**SUPREME COURT OF INDIA**

Union of India (UOI)

Vs.

Alok Kumar

C.A.No.3369 of 2010

Aftab Alam and Swatanter Kumar, JJ.

16.04.2010

**JUDGMENT**

**SWATANTER KUMAR, J.**

1. Delay condoned in SLP (C) No. 25293 of 2008.

2. Leave granted.

3. This judgment shall dispose of all the above mentioned appeals as common question of law on somewhat similar facts arise in all the appeals for consideration of this Court.

4. The Union of India being aggrieved by the judgment of the High Court of Judicature at Allahabad, Lucknow Bench dated 25th February, 2008 has filed the present appeals under Article 136 of the Constitution of India. The High Court declined to interfere with the Order passed by the

Central Administrative Tribunal, Lucknow Bench (hereinafter referred to as 'the Tribunal') wherein the Tribunal, in exercise of its powers under Section 19 of the Central Administrative Tribunal Act had set aside the orders of punishment passed by the Disciplinary Authority and the Appellate Authority. However, the High Court granted liberty to the Disciplinary Authority to conduct the inquiry afresh from the stage of nomination of the inquiry officer.

5. A simple but question of some significance under service jurisprudence falls for consideration in the present appeals, whether or not under the relevant Rules and provisions of the Act, the Railway Authorities have the jurisdiction to appoint a retired employee of the Department as 'Inquiry Officer' within the ambit of Rule 9(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 (for short referred to as 'the Rules').

6. The facts necessary for dealing with this batch of appeals can be summarily stated. The respondents in all these appeals are the members in service of the Railway Establishment. Alok Kumar, respondent in SLP (C) No. 25293 of 2008, is a Group-A officer, while in all other appeals the respondents are from clerical cadre of the Railway Department. This is primarily the only distinguishing feature in the facts of the present appeals. The High Court as well as the Tribunal in all these cases recorded the finding that a retired officer of the Railways cannot be appointed as an inquiry officer within the meaning of the provisions of Rule 9 of the Rules.

7. Keeping in view the common question of law that has been answered against Union of India, it may not be necessary for us to refer to the facts of each case in detail. Suffice it to notice the facts in some detail in Shri Alok Kumar's case. Shri Alok Kumar, respondent, an officer of the Indian Railway Services of Engineers was appointed as Senior Divisional Engineer and was one of the Members of the Tender Committee as well. It is the case of the appellants before us that some irregularities of the Tender Committee were noticed.

8. The Competent Authority on 11th September, 2001 thus served a charge sheet upon the delinquent officer under Rule 9 of the Rules, calling upon him to render his explanation with regard to the Article of Charges and imputations stated therein. It was alleged that Shri Alok Kumar, as convener member of the Committee besides the official position he was holding, submitted a brief calling for tenders on the basis of highly inflated estimates with a view to justify-award of contract at very high rates. It was also alleged that he did not submit proper information before the Tender Committee and deliberately misled the other members of the Committee. The Tender Committee which met on 13th July, 1999, upon comparing the rates quoted by M/s Rajpal Builders with the estimated tender value, had found that these were (-) 1.7% lower than the estimated rates.

9. In short, it was stated that by misusing his official status he had awarded the contract to the contractor of the Department at high rates. To this, the delinquent filed reply denying the Article of Charges. One Shri J.K. Thapar, retired CAO/FOIS, Northern Railways was appointed as an Inquiry

Officer. The inquiry was conducted by him during the year 2001-02. The entire file including the Central Vigilance Commission (for short 'CVC') advice was also placed before the competent authority. The Disciplinary Authority expressed disagreement and issued a Memorandum dated 6th May, 2003 giving a chance to Shri Alok Kumar for making a representation. The Railway Board vide its letter dated 14.6.2004, passed an order imposing punishment upon the respondent of reduction by one stage in the time scale of pay for a period of one year.

10. Aggrieved by this Order of punishment, the respondent preferred an appeal which came to be decided by the Ministry of Railways. The Competent Authority rejected the same vide Order dated 18 July, 2005. Since the respondent could not get any relief, he filed an Original Application No. 458 of 2006 before the Tribunal against the orders of the Disciplinary Authority and the Appellate Authority. Different points were raised in the application by the respondent, however finally only two issues were raised before the Tribunal which were noticed in paragraph 6 of its judgment as under:

(a) Whether, CVC's advice should be made available to the defender and

(b) Whether a retired person can be appointed as inquiry officer.

11. The Tribunal while noticing the provisions of Rule 9(2) of the Rules took the view that the Disciplinary Authority, with an intention to examine the truth of any imputation of misconduct or misbehaviour against the Railway servant, can conduct an inquiry itself or appoint a Board of Inquiry or other authority under the Rules. However, it held that even on the strength of the Circular relied upon by the present appellants issued by the Railways, empowering them to prepare a panel of retired officers to be nominated as inquiry officers; the appellants have no authority to appoint a former employee as 'Inquiry Officer'. The Tribunal also took the view that the orders of punishment were vitiated for non-supply of copy of advice/notes given by the CVC and it was mandatory on the part of the Disciplinary Authority to furnish the same to the delinquent. Thus on the basis of these findings, the impugned orders were set aside in all the cases. The High Court accepted the view of the Tribunal and Writ Petition No. 252 of 2008 filed by the Union of India, and other connected writ petitions were dismissed by the High Court giving rise to the present petitions.

12. In cases of Satrughan Pal, Suryadeo Tripathi, Ratneshwar Singh and Ram Bahor Yadav, it only needs to be noticed that all are from clerical cadre of booking clerk etc. In these cases, the Tribunal had decided against the appellants relying upon its judgment in the case of Ram Bahor Yadav, while taking the view that retired railway officer could not be appointed as the Inquiry Officer. Consequently, the orders of punishment in each case were set aside.

13. In the case of Ram Bahor Yadav, the High Court affirmed the view taken by the Tribunal that the words "other authority" in Rule 9(2) of the Rules will not include a retired Railway Officer and, that empanelment of retired Railway Officers by the Railway Board's letter dated 29th July, 1998 does not constitute amendment of Rules and consequently set aside the orders of punishment imposed upon the respondents in those cases.

14. The Union of India has challenged the judgment of the High Court in Ram Bahor Yadav's case in SLP (C) No. 24748 of 2008 and all other judgments in the aforementioned appeals. With the exception of Alok Kumar's case, in all the other cases, as is evident from the above narrated facts, we would be concerned with the interpretation of the Rules and provisions of the Act read with the Circular issued by the Railways Department/Board to answer the controversy, whether a retired Railway Officer can be appointed as Inquiry Officer for the purposes of conducting departmental inquiries against the employees of the Railway Department. In case of Shri Alok Kumar an additional issue will have to be dealt with by us with regard to the alleged non-furnishing of the Central Vigilance Commission advice/notes, to the delinquent and its effect on the merits of the case.

15. Before we proceed to examine the relevant provisions, we may also notice that a different view was taken by the Bench of Guwahati High Court in the case of Kendriya Vidyala Sangthan v. Vijay Bhatnagar, Writ Petition No. 6795 of 2005 than the view taken by the Allahabad High Court, Lucknow Bench, in the impugned judgment. The Bench of Guwahati High Court while dealing with Rule 14(2) of the CCS Rules had set aside the judgment of the Tribunal and held that a retired person could be appointed as Inquiry Officer which judgment is heavily relied upon by the appellants before us.

DISCUSSION ON LAW

16. During the British regime some of the persons holding high positions, in the governance of the Indian Dominion were found to be acting as autocrat. Their behaviour as public servants became a cause of concern for the Government. In order to have a check on this, a Bill was introduced in the Legislature on 1st November, 1850. By Act 1 of 1897 it was enacted as 'The Public Servants (Inquiries) Act, 1850'. This Act was enacted with an object to amend the law of regulating inquiries into behaviour of public servants, not removable (from their appointments) without the sanction of the Government and to make the same uniform throughout the Indian Territory. The provisions of this law clearly show that it is a self-sufficient code right from the stage of serving of Articles of Charges which were to be drawn up for the public inquiry to be conducted in the cases of the misbehaviour by public servants, till submission of the records of proceedings to the competent Government. The competent Government on consideration of the report may order taking of further evidence or direct the authority to which the person was subordinate for their opinion and finally pass such orders thereon as may appear consistent with its powers in such cases. Section 3 of this Act which has been referred to and even relied upon by the authorities reads as under:

Authorities to whom inquiry may be committed -Notice to accused - The inquiry may be committed either to the Court, Board or other authority to which the person accused is subordinate or to any other person or persons, to be specially appointed by the Government, commissioners for the purpose: notice of which commission shall be given to the person accused ten days at least before the beginning of the inquiry.

17. The Act remained unimplemented as the provisions thereof were hardly invoked by the authorities concerned. The President of India in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, 1950 made the rules termed as the 'Railway Servants Discipline and Appeal (Rules 1968)'. They came into force on 1st October, 1968.

18. The Preamble of the Act also indicates the Legislative intent as to which class of persons the provisions of the Act would be applicable. It is abundantly clear that the persons who are covered under the provisions of the Act are persons who are public servants and not removable from their appointment without sanction of the Government. This criterion has to be specified before the provisions of the Act can be made available, and an inquiry can be conducted under its provisions. In fact, the language of Sections 2 & 3 of the Act is quite distinguishable from the provisions normally covering the disciplinary action in departmental inquiries. In terms of Section 2, the Government has to form an opinion that sufficient grounds existed for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of the Government, who cannot be removed from his appointment without its sanction. Such an inquiry could be conducted by a Board or other authority to which the said Officer is subordinate or any other person or persons to be specifically appointed by the Government. However, in terms of Section 4, the Government, where it thinks fit to conduct the prosecution, shall nominate some person to conduct the same on its behalf. Under this Section, the prosecution has to be completed in terms of the provisions of the Act by the persons so appointed or the Commissions so appointed. In other words, inquiry or prosecution has to be conducted strictly in consonance with these provisions. The scope of applicability of this Act cannot be enlarged and it must be construed somewhat narrowly and the persons who are not specifically covered under the provisions of this Act cannot be included by implication or exemption. It is a settled rule of interpretation that where the legislature in its wisdom has made an Act applicable to a particular class of persons, there it will be impossible to construe it in a manner so as to enlarge the scope of its applicability. The provisions afore-referred as well as scheme of the Act makes it clear that the provisions are applicable to the public servants who can be removed from service only with the sanction of the Government. In the cases before us, including that of Mr. Alok Kumar, it had not been suggested by either party that they are removable from service only with prior sanction of the Government. In fact, they can be removed by the Disciplinary Authority in accordance with the law. The charge-sheet, which was served in Form No. 5 under Rule 9 of the Rules, did not even refer to the provisions of the Act. The Memorandum, in which the charge-sheet was contained, described him as Senior DE/1 Northern Eastern Railways, Lucknow and referred to the provisions of Rule 9 and Rule 20 of the Railway Service Conduct Rules 1966. In other words, the competent authority did not direct either a public inquiry or a prosecution under the relevant provisions of the Act. The departmental proceeding against the said respondent was restricted to the applicability of Rule 9 of the 1968 Rules. Thus,

recourse to the provisions of the Act for the purposes of interpretation or deciding the controversies in issue was entirely unwarranted in the facts and circumstances of the case in hand.

19. Now, let us examine the ambit, scope and ramifications of the Railway Service disciplinary Rules, 1968 in relation to the departmental inquiries in the Department of Railways and the delinquent. The Rules in question, noticed at the very threshold, are a complete code in itself. It opens with the words "these rules have been framed under proviso to Article 309 of the Constitution and are applicable to the officers/officials of the Railways". Rule 2 of the Rules defines 'appointing authority', 'disciplinary authority', 'Head of the Department' and 'service' under its different sub-rules. Service is stated to mean, service under the Ministry of Railways and in terms of Rule 3. The Rules are applicable to every railway servant but shall not apply to the class of members or persons indicated in Rule 3(i)(a) to (d). Rule 5 empowers the competent authority to place a railway servant under suspension and this power is controlled by the provisions of Rule 4 which requires the specified authorities alone to act in terms of Schedule 1 and 2 respectively for passing such orders. These Schedules not only specify the class of employees who can be placed under suspension but also the authority which can pass such orders as well as the authority which shall be the appellate authority for dealing with the grievances raised by the delinquent officer/official. It may be noticed that Schedule 1 deals with a class of non-gazetted railway servants including Grade-B non-gazetted officers/officials. Schedule-II deals with different grades of railway officers and senior supervisors of non-gazetted staff. Schedule III spells out the class of railway servants covered, authority empowered to place a railway servant under suspension or impose penalty and its nature as well as the appellate authority. Railway servants of Grade-A and Grade-B are dealt with under this Schedule and the President is vested with full powers. Where the orders are passed by the Railway Board, the appeal lies to the President. The penalties that can be imposed upon a delinquent officer/official for good and sufficient reasons have been spelt out in Rule 6, for which a disciplinary authority has been specified under Rule 7. While Rule 8 deals with authority to institute the proceedings, there is Rule 9 which falls under Part IV of these Rules, which provides the procedure for imposing major penalties. In fact, Rule 9 to Rule 12 are the most relevant provisions which detail the procedure which is to be followed and the imposition of punishments and communication of such orders. Rule 9 contemplates the complete procedure for imposition of major penalty including appointment of inquiry officer and submission of the report by the inquiring authority to the disciplinary authority. Rule 10 specifies the action which can be taken on the submission of the inquiry report. Keeping in view the primary challenge raised in these appeals, it will be useful to refer to the relevant part of Rule 9:

Rule 9. Procedure for imposing major penalties

> (1) No order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 6 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Rule 10, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850) where such inquiry is held under that Act.
>
> (2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a

railway servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, [a Board of Inquiry or other authority] to inquire into the truth thereof.

(3) Where a Board of Inquiry is appointed under Sub-rule (2) it shall consist of not less than two members, each of whom shall be higher in rank than the Railway servant against whom the inquiry is being held an none of whom shall be subordinate to the other member or members, as the case may be, of such Board.

Explanation:

Where the disciplinary authority itself holds the inquiry, any reference in Sub-rule (12) and in Sub-rule (14) to Sub-rule (25), to the inquiring authority shall be construed as a reference to the disciplinary authority.

20. Sub-rule 6 of Rule 9 states that, where it is proposed to hold an inquiry against a railway servant under Rule 9 and Rule 10, there a charge sheet and imputation of conduct and misbehaviour upon the said officer shall be served and the procedure as specified shall be followed. The language of this rule clearly shows that there is a discretion vested in the disciplinary authority, enabling it to hold the inquiry itself or get the truth of imputations inquired by any 'other authority' in terms of the Rule. It will be appropriate to read Rule 9(1) and 9(2) together but cautiously. Rule 9(1) starts with a negative language putting an embargo on passing of an order imposing penalties as specified under Clause 5 to Clause 9 of Rule 6, major penalties can be imposed except after an inquiry held. The inquiry contemplated can be held as per the procedure spelt out in Rule 9 and Rule 10 of these Rules. The other mode of holding an inquiry is in the manner provided by the Public Service Inquiries Act, 1850, when such inquiries are held under that Act. The language of Rule 9 of the Rules, therefore, clearly demonstrates that the Rules and the Act are neither interdependent nor convey a legislative intent that a departmental inquiry has to be held under both collectively or at the discretion of the disciplinary authority. We have already clarified it above, that the provisions of the Act are applicable to a very limited class of persons i.e., the officers who are removable or liable to be dismissed from service only with the sanction of the Government. The Rules, as framed, are applicable to non-gazetted officers and officials of the Department of Railways except Grade-A officers specified under Schedule 3 of the Rules. Thus, under the scheme of the Rules and the Act and particularly, keeping in view the preamble of the Act, it is not correct to say that absolute discretion is vested in the authorities concerned to subject a person to departmental inquiries in terms of the Rules or the Act. They have to exercise the power in accordance with the provisions of the relevant statute. Such an approach is amply indicated even in the language of Rule 9(2). The Rules require the disciplinary authority to form an opinion that the grounds for inquiry into the truth of imputations of misconduct or misbehaviour against the railway servant exists. Further, that they have enquired into the matter. Then, such inquiry may be conducted by the disciplinary authority itself or it may appoint under the Rules a Board of Inquiry or other authority to enquire into the truth thereof. Formation of such an opinion is a condition precedent for the disciplinary authority, whether it intends to conduct the inquiry under the Rules or under the Act as the case may be. The expression "as the case may be" clearly suggests that law which will control such departmental inquiry would depend upon the class of officers/officials whose misconduct or misbehaviour subject them to such inquiry. If the employee is covered under the Act, the disciplinary authority shall have to appoint an inquiry officer and proceed with the inquiry under the provisions of the Act, whereas

if he is covered under the Rules, the procedure prescribed under the Rules will have to be followed.

21. Other important feature in the language of the Rule is appoint under this Rule a Board of Inquiry or other Authority, What shall be the constitution of the Board of Inquiry and how the same would proceed further with the inquiry has been stated in Sub-rules 3, 4 and 5 of Rule 9 of the Rules. The expression "other authority" has neither been explained nor defined under the Rules. In terms of Rule 2(1)(2), the words which have not been defined under these Rules shall be deemed to have been assigned the same meaning as assigned under the Indian Railway Act, 1890.

22. Even the Indian Railway Act does not define the term "authority" though this expression has been used in conjunction with other words in the Rules as well as the Act. In absence of any specific definition or meaning we have to rely upon understanding of this expression in common parlance. In common parlance, the word 'authority' is understood to be, power to exercise and perform certain duties or functions in accordance with law. Authority may vest in an individual or a person by itself or even as a delegatee. It is the right to exercise power or permission to exercise power. Such permission or right could be vested in an individual or a body. It can also be in conferment of power by one person to another. This expression has been used differently in different statutes and can be given a different meaning or connotation depending upon the context in which it is used. The purpose and object of using such expression should be understood from the provisions of the relevant law and the purpose sought to be achieved. The word 'authority' is derived from the latin word *auctoritas*, meaning intention, advice, opinion, influence or command which originate from an auctor, indicating that authority originates from a master, leader or author, and essentially is imposed by superior upon inferior either by force of law (structural authority) or by force of argument (sapiential authority)

23. Farlex Free Dictionary explains the word 'authority' as follows:

Authority n. permission, a right coupled with the power to do an act or order others to act. Often one person gives another authority to act, as an employer to an employee, a principal to an agent, a corporation to its officers, or governmental empowerment to perform certain functions. There are different types of authority including "apparent authority" when a principal gives an agent various signs of authority to make others believe he or she has authority, "express authority" or "limited authority" which spell out exactly what authority is granted (usually a written set of instructions), "implied authority" which flows from the position one holds, and "general authority" which is the broad power to act for another.

Oxford Dictionary explains the word as under:

1. (a) The power to enforce laws, exact obedience, command, determine, or judge.

(b) One that is invested with this power, especially a government or body of government officials : land titles issued by the civil authority.

2. Power assigned to another; authorization: Deputeis were given authority to make arrests.

Merrium Webster's Law Dictionary, 1996 explains the word as under:

Authority pl.-ties

1. an official decision of a court used esp. as a precedent.

2. (a) a power to act est. over others that derives from status, position, or office. Example : the authority of the president.

(b) the power to act that is officially or formally granted (as by statute, corporate bylaw, or court order).

3. ...

4 (a) a government agency or corporation that administers a revenue-producing public enterprise. Example : the transit authority

(b) a government agency or public office responsible for an area of regulation. Example : should apply for a permit to the permitting authority.

In Law Lexicon, 2nd Edition, 1997 pg. 171, the word 'authority' has been explained and elucidated as follows:

A person or persons, or a body, exercising power of command; generally in the plural: as, the civil and military authorities. Power or admitted right to command or to act, whether original or delegated: as the authority of a prince over subjects and of parents over children ; the authority of an agent to act for his principal. An authority is general when it extends to all acts, or all connected with a particular employment, and special when confirmed to a single act.

Authority, is nothing but a power to do something; it is sometimes given by word, and sometimes by writing; also it is by writ, warrant, commission, letter of attorney & c. and sometimes by law. The authority that is given must be to do a thing lawful: for if it be for the doing anything against law, as to beat a man, take away his goods, or disseise him of his lands this will not be a good authority to justify him that doth it.:

> Authority (In contracts) the lawful delegation of power by one person to another.
>
> Authority(In administrative law) is a body having jurisdiction in certain matters of a public nature.

> Authority. Permission. Right to exercise powers; to implement and enforce laws; to exact obedience; to command; to judge. Control over; jurisdiction. Often synonymous with power. The power delegated by a principal to his agent. The lawful delegation of power by one person to another. Power of agent to affect legal relations of principal by acts done in accordance with principal's manifestations of consent to agent.

24. It is clear from above that there is some unanimity as to what meaning can be given to the expression 'authority'. The authority, therefore, should be understood on its plain language and without necessarily curtailing its scope. It will be more appropriate to understand this expression and give it a meaning which should be in conformity with the context and purpose in which it has been used. The 'other authority' appearing in Rule 9(2) is intended to cover a vast field and there is no indication of the mind of the framers that the expression must be given a restricted or a narrow meaning. It is possible that where the authority is vested in a person or a body as a result of delegation, then delegatee of such authority has to work strictly within the field delegated. If it works beyond the scope of delegation, in that event it will be beyond the authority and may even, in given circumstances vitiate the action.

25. Now, we have to examine the argument of the respondents before the court that the expression 'other authority' shall have to be construed to cover only the persons who are in the service of the railways. In other words, the contention is that the expression 'person' used under Section 3 of the Act and expression 'authority' used under Rule 9(2) contemplates the person to be in service and excludes appointment of an inquiry officer (authority) of a retired railway officer/official.

26. Heavy reliance was placed by the respondents upon the judgment of this Court in the case of Ravi Malik v. National Film Development Corporation Ltd. and Ors. 2004 (13) SCC 427. We have already discussed at some length the scheme of the Rules. As already noticed, we are not required to discuss in any further elaboration the inquiries taken under the Act, inasmuch as none of the respondents before us have been subject to public departmental inquiry under the provisions of the Act. Rule 9(2) requires the authority to form an opinion, whether it should hold the inquiry into the

truth of imputation of misconduct or misbehaviour against the railway servant itself or should it appoint some other authority to do the needful. Thus, there is an element of discretion vested in the competent authority to appoint 'other authority' for the purposes of conducting a departmental inquiry. It is a settled principle of interpretation that exclusion must either be specifically provided or the language of the rule should be such that it definitely follows by necessary implication. The words of the rule, therefore, should be explicit or the intent should be irresistibly expressed for exclusion. If it was so intended, the framers of the rule could simply use the expression like 'public servant in office' or 'an authority in office'. Absence of such specific language exhibits the mind of the framers that they never intended to restrict the scope of 'other authority' by limiting it to the serving officers/officials. The principle of necessary implication further requires that the exclusion should be an irresistible conclusion and should also be in conformity with the purpose and object of the rule.

27. The learned Counsel appearing for the respondents wanted us to accept the argument that provisions of Rule 9(2) have an implicit exclusion in its language and exclusion is absolute. That is to say, the framers have excluded appointment of former employees of Railway Department as other authority (inquiry officer) under these provisions. We find no merit in this contention as well. An exclusion clause should be reflected in clear, unambiguous, explicit and specific terms or language, as in the clauses excluding the jurisdiction of the court the framers of the law apply specific language. In some cases, as it may be, such exclusion could be read with reference to irresistible implicit exclusion. In our opinion the language of Rule 9(2) does not support the submission of the respondents. Application of principle of exclusion can hardly be inferred in absence of specific language. Reference in this regard can be made to the judgment of this Court in the case of New Moga Transport Co. v. United India Insurance Co. Ltd. : AIR 2004 SC 2154.

28. In the present case, neither of these ingredients appear to be satisfied. Ultimately, what is the purpose of a departmental inquiry? It is, to put to the delinquent officer/official the charges or article of charges and imputation and seek his reply in the event of there being no substance to hold an inquiry in accordance with the rules and principles of natural justice. The inquiry officer appointed by the disciplinary authority is a delegatee and has to work within the limited authority so delegated to him. The charges and article of charges and imputations are served by the disciplinary/competent authority. The inquiry report is submitted again to the competent authority which is expected to apply its mind to the entire record and then decide whether any punishment should be imposed upon the delinquent officer or not. Thus, all substantive functions are performed by the disciplinary or the specified authority itself. It is only an interregnum inquiry. It is conducted by the delegatee of the said authority. That being the purpose and specially keeping in mind the language of Rule 9(2), we are unable to accept the contention that 'other authority' has to be a person in service alone. Thus, it is not only the persons in service who could be appointed as inquiry officers (other authority) within the meaning of Rule 9(2). Reliance placed by the respondents upon the judgment of this Court in the case of Ravi Malik (supra) is hardly of any assistance to them. Firstly, the facts and the Rules falling for consideration before this Court in that case were entirely different. Secondly, the Court was concerned with the expression 'public servant' appearing in Rule 23(b) of the Service Rules and Regulations, 1982 of the National Film Development Corporation. The Court expressed the view that public servant should be understood in its common parlance and a retired officer would not fall within the meaning of public servant, as by virtue of his retirement he, loses the characteristics of

being a public servant. That is not the expression with which we are concerned in the present case. Rule 9(2) as well as Section 3 of the Act have used a very different expression i.e. 'other authority' and 'person/persons'. In other words, the absence of the word public servant of the Government is conspicuous by its very absence. Thus, both these expressions, even as per the dictum of the Court should be interpreted as understood in the common parlance. Another factor which we may notice is that the definition of the public servant appearing in the Indian Penal Code (for short 'the Code'), reliance upon which was placed by the respondents, was not brought to the notice of the Court while dealing with the case of Ravi Malik (supra). In terms of Section 21 of the Code a public servant denotes a person falling under any of the descriptions stated in the provision. While it refers to a different kind of persons it also brings within its ambit every arbitrator or every person to whom any cause or matter has been referred for decision or report by any court or any other competent public authority. Furthermore, as per the 12th clause of inclusion, in this very section, even "every person" can be a public servant. In fact, in terms of Section 21(a) a person who is in service of the Government or remunerated by fees or commission for the purpose of any public duty of a Government is also a public servant.

29. Thus, a person who is engaged by a competent authority to work on a fee or a fixed remuneration can be a public servant. We fail to understand then how a person engaged for the purposes of performing a delegated function in accordance with law would not be 'other authority' within the meaning of the Rule 9(2). The Rule has not specified any qualifications or pre-requisites which need to be satisfied before a person can be appointed as an inquiry officer. It has been left to the discretion of the disciplinary authority. Unless such exclusion of a former employee of the Government was spelt out specifically in the Rule, it will be difficult for the Court to introduce that element and the principle of implication simplicitor. Another aspect of the matter which would require deliberation of the Court is that, the competent authority in the Department of Railways as well as the Railway Board, Ministry of Railways, Government of India has issued certain circulars, specifically contemplating preparation of a panel of former officers/employees of the railway department, who can be appointed as inquiry officers to conduct the departmental inquiry as the disciplinary/competent authority. Firstly, the circular is stated to have been issued on 16th July, 1998 wherein it has been noticed by the authorities that a large number of cases are coming up before the Vigilance Department. These cases relate to corruption and other serious irregularities. Number of such cases pertain to non-gazetted staff. An inquiry is essentially conducted before imposition of major penalty in terms of Rule 9(2). Number of cases have been pending at the inquiry stage for a considerable time and cannot be disposed of because of non-completion. So, in order to liquidate the large outstanding position of department cases expeditiously, it was felt necessary to empanel certain retired senior-scale and JA Grade officers who would be relatively free to undertake the inquiries. This further led to the criteria of eligibility, remuneration and the work expected to be performed by the former employees to be appointed as inquiry officers. Again a circular is stated to have been issued on 16th October, 2008 on the same lines and taking a view that the former employees could be appointed as inquiry officers. Of course, the circular of 2008 may not be of great relevancy before us as the charge sheet was served upon the delinquent officer/official much prior to the implementation of this circular. However, the circular of 1998 is relevant.

30. The contention raised before us is that the circular issued by the appellants is in contradiction to the language of Rule 9(2). It is a settled rule that a circular cannot supersede the provisions of the

Rules and thus appointment of the former employees of the railway department as inquiry officer is impermissible and the appellants had no jurisdiction to issue such circular. On the other hand, it is contended on behalf of the appellant, that special instructions can be issued by the department for dealing with its affairs and such circulars are permissible. It is also submitted that, the circular being in furtherance to the provisions of law would even prevail over the Rules without having been issued for a specific purpose. Reliance is placed upon the judgment of this Court in the case of Union of India and Ors. v. Virpal Singh Chauhan and Ors. : 1995 (6) SCC 684. Firstly, we are unable to see any conflict, much less the contradiction between the language of Rule 9(2) and the circular of 1998 issued by the appellants. Under Rule 9(2), the disciplinary authority has the discretion to appoint a 'Board of Inquiry' or 'other authority' to conduct inquiry against the delinquent officer/official. The circular only aids it further while saying that in the interest of the administration and in consonance with the Rules, the former/retired officers of the railway department who satisfy the eligibility criteria can be appointed as inquiry officer and submit their report to the disciplinary authority in accordance with law. It is clear that the circular issued is only supplementing Rule 9(2) and is in no way in conflict with the language or Spirit of Rule 9(2). The argument advanced on behalf of the respondents is that in the event of clear conflict between circulars and the statutory rules, the circular cannot be permitted to prevail. This argument would be of worth consideration only if the respondents are able to demonstrate before the Court without ambiguity that it is a case of conflict and the circular issued is in terms contrary to the language of the statute.

31. We are unable to see any such conflict or contradiction. When a circular is issued for the purposes of supplementing the removal of ambiguity in the Rule or to achieve the purpose of the Rule more effectively, it can hardly be said that there is a conflict between the two. The matter shall certainly be on a different footing, where the Rule by a specific language or by necessary implication makes such exclusion or provides that a particular class of persons cannot be appointed as authority (inquiry officer). It may also be true in the case where the Rule itself makes it mandatory for the disciplinary authority to appoint a particular class of persons and no other as inquiry officers. While examining the provisions of vesting of discretion, it cannot be said that they should be interpreted in a manner which would take away the discretion contemplated under the Rule. Rather it would be appropriate to adopt an interpretation which would further the object of such rule. In the case of Virpal Singh Chauhan (supra), this Court was concerned with the circular/letters providing for reservation in favour of SC & ST and their operation on the subject of seniority as between reserved and general category candidates. Certain instructions had been issued and after perusing the facts of that case this Court took the view that, the Railway Board circulars which are provided specifically for such a situation and are not being violative of the constitutional provisions, should prevail and given effect to. In that case also it was not brought to the notice of the Court that the letter/circular was in any way inconsistent with the provisions of any law, as in the present case the respondents have failed to demonstrate that the circular issued is in conflict with or opposed to any specific rule enacted under proviso to Article 309 of the Constitution or any other constitutional protection. Once there is no conflict, then the Rule and the circular should be harmoniously read.

32. Another indication under the Rules which is suggested, is non-application of the Rule of strict construction to the provisions with regard to appointment of an Inquiry Officer and where the

expressions Appointing Authority, Disciplinary Authority and Appellate Authority have been duly explained and provided for, either under the Rules or in the schedule to these Rules. As already noticed, the Schedule specifies the powers of the respective authorities to take disciplinary action against the delinquent officer, either in certain terms or even by interpretation, it does not suggest which class of persons should or should not be appointed as inquiry officers. On the contrary, Rule 9(2) specifically empowers the Disciplinary Authority to inquire into the matter itself or appoint another authority to conduct the inquiry. In other words, the functions of the Inquiry Officer are that of a delegating nature and this delegation ex facie, is limited delegation. An Inquiry Officer is not even entitled to suggest the punishment unless the Rule so requires specifically, which is not the case here. It is a settled rule that the provisions of an Act/Rule should be examined in their entirety along with the scheme before a particular meaning can be given to an expression or sentence used in a particular language. Thus we must examine the Rules in their entirety along with the conditions of the Schedule and not merely look at Rule 9(2) in isolation.

33. Still another aspect of the case can be that, the expression "public servant" cannot be equated to the term "other authority". Both these expressions cannot be treated as inter-changeable or synonymous. They have different connotations and meaning in law. "Public servant" is a term which is well defined and explained in the field of law, while "authority" is a generic term and is used in different places with different meanings and purposes. 'Authority' thus is an expression of wide magnitude and is frequently used not only in legal jurisprudence but also in administrative and executive field. Therefore, it is to our mind not permissible to permit restricted meaning of this term.

34. It was also contended on behalf of the respondents that the competent authority exercising power under Rule 9(2) is vested with a choice whether to take action under these Rule or under the Act. Emphasis is laid on the language of Rule 9(2) while submitting that the expression "other authority" would have to be read *ejusdem generis* to the earlier part of Rule 9(2) and that they must take colour from the earlier part of the Rule. While reliance is placed upon the judgment of this Court in the case of Commissioner of Income Tax, Udaipur, Rajasthan v. Mcdowell and Company Limited: 2009 (10) SCC 755 to contend that the Rules and the provisions of the Act contemplate 'other authority' only as the persons in service. We are not impressed with either of these submissions. Firstly, the general rule stated in the case of Mcdowell and Company (supra) is a matter relating to fiscal laws, the interpretation of which is controlled by the rule of strict construction. We have already discussed at some length that it is not possible for this Court to apply the rule of strict construction to the provisions in question before us. Applicability of such doctrine to the rules of procedure under the service jurisprudence can hardly be justified.

35. The rule of *ejusdem generis* is applied where the words or language of which in a section is in continuation and where the general words are followed by specific words that relates to a specific class or category. This Court in the case of Mcdowel and Company Ltd. (supra) while discussing this doctrine at some length held as under:

The principle of statutory interpretation is well known and well settled that when particular words pertaining to a class, category or genus are followed by general words are construed as limited to things of the same kind as those specified. This rule is known as the rule of *ejusdem generis*. It applies when:

(1) the statute contains an enumeration of specific words;

(2) the subjects of enumeration constitute a class or category;

(3) that class or category is not exhausted by the enumeration;

(4) the general terms follow the enumeration; and

(5) there is no indication of a different legislative intent.

36. The maxim *ejusdem generis* is attracted where the words preceding the general word pertains to class genus and not a heterogeneous collection of items in the case of Housing Board, Haryana (supra).

37. The language of Rule 9(2), on its plain reading shows that the words are disjunctive and therefore, this principle of interpretation would be hardly applicable to the facts of the present case. It is also incorrect to suggest, much less to argue, that under Rule 9(2) a discreet choice is vested under the authority concerned. We have already indicated that the Act is applicable to a special class of persons while Rules are applicable to other class of persons including Grade - A to Grade - D. Once the provisions of the Act are attracted, a public inquiry has to be held in accordance with the provisions of the Act. The Rules and the Act, as self-contained codes within themselves, operate in a way without impinging upon the field of the other. There is hardly any discretion vested in the competent authority, it is only for the purposes of conducting an inquiry personally or through some other appointed authority that the discretion is vested. In the event of delegation by the competent authority, the delegatee authority has to function within the limit of the authority delegated to it. At the cost of repetition we may notice that neither in the Rules nor in the provisions of the Act which are independent in their application, there is any requirement or even suggestion that appointment of an authority or Board has to be essentially of a person in service, even a former employee could be appointed so.

38. It will be useful to apply the rule of contextual interpretation to the provisions of Rule 9. It would not be permissible to import any meaning or make additions to the plain and simple language of Rule 9(2) in relation to "other authority." The rule of contextual interpretation requires that the court should examine every word of statute in its context, while keeping in mind the preamble of the statute, other provisions thereof, pari material statutes, if any, and the mischief intended to be remedied. Context often provides a key to the meaning of the word and the sense it carries. It is also a well established and cardinal principle of construction that when the rules and regulations have

been framed dealing with different aspects of the service of the employees, the Courts would attempt to make a harmonious construction and try to save the provision, not strike it down rendering the provision ineffective. The Court would normally adopt an interpretation which is in line with the purpose of such regulations. The rule of contextual interpretation can be purposefully applied to the language of Rule 9(2), particularly to examine the merit in the contentions raised by respondent before us. The legislative background and the object of both the Rules and the Act is not indicative of any implied bar in appointment of former employees as inquiry officers.

39. These principles are well established and have been reiterated with approval by the courts, reference can usefully be made to the judgments of this Court in the cases of Gudur Kishan Rao v. Sutirtha Bhattachaarya: (1998) 4 SCC 189, Nirmal Chandra Bhattacharjee v. Union of India : 1991 (Supp (2) SCC 363, Central Bank of India v. State of Kerala : (2009) 4 SCC 94, Housing Board of Haryana v. Haryana Housing Board Employees Union : (1996) 1 SCC 95.

40. The circulars have been issued by the Department of Railways, from time to time, to recognize preparation of panels for appointing inquiry officers as per the terms and conditions, including the eligibility criterion stated in those circulars. We may notice here that, there is no challenge in any of the applications filed before the Tribunal to any of the circulars, despite the fact that they have been duly noticed in the impugned judgments. By passage of time and practice the competent authorities and even the delinquent officers in disciplinary cases have given effect to these circulars and they were treated to be good in law. It is only in the arguments addressed before this Court, where it is suggested that these circulars supersede or are in conflict with the Rules. This part of the contention we have already rejected.

41. It is not opposed to any canons of service jurisprudence that a practice cannot adopt the status of an instruction, provided it is in consonance with law and has been followed for a considerable time. This concept is not an absolute proposition of law but can be applied depending on the facts and circumstances of a given case. This Court in the case of Confederation of Ex-Service Man Associations and Ors. v. Union of India and Ors. (2006) 8 SCC 699 was concerned with providing of Medicare /Medical aid to ex-servicemen and the scheme framed by the Government to provide ex-defence personnel medical services provided they paid "one-time contribution", was held not to be arbitrary and based on the practice followed earlier. In such circumstances, this Court held as under:

In such cases, therefore, the Court may not insist an administrative authority to act judicially but may still insist it to act fairly. The doctrine is based on the principle that good administration demands observance of reasonableness and where it has adopted a particular practice for a long time even in the absence of a provision of law, it should adhere to such practice without depriving its citizens of the benefit enjoyed or privilege exercised.

42. A practice adopted for a considerable time, which is not violative of the Constitution or otherwise bad in law or against public policy can be termed good in law as well. It is a settled principle of law, that practice adopted and followed in the past and within the knowledge of the public at large, can legitimately be treated as good practice acceptable in law. What has been part of the general functioning of the authority concerned can safely be adopted as good practice, particularly, when such practices are clarificatory in nature and have been consistently implemented by the concerned authority, unless it is in conflict with the statutory provisions or principal document. A practice which is uniformly applied and is in the larger public interest may introduce an element of fairness. A good practice of the past can even provide good guidance for future. This accepted principle can safely be applied to a case where the need so arises, keeping in view the facts of that case. This view has been taken by different High Courts and one also finds glimpse of the same in a judgment of this Court in the case of Deputy Commissioner of Police and Ors. v. Mohd. Khaja Ali 2000 (2) SLR 49.

43. There can be hardly any doubt that the practice of appointing former employees had been implemented for quite some time in the Department. We are unable to see how this practice is opposed to any statutory provision or even public policy. To bar such a practice, there has to be a specific prohibition under the statutory provisions, then alone the argument raised on behalf of the respondents could have some merit.

44. We may also notice that in the issuance of the circulars by the Railways, larger public interest is served. The background stated by the appellants necessitating the issuance of these circulars, clearly stated that large number of cases of departmental inquiries are pending and have not attained finality, primarily for the non-availability of the inquiry officers. Even that consideration would tilt the balance, in achieving larger public purpose and interest, rather than to take an approach which would add to the misery of the Railway officials who are facing departmental inquiries. It is a known fact that in most of the inquiries the delinquent is placed either under suspension or faces other adverse consequences.

45. In the present case even the respondents before us have participated in the entire inquiry and received the order of punishment without any protest. They, in fact, have admitted to the established practice of appointment of former railway employees as inquiry officers. The cumulative result of this discussion is that, it is not possible for this Court to hold, in the facts and circumstances of the case, that the "other authority" has to be only a person in service.

Non-furnishing of advise of Central Vigilance Commission and its consequences

46. In its impugned judgment the Tribunal accepted the contention of the respondents that the CVC's advice/note should have been made available to the delinquent during the stage of inquiry. While referring to another judgment of the Tribunal itself, it concluded that the case was akin to the

referred judgment and the notes of the CVC should have been furnished and thus set aside the order of punishment. It will be useful to refer to the reason and conclusion recorded by the Tribunal in its order. There are only two paragraphs i.e., Paragraph Nos. 17 and 18 of the Tribunal's judgment which have been recorded in this regard:

17. We are of the opinion that this case is akin to the two cases mentioned above as far as the non supply of CVC's advise is concerned.

18. If the advise of the Central Vigilance Commission has been considered during the course of the disciplinary proceedings, the same should have been supplied to the delinquent official if asked for at appropriate time. In very special cases, such request may not be considered, but in such situations, the competent authority should have recorded the reasons for not supplying such documents.

47. The High Court has really not dealt with this issue in any further elaboration, except affirming the order of the Tribunal. The High Court mainly considered the arguments founded on the interpretation of Rule 9(2). The reasons recorded by the Tribunal are in no way sufficient to sustain that finding. Before setting aside the impugned orders on that ground, the Tribunal should have concluded in relation to certain facts. They be:

(a) Whether there were any CVC notes having a direct bearing on the inquiry in question,

(b) Whether such report was actually brought by the delinquent officer,

(c) Whether such notes were actually taken into consideration by the disciplinary authority while passing the impugned orders and finally,

(d) Whether the delinquent officer has suffered de facto prejudice as a result of non-furnishing of advise.

48. Unfortunately, the findings recorded by the Tribunal are entirely silent on the above material aspects, as is clear from Paragraph Nos. 17 and 18 of its judgment.

49. From the records before us, it appears that the circular issued by the Vigilance Department was

actually asked for by the delinquent officer in the application filed before the Tribunal and even in the reply filed before the High Court. It is nowhere stated what was the relevancy of this alleged CVC note, whether it had actually been taken into consideration and, whether it had caused prejudice to the delinquent officer. All these ingredients are not satisfied in the records before us. It is a settled rule of departmental proceedings that, it is for the delinquent officer to specifically raise such an issue and discharge the onus of prejudice. The concept of prejudice, we shall discuss shortly. But for the present, we are only discussing its factual aspect and the law relating thereto.

50. The. documents and the circulars issued by the Central Vigilance Commission, Government of India which have been placed on record as Annexure R-3 dated 28th September, 2000 relate to furnishing of information of the CVC advice and the purpose sought to be achieved as well as the need of the employee's representation in that regard. The record is entirely silent as to what were the comments of the CVC and whether they have been taken into consideration by the disciplinary authority or not.

51. Despite the factual aspect of the case, the learned Counsel appearing for the appellants has relied upon the judgment of this Court in the case of Sunil Kumar Banerjee v. State of West Bengal and Ors.[illegible] : 1980 (3) SCC 304, contending that it was not necessary and no prejudice had been caused to the respondent because of the alleged non-supply of the Vigilance note. On the contrary, the learned Counsel appearing for the respondents has relied upon the judgment of this Court in the case of State Bank of India and Ors. v. D.C. Aggarwal and Anr.: 1993 (1) SCC 13, to raise a counter plea that any document taken into consideration for imposing a punishment and if the CVC recommendations were prepared at the back of the officer, the order of punishment so passed would be liable to be set aside. The proposition of law stated in the above two judgments can hardly be disputed. What is really required to be seen by the Court is, whether the duty to furnish such a report arises out of a statutory rule or in consonance with the principles of natural justice and whether non-furnishing of such a report has caused any prejudice to the officer concerned.

52. From the aforenoticed facts it is clear that, there is nothing on record to show that the alleged CVC notes have actually been taken into consideration and that the same have affected the mind of the disciplinary authority while considering the defence of the delinquent officer and imposing punishment upon him. Unless such notes were actually considered and had some prejudicial effect to the interest of the delinquent officer, it will not be necessary for the Court to interfere in the departmental inquiry proceedings on that ground. In the case of Sunil Kumar Banerjee (supra), where the Vigilance Commissioner had been consulted, there was alleged non-supply of Vigilance Commissioner's report to the officer. A three Judge-Bench of this Court took the view that the findings of the disciplinary authority and its decision was not tainted and, therefore, would not be termed as illegal. The Court in Para 4 of the judgment held as under:

4. We do not also think that the disciplinary authority committed any serious or material irregularity in consulting the Vigilance Commissioner, even assuming that it was so done. The conclusion of the

disciplinary authority was not based on the advice tendered by the Vigilance Commissioner but was arrived at independently, on the basis of the charges, the relevant material placed before the Inquiry Officer in support of the charges, and the defence of the delinquent officer. In fact the final conclusions of the disciplinary authority on the several charges are so much at variance with the opinion of the Vigilance Commissioner that it is impossible to say that the disciplinary authority's mind was in any manner influenced by the advice tendered by the Vigilance Commissioner. We think that if the disciplinary authority arrived at its own conclusion on the material available to it, its findings and decision cannot be said to be tainted with any illegality merely because the disciplinary authority consulted the Vigilance Commissioner and obtained his views the very same material. One of the submissions of the appellant was that a copy of the report of the Vigilance Commissioner should have been made available to him when he was called upon to show cause why the punishment of reduction in rank should not be imposed upon him. We do not see any justification for the insistent request made by the appellant to the disciplinary authority that the report of the Vigilance Commissioner should be made available to him. In the preliminary findings of the disciplinary authority which were communicated to the appellant there was no reference to the view of the Vigilance Commissioner. The findings which were communicated to the appellant were those of the disciplinary authority and it was wholly unnecessary for the disciplinary authority to furnish the appellant with a copy of the report of the Vigilance Commissioner when the findings communicated to the appellant were those of the disciplinary authority and not of the Vigilance Commissioner. That the preliminary findings of the disciplinary authority happened to coincide with the views of the Vigilance Commission is neither here nor there.

53. No rule has been brought to our notice where it is a mandatory requirement for the disciplinary authority to consult the vigilance officer and take the said report into consideration before passing any order. If that was the position, the matter would have been different.

54. In the present case, firstly, no such rule has been brought to our notice and secondly, there is nothing on record to show that the alleged notes of the CVC were actually taken into consideration and the same effected or tainted the findings or mind of the authority while passing the orders of punishment. Thus, in our view, the findings of the Tribunal cannot be sustained in law. Unless the Rules so require, advice of the CVC is not binding. The advice tendered by the CVC, is to enable the disciplinary authority to proceed in accordance with law. In absence of any specific rule, that seeking advice and implementing thereof is mandatory, it will not be just and proper to presume that there is prejudice to the concerned officer. Even in the cases where the action is taken without consulting the Vigilance Commission, it necessarily will not vitiate the order of removal passed after inquiry by the departmental authority. Reference in this regard can also be made to the judgment of this Court in the cases of State of A.P. and Anr. v. Dr. Rahimuddin Kamal : 1997 (3) SCC 505 and Deokinandan Prasad v. State of Bihar: 1971 (2) SCC 330. In the case of Dr. Rahimuddin Kamal (supra), this Court was concerned with Rule 4(2) of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1961, where the expression 'shall' had been used in the Rules, making it obligatory upon the part of the Government, which required it to examine the records and after consulting the Head of the Department, pass an appropriate order. But before taking a decision, the Government shall consult the Vigilance Commission. In that case the order of removal from service was passed in accordance with law and after conducting appropriate inquiry but without consulting the Commission. The Court expressed the view that the expression

'shall' had to be construed as 'may' and non consultation with the Commission would not render the order illegal or ineffective. In view of the larger Bench judgment and particularly, with reference to the facts of the present case, we are unable to accept the contention of the respondents before us.

55. In its letter dated 28th December, 2001, the respondent claimed certain documents during the course of departmental inquiry. In Annexure-1 to this letter, at Sr. No. 1, he had prayed for the circular dated 28th September, 2000 from CVC to CVO's of all the Ministries. At Sr. No. 2, he had asked for CVC's first stage advice and Railway's note sent to CVC for arriving at the first stage advice. Thus, both these documents were of a very general nature and in no way suggested that the concerned disciplinary authorities had taken into consideration any particular notes advising action against the said officer. Some element of prejudice is essential before an order of imposing penalty can be interfered with by the Court, particularly when the inquiry otherwise had been conducted in accordance with law and no grievance was raised by the respondent on that behalf except the points raised for consideration of the Tribunal. Thus, we are of the view that no statutory rule or regulation has been violated by the appellant nor any CVC notes were actually taken into consideration for imposing the punishment upon the respondent. Thus, the second argument of the respondent also merits rejection.

Whether the de facto prejudice was a condition precedent for grant of relief and if so, whether respondents had discharged their onus.

56. In the submission of the appellants, there is no violation of any statutory rule or provision of the Act. Departmental inquiry has been conducted in accordance with the Rules and in consonance with the principles of natural justice. The respondents have not suffered any prejudice, much less prejudice de facto, either on account of retired employees of the railway department being appointed as inquiry officers in terms of the Rule 9(2) of the Rules or in the case of Alok Kumar, because of alleged non furnishing of CVC report. The contention is that the prejudice is a sine qua non for vitiation of any disciplinary order. However, according to the respondents, they have suffered prejudice ipso facto on both these accounts as there are violation of statutory rules as well as the principles of natural justice. In such cases, by virtue of operation of law, prejudice should be presumed and judgment of the Tribunal and the High Court call for no interference.

57. Earlier, in some of the cases, this Court had taken the view that breach of principle of natural justice was in itself a prejudice and no other 'de facto' prejudice needs to be proved. In regard to statutory rules, the prominent view was that the violation of mandatory statutory rules would tantamount to prejudice but where the Rule is merely dictatory the element of de facto prejudice needs to be pleaded and shown. With the development of law, rigidity in these Rules is somewhat relaxed. The instance of de facto prejudice has been accepted as an essential feature where there is violation of non-mandatory rules or violation of natural justice as it is understood in its common parlance. Taking an instance, in a departmental inquiry where the Department relies upon a large number of documents majority of which are furnished and an opportunity is granted to the

delinquent officer to defend himself except that some copies of formal documents had not been furnished to the delinquent. In that event the onus is upon the employee to show that non-furnishing of these formal documents have resulted in de facto prejudice and he has been put to a disadvantage as a result thereof. Even in the present cases, Rule 9(2) empowers the disciplinary authority to conduct the inquiry itself or appoint other authority to do so. We have already held that the language of Rule 9(2) does not debar specifically or even by necessary implication appointment of a former employee of the Railways as inquiry officer. Even if, for the sake of argument, it is assumed otherwise, all the respondents have participated in the departmental inquiries without protest and it is only after the orders of the competent authority have been passed that they have raised this objection before the Courts. In the light of the peculiar facts and circumstances of the present case, it is obligatory upon the respondents to show that they have suffered some serious prejudice because of appointment of retired Railway officers as inquiry officers. We have no hesitation in stating that the respondents have no way satisfied this test of law. Thus, if their argument was to be accepted on the interpretation of Rule 9(2), which we have specifically objected, even then the inquiries conducted and the order passed thereupon would not be vitiated for this reason.

58. Doctrine of de facto prejudice has been applied both in English as well as in Indian Law. To frustrate the departmental inquiries on a hyper technical approach have not found favour with the Courts in the recent times. In the case of S.L. Kapoor v. Jagmohan: 1980 (4) SCC 379, a three Judge Bench of this Court while following the principle in Ridge v. Baldwin stated that if upon admitted or indisputable facts only one conclusion was possible, then in such a case that principle of natural justice was in its self prejudice would not apply. Thus, every case would have to be examined on its own merits and keeping in view the statutory rules applying to such departmental proceedings. The Court in S.L. Kapoor (supra) held as under:

18. In Ridge v. Baldwin 1964 AC 40, 68 : 1963 2 All ER 66, 73 One of the arguments was that even if the appellant have been heard by the Watch Committee nothing that he could have said could have made any difference. The House of Lords observed at (p. 68):

> It may be convenient at this point to deal with an argument that, even if as a general rule a watch committee must hear a constable in its own defence before dismissing him this case was so clear that nothing that the appellant could have said could have made any difference. It is at least very doubtful whether that could be accepted as an excuse. But, even if it could, the watch committee would, in my view, fail on the facts. It may well be that no reasonably body of men could have reinstated the appellant. But at between the other two courses open to the watch committee the case is not so clear. Certainly, on the facts, as we know them the watch committee could reasonably have decided to forfeit the appellant's pension rights, but I could not hold that they would have acted wrongly or wholly unreasonably if they have in the exercise of their discretion decided to take a more lenient course.

59. Expanding this principle further, this Court in the case of K.L. Tripathi v. State Bank of India :

(1984) 1 SCC 43 held as under:

It is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.

60. In the case of ECIL v. B. Karunakar : (1993) 4 SCC 727, this Court noticed the existing law and said that 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 neither 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 denial of report to him, has to be considered on the facts and circumstances of each case. The Court has clarified even the stage to which the departmental proceedings ought to be reverted in the event the order of punishment is set aside for these reasons. It will be useful to refer to the judgment of this Court in the case of Haryana Financial Corporation v. Kailash Chandra Ahuja : 2008 (9) SCC 31 at page 38 where the Court held as under:

From the ratio laid down in B. Karunakar it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer's report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside.

61. The well established canons controlling the field of bias in service jurisprudence can reasonably extended to the element of prejudice as well in such matters. Prejudice de facto should not be based on a mere apprehension or even on a reasonable suspicion. It is important that the element of prejudice should exist as a matter of fact or there should be such definite inference of likelihood of prejudice flowing from such default, which relates statutory violations. It will not be permissible to set aside the departmental inquiries in any of these classes merely on the basis of apprehended prejudice.

62. In the light of the above enunciated rudiments of law, let us revert to the two points argued before us. Firstly, the contention of the respondents that Rule 9(2) necessarily debars appointment of

former railway employees as inquiry officers (other authority) is without any merit. Secondly, they have suffered no prejudice at least none has brought to our notice from the record before us or even during arguments. The contention was that this being violation of the statutory rule there shall be prejudice ipso facto. We may also notice that the circulars issued by the Department of Railways cannot be ignored in their entirety. They have only furthered the cause contemplated under Rule 9(2) of the Rules and in terms of judgment of Virpal Singh Chauhan (supra) the Court had taken the view that circulars should be read harmoniously and in given circumstances, may even prevail over the executive directions or Rules.

63. We do not find any merit even in the contention that if departmental inquiry has been conducted under the Rules of 1968 in accordance with law, principles of natural justice and no de facto prejudice is pleaded or shown by cogent documentation, the court would be reluctant to set aside the order of punishment on this ground alone. Secondly, the argument in relation to non-furnishing of CVC notes is again without any foundation as it has not even been averred in the application before the Tribunal, that these alleged notes were part of the record and that they were actually considered by the Disciplinary Authority and such consideration had influenced the mind of the competent authority while passing the impugned orders. Absence of pleading of these essential features read with the fact that no such documentation has been placed on record except demanding circulars of the CVC, we are of the considered view that even on this account no prejudice, as a matter of fact, has been caused to the delinquent officers (in the case of Shri Alok Kumar). We are not able to accept the contention addressed on behalf of the respondents that it is not necessary at all to show de facto prejudice in the facts of the present cases. We may notice that the respondents relied upon the judgment of this Court in the case of ECIL (supra), that imposition of punishment by the Disciplinary Authority without furnishing the material to the respondents was liable to be quashed, as it introduced unfairness and violated sense of right and liberty of the delinquent in that case. No doubt in some judgments the Court has taken this view but that is primarily on the peculiar facts in those cases where prejudice was caused to the delinquent. Otherwise right from the case of S.L. Kapoor (supra), a three Judge Bench of this Court and even the most recent judgment as referred by us in Kailash Chandra Ahuja's case (supra) has taken the view that de facto prejudice is one of the essential ingredients to be shown by the delinquent officer before an order of punishment can be set aside, of course, depending upon the facts and circumstances of a given case. *Judicia posteriora sunt in lege fortiori*. In the later judgment the view of this Court on this principle has been consistent and we see no reason to take any different view. Prejudice normally would be a matter of fact and a fact must be pleaded and shown by cogent documentation to be true. Once this basic feature lacks, the appellant may not be able to persuade the Court to interfere with the departmental inquiry or set aside the orders of punishment.

64. The judgment of the Tribunal and the High Court, in our view, are contrary to the settled principles of law and thus cannot be sustained. We, therefore, set aside the judgment of the Tribunal as well as the High Court in all these cases. The appeals are allowed. However, in the facts and circumstances of the case we leave the parties to bear their own costs.