IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Appellate Side

<u>Present</u>:

The Hon'ble Justice Shampa Sarkar
And
The Hon'ble Justice Ajay Kumar Gupta

<u>MAT 666 of 2023</u>

With

IA No : CAN 1 of 2023

Sri Rajesh Banerjee

Vs.

The Calcutta Municipal Corporation & Ors.

For the Appellant	:	Mr. Subir Sanyal, Sr. Adv. Mr. Sutirtha Das, Adv. Mr. Sourojit Mukherjee, Adv. Mr. Trijit Shonkar Mitra, Adv.
For the K.M.C.	:	Mr. Alok Kumar Ghosh, Adv. Mr. Arijit De, Adv.
Judgment Reserved on	:	05/08/2026
Judgment delivered on	:	28/08/2026
Judgment uploaded on	:	28/08/2026

<u>Shampa Sarkar, J.</u>

1. The appeal arises out of an order dated July 22, 2022, passed in W.P.A No. 6304 of 2019. By the order impugned, the learned Judge held that, as the allegation of defalcation of municipal funds had been admitted by the appellant by a written confession before the Enquiry Committee, the failure

on the part of the authority in holding a disciplinary proceeding before imposing the punishment of dismissal against the appellant, paled into insignificance. Thus, the order of dismissal from service did not deserve to be set aside.

2. The appellant had preferred the writ petition being aggrieved by the order of dismissal dated June 10, 2015, passed by the disciplinary authority and the order dated July 24, 2018, passed by the appellate authority confirming the dismissal. The order of dismissal dated June 10, 2015, was issued by the Joint Municipal Commissioner (P) and the disciplinary authority being the respondent No. 4, in this proceeding.

3. The facts reveal that, on the allegation of misappropriation of funds of the Calcutta Municipal Corporation (now Kolkata Municipal Corporation, KMC) against the appellant and some others, a preliminary enquiry was held by an Enquiry Committee comprising of the Joint Municipal Commissioner (Rev) as Chairman, Controller of Municipal Finance and Accounts, Chief Manager (Personnel) and Director General (SWM). The said Committee was constituted in terms of the order of the Municipal Commissioner dated May 19, 2015, for a probe into the matter of alleged misappropriation of funds of KMC at SWM-I, Br.-VIII. Five employees named in the enquiry report, including the appellant were asked to appear before the Committee on May 22, 2015. All the employees mentioned in the enquiry report appeared before the Committee and submitted their written explanations. At the relevant point of time, the appellant was working as the Head Assistant of IFU, SWM-I, Br.-VIII. By a declaration on non-judicial stamp paper, he admitted his

involvement in the defalcation of money by raising fake bills drawn in favour of some persons. He had submitted in writing that he had generated and passed some supplementary bills in the financial year 2014-2015 against leave encashment/short drawn on different dates in favour of unauthorised persons who were not the legal heirs of the deceased persons. He also admitted that he was solely responsible for the said incident. The other persons who had put their signatures on those bills had done so in good faith. The appellant also admitted that he had deposited the defalcated amount. As per his self-declaration, Rs. 11,84,008/- was the sum involved.. The other employees who were called for the enquiry had confessed that they had signed the bills as they had reposed trust on the appellant. In view of the confession made by the appellant, the members of the Enquiry Committee had instructed the authority not to pay the dues of the appellant and that the appellant should not be allowed to withdraw the provident fund money.

4. From the proceedings of the enquiry which was held on May 27, 2015, is revealed that the appellant appeared before the Committee and submitted the treasury receipt dated May 27, 2015, by which Rs. 3 lakh had been deposited by him as part of the excess amount which had been drawn. The appellant also prayed before the Committee for permission to withdraw Rs. 2 lakh from his P.F account and for two months' time to deposit the remaining Rs. 6,84,008/-. Finally, he prayed for condonation of his action on the assurance that he would not involve himself in any further unlawful activity.

5. In view of the admission made by the appellant of his involvement in defalcation of public money, the Committee recommended imposition of stringent punishment upon the appellant. The Committee further held that, 15 days' time would be needed to complete the enquiry in respect of the others.

6. Pursuant to the recommendation of the Enquiry Committee, by order dated June 10, 2015, the Joint Municipal Commissioner (P) and the disciplinary authority being respondent No. 4, observed that the conduct of the appellant was unbecoming of a civic employee and on the basis of his admission, the employee should be dismissed from service. The appellant was informed about his dismissal and the order was served upon him. The appellant preferred an appeal as per the Service Rules before the Municipal Commissioner on July 22, 2015.

7. Challenging the delay on the part of the appellate authority to consider and dispose of the appeal in spite of several reminders, the appellant moved the High Court under Article 226 of the Constitution of India. The writ petition was registered as W.P No. 22940(W) of 2016. The learned Single Judge disposed of the writ petition, with a direction upon the appellate authority to communicate the result of the appeal to the appellant within six weeks from the date of the order of His Lordship. His Lordship passed the order on June 13, 2018. By an order dated July 24, 2018, which was received by the appellant on July 26, 2018, the appellate authority informed the appellant of the order passed in appeal.

8. Upon perusal of the documents on record, the appellate authority held that the appellant had voluntarily confessed his guilt before the Enquiry Committee. He took the sole responsibility for the commission of the offence with regard to the defalcation of municipal funds amounting to Rs. 11,84,008/-. Upon receiving the order of the disciplinary authority, the appellant filed a belated appeal. The appellant tried to shrug off his responsibility and put the blame on senior officials, which was contrary to the admission made by him before the Enquiry Committee. Moreover, the appellant's allegation that his superior authorities were involved in the entire process of misappropriation of funds could not be established, as he did not adduce any corroborative document in support of such claim. Thus, his contentions before the appellate authority were found to be devoid of merit. The appellant had tried to convince the appellate authority that, being a mere staff of the accounts department, he could not have raised the fake bills. That, he was forced to confess the guilt and he succumbed to pressure. He was also pressurized to deposit the defalcated amount, but he did not deposit any amount with the KMC, although receipts were issued in his name. The appellate authority dismissed the appeal, by disbelieving the contentions of the appellant.

9. Challenging the order of dismissal and the order of the appellate authority, the writ petition was filed on various grounds. First, of such ground being failure of the disciplinary authority to adhere to the service rules, while imposing a major penalty of dismissal. According to the appellant, the applicable service regulations prescribed a specific procedure

for imposition of major punishment. The laws governing disciplinary action against an employee, clearly required issuance of a charge sheet and an opportunity to the employee to meet those allegations by filing a written version. It was alleged that the Enquiry Committee could not have recommended imposition of a stringent punishment. It was a fact finding Committee and the disciplinary authority could not have acted on the dictates of the Enquiry Committee without holding a formal enquiry. Reliance was placed on the Commissioner's Circular No. 6 of 1979-80 dated June 14, 1979, which was claimed to be the procedure followed by the KMC for departmental proceedings. The writ petition was dismissed on the ground that, in view of the admission of the guilt and repayment of the money, the disciplinary authority was not required by law to hold a regular proceeding under the service regulations.

10. Mr. Subir Sanyal, learned senior Advocate appearing for the appellant submitted that the preliminary enquiry was a fact finding procedure, which was directed to be held before a regular disciplinary proceeding could be initiated. The employer constituted the Committee only to find out whether disciplinary proceeding should be initiated against the erring employees. The recommendation and observations of the Enquiry Committee were only, prima facie. At best, the said enquiry report could be used as evidence in the disciplinary proceeding. The proper course of action for the employer should have been to issue a charge sheet, upon treating the report of the enquiry committee to be, prima facie, evidence of misconduct. He also submitted that the fact that the appellant was forced to admit the guilt would be

available from the sequence of events. Before the Enquiry Committee was formed, the appellant had signed the admission on the dictates of his superiors, on the understanding that he would be exonerated if he repaid the money.

11. The affidavit of admission on a non-judicial stamp paper was dated May 14, 2015. Whereas, the Enquiry Committee was constituted on May 19, 2015 to hold a preliminary enquiry. Thus, according to Mr. Sanyal, the entire process of confession by the appellant was a pre-meditated endeavour on the part the superior officers, to put the entire blame on the appellant. The appellant was a victim of a plot, which aimed at saving other guilty persons. The appellant was made to write down his confessional statement on May 14, 2015. On the first date of the enquiry i.e. 22 May, 2015, five employees were asked to attend such enquiry and on May 27, 2015 an order was passed. The fact that the confessional statement was recorded by the appellant in his own hand writing on May 14, 2015 prior to the Enquiry Committee being constituted, raised various doubts with regard to the role of the appellant in the entire process. It was next submitted that the Corporation had a regular and functional Vigilance Department, but in this case although public money was involved, the matter was not sent to the Vigilance and no vigilance enquiry was made. The Corporation had acted contrary to its own Circular No. 86(M.C)/98-99 dated 11.01.1999 issued by the Municipal Commissioner, claiming that the Municipal Vigilance Authority had been declared as Controlling Officer of the Vigilance Department. By a notification dated May 4, 1994 published in the Calcutta

Gazette, the Calcutta Municipal Corporation (Powers and Functions of the Vigilance Authority) Rules, 1994 had been notified. In the present case, without referring the matter for investigation by the Vigilance authorities and without holding any disciplinary proceeding in accordance with the service regulations, the order of dismissal was imposed on June 19, 2015. According to Mr. Sanyal, the procedure for imposition of a major penalty not having been followed, the decision was subject to judicial review by the High Court and the learned Judge misinterpreted the law by holding that the confession made before the preliminary Enquiry Committee was adequate to punish the appellant and dismiss him from service.

12. Reliance was placed on the decision of ***Cherukuri Mani vs. Chief Secretary, Government of Andhra Pradesh and Others*** reported in ***(2015)13 SCC 722*** on the proposition that, when a law prescribed a thing to be done in a particular way and by following a particular procedure, it must be done in the same manner and procedure provided by law without deviating from the same.

13. Reliance was also placed on ***Jagdish Prasad Saxena vs. State of Madhya Bharat (Now Madhya Pradesh)*** reported in ***1960 SCC OnLine SC 68***, on the proposition that the appellant was entitled to a reasonable opportunity to meet the charges framed against him and an inference of guilt could not be drawn only on the basis of the report of the previous enquiry. A departmental enquiry was not an empty formality, but a serious exercise, intended to give the officer concerned a chance to meet the charges and prove his innocence. In the absence of any such proceeding, it would

not be fair to hold that, no useful purpose would be served in providing a further opportunity to the officer to explain his stand, as he had admitted the guilt.

14. Reliance was also placed on ***Union of India and Others vs. R. Reddappa and Another*** reported in ***(1993) 4 SCC 269***, on the proposition that, if the order of the disciplinary authority was illegal, it did not assume the character of legality only because the appellate authority confirmed the same. Mere reiteration and repetition of the same findings by both the authorities would not add any strength to the order which was otherwise vulnerable on account of failure to adhere to the procedure established by law in the matter of removal of an employee.

15. ***Roop Singh Negi vs. Punjab National Bank and Others*** reported in ***(2009) 2 SCC 570***, was relied upon on the principle that a departmental proceeding was a quasi-judicial proceeding and the Enquiry Officer performed a quasi-judicial function. The Enquiry Officer had a duty to arrive at a finding that the charges against the employee were proved on the basis of materials on record. Even the confession made by the appellant was required to be proved.

16. ***Chairman & Managing Director, V.S.P vs. Goparaju Sri Prabhakara Hari Babu*** reported in ***(2008) 5 SCC 569***, was relied upon on the principle that, only when it was found that all procedural requirements had been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee, but not otherwise.

17. Mr. Alok Kumar Ghosh, learned Advocate for the KMC submitted that once the appellant had admitted the guilt and repaid the money, the matter attained finality. Any further proceeding as per the Service Rules and Regulations would be an empty formality, as the appellant would have been held to be guilty in any event. Secondly, the appellant neither denied his signature on the confession nor did he deny the factum of repayment of money before the authorities. For the first time before the High Court, he had raised a plea that the receipts which were issued upon deposit of the defalcated amount at the Treasury, were not on the basis of payments made by him and that those receipts were falsely generated in his name. Learned Advocate took us through all the averments made by the appellant before the appellate authority and the reminders sent to the appellate authority, which clearly indicated that he had admitted his guilt. He made allegations against his superior officers and other co-workers who according to him were also involved in the process, which were not accepted by the appellate authority. Thus, the question of retraction from the confession did not arise in this case and as such, no further disciplinary proceeding and issuance of charge sheet on the basis of the findings of the Enquiry Committee, was necessary.

18. Reliance was placed on the decision of ***Ashok Kumar Sonkar vs. Union of India and Others*** reported in ***(2007) 4 SCC 54,*** on the proposition that principles of natural justice would not be applicable unless a prejudice could be shown.

19. ***Indian Railway Construction Co. Ltd. vs. Ajay Kumar*** reported in ***(2003)4 SCC 579*** was relied upon, to demonstrate the limited scope of judicial review. Mr. Ghosh submitted that, a writ court should not sit in appeal over the decision of the disciplinary authority and substitute its own view for that of the disciplinary authority. Judicial review was only open in case of failure to exercise discretion as per law, or in cases where the disciplinary authority had acted either in excess of or in abuse of the law. Thus, had the order of the disciplinary authority and the appellate authority been illegal, irrational or a product of complete non application of mind, judicial review would be permissible. The order of dismissal was not issued, in bad faith and in abuse of power by the disciplinary authority. In this case, the disciplinary proceeding was not required to be held, in view of the admission and repayment of the entire amount by the appellant.

20. ***Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Education Institution vs. The Educational Appellate Tribunal and another*** reported in ***1999 AIR SCW 3187,*** was relied upon on the principle that, when the facts were clear and apparent from the records, the question of granting further opportunity to the delinquent employee did not arise.

21. ***Depot Manager, A.P. SRTC vs. B. Swamy*** reported in ***(2007)12 SCC 40,*** was relied upon on the principle that a person who was dishonest in performance of his duties, which resulted in losses to the employer, the gravity of the mis-conduct could not be minimised by the fact that he had repaid the money or he had confessed his guilt and had begged for forgiveness before the Enquiry Committee.

22. Having heard the learned Advocates for the parties, this court finds that the preliminary enquiry was conducted upon the constitution of an Enquiry Committee on May 19, 2015. The same was a fact finding committee. The enquiry by the Committee did not partake the character of a regular enquiry as envisaged in a disciplinary proceeding, upon issuance of a charge sheet. The reason behind holding preliminary enquiries for commission of offences, was only to collect the facts, for formation of a, prima facie, opinion as to whether the delinquent employee had committed any misconduct. Such enquiries are conducted to ascertain whether the facts which may emerge during such enquiry were sufficient to proceed against the delinquent officer by holding a regular disciplinary proceeding. On the basis of the findings in a preliminary enquiry, no order of punishment cannot be imposed. A preliminary enquiry should not be confused with a regular enquiry, for the simple reason that a preliminary enquiry can also be held ex parte. Even if we hold that the appellant had confessed voluntarily, without any coercion (although, Mr. Sanyal contended otherwise), the preliminary enquiry in this case, cannot be held to be a regular enquiry and as such, using the report of the Enquiry Committee as concrete proof of guilt and issuance of the order of dismissal without giving the appellant an opportunity to rebut the same by leading evidence, is violative of the principles of natural justice. The findings in the preliminary enquiry report are only, prima facie, evidence. At best, the enquiry report and the admission of guilt by way of the confessional statement, could be used as evidence against the appellant, but the appellant should have been

granted an opportunity to rebut the same upon issuance of a charge sheet, clearly spelling out the charges against him, so that, he knew what were the allegations he was required to meet and also got a chance to explain the circumstances under which the confessional statement was issued. Even if we hold that investigation by the Vigilance Commission as per the Vigilance Rules are not mandatory, we do not find any answer as to why the Corporation did not deem it fit to refer the matter to its own Vigilance Department when defalcation of public money was involved. Secondly, the Enquiry Committee being a fact finding committee was required to forward its report containing the facts which came to light during such enquiry, but it could not have recommended that the most stringent punishment should be imposed upon the appellant, without following the due process of law. The Calcutta Municipal Corporation (Powers and Functions of the Vigilance Authority) Rules, 1994 and the Schedule therein provides as follows :-

> "**3. Consultation with the Vigilance Authority**
> The concerned authority of the Corporation shall consult the Vigilance Authority regarding the cases enumerated in the Schedule to these rules as and when any such case may occur and the Vigilance Authority shall be competent to look into and advise on such cases.
>
> **4. Powers and functions**
> The powers and functions of the Vigilance Authority are as follows:
> (i) to undertake an enquiry into any transaction in which an employee of the Calcutta Municipal Corporation is suspected or alleged to have acted for an improper purpose or in a corrupt manner:
> (ii) to cause an enquiry or investigation to be made into -
> (a) any complaint that an employee of the Calcutta Municipal Corporation had exercised or had refrained from exercising his power for improper or corrupt purposes.
> (b) Any complaint of corruption, misconduct, lack of integrity or other kinds of malpractices or misdemeanour on the part of an employee of the Calcutta Municipal Corporation.
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> Schedule
> (See rule 3)

1. Demand and/or acceptance of illegal gratification.
2. Misappropriation of Corporation money or property.
3. Breach of trust in respect of Corporation fund.
4. Forgery or falsification of document for getting undue advantage for self of somebody else.
5. Showing false expenditure of Corporation money with improper motive.
6. Incurring unnecessary expenditure for Corporation with the motive of giving undue benefit to others.
7. Possession of assets disproportionate to known source of income.
8. Drawal of the false travelling allowance, daily allowance, house rent allowance, etc.
9. Engagement or involvement in private trade, business or employment, speculation and investment, promotion or management of companies.
10. Non-declaration or suppression of assets or misleading assets statements.
11. Omission to report to the appointing authority about acquisition of property and acceptance of gifts, when that is necessary under the Calcutta Municipal Corporation Officers and Employees (Conduct) Regulations, 1984.
12. Financial impropriety, lack of supervision, negligence of duty. arbitrary action, etc. resulting in loss of Corporation money or facilitating corruption.
13. Unauthorised raising of subscription.
14. Unauthorised lending and borrowing.
15. Unauthorised obtaining of patcuts.
16. Abuse of power or authority for deriving improper gain for self. relatives, friends, etc.
17. Such other case or cases as may be included in this Schedule by order of the Government issued from time"

23. We do not find any justification as to why the Corporation deviated from its own procedure and did not refer the matter to the Vigilance Commission. Secondly, we find from the Service Regulations of the Corporation annexed to the appeal papers, that charges are required to be framed against the appellant. A copy of the charge sheet was required to be supplied to the appellant, providing him with an opportunity to explain his conduct and showing cause as to why he should not be punished or dismissed. The relevant Regulation is quoted below :-

> "50.(a) In a case where any disciplinary action against an employee other than censure, suspension pending proceedings or removal, dismissal or reduction in rank on the ground of his conduct which has

> led to his conviction on a criminal charge is considered necessary, charges will be framed against him. As a rule, a copy of the charge sheet will be supplied to the employee concerned who may be given an opportunity of explaining his conduct and of showing cause why he should not punished or dismissed, as the case may be.
> (b) If no explanation as called for under clause (a) is received within one month from the date on which it is called for, final order will be passed without the explanation. In exceptional cases, the time may be extended by another month by the punishing authority.
> (c) When an employee is suspended from duty pending enquiry into his conduct, the charge sheet will be sent to him as early as possible and not later than one month from the date of order of suspension, provided that in exceptional cases the said time may be extended by further three months."

24. We also find that the appellant has annexed the Commissioner's Circular No. 6 of 1979-80 dated June 14, 1979, which provides for preliminary enquiry and investigation and it has been clarified that the preliminary enquiry was a fact finding enquiry, to be held for the purpose of collection of facts with regard to the conduct of the employee concerned and to determine whether there was a, prima facie, case for institution of a departmental proceeding. It also provided that the preliminary enquiry report was meant to be a subjective satisfaction of the authority and should not ordinarily cited as a document in support of the charges levelled against a civic employee. However, it could be taken as an evidence and relied upon during a regular proceeding upon the employee concerned being supplied with a copy thereof. The said circular also provides that charge sheet may be issued to an employee without giving him any prior show cause, although it would be desirable to call for an explanation before serving a charge sheet. The Circular further provides that, if after a preliminary enquiry, there was, prima facie, reason to think that the employee was at fault, a charge sheet setting out the details and likely evidence should be issued without

offending any principle of justice and fair play. Annexures III and IV of the said Circular provides that, after receiving the charge sheet, if the civic employee admitted the charges, no further formal enquiry would be necessary. Thus, in the case in hand, until a charge sheet was issued and the appellant admitted his guilt in answer to the charges therein, the departmental proceeding could not be done away with, solely on the basis of his admission. The relevant portions of the said Circular are quoted below :-

> **"PROCEDURE FOR INSTITUTING DEPARTMENTAL PROCEEDING – BRIEF RESUME**
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> *******
>
> **PRELIMINARY ENQUIRY/INVESTIGATION.**
>
> Whenever intimation is received about the commission of an offence by an employee or in cases where the allegation relates to a misconduct, a departmental irregularity or negligence or where the alleged facts are capable of verification on enquiry within the departmental office, a preliminary enquiry/investigation is conducted departmentally, which is in the nature of a fact "fact finding enquiry". This is held for the purpose of collection of facts in regard to the conduct and work of the employee concerned or to determine whether there is, prima facie, a case for institution of departmental proceedings. Such proceedings are not to be confused with the regular departmental proceedings which may be instituted later. There is no element of punitive proceedings in such an enquiry. In fact, it is an informal type of enquiry without any definite form or procedure. The preliminary or a "fact finding enquiry" may be held confidentially or even ex-parte. At this enquiry, all available evidences and relevant documents should be collected and in important cases, evidences of witnesses be reduced to writing and got signed by them, if possible, in presence of the employee concerned. During the course of such an enquiry, for the sake of fairness, the civic servant complained against should normally be given an opportunity to say what he may have to say about the allegations against him to find out if he is in a position to give any satisfactory information or explanation which may render any further investigation unnecessary. The investigation report along with preliminary evidences collected is then examined by the appropriate authority to a decision whether a prima facie case exists for initiation of formal disciplinary proceedings. This preliminary enquiry report is only meant for the subjective satisfaction of the disciplinary authority and should not ordinarily be cited as a document in support of the charges levelled against the civic employee concerned. But in case where evidence taken in preliminary enquiry is to be relied upon during regular proceedings, the employee concerned should be supplied with copies of such evidence so that he can put up his defence effectively. It is not, however, necessary to disclose the source of information to him.

In the case of witnesses examined during preliminary enquiry, their statements should again be recorded at the time of regular enquiry and in presence of the delinquent employee.

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SHOW CAUSE NOTICE/CHARGE SHEET

Charge-sheet may be issued to an employee without giving any prior show cause notice. Though it may be desirable to call for an explanation before serving a charge-sheet there is no principle which comples such a course. The calling for an explanation can only be with a view to making an enquiry unnecessary where the explanation is good. But in many cases it would be open to criticism that the defence of the employee was being fished out. If after a preliminary enquiry there is prima facie reason to think that the employee was at fault, a charge-sheet setting out the details and likely evidence may be issued without offending any principle of justice and fair play.

As soon as a decision has been taken by the competent authority to start disciplinary proceedings for imposition of penalty, a charge-sheet should be drawn up in the form prescribed, duly accompanied by the following annexures which should be appended to the memorandum of charge :-

(i) ANNEXURE I- Statement of articles of charge.

(ii) ANNEXURE II- Statement of imputation of misconduct or mis-behaviour in support of articles of charge framed against the employee (name and designation).

(iii) ANNEXURE III- List of documents by which the articles of charge framed against the employee (name and designation) are proposed to be sustained.

(iv) ANNEXURE IV- List of witnesses by whom the articles of charge framed against the employee (name and designation) are proposed to be sustained.

The following important instructions should invariably be observed while framing the charge-sheet:-

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ANNEXURES III & IV

The list of witnesses should contained the names of those witnesses who will be able to give positive evidence to substantiate the allegations. All material particulars given in the allegations, such as, dates, names, figures, totals of amounts, etc. should be carefully checked with reference to the original documents and records, before such documents are included in the list of documents.

The charge-sheet together with its enclosures should be served in person if he is on duty and his acknowledgement taken or sent by registered post with acknowledgement due. If the civic servant evades acceptance of the charge-sheet and/or refuses to accept the registered cover containing the same, the charge-sheet will be deemed to have been duly delivered on him as refusal of a registered letter normally is tantamount to proper service of its contents.

The acknowledgement of the civic employee should be obtained and kept on record as soon as the charge-sheet is served on him.

> On receipt of the charge-sheet, it is for the civic employee concerned to admit or deny the charges. If the charges are admitted then there will be no need to hold a formal inquiry, into the charges.
> The admission must however, be express and in writing. It is not sufficient to say that it is implied in his statement. If the delinquent employee, after he is served with a charge-sheet tenders and unconditional apology, such a case, there does not arise any necessity for an oral enquiry and the Disciplinary Authority is straightway seized with the matter of assessing his guilt on the basis of the information already available on record. It is, however, necessary that the apology tendered by the employee must be unconditional and unreserved.
> If the disciplinary authority finds that any or all the charges have not been admitted by the civic servant in his written defence or if no written statement of defence is received by him by the specified date, the disciplinary authority may itself inquire into such charges which are not admitted or appoint an Inquiry Officer to inquire into the truth of the charges. ”

25. Mr. Ghosh has not been able to satisfy us by producing any other Circular or service regulations applicable to the concerned employee. In any event, service jurisprudence mandates imposition of punishment only upon allowing an opportunity to meet the allegations and lead evidence to prove innocence. The scope of the departmental enquiry has also been provided in the said Circular. Affidavit-in-opposition had been filed by the Corporation before the learned Single Judge. The only version of the Corporation was that, in view of the admission made by the appellant vide his written declaration dated May 4, 2015, which was placed before the Enquiry Committee, the department deemed it fit to dismiss the employee on the ground of his misconduct and any further proceeding was unnecessary. It was contended that any further proeeding would only be a futile exercise. Retaining a person who was guilty of such serious offence would be detrimental to the interest of the employer. There was no guarantee that such offence would not be repeated.

26. In our view, without initiating a disciplinary proceeding by issuing a charge sheet clearly delineating the charges against the appellant, serving the documents which the disciplinary authority wanted to rely upon, supplying the list of witnesses to be cited, and without giving an opportunity to the appellant to meet those allegations, the punishment of dismissal from service was bad in law. On the recommendation of the Enquiry Committee, the appellant could not have been dismissed from service upon imposition of a major penalty.

27. The judgments relied upon by Mr. Ghosh on the scope of judicial review do not apply to the facts of the case. The employer has proceeded contrary to the service regulations and the punishment has been imposed by violating the established norms of service jurisprudence. The employee was denied of an opportunity of being heard. The action of the disciplinary authority is in abuse of the process established by law and violative of the principles of natural justice. The other contention of Mr. Ghosh that denial of the principles of natural justice would be relevant only if prejudice could be shown, is misconceived. The appellant was punished with the most stringent penalty available under the service law i.e. dismissal from service. It does not suit the Corporation to submit that no prejudice had been caused to the appellant by not allowing him an opportunity of being heard, in view of the confession. The law requires a procedure to be followed for imposition of punishment upon an employee and unless such procedure is followed, the punishment stands vitiated and is null and void.

28. For ready reference, the relevant paragraphs of the following judgments are discussed hereunder.

29. In ***Jagdish Prasad*** (supra) the Hon'ble Apex Court held as follows :-

> "**11.** It is true that the appellant specifically admitted during the course of the previous enquiry that illegal liquor had been delivered to the contractor, and that he had given the key of the receiver to Narona. It is on the strength of those admissions that the High Court took the view that the appellant had substantially admitted his guilt and so there was really no need for holding a formal enquiry against him after the charge-sheet was supplied to him. In this connection it is necessary to remember that the previous enquiry was not directed against the appellant as such, and he was certainly not in the position of an accused in the said enquiry. In fact, as we have already indicated, the result of the said enquiry was that the appellant was absolved from any complicity in the commission of the offence, and the only criticism made against him was that he was slack in his supervision, that is why he was transferred. In such a case, even if the appellant had made some statements which amounted to admission it is open to doubt whether he could be removed from service on the strength of the said alleged admissions without holding a formal enquiry as required by the Rules. But apart from this consideration, if the statements made by the appellant do not amount to a clear or unambiguous admission of his guilt, failure to hold a formal enquiry would certainly constitute a serious infirmity in the order of dismissal passed against him. Under Article 311(2) he was entitled to have a reasonable opportunity of meeting the charge framed against him, and in the present case, before the show-cause notice was served on him he has had no opportunity at all to meet the charge. After the charge-sheet was supplied to him he did not get an opportunity to cross-examine Kethulekar and others. He was not given a copy of the report made by the enquiry officers in the said enquiries. He could not offer his explanation as to any of the points made against him; and it appears that from the evidence recorded in the previous enquiries as a result of which Kethulekar was suspended an inference was drawn against the appellant and show-cause notice was served on him. In our opinion, the appellant is justified in contending that in the circumstances of this case he has had no opportunity of showing cause at all, and so the requirement of Article 311(2) is not satisfied.
> **12**. The two facts admitted by the appellant do not necessarily or inevitably lead to the conclusion that he was guilty of the offence with which he was charged; besides, if his statements are used against him all his statements must be considered as a whole; and thus considered there is no admission of guilt at all. The essential part of the finding against him is that he was present at the time when liquor was transferred to the contractor; and his presence cannot be reasonably inferred from the facts admitted by him. Even as to the delivery of the key to Narona no rule has been produced in this case which positively prohibited the delivery of such a key even in an emergency. Indeed the report made by the Superintendent on July 13, 1951, shows that as a

prudent man the appellant should not have given the key to Narona. The appellant was told that in future "the key should be given only to reliable persons in case of need". This admonition would show that in case of need it was open to the appellant to give the key to a reliable person, and that must necessarily mean that there was no rule which absolutely prohibited the delivery of the key to any person even in case of need. Therefore, the admission made by the appellant that he gave the key to Narona cannot necessarily lead to the conclusion that he was in league with Narona or Kethulekar.

13. The order passed by the Minister shows that he took into account the alleged interpolations in the books kept by the appellant as well as the fact that Kethulekar and the contractor saw the appellant the next morning. Now it is clear that so far as these two facts are concerned the appellant was given no opportunity to cross-examine Kethulekar and the contractor and to show that their story was untrue; nor was he given an opportunity to substantiate his explanation about the alleged interpolations in the books. The Minister may have thought that the facts to which his attention was invited indicated that the appellant must have been present at the warehouse when the offence took place; but it is of the utmost importance that in taking disciplinary action against a public servant a proper departmental enquiry must be held against him after supplying him with a charge-sheet, and he must be allowed a reasonable opportunity to meet the allegations contained in the charge-sheet. In the present case preliminary enquiries of a general type were held and they ended in a finding against Kethulekar. The reports did not show that the appellant was guilty of the offence for which he was ultimately dismissed from service. The delay made in giving the appellant the charge-sheet as well as in communicating to him the final order of dismissal shows that the authorities did not think that time was the essence of the matter, and so there was hardly any justification for not holding a formal and proper enquiry after the appellant was given a charge-sheet on October 17, 1951. In our opinion, therefore, the High Court was in error in coming to the conclusion that no prejudice had been caused to the appellant as a result of the respondent's failure to hold an enquiry against him after supplying him with a charge-sheet. The departmental enquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against the appellant and to hold that in view of the admissions made by him the enquiry would have served no useful purpose. That is a matter of speculation which is wholly out of place in dealing with cases of orders passed against public servants terminating their services."

30. In ***Cherukuri Mani*** (supra) the Hon'ble Apex Court held as follows :-

"Proviso to sub-section (2) of Section 3 is very clear in its purport, as to the operation of the order of detention from time to time. An order of detention would in the first instance be in force for a period of three months. The Government alone is conferred with the power to extend the period, beyond three months. Such extension, however, cannot be for a period, exceeding three months, at a time. It means that, *if the Government intends to detain an individual under the Act for the maximum period of 12 months, there must be an initial order of detention for a period of three months, and at least, three orders of extension for a period not exceeding three months each*. The expression "*extend such period from time to time by any period not exceeding three months at any one time*" assumes significance in this regard."

31. In ***R. Reddappa*** (supra) the observation of the Hon'ble Apex Court was as follows :-

> "**5.** More than a decade has gone by since these employees were dismissed for participating in strike called by the Union recognised by the Railways. But end has not reached. Barring appellate and revisional authority whose discretion too was attempted to be curtailed by issuing circular no court or tribunal has found the orders to be well founded on merits. True the jurisdiction exercised by the High Court under Article 226 or the tribunal is not as wide as it is in appeal or revision but once the court is satisfied of injustice or arbitrariness then the restriction, self-imposed or statutory, stands removed and no rule or technicality on exercise of power, can stand in way of rendering justice. We are not impressed by the vehement submission of the learned Additional Solicitor General that the CAT, Hyderabad exceeded its jurisdiction in recording the finding that there was no material in support of the finding that it was not reasonably practicable to hold an enquiry. The jurisdiction to exercise the power under Rule 14(*ii*) was dependent on existence of this primary fact. If there was no material on which any reasonable person could have come to the conclusion as is envisaged in the rule then the action was vitiated due to erroneous assumption of jurisdictional fact therefore the Tribunal was well within its jurisdiction to set aside the orders on this ground. An illegal order passed by the disciplinary authority does not assume the character of legality only because it has been affirmed in appeal or revision unless the higher authority is found to have applied its mind to the basic infirmities in the order. Mere reiteration or repetition instead of adding strength to the order renders it weaker and more vulnerable as even the higher authority constituted under the Act or the rules for proper appraisal shall be deemed to have failed in discharge of its statutory obligation."

32. In ***Goparaju Sri Prabhakara Hari Babu***(supra) the decision of the Hon'ble Apex Court is quoted below :-

> "21. Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved."

33. In ***Roop Singh Negi*** (supra) the Hon'ble Apex Court decided as follows :-

> "**14.** Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.
>
> **15.** We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."

34. The Hon'ble Apex Court in ***Nirmala J. Jhala vs. State of Gujarat & Anr.*** reported in ***(2013) 4 SCC 301*** held as follows :-

> **"42.** A Constitution Bench of this Court in *Amalendu Ghosh* v. *North Eastern Railway* [AIR 1960 SC 992] , held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.
>
> **43.** Similarly in *Champaklal Chimanlal Shah* v. *Union of India* [AIR 1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the

Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under :

"*12. …* There must therefore be *no confusion between the two enquiries* and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article, nor prior to that.

(emphasis added)

44. In Narayan Dattatraya Ramteerthakhar v. State of Maharashtra & Ors., AIR 1997 SC 2148, this Court dealt with the issue and held as under:

"… a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence.

(emphasis added)

45. In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.

46. In *Ayaaubkhan Noorkhan Pathan* v. *State of Maharashtra* [(2013) 4 SCC 465 : AIR 2013 SC 58] this Court while placing reliance upon a large number of earlier judgments held that cross-examination is an integral part of the principles of natural justice, and a statement recorded behind back of a person wherein the delinquent had no opportunity to cross-examine such persons, the same cannot be relied upon.

47. The preliminary enquiry may be useful only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry."

35. Accordingly, the order impugned is set aside. The order of dismissal, as also the order of the appellate authority confirming the dismissal of the appellant are set aside. The appellant shall be reinstated in service within a week from the date, in the same post which he was holding prior to his dismissal. Upon reinstatement, he will be treated as a regular employee. The employer will be at liberty to suspend him in contemplation of a disciplinary

proceeding by issuing necessary orders, after such reinstatement. If the employer decides to suspend the appellant, he shall be entitled to be treated as per the service rules applicable, including payment of subsistence allowance. The disciplinary authority shall be at liberty to issue a charge sheet within two weeks from date. Written version shall be filed by the appellant within 15 days from receipt of the charge sheet and the disciplinary proceeding shall be concluded expeditiously.

36. With regard to the back wages, we do not make any observations in the peculiar facts and circumstances of the case, and also in view of the fact that the appellant was not in service and did not work for the said period. Moreover, the confession is an important piece of evidence. The issue of back wages will be subject to the final outcome of the disciplinary proceeding.

37. The appeal and the connected application are disposed of. All parties will act on the basis of server copy of the order.

38. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(**Shampa Sarkar, J.**)

I agree.

(**Ajay Kumar Gupta, J.**)

Later:-

1. Mr. Ghosh, learned senior Advocate for the KMC prays for stay of operation of the judgment and order passed by us. The prayer has

been considered and refused.

(**Shampa Sarkar, J.**)

I agree.

(**Ajay Kumar Gupta, J.**)