(8) Since the matter is old relating to a suit filed in 1980, therefore, the Appellate Court shall dispose of the appeal on or before 31st July, 2005.

(9) No costs.

(10) Parties through their counsel are directed to appear before the Learned Appellate Court, Narnaul on 10th March, 2005.

R.N.R.

Before Amar Dutt and Surya Kant, JJ.

P.K. KHANNA,—*Petitioner*

versus

NATIONAL FERTILIZERS LTD. & ANOTHER,—*Respondents*

C.W.P. No. 10895 of 2000

12th March, 2005

Constitution of India, 1950—Art. 226—NFL Employees (Conduct, Discipline and Appeal) Rules—Rl. 29—Allegations of fraud & dishonesty against an officer of NFL—Enquiry Officer finding the officer guilty of the charges—Petitioner submitting detailed objections against the findings of the Enquiry Officer—Disciplinary authority merely agreeing with the conclusions arrived at by Enquiry Officer without discussing the material on record—Appellate authority confirming the penalty of removal from service—Rl. 29 mandates that the prescribed penalties can be imposed by the disciplinary authority "for good and sufficient reasons", thus, casts a duty upon it to sequester the objections, if any, put forth by the employee against the enquiry report—It is imperative upon the disciplinary authority to meet out the challenge/objections submitted by the employee and to give reasons in support of its conclusions—Disciplinary authority merely making a mechanical statement that it finds itself in complete agreement with the enquiry report—Non-observance of principles of natural justice, fair and just play—Appellate authority also failing to meet the challenges put forth by the petitioner in his appeal—Petition allowed, orders of removal of petitioner and orders of appellate authority quashed while granting liberty to Disciplinary authority to pass fresh orders in accordance with law.

Held, that when the enquiry report has been supplied to a delinquent employee and he has chosen to submit his objections against the findings of the Enquiry Officer, it is imperative upon the disciplinary authority to meet out those objections and give reasons in support of its conculsions. It cannot escape from the rigours of rules of natural justice, fair and just play merely be making a mechanical statement that it finds itself in complete agreement with the enquiry report.

(Para 19)

Further held, that Rule 29 of the NFL Employees (Conduct, Discipline & Appeal) Rules itself mandates that any of the prescribed penalties can be imposed by the disciplinary authority "for good and sufficient reasons" only. The existence of "good" as well as "sufficient reasons" is, thus, *sine qua* non for imposition of a penalty. The reason, which the disciplinary authority crystatllizes after considering the findings of the Enquiry Officer and the objections by the delinquent employee against such findings, can be termed as good and sufficient reasons. The NFL's Discipline and Appeal Rules also, thus, casts a duty upon the disciplinary authority to sequester the objections, if any, put forth by the delinquent employee against the enquiry report.

(Para 20)

Further held, that contrary to the requirement of Rule 29 and/ or the legal principles, we find from the record that the petitioner had submitted detailed objections dated 9th June, 1987 against the findings recorded by the Enquiry Officer. His one of the objections as to whether-the defacing of damaged bags in terms of the instructions issued by the NFL was required to be done by the Bagging Plant or by the store, goes to the root of the matter. Enquiry Officer has not given a firm finding and has merely noticed the absence of clear instructions in this regard. That apart, the enquiry officer in relation to charge No. 1 also concluded that the petitioner alone is not responsible for this lapse. Notwithstanding the fact that the petitioner raised these contentions in his reply to the enquiry report, the disciplinary authority has passed the impugned order dated 29th January, 2000 in a mechanical manner. Same is the fate of the Appellate Authority who too in its order dated 22/26th May, 2000 has failed to meet the challenges put forth by the petitioner in his memorandum of appeal dated 15th February, 2000.

(Para 21)

Rajiv Atma Ram, Sr. Advocate with Miss Madhu Dayal, Advocate, for the petitioner.

Vikram Aggarwal, Advocate, for the respondents.

JUDGMENT

SURYA KANT, J.

(1) In this petition, prayer has been made for issuance of a writ in the nature of certiorari for quashing the Enquiry Report (Annexure P-12), the order dated 29th January, 2000 (Annexure P-14) whereby the petitioner was removed from service, and the order dated 22/26th May, 2000 (Annexure P-16) whereby his appeal against the order of removal has been dismissed by the Appellate Authority.

(2) The petitioner has also sought a writ in the nature of Mandamus to command the respondents to grant consequential benefits like seniority, promotion and arrears of pay etc.

(3) Briefly, the facts are that while working as Assistant Material Officer in the National Fertilisers Limited (for short, the NFL), the petitioner was served with a charge-sheet on 19th February, 1990, *inter-alia,* alleging that he had shown "undue favour to M/s. Swastik Laminated Industries, Bahadurgarh in the despatch of rejected bags of Lot No. 259 without ensuring their defacement before issue of gate passes and this action of the petitioner was allegedly in violation of the instructions issued by the NFL and amounted to fraud and dishonesty in connection with the business and property of the Company. A regular enquiry was held. It appears that the petitioenr was removed from service on 18th July, 1991 without supplying a copy of the Enquiry Report and his appeal against the order of removal was also dismissed by the Appellate Authority. This led the petitioner to file Civil Suit No. 1042 dated 13th November, 1992 which was decreed vide judgment dated 30th April, 1994 to the extent that the order of removal of the petitioner from service was set aside, the enquiry proceedings were, however, upheld and as such liberty was given to the respondents to proceed with the matter from the stage of furnishing a copy of the enquiry report to the petitioner. The afore-mentioned judgment was upheld by the first Appellate Court also vide judgment dated 3rd May, 1997. The petitioner thereafter was supplied a copy of the enquiry to which he submitted a detailed reply/objections on 9th June, 1997 (Annexure P-13). The afore-mentioned reply, however, did not find favour with

the Disciplinary Authority who vide one of the impugned order dated 29th January, 2000 (Annexure P-14) again removed the petitioner from service by observing as follows :—

> "The undersigned has carefully gone through the report of the enquiry officer, statements of witnesses and documents produced as evidence both by the Presenting Officer as well as the defence assistant of the delinquent employee during the enquiry proceedings. I have also carefully examined the representation of Shri P.K. Khanna dated 9th June, 1997. After going through the Enquiry Report, documents produced during the course of enquiry, evidence recorded, written statement of defence and representation submitted by Shri P.K. Khanna, the undersigned is in agreement with the findings of the Enquiry Officer that charges levelled against Sh. P. K. Khanna,—*vide* charge sheet dated 19th February, 1990 stand proved.
>
> Seeing the gravity of the charges and critical nature of job of materials Department where the company's Officers have to handle matters connected with the business and property of the Company involving huge financial stake in each and every transaction the charges proved against Sh. Khanna assume utmost gravity. Therefore, the undersigned has come to the conclusion that retention of Sh. P.K. Khanna, Asstt. Materials Officer in the services of the Company is not in the interest of the Company and imposition of penalty of removal of service in this case is reasonable and will meet the ends of justice. Therefore, the undersigned in exercise of powers conferred by the Rule 30 of NFL Employees (Conduct, Discipline and Appeal) Rules imposes the penalty of removal from the service of the Company on Shri P.K. Khanna, Assistant Materials Officer with immediate effect.
>
> Sd/- (S.K. Mehta)
> General Manager"

(4) The petitioner thereafter filed an appeal under Rule 39 of the National Fertiliser Employees (Conduct, Discipline and Appeal) Rules. His appeal, however, also met with the same fate when the

Appellate Authority,—*vide* its order dated 22nd/26th May, 2000 (Annexure P-16) dismissed the same after observing as under :—

> "8. The undersigned have gone through all the relevant papers on record and the appeal made by Shri Khanna, the undersigned has observed that Shri Khanna has not brought out any new facts in his representation. Accordingly, the undersigned has come to the conclusion that Shri Khanna had shown undue favour to M/s Swastik Laminating Industries, Bahadurgarh in the despatch of rejected bags of lot No. 259 without ensuring their defacement before issue of gate passes. Thus by doing so, he acted in a manner prejudicial to the interest of the Organisation, shown wilful disobedience of the instructions and negliance in the performance of his duties. Therefore, looking to the charge into the facts and circumstances and all relevant aspects, the undersigned confirmed the penalty of removal from the services of the company imposed by GM, Bathinda,—*vide* his letter No. NFB/Pers/32/412 dated 29th January, 2000 and hereby order the same.
>
> Sd/-
> (Dinesh Singh)
> Chairman & Managing Director."

Aggrieved at the afore-mentioned orders, the petitioner has approached this Court.

(5) Notice of motion was issued and in response thereto reply on behalf of respondents Nos. 1 and 2 has been filed defending the order of removal (Annexure P-14) as well as the order passed by the Appellate Authority (Annexure P-16).

(6) We have heard Shri Rajiv Atma Ram, learned Senior Counsel along with Ms. Madhu Dayal, Advocate, in support of the prayers made in this writ petition and Shri Vikram Aggarwal, learned counsel for the respondents and have also perused the record.

(7) The primary submission of Shri Rajiv Atma Ram, learned Senior Counsel for the petitioner is that the orders of removal from service (Annexure P-14) as well as of the Appellate Authority (Annexure P-16) are devoid of any reasons and are not in conformity

with the principles of fair and just play and, therefore, cannot sustain in law. He has placed reliance upon the judgment dated 1st June, 2000 passed by a Division Bench of this Court in **C.W.P. No. 5173 of 2000 - Ashok Kumar Watts** *versus* **District Red Cross Society, Moga.**

(8) On the other hand, Shri Vikram Aggarwal, learned counsel for the respondents has contended that since the Disciplinary Authority has agreed with the conclusions arrived at by the Enquiry Officer, there was no necessity for it to discuss the material on record and reiterate the findings of fact and that principles of natural justice stand sufficiently complied with if the Disciplinary Authority discloses that it has considered the material on record before arriving at its conclusion. In support of his contention, reliance has been placed by Shri Aggarwal on the following judgments :—

(i) **S.B.I. and others** *versus* **Arvind K. Shukla (1)**

(ii) **P.N.B.** *versus* **Kunj Behari Mishra (2)**

(iii) **Yoginath D. Bagde** *versus* **State of Maharashtra and another (3)**

(iv) **Ram Kumar** *versus* **State of Haryana (4)**

(v) **State of Haryana & Others** *versus* **Ram Chander (5)**

(vi) **P.S.E.B.** *versus* **Gurpal Singh Bhamra (6)**

(vii) **K.P. Upendra** *versus* **Chief General Manager, S.B.I., Hyderabad (7)**

(9) The scope and extent of natural justice in the matter of disciplinary action by domestic Tribunals after the 42nd amendment of the Constitution which dispensed with the issuance of notice to show cause against the penalty proposed, has been authoritatively considered

(1) AIR 2001 S.C. 2398
(2) 1998 (7) S.C.C. 84
(3) 1987 (7) S.C.C. 739
(4) 1987 (ii) L.L.J. 504
(5) AIR 1976 P&H 381 (F.B.)
(6) 1989 (4) S.L.R. 19
(7) 1989 (5) S.L.R. 331

by the Constitution Bench of the Supreme Court in the case, **Managing Director, ECIL, Hyderabad etc.** *versus* **B. Karunakar etc. (8).** Though the issue which primarily came up for consideration pertained to the right to receive the Enquiry Report by a delinquent employee, their Lordships of the Supreme Court held as under :—

> 'The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its consclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. 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 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. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer to constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent

(8) AIR 1989 S.C. 1074

employee has no knowledge. 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 conclusion. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own 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, the report of the Inquiry Officer and the representation of the employee against it." (emphasis applied)

(10) In **P.N.B. & Others** *versus* **Kunj Bihari Mishra** ***(supra),*** the Apex Court, in reference to Regulation No. 7(2) of the Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977, held that the principles of natural justice will have to be read into the said Regulation and "whenever disciplinary authority disagreed with the enquiring report on any article of charge, then before it records its findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer." (emphasis applied)

(11) In **S.B.I. & Others** *versus* **Arvind K. Shukla** ***(supra),*** the Supreme Court having found that the disciplinary authority had, in fact disagreed with the findings of the Inquiry Officer, held that the principles laid down by the Apex Court in the case of **P.N.B.** *versus* **Kunj Bihari Mishra** ***(supra)*** were fully attracted to the facts and circumstances of that case.

(12) In **Yoginath D. Bagde** *versus* **State of Maharashtra** ***(supra),*** the Apex Court reiterated that requirement of affording opportunity of hearing to the charged employee before reversing findings of the Enquiry Officer, as laid down in **Kunj Bihari Mishra's** case is in consonance with Article 311(2) of the Constitution and it being a constitutional right does not require specific provision to this effect. It was also held by the Apex Court that if findings by the domestic Tribunal are perverse and not supported by evidence on record or the findings are such to which no reasonable person would have reached, it would be upon to the High Court or the Supreme Court to interfere in the matter while exercising jurisdiction under Artcle 226 and 32 of the Constitution, as the case may be.

(13) In **Ram Kumar** *versus* **State of Haryana (supra),** their Lordships of the Supreme Court held that when the punishing authority agrees with the findings of the Enquiry Officer and accepts reasons given by him in support of such findings, it is not necesary for the punishing authority to discuss the evidence again and come to the same findings as that of the Enquiry Officer and give the same reasons for the findings.

(14) In **State of Haryana and others** *versus* **Ram Chander** ***(supra),*** a Full Bench of this Court had held that it cannot be said as a matter of rule that the disciplinary authority is bound to record reasons in every case as there is a vital difference between a case where the disciplinary authority agrees with the findings of the Enquiry Officer and acts upon it and a case in which it disagrees with the findings of the Enquiry Officer.

(15) In **P.S.E.B.** v. **Gurpal Singh Bhamra** (supra), a learned Single Judge followed the Full Bench in **State of Haryana** *versus* **Ram Chander** ***(supra).***

To the same effect is the judgment of learned Single Judge of Andhra Pradesh High Court in **K.P. Upendra** v. **Chief General Manager, S.B.I. (supra).**

(16) The Division Bench in **Ashok Kumar Watt's** case (supra) upon which reliance has been placed by the petitioner though is not directly on the issue, held as follows :—

> "The requirement of recording of reasons and communication thereof has been read by the Courts as an integral part of the concept of fair procedure. The necessity of giving

reasons flows from the concept of rule of law which constitutes one of the corner stones of our constitutional set up. The administrative authorities chrarged with the duty to act judicially cannot decide the matters on considerations of policy or expediency and, therefore, the requirement of recording of reasons by such authorities must be regarded as an important safeguard to ensure observance of the rule of law. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and minimises arbitrariness in the decision making process. Another reason which makes it imperative for the quasi-judicial authorities to give reasons and communicate the same to the affected person is that their orders are not only subject to the right of the aggrieved persons to challenge the same by filing statutory appeal and revision but also by filing writ petition under Article 226 of the Constitution..."

(17) Before further adverting to the principles enunciated in the case laws referred to above, it will be apposite to reproduce Rule 29 of the NFL Rules which reads as follows :—

"29. The following penalties may, for **good and sufficient reasons,** and as hereinafter provided, be imposed on an employee who commits a breach of any Rule/Rules of the Company or who knowingly does anything detrimental to the interest of the Company or in violation of the instructions or who acts in a manner subversive or discipline or is guilty of any other act of misconduct or misdemeanour. "(emphasis applied)

(18) In our view, new dimensions have been given by the Apex Court for observance of the principles of natural justice in **Union of India** *versus* **Mohd. Ramzan Khan, (9)** which have been approved by the Constitutional Bench in the case of **Managing Director, ECIL, Hyderabad** *(supra).* The disciplinary proceedings have been dissected into two parts. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, the enquiry report and the delinquent's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. The Constitution Bench has

(9) AIR 1991 S.C. 471

laid emphasis time and again upon arrival **of its own conclusions** by the disciplinary authority on consideration of the material like enquiry officer's report or **the reply by the delinquent employee to the Enquiry Officer's findings.** The question would obviously arise that when copy of the enquiry report has been supplied to a delinquent employee and he has submitted his objections/reply thereto, will it be sufficient adherence to the principles of natural justice for the disciplinary authority merely to say that it has **considered** that reply or objections against the enquiry report and finds no merit or will it be obligated upon the disciplinary authority to meet the points raised in that reply/objections of the delinquent employee and accept/ reject the same for valid reason.

(19) We have absolutely no doubt in our mind that after the supply of enquiry report to a delinquent employee if he opts to submit his reply/objections against the findings of the Enquiry Officer, it is imperative upon the disciplinary authority to meet out the said challenge/objections and to respond with its own reasons in support of its conclusions. Non-observance of such a procedure would be negation of all tenets of natural justice and will render the mandatory requirement of supplying the enquiry report to an employee as an empty formality. The consequences will be disastrous. If the disciplinary authority is not required to give independent reasons in support of its conclusions, it will be nothing short of reverting to the same stage where 42nd amendment of the Constitution intended to bring but for the rider imposed by the Apex Court, firstly, in **Mohd. Ramzan Khan's** case (supra) and thereafter in **B. Karunakaran's** case (supra). In other words, giving liberty to the disciplinary authority to overlook the objections submitted by the delinquent employee against the findings of the Enquiry Officer would be in utter disregard to the principles of natural justice which have been read into Article 311(2) of the Constitution by their Lordships in a catena of judgements referred to above. We, therefore, hold that when the enquiry report has been supplied to a delinquent employee and he has chosen to submit his objections against the findings of the enquiry Officer, it is imperative upon the disciplinary authority to meet out those objections and give reasons in support of its conclusions. It cannot escape from the rigours of rules of natural justice, fair and just play merely by making a mechanical statement that it finds itself in complete agreement with the enquiry report.

(20) Coming to the facts of the case in hand, we find that Rule 29 of the Rules itself mandates that any of the prescribed penalties can be imposed by the disciplinary authority "for good and sufficient reasons" only the existence of "good" as well as "sufficient reasons" is, thus, *sine qua non* for imposition of a penalty. The reasons, which the disciplinary authority crystalizes after considering the findings of the Enquiry Officer and the objections by the deliquent employee against such findings, can be termed as **good** and **sufficient reasons.** The NFL's Discipline and Appeal Rules also, thus, casts a duty upon the disciplinary authority to sequester the objections, if any, put forth by the delinquent employee against the enquiry report.

(21) However, contrary to the requirement of Rule 29 and/ or the legal principles discussed above, we find from the record that the petitioner had submitted detailed objections dated 9th June, 1987 (Annexure P-13) against the findings recorded by the Enquiry Officer. His one of the objections as to whether the defacing of damaged bags, in terms of the instructions issued by the N.F.L. was required to be done by the Bagging Plant or by the Store, goes to the root of the matter. Enquiry Officer has not given a firm finding and has merely noticed the absence of clear instructions in this regard. That apart, the Enquiry Officer in relation to charge no. 1 also concluded that the petitioner alone is not responsible for this lapse. Notwithstanding the fact that the petitioner raised these contentions in his aforementioned reply to the Enquiry report, the disciplinary authority has passed the impugned order dated 29th January, 2000 (Annexure P-14) in a mechanical manner. Same is the fate of the Appellate Authority who too in its order dated 22/26 May, 2000 (Annexure P-16) has failed to meet the challenges put forth by the petitioner in his Memorandum of Appeal dated 15th February, 2000 (Annexure P-15).

(22) For the reasons stated above, we allow this writ petition, quash the orders dated 29th January, 2000 (Annexure P-14) and 22/ 26th May, 2000 (Annexure P-16) with liberty, however, to the disciplinary authority to pass fresh orders in accordance with law and keeping in view the observations made hereinabove.

(23) No order as to costs.

R.N.R.