Before G. S. Singhvi & S. S. Saron, JJ.

GURBACHAN SINGH BACHI,—*Petitioner*

versus

STATE OF PUNJAB & ANOTHER,—*Respondents*

C.W.P. NO. 10302/OF 2003

11th October, 2004

Constitution of India, 1950—Art, 226—Electricity (Supply) Act, 1948—S.10(1) (e)—Suspension of petitioner from the post of Administrative Member—After holding regular inquiry order of removal passed in terms of S.10 (1) (e)—No opportunity given to petitioner to controvert the findings of Enquiry Officer-Non-observance of rules of natural justice—High Court quashing the order of removal with 'all consequential benefits' while granting liberty to Government to pass fresh order in accordance with law—Supreme Court remitting the matter to High Court to determine meaning of 'all consequential benefits' payable to petitioner as a result of quashing of order of removal—No provision in the 1948 Rules for payment of subsistence allowance during the period of suspension—If there is no such provision an employee is entitled to his full emoluments during the period of suspension—Order of removal—Nullified by the High Court—Petitioner becomes entitled to be reinstated with retrospective effect as if the order of removal had not been passed—Petitioner held entitled to all consequential benefits including monetary benefits payable to him from the date of suspension to the date of dismissal and thereafter up to the date of quashing of the order of removal by High Court.

Held, that the principles which can be culled out from the survey of the judicial precedents are :—

(1) The employer has inherent right to suspend an employee.

(2) If the rules or other statutory provisions regulating the conditions of service provide for payment of subsistence allowance, then the suspended employee is entitled to subsistence allowance at the prescribed rate(s).

(3) If there are no rules or other statutory provisions for payment only of subsistence allowance, then the employee is entitled to get full pay and allowances during the period of suspension.

(4) Once the employee/public servant is removed or dismissed from service/post, then his right to receive subsistence allowance/full pay and allowances automatically comes to an end.

(5) If the order of removal or dismissal of an employee/public servant is nullified by the Court on the ground of violation of the statutory provisions or the basics of natural justice, he becomes entitled to be reinstated with retrospective effect as if the order of removal/dismissal had not been passed, In that event, the employee/public servant is entitled to receive full pay and allowances for the intervening period except when the Court makes payment of salary etc, subject to the outcome of fresh/further enquiry or there is a provision for automatic suspension of the employee with a further provision for payment of subsistence allowance during the period of revived suspension.

(Para 24)

Gurminder Singh, Advocate, *for the petitioner.*

Ms. Rita Kohli, Deputy Advocate, General, Punjab, *for respondent No. 1.*

N. S. Boparai, Advocate, *for respondent No. 2.*

JUDGMENT

S. S. SARON, J.

(1) What are the consequential benefits payable to the petitioner after his removal as Administrative Member of the Punjab State Electricity Board ('Board' for short) has been set aside, is the question that requires consideration in this case on its remittance from the Hon'ble Supreme Court of India.

(2) The petitioner was appointed as Member of the Board for a period of two years,—*vide* notification dated 24th December, 2001 (Annexure P2). He joined as Administrative Member on 26th December, 2001. After about two months and twenty days, the State Government, acting on the complaints received from an Ex-Adminstrative Member of the Board and the Office Secretary of the Punjab Pradesh Congress Committee that the petitioner has mis-used his position as Administrative Member of the Board by campaigning during the Assembly Elections, placed him under suspension,—*vide* order dated 7th March, 2002.

(3) The petitioner challenged the order of suspension in C.W.P. No. 5056 of 2002 by alleging *mala fides* against the respondents. In the reply filed on behalf of the State Government, it was averred that the petitioner is likely to be charge-sheeted and appropriate action would be taken after holding regular enquiry. During the pendency of the petition, the enquiry officer conducted an ex-parte enquiry against the petitioner and submitted report to the State Government. In view of that development, the writ petition was disposed of on 2nd May, 2003 with the direction that the competent authority shall take final decision in the matter in accordance with law. The prayer of the petitioner with regard to grant of subsistence allowance was ordered to be considered by the competent authority. Thereafter,—*vide* order dated 23rd June, 2003, the petitioner was removed from the post of Member of the Board in terms of Section 10(1)(e) of the Electricity (Supply) Act, 1948 ('Act' for short). It was also observed that the Administrative Member of the Board was a tenure post and there was no provision in the Punjab State Electricity Board Chairman Powers Rules for giving subsistence allowance/salary to any Member during his suspension and as such the petitioner was not entitled to any subsistence allowance or salary during the period of his suspension.

(4) The petitioner then filed the present petition. After considering the rival pleadings and the arguments of the learned counsel, this Court allowed the writ petition,—*vide* its order dated 18th September, 2003 and quashed the removal of the petitioner. The last two paragraphs of that order read as under :—

> "Before concluding, we deem it proper to notice the argument of Ms. Rita Kohli that even though, the petitioner was not given opportunity to controvert the findings recroded by

the enquiry officer and the impugned order appears to have been passed without complying with the rules of natural justice, the Court may not interfere with the same because the denial of opportunity of hearing has not caused any prejudice to him. We are afraid, there is no substance in the argument of the learned Deputy Advocate General. The theory of absence of prejudice can be invoked by the Court for denying relief to a petitioner if breach of the rules of natural justice is insignificant or the person complaining of the breach has acquiesced in the same. However, this theory cannot be applied to a case, like the present one in which the impugned order was passed by the State Government in total disregard of the fundamental rule of natural justice and denial of opportunity to the petitioner to defend himself and to explain his position qua the findings recorded by the equiry officer has resulted in total failure of justice.

For the reasons mentioned above, the writ petition is allowed. Order dated 23rd June, 2003 (Annexure P.7) is quashed. The petitioner shall get all consequential benefits. However, it is made clear that the State Government shall be free to pass fresh order in the matter in accordance with law."

(5) The petition for Special Leave to Appeal filed by the Board against the order of this Court was granted by the Supreme Court and was treated as Civil Appeal No. 2677 of 2004. By an order dated 26th April, 2004, their Lordships of the Supreme Court remitted the matter to this Court by making the following observations :—

"Even while ordering notice in the special leave petition it was indicated as to why the matter should not be ordered to be remitted to the High Court for clarifying as to what was meant by "all consequential benefits", since there is some controversy in the light of decided cases as to what it should comprehend at this stage in the facts and circumstances of the case. Respondent entered appearance and filed counter affidavit and the appellant also filed rejoinder. When, the order of punishment is set aside on account of defective procedural formalities or non observance of principles of

natural justice and liberty is granted to the competent authority to pass fresh orders in accordance with law what could be the consequential beneftis that can be accorded at that stage required to be considered in the case, wherein while setting aside the order of dismissal, liberty has been granted to pass fresh orders in accordance with law."

(6) In the above back-drop, we are required to decide whether as a result of quashing of the order of removal, the petitioner is entitled to pay etc. for the period during which he remained under suspension and also for the period during which he was deprived of his right to hold the post of Member by virtue of the order of removal.

(7) Shri Gurminder Singh, learned counsel for the petitioner argued that as a consequence of setting aside of the order of removal, the petitioner became entitled to all the benefits including the monetary benefits which he would have got but for the illegal order of removal. He submitted that the declaration of nullity which is inherent in the order passed by this Court has the effect of restoring the petitioner's position as a Member of the Board with effect from 7th March, 2002 i.e. the date of which he was placed under suspension and as such, he is entitled to full pay and allowances for the period between 7th March, 2002 and the date on which he was allowed to join as Member.

(8) Ms. Rita Kohli, learned Deputy Advocate General, Punjab and Shri N. S. Boparai, learned counsel appearing for the Board argued that the petitioner is not entitled to any monetary benefit because there is no provision in the rules for payment of subsistence allowance to a member during his suspension. They further argued that the petitioner is not entitled to salary and allowances for the period during which he did not work as an Administrative Member of the Board.

(9) We have given serious thought to the respective arguments.

(10) Before dealing with the question noted above, we consider it proper to mention that in furtherance of order dated 18th September, 2003 passed by this Court, the petitioner was allowed to re-join as Member of the Board on 22nd October, 2003 and his tenure of two years ended on 25th Decmeber, 2003.

(11) During the course of hearing, we had asked the learned counsel for the parties to disclose the total emoluments paid to the petitioner before his suspension from the post of Member. In reply, the learned counsel for the petitioner stated that his client was getting about Rs. 22,000 per month. The Chairman of the Board filed affidavit dated 4th August, 2004. A perusal thereof shows that at the time of suspension, the petitioner was getting the following emoluments :—

(i)	Basic Pay	:	Rs. 18,400 per month
(ii)	Additional dearness allownace	:	Rs. 8,280 per month
	Total	:	Rs. 26,680 per month

(12) It is also borne out from the affidavit of the Chairman of the Board that if the order of suspension/removal had not been passed, the petitioner would have received the following emoluments :—

"From 1st March, 2002 to 7th March, 2002	:	Rs. 6,191
Date of suspension i.e. with effect from 8th March, 2002 to Date of reinstatement i.e. up to 21st October, 2003 (i.e. 1 year 7 months and 14 days)	:	Rs. 5,62,126
Total	:	Rs. 5,68,317
After deduction of T.D.S.	:	Rs. 4,11,137
Net Amount payable to the petitioner		

(13) The stand taken by the respondents is that in terms of Section 10 (1) of the Act, the State Government can suspend any member of the Board, but there is no provision for payment of subsistence allowance and as such, the petitioner is not entitled to any monetary benefit for the period during which he remained suspended. Their further stand is that the petitioner is not entitled to salary and allowances for the period during which he did not work as a member of the Board because there is no provision in the Act or the rules for payment of salary etc. to a member, who is kept out of office by virtue of an order of removal passed under Section 10 (1).

(14) What are the effects of an order passed by the competent authority to suspend an employee and the consequences which flow from quashing an order of removal/ dismissal. These questions have been cosidered in a large number of decided cases. In **Khem Chand** *versus* **Union of India (1)** the Supreme Court, while repelling the appellant's challenge to the validity of Rule 12 (4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 ('the Central Rules', for short), observed as under :—

> "An order of suspension of a Government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of the order of suspension is that though he continues to be a member of the Government service he is not permitted to work and further, during the period of his suspension he is paid only some allowance — generally called "subsistence allowance" — which is normally less than his salary — instead of the pay and allowances he would have been entitled to it he had not been suspended. There is no doubt that the order of suspension affects a Government servant injuriously. There is no basis for thinking, however, that because of the order of suspension he ceases to be a member of the service."

(15) In **R. P. Kapur** *versus* **Union of India and another (2),** a Constitution Bench of the Supreme Court considered the question relating to salary/ emoluments/allowances payable to an employee, who is placed under suspension. The facts of that case were that the appellant, who was a member of the Indian Civil Service and who, after independence, became member of the Indian Administrative Service, was placed under suspension on 18th July, 1959 in the wake of registration of a criminal case against him. The order of suspension postulated payment of subsistence allowance equal to the leave salary which he would have drawn under the Leave Rules applicable to him if he had been on half average pay with a further provision that in case the suspension lasted for more than twelve months a further order fixing the rate of subsistence allowance shall be passed. The

(1) AIR 1963 S.C. 687
(2) AIR 1964 S.C. 787

appellant challenged the order of suspension mainly on the ground of violation of Article 314 of the Constitution of India. It was also pleaded that he was entitled to full pay and allowances. Their Lordships of the Supreme Court considered various questions including the one relating to payment required to be made during the period of suspension. After making reference to the earlier judgments in **Management of Hotel Imperial New Delhi** *versus* **Hotel Workers Union (3)** and **T. Cajee** *versus* **U. Jormanik Siem. (4),** their Lordships of the Supreme Court held :—

> "The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the Government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of Government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in Section 16 of the General Clauses Act, No. X of 1897, which lays down that where any Central Act or Regulation gives power of appointment

(3) AIR 1959 S.C. 1342
(4) AIR 1961 S.C. 276

that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension." (Underlining is ours)

(16) In **Jai Chand Sawhney** *versus* **Union of India, (5)** the Supreme Court held that when an order of dismissal or removal is set aside by the Court on the ground of violation of the constitutional provisions, the employee becomes entitled to salary etc. on month to month basis because he had been wrongly prevented from rendering service.

(17) In **H. L. Mehra** *versus* **Union of India (6),** the Supreme Court interpreted Rule 10 (3), (4) and (5) of the Central Rules and held that once an order dismissing the empolyee is passed, the earlier order of suspension ceases to exist and the same does not get revived with the setting aside of the order of dismissal.

(18) In **Krishan Murari Lal Sehgal** *versus* **State of Punjab, (7),** the Supreme Court set aside the order of punishment on the ground of violation of Section 115 (7) of the State Re-organisation Act, 1956 and then directed that the appellant shall be entitled to full pay and allowances for the intervening period. The facts of that case show that the appellant was dismissed from service on 21st October, 1959 and he instituted the suit challenging his dismissal order as void and illegal and praying for a declaration that he continued to be in service of the Punjab State. He then instituted the second suit as Pauper claiming a decree for about Rs. 8,689 as arrears of salary and allowances and other amount. Despite success of the appellant before the final Court, he was denied emoluments beyond 15th January, 1993 when

(5) 1969 S.L.R. 879
(6) AIR 1974 S.C. 1281
(7) AIR 1977 S.C. 1233

his suit was decreed by the Sub Judge 1st Class, Patiala. He, therefore, preferred Civil Miscellaneous Applications which were disposed of by the Supreme Court with the following directions :—

> "Heard. counsel for the parties. This application is disposed of on a short ground. It has become necessary to clarify the order made by this Court allowing the appeals of the petitioner. According to the decision of this Court, the petitioner was given a declaration that he would be deemed to continue in service with effect from the date of the suit. As a logical consequence of this declaration, it is manifest that the petitioner would be entitled to back-salary from Ist June, 1962 till 9th February, 1974. The only way in which the judgment of this Court can be implemented is to pay the aforesaid amount of salary to the petitioner. With these observation, this application is disposed of the amount of the salary must be paid within two months from today."

(19) In **Maimoona Khatun and another** *versus* **State of U.P. and another (8)** their Lordships of the Supreme Court interpreted the expression "when the wages accrue due" appearing in Article 102 of the Limitation Act. 1908 and held :—

> "In cases where an employee is dismissed or removed from service and is reinstated either by the appointing authority or by virtue of the order of dismissal or removal being set aside by a Civil Court, the starting point of limitation under Art, 102 of the Limitation Act of 1908 would be not the date of the order of dismissal or removal but the date when the right actually accrues, that is to say, the date of the reinstatment by the appointing authority where no suit is filed or the date of the decree where a suit is filed and decreed. If the Court takes the view that the right to sue for the arrears of salary accrues from the date when the salary would have been payable but for the order of dismissal and not from the date when the order or dismissal is set aside by the civil court, it will cause gross and substantial injustice to the employee concerned who having been found by a court of law to have been wrongly

(8) AIR 1980 S.C. 1773

dismissed and who in the eye of law would have been deemed to be in service would still be deprived for no fault of his, of the arrears of his salary beyond three years of the suit which, in spite of his best efforts he could not have claimed, until the order of dismissal was declared to be void. Such a course would in fact place the Government employee in a strange predicament and give an underserving benefit to the employers who by wrongfully dismissing the employees would be left only with responsibility of paying them for a period of three years prior to the suit and swallow the entire arrears beyond this period without any legal or moral justification."

(20) Their Lordships further held that even though, the appellant's husband-Zamirul Hassan had died during the pendency of the litigation, she would be entitled to arrears payable to her husband as a consequence of setting aside of his dismissal from service.

(21) In **Union of India** *versus* **K.V. Jankiraman (9)** it was held that when employee is completely exonerated in criminal/ disciplinary proceedings and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post.

(22) In **Parkash Chand** *versus* **S.S. Grewal, Chief Secretary, Punjab (10)** a Full Bench of this Court held that when the dismissal of a Government servant is declared, by a decree of a Civil Court, to be illegal, void or ineffective, then he becomes entitled to enjoy all the benefits and privileges including emoluments for the entire priod during which his dismissal remained in operation. This decree is to be construed as enjoining upon the Government to reinstate the decree-holder and grant him all benefits and privileges, including his past and future emoluments. It will entitle the Government servant concerned to claim the necessary reliefs from the Government and in case of the failure of the Government to grant those reliefs, to file a suit or other legal proceedings to enforce the rights given to him by

(9) AIR 1991 S.C. 2010
(10) 1974 (2) I.L.R. (P&H) 56 (F.B.)

the declaratory decree. The Government will, of course, be also entitled to plead such defences as may be open to it to defeat the claim of the Government servant. But it is not open to the Government to challenge the decree or the legal status of the decree-holder as a Government servant to which the decree restores him.

(23) Another Full Bench of this Court in **Radha Ram** *versus* **Municipal Committee, Barnala and another (11)** considered the question as to whether a suit for declaration or a High Court sitting in appeal or otherwise is competent to give direction etc. for the payment of arrears of pay as a result of dismissal order having been declared illegal or without jurisdiction and answered the same in afirmative by making the following observations :—

> "Now if it is once held that a declaratory decree enjoins the employer to reinstate the decree-holder and grant him all the benefits and privileges including his past and future emoluments then it is obvious that a direction to that effect only makes pointedly explicit what is plainly implicit in the decree. Such a direction, therefore, only clothes in peremptory terms what has been held to be enjoined by the decree itself."

(24) The principles which can be culled out from the above survey of the judicial precedents are :—

(1) The employer has inherent right to suspend an employee.

(2) If the rules or other statutory provisions regulating the conditions of service provide for payment of subsistance allowance, then the suspended employee is entitled to subsistence allowance at the prescribed rates (s).

(3) If there are no rules or other statutory provisions for payment only of subsistance allowance, then the employee is entitled to get full pay and allowances during the period of suspension.

(4) Once the employee/public servant is removed or dismissed from service/post, then his right to receive subsistence allowance/full pay and allowances automatically comes to an end.

(11) 1983 (1) S.L.R. 151

(5) If the order of removal or dismissal of an employee/ public servant is nullified by the Court on the ground of violation of the statutory provisions or the basics of natural justice, he becomes entitled to be reinstated with retrospective effect as if the order of removal/ dismissal had not been passed. In that event, the employee/public servant is entitled to receive full pay and allowances for the intervening period except when the Court makes payment of salary etc. subject to the outcome of fresh/further enquiry or there is a provision for automatic suspension of the employee with a further provision for payment of subsistence allowance during the period of revived suspension.

(25) At this stage, we may notice the judgments of the Supreme Court in **Managing Director, ECIL, Hyderabad** *versus* **B. Karunakar, (12)** and **State of Punjab and others** *versus* **Dr. Harbhajan Singh Greasy (13),** on which reliance was placed by the learned counsel for the respondents.

(26) One of the primary questions amongst others that was considered by the Supreme Court in **Managing Director, ECIL,** *versus* **B. Karunakar** *(supra)* was as to what is the effect of non-furnishing of the inquiry report on the order of punishment and what relief should be granted to the employees in such cases. It was held when an employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other case it may have made no difference to the ultimate punishment awarded to him. Hence, it was observed, to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual and whether, in fact, prejudice has been caused to the employee or not on account of the denial to him of the report has to be considered on the facts and circumstances of each case. Besides, where even after furnishing the report no different consequence would have followed, it was observed that it would be a perversion of justice to permit the employee to resume duty and get all the consequential benefits. It was further observed that

(12) AIR 1994 S.C. 1074
(13) (1996) 9 S.C.C. 322

in all cases where the inquiry officer's report is not furnished to the delinquent employee on the disciplinary proceedings, the Court/Tribunal should accept 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 giving him an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If, however, Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate finding and the punishment given it should not interfere with the order of punishment. It was further observed that it is only if the Court/Tribunal found 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 and where the Court sets aside the order of punishment, it was observed, the proper relief that should be granted is direct reinstatement of the employee with liberty to the authority/ management to proceed with the inquiry by placing the employee under suspension and continue the inquiry from the stage of furnishing 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, it was observed, should invariably be left to be decided by the authority concerned according to the law. After culmination of the proceedings and depending of 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 as to how it will treat the period from the date of dismissal till reinstatement and what benefits, if any, and the extent of the benefits, he would 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.

(27) In **State of Punjab** *versus* **Dr. Harbhajan Singh Greasy** *(supra),* the report of the Inquiry Officer was based on the admission of the respondent employee therein. However, the Inquiry Officer did not take the said admission in writing. Subsequently, the respondent therein denied having made any admission. Under the circumstances, it was observed by the Supreme Court that the High Court may be justified in setting aside the order of dismissal. However, when the inquiry was found to be faulty, it could not be proper to

direct reinstatement with consequential benefits and the matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Besides, pending inquiry, the delinquent must be deemed to be under suspension and the consequential benefits would depend upon the result of the inquiry and order passed thereon. It was held that the High Court had committed illegality in omitting to give the said direction. However, since the respondent therein had retired from service it was observed that no useful purpose would be served in directing to conduct inquiry afresh.

(28) It is apposite to note that the ratio of the decision in **B. Karunakar's case** *(supra)* is in relation to non-furnishing of the inquiry report and proceeding with the stage from which the infraction of rule of not furnishing the report was pointed out. The position that was considered was in the wake of the 42nd amendment to the Constitution of India which came into force from 1st January, 1977 whereby it was stated that it shall not be necessary to give to a person who was to be dismissed or removed or reduced in rank from the service of the government any opportunity of making representation on the penalty proposed. The amendment led to the controversy as to whether when the inquiry officer was other than the disciplinary authority, the employee was entitled to a copy of the findings recorded by him, before the disciplinary authority applies its mind to the findings and the evidence recorded or whether the employee was entitled to the findings of the inquiry officer only at the stage when the disciplinary authority had arrived at its conclusion and proposed the penalty. The further question that arose was whether the employee was entitled to make representation against such finding before the penalty was proposed even when Article 311(2) of the Constitution stood as it was prior to the 15th amendment which came into force from 6th October, 1963. In **Union of India** *versus* **Mohd. Ramzan Khan (14)** the Hon'ble Apex Court held that disciplinary proceedings attract the principles of natural justice and the report of the inquiry officer after it records a finding of guilt and proposes a punishment so far as the delinquent is concerned he would be entitled to the supply of the copy of the inquiry report. This decision, however, it was held, would have prospective application and no punishment imposed was open to challenge on this ground.

(12) AIR 1991 S.C. 471

(29) The decision in **Mohd. Ramzan Khan's case** *(supra)* was pronounced on 20th November, 1990. Besides, it was also clarified that the said decision would not preclude the disciplinary authority from revising the proceedings and continuing with it in accordance with law from the stage of supply of the inquiry report in cases where dismissal or removal was the punishment. It is in view of another conflicting decision in the case of **Kailash Chander Asthana versus State of U.P. (15)** that the matter was referred to the Constitution Bench in **Managing Director, ECIL versus B. Karunakar** *(supra)* and the prospective operation of **Mohd. Ramzan Khan's case** *(supra)* was reiterated. Therefore, the observations of the Supreme Court in **B. Karunakar's case** *(supra)* were in the context of a technical infraction in the non-supply of the report of the Inquiry Officer to a delinquent employee after an Inquiry Officer found the employee guilty and proposed a penalty. Besides, it is to be seen in the facts and circumstances of each case as to whether any prejudice had been caused on account of non-furnishing of the inquiry report to the delinquent. The basis requirement that is to be kept in view by the Courts while considering to set aside an order of punishment or removal as the case may be is one of having caused prejudice. This aspect of the applicability of the test of prejudice and the rule in **B. Karunakar's case** *(supra)* has been considered by the Hon'ble Supreme Court in **State Bank of Patiala and others** *versus* **S.K. Sharma, (16)** wherein it was observed as follows :—

> "In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries : a distinction ought to be made between violation of the principle of natural justice, *audi alterm partem*, as such and violation of a facet of the said principle. In other words, distinction is between "no notice", "no hearing and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity." To illustrate-take a case where the person is dismissed from service without hearing him altogether [as in Ridge *versus* Baldwin. 1964 AC 40]. It would be a case falling

(15) AIR 1988 S.C. 1338
(16) AIR 1996 S.C. 1669

under the first category and the order of dismissal would be invalid or void, if one chooses to use that expression [Calvin *versus* Carr. (1980 AC 574]. But where the person is dismissed from service say, without supplying him a copy of the enquiry officer's report (Managing Director, E.C.I.L. *versus* B. Karunakar (1994 AIR SCW 1050) or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi, AIR 1984 SC 273), it would be a case falling in the latter category violation of a facet of the said rule of natural justice-in which case, the validity of the order has to be tested on the touch stone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct—in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touch stone of prejudice as aforesaid."

(30) On the basis of the above discussion, we hold that as a consequence of the setting aside of order dated 23rd June, 2003, the petitioner shall be entitled to all consequential benefits which necessarily include monetary benefits payable to him from the date of suspension i.e. 7th March, 2002 to the date of dismissal i.e. 23rd June, 2003 and thereafter up to the date of quashing of the order of removal by this Court.

(31) With the above observations, the matter stands disposed of on remittance from the Hon'ble Supreme Court.

R.N.R.