**SUPREME COURT OF INDIA**

Santosh Kumar Pandey

Vs.

Pradeshiya Industrial & Investment Corporation of U.P. Ltd.

C.A.No.3251 of 2008

(S.B. Sinha and Lokeshwar Singh Panta JJ.)

02.05.2008

**ORDER**

1. Leave granted.

2. Appellant is aggrieved by a portion of the order dated 8.8.2006 passed by the Hight Court of Judicature at Allahabad, Lucknow Bench, whereby it was directed: So far as the 50% back wages is concerned, it shall be made available to the Respondent provided the enquiry concludes in his favour by the competent authority.

3. Appellant was dismissed from services of the respondent. He questioned the validity of the said order of dismissal by filing a writ petition. The said order of termination was set aside by a learned single Judge of the High Court with a direction to the respondent for payment of 50% back wages. The period between the dismissal and reinstatement was also directed to be treated as the period spent on duty, determining other service benefits. The respondent preferred an intra-Court appeal therefrom.

4. A Division Bench of the High Court, while affirming the finding of the learned Single Judge that the enquiry proceedings pursuant whereto and in furtherance whereof an order of dismissal was passed, was violative of the principles of natural justice, issued the afore-mentioned direction.

5. The learned counsel appearing on behalf of the respondent has relied upon the decision of this Court in *Managing Director, ECIL, Hyderabad and Ors. vs. B. Karunakar and Ors.*[1], wherein it was opined: Hence, in all cases where the enquiry 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

not 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 Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal 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.

6. Karunakar (supra), therefore, is not an authority for the proposition that the High Court should preempt the exercise of jurisdiction of a Competent Authority. It was for the Competent Authority to deal with the matter. In the event the appellant is exonerated from the charges, he may not be found to be disentitled from claiming the entire back wages. What would be the nature of punishment even if he is found guilty in the disciplinary proceedings, cannot be a matter of surmises and conjecture. Furthermore the respondent did not succeed even before the Division Bench of the High Court as regards the finding of the learned Single Judge that the departmental proceeding was vitiated in law, as being opposed to the principle of natural justice.

7. In that view of the matter, the impugned judgment cannot be sustained and it is set aside, leaving the parties to take recourse to such remedies which are available to them in law, inter alia, in the light of the observations made by this Court in Karunakar (supra), if the same is found to be applicable.

8. The appeal is allowed accordingly. No costs.

[1] *[1993 (4) SCC 727]*