Supreme Court of India

Managing Director Ecil Hyderabad ... vs B. Karunakar Etc. Etc on 1 October, 1993

Bench: M.N. Venkatachaliah Cji, P.B. Sawant, K. Ramaswamy, S. Mohan, B.P.

CASE NO.:

Appeal (civil) 3056 of 1991

PETITIONER:

MANAGING DIRECTOR ECIL HYDERABAD ETC. ETC.

RESPONDENT:

B. KARUNAKAR ETC. ETC.

DATE OF JUDGMENT: 01/10/1993

BENCH:

M.N. VENKATACHALIAH CJI & P.B. SAWANT & K. RAMASWAMY & S. MOHAN & B.P. JEEVAN REDDY

JUDGMENT:

JUDGMENT with SLP (Civil) Nos. 4273 of 1986, 6232, 8735, 10174, 16275, 17186, 17484, 18262, 20035 of 1991, 89, 6587, 7252, 8147, 8642, 9885, 10589, 10790, 11641, 12265, 12456, 12531, 12727, 12948, 13577, 13695, 13815 and 16477 of 1992, 2414 and 5296 of 1993 AND C. A. Nos. 4504 of 1990, 2935, 3742-43, 3747, 3750-52, 4072, 4083-85, 4148, 4421-23 and 4482 of 1991, 302, 1063, 1116, 2408 and 4630 of 1992 AND 611 and 662-63 of 1993, .

AIR 1994 SC 1074 SAWANT, J. (for himself and for M. N. Venkatachaliah, C. J. I. and S. Mohan and B. P. Jeevan Reddy, JJ.):- This group of matters is at the instance of various parties, viz., Union of India, Public Sector Corporations, Public Sector Banks, State Governments and two private parties. By an order dated 5th August, 1991 in Managing Director, Electronic Corporation of India v. B. Karunakar (1992) 3 JT (SC) 605, a three

Judge Bench of this Court referred that matter to the Chief Justice for being placed before a larger Bench, for the Bench found a conflict in the two decisions of this Court, viz., Kailash Chander Asthana v. State of U. P. (1988) 3 SCC 600: (AIR 1988 SC 1338) and Union of India v. Mohd. Ramzan Khan (1991) 1 SCC 588: (AIR 1991 SC 471) both delivered by the Benches of three learned Judges. Civil Appeal No. 3056 of 1991 arising out of SLP (Civil) No. 12103 of 1991 along with the other matters in which the same question of law is in issue, has, therefore, been referred to this Bench.

2. The basic question of law which arises in these matters is whether the report of the Inquiry Officer/authority who/which is appointed by the disciplinary authority to hold an inquiry into the charges against the delinquent employee is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. This question in turn gives rise to the following incidental questions:

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

(ii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

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

(iv) Whether the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC

471) (supra) will apply to all establishments- Government and non- Government, public and private sector undertakings?

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

(vi) From what date the law requiring furnishing of the report should come into operation?

(vii) Since the decision in Ramzan Khan's case (AIR 1991 SC 471) (supra) has made the law laid down there prospective in operation, i.e., applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz., what was the law prevailing prior to 20th November, 1990?

3. In order to appreciate fully the significance of the basic question, it is necessary to refer briefly to the genesis of the law on the subject of furnishing the report of the Inquiry Officer/authority to the delinquent employee. In this country, the law on the subject has developed along two paths. viz., the statute and the principles of natural justice. We may first refer to the statutory development of the law. It is not necessary to refer to the law prior to the Public Servants (Inquiries) Act, 1850 which for the first time made uniform the law regulating inquiries into the behaviour of public servants who were not removable from their appointments without the sanction of the Government. It provided for a formal and public inquiry into the imputations of misbehviour against the public servant. Either the Government, if it thought fit conducted the prosecution or left it to the accuser to conduct it after requiring him to furnish reasonable security. The Act also provided that the inquiry may be committed either to the Court, Board or any other authority to which the accused public servant was subordinate, or to any other person or persons to be specially appointed as Commissioners for the purpose. Section 25 of the Act, however, saved the authority of the Government for suspending or removing any such public servant for any cause without an inquiry under the Act. While the said Act continued to be on the statute book, the Government of India Act, 1919 was enacted and sub-sec. (2) of S. 96B of that Act authorised the Secretary of State in Council to make rules for regulating the classification of the civil services, the methods of their recruitments, their conditions of service, pay and allowances and discipline and conduct. In pursuance of these powers, the Civil Services Classification Rules, 1920 were framed, and Rule XIV of the said Rules provided that without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850, in all cases in which the dismissal, removal or reduction in rank of any officer is ordered, the order shall, except when it is based on facts or conclusions, established at a judicial trial, or when the officer concerned has absconded with the accusations hanging over him, be preceded by a properly recorded departmental inquiry. At such an inquiry, a definite charge in writing had to be framed in respect of each offence and explained to the accused. The evidence in support of it and any evidence which the accused may adduce in his defence

had to be recorded in his presence and his defence had to be taken down in writing. Each of the charges framed had to be discussed and the finding had to be recorded on each charge. However, there was no provision made in the Rules for hearing the delinquent officer against the action proposed to be taken on the basis of the finding arrived at in the inquiry. All that R. XVI of the Rules provided was that any officer against whom an order was passed and who thought himself wronged thereby would be entitled to prefer at least one appeal against such order. These rules were followed by the Civil Services (Classification, Control and Appeal) Rules, 1930 also framed under S. 96B of the Government of India Act, 1919. Rule 55 thereof contained the same provisions as those contained in R. XIV of 1920 Rules and made no difference to the earlier position of law on the subject. It cannot, therefore, be gainsaid that the seeds of the law on the subject were laid by S. 240(3) of the Government of India Act, 1935 (the 'GOI Act,). It stated that the civil servant shall not be dismissed or reduced in rank until he had been given "reasonable opportunity to show cause against action proposed to be taken in regard to him". The expression "against action proposed to be taken" was uniformly interpreted by the courts to mean the stage at which the disciplinary authority had arrived at its tentative conclusion with regard to the guilt of and the punishment to be awarded to the employee. The expression "reasonable opportunity to show cause" was accordingly interpreted to mean an opportunity at that stage to represent to the authority against the tentative findings both with regard to the guilt and the proposed punishment. It was therefore, held that in order that the employee had an effective opportunity to show cause against the finding of guilt and the punishment proposed, he should, at that stage be furnished with a copy of the findings of the inquiring authority. It is in this context that the furnishing of the Inquiry Officer's report at that stage was held to be obligatory. It is, however, necessary to note that though the provisions of S. 240(3) of the Government of India Act stated that they would apply only when the employee was sought to be dismissed or reduced in rank which were the major punishments, the same were interpreted to mean that they would also apply when the employee was sought to be removed.

These provisions of S. 240(3) of the GOI Act were incorporated bodily in Art. 311(2) of the Constitution with a specific addition of the case of "removal" of the employee to the cases of dismissal and reduction in rank. This addition did not make any difference to the prevailing law, since, as stated earlier, the Courts had already interpreted the provision to include the case of the removal of the employee as well. Probably the

specific addition was on account of the interpretation placed by the courts. Article 311(2), however, underwent change with the Constitution (15th Amendment) Act of 1963 which came into force from 6th October, 1963. It explained and expanded the scope of "reasonable opportunity". For the original expression "until he has been given reasonble opportunity of showing cause against the action proposed to be taken in regard to him", the provision "except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed after such inquiry, to impose on him any such penalty, until he has been given reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry" was substituted. Consequent upon this Amendment, necessary changes were made in the proviso to clause (2) of Art. 311 which changes need not detain us here. It would thus be apparent that the 15th Amendment for the first time in terms provided for holding of an inquiry into the specific charges of which information was given to the delinquent employee in advance and in which he was given reasonable opportunity to defend himself against those charges. The Amendment also provided for a second opportunity to the employee to show cause against the penalty if it was proposed as a result of the inquiry. The courts held that while exercising his second opportunity of showing cause against the penalty, the employee was also entitled to represent against the findings on charges, as well. What is necessary to note for our present purpose is that in spite of this change, the stage at which the employee was held to be entitled to a copy of the report, was the stage at which the penalty was proposed, as was the case prior to the said Amendment.

The provisions of clause (2) of Art. 311 were further amended by the Constitution (42ndAmendment) Act of 1976. It came into force from 1st January, 1977. It expressly stated that "it shall not be necessary to give such person any opportunity of making representation on the penalty proposed". The words "such person" of course meant the person who was to be dismissed or removed or reduced in rank. In other words, the 42nd Amendment of the Constitution while retaining the expanded scope of the reasonable opportunity at the first stage, viz., during the inquiry as introduced by the 15th Amendment of the Constitution, did away with the opportunity of making representation against the penalty proposed after the inquiry. It is this Amendment toArt. 311(2) which has given rise to the controversy as to whether when the Inquiry Officer is other than the disciplinary authority, the employee is entitled to a copy of the

findings recorded by him, before the disciplinary authority applies its mind to the findings and the evidence recorded, or whether the employee is entitled to the copy of the findings of the enquiry Officer only at the second stage, viz., when the disciplinary authority had arrived at its conclusions and proposed the penalty. Upon answer to this question depends the answer to the other question flowing from it, viz., whether the employee was entitled to make representation against such finding before the penalty was proposed even when Art. 311(2) stood as it was prior to the 15th Amendment of the Constitution.

4. It will be instructive to refer briefly to certain authorities on this aspect of the matter. We may first refer to the decision of this Court in Khem Chand v. Union of India, 1958 SCR 1080 : (AIR 1958 SC 300) where two questions squarely fell for consideration, viz., what is meant by the expression "reasonable opportunity of showing cause against the action proposed" and at what stage the notice against the proposed punishment was to be served on the delinquent employee. After referring to the decisions of the Judicial Committee in R. Venkata Rao v. Secretary of Statefor India, (1937) 64 Ind App 55: (AIR 1937 PC 31) and of the Federal Court in Secretary of State for India v. I. M. Lall, 1945 FCR 103 : (AIR 1945 FC

47), the Court held that the reasonable opportunity envisaged by the provisions of Art. 311(2) as originally enacted was at the following stages:

"(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the inquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant ....."

The Court further held that the substance of the protection provided by rules like R. 55 of the Civil Services (Classification, Control and Appeal) Rules promulgated on May 27, 1930 under S.96-B of the Government of India Act, 1915 (sic), was bodily lifted out of the said Rules and together with an additional opportunity embodied in 5. 240(3) of the GOI Act was incorporated in Art. 311(2) So as to convert the protection into a constitutional safeguard. The Court also held that the opportunity to show cause against the penalty proposed should be given after a stage has been reached where the charges had been established and the competent authority had applied its mind to the gravity or otherwise of the proved charges tentatively and proposed a particular punishment. It was necessary to state so, since in that case no notice was served upon the appellant there when the competent authority accepted the report of the Inquiry Officer and confirmed the opinion that the punishment of dismissal should be inflicted on him, and no cause, therefore, could be shown by him. On the other hand, by the first notice itself which communicated the charges, the appellant was called upon to show cause as to why he should not be dismissed from service, although the notice further called upon the appellant to state in reply whether he wished to be heard in person and whether he would produce his defence.

What are the duties of the Inquiry Officer appointed by the disciplinary authority to conduct the inquiry is the next question and this Court in A. N. D'Silva v. Union of India (1962) Supp 1 SCR 968 at p.977: (AIR 1962 SC 1130 at p. 1134) has in terms held that the question of imposing punishment can only arise after inquiry is made and the report of the Inquiry Officer is received. It is for the punishing authority to propose the punishment and not for the inquiring authority to do so. The latter has, when so required, to appraise the evidence, to record its conclusion and if it thinks proper to suggest the appropriate punishment. But neither the conclusion on the evidence nor the punishment which the inquiring authority may regard as appropriate is binding upon the punishing authority. In that case, the charge served upon the delinquent officer by the Inquiry Officer itself incorporated the proposed punishment. Hence it was also observed that in the communication addressed by the Inquiry Officer the punishment proposed to be imposed upon the appellant if he was found guilty of the charges could not properly be set out. Two things, therefore, emerge from this decision, viz., that it is not the function of the inquiry Officer to propose any punishment even after he records findings of guilt against the delinquent employee. Much less can the Inquiry Officer do so at the stage of serving the charges on the employee. Secondly, it is for the disciplinary

authority to propose the punishment after receipt of the report of the Inquiry Officer which suggests that before the authority proposes the punishment, it must have applied its mind to the evidence and the findings recorded by the Inquiry Officer.

Still further question that was required to be answered was whether when the disciplinary authority issued notice to the employee to show cause against the punishment proposed, the employee had the right also to represent that he was not guilty of the charge itself and the findings recorded against him were wrong. This question was squarely answered by this Court inUnion of India v.H. C. Goel (1964) 4 SCR 718:(AIR 1964 SC

364). The Court pointed out there that it was well settled that the public servant entitled to the protection of Art. 311 must get two opportunities to defend himself. He must have a clear notice of the charge which he is called upon to meet before the departmental inquiry commences, and after he gets a notice and is given the opportunity to offer his explanation, the inquiry must be conducted according to the rules and consistently with the requirements of natural justice. At the end of the inquiry, the Inquiry Officer appreciates the evidence, records his conclusions and submits his report to the Government concerned. That is the first stage of the inquiry. After the report is received by the Government, the Government is entitled to consider the report and the evidence laid against the delinquent public servant. The Government may agree with the report or may differ, either wholly or partially, from the conclusions recorded in the report. If the report makes a finding in favour of the public servant and the Government agrees with the said finding, nothing more remains to be done, and the public servant who may have been suspended is entitled to be reinstated with consequential reliefs. If the report makes findings in favour of the public servant and the Government disagrees with the said findings and holds that the charges framed against the public servant are prima facie proved, the Government should decide provisionally what punishment should be imposed on the public servant and proceed to issue a second notice against him in that behalf. If the Inquiry Officer makes findings, some of which are in favour of the public servant and some against him, the Government is entitled to consider the whole matter and if it holds that some or all the charges framed against the public servant are, in its opinion, prima facie established against him, then also the Government has to decide provisionally what punishment should be imposed on the public servant and give him notice accordingly. The Court then proceeded to observe that "it would thus be seen that

the object of the second notice is to enable the public servant to satisfy, the Government on both the counts, one that he is innocent of the charges framed against him and the other that even if the charges are held proved against him, the punishment proposed to be inflicted upon is unduly severe. This position under Art. 311 of the Constitution is substantially similar to the position which governed the public servants under S.240 of the Government of India Act, 1935". The Court also observed that the decisions in The Secretary of State for India v. I.M. Lal, 1945 FCR 103 : (AIR 1945 FC 47), High Commr. for India and High Commissioner for Pakistan v. I. M. Lal, 75 Ind App 225: (AIR 1948 PC 121) and Khem Chand v. Union of India, 1958 SCR 1080 : (AIR 1958 SC

300) would show that it had never been suggested that the findings recorded by the Inquiry Officer concluded the matter and the Government which appoints the Inquiry Officer and directs the inquiry is bound by the said finding and must act on the basis that the said findings are final and cannot be reopened. lt is obvious that the Inquiry Officer holds the inquiry against the employee as a delegate of the disciplinary authority. The object of the inquiry is plain. It is to enable the Government to hold an investigation into the charges framed against the employee so that the Government can in due course consider the evidence adduced and decide whether the said charges are proved or not. The interposition of the inquiry which is held by a duly appointed Inquiry Officer does not alter the true legal position that the charges are framed by the Government and it is the Government which is empowered to impose punishment on the deliquent public servant. Repelling the contention that the Government is bound to accept the findings of the Inquiry Officer, the Court pointed out that if that argument was valid, the second notice would serve very little purpose. For at the second stage, the opportunity which is intended to be given to the public servant is to show cause not only against the proposed punishment but also against the finding recorded against him and that opportunity would be defeated because the Government cannot alter the said finding even if the employee shows that the findings are incorrect. The Court then went on to add that unless the statutory rule or the specific order under which the officer is appointed to hold an inquiry so required, the Inquiry Officer need not make any recommendations as to the punishment to be imposed. If, however, the Inquiry Officer makes any recommendations in that behalf, the said recommendations like his findings on the merits are intended merely to supply appropriate material for the consideration of the Government. Neither the findings nor the recommendations are binding on the Govemment.

In Avtar Singh v. Inspector General of Police, Punjab, 1968 Serv LR 131 (SC) admittedly the findings of the Inquiry Officer were not communicated to the delinquent employee and he was only orally told that it was proposed to dismiss him. The Court in this context held that every public servant is entitled to have the whole of the matter brought to his notice before he was asked to show cause why particular punishment should not be meted out to him. The Court has explained what it meant by "the whole of the matter" by stating that it is the findings on the charges against him which should be made known to him.

In State of Gujarat v. R. G. Teredesai (1970) 1 SCR 251 : (AIR 1969 SC 1294) this Court held that the requirement of a reasonable opportunity would not be satisfied unless the entire report of the Inquiry Officer including his views in the matter of punishment were disclosed to the delinquent public servant. The Inquiry Officer is under no obligation or duty to make any recommendations in the matter of punishment and his function merely is to conduct the inquiry in accordance with law, and to submit the records along with his findings. But if he has also made recommendations in the matter of punishment "that is likely to affect the mind of the punishing authority with regard to penalty or punishment to be imposed" it must be disclosed to the delinquent officer. Since such recommendations form part of the record and constitute appropriate material for consideration of the Government it would be essential that that material should not be withheld from him so that he could, while showing cause against the proposed punishment, make a proper representation. The entire object of supplying a copy of the report of the Inquiry Officer is to enable the delinquent officer to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved, the punishment proposed to be inflicted is unduly servere".

In General Manager, Eastern Railway v. Jawala Prosad Singh (1970)3 SCR 271 : (AIR 1970 SC 1095) it is reiterated that the duty of the Inquiry Officer ends with the making of the report. The disciplinary authority has to consider the record of the inquiry and arrive at its own conclusion on each charge. Even if the inquiry committee makes a report absolving the employee of the charges against him, the disciplinary authority may on considering the entire record come to a different conclusion and impose a penalty. A reference is made in this connection to H. C. Goel's case (AIR 1964 SC 364) (supra).

In Uttar Pradesh Govt. v. Sabir Hussain (1975) Supp SCR 354: (AIR 1975 SC 2045), it was held that in the absence of furnishing the copy of the report of the Inquiry Officer, the plaintiff had been denied a reasonable opportunity of showing cause against his removal. It was also held that although S. 240(3) of the GOI Act did not cover a case of "removal", it did not mean that the protection given by the said section did not cover the case of "removal". From the Constitutional stand-point "removal" and "dismissal" stand on the same footing except as to future employment. In the context of S. 240(3). removal and dismissal are synonymous terms-the former being only species of the latter. The broad test of "reasonable opportunity" is whether in the given case the show cause notice issued to the delinquent servant contained or was accompanied by so much information as was necessary to enable him to clear himself of the guilt, if possible, even at that stage or in the alternative to show that the penalty proposed was much too harsh and disproportionate to the nature of the charge established against him.

In Union of India v. Tulsiram Patel (1985) Supp 2 SCR 131 :(AIR 1985 SC 1416), this Court had specifically to consider the legal position arising out of the 42nd Amendment of the Constitution by which clause (2) of Art. 311 was amended and the part of the said clause, viz., "and where it is proposed, after such inquiry, to impose on him any such penalty until he has been given reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry" was deleted. In that decision, this Court has not dealt with the procedure to be followed by the disciplinary authority after the Inquiry Officer's report is received by it. The question whether the delinquent employee should be heard by the disciplinary authority to prove his innocence of the charges levelled against him when they are held to have been proved by the Inquiry Officer, although he need not be heard on the question of the proposed penalty was neither raised nor answered. This decision, therefore, is not helpful for deciding the said question.

In Secretary, Central Board of Excise and Customs v. K. S. Mahalingam (1986) 3 SCC 35 : (AIR 1987 SC 1919), again the question did not arise as to whether the report of the Inquiry Officer should be furnished to the delinquent employee as a part of the reasonable opportunity at the first stage, Viz., before the disciplinary authority took its decision on the said report and came to its own conclusions with regard to the guilt or innocence of the employee. The contention raised there was with regard to the non-supply of the report to show cause against the penalty proposed. Since it was raised in

ignorance of the 42nd Amendment of the Constitution, this Court rejected the said contention.

In Ram Chander v. Union of India (1986)3 SCC 103 : (AIR 1986 SC 1173) which is a decision of two learned Judges of this Court, it was lamented that after the 42nd Amendment of the Constitution, the question still remained as to the stage when the delinquent Government servant would get the opportunity of showing that he had not been guilty of any misconduct so as to deserve any punishment or that the charges proved against him were not of such a character as to merit the extreme penalty of dismissal or even of removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case. The Court, however, felt that it was bound by the majority decision in Tulsiram Patel's case (AIR 1985 SC 1416) (supra). The Court further went on to observe that in view of the constitutional change and the decision of the majority in Tulsiram Patel's case (supra), the only stage at which now a civil servant can exercise the said valuable right was by enforcing his remedy by way of a departmental appeal or revision or by way of judicial review.

In Union of India v. E. Bashyan (1988) 3 SCR 209 : (AIR 1988 SC 1000), the question squarely arose before a Bench of two learned Judges of this Court as to whether the failure to supply a copy of the report of the Inquiry Officer to the delinquent employee before the disciplinary authority makes up its mind and records the finding of guilt would constitute violation of Art. 311(2) of the Constitution and also of the principles of natural justice. It was opined that in the event of failure to furnish the report of the Inquiry Officer, the delinquent employee is deprived of crucial, and critical material which is taken into account by the real authority which holds him guilty, viz., the disciplinary authority. According to the Court, it is the real authority because the Inquiry Officer does no more than act as a delegate and furnishes the relevant material including his own assessment regarding the guilt, to assist the disciplinary authority who alone records the effective finding. The non-supply of the copy of the report would, therefore, constitute violation of the principles of natural justice and accordingly will be tantamount to denial of reasonable opportunity within the meaning of Art. 311(2) of the Constitution. It was observed that there could be glaring errors and omissions in the report or it may have been based on no evidence or rendered in disregard to or by overlooking evidence. If the report is not made available to the delinquent employee, this crucial material which enters into the consideration of the disciplinary authority

never comes to be known to the delinquent and he gets no opportunity to point out such errors and omissions and to disabuse the mind of the disciplinary authority before he is held guilty. The Court then specifically pointed out that serving a copy of the inquiry report on the delinquent employee to enable him to point out anomaly, if any, before finding of guilt is recorded by the disciplinary authority, is altogether a different matter from serving a second show cause notice against the penalty to be imposed which has been dispensed with by virtue of the amendment of Art. 311(2) by the 42nd Amendment of the Constitution. The Court then found that the said point required consideration by a larger Bench and referred the matter to Hon'ble the Chief Justice for placing it before a larger Bench.

5. Since it is contended that in K. C. Asthana v. State of U. P., (1988) 3 SCC 600: (AIR 1988 SC 1338), a Bench of three learned Judges has taken a view that it is not necessary to furnish the report of the Inquiry Officer to the delinquent employee before the disciplinary authority arrives at its conclusions, it is necessary to consider the said authority a little closely. In that case, pursuant to the direction of the High Court, an inquiry was conducted by the Administrative Tribunal under the Uttar Pradesh Disciplinary Proceedings [Administrative Tribunal] Rules, 1947 against the petitioner who was a Munsiff Magistrate. The charge against him was that he had demanded bribe from a plaintiff in a suit pending before him. After completion of the inquiry, the entire matter was considered by the Full Court of the High Court which approved the findings of the Administrative Tribunal holding the writ petitioner guilty. The High Court thereafter requested the Governor to remove the petitioner from service and the impugned order terminating the services of the petitioner was accordingly passed. The petitioner challenged the order under Article 32 of the Constitution. The petitioner had also filed an application underArticle 226 of the Constitution before the Allahabad High Court which was dismissed in limine. The appeal against the said order was also heard along with the writ petition. One of the contentions raised before this Court by the counsel for the petitioner was that a copy of the report of the Administrative Tribunal was not made available to the petitioner and this must be held to have vitiated the subsequent proceedings including the impugned order of punishment. In this connection, a reference was made to the Explanation to sub-rule (3) of Rule 9 of the said Rules providing that a copy of the recommendations of the Tribunal as to the penalty should be furnished to the charged Government servant. As against this, the learned counsel for the respondents-State of U. P. and others pointed out that after the 42nd

Amendment of the Constitution the said Explanation was dropped, the Court, therefore, observed as follows [AIR 1988 SC 1338, Para 5]:

"The question of service of copy of the report arose on account of a right of a second show cause notice to the government servant before the 42nd Amendment and since present disciplinary proceeding was held later, the petitioner cannot legitimately demand a second opportunity. That being the position, non-service of a copy of the report is immaterial."

In this view of the matter, the Court dismissed the writ petition. It would thus be clear that the contention before this Court in that case was that the copy of the report of the inquiring authority was necessary to show cause at the second stage, i.e., against the penalty proposed. That was also how the contention was understood by this Court. The connection was not and at least it was not understood to mean by this Court, that a copy of the report was necessary to prove the innocence of the employee before the disciplinary authority arrived at its conclusion with regard to the guilt or otherwise on the basis of the said report. Hence, we read nothing in this decision which has taken a view contrary to the view expressed in E. Bashyan's case (AIR 1988 SC 1000) (supra) by a Bench of two learned Judges or to the view taken by three learned Judges in Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588:(AIR 1991 SC 471).

In Mohd. Ramzan Khan's case (supra), the question squarely fell for consideration before a Bench of three learned Judges of this Court, viz., that although on account of the 42nd Amendment of the Constitution, it was no longer necessary to issue a notice to the delinquent employee to show cause against the punishment proposed and, therefore, to furnish a copy of the Inquiry Officer's report along with the notice to make representation against the penalty, whether it was still necessary to furnish a copy of the report to him to enable him to make representation against the findings recorded against him in the report before the disciplinary authority took its own decision with regard to the guilt or otherwise of the employee by taking into consideration the said report. The Court held that whenever the Inquiry Officer is other than the disciplinary authority and the report of the Inquiry Officer holds the employee guilty of all or any of the charges with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the disciplinary authority against it and the non-furnishing of the report amounts to a violation of the rules of natural justice. However, after taking this view, the Court

directed that the law laid down there shall have prospective application and the punishment which is already imposed shall not be open to challenge on that ground. Unfortunately, the Court by mistake allowed all the appeals which were before it and thus set aside the disciplinary action in every case, by failing to notice that the actions in those cases were prior to the said decision. This anomaly was noticed at a later stage but before the final order could be reviewed and rectified, the present reference was already made, as stated above, by a Bench of three learned Judges. The anomaly has thus lent another dimension to the question to be resolved in the present case.

6. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: In A. K. Kraipak v. Union of India,(1970) 1 SCR 457: (AIR 1970 SC 150), it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi- judicial ones. An unjust decision in an administrative inquiry may have a more far reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

In Chairman, Board of Mining Examination v. Ramjee, (1977)2 SCR 904: (AIR 1977 SC 965), the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without

reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

In Institute of Chartered Accountants of India v. L. K. Ratna, AIR 1987 SC 71, Charan Lal Sahu v. Union of India, (1990) 1 SCC 613 : (AIR 1990 SC 1480), (Bhopal Gas Leak Disaster Case) and C. B. Gautam v. Union of India, (1993) 1 SCC 78, the doctrine that the principles of natural justice must be applied in the unoccupied interstices of the statute unless there is a clear mandate to the contrary, is reiterated.

7. What emerges from the above survey of the law on the subject is as follows:

Since the Government of India Act, 1935 till the 42nd Amendment of the Constitution, the Government servant had always the right to receive report of the Inquiry Officer/authority and to represent against the findings recorded in it when the Inquiry Officer/authority was not the disciplinary authority. This right was however, exercisable by him at the second stage of the disciplinary proceedings viz., when he was served with a notice to show cause against the proposed penalty. The issuance of the notice to show cause against the penalty necessarily required the furnishing of a copy of the inquiry Officer's report since, as held by the Courts, the right to show cause against the penalty also implied the right to represent against the findings on the charges. This was considered to be an essential part of the reasonable opportunity, incorporated earlier in Section 240 (3) of the GOI Act and later in Article 311(2) of the Constitution as originally enacted. The right to receive the Inquiry Officer's report and to show cause against the findings in the report was independent of the right to show cause against the penalty proposed. The two rights came to be confused with each other bacause as the law stood prior to the 42nd Amendment of the Constitution, the two rights arose simultaneously only at the stage when a notice to show cause against the proposed penalty was issued. If the disciplinary authority after considering the Inquiry Officer's report had dropped the proceedings or had decided to impose a penalty other than that of dismissal, removal or reduction in rank, there was no occasion for issuance of the notice to show cause against the proposed penalty. In that case, the employee had neither the right to receive the report and represent against the finding of guilt nor the

right to show cause against the proposed penalty. The right to receive the report and to represent against the findings recorded in it was thus inextricably connected with the acceptance of the report by the disciplinary authority and the nature of the penalty proposed. Since the 42nd Amendment of the Constitution dispensed with the issuance of the notice to show cause against the penalty proposed even if it was dismissal, removal or reduction in rank, some courts took the view that the Government servant was deprived of his right to represent against the findings of guilt as well. The error occurred on account of the failure to distinguish the two rights which were independent of each other.

While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report. the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the 42nd Amendment.

The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity it 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 conclusions. 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 the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. 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 do 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 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.

It will thus be seen that where the Inquiry Officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, Inquiry Officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.

The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry Officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute

new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry to impose upon him any such penalty such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the Inquiry Officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the Inquiry Officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the Inquiry Officer. The latter right was always there. But before the 42nd Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the 42nd Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry Officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

Hence it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has right to receive a copy of the inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

Hence the incidental questions raised above may be answered as follows:

(i) Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

(ii) The relevant portion of Article 311(2) of the Constitution is as follows:

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."

Thus the Article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The Article, however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded, and when the Inquiry Officer is not the disciplinary authority the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment.

(iii) Since it is the right of the employee to, have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the, report or not, the report has to be furnished to him.

(iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in

Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non- furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to a "unnatural expansion of natural justice" which in itself is antithetical to justice.

Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court! Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If

after hearing the parties, the Court., Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment.

The Court/Tribunal should nut mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/ Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Courts/ Tribunals find that the furnishing of the report would have made a: difference to the result in the case that should set aside the order of punishment Where after following the above procedure the Courts/Tribunals sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority, management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

In this connection we may refer to a decision of this court in State Bank of India v. N. Sundara Money, (1976) 3 SCR 160: (AIR 1976 SC 1111) where the Court has shown the proper course to be adopted where the termination of service of an employee is faulted on a technical ground. This was a case where an employee was appointed as Cashier off and on by the State Bank of India between July 31, 1973 and August 29. 1973. Together

with the earlier employment, this nine days, employment during the said period had ripen into 240 days of broken bits of service. The employment, however, was terminated without notice or payment of retrenchment compensation. The Court moulded the relief taking into consideration the long period which had passed and directed that the employee would be put back to the same position where he left off, but his new salary will be what he would draw were he to be appointed in the same post "today" de novo. He was further directed to be ranked below all permanent employees in that cadre and to be deemed to be a temporary hand till that time. He was not allowed to claim any advantages in the matter of seniority. As for the emoluments, he was left to pursue other remedies, if any.

Questions (vi) and (vii) may be considered together. As has been discussed earlier, although the furnishing of the Inquiry Officer's report to the delinquent employee is a part of the reasonable opportunity available to him to defend himself against the charges. before 42nd Amendment of the Constitution, the stage at which the said opportunity became available to the employee had stood deferred till the second notice requiring him to show cause against the penalty was issued to him. The right to prove his innocence to the disciplinary authority was to be exercised by, the employee along with his right to show cause as to why no penalty or lesser penalty should be awarded. The proposition of law that the two rights were independent of each other and in fact belonged to two different stages in the inquiry came into sharp focus only after the 42nd Amendment of the Constitution which abolished the second stage of the inquiry, viz., the inquiry into the nature of punishment. As pointed out earlier, it was mooted but not decided in E. Bashyan's case (AIR 1988 SC 1000) (supra) by the two learned Judges of this Court who referred the question to the larger Bench. lt has also been pointed out that in K. C. Asthana's case (AIR 1988 SC 1338) (supra), no such question was either raised or decided. It was for the first time in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) that the question squarely fell for decision before this Court. Hence till 20th November, 1990, i.e., the day on which Mohd. Ramzan Khan's case (supra) was decided, the position of law, on the subject was not settled by this Court. It is for the first time in Mohd. Ramzan Khan's case (supra) that this court laid down the law. That decision made the law, laid down there prospective in operation, i.e., applicable to the orders of punishment passed after 20th November, 1990. The law laid down was not applicable to the orders of punishment passed before that date notwithstanding the fact that the proceedings arising out of the same were pending in courts after that date. The said

proceedings had to be decided according to the law prevalent prior to the said date which did not require the authority to supply a copy of the Inquiry Officer's report to the employee. The only exception to this was where the service rules with regard to the disciplinary proceedings themselves made it obligatory to supply a copy of the report to the employee.

However, it cannot be gainsaid that while Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) made the law laid down there prospective in operation, while disposing of the cases which were before the Court, the Court through inadvertence gave relief to the employees concerned in those cases by allowing their appeals and setting aside the disciplinary proceedings. The relief granted was obviously per incuriam. The said relief has, therefore, to be confined only to the employees concerned in those appeals. The law which is expressly made prospective in operation there cannot be applied retrospectively on account of the said error. It is now well settled that the courts can make the law laid down by them prospective in operation to prevent unsettlement of the settled positions, to prevent administrative chaos and to meet the ends of justice. In this connection, we may refer to some well-known decisions on the point.

In L. C. Golak Nath v. State of Punjab, (1967) 2 SCR 762 : (AIR 1967 SC 1643), dealing with the question as to whether the decision in that case should be given prospective or retrospective operation, the Court took into consideration the fact that between 1950 and 1967, as many as twenty amendments were made in the Constitution and the legislatures of various States had made laws bringing about an agrarian revolution in the country. These amendments and legislations were made on the basis of the correctness of the decisions in Sankari Prasad Singh Deo v. Union of India, 1952 SCR 89: (AIR 1951 SC 458) and Sajjan Singh v. State of Rajasthan, (1965) 1 SCR 933 : (AIR 1965 SC 845) viz., that the Parliament had the power to amend the fundamental rights and that Acts in regard to estates were outside the judicial scrutiny on the ground they infringed the said rights. The Court then stated that as the highest Court in the land, it must evolve some reasonable principle to meet the said extraordinary situation. The Court pointed out that there was an essential distinction between the Constitution and the statutes. The Courts are expected to and they should interpret the terms of the Constitution without doing violence to the language to suit the expanding needs of the society. In this process and in a real sense, they make laws. Though it is not admitted, such role of this Court is effective and cannot be ignored. Even in the realm of ordinary statutes, the

subtle working of the process is apparent though the approach is more conservative and inhibitive. To meet the then extraordinary situation that may be caused by the said decision, the Court felt that it must evolve some doctrine which had roots in reason and precedents so that the past may be preserved and the future protected. The Court then referred to two doctrines familiar to American Jurisprudence, viz., Blackstonian view that the Court was not to pronounce a new rule but to maintain and expound the old one and, therefore, the Judge did not make law but only discovered or found the true law. That view would necessarily make the law laid down by the Courts retrospective in operation. The Court, therefore, preferred the opinion of Justice Cardozo which tried to harmonise the doctrine of prospective overruling with that of stare decisis expressed in Great Northern Railway v. Sunburst Oil and Ref. Co., (1932) 287 US 358, 77 Led 360. The Court also referred to the decisions subsequent to Sunburst and to the "Practice Statement (Judicial Precedent)" issued by the House of Lords recorded in (1966) 1 WLR 1234 and pointed out that the modern doctrine as opposed to the Blackstonian theory was suitable for a fast moving society. It was a pragmatic solution reconciling the two doctrines. It found law but restricted its operation to the future and thus enabled the Court to bring about a smooth transition by correcting its errors without disturbing the impact of those errors on the past transactions. It was left to the discretion of the court to prescribe the limits of the retroactivity. There by, it enabled the court to mould the reliefs to meet the ends of justice. The Court then pointed out that there was no statutory prohibition against the Court refusing to give retroactivity to the law declared by it. The doctrine of res judicata precluded any scope for retroactivity in respect of a subject matter that had been finally decided between the parties. The Court pointed out that the Courts in this land also, by interpretation, reject retroactivity of statutory provisions though couched in general terms on the ground that they affect vested rights. The Court then referred to Articles 141 and 142 to point out that they are couched in such wide and elastic terms as to enable this Court to formulate legal doctrines to meet the ends of justice. The only limitation therein is reason, restraint and injustice. These Articles are designedly made comprehensive to enable the Supreme Court to declare law and to give such direction or pass such order as is necessary to do complete justice. The Court then held that in the circumstances to deny the power to the Supreme Court to declare the operation of law prospectively on the basis of some outmoded theory that the Court only finds law but does not make it is to make ineffective a powerful instrument of justice placed in the hands of the highest judiciary of this land. The Court then observing that it was for the first time called upon to apply the doctrine of

prospective overruling evolved in a different country under different circumstances, stated that it would like to move warily in the beginning. Proceeding further, the Court laid down the following propositions :

"(1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution (2) it can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

The Court then declared that the said decision will not affect the validity of the Constitution (Seventeenth Amendment) Act, 1964 or other amendments made to the Constitution taking away or abridging the fundamental rights. The Court also declared that in future Parliament will have no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights.

Accepting the lead given in the above decision, this Court has since extended the doctrine to the interpretation of ordinary statutes as well.

In Waman Rao v. Union of India, (1981) 2 SCR 1 : (AIR 1981 SC 271), the question involved was of the validity of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 and again the device of prospective overruling was resorted to.

In Atam Prakash v. State of Haryana, (1986) 2 SCC 249 : (AIR 1986 SC 859), the question was of the validity of the Punjab Pre-emption Act, 1913. The Court while holding that the relevant provisions of the Act were ultra vires the Constitution gave a direction that the suits and appeals which were pending in various courts will be disposed of in accordance with the declaration made in the said decision, Where, however, the decrees had become final they were directed to be binding inter partes and it was held that the declaration granted by the Court with regard to the invalidity of the provisions of the Act would be of no avail to the parties to such decree.

In Orissa Cement Ltd, v. State of Orissa, 1991 Supp 1 SCC 430: (AIR 1991 SC 1676), the question involved was about the validity of the royalty and related charges for mining leases. Although the Court held that the levy was invalid since its inception, the Court

held that a finding regarding the invalidity of the levy need not automatically result in a direction for a refund of all collections thereof made earlier. The Court held that the declaration regarding the invalidity of a provision of the Act enabling levy and the determination of the relief to be granted were two different things and, in the latter sphere, the Court had, and it must be held to have, a certain amount of discretion. It is open to the Court to grant moulded or restricted relief in a manner most appropriate to the situation before it and in such a way as to advance the interest of justice. It is not always possible in all situations to give a logical and complete effect to a finding. On this view, the Court refused to give a direction to refund to the assessees any of the amounts of cess collected until the date of the decision since such refund would work hardship and injustice to the State. We may also in this connection refer to Victor Linkletter v. Victor G. Walker,(l965) 381 US 618 :14 Law ed 2d 601, where it was held that a ruling which is purely prospective does not apply even to the parties before the court. The Court held that in appropriate cases a court may in the interest of justice make its ruling prospective and this applies in the constitutional area where the exigencies of the situation require such an application.

The direction with regard to the prospective operation of the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) was followed by various Benches of this Court, viz., S. P. Viswanathan v. Union of India, (1991) Supp 2 SCC 269 : (1991 AIR SCW 730); Union of India v. A. K. Chatterjee (1993) 2 SCC 191 and Managing Director, Food Corporation of India v. Narendra Kumar Jam, (1993) 2 SCC 400.

The apparent departure was in R. K. Vashisht v. Union of India, (1993) Supp 1 SCC 431. However, the employee there had made a request for a copy of the inquiry report but it was not furnished to him prior to the issue of the order of dismissal. It is in these circumstances that this Court, relying upon the proposition of law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) held that the order of dismissal was vitiated. lt is not clear from the decision whether the rules in that case required furnishing of the copy and at what stage.

However, it has to be noticed that although it is in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) that this Court for the First time accepted and laid down the law that the delinquent employee is entitled to the copy of the report before the disciplinary authority takes its decision on the charges levelled against him, Gujarat High Court in a decision rendered on 18th July, 1985 in Dr. H. G. Patel v. Dr. (Mrs.) K. S. Parikh, (1985)

(2) 26 Guj LR 1385 and a full Bench of the Central Administrative Tribunal in its decision rendered on 6-11-1987 in Premnath K. Sharma v. Union of India, (1988)2 ASLJ 449. had taken a similar view on the subject. It also appears that some High Courts and some Benches of the Central Administrative Tribunal have given retrospective effect to the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) notwithstanding the fact that the said decision itself had expressly made the law prospective in operation. The fact, however, remains that although the judgments in H. G. Patel's case and Premnath K. Sharma's case (supra) as well as some of the decisions of the High Courts and of the Benches of the Central Administrative Tribunal were either taking a similar view prior to the decision in Mohd. Ramzan Khan's case (supra) or giving retrospective effect to the said view and those decisions were not specifically challenged, the other decisions taking the same view were under challenge before this Court both before Mohd. Ramzan Khan's case (supra) was decided and thereafter. In fact as stated in the beginning, the reference to this Bench was made in one such case as late as on the 5th August, 1991 and the matters before us have raised the same question of law. It has, therefore, to be accepted that at least till this Court took the view in question in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra), the law on the subject was in a flux. Indeed, it is contended on behalf of the appellants! petitioners before us that the law on the subject is not settled even till this day in view of the apparent conflict in decisions of this Court. The learned Judges who referred the matter to this Bench had also taken the same view. We have pointed out that there was no contradiction between the view taken in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) and the view taken by this court in the earlier cases, and the reliance placed on K. C. Asthana's case (AIR 1988 SC 1338) (supra) to contend that a contrary view was taken there was not well merited. It will, therefore, have to be held that notwithstanding the decision of the Central Administrative Tribunal in Premnath K. Sharma's case (1988 (2) ASLJ 449) (supra) and of the Gujarat High Court in H. G. Patel's case (1985 (2) 26 Guj LR 1385) (supra) and of the other courts and tribunals, the law was in an unsettled condition till at least 20th November, 1990 on which day the Mohd. Ramzan Khan's case was decided. Since the said decision made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment which are passed by the disciplinary authority after 20th November, 1990. This is so, notwithstanding the ultimate relief which was granted there which, as pointed out earlier, was per incuriam. No order of punishment passed before that date would be challengeable on the ground that there was a failure to furnish the inquiry report to the

delinquent employee. The proceedings pending in courts/tribunals in respect of orders of punishment passed prior to 20th November, 1990 will have to be decided according to the law that prevailed prior to the said date and not according to the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC

471) (supra). This is so notwithstanding the view taken by the different benches of the Central Administrative Tribunal or by the High Courts or by this Court in R. K. Vashist's case, (1993 Supp (I) SCC 431) (supra).

8. The need to make the law laid down in Mohd. Ramzan Khan's case, (AIR 1991 SC 471) (supra) prospective in operation requires no emphasis. As pointed out above, in view of the unsettled position of the law on the subject, the authorities/ managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the Inquiry Officer to the delinquent employee, and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in courts at different stages. In many of the cases, the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not, therefore, require that the orders of punishment passed prior to the decision in Mohd. Ramzan Khan's case (supra) without furnishing the report of the Inquiry Officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account. Hence we hold as above.

In the view we have taken, we direct that all the appeals and special leave petitions be now placed before an appropriate Bench of this Court for decision according to the law laid down here.

9. K. RAMASWAMY, J.:- I have had the benefit of reading the draft judgment of my learned brother P. B. Sawant, J.. While broadly agreeing with his interpretation of Art. 311(2), I disagree with his conclusion that the application of Mohd. Ramzan Khan's ratio to him and his companions was per incuriam. To deal with certain aspects which would flow from our judgment in this batch too. I feel it expedient to express my views. Since my learned brother has critically examined in extenso the historical development and

the interpretation given to S. 240(3) of the Government of India Act, 1935 and Art. 311(2) of the Constitution of India vis-a-vis the Constitution 15th Amendment Act, 1963 and the Constitution 42th Amendment Act, 1976. I would desist to tread the path once over. For continuity of thought, I would broadly sketch the scope of the phrase "reasonable opportunity of being heard" at an enquiry into a charge and the action proposed to be taken against a member of a civil service or holder of a civil post engrafted in Art. 311 of the Constitution and the concept of the principles of natural justice embedded as its part at an enquiry into the charges against an employee or workman/ officer of an authority under Art. 12 of the Constitution, a workman/officer of an employer compendiously called "the delinquent" as the same principles are applicable to them all. Before doing so it is necessary to state facts, in brief in some sample cases.

10. The respondent B. Karunakar in the. main appeal while working as a Sr. Technical Officer, was served on December 27, 1986 with a Memorandum of Charges setting out the misconduct, said to have been committed by him, with details thereof that he had unauthorisedly sold T.V. sets. The enquiry officer appointed in this behalf conducted the enquiry, recorded the evidence, given him adequate opportunity to rebut the evidence. On March 13, 1987 the enquiry officer submitted his report finding that the respondent acted fraudulently and dishonestly in conducting the business of the appellant company and acted thereby prejudicially to the interest of the company. On its consideration and agreeing with the findings, the disciplinary authority, by proceedings dated April 27, 1987, removed him from service and on appeal it was confirmed. The single Judge of the Andhra Pradesh High Court dismissed his writ petition but on appeal, the Division Bench, by judgment dated March 29, 1991 relying on the Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588 : (AIR 1991 SC 471), allowed it. In this case the rules framed by the company does not require the supply of the copy of the report to the delinquent. In Civil Appeal No. 4148/91 Union of India v. A. J. Shah, the respondent, while working as T.T.E. in S. E. Railway, was found to have collected excess amounts from the passengers. Enquiry Officer, after giving an opportunity to the respondent, submitted his report and the disciplinary authority agreeing with the findings of guilt recorded by the enquiry officer, reverted him to the grade of Ticket Collector in the pay scale of Rs. 950-1500 fixing his initial pay as Rs. 950/-. The CAT at Cuttack set it aside as the enquiry report was not supplied to him holding that it resulted in denial of opportunity and violates the principles of natural justice. In Civil Appeal No. of 1993

(arising out of S.L.P.(C) No. 13813 of 1992) State of M.P. v. A. Sheshagiri Rao, the respondent, while working as Executive Engineer, was suspended by order dated 21st July, 1983. On October 21, 1983 he was served with a charge-sheet. After conducting an enquiry the enquiry officer submitted his report and the disciplinary authority while agreeing with the findings of guilt, reverted him by an order dated October21, 1987 as an Asstt. Engineer. It was set aside by the Tribunal, holding that non-supply of the enquiry report was denial of opportunity under Art. 311(2) and it violates the principle of natural justice. In C.A. No. of 1993 (arising out of S.L.P. (C) No. 17484 of 1991) Union of India v. Mohammed Naimulla, the respondent was working as an electrical fitter. On March 11, 1983 a charge- sheet was issued. The enquiry officer had given him reasonable opportunity and after completing the enquiry submitted his report that the charges were proved against the respondent. The disciplinary authority by an order dated April 29, 1988 removed him from service. On appeal, it was confirmed. The Tribunal set aside the order. In all these cases the enquiry report was not supplied. In C.A. No. 302 of 1992, Bank of India v. Vinodchandra Balkrishan Pandit, the respondent was served with a charge-sheet on 10th August, 1982 accusing him of having committed misconduct by taking illegal gratification in his discharge of official duties. The enquiry officer after giving full opportunity found him to have received illegal gratification in the stated instances and was guilty of the charges. The disciplinary authority agreed with the findings of the enquiry officer; removed him from service by supplying him a copy of the enquiry report along with the order of removal as required under Regulation 9 of the Bank of India Employees (Disciplinary Appeal) Regulations, 1976. Following the Ramzan Khan's case (AIR 1991 SC

471), the order was set aside. These facts have been stated with a view to illustrate that Ramzan Khan's ratio was applied by the Courts/ Tribunals to the cases where rules are either absent, or Statutory Rules were amended after Constitution 42nd Amendment Act, 1976, omitting the obligation to supply a copy of the enquiry report. The Banking Regulation enjoins to supply it along with the order when served.

11. It is settled law that the disciplinary authority, by whatever name called, has power and jurisdiction to enquire into the misconduct by himself or by his delegate and to impose the penalty for proved misconduct of a delinquent. It is a condition precedent that the charge-sheet, statement of facts in support thereof and the record, if any, need to be supplied to the delinquent. The record, if, bulky and not having been supplied, an

opportunity for inspection and to have copies thereof at his expenses, be given as per rules, regulations or standing orders. The delinquent must be given reasonable opportunity to submit his written statement. In case he denies the charges and claims for enquiry, disciplinary authority or the enquiry officer, if appointed, shall conduct the enquiry. The department should examine the witness or prove the documents to establish the charge of the imputed misconduct. The delinquent shall be given an opportunity to cross-examine the witnesses, if he so desires to examine himself and to examine his witnesses in rebuttal. After giving an opportunity of being heard the enquiry officer should consider the entire records and the evidence and should submit his report to the disciplinary authority with reasons and findings or conclusions in support of the proof or disproof of each of the charge or charges, as the case may be. He shall transmit the record of enquiry and his report to the disciplinary authority.

12. In Khem Chand v. Union of India, 1958 SCR 1080 : (AIR 1958 SC 300 at pp. 306-07), it was held thus:

"If the opportunity to show cause is to be a reasonable one it is clear that he should be informed about the charge or charges levelled against him and the evidence by which it is sought to be established, for it is only then that he will be able to put forward his defence. If the purpose of this provision is to give the Govt. servant an opportunity to exonerate himself from the charge and if this opportunity is to be a reasonable one he should be allowed to show that the evidence against him is not worthy of credence or consideration and that he can only do if he is given a chance to cross-examine the witnesses called against him and to examine himself or any other witness in support of his defence. All this appears to us to be implicit in the language used in the clause, but this does not exhaust his rights. In addition to showing that he has not been guilty of any misconduct so as to merit any punishment, it is reasonable that he should also have an opportunity to contend that the charges proved against him do not necessarily require the particular punishment proposed to be meted out to him. He may say, for instance, that although he has been guilty of some misconduct it is not of such a character as to merit the extreme punishment of dismissal or even of removal or reduction in rank and that any of the lesser punishments ought to be sufficient in his case."

13. In Bachhittar Singh v. State of Punjab, AIR 1963 SC 395, another Constitution Bench held that the departmental proceedings taken against the Govt. servant are not divisible into two compartments. There is just one continuous proceeding though there are two

stages in it. The first is coming to a conclusion on the evidence as to whether the charges raised against the Govt. servant have been established or not and the second is reached only if it is found that they are established. That stage deals with the action to be taken against the Govt. servant concerned. Therefore, from the stage of service of the charge-sheet till the imposition of punishment was considered to be a continuous whole process consisting of the proof of the charge and imposition of the punishment on the proved charge. In Dr. M. N. Dasanna v. State of A.P., (1973)2 SCC 378 at p.383: (AIR 1973 SC 2275 at p. 2278), a Bench of three Judges held that the enquiry consists of recording evidence admitting documents and generally completing the records upon which the finding would be based. It is only after all the material has been placed on record by both the sides, the stage of recording a finding would arise. In Khardah Co. Ltd. v. Their Workmen, (1964) 3 SCR 506: (AIR 1964 SC 719), a Bench of three Judges held that it is the duty of the inquiry officer to record clearly and precisely his conclusions and to indicate briefly the reasons therefor, so that the Industrial Tribunal can judge whether they are basically erroneous or perverse. In that case since the reasons were not specifically recorded the court quashed the order of termination.In Union of India v. H. C. Goel, (1964) 4 SCR 718 : (AIR 1964 SC 364), another Constitution Bench held that the enquiry report along with the evidence recorded constitute the material on which the Govt. has ultimately to act, i.e. only the purpose for the enquiry held by the competent officer and the report on which he makes as a result of the said enquiry. The non-supply of the copy of the report contravenes the principle of reasonable opportunity envisaged under Article 311(2) and also violates the principle of natural justice. If the dismissal order is based on no evidence then the order of dismissal is clearly illegal. In State of Maharashtra v. B. A. Joshi, (1969)3 SCR 917 (AIR 1969 SC 1302), this Court held that the report of the enquiry officer is bound to influence the disciplinary authority: to deprive the plaintiff of a copy of the report was handicap to the delinquent and he was not knowing what material had influenced the disciplinary authority. Therefore, it was held that it would be in a rare case in which it can be said that the Govt. servant was not prejudiced by the non-supply of the report of the enquiry officer. Accordingly the finding of the High Court holding that non-supply of the report violates the principles of natural justice and the statutory provision was upheld by a Bench of three Judges. In State of Gujarat v. R. G. Teredesai, (1970) 1 SCR 251: (AIR 1969 SC 1294), a Bench of three Judges held that the enquiry officer was under no obligation or duty to make any recommendations in the matter of punishment to be imposed on the servant against whom the departmental enquiry was held. Its function was merely to conduct the

enquiry in accordance with the law and to submit the record along with his findings or conclusions on the delinquent. If the enquiry officer has also made recommendation in the matter of punishment, that is likely to affect the mind of the punishing authority with regard to the penalty or punishment to be imposed on such officer, it must be disclosed to the delinquent. Since such recommendation form part of the record and constitutes appropriate material for consideration, it would be essential that the material should not be withheld from him so that he could, while showing cause against the proposed punishment, make a proper representation. The entire object of supplying a copy of the report of the enquiry officer is to enable the delinquent to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved the punishment proposed to be inflicted is unduly severe.

14. In State of U. P. v. Sabir Hussain, (1975) Suppl SCR 354 : (AIR 1975 SC 2045), a Bench of three Judges held that the supply of the report of the enquiry officer is a part of reasonable opportunity under Art. 311(2) of the Constitution. In State of Madras v. A. R. Srinivasan, AIR 1966 SC 1827, another Constitution Bench held that in case the Govt. agrees with the findings of the Tribunal, it was not obligatory on the part of the Govt. to give reasons in support of the order imposing penalty on the delinquent. While Govt. does not accept the findings of the Tribunal and proposes to impose the penalty, it should give reasons as to why it differ from the conclusions of the Tribunal though even in such a case it is not necessary that the reasons should be detailed or it be a judgment.

15. In State of Assam v. Mohan Chandra Kalita, AIR 1972 SC 2535, the respondent was charged for illegal collection of money from the villagers while distributing compensation amount due to them. There is no evidence for proof thereof, but evidence adduced establishes that he had not made full amount to those entitled to compensation. There was no charge in that behalf, nor any charge that he has authorised anyone to collect any fee which was sought to be set up in the evidence. The enquiry officer recommended for removal of the respondent on the finding that he had taken unauthorised collection of the amount by way of fee. This court held that the conclusion reached by the enquiry officer and the action taken by the Govt. were conjectures and there was no evidence to show that any amount was deducted by the delinquent himself or at his instance or even by his connivance. Accordingly the order of removal from service set aside by the High Court was upheld.

16. In A. N. D'Silva v. Union of India, (1962) Supp1 1 SCR 968 : (AIR 1962 SC 1130), a Bench of two Judges held that while rules provide graded punishment consistent with the magnitude of the misconduct, the rules left to the decision of the punishing authority to select the appropriate punishment having regard to the gravity of the misconduct. It is not for the enquiry officer to propose the punishment in which event the copy of the report should be supplied to the delinquent. In Avtar Singh v. I. G. of Police, Punjab, (1968) 2 Serv LR 131 (SC), another Constitution Bench found that nothing was clear from the report of the enquiry officer as to on what ground the findings were based and what the findings themselves were. In that view it was held that it is difficult to hold that there was due compliance with the requirement of Art. 311(2).In Calcutta Dock Labour Board v. Jaffar Imam. (1965) 2 Lab LJ 112 (113) : (AIR 1966 SC 282), a Bench of three Judges held that the employer must lead evidence against the concerned employee giving him reasonable chance to test the said evidence, allow him liberty to lead evidence in defence and then come to a decision of his own. Such an enquiry is prescribed by the requirements of natural justice and in that case since that was not complied with it held that the enquiry was vitiated by the principles of natural justice.

17. In Union of India v. K. R. Menon, (1969) 2 SCR 343 : (AIR 1970 SC 748), a Bench of two Judges held that the rule does not lay down any particular form or manner in which the disciplinary authority should record its findings on each charge. The record of enquiry should be considered and disciplinary authority should proceed to give its findings on each charge. It is not obligatory to discuss the evidence and the facts and circumstances established at the enquiry in detail and to write as if it were an order of the Judicial Tribunal. If the disciplinary authority agrees with the findings of the enquiry officer on the charges mentioned in the charge-sheet had been established, it must be construed that he was affirming the findings on each charge and that would certainly fulfil the requirements of the principle of natural justice. In Lakshmiratan Cotton Mills Co. Ltd. v. Its Workmen, (1975)2 SCR 761: (AIR 1975 SC 1689), a Bench of three Judges held that workmen may show that the findings of the enquiry officer are not justified on the evidence on record or that even if the findings are justified, they do not warrant dismissal from service having regard to the nature or gravity of the misconduct, the past record of the workman or any other extenuating circumstances. The notice must, therefore, give a reasonable opportunity to the workmen. That is a

condition precedent, which must be satisfied before an order of dismissal can validly be passed by the employer.

18. In Tara Chand Khatri v. Municipal Corporation of Delhi, (1977) 2 SCR 198 (AIR 1977 SC 567), a Bench of three Judges held that although it may be necessary for the disciplinary authority to record its provisional conclusions in the notice calling upon the delinquent to show cause why the proposed punishment be not imposed upon him, unless it differs from the findings arrived at by the enquiry officer with regard to the charge, in which event it is obligatory to record reasons, in case the disciplinary authority concurs with the findings of the enquiry officer lie need not record reasons. In P. Joseph John v. State of Travancore, Cochin, (1955) 1 SCR 1011: (AIR 1955 SC 160), another Constitution Bench held that when an enquiry was held and before provisional conclusions are reached, the delinquent officer is entitled to an opportunity of show cause. In Krishna Chandra Tandon v. Union of India, (1974)4 SCC 374 (380) : (AIR 1974 SC 1589, 1593), a Bench of two Judges held that the disciplinary authority is entitled to go into the findings and differ from the enquiry officer in respect of one or all the charges.

19. It would thus, be clear that the report together with the findings on the charge and the recommendations, if any, would constitute appropriate material for consideration by the disciplinary authority. It is not incumbent upon the enquiry officer to indicate in his report of the nature of the penalty to be imposed on the delinquent. Neither findings on merits, nor the suggested penalty binds the disciplinary authority who is enjoined to consider the record and the report. It is open to him to agree on the findings of the enquiry officer in which event he need not record elaborate consideration or reasoning in support of his conclusions, but the order must bear out his application of mind to the questions involved and brief reasons in support thereof, though not like a judgment. If he disagrees on some or all of the findings or reasons of the enquiry officer, then he is enjoined to record the reasons for his disagreement. On the nature of the penalty, though it is discretionary, the discretion must be exercised reasonably, consistent with the gravity of the misconduct having indelible effect on the discipline or morale of the service, etc. and adequate punishment be imposed on the delinquent. Brief reasons in this behalf also always lend assurance of the application of the mind and consideration given to the case by the disciplinary authority which would be a factor the High Court or the Tribunal would take into consideration even on the nature of the penalty.

20. The findings or recommended punishment by the enquiry officer are likely to affect the mind of the disciplinary authority in his concluding the guilt or penalty to be imposed. The delinquent is, therefore, entitled to meet the reasoning, controvert the conclusions reached by the enquiry officer or is entitled to explain the effect of the evidence recorded. Unless the copy of the report is supplied to him, he would be in dark to know the findings, the reasons in support thereof or nature of the recommendation on penalty. He would point out all the factual or legal errors committed by the enquiry officer. He may also persuade the disciplinary authority that the finding is based on no evidence or the relevant material evidence was not considered or overlooked by the enquiry officer in coming to the conclusions, with a view to persuade the disciplinary authority to disagree with the enquiry officer and to consider his innocence of the charge, or even that the guilt as to the misconduct has not been established on the evidence on records or disabuse the initial impression formed in the minds of the disciplinary authority on consideration of the enquiry report. Even if the disciplinary authority comes to the conclusion that charge or charges is/are proved, the case may not warrant imposition of any, penalty. He may plead mitigating or extenuating circumstances to impose no punishment or a lesser punishment. For this purpose the delinquent needs reasonable opportunity or fair play in action. The supply of the copy of the report is neither an empty formality, nor a ritual, but aims to digress the direction of the disciplinary authority from his derivative conclusions from the report to the palliative path of fair consideration. The denial of the supply of the copy, therefore, causes to the delinquent a grave prejudice and avoidable injustice which cannot be cured or mitigated in appeal or at a challenge under Art. 226 of the Constitution or S. 19 of the Tribunal Act or other relevant provisions. Ex post facto opportunity does not efface the past impression formed by the disciplinary authority against the delinquent, however, professedly to be fair to the delinquent. The lurking suspicion always lingers in the mind of the delinquent that the disciplinary authority was not objective and he was treated unfairly. To alleviate such an impression and to prevent injustice or miscarriage of justice at the threshold, the disciplinary authority should supply the copy of the report, consider objectively the records, the evidence, the report and the explanation offered by the delinquent and make up his mind on proof of the charge or the nature of the penalty. The supply of the copy of the report is thus, a sine qua non for a valid, fair, just and proper procedure to defend the delinquent himself effectively and efficaciously. The denial thereof is offending not only Art. 311(2) but also violates Arts. 14 and 21 of the Constitution.

21. The contention, therefore, of Sri Salve that supply of the enquiry report was a part of the later clause of Art. 311(2) i.e. to impose penalty which requirement was dispensed with by the Constitution Fortysecond Amendment Act, S. 44 thereof, deleting the necessity of issuance of second show cause notice on the proposed punishment to the delinquent does not merit consideration. The reasons are self evident.

22. Even prior to the Constitution Forty-second Amendment Act the entire proceedings was considered as an integral whole and on receipt of the report of the enquiry officer the disciplinary authority was required to consider the record and to arrive at a provisional conclusions thereon; a show cause notice with the proposed punishment was a part of the reasonable opportunity envisaged under Art. 311(2). The supply of the copy of the report at that stage was made an integral part of the reasonable opportunity. On receipt thereof the delinquent officer got the opportunity to controvert even the findings recorded, their correctness and legality showing that the charges which were held proved by the enquiry officer could not be sustained for the reasons set forth in the reply to the show cause notice. Alternatively he was entitled to show mitigating or extenuating circumstances including previous conduct or record of service for dropping the action or to impose lesser punishment.

23. Section 44 of the Fortysecond Amendment Act done away with supply of the copy of the report on the proposed punishment but was not intended to deny fair, just and reasonable opportunity to the delinquent, but to be a reminder to the disciplinary authority that he is still not absolved of his duty to consider the material on records, the evidence along with the report, but before he does so, he must equally accord to the delinquent, a fair and reasonable opportunity of his say on the report when the disciplinary authority seeks to rely there on.

24. It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offend Arts. 14 and 21. It is well settled law that principle of natural justice are integral part of Art. 14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post mortem certificate with purifying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Arts. 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice. The

contention on behalf of the Govt./management that the report is not evidence adduced during such enquiry envisaged under proviso to Art. 311(2) is also devoid of substance. It is settled law that Evidence Act has no application to the enquiry conducted during the disciplinary proceedings. The evidence adduced is not in strict conformity with Indian Evidence Act, though the essential principle of fair play envisaged in the Evidence Act are applicable. What was meant by 'evidence, in the proviso to Art. 311(2) is the totality of the material collected during the enquiry including the report of the enquiry officer forming part of that material. Therefore, when reliance is sought to be placed, by the disciplinary authority, on the report of the enquiry officer for proof of the charge or for imposition of the penalty, then it is incumbent that the copy thereof should be supplied before reaching any conclusion either on proof of the charge or the nature of the penalty to be imposed on the proved charge or on both.

25. Shri P. P. Rao obviously realising this effect, contended that the enquiry officer being a delegate of the disciplinary authority is not bound by the delegatee's recommendations and it is not a material unless it is used by the disciplinary authority. Therefore, the need to its supply does not arise and the principles of natural justice need not be extended to that stage as the officer/workman had opportunity at the enquiry. In support thereof he placed strong reliance onSuresh Koshy George v. University of Kerala, (1969) 1 SCR 317 : (AIR 1969 SC 198); Shadi Lal Gupta v. State of Punjab, (1973) 3 SCR 637: (AIR 1973 SC 1124); Hira Nath Misra v. Principal, Rajendra Medical College, Ranchi, AIR 1973 SC 1260; Satyavir Singh v. Union of India, AIR 1986 SC 555; Secretary, Central Board of Excise and Customs v. K. S. Mahalingam, (1986)2 SCR 742:(AIR 1987 SC 1919) and Union of India v. Tulsiram Patel, (1985) Suppl 2 SCR 131: (AIR 1985 SC 1416). I am unable to agree with his contentions. Doubtless that the enquiry officer is a delegate of the disciplinary authority,, he conducts the enquiry into the misconduct and submits his report, but his findings or conclusions on the proof of charges and his recommendations on the penalty would create formidable impressions almost to be believed and acceptable unless they are controverted vehemently by the delinquent officer. At this stage non-supply of the copy of the report to the delinquent would cause him grave prejudice, S. K. George's case (AIR 1969 SC 198), renders no assistance. It is only an enquiry against malpractice at an examination conducted by the University under executive instruction. Therein the students were given an opportunity of hearing and they were supplied with all the material, the foundation for the report. The observations of the Bench of two Judges with regard to the theory of two stages in the enquiry

under Art. 311 also bears little importance for the foregoing consideration in this case. It is already seen that this court held that the enquiry from the stage of charge-sheet till the stage of punishment is a continuous one and cannot be split into two. The reliance in The Kesava Mills Co. Ltd. v. Union of India, (1973) 3 SCR 22: (AIR 1973 SC 389), is also of no avail. Therein it was pointed out that under S. 18-A of the I.D.R. Act there was no scope of enquiry at two stages and the omission to supply enquiry report, before taking the action did not vitiate the ultimate decision taken. In Shadi Lal,s case (AIR 1973 SC 1124), Rule 8 of the Punjab Civil Service (Punishment and Appeal) Rules does not provide for the supply of copy of the report of an enquiry conducted by the fact finding authority before enquiry. It was held that the delinquent officer was supplied with all the materials and was given opportunity to make representation and the same was considered. The report did not indicate anything in addition to what was already supplied to him. Under those circumstances it was held that the principle of natural justice cannot be put into an iron cast or a straight jacket formula. Each case has to be considered and the principles applied in the light of the facts in each case. The effect of the violation of the principle of natural justice on the facts of the case on hand needs to be considered and visualised. The effect of Tulsiram Patel's ratio was considered by my brother Sawant, J. and it needs no reiteration. The reliance on S. K. George's case (AIR 1969 SC 198) in Tulsiram Patel (AIR 1985 SC 1416) ratio renders no assistance in the light of the above discussion. Since Mahalingam's case (AIR 1987 SC 1919) which was after the Fortysecond Amendment Act, the need to supply second show cause notice was dispensed with regarding punishment, and therefore, that ratio renders no assistance to the case. Hira Nath Misra's case (AIR 1973 SC 1260) also, is of no avail since the enquiry was conducted relating to misbehaviour with the girl students by the erring boys. The security of the girls was of paramount consideration and, therefore, the disclosure of the names of the girl students given in the report or their evidence would jeopardise their safety and so was withheld. Accordingly this court on the facts situation upheld the action of the Medical College. Satyavir Singh's (AIR 1986 SC

555) ratio also is of no assistance as the action was taken under proviso to Art. 311(2) and Rule 199 of the C.C.A. Rules. The enquiry into insubordination by police force was dispensed with as the offending acts of the police force would generate deleterious effect on the discipline of the service. Asthana's case (AIR 1988 SC 1338) was considered by my brother Sawant, J. in which the report was not supplied and it was upheld. It should, thus be concluded that the supply of the copy of the enquiry report is

an integral part of the penultimate stage of the enquiry before the disciplinary authority considers the material and the report on the proof of the charge and the nature of the punishment to be imposed. Non- compliance is denial of reasonable opportunity, violating Art. 311(2) and unfair, unjust and illegal procedure offending Arts. 14 and 21 of the Constitution and the principles of natural justice.

26. The emerging effect of our holding that the delinquent is entitled to the supply of the copy of the report would generate yearning for hearing before deciding on proof of charge or penalty which 42nd Amendment Act had advisedly avoided. So while interpreting Art. 311(2) or relevant rule the court/ tribunal should make no attempt to bring on the rail by back track the opportunity of hearing as was portended by the Gujarat High Court. The attempt must be nailed squarely. Prior to the 42 nd Amendment Act the delinquent has no right of hearing before disciplinary authority either on proof of charge or penalty. So after 42nd Amendment Act it would not be put on higher pedestal. The Gujarat High Court's decision is, therefore, not a good law. However, the disciplinary authority has an objective duty and adjudicatory responsibility to consider and impose proper penalty consistent with the magnitude or the gravity of the misconduct. The statute or statutory rules gave graded power and authority to the disciplinary authority to impose either of the penalties enumerated in the relevant provisions. It is not necessarily the maximum or the minimum. Based on the facts, circumstances, the nature of imputation, the gravity of misconduct, the indelible effect or impact on the discipline or morale on the employees, the previous record or conduct of the delinquent and the severity to which the delinquent will be subjected to, may be some of the factors to be considered. They cannot be eulogised but could be visualised. Each case must be considered in the light of its own scenario. Therefore, a duty and responsibility has been cast on the disciplinary authority to weigh the pros and cons, consider the case and impose appropriate punishment. In a given case if the penalty was proved to be disproportionate or there is no case even to find the charges proved or the charges are based on no evidence, that would be for the court/the tribunal to consider on merits, not as court of appeal, but within its parameters of supervisory jurisdiction and to give appropriate relief. But this would not be a ground to extend hearing at the stage of consideration by the disciplinary authority either on proof of the charge or on imposition of the penalty. I respectfully agree with my brother Sawant, J. in other respects in the draft judgment proposed by him.

27. The next question is whether Mohd. Ramzan Khan ratio in its grant of relief to him and his companions is per incuriam? Adherence to precedents and retrospective overruling has its legacy from the declaratory theory of precedent propounded by Blackstone that the duty of the court is not to "pronounce a new law but to maintain and expound the old one" and that "if it is to be found that the former decision is manifestly unjust or absurd, it is declared, not that such sentence was bad law, but that it was not the law". Vide his Commentaries pp. 69-70. Steadfast adherence to stare decisis is being advocated for stability, consistence and certainty as inherent values on the premise that it is much more conducive to the laws, self- respect and it provides greatest deterrence to judicial creativity tampering with the restraining influence of certainity. Lord Reid in Birmingham City Corporation v. West Midland Baptist (Trust) Ass., (1969)3 All ER 172 at 180, Lord Simon in Jones v. Secretary of States for Social Services, 1972 A. C. 944 at 1026-27, Lord Devlin in his Article "Judges and Law Makers" (39 Modern Law Review p. 1 at 11). Lord Lloyd of Hamnstead in his "Introduction to Jurisprudence, 4th Edn. 1979 p. 858" Prof. Rupert Cross and Harris, "Precedent in English Law" (Oxford 4d ed., 1991) pp. 228-232, W. Friedmann, "Limits of the Judicial Lawmaking and Prospective Overruling" (29 M. L. R. 593 (1966)) and Anatomy of the Law by Leon. L. Fuller; A. G. L. Nicol in prospective overruling new device for English courts (39 M. L. R. 542 at 548 (1976)) opposed the application of prospective overruling. On the other hand Prof. John Wigmore as early as in 1917 in "Judicial Function," is Science of Legal Method at p. 27 and Justice Cardozo in "Selected Writings", 1947 Edn., p. 35, Trayner in his Qua Vadis "Prospective overruling". A question Judicial Responsibility ((1975) 39 M. L. R. 542); Marsh in "What is wrong with the Law (2nd Edn.); English and American Judges as Law Makers by Louis L. Jafee (1969 Oxford Edn.); Prof. P. 5. Atiyah and R. S. Summers "Form and Substance in Anglo American Law" (1987 Oxford Ed. p. 146 and Prof. Baker in his "Judicial Discretion" 254(1993 Ed.) are the proponents of the articulation and efficacy of prospective overruling or prospective application of a new principle laid by the courts. Prof. Jafee at p. 37 stated that if the law is to function as a control, it is to set the limits within which innovation is to take place, the judge should rationalise his decision. We have come to believe that where discretion is exercised, be it by administrator or judge, the requirement of rationalisation is crucial. In submitting himself to this discipline, the Judge alerts himself to the limits of his power, laying the basis for objective criticism, and enables the citizenry to anticipate and so to conform its conduct to the potentialities of the decision. This process imposes two requirements. First, the decision must be based upon a principle already found in the existing law. It

may be a constitutional provision or a statute or a principle derived by the judges from common law rulings. The decision should be logically consistent with the tests on which it is founded. The second, logical consistency does not suffice to establish legitimacy. Since the authoritative legal texts will usually allow more than one conclusion, the choice must be rational in terms consistent with accepted modes of legal reasoning. At p. 57 it was further stated that there are occasions where judicial innovation is valuable and appropriate. The legislatures are not perfectly organised to make law; they are not always well informed, articulate majorities inciting our legislatures to action. Even an alert society needs leaders and teachers to formulate its objectives and to galvanise it into action. Inevitably a court, as is true of all our political organisations, will represent important minority interests. In a society overwhelmed by a consciousness of the vastness and variety of its tasks, there is opportunity for social responsibility in all branches of Govt. It may be true that judicial intervention occasionally relieves the legislature of tasks better performed by them. Atiyah at p. 146 stated that the solution appears to be to overrule only prospectively.

28. Though by far the legislature must be responsible for the formulation and promulgation of principles of conduct which are of general, and prospective applicability to a given community for an indeterminate number of situations, administrators must apply such general and often specific principles within the community - even though administrative orders and regulations often have certain legislative aspects; and the courts must also apply the prescriptions of legislators, or the generalised principles deduced from a series of precedents to individual disputes. Such a separation of functions is not confined to the democratic doctrine of separation of powers; it is part of the essential structure of any developed legal system. In a democratic society, the process of administration, legislation and adjudication are more clearly distinct than in a totalitarian society. The courts can act when indeed called upon to adjust the rights and law in accordance with the changing tenets of public policy and needs of the society. Equally discretion assumes freedom to choose among several lawful alternatives of which the judge is entitled to choose the one that most appeals to him, not a choice between two decisions, one of which may be said to be almost certainly right and the other almost certainly wrong, but a choice so nicely balanced that when once it is announced, a new right and a new wrong will emerge in the announcement. Justice Cardozo described this process in his inimitable style in selected writings that "there have been two paths, each open, though leading two different goals. The fork in the road

has not been neutralised for the traveller by a barrier across one of the prongs with the label of "no thoroughfare". He must gather his wits, pluck up his courage, go forward one way or the other, and pray that he may be walking, not into ambush, morass, and darkness, but into safety, the open space, and the light".

29. When judicial discretion has been exercised to establish a new norm, the question emerges whether it would be applied retrospectively to the past transactions or prospectively to the transactions in future only. This process is limited not only to common law traditions, but exists in all the jurisdictions. Though Lord Denning is the vocal proponent of judicial law making and the House of Lords consistently overruled him, judicial law making found its eloquent acceptance even from the House of Lords and buried the remnants of the Blackstone's doctrine in the language of Prof. Friedmann, "has long been little more than a ghost". In Candler v. Crane Christmas and Co., (1951) 2 K.B. 164, the dissenting opinion of Denning, L.J. as he then was, has now received approval and Candler was overruled by the House of Lords in Hedley Byrne and Co. Ltd. v.

Heller and Partners Ltd., 1964 A. C. 465 interpreting whether a banker has a special relationship of duty of care in making careless misrepresentations, Lord Devlin held that the duty of care arises where the responsibility is voluntarily accepted or undertaken either generally, where a general relationship is created, or specifically in relation to a particular transaction, the law hitherto was existing. But, per majority held that the banker, though honest misrepresentation, spoken or written, was negligent, and it may give rise to an action for damages for financial loss caused thereby, any contract or fiduciary relationship apart, since "law will imply a duty of care when a party seeking information from a party possessed of a special skill trusts him to exercise due care, and that party knew or ought to have known that reliance was being placed on his skill and judgment". Without holding prospective operation of Hadley ratio, the House of Lords while setting aside the previous precedents laid new liability impliedly applicable to future contracts. Prof. Robert Stevens of Yale University commenting on Yedley Bryne ratio said that common law embodying the policy that 'sticks and stones may break my bones but words will never harm me" has been seriously eroded (vide 27 M.L.R. p. 5 (1964)).

30. Similarly, in Rookes v. Barnard, 1964 A.C. 1129, the House of Lords revived an all but forgotten tort of intimidation, and resurrected the tort of conspiracy for economic

disputes which had been all but buried in Crofter Hand Woven Harris Tweed Co. v. Veitch, 1942 A.C. 435 establishing a legal responsibility for damages in the case of a typical union action instigated by a union organiser and two fellow employees designed to coerce the employer into certain behaviour. Similarly in Miliangos v. George Frank (Textiles) Ltd., 1976 A. C. 443, the House of Lords overruled the previous decision of its own. Accordingly the rule that on a claim for a liquidated damages payable in foreign currency, debt has to be given for the appropriate amount of English currency as on the date when the payment was due was overruled prospectively from the date of the judgment without disturbing past transactions.

31. Prospective overruling, therefore, limits to future situations and excludes application to situations which have arisen before the decision was evolved. Supreme Court of United States of America in interpretation of the Constitution, statutes or any common law rights, consistently held that the Constitution neither prohibits nor requires retrospective effect. It is, therefore, for the court to decide, on a balance of all relevant considerations, whether a decision overruling a previous principle should be applied retrospectively or not. In Great Northern Railway Company v. Sunburst Oil and Refining Co. ((1932) 287 U.S. 358, "77 L. Ed. 360). Justice Cardozo speaking for the unanimous Supreme Court of U.S.A. for the first time applied prospective operation of the decision from the date of the judgment. The Supreme Court of Montana overruled a previous decision granting shippers, certain rights to recover excess payment regulated by Rail-Road Commission of intrastate freight rate. The Montona Court held that the statute did not create such a right. While approving the above rule it was held that it would not apply to past contracts or carriages entered into in reliance upon earlier decision. The Court held that "we have no occasion to consider whether this division in time of the effects of a decision as a sound or an unsound application of a doctrine of stare decisis as known to the common law. Sound or unsound, there involved in it no denial of a right protected by the Federal constitution. This is not a case where a court in overruling an earlier decision has given to a new ruling a retroactive bearing, and thereby has made invalid what was valid in the doing.... The choice for any state may be determined by the juristic philosophy of the judges of her courts, their conceptions of law, its origin and nature. We review not the wisdom of their philosophies, but the legality of their acts." In Dollree Mapp v. Ohio, (1961) 367 U.S. 643 : 6 Law Ed. 2nd 1081, it was held that evidence seized in a search and seizure violates the Fourth Amendment. Whether the ratio in Mapp's case could be applied retrospectively had

come up in Victor Linkletter v. Victor G. Walker, (1965) 381 US 618 :14 L.Ed. 2nd 601. Per majority it was held that though the evidence collected in illegal search and seizure violated Fourth Amendment, the ratio in Mapp would apply prospectively. The Court further laid down that in determining whether to give its decision a prospective or retrospective operation, the court must weigh the merits and demerits in each case by looking to the previous history of the rule in question, its purpose and effect, and whether retrospective operation will accelerate or retard its operation; this approach is particularly correct with reference to the fourth amendment's prohibitions as to unreasonable search and seizures. In Ernesto A. Miranda v. State of Arizona, (1966) 384 US 436, 16 Law Ed. 2nd 694, the court dealt with the admissibility of the confessional statement obtained from the accused during custodial interrogation without warnings or counsel being present. While holding that such evidence was inadmissible, the court per majority set aside the conviction and sentence. Similar was the case in Danny Escobedo v. Illinois, (1964) 378 U.S. 478:12 Law Ed. 2nd, 977. In Sylvester Johnson v. State of New Jersey, (1966) 384 U.S. 719:16 Law Ed. 2nd 882, the question arose whether retrospectivity would be given to constitutional guarantee laid in Miranda's case. Johnson was convicted and was sentenced to death and that became final. When certiorari was sought placing reliance on Escobedo and Miranda ratio, the court per majority held that even in criminal litigation court would make a new judicial rule prospective where the exigencies of the situation require such an application. The court held that even though it involved constitutional right of accused it would look into the purpose of the newly, evolved rule, the reliance placed on the former rule and the effect on the administration of justice of a retrospective operation of the new rule have to be considered. The retroactivity or non-retroactivity of a new judicial rule involving a constitutional dictate is not automatically determined by the provision of the constitution on which the dictate is based. The Court must determine in each case, by looking to the peculiar traits of the specific rule in question even if the new rule has already been applied to the parties before the court in the case in which the rule was announced, its impact on the administration of justice be taken into account, the extent to which safeguards other than that involved in the new rule are available to protect the integrity of the truth determining process at trial. Such an application of new rule does not foreclose the possibility of applying the decision only prospectively and with respect to other parties. Accordingly due process in Miranda and Escobedo ratio was denied to Johnson. In T. A. Jenkins v. State of Delaware, (1969) 395 US 213 : 23 Law Ed. 2nd, 253, the Miranda ratio was not applied retrospectively to the pending appeals in Jenkins

case. It was held that Miranda rule did not have to be applied to post Miranda trial of a case originally tried prior to the Miranda decision. It was further held that there is a large measure of judicial discretion involved in deciding the time from which that new principle is to be deemed controlling. In P. B. Rodrigue v. Aetna Casualty Co., (1969) 395 US 352 : 23 Law Ed. 2nd 360, at an action brought in United States Dist. Court in Lusiana for damages for death of the workman while in service, the Dist. Court on the basis of the Outer Continental Shelf Lands Act, held that damages claimed were not available. The suit was dismissed. On appeal it was confirmed. On certiorari, the Supreme Court of United States reversed the decision and held that the constitutional right gives them the remedy for damages. In Chevron Oil Co. v. Gaines Ted Huson, (1971) 404 US 97: 30 Law Ed. 2nd 296 a Civil action was laid in the United States Dist. Court for the Eastern Dist. of Lusiana to recover for personal injury prospectively two years earlier to the date of filing the suit. While the action was pending in view of Rodrigue interpretation, the Dist. Court held that one year limitation prescribed under Lusiana Act bars the action for damage for personal injuries. On appeal reversed the decree and remanded the matter holding that Lusiana statute of limitation being prospective and the remedy though barred, right to recover is not extinguished, the Supreme Court of U.S.A. held on certiorari, that the limitation as interpreted in Rodrigue's case being prospective, the remedy was not extinguished and the claim was not barred as the action was controlled by Federal Law. It was further held that the question of non-retroactivity application of judicial issue is not limited to the area of criminal process but also pertains to decisions outside a criminal area, in both constitutional and non- constitutional cases. Where a decision of the court could produce substantial inequitable results, if applied retrospectively, there is ample basis for avoiding injustice or hardship by a holding of non- retrospectivity. Accordingly the Court held that the suit was within limitation and remanded the matter for trial according to law. In Northern Pipeline Construction Co. v. Marathon Pipeline Co. (1982) 458 US 50 : 73 Law Ed. 2nd 598, the question was whether the Bankruptcy Act 1978 and bankruptcy courts applied to Federal Dist. established earlier and the appointments of the tenure judges by 1978 Act were contrary to Art. III protection. While declaring, per majority, that the appointment of tenure judges was violative of Art. III protection offending independence of judiciary, the court applied the law prospectively while giving relief to the plaintiff therein, stayed its operation until a further date affording opportunity to the Congress to amend the Law to reconstitute bankruptcy courts or to

adopt other valid means of adjudication without impairing the interim administration of the bankruptcy laws.

32. In U. S. v. James Robert Peltier, (1975) 422 U.S. 531 :4SLaw Edn 2nd 374,the respondent was convicted for Federal narcotics offence. The Border Patrol Agent conducted a search at 70 air miles from the Mexican border and seized the contraband for which he was convicted. While the appeal was pending in the Court of Appeal, the Supreme Court of the United States of America in Almeida-Sanchez v. U.S. (1973) 413 U.S. 266:37 Law Ed. 2nd 596 held that warrantless automobile search conducted about 25 air miles from the Mexican border by the Border Patrol Agent was without probable cause offending Fourth Amendment of the Constitution. Therefore, the search was declared unconstitutional and the conviction was set aside. On concession by the State, the court of appeal set aside petitioner's conviction giving him the benefit of the Almeida-Sanchez rule. On appeal, the Supreme Court of the United States of America, per majority, held that Almeida-Sanchez's ratio would not be applied retrospectively if search was conducted prior to the date of the decision, since Border Patrol Agents had acted pursuant to the statutory and regulatory authority to conduct warrantless searches of the vehicles within 100 air miles from the border, existing law was that it was permissible. The same ratio was reiterated in Bowen v. U. S. (1975) 422 U. S. 916: 45 Law Ed. 2nd 641. In this case the ratio in Almeida-Sanchez was laid while his petition for certiorari was pending consideration in the Supreme Court of the United States of America. The matter was remitted to the Appellate Court to consider in the light of Almeida-Sanchez ratio. The Court of Appeal again affirmed the appellant's conviction holding that the search was conducted at traffic check point according to the law then prevailing and, therefore, Almeida-Sanchez ratio was not applicable to the search conducted prior to the date of the decision. The Supreme Court of U.S.A. affirmed the decision by majority holding that Almeida-Sanchez ratio was not applicable retrospectively reiterating Peltier's ratio.

33. In United States v. Raymond Eugene Johnson (1982) 457 US 537 :73 Law Ed. 2nd 202, applying the ratio in Payton v. New York, (1980)445 US 573 :63 Law Ed. 2nd 639 it was held that warrantless arrest on suspicion at his home and suppression of his oral or written statements obtained on account of unlawful arrest offend Fourth Amendment constitutional right. The respondent was convicted by the District Court. The appeal was dismissed, but an application for rehearing was pending before the Appellate Court,

before Payton's case was decided. Thereon it was contended that the respondent will be entitled to the benefit of the ratio in Payton. The state argued that the ratio in Payton should not be applied retrospectively to an arrest that had occurred before Payton was decided. The Court of appeal did not agree and held that Payton ratio did apply retrospectively. On appeal the Supreme Court of the United States of America per majority held that the rule announced in Payton's case would apply retrospectively to pending direct appeal since Fourth Amendment immunization was extended and the conviction was set aside.

34. In Golak Nath v, State of Punjab (1967) 2 SCR 762 : (AIR 1967 SC 1643), this Court while declaring that Shankari Prasad Singh Deo v. Union of India, 1952 SCR 89: (AIR 1951 SC 458) andSajjan Singh v. State of Rajasthan (1965) 1 SCR 933 : (AIR 1965 SC 845) were wrongly decided, held that the constitutional amendments offend the fundamental rights and the Parliament has no power to amend fundamental rights exercising the power under Art. 368, applied Golak Nath rule prospectively and upheld the pre- existing law as valid, Mohd. Ramzan Khan tread on the same path.

35. It would, thus, be clear that the Supreme Court of the United States of America has consistently, while overruling previous law or laying a new principle, made its operation prospective and given the relief to the party succeeding and in some cases given retrospectively and denied the relief in other cases. As a matter of constitutional law, retrospective operation of an overruling decision is neither required nor prohibited by the Constitution but is one of judicial attitude depending on the facts and circumstances in each case, the nature and purpose of the particular overruling decision seeks to serve. The court would look into the justifiable reliance on the overruled case by the administration; ability to effectuate the new rule adopted in the overruling case without doing injustice; the likelihood of its operation whether substantially burdens the administration of justice or retard the purpose. All these factors are to be taken into account while overruling the earlier decision or laying down a new principle. The benefit of the decision must be given to the parties before the Court even though applied to future cases from that date prospectively would not be extended to the parties whose adjudication either had become final or matters are pending trial or in appeal. The crucial cut off date for giving prospective operation is the date of the judgment and not the date of the cause of action of a particular litigation given rise to the principle culminated in the overruling decision. There is no distinction between civil and criminal

litigation. Equally no distinction could be made between claims involving constitutional right, statutory right or common law right. It also emerges that the new rule would not be applied to ex post facto laws nor acceded to plea of denial of equality. This Court would adopt retroactive or non-retroactive effect of a decision not as a matter of constitutional compulsion but a matter of judicial policy determined in each case after evaluating the merits and demerits of the particular case by looking to the prior history of the rule in question, its purpose and effect and whether retroactive operation will accelerate or retard its operation. The reliance on the old rule and the cost of the burden of the administration are equally germane and be taken into account in deciding to give effect to prospective or retrospective operation.

36. The ratio of the Supreme Court of U. S. A. consistently given the benefit of overruling decision to the successful party received commendation from the academic lawyers. In 'Introduction to Jurisprudence, 4th Ed., Lord Lloyd of Hampstead at p. 858 stated that a strong argument against the Sunburst approach is that potential litigants faced with outmoded doctrine are given no incentive to litigate. If they win, their case is governed by the old doctrine and new rule would apply only to disputes subsequently arising. Litigants who provide the courts with opportunities to rid the normative order of outmoded doctrine are performing a social service, and deserve some reward for their exertions. Andrew G. L. Nicol in his 'Prospective Overruling a Text for English Courts, (39 MLR 542 at 546) also stated that 'excepting the parties to the overruling decision from the denial of retroactivity, the courts which use this variation talk in terms of reward for the party who has persuaded them to see the error of their ways. They argued that unless the party to the instant case is given the benefit of new decision, there will be no incentive for him to raise the correctness of the old decision. Finally they say that if the new rule is not applied in the instant case, the overruling will be obiter only. Cross and Harris in their 'Precedent in English Law, have also argued on the same lines to give benefit to the party in the overruling case. P. S. Atiyah and R. S. Summers in their Form and Substance in Anglo-American Law, at page 146 also stated that: 'if litigants who persuade the court to overrule a bad precedent are not themselves accorded the benefit of the new law would they have sufficient incentive to litigate such cases so that bad law is not perpetuated". It is, therefore, argued to extend the benefit to the successful party in the case.

37. Mohd. Ramzan Khan's ratio giving the benefit to him and companion appellants was valid in law and not, therefore, per inquarium and was legally given the reliefs. The contention of the counsel for the employees/Govt. Servants that the denial of Ramzan Khan's ratio to the pending matters offend Art. 14 is devoid of substance. It is seen that placing reliance on the existing law till date of Ramzan Khan, the employers treated that under law they, had no obligation to supply a copy of the enquiry report before imposing the penalty. Reversing the orders and directing to proceed from that stage would be a needless heavy burden on the administration and at times encourage the delinquent to abuse the office till final orders are passed. Accordingly I hold that the ratio in Mohd. Ramzan Khan's case (AIR 1991 SC 471) would apply prospectively from the date of the judgment only to the cases in which decisions are taken and orders made from that date and does not apply to all the matters which either have become final or are pending decision at the appellate forum or in the High Court or the Tribunal or in this Court.