MISCELLANEOUS CIVIL

Before Bal Raj Tuli and S. S. Sandhawalia, JJ.

PARKASH CHANDER,—*Petitioner.*

versus

HARYANA STATE ELECTRICITY BOARD, ETC.,—*Respondents.*

Civil Writ No. 4794 of 1974.

March 31, 1975.

The Punjab State Electricity Board (Punishment and Appeal) Regulations 1965 *as adopted by Haryana State Electricity Board—Regulations* 7 *and* 13(*i*)*—Constitution of India* 1950*—Article* 14*—Striking employees acting collectively convicted on a criminal charge—Penalties imposed for misconduct—Matters to be considered by punishing authority—Stated—Employer—Whether can take policy decision about imposing penalties—Discretion of punishing authority—Whether interfered with—Regulation* 13(*i*)*—Whether* ultra vires *Article* 14.

Held, that in the case of an employee convicted on a criminal charge, his conduct which led to the conviction and the circumstances of the case alone have to be considered as envisaged in Regulation 13(i) of the Punjab State Electricity Board (Punishment and Appeal) Regulations 1965 as adopted by the Haryana State Electricity Board for imposing one of the penalties stated in Regulation 7. Although dismissal or removal from service is one of the penalties prescribed in Regulation 7 but no such order of dismissal or removal from service can be passed merely on the basis of conviction of an employee without considering the conduct which led to his conviction on a criminal charge.

(Para 5)

Held, (per Tuli, J. Sandhawalia, J., contra), that as a general rule a punishing authority must exercise its own judicial discretion while imposing a penalty on an erring employee and not sign the order on dotted lines but there is one exception to this general rule. Extraordinary situations, however, require extraordinary solutions. A policy decision by the management in extraordinary circumstances, like strikes and lock-outs, can be justified in order to avoid the allegations of discrimination and victimisation or the like. In order, therefore, to avoid such like allegations it becomes necessary for the management to formulate its policy for dealing with the employees who go on strike and are convicted of a criminal offence as a result of their collective action. Since their's is a collective action, they have to be dealt with collectively, if any punishment is to be meted out to them. In an individual case, a punishing authority has to exercise its own judicial mind and discretion in

the matter of inflicting punishment, but if a sizeable number of employees adopt the same course as a result of their collective action and are guilty of the same acts of conduct leading to their conviction, a general policy can be laid down by the employer as to the punishment to be imposed upon the erring employees *en masse*. In such a case, the plea of interference with the judicial discretion of the punishing authority will not be available. Thus, a policy decision can be taken by an employer about the penalties to be imposed on the erring employees acting collectively and it does not interfere with the discretion of the punishing authority.

(Paras 6 and 8)

Held, that the power under regulation 13 is quasi-judicial and it is a fundamental principle of jurisprudence that there is no equality before a judicial or a quasi-judicial decision. Merely because different punishments can be awarded by different punishing authorities is no ground to declare regulation 13 as discriminatory and violative of Article 14 of the Constitution of India 1950. The quantum of punishment has to be left to the discretion of the punishing authority. Article 14 of the Constitution guarantees equality before the law and not before a judicial or a quasi-judicial decision. Again Regulation 13 cannot be struck down as conferring an arbitrary power on the punishing authority because no appeal has been provided against such order. It is not necessary that in every case an appeal or appeals should be provided against the orders of the punishing authority or any authority exercising judicial or quasi-judicial powers. No statutory provision or regulation can be struck down on this ground. Regulation 13 cannot be attacked on the ground that it violates the rule of natural justice *audi alterem partem*. The rules of natural justice do not form part of the law of the land; they only supplement the law and do not supplant it. If a statute specifically provides that a hearing need not be given to an employee before inflicting certain punishment, it has to be seen whether the provision is reasonable or not. Regulation 13 is analogous to clause (2) of Article 311 of the Constitution with its proviso. This regulation cannot be struck down on the ground that it does not provide for an opportunity of hearing being afforded to the delinquent employee before passing the order of punishment for the reason that the employee has a chance of showing his innocence when he faces the criminal trial and if he is not able to exculpate himself there, a second enquiry into the same facts need not be held by the disciplinary authority. Thus regulation 13 is not *ultra-vires* Article 14 of the Constitution of India.

(Paras 12 and 13)

Held, (per Sandhawalia, J.), that the principle that a quasi-judicial power must be exercised independently and completely uninfluenced by any extraneous consideration admits of no exception. To carve out a proviso or an exception to this rule, even in the context of slightly unusual circumstances is not called for and indeed

may be fraught with consequences which may ultimately tend to erode the basic principle underlying the exercise of the judicial or quasi-judicial power. The mere fact that the employees act collectively does not in any way justify the abandonment of the accepted mode and manner of exercising quasi-judicial authority.

(Para 18)

Petition under Article 226 of the Constitution of India praying that:—

(1) *Writ of certiorari quashing order No. 124, dated May 23. 1974, issued under Regulation 13(1) of the Regulations by the Superintending Engineer 'op'. Circle, Hissar and other like orders served under Regulation 13(1) of the Regulations.*

(2) *Writ of mandamus directing the Respondents to restore to the Petitioner his post and to further restore to him and to all others served with like orders all the pecuniary and other benefits like salary, dearness allowance, house rent allowance, city compensatory allowance, increments, promotion, as if his services were never terminated.*

Any other relief that in the circumstances may deemed just, *fit and proper.*

Cost of the petition is also prayed.

P. N. Lekhi, Senior Advocate with M/s. I. S. Vimal and Gian Singh, Advocates, *for the petitioners.*

J. N. Kaushal, Advocate-General, Haryana and C. D. Dewan; Additional Advocate-General, Haryana, with S. K. Jain, Advocate and S. P. Jain, Advocate, *for the respondents.*

JUDGMENT

Tuli J.—(1) This judgement will dispose of 217 writ petitions Nos. 4794, 4943, 4944, 5739, 5754, 5768, 5769, 5673, 5833, 5849 to 5857, 5866, 5899 to 5904, 5922, 5929 to 5932, 5934 to 5936, 5967, 6065 to 6078, 6080 to 6085, 6087 to 6092, 6121 to 6134, 6137, 6138, 6140 to 6148, 6173 to 6179, 6182 to 6190, 6193 to 6196, 6198, 6199, 6201 to 6203, 6205, 6206, 6308 to 6315, 6317 to 6324, 6326 to 6330, 6382 to 6385, 6418 to 6423, 6465A, 6484 to 6486, 6488 to 6492, 6495, 6496, 6498 to 6501, 6507, 6509 to 6512, 6514 to 6516, 6630, 6635, 6636, 6638 to 6642, 6644, 6685 to 6687, 6689, 6693, 6697 to 6699, 6701, 6703

to 6706, 6712, 6714 to 6716, 6718, 6719, 6739, 6743 to 6745, 6755, 6757, 6758, 6900, 6902 to 6905, 6907 to 6914 and 6917 to 6919 of 1974 as common questions of law and fact are involved.

(2) The brief facts are that the petitioners were employees of the Haryana State Electricity Board, either temporary or substantive, and in pursuance of the call of the Union they went on strike with effect from April 25, 1974. They then went to Delhi to hold demonstrations in order to bring pressure on the management of the Board to concede their demands and to invite the intervention of the Central Government in the matter. In Delhi there was already in force an order under section 144 of the Code of Criminal Procedure prohibiting such demonstrations and assembly of more than five persons. The petitioners deliberately defied that order and thus committed an offence under section 188 of the Indian Penal Code. They were arrested and tried in the Court of the Metropolitan Magistrate, New Delhi. They were convicted and sentenced to various terms of imprisonment. The strike was withdrawn on May 15, 1974, and the petitioners thereafter reported for duty, but they were not allowed to resume duty. On various dates the appointing authorities of the petitioners issued orders terminating their services under regulation No. 13(i) of the Punjab State Electricity Board (Punishment and Appeal) Regulations, 1965 (hereinafter referred to as the Regulations) as adopted by the Haryana State Electricity Board (hereinafter called the Board). One such order is as under :—

"HARYANA STATE ELECTRICITY BOARD.

OFFICE ORDER No. 124, Dated 23rd May, 1974.

Shri Parkash Chander, son of Shri Duni Chand, an employee of the Board, posted as Meter Reader of Division Office, absented himself from duty, went to Delhi and deliberately violated on May 4, 1974, a duly promulgated order under section 144 of the Code of Criminal Procedure by the Additional Magistrate, New Delhi, on May 4, 1974. He took out a procession along with the persons and raised slogans in spite of being warned that the prohibitory orders under section 144, Criminal Procedure Code, was in force and continued disobeying the said order and were arrested and challaned.

As such he along with other accused were prosecuted for an offence under section 188 of Indian Penal Code in the Court of Shri Mohinder Paul, Metropolitan Magistrate, Parliament Street Courts at New Delhi, on May 4, 1974, and pleaded guilty to the charge and made a voluntary confession before the above said Magistrate on the above date. The court of Shri Mohinder Paul, Magistrate Ist Class, convicted him to an offence under section 188, Indian Penal Code and sentenced him to undergo a simple imprisonment for 10 days *vide* his order dated May 4, 1974.

His conduct in deliberately violating lawful order and showing flagrant disregard to the law, has lead to his conviction on the above-said criminal charge, so in the circumstances of the case, I deem it proper that his services be terminated.

I, therefore, hereby order the termination of the services of Shri Parkash Chander, Meter Reader, with immediate effect as per provision laid down in Regulation 13(i) of the P.S.E.B. Employees (Punishment and Appeal) Regulation 1965, as adopted by the H.S.E.B.

Sd/-
S.E. 'OP' Circle, Hissar,"

(3) The orders passed in the cases of the petitioners by their appointing authorities are exactly in the same words so much so even the typographical errors are the same. The petitioners then filed these petitions for issuance of writ of *certiorari* quashing the orders terminating their services and directing the respondents by a writ of *mandamus* to restore them to their posts and allow them all benefits like salary, dearness allowance, house rent allowance, city compensatory allowance, increments, promotion, etc. as if their services were not terminated. The Board has opposed these writ petitions on various grounds. A preliminary objection has been taken that the action of the Board, which is an incorporated autonomous body, is not amenable to writ jurisdiction in the matter of termination of services of its employees. On merits it is stated that the Board is an industrial establishment and also a statutory body incorporated under the provisions of section 5 of the Electricity (Supply) Act, 1948 (hereinafter called the 'Act'), and that the strike was not lawful as a notice of strike by the Union in a public utility service is required to be given in form 'L' and no such notice was given by

the Union. It is further stated that the Union had entered into a settlement with the Board on July 21, 1972, under which it had agreed not to adopt agitational approach and disturb industrial peace for a period of two years. In reply to the allegation that each punishing authority prescribed under the Service Regulations did not act on his own judgment, while passing the orders of termination of services of the petitioners, but such orders were passed in pursuance of the directions issued by the Chairman of the Board, it has been stated in the written statement that every punishing authority independently applied his own mind and since every punishing authority wanted that the order should be in a legal form, he got into touch with the Law Department of the Board and obtained from it a draft of the order to enable him to pass a proper and correct order which may not suffer from any legal infirmity. That is why all the punishing authorities passed the orders in the same language. The allegation of *mala fides* and victimisation is stoutly denied. In the end it is submitted that an alternative remedy was open to the petitioners of having their dispute with the Board referred to a Labour Court or Industrial Tribunal under section 10 of the Industrial Disputes Act or to file a suit for damages in a Civil Court for wrongful termination of their services.

(4) The first point for determination is whether the petitioners had a right to file these writ petitions under Article 226 of the Constitution and whether this Court can make an order or direction for their reinstatement? There is no dispute that the Board is a statutory Corporation established under section 5 of the Act and is 'the State' for the purposes of Part III of the Constitution as it falls within the category of 'other authority' mentioned in the definition of 'the State' in Article 12, but for no other purpose. Article 311 of the Constitution does not apply to the employees of this Board. The employees of the Board are, however, entitled to the fundamental rights guaranteed in Part III of the Constitution and have the right to enforce the same. The learned counsel for the Board has relied on the following judgments :—

(1) Executive Committee of U.P. *State Warehousing Corporation, Lucknow* v. *Chandra Kiran Tyagi,* (1).

(1) A.I.R. 1970 S.C. 1244.

(2) *Indian Air Lines Corporation* v. *Sukhdev Rai*, (2).

(3) *Jaswinder Singh Toor* v. *The Punjab Agricultural University, Ludhiana, through its Registrar and others*, (3).

(4) *Mall Singh* v. *Punjab State Electricity Board and others*, (4).

The learned counsel for the petitioners has, on the other hand, relied on the following judgments :—

(1) *Life Insurance Corporation of India* v. *Sunil Kumar*, (5).

(2) *S. R. Tewari* v. *District Board, Agra*, (6).

(3) *Calcutta Dock Labour Board* v. *Jaffar Imam*, (7).

(4) *Mafatlal Naraindas Barot* v. *Divisional Controller*, (8).

(5) *Raj Kumar Ex-Building Inspector* v. *Municipal Committee*, Jullundur, (9).

(6) *Indian Institute of Technology* v. *Mangat Singh*, (10).

(7) *Sirsi Municipality by its President, Sirsi* v. *Cecelia Kom Francis Tellis*, (11).

(8) *Sukhdev Singh and others* v. *Bhagatram Sardar Singh Raghuvanshi and another*, (12).

(2) A.I.R. 1971 S.C. 1828.
(3) 1972 S.L.R. 198.
(4) 1974(2) S.L.W.R. 737.
(5) (1964) 5 S.C.R. 528=A.I.R. 1964 S.C. 847.
(6) (1964) 3 S.C.R. 55=A.I.R. 1964 S.C. 1680.
(7) (1965) 3 S.C.R. 463=A.I.R. 1966 S.C. 282.
(8) S.T.C. (1966) 3 S.C.R. 40=A.I.R. 1966 S.C. 1364.
(9) I.L.R. (1974) 2 Pb. & Hr. 230.
(10) 1973(2) S.L.R. 46.
(11) A.I.R. 1973 S.C. 855.
(12) C.A. 2137/72 decided on 21st February, 1975 by Supreme Court.

In view of the sharp conflict of judicial opinion and the fact that quite a large number of writ petitions have been admitted, we do not propose to decide this point and prefer to decide these petitions on their merits.

(5) The next question to be determined is whether the orders of termination of the services of the petitioners have been passed in accordance with or in violation of the Regulations. These orders have been passed under regulation 13(i) of the Regulations which reads as under :—

> "Notwithstanding anything contained in regulations 9, 10 and 12;
>
> (i) Where a penalty is imposed on an employee on the ground of conduct which has led to his conviction on a criminal charge, or
>
> (ii) .. ..
>
> (iii) .. ..
>
> the punishing authority may consider the circumstances of the case and pass such orders thereon as it deems fit."

The penalties that can be imposed under the Regulations are stated in regulation 7 as under :—

(i) Censure ;

(ii) withholding of increments or promotion;

(iii) recovery from pay of the whole or part of any pecuniary loss caused to the Board by negligence or breach of orders;

(iv) reduction to a lower service, grade or post, or to a lower time-scale or to a lower stage in a time-scale;

(v) compulsory retirement;

(vi) removal from service which shall not be a disqualification for future employment;

(vii) dismissal from service which shall ordinarily be a disqualification for future employment.

Regulation 9 prescribes procedure for imposing major penalties while regulation 10 prescribes the procedure for imposing minor penalties. Regulation 12 pertains to joint inquiry. Regulation 13 expressly excludes the operation of regulations 9, 10 and 12, which means that in cases covered by regulation 13, no enquiry is to be held, no show-cause notice is to be issued and no explanation is to be called from the delinquent employee. Thus in the case of an employee convicted on a criminal charge, his conduct which led to the conviction and the circumstances of the case have alone to be considered for imposing one of the penalties stated in regulation No. 7. It has been submitted by the learned counsel for the petitioners that the orders for termination of services of the petitioners have been passed merely on the ground that they were convicted of an offence under section 188, Indian Penal Code, and their conduct, which led to the conviction, or the circumstances of the case have not been considered and, therefore, those orders cannot be sustained. Reliance for this proposition is placed on a Full Bench judgment of this Court in *Om Parkash* v. *The Director, Postal Services and others* (13). In that case, the petitioner was convicted for the commission of offences under sections 420/511, 467, 468 and 471/109, Indian Penal Code, in connection with the submission of false medical reimbursement claims on the finding that he had knowingly used forged cash memos for claiming medical reimbursement and had tried to cheat the Government in that manner. After his conviction he was dismissed from service by the order of the appointing authority reading as under :—

> "Whereas Shri Om Parkash, son of Shri Charanjit Rai, Postman No. 37, Amritsar H.O. (under suspension was convicted on criminal charges under sections 120-B, 420/511, 467, 468 and 471/109, Indian Penal Code, in the Court case No. 153/67 SPE, Ambala F.I.R. No. 44/66) by the Court of Shri S. K. Jain, Special Judicial Magistrate 1st Class, Punjab, Patiala, on March 20, 1969, in connection with submission of false medical reimbursement claims by him.
>
> I, the undersigned, now, therefore, dismiss Shri Om Parkash, son of Shri Charanjit Rai, Postman, Amritsar H.O. from Government service with effect from September 16, 1969, forenoon".

(13) I.L.R. (1972)2 Pb. & Hr. 72.

The Full Bench held that the order of dismissal was passed merely on the basis of his conviction and without considering the conduct which led to his conviction, as is the requirement of rule 19(1) of the Central Civil Services (Classification and Appeal) Rules, 1965. In the cases before us, the orders terminating the services of the petitioners were not passed merely on their conviction, but their conduct which led to their conviction and the circumstances of each case were considered as is clear from the text of the order which has been set out in full in an earlier part of this judgment. The text of each order clearly shows that the punishing authority in the first instance, described the facts of each case and towards the end, imposed the penalty on the ground of his conduct of deliberately violating lawful order and showing flagrant disregard to the law, which led to his conviction on the criminal charge earlier mentioned and came to the conclusion that he was not a fit person to be retained in service. The reason stated is, no doubt, a brief one, but it is the basis of the order terminating the services of each petitioner. It cannot, therefore, be said that the order does not consider the circumstances of each case and conduct of each petitioner leading to his conviction and the effect thereof on his suitability to be retained in service. The cases before us are, thus, distinguishable from the case before the Full Bench on which reliance has been placed.

(6) It is then argued that the punishing authority did not exercise his own judicial discretion while passing the order of termination of services against each petitioner, but signed the order on dotted lines as directed by the Chairman of the Board. Since the punishing authority acted as a quasi-judicial authority while passing such orders, his discretion could not be fettered by the Chairman and, therefore, the orders, not being the result of application of independent mind of each punishing authority, are liable to be set aside as having been passed at the instance of an extraneous authority. Reliance for this proposition has been placed on various judgments of the Supreme Court, but I do not feel the necessity of burdening this judgment with quotations from those decisions because I find myself in complete agreement with this proposition. It has been denied by the punishing authority in each case that he passed the order on the direction of the Chairman or any other higher authority. It is asserted that he applied his independent mind while passing the order and the fact that the order in each case is in the same language is explained by saying that each punishing authority approached the Law

Department of the Board for a legal draft of an order terminating the services of the erring employees so that proper and legal orders could be passed. Under regulation 13, no draft of the order is provided in the regulations themselves. It is denied that the Chairman of the Board issued any directive to terminate the services of all the employees who had gone on strike and were convicted of the offence under section 188, Indian Penal Code. In view of this denial there arises a dispute on facts. We do not consider it a fit case to examine the evidence in order to resolve that dispute. In a petition under Article 226 of the Constitution, when a fact asserted in the petition is denied by the respondent, it is not safe to accept the assertion made by the petitioner. It cannot, therefore, be held that the punishing authorities of all the petitioners passed the impugned orders at the dictation of the Chairman of the Board and, therefore, there is no substance in the plea put forth on behalf of the petitioners. Even if the assertion of the petitioners is accepted, in my opinion, the orders passed by the punishing authorities cannot be quashed on that ground. Extra-ordinary situations require extra-ordinary solutions. A policy decision by the management in extra-ordinary circumstances, like strikes and lock-outs, can be justified in order to avoid the allegations of discrimination and victimisation or the like. If an individual case in due course arises, the punishing authority has to exercise his own judicial mind and discretion in the matter of inflicting punishment, but if a sizeable number of employees adopt the same course as a result of the decision taken by their Union and are guilty of the same acts of conduct leading to their conviction, a general policy can be laid down by the employer as to the punishment to be imposed upon the erring employees *en masse*. In such a case, the plea of interference with the judicial discretion of each punishing authority will not be available. It is a matter of common experience that whenever a large number of employees of the Government or any other establishment in the private or public sector go on strike and the strike is put an end to, it is usually as a result of an agreement arrived at between the representatives of the employees and the officers of the employer that the action to be taken against the erring employees is decided upon. If a strike is called off unconditionally without arriving at an agreement with the management, it will be open to the management to prescribe the penalty to be imposed on all the employees, who went on strike or were guilty of certain acts of misconduct, leviable under the Service rules.

(7) The ratio of the decision of the Supreme Court in *The Punjab National Bank Limited* v. *Its Workmen* (14), relied on by the learned counsel for the petitioners, seems to go against his contention and supports the view I have taken above. In that case a large number of employees of the Punjab National Bank went on strike, which was termed as illegal by the Bank and 150 of them were dismissed. The dismissed employees raised an industrial dispute which was referred for adjudication to the Industrial Tribunal. The Tribunal decided that the strike was illegal and participation in illegal strike justified the dismissal of the employees. Even so the Tribunal made an order directing the Bank to pay certain amount to the employees on compassionate grounds. The Bank challenged that direction for the payment of the amount to the employees before the Labour Appellate Tribunal which held that, though the strike was illegal, the Bank, by its conduct, had precluded itself from exercising the alleged right to dismiss its employees for their participation in such an illegal strike. It was pleaded by the Union of the employees that it was known to the Bank that the strike was the result of the unanimous decision and that all the acts committed by the Union and its officers before and during the strike were the acts not of any individual but of the Union as a whole. There was no rule for making any distinction between one workman and another and if the Bank took back a large number of strikers, it should have taken back the 150 remaining workmen as well, but it refused to do so because of its policy of victimisation, as it wanted to teach a lesson to all the office-bearers and active workers of the Union.

(8) In my opinion in order to avoid such like allegations it becomes necessary for the management to formulate its policy for dealing with the employees who go on strike and are convicted of a criminal offence which is committed as a result of the decision taken by the Union. Since strike is a collective action of the employees, they have to be dealt with collectively, if any punishment is to be meted out to them.

(9) In *India General Navigation and Railway Company Limited* v. *Their Workmen* (15) the following obesrvations appear which

(14) (1960)1 S.C.R. 806.

(15) (1960) 2 S.C.R. 127.

show that a decision for imposing the same punishment on every workman guilty of the same misconduct can be made :—

> "To determine the question of punishment, a clear distinction has to be made between those workmen, who not only joined in such a strike, but also took part in obstructing the loyal workmen from carrying on their work, or took part in violent demonstrations, or acted in defiance of law and order, on the one hand, and those workmen who were more or less silent participators in such a strike, on the other hand. It is not in the interest of the Industry that there should be a wholesale dismissal of all the workmen who merely participated in such a strike. It is certainly not in the interest of the workmen themselves."

Again, on page 30 of the report, the following observations are pertinent as to the punishment to be imposed on employees who defy the lawful orders promulgated under section 144 of the Code of Criminal Procedure :—

> "The position, therefore, is that the strikes were illegal, that there was no question of those strikes being justified, and that, assuming that the strikers were liable to be punished, the degree and kind of punishment had to be modulated according to the gravity of their guilt. Hence, it is necessary to distinguish between the two categories of strikers. The Tribunal attempted to make such a distinction by directing that the 52 workmen, who had been convicted under section 143, read with section 188 of the Indian Penal Code, were not entitled to reinstatement, and the remaining 208 workmen were so entitled. Dealing with the case of the thirty-seven workmen, who had been convicted only under section 188 of the Indian Penal Code, for transgression of the prohibitory orders under section 144 of the Code of Criminal Procedure, the Tribunal put those workmen on the same footing as the rest of the workmen. But, in our opinion, those 37 workmen do not stand on the same footing as the others. Those 37 workmen, who were convicted under section 188 of the Indian Penal Code, had been found to have violated the prohibitory orders passed by the public authorities to keep the public peace. Those

convictions were based upon evidence adduced before the Magistrate, showing that the workmen had proceeded to the steamer flat through the jetty, in defiance of the orders promulgated under section 144. We have examined the record and we find that there is sufficient indication that those 37 workmen were among the violent strikers, and could not be placed in the category of peaceful strikers. Hence, it is clear that those workmen not only joined the illegal strike by abstaining from their assigned duty, but also violated regularly promulgated orders for maintaining peace and order. Such persons, apparently, cannot be said to be peaceful strikers, and cannot, therefore, be dealt with as lightly as the Tribunal has done. The Tribunal, in our opinion, is wrong in taking the view that the appellants had nothing to do with the violation of the order under section 144 of the Code of Criminal Procedure, promulgated by the District Magistrate, with a view to maintaining peace and order at the site of work. These 37 workmen, therefore, should not have been ordered to be reinstated."

These observations clearly lead to the conclusion that the same punishment is to be imposed on all the employees guilty of the same or similar acts of misconduct and this can be done by the management laying down a policy.

(10) It has also to be borne in mind that the Board, under regulation 30, has the power to revise the proceedings of any punishing or appellate authority, *suo motu* or at the instance of an employee. This regulation reads as under :—

"The Board may call for and examine the records of any case in which a subordinate authority passed any order under regulation 24 or has inflicted any of the penalties specified in regulation 7, or in which no order of penalty inflicted has been passed and after making further investigation, if any, may confirm, remit, reduce or, subject to the provisions of regulation 24, increase the penalty or subject to the provisions of regulations 9, 10 and 11, inflict any of the penalties specified in regulation 7."

(11) The penalty of termination of service is provided in regulation No. 7 and, therefore, even if a punishing authority were to

pass any order other than termination of service, it was open to the Board, under regulation 30, to inflict the punishment of termination of service. Instead of exercising this power, if the Board or its Chairman adopted a uniform pattern of punishment in the case of all employees convicted of an offence under section 188, Indian Penal Code, for defying the prohibitory order at Delhi or Chandigarh, there was nothing wrong or contrary to the Service regulations. I am, therefore, of the opinion that even if the impugned orders, terminating the services of the petitioners under regulation 13, were passed by each punishing authority, as a result of consultation with the Chairman, or as a result of the policy formulated by the Board, the orders cannot be struck down on that ground and cannot be termed as vitiated. It has also to be borne in mind that an order of punishment can be passed, even in the first instance, by the appellate or revising authority. Even under Article 311 of the Constitution, which prescribes that an order of dismissal or removal from service cannot be passed by an authority subordinate to that by which he was appointed, an order of dismissal or removal from service can be passed by an authority higher than the authority, who appointed the civil servant. This matter was considered by a full Bench of this Court in *Karnail Singh* v. *The State of Punjab and others* (16) where the question debated was whether an order of retirement on attaining the age of 55 years under Rule 5.32(c) of the Punjab Civil Services Rules, Volume II, could be passed by the State Government instead of the Excise and Taxation Commissioner, who had appointed that employee. It was held that:—

> "(i) in the absence of anything to the contrary stated in any relevant statute or statutory rule, the State Government or the Governor is the appointing authority of a State Government servant,
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> (ii) inasmuch as the Governor's power to appoint has also been delegated by him to the Excise and Taxation Commissioner, the Governor as well as the Excise and Taxation Commissioner could validly and effectively issue to the petitioner, the notice of retirement under rule 5.32(c);
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> (iii) the Excise and Taxation Commissioner, while issuing the notice of retirement, is exercising the State Government's power which is delegated to him by the relevant rules;

(16) C.W. 3612/73 decided on 1.11.74.

(iv) any authority other than the Excise and Taxation Commissioner or the Governor (the State Government) could not issue such a notice, as such authority would not be appointing authority of an Excise Inspector; and

(v) likewise, a notice served by an Excise Inspector on the State Government (or the Governor) in exercise of his corresponding right under rule 5.32(c) to retire any time after attaining the age of 55 years would be as valid and effective as a notice served by him on the Excise and Taxation Commissioner, who had actually appointed him."

On the parity of reasoning it can be held that the Board is the appointing authority of every employee and other authorities are the delegates of that power. So the Board can pass any order of punishment under the Regulations and if it guided the individual punishing authorities to pass a uniform order in the case of the petitioners and others like them, it committed no error of law and the order cannot be struck down on that ground.

(12) Lastly, it has been argued that regulation 13 is violative of Article 14 of the Constitution inasmuch as no guidelines have been provided to the punishing authority for taking action under that regulation. An arbitrary power has been conferred on the punishing authority the result of which is that for the same misconduct, one punishing authority may pass an order of dismissal or removal from service while another may pass an order stopping a number of increments and a third may administer only a warning and the fourth may pass an order of censure and so on. The power under regulation 13 is quasi-judicial and it is a fundamental principle of jurisprudence that there is no equality before a judicial or a quasi-judicial decision. Merely because different punishments can be awarded by different punishing authorities is no ground to declare regulation 13 as discriminatory and violative of Article 14 of the Constitution. The quantum of punishment has to be left to the discretion of the punishing authority. It may here be emphasised that Article 14 guarantees equality before the law and not before a judicial or a quasi-judicial decision. A similar argument was advanced before the Supreme Court in *Jagmohan Singh* v. *State of U.P.* (17), to the effect that uncontrolled and unguided discretion in

(17) A.I.R. 1973 S.C. 947.

the Judges to impose capital punishment or imprisonment for life was hit by Article 14 of the Constitution, but was not accepted. It was observed that if the law has given to the Judge a wide discretion in the matter of sentence to be exercised by him after balancing all the aggravating and mitigating circumstances of the crime, it will be impossible to say that there would be at all any, discrimination, since facts and circumstances of one case can hardly be the same as the facts and circumstances of another. In an earlier case, *Bhudhan Choudhry* v. *The State of Bihar* (18), it was held that Article 14 can hardly be invoked in matters of judicial discretion. After referring to the observation of Frankfurter, J., in *Snowden v. Hughes* (19), "the Constitution does not assure uniformity of decisions or immunity from merely erroneous action, whether by the Court or the executive agencies of a State", it was observed that "the judicial decision must of necessity depend on the facts and circumstances of each particular case and what may superficially appear to be an unequal application of the law may not necessarily amount to a denial of equal protection unless there is shown to be present in it an element of intentional and purposeful discrimination." There is, therefore, no merit in this submission which is repelled.

It is then submitted by the learned counsel or the petitioners that Regulation 13 should be struck down as conferring an arbitrary power on the punishing authority because no appeal has been provided against such order and in case it be held that an appeal has been provided, the appellate authority has not been prescribed by the Board, and, therefore, the right of appeal has remained dormant and has, in fact, been denied to the petitioners. There is equally no merit in this submission because it is not necessary that in every case an appeal or appeals should be provided against the orders of the punishing autherity or any authority exercising judicial or quasi-judicial powers. No statutory provision or regulation can be struck down on this ground. In the case of the petitioners the right of appeal has been provided under regulation 18. By virtue of regulation 31, Appendix 'B' to Punjab Public Works Electricity Branch Provincial Service Class III (Subordinate Posts) Rules, 1952, is still in force and that prescribes the appointing authority, the nature of penalty, authority empowered to impose penalty,

(18) (1965) 1 S.C.R. 1045.
(19) 1943) 321 U.S.I.

appellate authority and second appellate or revising authority. These rules have been kept in force by orders dated February 19, 1959 and October 1, 1960, of the Punjab State Electricity Board and the order of the Haryana State Electricity Board dated May 10, 1967. The petitioners, however, did not avail of the remedy of appeal and only made representations to the punishing authorities for review of their orders which were declined.

(13) The validity of regulation 13 is also attacked on the ground that it does not provide for any opportunity of hearing being afforded to the delinquent employee against whom action is contemplated. It is said that the violation of the rule of natural justice—*audi alterem partem*—makes the orders of termination of services null and void. In this connection it may be stated that the rules of natural justice do not form part of the law of the land; they only supplement the law and do not supplant it. If a statute specifically provides that a hearing need not be given to an employee before inflicting certain punishment, it has to be seen whether the provision is reasonable or not. The same rule will apply to a regulation prescribing the conditions of service between an autonomous body and its employees. Article 311(2) of the Constitution provides that no person, who is a member of a civil service of the Union or an All India Service or a civil service of a State or holds a civil post under the Union or a State, shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the changes against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such enquiry, to impose on him such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such enquiry. To this clause a proviso has been added that it shall not apply where a member of a service is dismissed or reremoved or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, which clearly means that after conviction if the punishment is to be imposed on the basis of the conduct which led to his conviction, no enquiry need be held nor any opportunity of hearing or showing cause against the proposed penalty has to be afforded to the public servant concerned. Regulation 13 is also analogous to clause (2) of Article 311 with its proviso. Similar also is rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The regulation

cannot be struck down on the ground that it does not provide for an opportunity of hearing being afforded to delinquent employee before passing the order of punishment for the reason that the employee has the chance of showing his innocence when he faces the criminal trial and if he is not able to exculpate himself there, a second enquiry into the same facts need not be held by the disciplinary authority. In this view of the matter, regulation 13 is valid and action under it could be taken by the punishing authority against the petitioners.

(14) For the reasons given above, I find no merit in these petitions which are dismissed, but without any order as to costs. The dismissal of the petitions will, however, not bar the parties from negotiating a settlement, if desired.

SANDHAWALIA, J.—(15) I have the privilege of perusing the very lucid judgment prepared by my learned brother Tuli, J. I agree with him that the writ petitions must be dismissed.

(16) It is, however, only on an ancillary point that I feel compelled to refrain from giving whole-hearted concurrence to the above-said judgment. It was urged before us that the punishing authority in these cases did not exercise its own judicial discretion while passing the order of termination against each petitioner but had signed the order on the dotted line, as directed by the Chairman of the Board. As has been fully noticed by my learned brother Tuli, J., the allegations of fact for this contention were stoutly denied on behalf of the respondents. It was categorically stated in the return that the order of termination was not passed on the direction or behest of the Chairman of the Board or of any other higher authority. Equally it was asserted that the punishing authority had acted in a quasi-judicial manner and independently applied its mind whilst passing the orders in each individual case. The close similarity of the language of the orders was plausibly explained on the respondents' behalf by averring that the Law Department of the Board had prepared a legal draft for passing a proper order in case termination of the services of the erring employee was to be resorted to.

(17) It is well-settled that the burden of establishing the necessary facts to show the invalidity of an impugned order obviously

rests on the writ petitioner. In this case, the petitioners had on the pleadings before us signally failed to discharge that burden and we are unanimous in our opinion that it was not a fit case for examining evidence to resolve the dispute, if any. I agree entirely with Tuli, J. that on these facts it was wholly unsafe to accept the assertions made by the petitioners and the contention must, therefore, be rejected. I would wish to rest my judgment in the context of this contention upon the above-said firm footing.

(18) On the above-said finding, no further issue arises and it is, therefore, that I do not feel at all the necessity of pronouncing upon a hypothetical proposition. My learned brother Tuli, J., however, has proceeded to hold that even if the assertion of the petitioners that their services have been terminated at the command and direction of the Chairman of the Board was correct, still the orders passed by the punishing authority in its quasi-judicial capacity would not be tainted with any infirmity. This issue in these hypothetical terms was not debated before us at length on behalf of the respondents and that is one reason for my reluctance to arrive at any considered finding thereon. However, it appears to me that it is well-established, both on principle and by a long line of precedent, that a quasi-judicial power must be exercised independently and completely uninfluenced by any extreneous consideration. That principle perhaps admits of little or no exception. Therefore, to carve out a proviso or an exception to this rule, even in the context of slightly unusual circumstances may well not be called for and indeed may be fraught with consequence which may ultimately tend to erode the basic principle underlying the exercise of judicial or quasi-judicial power. I am, therefore, unable to persuade myself that the mere fact that the employee-petitioners had acted collectively would, in any way, justify the abadonment of the accepted mode and manner of exercising quasi-judicial authority.

(19) I am more than fully conscious that troublesome practical difficulties in peculiar situations may well arise. That, however, is a matter for the legislature or the rule-making authority, as the case may be. To create a remedy for such a situation by way of interpretation which may tend to erode the salutary principle of quasi-judicial power appears to me to be fraught with danger. Once it is held that a person or body of persons is to act quasi-judicially, then the mere fact that the action they intend to counter,

is *en masse* or collective would not justify the abandonment of the hallowed principle that quasi-judicial power must be exercised independently and untrammelled by any extraneous influence.

(20) With the aforesaid words, I would reiterate my concurrence with Tuli, J., on all the other points.

N. K. S.

APPELLATE CIVIL

Before R. S. Narula. C.J., and M. R. Sharma, J.

RAJA RAGHAVINDER SINGH,—*Appellant*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Letters Patent Appeal No. 76 of 1973.

April 2, 1975.

Income Tax Act (XLIII of 1961)—Sections 2(24) and 10(2)—Income Tax Act (XI of 1922)—Sections 2(6C) and 14(1)—Rulers of erstwhile Princely States surrendering their sovereignty by executing instruments of accession—Union of India agreeing to pay privy purses to such Rulers and allowances to their relations—Receipt of periodical allowance by a relation of such a Ruler—Whether constitutes 'income'—Such periodical receipt—Whether exempt from payment of income-tax.

Held, that section 2(6C) of the Income Tax Act, 1922 and section 2(24) of the Income Tax Act, 1961, give an inclusive definition of the word "income". Whenever a term is given such a definition in a statute, it means not only the things mentioned therein, but also includes in its ambit the meaning of the term as generally understood. Income conotes a periodical monetary return coming in with some sort of regularity or expected regularity from definite sources and the multiplicity of forms which it may assume is beyond enumeration. In other words, the word 'income' has to be given a very wide meaning. Therefore, a periodical receipt of an allowance by relation of an erstwhile Princely Ruler in lieu of the execution of a document of accession constitutes income for the purposes of Income Tax Acts.

(Para 10)

Held, that anything which can properly be described as income is taxable under the Acts. Wherever the Legislature grants exemp-