no reliance can be placed on statements for purpose of finding the official guilty.\(^60\) Hence the witnesses must be examined in the presence of delinquent official.

(viii) the inquiry officer cannot compel the attendance of a witness who is not under the control of administration. Hence, so long as effort was made by the inquiry officer to bring the witness, the inquiry proceedings cannot be held to be vitiated.\(^61\)

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(ix) By production of extraneous material by prosecution, the inquiry proceedings stand vitiated.\textsuperscript{62}

(x) Examination of witnesses not mentioned in the charge sheet allowed. No provision of law or rule prohibits an inquiry officer from examining the witnesses not mentioned in the chargesheet if he considers it necessary to do so, so long as the witnesses are examined in the presence of the delinquent official and he is given an opportunity to cross examine;\textsuperscript{63}

(xi) if the inquiry officer does not allow a witness to answer the relevant question natural justice principles are violated.\textsuperscript{64}

(xii) it is against the principles of natural justice when the inquiry officer cross-examine the defence witnesses. The entire inquiry is vitiated because of violation of natural justice when the inquiry officer seeks to examine the defence witnesses and even suggests that they were uttering falsehood to support the delinquent official on account of friendship.\textsuperscript{65}


\textsuperscript{64} Parameshwaran V.K. v. Union of India, S.L.R.1983(1)Kar.747.

Complainant cannot be a presenting officer. A person who lodged the complaint against an employee, cannot be a presenting officer or inquiry officer;

the inquiry officer is entitled to put questions to the witnesses for clarification whenever necessary.

So long as the delinquent employee is permitted to cross examine the witnesses after the inquiring authority put questions to the witnesses, the inquiry proceedings cannot be impeached as unfair;

statement of the delinquent officer in some other inquiry cannot be basis of the decision in the inquiry in question. The civil servant cannot be found guilty without inquiry drawing conclusion from statements made by him in the past in another inquiry;

as regards inspection of documents is concerned at the stage of starting of the inquiry, it is necessary only to furnish the list of documents and witnesses along with the issue of the articles of charge. He is not entitled to inspect all the documents at that stage. It is only after he furnishes his reply to the articles of charges and disciplinary proceedings


actually commence that he would be entitled to the inspection of documents for the purpose of preparing the defence. Hence the failure to allow access to all the documentary evidence to the delinquent civil servant at the stage of preparing for defence, is a clear violation of the rules and the inquiry is invalid. If possible, copies of documents relied against delinquent, must be given to the delinquent for proper opportunity;

(xvii) right to cross examine defence witness by delinquent is permitted. Therefore, such a practice could also be legitimately followed in disciplinary inquiries if it is considered necessary for finding out the credibility of the witness;

(xviii) personal knowledge of inquiry officer cannot be the basis of decision. Hence, any order passed on the basis of such a report is liable to be quashed being violative of natural justice;

(xix) inquiry officer cannot give evidence himself. The act of inquiry officer recording his own testimony in the case is shocking to the notions of judicial propriety and fair play. It is bias attitude of the

inquiry officer. Such a proceeding's stands vitiated as being in violation of the rules of natural justice.\(^{72}\)

(xx) the refusal to give an opportunity to examine witnesses when the delinquent official wanted to examine them, introduces a fatal infirmity in the inquiry, in the absence of a valid recorded reasons.\(^{73}\)

V. No inquiry after exoneration

Once a delinquent is exonerated on some of the charges by the departmental order and punishment is imposed on the basis of the rest of the charges proved against him and this punishment in quashed by the court. In a de novo inquiry the disciplinary authority cannot inquire into the charges of which the civil servant has once been exonerated. Exoneration of charges debars any further inquiry in respect of the same charges.

Can a person after acquittal in a criminal case, be subject of departmental inquiry. \textit{In Corporation of Nagpur v. R.C. Modak}\(^{75}\), the Supreme Court held that this was a matter

\begin{itemize}
\item \(^{75}\) 1984 S.C. 626; 1984 Lab. 1 C. 179(S.C.).
\end{itemize}
which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges, it is not expedient to continue a departmental inquiry on the very same charges or grounds or evidence. However, merely because the accused is acquitted the power of the authority concerned to continue the departmental inquiry is not taken away.

VI. Representation of both sides necessary

The Supreme Court opined that where the department had appointed a presenting officer and a co-delinquent had an officer to defend him, the appellant in the present case a class IV semi-literate forest guard was to be given a reasonable opportunity to defend himself and the inquiry officer should have asked him whether he would like to engage some one to defend him in view of Rule 16 of the C.C.S. (Classification, Control and Appeal) Rules, 1965. The delinquent has a right to cross-examine the witnesses produced on behalf of prosecution. Where in a disciplinary proceeding the department is represented by a presenting, the disciplinary authority should inform the delinquent of appointment of presenting officer as well as the right of delinquent to take help of another Government servant.

VII. Refusal of request to remain at the place of inquiry

A police constable was charged with misconduct for complicity with smugglers and the departmental inquiry held
against him resulted in his dismissal. He applied to remain at the place of inquiry but his request was refused. There was however, no restriction on his visits to that place. It was held that did not amount to denial of reasonable opportunity. 76

VIII. Delay in inquiry proceedings

Where the departmental inquiry was initiated after 12 years and there was no satisfactory explanation for such delay, the departmental proceedings were quashed. 77

In Rejinder Kumar Sood, Junior Engineer v. State of Punjab 78 where show cause notice to the delinquent was issued for the purpose of imposing punishment after a lapse of 8 years. Proceedings held to be vitiated due to inordinate delay in issuing the show cause notice.

In a recent case Hayat Hussain Khan v. State of U.P. 79 where charge related to the period 10 years back and charge sheet served after more than 8 years. Nothing happened after submission of explanation. The Division Bench of the Allahabad High Court held that due to inquiry proceedings after much delay, thereafter no action was taken to finalise the


78. 1994(1) 3 L.R. 367 (P. and H.)

same. Hence, charge sheet as well as the disciplinary proceedings, were liable to be set aside.

In a recent case *Mamohan Pal Singh v. State of Punjab*, the Division Bench of Punjab and Haryana High Court held that where institution of disciplinary proceedings after the lapse of six years from the date of misconduct, Department cannot be permitted to keep the inquiry pending and reopen it at any time according to their convenience and for an oblique purpose of putting obstruction in his promotion.

In another recent case *J.S. Sanghera v. State of Punjab*, the Division Bench of Punjab and Haryana High Court held that issuance of charge sheet after a delay of 15 years from the date of alleged misconduct, though no period is prescribed for initiating disciplinary proceedings, yet the delay in initiating the disciplinary proceedings must be bonafide. It must be shown that the delay has resulted in prejudice to the aggrieved person. Hence, charge sheet was quashed relying upon *Jazir Singh v. State of Punjab*.

In a recent case *State of M.P. v. Sh.L.P. Tiwari*, where the charge sheet was not served within the stipulated

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82. 1993(1) S.L.R. 1 (P. and H.) (Full Bench).
period of 90 days as envisaged by the Rules as the concerned employee succeeded in avoiding the service. The Supreme Court held that non-service did not render the initiation of disciplinary proceedings illegal as observed by the Administrative Tribunal and further held that there was no need to give satisfactory explanation for every day's delay in serving the charge-sheet.

Hence, avoiding service of charge sheet by the delinquent himself does not render the disciplinary proceedings invalid because in the above case the Government ever intended to serve the charge sheet within stipulated period of 90 days.

IX. Power of Courts to interfere

The enquiry under Article 311 is a domestic inquiry and the Court is not concerned with the question whether on evidence before the officer or the authority passing the order against the civil servant, there was sufficient evidence to justify the order. The guarantee under Article 311 is of the regularity of the inquiry. If the inquiry is not vitiated on the ground of procedural irregularity the court is not concerned to decide whether the evidence justified the order.

Where an order of removal is passed against a Government servant after a departmental inquiry. Such

removal is challenged by a suit for a declaration that the order of removal was unconstitutional, illegal and inoperative, the Court cannot sit in judgement over the domestic tribunals and state that on the evidence adduced in the departmental proceedings, the charges were not brought home and that the findings of the domestic tribunal were wrong. Courts are concerned in such suits only with the question whether reasonable opportunity was given to the plaintiff in the inquiry to meet the charges brought against him and, principles of natural justice were observed in the inquiry.\textsuperscript{85}

It is not the function of the High Court in a petition for writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the statutory authority has acted without or in excess of its jurisdiction or where it has committed an error of law apparent on the face of the record.\textsuperscript{86}

In dealing with writ petitions filed by public servants who have been dismissed or otherwise dealt with so as to attract Article 311(2), the High Court under


Article 226 has jurisdiction to inquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. The High Court cannot, however, consider the sufficiency or adequacy of the evidence, but has only to inquire whether the order is justified "if the whole of the evidence led in the inquiry is accepted as true." 37

In short, following aspects of inquiry are within interference of the courts:

(a) whether inquiry was held by competent authority.
(b) whether statutory procedure was followed.
(c) whether rules of natural justice violated.
(d) whether considerations, extraneous to the evidence and the merits of the case relied upon.
(e) whether conclusion is on the very face of it arbitrary or capricious.
(f) whether there was error of law acted upon.
(g) whether findings were based on no evidence at all.
(h) whether reasonable opportunity was afforded in the inquiry.

X. Procedure under the Public Servants (Inquiries) Act, 1860 and Civil Services (C.C.A.) Rules, 1965

The Central Government or a State Government may use this Act for the purpose of inquiry against their

respective employees. This Act provides that for making "inquiries into the behaviour of public servants who are not removable from their appointment without sanction of Government." It is the option of the concerned Government whether the inquiry should be held under this special procedure (under the Act) or under the ordinary procedure. Therefore it is not obligatory or mandatory for the Government to take action against a public servant of the aforesaid class for alleged misbehaviour.

The scope of the proceeding under this Act is only to make a fact finding inquiry in order to enable Government to determine provisionally the punishment that should be imposed upon the public servant, prior to giving him reasonable opportunity of showing cause, as required by Article 311(2) of the Constitution. 89

The features of this Act are as follows:

(1) The inquiry is to be held by person or persons who may be appointed Commissioners under this Act by the Government;

(2) The Government suo motu can make accusation before the Commissioner or by an 'accuser' by preparing charge sheet;

(3) A charge sheet is prepared, and a list of documents and witnesses are furnished to the delinquent at

89. Ibid.
least three days prior to beginning of inquiry;

(4) if the delinquent refuses or neglects to appear to face inquiry either personally or by his counsel or agent, he shall be taken to admit the truth of the articles of charge;

(5) the procedure of examination, cross examination, and hearing is the same as is used in trial before a Court;

(6) the Commissioners enjoy the powers of summoning, punishment of contempt etc. similar to the Courts;

(7) in the end, the Commissioners after preparing report upon each charge with their opinion, submit this report to the Government;

(8) thereafter, the Government may make such orders on the report "as appear just and consistent with its powers in such cases."

The procedures prescribed by the Act and rule 55 of the Central Civil Services (C.C.A.) Rules, 1965 are substantially similar. In Kapur v. Union of India, it was held that there is no discrimination if Government proceeds under this Act instead of under the Rules.

90. Sectbn 11.
91. Section 21.
92. Section 22.
Under this Act, Commissioners do not acquire the position of judicial tribunal. The requirements under Article 311(2) are mandatory to be followed irrespective of any procedure of inquiry.

It was held that when departmental inquiry could be held under one or the other of the two sets of rules, the fact that under one there is right of appeal and is not in another, is no ground to hold that the inquiry held under the rules under which there is no right of appeal is illegal.\(^94\)

**XI. De novo inquiry or additional evidence**

Where final order, imposing punishment against a civil servant in disciplinary proceedings, is set aside by the Court on the ground that a mandatory procedure has not been complied with or the inquiry contravenes the principles of natural justice and the merits of the charges are not investigated there is no bar for the State to hold a de novo inquiry in respect of the same charges.\(^95\)

Yet it is permissible to hold a de novo inquiry from the stage at which illegality was committed after the order imposing punishment is set aside. But where out of several charges framed against the delinquent some of were dropped and the punishment was imposed only on the basis of

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the remaining charges and the punishment was judicially set aside, no de novo enquiry can be held against all the charges including those which had been dropped earlier.\textsuperscript{96}

If there is some defect in the inquiry conducted by the inquiry officer, the disciplinary authority can direct the inquiry officer to conduct further inquiries in respect of that matter. But it is incompetent for the disciplinary authority to set aside the inquiry proceedings and to direct a fresh inquiry.\textsuperscript{97}

Unless there is rule, it is not permissible for the disciplinary authority to hold a second inquiry after a civil servant has been exonerated in an inquiry and the case came to be closed. The absence of power under a rule to do so inhibits the holding of a second inquiry.\textsuperscript{98}

The rules which require the holding of an inquiry before enhancing the penalty would apply only to cases where a summary inquiry had been held for the purpose of imposition of a minor penalty and the reviewing authority concerned intends to impose a major penalty, which could be imposed only in an inquiry held for that purpose.\textsuperscript{99}


In Deb v. Collector, The Supreme Court opined that there is no provision for completely setting aside a previous inquiry on the ground that the inquiry officer's report is not as desired by the disciplinary authority, and to order de novo inquiry till the desired report is available. Where the disciplinary authority cannot agree with the findings of the inquiry officer, he has powers to re-consider the evidence himself and come to his own conclusions, taking the responsibility upon himself.

If the employee is dismissed as a result of such de novo inquiry, the order of termination of service will be void for contravention of Article 311(2). Because normally, there should be only one inquiry into the charges.

The direction of further evidence can be given when there has been no proper inquiry if some serious defect has crept into the inquiry, or some important witnesses were not available at the time of inquiry or were not examined for some other reason.

It was clearly established that further evidence cannot be directed in order to fill up the gap in the report of the inquiry due to some laxity on the part of the Government to prove the charges. Rule 14(15) of the


Classification, Control and Appeal Rules also contains the same limitation about further evidence as follows:

"New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally."

The question whether after order of de novo inquiry, the delinquent will have to be reinstated first before initiation of de novo inquiry has been answered in this case. In Bhura Singh v. District and Session Judge where a Nazir in the Court of Senior Subordinate Judge was charge sheeted. He was placed under suspension. Inquiry was initiated in which he was dismissed from service. The Nazir filed an appeal where order of dismissal was set aside but de-novo inquiry in regard to the same charges was also ordered. Also ordered that suspension order originally issued shall continue to be in force from the date of order of dismissal. In this de novo inquiry order of removal was passed. The Nazir filed a writ petition in which it was held by Punjab and Haryana High Court that order of removal is valid and de-novo inquiry without first reinstating the petitioner did not vitiate the proceedings as no prejudice had been caused to the petitioner.

XII. Onus to prove

It is well settled that the onus lies on prosecution to prove the charges and simultaneously, it is the duty of the delinquent to prove his defence by his documentary or oral evidence. It was held that except where the allegations are admitted, the burden of proving the truth of the allegation or charges is upon the employer and the proceedings cannot be allowed to take the form of an inquisition. The same principle has been followed in many cases.

XIII. Inquiry tribunal

There was controversy among various High Court decisions over the question whether it is valid if the inquiry officer acts upon evidence taken by some other person or if any of the members of the inquiry committee did not hear the evidence or any part of it, owing to transfer or non-availability of the member who heard the evidence.

The above controversy has been removed by the Supreme Court in *General Manager v. Jawala Prasad*. It was held that since it is the duty of the disciplinary authority to come to his own findings on a perusal of the evidence already recorded

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at the enquiry, it is immaterial whether any of the members of
the inquiry committee marked the demeanour of the witnesses
or not, because the report of the inquiry committee is not
binding upon the disciplinary authority.

The report of the inquiry is sent by inquiry officer
of the committee to the punishing authority whereas the
whole proceedings may not be held in the presence of all the
members of the committee.

It cannot be held that the report of the inquiry
committee is vitiated by violation of the principles of
natural justice on account of change of one of the members

\section*{XIV. Non-applicability of the Law of Evidence}

The technicalities of Evidence Act or criminal
procedure are not applicable to disciplinary proceedings.
In other words the rules of evidence are not applicable
to quasi-judicial proceedings.\footnote{Union of India v. Verma, A. 1957, S.C. 882 (885).}

The right to examine witnesses does not imply that
the witnesses must be examined according to the procedure
laid down in the Evidence Act. Therefore, an inquiry is not
vitiated by the mere fact that the witnesses called by the
accused officer were examined by the inquiry officer and that
the accused was not allowed to put questions to them by way
of examination-in-chief.\footnote{Bhatt v. Union of India, A. 1962 S.C. 1344 (1347).}
The inquiry officer may act on the basis of uncorroborated testimony of accomplices\textsuperscript{10} or the previous statement of a witness, provided he is offered for cross examination\textsuperscript{11} or the statements of co-delinquents\textsuperscript{12} or tape recorded conversation\textsuperscript{13} or hearsay evidence, provided it has a reasonable nexus to the charge and probative value to a prudent mind. Therefore, it can be said that an inquiry officer at a departmental proceedings may obtain materials from any sources, provided only any material information or material so obtained must be disclosed to the delinquent, if it is intended to be relied upon so that the latter may have an opportunity of meeting the inferences arising from such material.\textsuperscript{15}

When there is some evidence on the issue in question and findings are made accordingly, the sufficiency of

\textsuperscript{11} State of Mysore v. Sivabasappa. A. 1963 S.C.175
\textsuperscript{15} Union of India v. Verma, A. 1957 S.C. 882(885).
evidence on which the disciplinary authority had acted would also be beyond scrutiny by the Court. But when there was no evidence, the finding of the disciplinary authority becomes vitiated by an error of law.

Yet the Evidence Act is not applicable upto its technicality but a delinquent officer cannot be punished on mere suspicion and without any proof of the charges brought against him.

The presumption of innocence at a criminal trial is thus excluded while conducting disciplinary proceedings. The reason is that the standard of proof in a departmental proceeding is not the same as in a criminal proceeding.

As regards, admission by the delinquent, the inquiry officer may act upon the admission of the delinquent. But such admission must be clear and unambiguous and notice must be given to the delinquent that his admission would be relied upon by the prosecution.

An authority conducting the departmental inquiry should be guided by rules of equity and natural justice and is not bound by the formal rules of evidence. Yet testimony of an accomplice can be relied but inquiry stands vitiated by reliance on the final statement of the co-accused which implicates a civil servant, which the latter has no opportunity to contest.

XV. 'Reasonable opportunity' deemed to be given

There are certain situations where reasonable opportunity is given to the delinquent but he did not avail it, hence it was considered that proper reasonable opportunity has been given as per requirement of Article 311(2) in the following cases:

(a) if the officer does not avail of the opportunity to show cause;

(b) withdraws himself from the inquiry proceedings;

(c) the delinquent has tendered an 'unconditional apology' and not merely beg for pardon after denying the charge.

27. Trilok Singh v. Union of India, (1960) S.C. (C.A. 332/7, dt. 1.11.60.)
(d) when opportunity to adduce evidence and to cross examine witnesses but he does not avail.

In the above situations, the inquiry may be held ex-parte and there will not be violation of requirement of Article 311(2).

The inquiry officer, not being bound by the rules of the law of evidence, may proceed on the materials placed before him by the Government, where the delinquent officer refuses to take part in the proceeding.

XVI. Abandonment of disciplinary proceedings

Once the disciplinary authority condones the delinquency of a civil servant and drops the proceedings, it may not review and continue the inquiry and impose punishment. In G.R. Gururajachar v. State of Mysore, it was held that when promotion was ordered by government during the pendency of enhancement proceedings before the governor, there was no "abandonment."

When after the issue of a show cause notice to a government official and thereafter receiving the explanation, no further action is taken for a considerable period, the only inference can be drawn is that the disciplinary authority


has abandoned the proceedings. Hence, it is not competent for the disciplinary authority to revive the same disciplinary proceedings subsequently and to impose punishment against a civil servant.

XVII. Stoppage of inquiry by temporary employee

If the rules provide that the termination of a temporary employee can be effected by giving one month's notice or one month's salary in lieu of notice if such employee desired to, even when he is under suspension pending disciplinary proceedings. Notice given by a temporary government servant terminating his service with immediate effect and asking the government to deduct one month's salary out of the amounts due to him is a valid notice; it is not open for the government to continue the inquiry thereafter.

XVIII. Disciplinary proceedings after retirement

The Civil Services (Classification, Control and Appeal) Rules prescribes the imposition of a penalty only on a government servant. Hence a retired person cannot be considered as a government servant and accordingly, no disciplinary proceedings against a retired government servant.


can be held under the rules. Inquiry continued beyond the age of superannuation is illegal. If the disciplinary action cannot be taken before the date of retirement, the course open to the government is to pass an order of suspension and refuse to permit the concerned public servant to retire and retain him in service. But continuance in service must be authorised by the rules. If not authorised by the rules, a departmental inquiry cannot also be continued against a government servant after the date of compulsory retirement.

When during the pendency of a departmental inquiry, a civil servant retires, the State may order recovery of loss caused by a government servant and can also order reduction of pension.

If the rules require the governmental sanction for the institution of disciplinary proceeding against a retired civil servant, initiation of proceeding without such sanction is without jurisdiction.

XIX. Disciplinary proceeding and criminal trial on same charges

Whether a government servant can be proceeded departmentally simultaneously or alternatively with criminal


41. Dr. C. Kalyanam v. Govt. of Tamil Nadu, S.L.R. 1983(1) Mad. 25
trial on the same charges. In other words, can a single charge be inquired into by two different agencies, even after exoneration or acquittal by one agency. There had been controversy over the above questions among various High Courts.

Before discussion over the controversy, it is necessary to know that whether departmental proceeding constitutes a prosecution. It was held that it does not constitute prosecution within the meaning of Article 20 (2).

The controversy has been fully resolved by the Supreme Court in Modak Case. It was held:

"This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction (discretion) in any way fettered."

Hence, the Government is legally competent to proceed departmentally, without resorting to criminal prosecution.

even though the charge involves a criminal offence\textsuperscript{44} and even after a criminal prosecution has been launched.\textsuperscript{45} Even the Government may institute criminal proceedings at the close of departmental proceedings\textsuperscript{46-47} or vice-versa.\textsuperscript{46} (As already has been discussed that both proceedings may continue simultaneously, but it would be advisable to await the decision of the court, so that the defence of the employee in the criminal case may not be prejudiced by anything taking place in the departmental proceedings.\textsuperscript{48}) The justification for both the proceedings is that though such acquittal bars a second prosecution before the criminal court it does not bar a departmental inquiry.\textsuperscript{49} Proviso (a) to Article 311(2) negates the necessity of departmental proceedings at all when a Government employee is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.

\begin{itemize}
\item \textbf{45.} Kapur Singh v. Pratap Singh, (1964) 3 S.C.C. (C.A. 75/63);
\item DCM v. Kushal, A. 1960 806 (807).
\item \textbf{46.} Venkataraman v. Union of India, A. 1964 S.C. 375.
\end{itemize}
The discretion of the Government to proceed departmentally simultaneously with criminal proceedings does not necessarily violate Article 14. Also both proceedings differ qualitatively (in the matter of scope, evidence and consequence) (hence departmental inquiry can be initiated even after acquittal by court).

Although the controversy has been resolved by the Supreme Court in Modak case. But still the contrary view taken by many High Courts, prior to the resolving of controversy, appears to be of sound reasons. These High Courts are of the view that no disciplinary action may be pursued in respect of these charges when the civil servant had been acquitted honourably by the criminal court. The reason is that if the department in which the petitioner was holding the civil post choses to invoke the criminal court and the court acquits the civil servant, it would be extremely improper for any disciplinary authority to inquire again into that charge and hold him guilty on the very evidence which was before the criminal court and which it disbelieved. Hence, the disciplinary authority cannot

(b) Kundan Lal v. Delhi Administration, Delhi S.I.R. 1976(1) Del. 133.
(c) Sahib Ram v. Delhi Administration, SLR 1984(2) Del. 133.
(f) MEJENDRA KUMAR PAUL v. Union of India, S.I.R. 1976(2) Cal. 295
resort to hold a departmental inquiry after acquittal of a civil servant by a competent criminal court.

However, if the rules regulating the disciplinary proceedings themselves prohibit the holding of inquiry against a civil servant on a charge of which he was acquitted, then there is jurisdictional bar to hold the inquiry in respect of the same charge. For instance, Rule 163 of the Punjab Police Rules which provide that after acquittal by a Criminal Court, departmental proceeding on the same charge or on different charges based on the same evidence as has been adduced in the Criminal case, would not lie except in certain specified contingencies.

(In a recent case G.3imbachalam v. The Depot Manager APSRTC where a driver in A.P. State Road Transport Corporation caused death by rash and negligent driving. In a criminal trial he was acquitted. Departmental inquiry was initiated in which he was dismissed from service. It was held that Departmental inquiry is permissible despite acquittal by the competent Criminal Court because the acquittal was not on merits but on the ground of material witnesses turning hostile.)


55. Rule 163 of the Punjab Police Rules framed under the Police Act (Harbans Lal v. Suvid. of Police, A. 1969 Punj. 131(133)).

56. 1994 (2) S.L.R. 547 (Andhra Pradesh).
In another recent case *Laxman Lal v. The State of Rajasthan*, where the petitioner was tried under sections 452, 423 and 427 of I.P.C. In criminal proceedings he was acquitted whereas in disciplinary proceedings he was dismissed from services. It was observed that there is no constitutional bar for conducting two parallel proceedings, criminal as well as disciplinary, for the same charges. Both the proceedings can go simultaneously. Continuation of departmental inquiry during pendency of criminal trial, which (departmental inquiry) ultimately resulted in the dismissal of petitioner, cannot be said to be, in any way, illegal, unjust or contrary to rules as there is no such constitutional or other statutory bar under the Act or the Rules. Subsequent acquittal of petitioner in criminal trial is not relevant in considering the merit of the disciplinary inquiry and the order of dismissal passed as a consequence thereof. (Acquittal does not mean reinstatement. So long there is evidence to support the findings of the disciplinary authority in the departmental inquiry, respondents not obliged to re-consider the case of petitioner for his reinstatement in service as well as for reducing the quantum of punishment or for setting aside the order of dismissal after the acquittal of the employee in criminal trial.)

57. 1994(2) S.L.R. 600 (Rajasthan).