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A. L. KALRA

v.

THE PROJECT & EQUIPMENT CORPORATION OF INDIA LIMITED.

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May 1, 1984

[D.A. DESAI, O. CHINNAPPA REDDY AND A. VARADARAJAN, JJ.]

A *Writ Jurisdiction of the High Court under Article 226 of the Constitution—Public sector undertakings and other instrumentalities of the State,* C *whether amenable to the writ jurisdiction.*

B. *Effect of concession in the Supreme Court by the State as to the maintainability or amenablity to the writ jurisdiction—Though the normal procedure is to remit to the High Court, the Supreme Court, in order not to protract the litigation involving the livelihood of a party before it can itself hear the appeal on merits.*

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C. *Constitution of India, 1950 Art. 14—Whether there should be any specific pleading in the Petition pointing out whether anyone else was either similarly situated as the petitioner or dissimilarly treated for entertaining the charge of discrimination and granting relief on that ground.*

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D. *Legislative Policy, whether judicially reviewable by the courts—Constitution of India, 1950 Arts. 226, 32 and 13.*

E. *Constitution of India 1950—Distinction between Part XIV and Part III of the Constitution—Whether the employees of the Corporation entitled to the protection under Part XIV of the Constitution.*

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F. *Project and Equipment Corporation of India Ltd. Employees' (Conduct, Discipline and Appeal) Rules, 1975—Rules 4, 5 and 25, Scope of—Rule 4 does not specify any misconduct and Rule 5 does not specify that violation of Rule 4 is per se misconduct—No disciplinary action, therefore will arise under Rule 4 of the 1975 Rules.*

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G. *The Project and Equipment Corporation of India House Building Advance (Grant and Recovery) Rules Rule 10 (1) (ii) and the Profits and Equipments Corporation of India Ltd. conveyance Advance (Grant and Recovery) Rules 8 and 10 (1)—Whether the non-utilisation of the advances within the stipulated time for the purposes of and no refund thereof immediately on the expiry of the period, constitute "misconduct"* H *within the meaning of the expression in Rule 4 (i) (iii) of the 1975*

Rules and if not whether the domestic enquiry and the punishment of the dismissal of service is warranted. A

H. Relief for a declaration in cases of contract for public employment—whether cannot be specifically enforced.

I. Domestic Enquiry—Whether the Inquiry Officer and the Punishing Authority must give reasons before the major punishment is imposed—Whether non giving of the reasons makes the decision of dismissal arbitrary and against principles of natural justice. B

The Project and Equipment Corporation of India Ltd. was formed in 1971 as a wholly owned subsidiary company of State Trading Corporation, a Government of India Undertaking. In 1976 it was separated and since then it functions as a separate Government of India Undertaking. C

The appellant who joined the service under the State Trading Corporation originally and later exercised his option to serve the Project and Equipment Corporation with effect from November 9, 1976. The appellant while working as Deputy Finance Manager Grade II applied for and obtained (a) an advance in the amount of Rs. 16,050 for purchasing a plot of land on April 4, 1979 for which he executed the requisite agreement as required by 'the Project & Equipment Corporation of India Ltd., House Building Advance (Grant and Recovery) Rules, and (b) an advance in the amount of Rs. 11,000 for purchase of a new motor cycle on July 7, 1979 as admissible under "the Project and Equipment Corporation conveyance Advance (Grant and Recovery) Rules. Under these rules non-utilisation of the amounts within the time limit will impose a liability of the refund of the entire amount forthwith together with penal interest thereon. The appellant failed to utilise the amounts and also to refund the same. Therefore, coercive steps were taken to recover the entire amount of the House Building advance from his pay by stopping the payment of his salary from 16th November, 1979. As regards the conveyance advance, the receipts etc. for purchase made in 1980 were accepted. D E F

On July 22, 1980 a memorandum was served upon the appellant stating therein that the competent authority proposes to hold an enquiry against him under Rules 27 of the Project and Equipment Corporation of India Employees (Conduct, Discipline & Appeal) Rules, 1975 in respect of the aforesaid misutilization of the advances. The committee of Management in exercise of the powers conferred by sub-rule (4) of Rule 27 of the 1975 rules appointed one Sri A.S. Nangia, its Chief Marketing Manager as the Enquiry Officer to enquire into the two charges against the appellant. The appellant submitted on June 13, 1980 a detailed statement pointing out that for various reasons therein mentioned so as to explain why there was delay in refunding the advance and specifically pleaded that in view of the fact that the first advance was sought to be recovered by withholding his salary and adjusting the pay towards the advance and charging penal interest and in the second case by accepting the document evidencing purchase of scooter no misconduct could be said to have been committed G H

by the appellant and the disciplinary enquiry was uncalled for. The enquiry Officer in his report after recaputulating allegations and explanation simply concluded that the appellant has contravened Rule 10 (1) (c) (i) of the House Building Advance Rules, and also rules 8 and 10 (1) of the Conveyance Advance Rules and therefore committed misconduct punishable under Rule 4 (1) (iii) of the 1975 Rules.

Pursuant to the report of the Enquiry Officer, the Executive Director for and on behalf of the Committee of Management of the corporation made an order PEC : P 5 (8) 77 dated February 4, 1981 stating that the Committee of management agrees with the findings of the inquiry officer and imposes the punishment of removal from service with effect from the date of the order. The appeal preferred to the Appellate Authority was rejected as per the Memorandum dated May 21, 1981 signed by one Anand Krishna claiming to act for and on behalf of the Board of Directors.

The appellant, therefore approached the High Court of Delhi under Art. 226 of the Constitution questioning the correctness and validity of the findings of the inquiry officer and the decision of the Disciplinary Authority as well as the appellate authority, inter alia on the ground that the inquiry was held in violation of the principles of natural justice and the quasi-judicial authority failed to give reasons in support of its order and the action taken against the appellant was *per se* arbitrary and wolative of Arts. 14 and 16 of the Constitution inasmuch as the allegation contained in the heads of charges, even if unrebutted, do not constitute a misconduct within the meaning of the expression in 1975 Rules. In order to sustain the maintainability of the writ petition, the appellant also contended that the respondent is an instrumentality of the State and is comprehended in the expression 'other authority' in Art. 21 of the Constitution. The writ petition came-up for admission before a Division Bench of the Delhi High Court. It was dismissed in limine observing that the writ petition is not maintainable on the facts presently set out in the petition. Hence this appeal by special leave.

Allowing the appeal, the Court

HELD : 1 : 1. Public sector undertakings and other instrumentalities of the State are comprehended in the expression "other authority" in Article 12 of the Constitution. [660A]

1 : 2. Once it is conceded that the respondent—corporation is an instrumentality of the State and is therefore, comprehended in the expression 'other authority' in Art. 12 of the Constitution, it is indisputable that it is amenable to the writ jurisdiction under Arts. 32 and 226 of the Constitution. Apart from the concession, the tests collated in the decision of the Constitution Bench of this Court in *Ajay Hasia etc. v. Khalid Mujib Sheravardi and Others etc.* [1981] 2 S.C.R. 79 for determining whether a particular body is an instrumentality of the State are fully satisfied and therefore on precedent and concession it is satisfactorily established that the respondent-Corporation is an instrumentality of the State within the

meaning of the expression 'other authority' under Art. 12 of the Constitution and is amenable to the writ jurisdiction. The writ petition filed by the appellant in the High Court was thus maintainable. [660D-E] A

2. When once it is conceded that the respondent was amenable to the writ jurisdiction, the question that will arise is whether the matter should be remitted to the High Court as the High Court has rejected the writ petition *in limine* on the ground that the respondent was not amenable to the writ jurisdiction of the High Court. In order not to protract the litigation involving livelihood of the party approaching the Supreme Court for justice, the Court can set down the appeal for final hearing on merits, which they did in the instant case. [660F-H] B

3:1. It cannot be said that executive action which results in denial of equal protection of law or equality before law cannot be judicially reviewed nor can be struck down on the ground of arbitrariness as being violative of Art. 14. [661E-F] C

3:2. The scope and ambit of Article 14 have been the subject matter of a catena of decisions. It is well settled that Article 14 strikes at arbitrariness in executive/administrative action because any action that is arbitrary must necessarily involve the negation of equality. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action *per se* arbitrary itself denies equal protection of law. It is thus too late in the day to contend that an executive action shown to be arbitrary is not either judicially reviewable or within the reach of Article 14. [662A, F-G, 663A-B] D E

Ajay Hasaia etc. Khalid Mujib Shehravardi and *Ors* [1981] 2 S.C.R. 79; E. P. Royappa v. State of Tamil *Nadu and anr.* [1974] 2 S.C.R. 348; *D. S. Nakara v. Union of India*, [1983] 1 S. C. C. 305 and *Maneka Gandhi v. Union of India* [1978] 2 S. C. R. 621 followed. F

4. Wisdom of the legislative policy may not be open to judicial review but when the wisdom takes the concrete form of law, the same must stand the test of being in tune with the fundamental rights and if it trenches upon any of the fundamental rights, it is void as ordained by Art. 13, Conceding for the present purpose that legislative action follows a legislative policy and the legislative policy is not judicially reviewable, but while giving concrete shape to the legislative policy in the form of a statute, if the law violates any of the fundamental rights including Art. 14, the same is void to the extent as provided in Art. 13. If the law is void being in violation of any of the fundamental rights set out in Part II of the Constitution, it cannot be shielded on the ground that it enacts a legislative policy. [661F-H] G

5. Even if the respondent Corporation is an intrumentality of the State as comprehended in Art. 12, yet the employees of the Corporation are not governed by Part XIV of the Constitution. However it could not be H

A said that ae protection conferred by Part III on the public servant is comparatively less effective than the one conferred by Part XIV. Therefore the distinction sought to be drawn between protection of part XIV of the Constitution and part III has no significance. [663B-C, 665A]

Managing Director, Uttar Pradesh Warehousing Corporation & Anr. v. B *Vinay Narayan Vajpayee*; [1980] 2 S C R. 773 at p. 784, relied upon.

6:1. Even if the facts alleged in two heads of charges are accepted as wholly proved, yet that would not constitute misconduct as prescribed in Rule 5 and no penalty can be imposed for such conduct, for the reason that while Rule 25 which prescribes penalties specifically provides that any of C the penalties therein mentioned can be imposed on an employee for misconduct committed by him. Rule 4 does not specify a misconduct. Rule 4 styled as 'General' specifies a norm of behaviour but does not specify that its violation will constitute misconduct. In Rule 5, it is nowhere stated that anything violative of Rule 4 would be *per se* a misconduct in any of the sub-clauses of Rule 5 which specifies misconduct. [666B D]

D 6:2. A general expectation of a certain decent behaviour in respect of employees keeping in view corporate culture may be a moral or ethical expectation. Failure to keep to such high standard of moral; ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Any attempt to telescope Rule 4 into Rule 5 must E be looked upon with apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with F precision and accuracy so that any *ex post facto* interpretation of some incident may not be camouflages as misconduct. [665D-G]

M/s Glaxo Laboratories (I) Ltd v. Presiding Officer, Labour Court, Meerut & Others; [1984] 1. S.C.C. 1, followed.

G 7:1. Seeking advance and granting the same under relevant rules is at best a loan transaction. The transaction may itself provide for paymens and the consequences of failure to repay or to abide by the rules. If the rules for granting the advance themselves provided the consequence of the breach of conditions, it would be idle to go in search of any other consequence by initiating any disciplinary action in that behalf unless the 1975 Rules specifically incorporate a rule that the breach of House Building H Advance Rules and the conveyance advance rules, would by themselves constitute a "misconduct". Therefore Rule 4 (1) (1) is not only, not attaracted but in this case no attempt was made to establish the correction. And

as far as Rule 4 (1) (iii) is concerned, an advance not refunded in time where it was recovered by withholding the salary of a highly placed officer may not disclose a conduct unbecoming of a public servant. Therefore, the first head of charge is an eye-wash, It does not constitute a misconduct if it can be said to be one even if it remains unrebutted. The inquiry officer has not said one word how the uncontroverted facts consistute a conduct unbecoming of a public servant, or he failed to maintain absolute integrity. Regarding the conveyance advance the position is the same. The appellant for no fault has been punished *sub-silencio.*

[667F-H, 668A, D-E, 669H]

7:2. Now if what is alleged as misconduct does not constitute misconduct not by analysis or appraisal of evidence, but *per se* under 1975 Rules the respondent had neither the authority nor the jurisdiction nor the power to impose any penalty for the alleged misconduct. An administrative authority who purports to act by its regulation must be held bound by the regulation. [670H, 671A]

8. In the matter of public employment if the termination is held to be dba, a declaration can be granted that the man continues to be in service. [671G, 672A]

Sukhdev Singh & Ors. v. Bhagatram Sardar Singh. Raghuvananshi & Anr. [1975] 3 S.C.R. 619 @ 655. *Western India Automobile Association v. Industrial Tribunal, Bombay and Ors.* [1949] F.C.R. 321 at 340.

9:1. The duty to give reasons would permit the court hearing a petition for a writ of certiorari to ex facie ascertain whether there is any error apparent on the record. A speaking order will at its best be reasonable and at its worst be at least a plausible one. If reasons for an order are given there will be less scope for arbitrary or partial exercise of power and the order ex facie will indicate whether extraneous matters were taken into consideration by authority passing the order. [672D-E]

M. P. Industries Ltd. v. Union of India and Others [1966] 1 S. C. R. 466 at 472; *Vadachala Mudaliar* v. *State of Madras,* A. I. R. 1952 Madras 276; *Bhagat Raja* v. *Union of India and Others;* [1967] 3 S.C.R. 302 @ 320; referred to.

9:2. Here, the findings of the inquiry officer are merely his *ipse dixit.* No reasons are assigned for reaching the finding and while recapitualating evidence self-contradictory positions were adopted that either there was no misconduct or there was some misconduct or double punishment was already imposed. Rule 27 (19) casts an obligation upon the inquiry officer at the conclusion of the inquiry to prepare a report which must inter alia include the findings on each article of charge and the reasons therefor. The report is prepared in contravention of the aforementioned rule. The situation is further compounded by the fact that the disciplinary authority which is none other than Committee of Management of the Corporation while accepting the report of the inquiry officer which itself was defective did not assign any

A reasons for accepting the report of the inquiry officer. Further sub rule (ii) of Rule 35 provides amongst others that the Appellate Authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders within three months of the date of appeal. In order to ascertain whether the rule is complied with, the order of the appellate authority must show that it took into consideration the findings the quantum of penalty and other relevant considerations. There B is no material for showing that the appellate authority acted in consonance with its obligation under Rule 35. [672E-H, 673A-D-E]

9:3. Therefore, the order of removal passed by the Disciplinary Authority is illegal and invalid for the reasons (i) that the action is thoroughly arbitrary and is violative of Art. 14; (ii) that the alleged misconduct does not constitute misconduct within the 1975 Rules; (iii) that the inquiry C officer himself found that punishment was already imposed for the alleged misconduct by withholding the salary and the appellant could not be exposed to double jeopardy; and (iv) that the findings of the inquiry officer are unsupported by reasons and the order of the Disciplinary Authority as well as the Appellate Authority suffer from the same vice. [673H. 674A-B]

D 10:1. Once the order of removal from service is held to be illegal and invalid and the appellant being in public employment, the necessary declaration must follow that he continues to be in service uninterruptedly. Ordinarily, it is well-settled that if termination of service is held to be bad, no other punishment in the guise of denial of back wages can be imposed and therefore, it must as a necessary corollary follow that he will be entitled to all the back wages on the footing that he has continued to be in service E uninterruptedly. If the appellant had procured an alternative employment he would not be entitled to wages and salary from the respondent. But it is equally true that an employee depending on salary for his survival when he is exposed to the vagaries of the court litigation cannot hold on to a slender distant hope of judicial process coming to his rescue and not try to survive by accepting an alternative employment, a hope which may turn out to be a mirage. Therefore, the appellant was perfectly justified in procuring an F alternative employment in order to keep his body and soul together as also to bear the expenses of litigation to vindicate his honour, integrity and character. [674B-G]

10:2. However, in the instant case, the appellant should be paid 50% of the back wages for the rest of the period during which he remained G unemployed. This is so because the conduct of the appellant cannot be said to be entirely in consonance with corporate culture. As a highly placed officer he was bound to strengthen the corporate culture and he should have acted within the spirit of the regulations both for house building advance and conveyance advance, which are devised to help the employees. There has been lapse in totally complying with these regulations by the appellant H though it neither constitutes misconduct to attract a penalty nor substantially good enough for initiation of disciplinary inquiry. [675A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2703 of 1981. A

From the Judgment and Order dated the 23rd July, 1981 of the Delhi High Court in C.W. No. 1648 of 1981.

M.K. Ramamurthi, L.C. Goyal and *Ms. Sumitra Goyal* for the Appellant. B

Lal Narain Sinha, M.C. Bhandare and *P.P. Singh* for the Respondent.

The Judgment of the Court was delivered by C

DESAI, J. Failure to adjust the antena to the operative channel and dipping the head like the proverbial ostrich in the sand so as not to view the changing kaleidoscope of the law can alone be said to be responsible for this trivial matter to be brought to this Court.

Respondent is the Project & Equipment Corporation of India Ltd. ('Corporation' for short) since its formation in 1971 a wholly owned subsidiary company of State Trading Corporation ('STC' for short), a Government of India Undertaking upto 1976 when it was separated and since then it functions as a Government of India undertaking. The appellant A.L. Kalra joined as Upper Division Clerk in the STC on August 6, 1963. On November 1, 1969, he came to be promoted as Assistant and earned a further promotion on May 22, 1974 as Accountant. On the setting up of the Corporation, the appellant exercising his option came to be transferred as Accountant to the Corporation on November 9, 1976. Under the relevant conditions of transfer, he continued to be governed in the matter of recruitment and promotion by the relevant rules of the STC. He was promoted in an officiating capacity as Deputy Finance Manager Grade II on June 29, 1978 and he was put on probation after being promoted as Deputy Finance Manager Grade II on regular basis effective from February 5, 1979. The appellant applied for and obtained an advance in the amount of Rs. 16,050 for purchasing a plot of land on April 4, 1979 for which he executed the requisite agreement on April 4, 1979. The rules under which advance was obtained are styled as 'The Project and Equipment Corporation was India Ltd. House Building Advance (Grant & Recovery) Rules ('Rules for House Building Advance' for short) framed in exercise of the powers conferred upon the Board of Directors by the Articles of Association of the Corporation. The appellant also applied for and obtained an advance in the amount of Rs. 11,000/- for purchase of a D E F G H

A new motor cycle on July 7, 1979. This advance is governed by what are styled as the Projects & Equipment Corporation of India Ltd. Conveyance Advance (Grant & Recovery) Rules ('Conveyance Advance Rules' for short).

In respect of the house building advance according to the B respondent-Corporation, in view of Rule 10 (1) (c) (i) the appellant was required to utilise the amount drawn by him for the purpose for which advance was granted within two months of drawal and submit the documents evidencing the purchase of plot within the prescribed time failing which he was liable to refund at once the entire amount together with interest to the Corporation. The agreement dated C April 4, 1979 executed by the appellant also obligated him to utilise the advance for the purpose for which the same was sanctioned and to produce the sale-deed for verification by the Corporation failing which the whole of the advance had to be refunded with interest. It was alleged that the appellant neither utilised the advance for the purchase of plot nor refunded the amount despite several reminders D and ultimately on November 13, 1979 a memorandum was served upon him cautioning him that if he failed to refund the entire amount forthwith, disciplinary proceedings will be initiated against him. As the appellant failed to comply with the request made in the memorandum, his salary from November 7, 1979 as a whole was E withheld for adjusting the amount of advance and the interest payable thereon. He was also charged penal interest for the default committed by him.

In respect of the conveyance advance, which was sanctioned on July 7, 1979, the appellant is alleged to have committed a default by F not purchasing the motor cycle within a period of one month as required by Rule 10 of the Conveyance Advance Rules, and on November 13, 1979 he was advised to refund the amount by November 14, 1979 failing which he was threatened with disciplinary action. It is, however, admitted that the appellant purchased a scooter in G April, 1980 and submitted the documents which appear to have been accepted by the Corporation. The balance of advance was also refunded.

A memorandum dated July 22, 1980 was served upon the appellant stating therein that the competent authority proposes to hold an enquiry against him under Rule 27 of the Project and H Equipment Corporation of India Ltd. Employees' (Conduct, Discipline & Appeal) Rules, 1975 ('1975 Rules' for short). There were

two heads of charges in the charge-sheet drawn-up against the appellant on which disciplinary enquiry was proposed to be held. These two heads of charges read as under :

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"**Article I**

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Shri A.L. Kalra while functioning as Deputy Finance Manager-Grade II in the Finance Division of the PEC during April, 1979 applied and drew an advance of Rs. 16,050 for purchase of a plot of land at Faridabad. But he did not furnish the relevant documents in the office nor did he refund the amount of advance to the Corporation within two months of the date of drawal of the advance as required under Rule 10 (1) (c) (i) of PEC House Building Advance (Grant and Recovery) Rules.

C

Shri Kalra by his above act exhibited lack of integrity and conduct unbecoming of a public servant and violated Rule 4 (1) & (iii) and Rule 5 (5) of the PEC Employees' (Conduct, Discipline & Appeal) Rules and Rule 10 (1) (c) (i) of PEC House Building Advance (Grant & Recovery Rules and thereby committed misconduct punishable under the PEC employees (Conduct, Discipline and Appeal) Rules, 1975.

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Article-II

Shri, A.L. Kalra drew a conveyance advance of Rs. 11,000 in July, 1979 for purchasing a motor-cycle, but did not utilise the amount for the above purpose and did not furnish cash receipt etc. evidencing purchase of the vehicle within one month as required under Rule-8 of the PEC Conveyance Advance (Grant & Recovery) Rules. Nor did he refund the amount of advance to the Corporation as required under Rule 10 (1) ibid.

F

G

Shri A.L. Kalra by his above act exhibited lack of integrity and conduct unbecoming of a Public servant and violated Rule-4 (1) (i) & (iii) and Rule 5 (5) of PEC Employees (Conduct, Discipline & Appeal) Rules and also violated Rule-8 and Rule-10 (is of the PEC Conveyance Advance (Grant & Recovery) Rules and thereby committed misconduct punishable under the PEC Employees' (Conduct,

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Discipline & Appeal) Rules, 1975."

The appellant was also asked to submit his defence statement within 10 days from the date of the receipt of the memorandum. The appellant by his letter dated February 13, 1980 requested for extension of time to file the defence statement. It appears that he sought further extension of time by three weeks which request was declined by the memorandum dated Feb. 23, 1980.

The Committee of Management in exercise of the powers conferred by sub-rule (4) of Rule 27 of the 1975 Rules appointed Shri A.S. Nangia, Chief Marketing Manager as the Enquiry Officer to enquire into the charges against the appellant submitted on June 13, 1980 a detailed statement pointing out that the inquiry was the outcome of malice for various reasons therein mentioned and also explaining why there was delay in refunding the advances and specifically pleaded that in view of the fact that the first advance was sought to be recovered by withholding his salary and adjusting the pay towards advance and charging penal interest and in the second case by accepting the document evidencing purchase of scooter, no misconduct could be said to have been committed by the appellant and the disciplinary enquiry was uncalled for. Various other contentions were also raised in the defence statement. The inquiry officer conducted the enquiry in respect of the afore-mentioned two charges. One U.S. Aggarwal, Finance Manager of the Corporation appeared as Presenting Officer. The appellant conducted his own defence.

In Para 4 of his report, the Inquiry officer states that the 'preliminary hearings of the inquiry was held on 3rd and 9th April, 1980 and then inquiry was held regularly on various dates from 23rd April 1980 to 22nd May, 1980. The appellant was called upon to submit his statement of defence which he had submitted on June 30, 1980.

The findings purported to have been recorded by the inquiry officer were the subject matter of a heated debate between the parties and therefore, the report of the Inquiry Officer may be broadly scanned here. After recapitulating in paras 1 to 4 the various stages through which the enquiry progressed, in para 5, it is stated that at the 'preliminary hearing on 3rd April, 1980, Shri A.L. Kalra, (appellant) pleaded guilty to all the charges mentioned in Annexure I and also agreed to the statement of imputation of his misconduct in support of the articles of charges framed against him.' In part 5 (3), the inquiry officer discussed the first head of charge in respect of the

house building advance. It was found as a fact that the advance was taken for the purchase of a plot and that the appellant had negotiated for a purchase of a plot from Shri J.C. Chugh who was examined as a management witness and who admitted that he waited for six months to complete the transaction but after that he disposed of the plot. Evidence of Shri J.C. Chugh revealed that the deal was delayed because Haryana Estate Officer demanded some additional amount and there was dispute between the appellant, the vendee and J.C. Chugh, the vendor as to who should bear the extra burden. In paragraph 5.1.4 after recapitulating the reminders sent to the appellant to refund the advance, it is observed that it is not clear from the relevant rule as to which is the competent authority to grant extension of time for utilisation of the amount. And then in paragraph 5.1.5 he recommended that the sanction of the competent authority should be taken before granting any extension. There ends the discussion on the charge in respect of house building advance.

The inquiry officer then proceeded to examine the second head of the charge. After recapitulating the fact about sanction of advance and drawal of the same, it was observed that the appellant drew the advance on July 9, 1979 and on April 7, 1980 he submitted the documents such as cash receipt in respect of purchase of a scooter, insurance certificate, receipt of balance amount deposited with the cashier, original insurance policy and registration book evidencing the purchase of scooter. It is then observed that under the relevant rules motor cycle had to be purchased within one month from the date of the drawal of the advance or else he should have obtained fresh sanction for the purchase of a scooter instead of a motor cycle. Then comes the particular observation which may be extracted :

> "He (appellant) did not obtain any fresh sanction for purchase of a scooter but simply submitted the papers for regularisation of the advance and although no specific letter for sanction of the purchase of a scooter was issued by the Personnel Division yet the fact that he was asked to refund the balance amount tantamounts to agreeing defacto sanction for the purchase of the same."

The inquiry officer then proceeds to dispose of the contention of the appellant that in other cases of similar advance and default, no action was taken but he was singled out for a harsh treatment

for the reasons alleged by him but with which we are not concerned at this stage. The inquiry offieer then noticed that the full salary payable every month to the appellant was stopped by the Corporation from November 16, 1979 in addition to the inquiry under which disciplinary action was proposed to be taken. The inquiry officer concluded his report as under :

> "While deciding the oase, the fact that the salary was stopped from 16th November, 1979 may be kept in view as this may, I feel, tantamount to double punishment. Normally even where an employee is suspended certain amount of subsistence allowance is granted whereas in this case the salary was completely stopped and nothing has been paid since then."

What is referred to as the report of the enquiry which is minutely scanned in the preceeding paragraphs merely seems to be the record of inquiry and recapitulation of allegations and explanation. What is styled as findings of the inquiry officer are separately filed being Annexure M to the petition. This is a bald document of two paragraphs in which the inquiry officer records that the appellant has contravened Rule 10 (1) (c) (i) of House Building Advance Rules and has thereby committed misconduct punishable under Rule 4 (1) (iii) of 1975 Rules. In paragraph 2, it is stated that the appellant has committed breach of Rule 8 and Rule 10 (i) of the Conveyance Advance Rules and has thereby committed misconduct punishable under Rule 4 (1) (iii) of 1975 Rules. By what process this conclusion is reached or what evidence appealed to him is left to speculation. The reasons in support of the conclusion are conspicuous by their absence. The findings are the *ipse dixit* of the inquiry officer.

Pursuant to this report of the inquiry officer the Executive Director for and on behalf of the Committee of Management of the Corporation made an Order No. PEC.P ; 5 (8)/77 dated February 4, 1981. The heads of charges are reproduced in paragraph 1. Paragraphs 2 and 3 are devoted to the stages through which the enquiry progressed. In paragraph 4, the findings unsupported by reasons are reproduced. In paragraph 5, it is stated that the Committee of Management agrees with the findings of the inquiry officer and imposes the punishment removal from service with effect from the date of the order.

The appellant preferred an appeal to the Appellate Authority being the Board of Directors of the Corporation on February 21,

1981. One Anand Krishna claiming to act for and on behalf of the Board of Directors, Appellate Authority issued memorandum dated May 21, 1981, Annexure P to the petition in which it is stated that the appeal of the appellant was considered by the Appellate Authority and after going through the records of the case, the Appellate Authority has decided to uphold the decision of the authority and to confirm the penalty of removal imposed upon him.

The salient feature which flies into the face about the findings recorded by the inquiry officer and the order by the Disciplinary Authority as well as the Appellate Authority is that none of them made a reasoned order or speaking order and their conelusions are mere *ipse dixit* unsupported by any analysis of the evidence or reason in support of the conclusions.

The appellant approached the High Court of Delhi under Art. 226 of the Constitution questioning the correctness and validity of the findings of the inquiry officer and the decision of the Disciplinary Authority as well as the Appellate Authority *inter alia* on the ground that the enquiry was held in violation of the principles of natural justice and the quasi-judicial authority failed to give reasons in support of its order and the action taken against the appellant was *per se* arbitrary and in violation of Art. 14 and Art. 16 of the Constitution inasmuch as the allegations contained in the heads of charges, even if unrebutted, do not consitute a misconduct within the meaning of the expression in 1975 Rules. In order to sustain the maintainabilit of the writ petition, the appellant also contended that the respondent is an instrumentality of the State and is comprehended in the expression 'other authority' in Art. 12 of the Constitution.

The writ petition came-up for admission before a Division Bench of the Delhi High Court. It was dismissed in limine observing that the writ petition is not maintainable on the facts presently set out in the petition. Hence this appeal by special leave.

In order to obtatn any decision on merits, the appellant will have to clear the roadblock about the maintainability of the writ petition in the High Court. Happily this untenable contention was not pursued in this Court. In para 2 (vi) of the counter-affidavit filed by one Mahanand Khokher on behalf of the respondents it was unambiguously stated that the 'respondent-Corporation is advised not to dispute the maintainability of the petitioner's petition as

A regards applicability of Art. 12 of the Constitution.' Further in para 5.1 of the same affidavit, it was stated that as regards the assertion of the appellant that the respondent-Corporation is an instrumentality of the Central Government and hence within Art. 12 of the Constitution, the respondent Corporation does not dispute the same. This admission was reiterated in para 5.2. Further in the written submissions dated September 30, 1983 filed on behalf of the respondent, it is conceded that the respondent is a State within the meaning of Art. 12 for the purposes of Part III of the Constitution, with this reservation that the employees of the respondent are not members of a civil service of the Union or all India civil service or a civil service of a State or holds the civil posts under the Union or the State and therefore, would not be entitled to the protection of Part XIV of the Constitution. This concession absolves us from the obligation to examine the status and character of the respondent-Corporation to determine whether it is an instrumentality of the State and therefore, comprehended in the expression 'other authority' in Art. 12 of the Constitution. Once it is conceded that the respondent-Corporation is an instrumentality of the State and is therefore, comprehended in the expression 'other authority' in Art. 12 of the Constitution, it is indisputable that it is amenable to the writ jurisdiction under Arts. 32 and 226 of the Constitution. Apart from the concession, the tests collated in the decision of the Constitution Bench of this Court in *Ajay Hasia etc.* v. *Khalid Mujib Sehravardi & Ors. etc.*,(1) for determining whether a particular body is an instrumentality of the State are fully satisfied and therefore on precedent and concession it is satisfactorily established that the respondent-Corporation is an instrumentality of the State within the meaning of the expression 'other authority' under Art. 12 of the Constitution and amenable to the writ jurisdiction. The writ petition filed by the appellant in the High Court was thus maintainable.

Once when in this Court it was conceded that the respondent was amenable to the writ jurisdiction of the High Court, the question arose whether the matter should be remitted to the High Court as the High Court has rejected the writ petition *in limine* on the ground that the respondent was not amenable to the writ jurisdiction of the High Court. Ultimately, in order not to protract the litigation involving livelihood of the appellant, the appeal was set down for final hearing on merits. The respondent-Corporation was accordingly directed to file its affidavit as also the documents on which it seeks to rely. The appeal was thereafter heard on merits.

(1) [1981] 2 SCR 79.

Before we deal with the contentions raised on behalf of the appellant, it is necessary to dispose of a contention having a flavour of a preliminary objection raised by Mr. Lal Narain Sinha on behalf of the respondent-Corporation. It was urged that in the absence of any specific pleading pointing out whether any one else was either similarly situated as the appellant or dissimilarly treated the charge of discrimination cannot be entertained and no relief can be claimed on the allegation of contravention of Art. 14 or Art. 16 of the Constitution. It was submitted that the expression discrimination imports the concept of comparison between equals and if the resultant inequality is pointed out in the treatment so meted out the charge of discrimination can be entertained and one can say that equal protection of law has been denied. Expanding the submission, it was urged that the use of the expression 'equality' in Art. 14 imports duality and comparison which is predicated upon more than one person of situation and in the absence of available material for comparison, the plea of discrimination must fail. As a corollary, it was urged that in the absence of material for comparative evaluation not only the charge of discrimination cannot be sustained but the executive action cannot be struck down on the ground that the action is *per se* arbitrary. Proceeding along, it was urged that making law is a matter of legislative policy and the degree of reasonableness in every such law is equally a matter of policy and policy of the legislature is not judicially reviewable on the specious plea that it is either arbitrary or unreasonable.

It is difficult to accept the submission that executive action which results in denial of equal protection of law or equality before law cannot be judicially reviewed nor can it bestruck-down on the ground of arbitrariness as being violative of Art. 14. Conceding for the present purpose that legislative action follows a legislative policy and the legislative policy is not judicially reviewable, but while giving concrete shape to the legislative policy in the form of a statute, if the law violates any of the fundamental rights including Art. 14, the same is void to the extent as provided in Art. 13. If the law is void being in violation of any of the fundamental rights set out in Part III of the Constitution, it cannot be shielded on the ground that it enacts a legislative policy. Wisdom of the legislative policy may not be open to judicial review but when the wisdom takes the concrete form of law, the same must stand the test of being in tune with the fundamental rights and if it trenches upon any of the fundamental rights, it is vaid as ordained by Art. 13.

A The scope and ambit of Art. 14 have been the subject matter of a catena of decisions. One fact of Art. 14 which has been noticed in *E.P. Royappa* v. *State of Tamil Nadu & Anr.*[1] deserves special mention because that effectively answers the contention of Mr. Sinha. The Constitution Bench speaking through Bhagwati, J. in concurring judgment in *Royappa's* case observed as under :

B

> "The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now what is the content and reach of this great equalising principle ? It is a founding faith, to use the
> C words of pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits.
> D From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies ; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and
> E is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

F This view was approved by the Constitution Bench in *Ajay Hasia case* It thus appears well-settled that Art. 14 strikes at arbitrariness in executive/administrative action because any action that is arbitrary must necessarily involve the negation of equality. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An
G action *per se* arbitrary itself denies equal of protection by law. The Constitution Bench pertinently obsered in *Ajay Hasia's case* and put the matter beyond controversy when it said 'wherever therefore, there is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action.'

H

(1) [1974] 2 SCR 348

This view was further elaborated and affirmed in *D.S. Nakqra* v. *Union of India*.(1) In *Maneka Gandhi* v. *Union of India*(2) it was observed that Art. 14 strikes at arbitrariness in State action and ensure fairness and equality of treatment. It is thus too late in the day to contend that an executive action shown to be arbitrary is not either judicially reviewable or within the reach of Art. 14. The contention as formulated by Mr. Sinha must accordingly be negatived.

It must be conceded in fairness to Mr. Sinha that he is right in submitting that even if the respondent-Corporation is an instrumentality of the State as comprehended in Art. 12, yet the employees of the Corporation are not governed by Part XIV of the Constitution. Could it however be said that a protection conferred by Part III on public servent is comparatively less effective than the one conferred by Part XIV ? This aspect was examined by this Court in *Managing Director, Uttar Pradesh Warehousing Corporation & Anr.* v. *Vinay Narayan Vajpayee*(3) where O. Chinnappa Reddy, J. in a concurring judgment has spoken so eloquently about it that it deserves quotation :

> "I find it very hard indeed to discover any distinction, on principle, between a person directly under the employment of the Government and a person under the employment of an agency or instrumentality of the Government or a Corporation, set up under a statute or incorporated but wholly owned by the Government. It is self evident and trite to say that the function of the State has long since ceased to be confined to the preservation of the public peace, the exaction of taxes and the defence of its frontiers. It now the function of the State to secure 'social, economic and political justice', to preserve 'liberty of thought, expression, belief, faith and worship', and to ensure 'equality of status and of opportunity'. That is the proclamation of the people in the preamble to the Constitution. The desire to attain these objectives has necessarily resulted in intense Governmental activity in manifold ways. Legislative and executivity have reached very far and have touched very many aspects of a citizen's life. The Government, directly or through the Corporations, set up by it or owned by it, now owns or manages, a large number of industries and institutions. It is the biggest builder in the country. Mam-

(1) [1983] 1 SCC 305
(2) [1978] 2 SCR 621
(3) [1980] 2 SCR 773 at p. 784

moth and minor irrigation projects, heavy and light engineering projects, projects of various kinds are undertaken by the Government. The Government is also the biggest trader in the country. The State and the multitudinous agencies and Corporations set up by it are the principal purchasers of the produce and the products of our country and they control a vast and complex machinery of distribution. The Government, its agencies and instrumentalities, Corporations, set up by the Government under statutes and Corporations incorporated under the Companies Act but owned by the Government have thus become the biggest employers in the country. There is no good reason why, if Government is bound to observe the equality clauses of the constitution in the matter of employment and in its dealings with the employees, the Corporations set up or owned by the Government should not be equally bound and why, instead, such Corporations could become citadels of patronage and arbitrary action. In a country like ours which teems with population, where the State, its agencies, its instrumentalities and its Corporations are the biggest employers and where millions seek employment and security, to confirm the applicability of the equality clauses of the constitution, in relation to matters of employment, strictly to direct employment under the Government is perhaps to mock at the Constitution and the people. Some element of public employment is all that is necessary to take the employee beyond the reach of the rule which denies him access to a Court to enforce a contract of employment and denies him the protection of Arts. 14 and 16 of the Constitution. After all employment in the public sector has grown to vast dimensions and employees in the public sector often discharge as onerous duties as civil servants and participate in activities vital to our country's economy. In growing realization of the importance of employment in the public sector, Parliament and the Legislatures of the States have declared persons in the service of local authorities, Government companies and statutory corporations as public servants and extended to them by express enactment the protection usually extended to civil servants from suits and prosecution. It is, therefore, but right that the independence and integrity of those employed in the public sector should be secured as much as the independence and integrity of civil servants."

There fore the distinction sought to be drawn between protection of part XIV of the Constiution and Part III has no significance.

And now to the facts. The gravamen of the two heads of charges is that the appellant is guilty of misconduct as prescribed in Rule 4 (1) (i) and (iii).

It reads as under :

"4 (1) Every employee shall at all times :

(i) maintain absolute integrity ;

(ii) —— —— ——

(iii) do nothing which is unbecoming of a public servant."

Rule 5 prescribes various misconducts for which action can be taken against an employee governed by the rules.

Rule 4 bears the heading 'General'. Rule 5 bears in the heading 'misconduct'. The draftsmen of the 1975 Rules made a clear distinction about what would constitute misconduct. A general expectation of a certain decent behaviour in respect of employees keeping in view Corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decrous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Any attempt to telescope Rule 4 into Rule 5 must be looked upon with apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any *ex post facto* interpretation of some incident may not be camouflages as misconduct. It is not necessary to dilate on this point in view of a recent decision of this Court in *M/s Glaxo Labouratories (I) Ltd.* v. *Presiding Officer, Lobour Court, Meerut & Others* (1) where this Court held that 'everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken

(1) [1984] 1 S.C.C. 1.

into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say *ex post facto* that some acts of omission or commission nowhere found to be enumerated in the relevant standing or is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty.' Rule 4 styled as 'General' specifies a norm of behaviour but does not specify that its violation will constitute misconduct. In Rule 5, it is nowhere stated that anything violative of Rule 4 would be per as a misconduct in the sub-clauses of Rule 5 which specifies misconduct. It would therefore appear that even if the facts alleged in two heads of charges are accepted as wholly proved, yet that would not constitute misconduct as prescribed in Rule 5 and no penalty can be imposed for such conduct. It may as well be mentioned that Rule 25 which prescribes penalities specifically provides that any of the penalities therein mentioned can be imposed on an emyloyee for misconduct committed by him. Rule 4 does not specify a misconduct.

Mr. Ramamurthi, learned counsel for the appellant further contended that the very initiation of the disciplinary enquiry and imposition of punishment of removal from service is thoroughly arbitrary and discloses a vindictive attitude on the part of the respondent Corporation. It was urged that the two heads of charges *per se* do not constitute any misconduct and they can be styled as trumped-up which even if held approved would not render the appellant liable for any punishment. The two heads of charges have been extracted hereinbefore. Charge No. 1 refers to the drawal of a House Building Advance and failure to comply with the requisite rules prescribed for House Building Advance. According to the finding recorded by the inquiry officer, the failure of the appellant to refund the amount of advance to the respondent-Corporation within two months of the date of the drawal would be violative of Rule 10 (1) (c) (i) of the House Building Advance Rules and it would constitute misconduct within the meaning of the expression in Rule 4(1) (iii) of 1975 Rules. Rule 10 (1) provides that the advance shall be drawn in instalments as prescribed in various sub-clauses. The relevant sub-clause in this case is sub-cl. (C) which provides that "when advance is required partly for purchase of land and partly for constructing a single storeyed new house thereon ; (i) not more than 20% of the sanctioned advance on execution by the applicant employees an agreement in the required form for repayment of the advance. The amount will be payable to the applicant only for purchasing a

developed plot of land on which construction can commence immediately and sale deed in respect thereof be produced for the inspection of CPM/RM within two months of the date on which 20% of the advance is drawn or within such further time as the CPM/RM may allow in this behalf failing which the employee shall be liable to refund at once the entire amount to the Corporation together with interest thereon." A bare reading of the relevant rule will show that it provides for obtaining advance which in this case was taken for purchasing a plot. The inquiry officer accepts the evidence of Mr. Chugh that the appellant had negotiated with him for purchase of a plot but some dispute arose about some additional expenditure and the negotiations protracted over a period of six months. Now para 1 sub-cl. (C) confers on CPM/RM power to extend the time for finalising the deal or call upon the employee to refund the entire amount and he is liable to pay interest thereon. This is the only consequence of taking advance and failure to keep to the time-schedule. The relevant rule is a self contained provision providing for the condition for grant of advance, time table for repayment and consequence of failure to keep to the time schedule. The House Building Advance was drawn on April 4, 1979. On November 13, 1979 the appellant was asked to refund the entire amount. Immediately on November 16, 1979, an order was made withholding the entire salary of the appellant. Even the inquiry officer was constrained to observe that the appellant was exposed to double jeopardy inasmuch as his salary as a whole was withheld and he was being removed from service. It is also pertinent to note that the inquiry officer is not clear when he said 'that once the power to extend the time to repay the advance is conferred and penal interest is charged, is any rule violated.' This is not an attempt to reappreciate evidence in the case but the entire thing is being analysed to point out that the action apart from being arbitrary is motivated and unjust.

If the rules for granting the advance themselves provided the consequence of the breach of conditions, it would be idle to go in search of any other consequence by initiating any disciplinary action in that behalf unless the 1975 Rules specifically incorporate a rule that the breach of House Building Advance Rules would by itself constitute a misconduct. That is not the case here as will be presently pointed out.

Seeking advance and granting the same under relevant rules, is at best a loan transaction. The transaction may itself provide for

repayment and the consequence of failure to repay or to abide by the rules. That has been done in this case. Any attempt to go in search of a possible other consequence of breach of contract itself appears to be arbitrary and even motivated. However, the more serious infirmity in framing this head of charge is that according to the inquiry officer this failure to refund the advance within the time frame in which it was sanctioned constitutes violation of Rule 4 (1) (iii). Let us turn to the charge-sheet drawn-up against the appellant. Under the first head of charge it was stated that the appellant was guilty of misconduct as prescribed in Rule 4 (1) (i) and (iii). Rule 4 (1) (i) provides that every employee shall at all times maintain absolute integrity. How did the question of integrity arise passes comprehension. The appellant applied for House Building Advcane. Inquiry Officer says that the appellant had negotiated with Mr. Chugh for purchase of a plot. There is not even negative evidence or evidence which may permit an inference that the house building advance was utilised for a purpose other than for which it was granted. Therefore Rule 4 (1) (i) is not only attracted but no attempt was made before us to sustain it. And as far as Rule 4 (1) (iii) is concerned, we fail to see how an advance not refunded in time where it was recovered by withholding the salary of a highly placed officer discloses a conduct unbecoming of a public servant. Therefore, the first head of charge is an eye-wash. It does not constitute a misconduct if it can be said to be one even if it remains unrebutted. The inquiry officer has not said one word how the uncontroverted facts constitute a conduct unbecoming of a public servant, or he failed to maintain absolute integrity.

Turning to the second head of charge, it is alleged that the appellant applied for and obtained a conveyance allowance of Rs. 11,000 on July 7, 1979 but did not utilise the amount for the purpose for which it was granted and did not furnish cash receipt evidencing purchase of a vehicle within one month as required by Rule 8 of the Conveyance Advance Rules, nor did he refund the amount to the Corporation as required by Rule 10 (1). It is not in dispute that the respondent applied for a motor-cycle advance which was sanctioned and on being sanctioned he drew the same on July 9, 1979. As required by the respondent, the appellant executed an agreement on July 6, 1979, a day preceding the sanction of the advance guaranteeing that if the motor-cycle was not purchased and hypothecated within one month from the date of the drawal of the

advance, the whole of the advance together with the interest accrued thereon would become refundable. As the appellant did not keep to the time-schedule, memos dated August 20, September 24, November 12 and November 13, 1979 were served upon him calling upon him to either furnish the requisite documents or to refund the advance latest by November 14, 1979. The inquiry officer in this connection, recapitulated the facts in paragraphs 5·2, 5·2·1, and 5·2·2. Then he proceeded to record a finding that the appellant on April, 7, 1980 submitted the documents namely cash receipt in respect of purchase of a scooter, insurance certificate, receipt showing deposit of the balance of advance with cashier, original insurance policy and registration book for purchase of the scooter. The report does not show the date of purchase which could have been ascertained with certainty from the insurance certificate as well as the cash receipt. After recapitulating these undisputed facts, he stated that the fact that 'he (appellant) was asked to refund the balance amount tantamount to agreeing de facto sanction for the purchase of the same (scooter)'. In the last paragraph, he has stated that a stoppage of the salary effective from November 16, 1979 in the opinion of the inquiry officer tantamounts to imposition of double punishments and this is compounded by not paying even a subsistance allowance. We scanned the report minutely with the able assistance of the learned counsel for the respondent subjecting it to microscopic analysis to ascertain whether the inquiry officer recorded any finding in respect of this charge adverse to the appellant. We found none. On the contrary, a comprehensive reading of the report clearly indicates that the inquiry officer was satisfied that the delay in submitting the documents and purchasing a scooter instead of a motor cycle should not have been visited with such drastic punishment of stoppage of salary altogether and yet compelling the appellant to render service without *quid pro quo*. Curiously, however, in a separate document recorded as finding, the inquiry officer has held that the appellant contravened Rule 10 (1) of the Conveyance Advance Rules which would constitute misconduct within the meaning of the expression in Rule 4 (1) (iii) of the 1975 Rules. The report and the findings are wholly irreconcilable and left us guessing about the approach of the inquiry officer, his conclusion and his finding. This aspect considerably troubled us because we would presently point out that the disciplinary Authorfty as well as the appellate authority have declined a peep into the working of their minds by making a reasoned or a speakng order. The appellant appears to us to have been convicted *sub silencio*,

A The first question we must pose to ourselves is whether taking the findings of facts as recorded by the inquiry officer and accepting for the present purpose that they are not open to a judicial review, do they constitute misconduct so as to invite penalty? According to the inquiry officer, failure either to produce the documents or to refund the amount within a period of one month from the drawal of the conveyance advance constitutes contravention of Rule 10 (1) of the Conveyance Advance Rules. Rule 10 reads as under :

> "10. (1). Where an employee after taking advance is unable to purchase the vehicle for any reason, he shall refund within one month of drawal of advance the full amount with interest thereon to the Corporation. If he fails to do so, he shall be liable to disciplinary action for misconduct in addition to liability for payment of additional interest in accordance with Sub Rule (2).
>
> (2) Where an amount of advance is retained by an employee beyond one month or where the employee fails to produce evidence of purchase, insurance policy of registration book, the normal rate of interest under Rule 5 will be charged for the first month and for the period in excess of one month in addition to the normal rate of interest, additional interest at a rate equivalent to difference between the borrowing rate of the Corporation and the normal rate chargeable under Rule 5 will be charged. The additional rate of interest will be compound interest and it will be merged with the principal at monthly intervals for the purpose of calculating interest for subsequent periods."

In this connection, our attention was drawn to Circular dated December 11, 1979 issued by the respondent-Corporation which provides that henceforth a penal interest will be levied/charged 'on the total drawn amount under the Conveyance Advance Rules in cash vouchers or receipts are not produced to the Personnel Division within the prescribed period, or in case the amount drawn is refunded without utilisation.' It thus transpires that drawal of the advance, if not utilised within the prescribed period or if not refunded within the same time, will expose the drawer to a liability to penal interest. And in this case, it has been so charged.

Now if what is alleged as misconduct does not constitute misconduct not by analysis or appraisal of evidence, but *per se* under 1975

Rules the respondent had neither the authority nor the jurisdiction nor the power to impose any penalty for the alleged misconduct. An administrative authority who purports to act by its regulation must be held bound by the regulation. 'Even if these regulations have no force of law the employment under these corporations is public employment, and therefore an employee would get a status which would enable him to obtain a declaration for continuance in service, if he was dismissed or discharged contrary to the regulations.' [*Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi and Anr.*(1)]

If thus it is satisfactorily established that the employment under such Corporation like the respondent which is an instrumentality of the State, is public employment, it is difficult to entertain the submission of Mr. Sinha which did prevail for some time in the days goneby that contract of public service cannot be specifically enforced. Mr. Sinha in this connection relied upon Sec. 14 of the Specific Relief Act, 1963 and urged that where the origin of employment is in a contract the breach of it cannot be remedied by directing specific performance of a contract of personal service. He also drew our attention to *Western India Automobile Association v. Industrial Tribunal, Bombay and Ors.*(2) Where a Constitution Bench of this Court has observed as under :

> "It is true that this Tribunal can do what no Court can, namely, add to or alter the terms or conditions of the contract of service. Express power to do so is given by the regulation, while there are no words conferring a power to reinstate or revive a contract lawfully determined."

Reference was also made to *Dr. S.B. Dutt* v. *University of Delhi*(3) wherein it was held that an arbitrator appointed by the parties and functioning under the Arbitration Act, 1940 cannot by his award enforce a contract of personal service in contravention of the provisions of the Specific Relief Act and this discloses an error apparent on the face of the award. But neither Sec. 14 nor the aforementioned two decisions can render any assistance to the respondent because it is well-settled that in the matter of public employment if the termina-

(1) [1975] 3 SCR 619 at 655.
(2) [1949] F.C.R. 321 at 340
(3) [1959] S.C.R. 1236

A tion is held to be bad, in view of the latest decisions in *Sukhdev Singh* and *Uttar Pradesh Warehousing Corporation's cases* a declaration can be granted that the man continues to be in service.

Mr. Ramamurthi on behalf of the appellant further contended that the order of removal from service is void as it is passed in violation of the principles of natural justice and at any rate an order imposing penalty by a quasi-judicial tribunal must be supported by reasons in support of its conclusions. It was urged that duty to give reasons would permit the court hearing a petition for a writ of certiorari to *ex facie* ascertain whether there is any error apparent on the record.) It was conceded that for the present submission adequacy or sufficiency of reasons is not questioned. What is contended is that the inquiry officer has merely recorded his *ipse dixit* and no reasons are assigned in support of the findings. The mental process is conspicuosly silent. A speaking order will at its best be reasonable and at its worst be at least a plausible one (*M.P. Industries Ltd.* v. *Union of India & Others*).(1) What prevents the authority authorised to impose penalty from giving reasons ? If reasons for an order are given, there will be less scope for arbitrary or partial exercise of power and the orders *ex facie* will indicate whether extraneous circumstances were taken into consideration by authority passing the order. This view in *Vedachala Mudaliar* v. *State of Madras*(2) was approved by this Court in *Bhagat Raja* v. *Union of India and Others*.(3) As pointed out earlier, the findings of the inquiry officer are merely his *ipse dixit*. No reasons are assigned for reaching the finding and while recapitulating evidence self-contradictory position were adopted that either there was no misconduct or there was some misconduct or double punishment was already imposed. Rule 27 (19) casts an obligation upon the inquiry officer at the conclusion of the inquiry to prepare a report which must *inter alia* include the findings on each article of charge and the reasons therefor. The report is prepared in contravention of the aforementioned rule.

The situation is further compounded by the fact that the disciplinary authority which is none other than Committee of Management of the Corporation while accepting the report of the inquiry officer which itself was defective did not assign any reasons for accepting the report of the inquiry officer. After reproducing the findings of the

(1) [1966] 1 SCR 466 at 472.
(2) AIR 1952 Madras 276.
(3) [1967] 3 SCR 302 at 320.

inquiry officer, it is stated that the Committee of Management agrees with the same. It is even difficult to make out how the Committee of Management agreed with the observations of the inquiry officer because at one stage while recapitulating the evidence the inquiry officer unmistakably observed that appellant was subjected to double punishment and at other place, it was observed that granting extension of time and acceptance of documents and balance advance would tantamount to extending the time which would make the affair look wholly innocuous. This shows utter non-application of mind of the Disciplinary Authority and the order is vitiated.

A detailed appeal was submitted by the appellant to the Board of Directors running into about 8 pages. The only order while dismissing the appeal brought to our notice is a communication by a gentleman Anand Krishna whose authority and designation are not stated, but who purported to act on behalf of the Board of Directors, that the appellate authority, after going through the records of the case, has decided to uphold the decision of the disciplinary authority and to confirm the penalty of removal from service imposed upon the appellant. Rule 35 of 1975 Rules deals with appeals, Sub-rule (ii) of Rule 35 provides amongst others that the Appellate Authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders within three months of the date of appeal. In order to ascertain whether the rule is complied with, the order of the appellate authority must show that it took into consideration the findings the quantum of penalty and other relevant considerations. There is no material for showing that the appellate authority acted in consonance with its obligation under Rule 35. However, in para 5.14 to 17 of the counter-affidavit, it was stated that 'full inquiry report with annexure can be shown to the court at the time of hearing, if desired.' If the respondent was anxious to sustain its action, it was obligatory upon it to disclose the full inquiry report. Nothing was shown to us nor any attempt to show the proceedings of the appellate authority to disabuse our mind that the appellate authority was guilty of utter non-application of mind and discharged its duty under Rule 35. No attempt was made to urge that the three authorities had ever assigned reasons in support of their conclusions. For this additional reason also, the initial order of the Disciplinary Authority as well as the Appellate Authority are liable to quashed and set aside.

To sum up the order of removal passed by Disciplinary Authority is illegal and invalid for the reasons : (i) that the action is thoroughly arbitrary and is violative of Art. 14, (ii) that the alleged

misconduct does not constitute misconduct within the 1975 Rules; (iii) that the inquiry officer himself found that punishment was already imposed for the alleged misconduct by withholding the salary and the appellant could not be exposed to double jeopardy; and (iv) that the findings of the inquiry officer are unsupported by reasons and the order of the Disciplinary Authority as well as the Appellate Authority suffer from the same vice. Therefore, the order of removal from service as well as the appellate order are quashed and set aside.

The last question then is to what relief the appellant is entitled? Once the order of removal from service is held to be illegal and invalid and the appellant being in public employment, the necessary declaration must follow that he continues to be in service uninterruptedly. This aspect does not present any difficult and the declaration is hereby granted.

When removal from service is held to be illegal and invalid, the next question is whether the victim of such action is entitled to backwages. Ordinarily, it is well-settled that if termination of service is held to be bad, no other punishment in the guise of denial of back wages can be imposed and therefore, it must as a necessary corollary follow that he will be entitled to all the back wages on the footing that he has continued to be in service uninterruptedly. But it was pointed out in this case that the appellant was employed as Factory Manager by M/s KDR Woollen Mills, A-90, Wazirpur Industrial Area, Delhi from where he resigned with effect from August 8, 1983. It was also submitted that he was drawing a salary of Rs. 2500 per month. Now if the appellant had procured an alternative employment, he would not be entitled to wages and salary from the respondent. But it is equally true that an employee depending on salary for his survival when he is exposed to the vagaries of the court litigation cannot hold on to a slender distant hope of judicial process coming to his rescue and not try to survive by accepting an alternative employment, a hope which may turn out to be a mirage. Therefore, the appellant was perfectly justified in procuring an alternative employment in order to keep his body and soul together as also to bear the expenses of litigation to vindicate his honour, integrity and character.

The submission of the respndent that the appellant had accepted employment with M/s KDR Woollen Mills may be accepted in view of the evidence tendered in the case. Therefore, the appellant would not be entitled to salary for the period he was employed with M/s KDR Woollen Mills.

Even for the rest of the period, the conduct of the appellant cannot be said to be entirely in consonance with corporate culture. As a highly placed officer he was bound to strengthen the corporate culture and he should have acted within the spirit of the regulations both for house building advance and conveyance advance, which are devised to help the employees. There has been lapse in totally complying with these regulations by the appellant though it neither constitutes misconduct to attract a penalty nor substantially good enough for initiation of disciplinary inquiry. Accordingly, having regard to all the aspetes of the case, the appellant should be paid 50% of the back wages for the period since his removal from service upto his reinstatement excluding the period for which he had procured an alternative employment. The respondent shall also pay the costs of the appellant quantified at Rs. 3000.

A B C

S.R. *Appeal allowed.*