



**IN THE HIGH COURT OF MADHYA PRADESH**  
**AT GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT**

***ON THE 7<sup>th</sup> OF APRIL, 2026***

**WRIT PETITION No. 7593 of 2010**

***SHIVRAM SINGH TOMAR***

*Versus*

***STATE OF M.P. AND OTHERS***

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**Appearance:**

*Shri Sankalp Sharma - Advocate for petitioner.*

*Shri Shiraz Qureshi – Government Advocate for respondent/State.*

*Shri Rajendra Kumar Shrivastav – Advocate for respondent No.3 and 4.*

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**ORDER**

This petition, under Article 226 of Constitution of India, has been filed seeking following relief (s):-

“i. That, the Hon'ble Court may kindly be pleased to allow this Writ Petition;

ii. Writ of mandamus may kindly be issued setting aside the impugned order dated 28.7.2008 and the copy of the approval dated 23.5./25.3.2010 of the termination dated 02.12.2008, Annexure P/1 and P/2, P/23 by which the services of the petitioner has been terminated and a writ of mandamus may kindly be issued commanding the respondents jointly and



severally to restore the services of the petitioner with all benefits which accrued during the period of termination/suspension order for which the petitioner is entitled. A writ of mandamus may kindly be issued against the respondents commanding them to pay all the benefits during the period of suspension along with subsistence allowance and thereafter difference of pay may kindly be paid to the petitioner.

iii. Any other just, suitable and proper relief, which this Hon'ble Court deems fit, may also kindly be granted to the petitioner. Costs be also awarded in favour of the petitioner.”

2. Learned counsel for petitioner submits that Maharaja Mansingh College Shiksha Samiti is a society registered under the Societies Registration Adhiniyam and running the educational institution in the name and style as “Maharaja Mansingh College”. The college is receiving 100% grant-in-aid from the State Government. It is further submitted that petitioner was initially appointed as Lower Division Clerk on 1.9.1997. Thereafter, his services were confirmed on the said post vide order dated 31.7.1999. He passed Accounts Training Course in February, 1987. Thereafter, he was sanctioned increment on account of passing Accounts Training Course. Mr. B.P. Chaudhary who was working as Head Clerk-Cum-Accountant stood retired from service w.e.f. 31.12.1996 and the post fell vacant. Then charge of Head Clerk- Cum-Accountant was assigned to petitioner. Mr. V.D. Gupta was appointed on absorption in the college on the post on which petitioner was working as Head Clerk-Cum-Accountant. Petitioner challenged the said order before the High Court in W.P. No.202/97. The High Court granted stay against the absorption of Mr. V.D.



Gupta as Head Clerk-Cum-Accountant and thereafter the order was withdrawn.

3. The petition of the petitioner was disposed of by the High Court with the observation that the authority may consider the case of petitioner with regard to promotion. Petitioner submitted representation to this effect on 23.09.1998.

4. Thereafter, the promotion committee was constituted to consider the case of petitioner. However, petitioner was not promoted and on 31.03.1998 Mr. P.B.S. Yadav was appointed as In-charge Principal on account of retirement of Dr. D.N. Chaturvedi. The charge of Head Clerk-Cum-Accountant was withdrawn from petitioner in January, 1999.

5. Petitioner filed a contempt petition before the High Court which was registered as M.C.C. No. 111/1999.

6. Thereafter, the In-charge Principal vide order dated 30.10.1999 passed order of suspension against petitioner. Thereafter, on 10.12.1999, charge-sheet was issued to petitioner. By the said charge-sheet four charges were levelled against petitioner. The first charge was that when he was Accountant from 01.01.1997, he passed some secret documents of the institution to political persons. The second charge was that petitioner retained caution money of Rs.75/- of the student which was never deposited by him. The third charge was that petitioner disobeyed the order of the Principal and the fourth charge was that petitioner misbehaved with the employees of the college.



7. The petitioner denied the aforesaid charges. Thereafter, detailed imputation of charges was issued to petitioner. He further denied the aforesaid charges and submitted a detailed reply. Petitioner also alleged that the Incharge Principal had no power and authority to issue a charge-sheet and the enquiry was initiated with *mala fide* intention.

8. Thereafter, vide order dated 12.01.2000, a retired Principal of the college Mr. Sarman Singh Yadav was appointed as Enquiry Officer. The petitioner objected appointment of enquiry officer vide letter dated 22.01.2000 on the ground that it was against the Rules.

9. Thereafter, as per petitioner he submitted a letter for joining and also submitted representations to participate in the enquiry. However, he was not permitted to participate in the enquiry and enquiry was conducted *ex parte*.

10. Respondents No. 1 & 2 had not filed the return though they have been served. Respondents No. 3 & 4 filed the return and stated that the Incharge Principal was authorized to issue the charge-sheet. Petitioner deliberately did not appear before the enquiry officer. Hence, *ex parte* enquiry was conducted and thereafter, the charges were found proved against petitioner. The Management Committee of the Institution took a decision to terminate the services of petitioner.

11. Earlier, all the papers along with enquiry report were sent to the appropriate authority with regard to approval for termination of service of petitioner. However, the approval was not granted by the appropriate authority. Hence, the Education Committee in its meeting dated 24.08.2002 decided to dismiss petitioner from service and consequently, the order of



dismissal was passed by the Principal dated 03.09.2002. Thereafter, petitioner preferred W.P. No. 2230/2005 which was allowed on 24.08.2007 and the dismissal order dated 03.09.2002 and resolution dated 24.08.2002 were quashed. The Court directed the respondents to pay full salary and other benefits to petitioner and cost of Rs. 2,000/- was also awarded in favour of petitioner. Against the said order, the respondents preferred W.A. No.639/2007 which was dismissed by the Division Bench of this Court vide order dated 04.11.2008. However, liberty was granted to the respondents to continue the enquiry on the basis of the charge-sheet already issued to petitioner by appointing a fresh Enquiry Officer. It is further submitted that thereafter on 21.11.2008 (Annexure R/15) resolution was passed by the Management of the College; whereby, it was decided to impose major penalty of termination of services of petitioner. It is further submitted that prior to the appointment of the Enquiry Officer, the management had already decided to impose the major penalty of termination of the services of petitioner. It is submitted that thereafter vide order dated 02.12.2008, in pursuance of the resolution dated 21.11.2008, petitioner was terminated from service (Annexure R/17). Thereafter, merely to complete the formalities, the respondents appointed Shri Rajendra Singh Yadav, Principal, as the Enquiry Officer vide order dated 15.01.2009 (Annexure P/12). It is further submitted that the Enquiry Officer did not issue any show-cause notice to petitioner and thereafter, on 31.03.2009, the respondents requested the Commissioner to accord approval of the termination order of the petitioner (Annexure R/17). By order dated 25.03.2010, approval for the termination/dismissal of petitioner was purportedly granted by the Commissioner (Annexure P/2).



Thereafter, the Enquiry Officer communicated to the Chairman, Governing Council that the inquiry proceedings instituted against petitioner had been completed and requested expeditious action against petitioner on the basis of the inquiry report. It is further submitted that a copy of the inquiry report was not supplied to petitioner and no show-cause notice was issued to him.

12. Learned counsel for petitioner submits that as per Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmcharyon Ke Nilamban) Niyam, 1978 the procedure has been provided. Rule 5 of the said Rules says that on receipt of the application under Rule 4, the competent authority shall call for the relevant record of the case to satisfy itself as to the propriety or legality of the proposed order. After satisfying itself, a notice be sent accompanying the reasons in writing for suspension. It is further submitted that as per Rule 9 of the said Rules, the competent authority shall complete the inquiry and pass order within a period of two months from the date of receipt of application for approval and submitted that aforesaid Rule 9 has not been complied with by the respondent. It is further submitted that as per Section 3 of the Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmcharyon Ke Padachyut Karne/Seva Se Hatane Sambandhi Prakriya) Niyam, 1983 says that no order imposing any of the penalties specified in sub-clause-(iii) of Clause (a) of Section 6 of Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karcharyon Ke Vetano Ka Sandaya) Adhinyam 1978, on a teacher or other employee shall be made unless he has been informed in writing of the grounds on which it is it proposed to take action and he has been given



reasonable opportunity of defending himself. Section 7 of the Rules of 1983 deals with “Enquiry Officer”. Clause (c) of Sub-section (1) of Section 7 of the Rules of 1983 says that after the written statement is received from the teacher or other employee in accordance with Rule 5 or if no statement received within the time specified as reference shall be made in the case of an employee, the Head of the institution shall be appointed as an Enquiry Officer. Section 9 of the said Rules of 1983 pertains to the report of the Enquiry Officer. Section 12 of the said Rules of 1983 pertains to the decision of the Management. Clause (a) of sub-section (3) of Section 12 of the said Rules of 1983 provides that the Management shall, after considering the representation, if any, made by the teacher or other employee, determine what action, if any, should be taken against the teacher or other employee and make a proposal for the order which it intends to pass. In the present case, no approval was taken in accordance with the provisions of Rule 9 of the said Rules of 1983. It is further submitted that after appointment of Rajendra Singh Yadav, Principal as an Enquiry Officer, no notice was given to the petitioner in regard of the inquiry. It is further submitted that without complying the principal of natural justice all the proceedings remained only on the paper. No show-cause notice was issued; no opportunity of being heard was given to petitioner. Moreover, petitioner was not called for participating in the proceeding as initiated. It is submitted that even the inquiry report dated 20.4.2009 was not supplied to petitioner. It is further submitted that Enquiry Officer has not examined the witnesses in front of petitioner. As per the inquiry report, the Enquiry Officer has not recorded any new facts and has only stated that याचिका क्रमांक 639/2007 में दिये



गये निर्देशन में की गई पुनः जाँच में आरोपी श्री शिवराम सिंह तोमर ने ऐसी कोई नई बात नहीं कही जो आरोप को असिद्ध करता हो। It is further submitted that after granting liberty by the Division Bench, the Enquiry Officer did not issue any show-cause notice to petitioner and this fact has not even been mentioned by the Enquiry Officer in the inquiry report dated 20.04.2009/31.03.2009.

13. *Per contra*, learned counsel for respondents No. 3 and 4 as well as learned counsel for the respondent/State submitted that after the liberty was granted by the Division Bench, due procedure was followed by the respondents and the termination of the petitioner's services was carried out in accordance with law. It is further submitted that despite issuance of notice, petitioner did not appear before the Enquiry Officer. Learned counsel for respondents supported the impugned order, opposed the prayer made by learned counsel for petitioner and prayed for dismissal of the present petition.

14. Heard learned counsel for the parties and perused the record.

15. Perusal of record reveals that petitioner was appointed as a Lower Division Clerk in 1997 and later confirmed in service. After being given additional responsibilities as Head Clerk-cum-Accountant, dispute arose regarding his promotion and appointment of another person to the post. Petitioner challenged these actions before the High Court which directed the authorities to consider his case for promotion. Subsequently, petitioner was suspended in 1999 and charge-sheeted on allegations including misconduct, misappropriation and disobedience. He denied all charges and raised



objections regarding the authority of the Incharge Principal and the inquiry process. An ex parte inquiry was conducted and petitioner was dismissed from service in 2002. The dismissal was later quashed by the High Court in 2007 with a direction for reinstatement and payment of benefits. The Division Bench upheld the order but allowed the respondents to conduct a fresh inquiry. However, despite having such liberty extended, the management allegedly pre-decided to terminate the petitioner and passed a resolution to that effect even before appointing a new Enquiry Officer. A fresh Enquiry Officer was appointed in 2009 but no proper notice or opportunity of hearing was given to petitioner. The inquiry report was also not supplied to him. Eventually, approval for termination was obtained from the Commissioner and the process was completed without following due procedure. True it is that respondents failed to follow the mandatory procedure prescribed under the relevant Rules of 1978 and 1983. Prior to approval, proper inquiry and compliance timelines were not adhered to. The petitioner was neither issued any show-cause notice nor given an opportunity of hearing, thereby violating the principles of natural justice. Even after the appointment of the Enquiry Officer, no notice was served upon the petitioner, no witnesses were examined in his presence and the inquiry report was not supplied to him. The Enquiry Officer also did not record any new fact and merely reiterated earlier findings. Despite liberty granted by the Division Bench to conduct a fresh inquiry, the respondents failed to follow due procedure, rendering the entire inquiry and subsequent action vitiated.



16. While dismissing the appeal filed by the respondents, the Division Bench, vide order dated 04.11.2008 passed in W.A. No. 639/2007, granted liberty to the respondents in the following manner:

13. Hence, the learned Writ Court has not committed any in allowed the writ petition thereby quashing the termination order. However, we observe that **now the enquiry can be continued against the respondent No.1 herein on the basis of charge sheet already issued against him by appointing fresh enquiry officer, who shall be Head of the Institution**, and will be eligible for appointment of Enquiry Officer as per Rule 7(e) of the Rules, 1983. If such inquiry officer is appointed, he shall proceed with the enquiry and conclude the same in accordance with law within a period of six months from the date of appointment looking to the facts that the matter is quite old and the respondent No.1 herein is facing enquiry for long period.

14. Accordingly, the writ appeal is hereby dismissed with the aforesaid liberty/ observation. No costs.

17. Thereafter, in compliance with the same, by order dated 15.01.2009 (Annexure P/12), **Shri Rajendra Singh Yadav was appointed as the Enquiry Officer. A specific query was put by this Court on four occasions to the learned counsel for the respondents as to whether any notice had been issued by the Enquiry Officer, Shri Rajendra Singh Yadav, after 15.01.2009; however, learned counsel for the respondents**



**maintained blissful silence and did not provide any answer to the said query. The fact that no notice was issued to petitioner in relation to the inquiry has already been pleaded by him** in Ground (c) in the following manner:

*“nor an notice was given to the petitioner in regard of the enquiry.”*

18. Despite the aforesaid pleading, the respondents did not deny the aforesaid fact and only gave reply in following manner:

“(c) That, the Incharge Pricinpal R.S. Yadav was appointed as inquiry officer who conducted entire inquiry as per procedure prescribed in the rules. The appointment of the inquiry officer is under the Rules 1983.”

19. The Division Bench has already granted liberty stating that the inquiry may be continued against petitioner on the basis of the charge-sheet already issued to him by appointing a fresh Enquiry Officer. Despite the aforesaid liberty, the proper procedure has not been followed by the respondents and the Enquiry Officer has also not recorded the same in the inquiry report. Further, although it is alleged that notice was issued to petitioner, the Enquiry Officer has merely stated in the inquiry report that proceedings were conducted on five occasions. However, the Enquiry Officer has not stated that any show-cause notice was issued to petitioner nor has he recorded that the petitioner remained absent during the said five proceedings conducted by Shri Rajendra Singh Yadav (Enquiry Officer).



20. In the previous round of litigation, this Court has observed in following manner in W.P. No.2230/2005:

27. It is clear from the aforesaid proceedings that no show cause notice was issued by the Management before deciding to dismiss the petitioner from service. Although the respondents No. 3 & 4 filed a copy of the show cause notice along with return in W.P. No. 2230/2005 as Annexure R/3-4/1 dated 24.06.2000. However, that notice cannot be said to be in compliance of the statutory provisions. It was issued by the Principal after decision by the Management. Apart from this, it is not clear that whether a copy of the enquiry report along with all the papers were sent to the petitioner? The respondents Management did not file any copy of report of the enquiry officer in which it is being said that the charges against the petitioner were found proved. Neither it has been stated in the return that how many witnesses were examined? and on what basis the Management found the charges proved against the petitioner. There is no discussion about the misconduct of the petitioner in the resolution also. Simply it has been stated that on the basis of enquiry report it was decided to dismiss the petitioner from service.

28. From the above discussion, it is clear that the appointment of enquiry officer was against the Statutory rules of 1983. Hence, the proceedings with regard to dismissal of the petitioner are also against the mandatory provisions of rules 11 & 12 of rules of 1983. The petitioner was dismissed from service vide order dated 03.09.2002 without approval by the competent authority. It has been stated by the respondents that the case of approval was pending before the authority.

29. Looking to the rules of 1983 an approval of competent authority as condition precedent before issuing the dismissal order of the petitioner was necessary.

30. The Division Bench of this Court in *Dilip Versus*



*Prabandhak Samiti Maheshwari H.S.S. and Others reported in 1993 JLJ 529* has held as under:

"18. It is abundantly clear that the respondents have not followed the procedure as prescribed by Rule 12 (3) of the Rules. The impugned order of termination Annex. 'B' passed by the respondent No. 1 on 23.07.1986 is liable to be quashed on this short ground alone, it is accordingly quashed. We deliberately refrain from expressing any view on the justifiability of the impugned order in view of the charges levelled against the petitioner. It is solely on the basis of the glaring procedural lapse on the part of the respondents in not complying with Rule 12 (3) of the Rules that the termination order is struck down as void and inoperative."

31. The arguments advanced by the learned counsel for the respondents based on the Judgment of Hon'ble the Supreme Court in **Suga Ram @ Chhuga Ram Versus State of Rajasthan & Others reported in 2006 AIR SC 3258** cannot be accepted that the subsequent approval will cure the defect. But in the present case no approval has been granted by the competent authority even after 5 years of order of dismissal of the petitioner from service and the mandatory provision of statutory rules of 1983 have not been followed.

32. In such circumstances, in my opinion, the whole enquiry is vitiated and liable to be quashed. With regard to availability of alternate remedy, it is clear that the petitioner was dismissed from service in the year 2002 since then appeal has not been decided. He filed a petition in the year 2005, existence of alternate remedy is no bar in exercising power for writ of certiorari as held by the Hon'ble Supreme Court in **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai reported in AIR 1999 Supreme Court 22** has held as under with regard to maintainability of petition if alternative remedy is available:



"The jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution, inspite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation. That being so, the High Court was not justified in dismissing the Writ Petition at the initial stage without examining the contention that the show cause notice issued to the appellant was wholly without jurisdiction".

33. Looking to the facts of the case, in my opinion, dismissing the petition of the petitioner on the ground of alternate remedy when there is naked violation of statutory rules will be unjust.

21. Despite the aforesaid consideration, the respondents have again failed to properly follow the prescribed procedure, and the Enquiry Officer submitted the inquiry report along with the covering letter dated 20.04.2009 in the following manner:

अध्यक्ष शासी निकाय महाराजा मानसिंह महाविद्यालय ग्वालियर के आदेश क्रमांक 2008-9/क्यू1 दिनांक 15.01.2009 के परिपालन में आरोपी श्री शिवराम सिंह तोमर निलम्बित निम्न श्रेणी लिपिक महाराजा मानसिंह महाविद्यालय के विरुद्ध माननीय उच्च न्यायालय खण्डपीठ ग्वालियर याचिका क्रमांक 639/2007 में दिये गये निर्देशों के अनुसार संस्थापित विभागीय जाँच की गई जो दिनांक 31.01.2009 से प्रारम्भ होकर दिनांक 31.03.2009 तक सम्पन्न हुई। जाँच कार्यवाही में कुल 5 बैठके हुई।

आरोप क्रमांक:1-आरोपी श्री शिवराम सिंह तोमर निम्न श्रेणी लिपिक के प्रभार में महत्वपूर्ण चार्ज था, जिसमें तीन पत्र क्रमांक 1312/1319 व पत्राचार 109-90/97/6153 दिनांक 10.10.97 एवं पत्र क्रमांक 655 दिनांक 4.01.98 जीवाजी



विश्वविद्यालय का पत्र क्रमांक एफ/विकाश/98/154 दिनांक 6.03.98 आपके प्रभार में थे। श्री प्रध्मुन सिंह तोमर ने अपने पैड पर शिकायत कर महाविद्यालय की छवि धूमिल करने का प्रयास किया, श्री शिवराम सिंह तोमर निम्न श्रेणी लिपिक द्वारा अनाधिकृत व्यक्ति को पत्र पहुंचाना आरोपो को सिद्ध करता है।

**याचिका क्रमांक 639/2007 में दिये गये निर्देशन में की गई पुनः जाँच में आरोपी श्री शिवराम सिंह तोमर ने ऐसी कोई बात नहीं कही जो आरोप को असिद्ध करता हो।**

आरोप क्रमांक:2—आरोपी श्री शिवराम सिंह तोमर ने एक ऐस छात्र को धरोहर राशि का भुगतान किया है, जब कि उस छात्र की धरोहर राशि महाविद्यालय में जमा नहीं थी, महाविद्यालय रिकार्डनुसार के अनुसार आरोप स्वतः ही सिद्ध है।

**याचिका क्रमांक 639/2007 में दिये गये निर्देशन में की गई पुनः जाँच में आरोपी श्री शिवराम सिंह तोमर ने ऐसी कोई नई बात नहीं कही जो आरोप को असिद्ध करता हो।**

आरोप क्रमांक:3—कॉलेज रिकार्डनुसार महाविद्यालय की आदेश पुस्तिका पर ही नोट लगाना, आदेशो की अवहेलना करने के आदि है, प्राचार्य के आदेशो का पालन न कर अनुशासन हीनता की है। आरोप पूर्णतया सिद्ध है।

**याचिका क्रमांक 639/2007 में दिये गये निर्देशन में की गई पुनः जाँच में आरोपी श्री शिवराम सिंह तोमर ने ऐसी कोई नई बात नहीं कही जो आरोप को असिद्ध करता हो।**



आरोप क्रमांक 4—महाविद्यालय के शैक्षणिक एवं अशैक्षणिक कर्मचारियों के साथ अभद्र व्यवहार किया गया है, उनके द्वारा पूर्व में दिये गये कथनों की पुष्टि की है, जो कि पूर्व में कथन लिये गये हैं। श्री शिवराम सिंह तोमर निम्न श्रेणी लिपिक पर आरोप क्रमांक 4 पूर्णतया सिद्ध होता है

**याचिका क्रमांक 639/2007 में दिये गये निर्देशन में की गई पुनः जाँच में आरोपी श्री शिवराम सिंह तोमर ने ऐसी कोई नई बात नहीं कही जो आरोप को असिद्ध करता हो।**

22. The Enquiry Officer has not recorded any relevant finding and the liberty granted by the Division Bench has not been properly complied with by the respondents. Moreover, even prior to receipt of the inquiry report, the Management, by resolution dated 21.11.2008 (Annexure R/15), had already decided to impose the major penalty of termination of the services of petitioner. Pursuant to the said resolution, petitioner was terminated from service by order dated 02.12.2008 (Annexure R/7). Thereafter, the Enquiry Officer submitted the inquiry report. Thus, it is evident that the services of petitioner were terminated even before the inquiry report was received. This is the third round of litigation and despite the specific liberty granted by the Division Bench, the respondents have repeated the same error which had already been considered and affirmed by the Division Bench of this Court vide judgment dated 04.11.2008.

23. It is a settled position in law that when a discretion is vested in an authority to exercise a particular power, the same is required to be exercised with due diligence, and in reasonable and rational manner. The Hon'ble Supreme Court in catena of decisions has reiterated time and again the



necessity and importance of giving reasons by the authority in support of its decision. It has been held that the face of an order passed by a quasi-judicial authority or even by an administrative authority affecting the rights of parties must speak. The affected party must know how his case or defence was considered before passing the prejudicial order.

24. The decision of the Hon'ble Supreme Court in the case of **State of Punjab v/s. Bandip Singh and others reported in (2016) 1 SCC 724** is relevant to quote. In the said decision it had been held by the Hon'ble Supreme Court that every decision of an administrative or executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion.

25. In the same judgment in paragraph 7, the Hon'ble Supreme Court clarifies that the Government does not have carte blanche to take any decision it chooses to; it cannot take a capricious, arbitrary or prejudiced decision. Its decision must be informed and impregnated with reasons. Paragraph 7 of the said decision is quoted as under:-

“7. The same principle was upheld more recently in *Ram Kishun v. State of U.P.* (2012) 11 SCC 511 : (2013) 1 SCC (Civ) 382. However, we must hasten to clarify that the Government does not have a carte blanche to take any decision it chooses to; it cannot take a capricious, arbitrary or prejudiced decision. Its decision must be informed and impregnated with reasons.

This has already been discussed threadbare in several decisions of this Court, including in *Sterling Computers Ltd. v. M & N Publications Ltd* (1993) 1 SCC 445, *Tata Cellular v. Union of*



India (1994) 6 SCC 651, Air India Ltd. v. Cochin International Airport Ltd. (2000) 2 SCC 617, B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. (2006) 11 SCC 548 and Jagdish Mandal v. State of Orissa (2007) 14 SCC 517” 31.

26. Also the decision of the Hon'ble Supreme Court in the case of *Kranti Associates Pvt. Ltd. and another v/s Masood Ahmed Khan and others cited in (2010) 9 SCC 496* highlights this point. The Hon'ble Supreme Court in paragraph 15 opined that the face of an order passed by a quasi judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the inscrutable face of a sphinx. In paragraph 47 the Honb'le Supreme Court summarized its discussion. The relevant subparagraphs of the said summary are quoted as under:-

“47. Summarising the above discussion, this Court holds:

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of



Strasbourg Jurisprudence. See *Ruiz Torija v. Spain* [(1994) 19 EHRR 553] EHRR, at 562 para 29 and *Anya v. University of Oxford* [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, “adequate and intelligent reasons must be given for judicial decisions”.

27. The Hon'ble Supreme Court in the case **Oryx Fisheries Pvt.Ltd vs Union Of India & Ors; (2010) 13 SCC 427** has held as under:-

"41. In *M/s Kranti Associates (supra)*, this Court after considering various judgments formulated certain principles in para 51 of the judgment which are set out below

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.



- h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- j. Insistence on reason is a requirement for both judicial accountability and transparency.
- k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).
- n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of



European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions". o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

42. In the instant case the appellate order contains reasons. However, absence of reasons in the original order cannot be compensated by disclosure of reason in the appellate order.

43. In *Institute of Chartered Accountants of India v. L.K. Ratna and others*, (1986) 4 SCC 537, it has been held:

".....after the blow suffered by the initial decision, it is difficult to contemplate complete restitution through an appellate decision. Such a case is unlike an action for money or recovery of property, where the execution of the trial decree may be stayed pending appeal, or a successful appeal may result in refund of the money or restitution of the property, with appropriate compensation by way of interest or mesne profits for the period of deprivation. And, therefore, it seems to us, there is manifest need to ensure that there is no breach of fundamental procedure in the original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding."

44. For the reasons aforesaid, this Court quashes the show cause notice as also the order dated 19.03.2008 passed by the third respondent. In view of that, the appellate order has no legs to stand and accordingly is quashed."

28. The Hon'ble Supreme Court in the case *Roop Singh Negi v. Punjab National Bank and Ors. Vide judgment dated 19.12.2008 passed in SLP © No.14429 of 2007* has held as under:-



“17. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

29. The Hon'ble Supreme Court in the case of *Anil Kumar v. Presiding Officer, (1985) 3 SCC 378* has held as under:-

5. We have extracted the charges framed against the appellant. We have also pointed out in clear terms the report of the enquiry officer. It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the enquiry officer has a duty to act judicially. The enquiry officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not creditworthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the



appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the enquiry officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well settled to be supported by a precedent. In *Madhya Pradesh Industries Ltd. v. Union of India* [AIR 1966 SC 671 : (1966) 1 SCR 466 : (1966) 1 SCJ 204] this Court observed that a speaking order will at best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard. Similarly in *Mahabir Prasad Santosh Kumar v. Slate of U.P.* [AIR 1966 SC 671 : (1971) 1 SCR 201] this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non-application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a more gross case of non-application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court.

6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one.....

30. The Hon'ble Supreme Court in the case of **M.V. Bijlani v. Union of India, (2006) 5 SCC 88** has held as under:-

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all



reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

31. Considering the aforesaid, this petition is *allowed and disposed of* in following terms:

- (i) Impugned order dated 28.7.2008 (Annexure P/1), order dated 25.3.2010 (Annexure P/2) and order 2.12.2008 (Annexure R/17) are hereby quashed;
- (ii) The respondents are directed to give all consequential benefits including the monetary benefits to petitioner;
- (iii) Petitioner is entitled for full salary and other benefits w.e.f. 24.8.2002 which shall be paid by the respondents to him;
- (iv) The respondents shall pay the cost of petition/ compensation Rs.50,000/- (Rs. Fifty Thousand Only) to petitioner;
- (v) The respondents shall pay the salary/ back wages from 24.8.2002 till attaining the age of superannuation; and



(vi) The respondents are directed to pay pension along with arrears of pension and to continue paying regular pension to petitioner in accordance with law, if he is found entitled.

32. The petition is, accordingly, *disposed of*.

**(Anand Singh Bahrawat)**  
**Judge**

Ahmad