



2026:AHC-LKO:19971-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL DEFECTIVE No. - 11 of 2024

Aryavart Bank, Head Office, Vijay Khand Gomti
Nagar Lko. through Chairman

.....Appellant(s)

Versus

O.P Trivedi (Om Prakash Trivedi) and others

.....Respondent(s)

Counsel for Appellant(s)	: Asit Kumar Chaturvedi (Sr.Adv.) with Dharmendra Kumar Dixit
Counsel for Respondent(s)	: Ramesh Kumar Srivastava

Reserved on: 17.02.2026

Delivered on: 19.03.2026

Chief Justice's Court

**HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE JASPREET SINGH, J.**

(Per : Jaspreet Singh, J.)

IA/01/2024

1. The appellant bank has preferred the instant intra-court appeal challenging the judgment and order dated 07.07.2023 passed in Writ A no.8256 of 1992 whereby the writ petition preferred by the respondent was allowed and the orders dated 08.09.1992 dismissing the departmental appeal along with the punishment order dated 11.02.1991 were set aside with a direction to the appellant bank to reinstate the respondent and granted liberty to the appellant to proceed with the departmental inquiry if the appellant bank so desired after providing a copy of the inquiry report and an opportunity to the respondent to submit his reply.

2. The said appeal is reported to be barred by limitation by 155 days and it is accompanied by an application seeking condonation of delay.

3. The Court has considered the ground shown in the affidavit seeking condonation of delay and finds that the cause indicated therein is sufficient to condone the delay of 155 days. Accordingly, the application is allowed and the appeal shall be treated to have been filed in time. Office is directed to allot a regular number to this appeal.

On merits:

4. The respondent was initially appointed with the Bhagirath Gramin Bank in the year, 1979 for a limited period. Later, the respondent came to be regularly appointed on the post of Junior Clerk on 10.02.1983 and was on probation for a period of one year.

5. During the course of its functioning the appellant bank noticed certain financial discrepancies and embezzlement, wherein the Branch Manager of the bank, Sri D.S. Mishra was allegedly involved alongwith the respondent. The bank issued a charge sheet to the respondent on 02.01.1990 containing two charges relating to embezzlement and conspiracy for embezzlement. It was alleged that the respondent defalcated the money of the bank. It was specifically stated that certain account holders namely Smt. Dhupkali, Ram Sahai Dixit, Shiv Shankar Mishra, Smt. Ambika, Sharvshri Machhley, Tulsiram, Ameerzada and Rameshwar, their accounts were manipulated and the account holders who had entrusted money to the respondent to be deposited in their accounts against which they received receipts and necessary entries were also made in their pass books, but it was not entered in the ledger of the bank and the sum was misappropriated.

6. The respondent participated in the inquiry and even submitted a brief statement, (running page 262 of the paper book) however, he did not lead any evidence nor he cross examined the bank witnesses. The inquiry officer submitted his inquiry report dated 10.02.1990, however, neither a copy of the said inquiry report was given to the respondent nor the respondent sought a copy from the bank.

7. In the aforesaid backdrop, the disciplinary authority passed the punishment order dated 11.02.1991, whereby it found the charges levelled against the respondent as duly proved and the respondent was dismissed from service.

8. Significantly, the copy of the inquiry report was given to the respondent along with the punishment order. The respondent being aggrieved preferred a departmental appeal on 25.03.1991. The appeal did not find favour with the Appellate Authority and it was dismissed on

31.08.1992. The respondent further assailed the punishment order and the order dismissing the appeal by means of Writ A no.8256 of 1992.

9. Learned Single Judge relying upon the decisions of the Apex Court held that furnishing of the inquiry report to an employee is an integral part of a valid inquiry and its absence amounts to depriving the employee of a reasonable opportunity of hearing.

10. Learned Single Judge found that admittedly the inquiry report was not provided to the respondent before passing of the punishment order nor any show cause notice was given, hence, the inquiry stood vitiated. In such circumstances, the punishment order as well as the order dismissing the departmental appeal were held to be null and void as they violated the principles of natural justice. Consequently, the impugned orders were set aside after allowing the writ petition with a further direction to reinstate the respondent in service forthwith. Liberty was given to the bank to conduct the departmental inquiry afresh if they so desired.

11. In the aforesaid factual background, the appellant bank has assailed the said judgment and order dated 07.07.2023 of the writ court by means of the instant intra court appeal.

12. The Court was informed that the appellant-bank was initially known as Bhagirath Gramin Bank which later merged with Aryavart Bank and later it merged with Uttar Pradesh Gramin Bank. In view thereof, the Uttar Pradesh Gramin Bank had moved an application seeking its impleadment in the intra court appeal which was allowed vide order dated 26.11.2025.

13. Sri Asit Kumar Chaturvedi learned Senior counsel assisted by Sri Dharmendra Dixit vehemently urged that the learned Single Judge has relied upon the decisions wherein it was held that the absence of providing an inquiry report to the employee, amounts to violation of principles of natural justice and on the aforesaid premise the punishment order as well as the order dismissing the departmental appeal was set aside. It was submitted that earlier in point of time, there were certain conflicting decisions on the point as to whether the employee is to be provided with an inquiry report and if so, at what stage. It was further

urged that this position was cleared in an authoritative pronouncement of the Apex Court in **Union of India and Ors vs Mohd Ramzan Khan; (1991) 1 SCC 588** which was delivered on 20.11.1990, while the punishment order in the instant case was passed on 11.02.1991.

14. It was further urged that later, certain questions relating to furnishing of the inquiry report to the delinquent employee whether was mandatory despite the statutory rules laying down the procedure for holding disciplinary inquiry being silent on the subject or were against it, alongwith certain ancillary issues including the question relating to the impact of the decision of the Apex Court in **Mohd. Ramzan Khan** (supra) were considered by a Constitution Bench of the Apex Court in **Managing Director ECIL, Hyderabad and Ors v. B. Karunakar and Ors; (1993) 4 SCC 727**.

15. Learned Senior Counsel for the appellant submitted that the Constitution Bench of the Apex Court in **B. Karunakar** (supra) answered the questions referred to it by holding that if the inquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the inquiry officer's report before the disciplinary authority arrives at its conclusion with regard to the guilt or innocence of the employee pursuant to the charges levelled against him. It was also held that this right is a part of employee's right to defend himself against the charges levelled and a denial of the inquiry officer's report, before the disciplinary authority takes a decision on the charges, amounts to denial of reasonable opportunity to the employee to prove his innocence and is a breach of principles of natural justice.

16. It was further submitted that the Apex Court in **B. Karunakar** (supra) further held that whether the employee asks for the inquiry report or not, the same had to be furnished to him. It was also clarified that the case of **Mohd. Ramzan Khan** (supra) would apply to all employees in the establishment whether they were Government, non Government, public or private sector. It also clearly held that whatever be the nature of punishment but whenever the rules require an inquiry to be held for inflicting a punishment then, in all such cases, the 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.

17. Sri Chaturvedi, however, vehemently submitted that the Constitution Bench in **B. Karunakar** (supra) further held that whenever an employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to an employee then in such circumstances, merely directing the reinstatement of the employee with backwages should not be done in a mechanical manner. It is required to be seen whether in the facts of the case, any prejudice has been caused to an employee or not on account of non furnishing the copy of the inquiry report. In a case, whereof, even after furnishing of the report, no different conclusion could have been arrived then in such cases, it may not be necessary to set aside the punishment order and reinstate the employee.

18. Sri Chaturvedi further submitted that this aspect of the matter whether the employee had suffered any prejudice or not was not considered by the learned Single Judge and in a mechanical exercise, the punishment order and the order dismissing the departmental appeal has been set aside. It was also urged that the decisions which have been relied upon by the learned Single Judge could easily be distinguished on facts as none of those decisions, considered the issue of 'prejudice test' as evolved by the Apex Court in **B. Karunakar** (supra).

19. It was also submitted that the learned Single Judge failed to consider that the respondent had already attained the age of superannuation and yet it directed the respondent to be reinstated forthwith. It was urged that the aforesaid direction was unachievable and it was reflective of the grant of remedy, by the learned Single Judge, without considering the factual aspect. Hence, the decision rendered by the learned Single Judge cannot be sustained in light of the Constitution Bench decision of the Apex Court in **B. Karunakar** (supra).

20. Sri Chaturvedi, lastly submitted that since the Bhagirath Gramin Bank had merged with Aryavart bank and further it was merged with Uttar Pradesh Gramin Bank, in such circumstances, the relief as granted cannot be implemented, moreover, there is no manner in which the departmental proceedings can be re-initiated against the respondent from the stage of

providing a copy of the inquiry report. In such a situation, there was all the more reason to at least consider whether the 'prejudice test' was applicable to the facts of the instant case. Hence, for all the aforesaid reasons the instant appeal deserves to be allowed after setting aside the judgment and order dated 07.07.2023 passed by the learned Single Judge.

21. Sri Ramesh Kumar Srivastava learned counsel appearing for the respondent defended the impugned judgment of the learned Single Judge on the ground that even the Apex Court in **B.Karunakar** (supra) had categorically held that irrespective whether an employee asks for a copy of the inquiry report or not, and irrespective of the service Rules/Regulations which may prohibit the giving of the inquiry report but providing the copy of the inquiry report was held to be a mandatory condition and in such circumstances, where admittedly the inquiry report was not provided to the respondent prior to passing of the punishment order hence, it was a clear case of violation of principles of natural justice and the inquiry conducted in the year, 1992 stood vitiated and this ground alone was sufficient to set aside such a tainted inquiry, which was rightly done by the learned Single Judge and the said judgment does not suffer from any manifest error of law.

22. Sri Srivastava, further urged that the rules governing the employee/respondent does not permit continuation of departmental inquiry after the age of superannuation. In the instant case, even though liberty may have been granted by the learned Single Judge to re-initiate the enquiry but the fact remains that no such inquiry could be re-initiated against the respondent. In this view of the matter, once the punishment order and the order dismissing the departmental appeal were set aside for want and adherence of principles of natural justice, the necessary consequence would be that the petitioner would be entitled to all the benefits treating him to be in service with all consequential benefits.

23. Sri Srivastava further sought to refute the submission advanced by Sri Chaturvedi for the appellants regarding the 'prejudice test' as referred in the decision of the Apex Court in **B. Karunakar** (supra) with the aid of the decision of the Apex Court in **State of U.P. through Principal Secretary, Department of Panchayati Raj (Lucknow) vs Ram**

Prakash Singh: AIR Online 2025 SC 360 and urged that the prejudice test was of no worthwhile applicability as providing a copy of the inquiry report has been held to be mandatory.

24. It was urged that in the instant case, it was not disputed that there was a clear failure to provide the inquiry report hence, the plea of prejudice does not come to the aid of the appellant and this is exactly what the writ court has done and it cannot be said that the judgment passed by the learned Single Judge suffers from any palpable error for this Court to interfere in its intra-court appellate jurisdiction, hence, the intra court Appeal deserves to be dismissed.

25. The Court has heard the submissions of considered learned counsel for the parties and also perused the material on record.

26. Apparently, it is an undisputed fact that the respondent had been working with the erstwhile Bhagirath Gramin Bank since 28.12.1979 with intermittent breaks and later, he was regularly appointed as Junior Clerk on 10.02.1983. It is also an undisputed fact that a charge sheet was issued to the respondent while he was working at the Nerikala Branch and he was put under suspension. He was furnished with a charge sheet relating to charges of financial embezzlement levelled against him.

27. It is also an undisputed fact that the respondent submitted a brief report (running page 262 of the paper-book) to the inquiry officer and during course of inquiry, the respondent participated but did not cross examine any witnesses of the bank who were examined to prove the case against the respondent.

28. It is also not disputed that in the brief report submitted by the respondent, he clearly stated that the respondent had made entries in his own handwriting in the ledger and books of account maintained by the bank on dates when the respondent was allegedly on leave and he attempted to suggest that he performed the necessary work on the asking of the Branch Manager, Sri Mishra.

29. It was also tried to be projected by the respondent that the allegations regarding defalcation of funds from the account of the depositors related

to the dates when the respondent was not present, coupled with the fact that the said incident referred to a period when the respondent was not even regularly appointed as a Junior Clerk, thus, the Regulations of the Bank instituting an inquiry was bad.

30. It is also an undisputed fact that upon conclusion of the inquiry, the inquiry report was submitted before the disciplinary authority who did not provide a copy of the same to the respondent nor called for his response and but passed the order of punishment on 11.02.1991, dismissing the respondent from service.

31. It is also an undisputed fact that the respondent was provided with a copy of the inquiry report along with the punishment order and having received the same, the respondent preferred a departmental appeal which came to be dismissed on 31.08.1992.

32. In the backdrop of the aforesaid undisputed facts and after considering the submissions of learned counsel for the respective parties, the issue that requires consideration of this Court is, as to whether in the given factual background the punishment order could be set aside merely for not providing a copy of the inquiry report without considering the prejudice test as evolved by the Constitution Bench in **B. Karunakar** (supra).

33. In order to answer the aforesaid issue, it will be appropriate to notice the questions referred to the Apex Court in **B. Karunakar** (supra) and how they were answered as it would have a profound bearing on the outcome of this appeal.

34. In **B. Karunakar** (supra), the questions referred and the answer thereto are being reproduced hereinafter for ease of reference:

“2. The basic question of law which arises in these matters is whether the report of the enquiry 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 enquiry 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 case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] 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 Mohd. Ramzan Khan case has made the law laid down there prospective in operation, i.e., applicable to the orders of punishment passed after November 20, 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 November 20, 1990?"

35. The aforesaid questions were answered as under:

"29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry 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 enquiry 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.

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

[i] Since the denial of the report of the enquiry 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 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.”

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 enquiry officer is not the disciplinary authority the delinquent employee will have the right to receive the enquiry 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 enquiry 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 case 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 enquiry 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 enquiry 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 an "unnatural expansion of natural justice" which in itself is antithetical to justice.

31. 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.

33. Questions (vi) and (vii) may be considered together. As has been discussed earlier, although the furnishing of the enquiry officer's report to the delinquent employee is a part of the reasonable opportunity available to him to defend himself

against the charges, before the Forty-second 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 Forty-second 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 case, (1988) 2 SCC 196, by the two learned Judges of this Court who referred the question to the larger Bench. It has also been pointed out that in K.C. Asthana case [(1988) 3 SCC 600] no such question was either raised or decided. It was for the first time in Mohd. Ramzan Khan case [(1991) 1 SCC 588] that the question squarely fell for decision before this Court. Hence till November 20, 1990, i.e., the day on which Mohd. Ramzan Khan case 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 case 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 November 20, 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 enquiry 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.

34. However, it cannot be gainsaid that while Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] 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.

43. However, it has to be noticed that although it is in Mohd. Ramzan Khan case 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 July 18, 1985 in Union of India v. N.N. Prajapati [(1985) 2 GLR 1406] and a Full Bench of the Central Administrative Tribunal in its decision rendered on November 6, 1987 in Premnath K. Sharma v. Union of India [(1988) 6 ATC 904] 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 case 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 N.N. Prajapati case and Premnath K. Sharma case 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 case 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 case 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 August 5, 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 case 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 case and the view taken by this Court in the earlier cases and the reliance placed on K.C. Asthana case 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 Gujarat High Court in N.N. Prajapati case and of the Central Administrative Tribunal in Premnath K. Sharma case and of the other courts and tribunals, the law was in an unsettled condition till at least November 20, 1990 on which day the Mohd. Ramzan Khan 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 November 20, 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 enquiry report to the delinquent employee. The proceedings pending in courts/tribunals in respect of orders of punishment passed prior to November 20, 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 case. 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. Vashisht case [1993 Supp (1) SCC 431].”

36. Having noticed the aforesaid dictum, wherein the Apex Court lucidly laid down that in cases where an employee is dismissed and the inquiry is set aside for non furnishing of the enquiry report as done in the instant case then the 'prejudice test' has to be applied before reinstatement with backwages can be ordered.

37. Now, whether mere non providing of the inquiry report prior to passing of the punishment order caused any prejudice to the respondent can be ascertained in light of the undisputed facts, noticed hereinabove.

38. The facts of the instant case reveals that the respondent was served with the charge sheet on 02.01.1990 relating to the embezzlement while the respondent was working as Cashier between 10.4.1981 to 21.12.1982. The record would further indicate that the respondent had never questioned the fact that the entries made in the books of account maintained by the bank were not in his handwriting. The account holders and other witnesses who were examined by the bank clearly gave a statement that they had handed over the money to the respondent who had issued a proper receipt and made corresponding entries in their pass books

but the said amount was not deposited with the bank.

39. The record further indicates that in the inquiry, full opportunity was granted to the respondent who had furnished a brief report and despite being provided with an opportunity to examine the departmental witnesses, he chose not to cross examine.

40. Moreover, from the memo of departmental appeal preferred by the respondent, it would reveal that primarily, two grounds were raised by the respondent before the appellate authority **(A)** not permitting the summoning of certain attendance registers to prove that on the dates when the alleged embezzlement is said to have taken place, the respondent was not on duty **(B)** before passing of the punishment order, the disciplinary authority did not provide a copy of the inquiry report.

41. As far as the ground **(A)** regarding non summoning the attendance register is concerned that in itself may not have any grave impact to ascertain the prejudice caused to the respondent for the reason that it was never disputed by the respondent that he had not made the entries in his own handwriting in the books of account maintained by the bank. This assumes significance for the reason that in his brief report, the respondent had taken a plea that he did this only on the asking of the Branch Manager, Sri Mishra. However, he did not give any explanation as to the fact why the respondent did what he was asked to do by the Manager which was clearly a wrongful act of malfeasance. Thus, even if the said attendance registers were not summoned it would not have much impact as the entries were admittedly made by the respondent in his own handwriting in the books of account maintained by the bank.

42. Moreover, the respondent made entries in the pass book of the account holders and after receiving the money issued receipts but did not account for the said money. As far as the act of defalcation is concerned there was no hard denial nor any cogent evidence was led by the respondent nor did the respondent cross examine any bank witness nor the armour of defence of the bank could be dented by the respondent.

43. Now, considering ground **(B)** at the outset, it may be noticed that the respondent actually did not take any specific ground amplifying any

prejudice caused to him. His ground was based merely on the premise that he was not given a copy of the enquiry report before passing of the punishment order, as a procedural defect *per se*. However, this ground nor the averments in the appeal indicate as to how he was prejudiced especially when he had been given the copy of the enquiry report with the punishment order and thus, he had all the material available with him, while he had filed his appeal.

44. Significantly, the respondent did not ascribe any *mala fides* against the employer bank for not providing a copy of the enquiry report before passing the punishment order.

45. This assumes significance for the reason that prior to the decision of the Apex Court in **Mohd. Ramzan Khan** (supra) non providing an enquiry report was not treated as a fatal defect in a departmental enquiry. This decision of the Apex Court was rendered on 20.11.1990 while it was reported in law journals much later in the year 1991 and was reported in two widely circulated journals with the citation **AIR 1991 SC 471 : (1991) 1 SCC 588**.

46. The Disciplinary Authority had passed the punishment order on 11.02.1991 and definitely it cannot be said that the Disciplinary Authority was aware of the decision in **Mohd. Ramzan Khan** (supra) and yet the enquiry report was not given to the respondent. Moreover, there is no such averment of the respondent either in appeal or even while filing the writ petition.

47. In this background, it will now be apt to notice the decision of the Apex Court in **Ram Prakash Singh** (supra), where the Apex Court has considered the prejudice test as under:-

“51. Thus said, what is the way for reconciling the law laid down in the precedents discussed so far? Attempting to clear the confusion arising out of different understandings of the ratio decidendi of the decision in B. Karunakar (supra), we proceed to focus on the proper course for the tribunal/court to adopt when the issue reaches it for adjudication. In our opinion, whenever a challenge is mounted to an order of punishment on, inter alia, the ground that the report of enquiry has not been furnished, the tribunal/court should require the employer (Government, public

or private) to justify non-furnishing of such report. This is a course, which again experience has shown, is seldom followed. If no valid explanation is proffered and the tribunal/court suspects unfair motives (report has not been furnished as part of a strategic ploy or to advance an unholy cause or prompted by extraneous reasons) or carelessness, without much ado and without insisting for 'prejudice' to be demonstrated, the order of punishment should be set aside and the proceedings directed to resume from the stage of offering opportunity to the delinquent employee to respond to the enquiry report. Irrespective of 'prejudice' being demonstrated, no employer or for that matter anyone should be permitted to steal a march and gain any benefit by violating the law. In case the tribunal/court is satisfied that real effort was made by the employer but such effort remained abortive because the report could not be furnished to the employee for reason(s) beyond its control, or some other justification is placed on record, which is acceptable to the tribunal/court, the test of 'prejudice' is open to be applied but only after ensuring service of a copy of the enquiry report on the employee. In a case where the employee either expressly or by his conduct appears to have waived the requirement of having access to the report, it would be open to the tribunal/court to deal with the situation as per its discretion. However, the simplicitor application of the 'prejudice' test absent a query to the employer, as indicated above, in our opinion, would be in the teeth of the law laid down in B. Karunakar (supra).

52. We now sum up our understanding of the law declared in B. Karunakar (supra) and answer the four questions delineated in paragraph 26 (supra) compositely. Reading the declaration of law by the Constitution Bench regarding the imperative need to furnish the report of enquiry to the delinquent employee even when : (i) the relevant statutory rules are silent or against it, (ii) the punishment to be imposed is other than the punishment referred to in clause (2) of Article 311 of the Constitution, (iii) the employee does not ask for it, and (iv) the burden is cast on a private employer too, and the law requiring furnishing of the report being made to operate prospectively from the date the decision in Mohd. Ramzan Khan (supra) was rendered, thereby reinforcing the legal position that prevailed after the GoI Act was enacted but became unsettled later, there can be no two opinions that on and from 20th November, 1990 [i.e., when Mohd. Ramzan Khan (supra) was decided] it is the mandatory requirement of law that the report of enquiry has to be furnished to the delinquent employee. Taking a cue from S.K. Sharma (supra), we are inclined to the view that the requirement of

furnishing the report of enquiry, though procedural, is of a mandatory character and the bogey argument of the employer to apply the test of 'prejudice' when the report of enquiry is not furnished cannot be of any avail to thwart the challenge of the delinquent employee. Such test could call for application, if from the facts and circumstances, it can be established that the delinquent employee waived his right to have the report furnished. Should satisfactory explanation be not proffered by the employer for its failure/omission/neglect to furnish the enquiry report, that ought to be sufficient for invalidating the proceedings and directing resumption from the stage of furnishing the report. No proof of prejudice for breach of a statutory rule or the principles of natural justice and fair play need be proved, unless there is a waiver, either express or by conduct, to of the right to receive the report. And, it is only in specific and not in all circumstances that proof of 'prejudice' ought to be insisted upon.

53. While concluding our discussion, we repeat what has been observed earlier. This discourse is intended, not to doubt existing points of view, but to contribute to the understanding of the law. To prevent misunderstandings and to provide clarity, we wish to make it clear that it would be open for all courts, bound by Article 141 of the Constitution, to decide matters coming up before them on the relevant topic in accordance with what they perceive is the law declared in B. Karunakar (supra).

54. Turning to the facts of the present appeal, we have noted how the appellant has conducted itself in proceeding against the respondent. Res ipsa loquitur. We have noted earlier that the report of enquiry dated 15th September, 2014 has never seen the light of the day."

48. Upon perusal of the record of the instant case, it clearly reflects that the learned Single Judge allowed the writ petition merely finding that the enquiry report was not given to the respondent. It did not examine whether the respondent suffered any prejudice nor considered the fact that whether there was any strategic ploy on the part of the employer in not providing the enquiry report.

49. The learned counsel for the respondent even before this Court could not visibly demonstrate any prejudice nor could point out any material from which it could remotely be inferred that there was any *mala fide* of the employer. On the other hand, learned Senior Counsel for the appellant

had submitted that non furnishing of the enquiry report was not *mala fide* rather it was as per the prevalent practice at the given time. The decision of **Mohd. Ramzan Khan** (supra) had been delivered on 20.11.1990 and by the time the punishment order dated 11.02.1991 was passed, the said decision of **Mohd. Ramzan Khan** (supra) had not been widely circulated and was not known to the Disciplinary Authority or the bank so as to taint the action of the employer bank as *mala fide* in not providing a copy of the enquiry report. Moreover, the employer bank did not wait for the respondent to ask for a copy of the enquiry report rather even without asking, it was given to him along with the punishment order as per the then prevalent practice (pre Mohd Ramzan Khan regime).

50. In the above noted circumstances, where facts and events could not be disputed rather technical and emotional plea was taken by the respondent to divert the blame towards the Branch Manager, hence, non providing of the enquiry report in itself at the stage of calling for a response before passing the impugned punishment order, but made available with the punishment order, in the humble estimation of this Court did not cause any real prejudice to the respondent.

51. In light of the aforesaid discussions, the decision of **Ram Prakash Singh** (supra) does not come to the aid of the respondent as the condition mentioned in Paras-51 and 52 of the said judgment is not attracted to the facts of the instant case. Moreover, in **Ram Prakash Singh** (supra), the enquiry report dated 15.09.2014 [i.e. even after two decades of the law being settled by the Apex Court in Mohd. Ramzan Khan (supra)] yet it was never placed on record of any of the forums where the matter was contested including the Apex Court itself. In these circumstances, the decision of **Ram Prakash Singh** (supra) may not apply to the given facts and circumstances of the instant case. In this regard, the decision of the Apex Court in **Bhavnagar University v. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111** can aptly be noted wherein it has held as under:

"59. A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See Ram Rakhi v. Union of India [AIR 2002 Del 458

(FB)] , Delhi Admn. (NCT of Delhi) v. Manohar Lal [(2002) 7 SCC 222] , Haryana Financial Corpn. v. Jagdamba Oil Mills [(2002) 3 SCC 496] and Nalini Mahajan (Dr) v. Director of Income Tax (Investigation) [(2002) 257 ITR 123 (Del)] .]"

52. For the reasons noticed above, mere ground that the inquiry report was not provided before passing of the punishment order by the disciplinary authority did not cause any prejudice to the respondent as he had availed full opportunity in departmental enquiry and appeal and moreover, there was nothing which could substantiate any prejudice especially without there being an explanation as to why the departmental witnesses were not cross examined and also for certain inferential admissions of the respondent which actually clinched the issue regarding embezzlement.

53. In such circumstances, even if the inquiry report would have been provided to the respondent, the fact and the outcome of the inquiry would have still remained the same in absence of any hard denial. Additionally, the respondent had not raised any ground on the quantum of punishment. Thus, the learned Single Judge without considering the aspect of prejudice test as laid down by the Apex Court in its Constitution Bench decision in **B. Karunakar** (supra) clearly ignored a fundamental aspect and it also erred by granting a remedy which could not have been granted as the service regulations applicable to the respondent did not permit any further continuation of the inquiry specially as the respondent had attained the age of superannuation. In the given circumstances, there was no requirement to pass an order reinstating the respondent in service with all benefits.

54. Thus, for the aforesaid reasons, this Court is of the clear view that the decision of the learned Single Judge dated 07.07.2023 cannot be sustained and is liable to be set aside. Accordingly, the intra-court appeal is allowed. The judgment and order dated 07.07.2023 passed in Writ A No.8256 of 1992 is set aside. Consequently, the writ petition stands dismissed. There shall be no order as to costs.

(Jaspreet Singh,J.) (Arun Bhansali,CJ.)

March 19, 2026

Harshita