HIGH COURT OF MADHYA PRADESH, JABALPUR
(Full Bench)

Writ Petition No.1353/2011

Ram Sewak Mishra ……Petitioner

Vs.

The State of M.P. and another ..…….. Respondents

CORAM:-

Hon'ble Shri Justice Hemant Gupta, Chief Justice,
Hon'ble Shri Justice Sujoy Paul, J.
Hon'ble Shri Justice Subodh Abhyankar, J.

Shri K. C. Ghildiyal, and Shri Jai Shukla, Advocates for the petitioner.

Shri P. K. Kaurav, Advocate General with Shri Amit Seth, Govt. Advocate for the respondents/State.

Whether approved for reporting ? Yes

Law laid down :- A relationship between employer and employee before superannuation is governed by service Rules. If the Rules do not permit giving of an opportunity of hearing, the same can be dispensed with but so far as pension is concerned, it not a bounty. Pension is a benefit earned by him by serving State for many years. The deprivation of such pension, a means of survival, for whole life, affects civil rights of the pensioner. Though sub-rule (2) of Rule 8 of the Pension Rules is silent about opportunity of hearing, but neither dispensing with an opportunity of hearing is urgent nor is any other purpose expected to be achieved by denying the benefit of opportunity of hearing. Therefore, in case of a pensioner, the rule of natural justice would warrant an opportunity of hearing, at least of serving a show cause and elucidating the reply of the pensioner.

The view expressed by this Court in **Dau Ram Maheshwar Vs. State of M.P. and another** reported as **2017(1) MPLJ 640** is affirmed.

Significant Paragraphs – 14 and 15

O R D E R

(Delivered on this 18th day of July, 2017)

Per Hon'ble the Chief Justice

The matter has been placed before this Bench in view of the reference made by the learned Single Judge of this Court doubting the

correctness of an order passed by Single Bench of this Court in the case of **Dau Ram Maheshwar Vs. State of M.P. and another** reported as **2017(1) MPLJ 640.** The learned Single Bench has framed the following questions:-

> "(I) Whether a show cause notice/opportunity of hearing is required to be given to the Retired Government Servant who is convicted of a serious crime by the Court of law?
>
> (II) Whether the view taken in **Dau Ram Maheshwar**'s case (supra) is correct in view of Rule 8 of the Pension Rules?

02. The facts as are necessary for examining the question posed are that the Petitioner was convicted in a criminal case under Section 7 of the Prevention of Corruption Act, 1988. The petitioner filed an appeal against his conviction which is pending before this Court, wherein there is order of suspension of sentence. The petitioner attained the age of superannuation on 31.12.2004 and was granted anticipatory pension on 31.3.2005 by the Collector. The entire pension has been withheld under Rule 8 of the Civil Services (Pension) Rules, 1976 (hereinafter referred to as the "Pension Rules" for short) in view of the conviction of the Petitioner in the criminal case without giving any notice and opportunity of hearing. The impugned order of stoppage of pension has been passed on 15.3.2010. The ground of challenge in the writ petition is that pension could not be stopped without giving notice or opportunity of hearing.

03. On behalf of the State it is stated that the pension has been stopped after consultation of the Public Service Commission and the

approval from the Council of Ministers. It is denied that there is any violation of principles of natural justice as the pension has been stopped in terms of Rule 8 (1) of the Pension Rules, 1976. Rule 8 of the said Rules reads as under:-

> "**8. Pension subject to future good conduct**. - (1) (a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.
>
> (b) The pension sanctioning authority may, by order in writing withhold or withdraw a pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct:
>
> Provided that no such order shall be passed by an authority subordinate to the authority competent at the time of retirement of the pensioner, to make an appointment to the post held by him immediately before his retirement from service:
>
> Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum pension as determined by the Government from time to time.
>
> (2) Where a pensioner is convicted of a serious crime by a court of law, action under clause (b) of sub-rule (1) shall be taken in the light of the judgment of the court relating to such conviction.
>
> (3) In a case not falling under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is *prima facie* guilty of grave misconduct, it shall before passing an order under sub-rule (1) :-
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> (a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not

exceeding fifteen days as may be allowed by the pension sanctioning authority, such representation as he may with to make against the proposal; and

(b) take into consideration the representation, if any, submitted by the pensioner under clause (a).

(4) where the authority competent to pass an order under sub-rule (1) is the Governor, the State Public Service Commission shall be consulted before the order is passed.

(5) An appeal against an order under sub-rule (1), passed by any authority other than the Governor, shall lie to the Governor and the Governor shall in consultation with the State Public Commission pass such order on the appeal as he deems fit.

Explanation. - In this rule, -

(a) the expression “serious crime” includes a crime involving an offence under the Official Secrets Act, 1923 (No.19 of 1923);

(b) the expression “grave misconduct” includes the communication or disclosure of any secret official code or pass word or any sketch, plan, model, article, note, document or information such as is mentioned in section 5 of the Official Secrets Act, while holding office under the Government so as to prejudicially affect the interests of the general public or the security of the country.

[**Note**. - The Provisions of this rule shall also be applicable to family pension payable under rule 47 and 48. The authority competent to make an appointment to the post held by the deceased Government servant/pensioner immediately before the death or retirement from the service, as the case may be, shall be the competent authority to withhold or withdraw any part of family pension.]”

04. The learned counsel for the petitioner contends that even a convicted employee is entitled to notice and opportunity of hearing as

part of rule of natural justice. The argument is based upon a principle that pension is not a bounty, but a right; therefore, any order which affects the vested civil right of a citizen can only be passed after compliance of principle of natural justice. Reliance is placed on the judgments of Supreme Court in the cases reported as **AIR 1967 SC 1269 (State Of Orissa Vs. Dr. (Miss) Binapani Dei & Ors**), **(1971) 2 SCC 330 (Deoki Nandan Prasad Vs. State Of Bihar & Ors), (1973) 1 SCC 120 (State of Punjab Vs. K. R. Erry), (1976) 2 SCC 1 (State of Punjab and another Vs. Iqbal Singh), (1987) 2 SCC 179 (State of Uttar Pradesh Vs. Brahm Datt Sharma and another)** and **(2007) 2 SCC 181 (Rajesh Kumar and others Vs. Dy. CIT and others)**.

05. On the other hand, learned Advocate General refers to Supreme Court judgment in the case of **Dr. Umrao Singh Choudhary Vs. State of M.P. and another** reported as **(1994) 4 SCC 328**, to contend that principles of natural justice can be excluded which stands impliedly excluded which is apparent from bare reading of Rule 8. It is contended that sub-rule (3) of Rule 8 contemplates issuing of a prior show cause notice that is in respect of cases of grave misconduct. Since the finding of misconduct is to be recorded for the first time, the opportunity of hearing is contemplated in sub-rule (3) of Rule 8 of the Pension Rules. But sub-rule (2) does not contemplate any opportunity of hearing as the order of stoppage of pension is based upon a judgment of a competent Court. Therefore, the opportunity of hearing stands

excluded by implication when there is prior finding recorded by the competent Court, whereas when an action is being taken for the first time opportunity of hearing is provided for.

06. We have heard learned counsel for the parties and find that to answer the first question, it is necessary to examine as to whether the principle of natural justice stands excluded by implication, when action is taken under sub-rule (2) of Rule 8 of the Pension Rules, 1976.

07. **Dr. Umrao Singh Choudhary**'s case (supra), to which the learned Advocate General has put a strong reliance, deals with the situation of removal of Vice Chancellor of the University. The term of Vice Chancellor can be reduced by a notification issued by the Governor under Section 14 of the M.P. Vishwavidyala Adhiniyam, 1973 (for short "1973 Act"). Section 14 of the Act engrafts an elaborate procedure to conduct an enquiry after giving reasonable opportunity against the Vice Chancellor for his removal. Section 52 of 1973 Act is an exception to Section 14 of the said Act. To exercise the jurisdiction under Section 52, the condition precedent is that the State Government should be satisfied that the administration of University cannot be carried out in accordance with the provisions of the Act. It was held that application of principle of natural justice may be excluded either expressly or by necessary implication. It was held that the principle of natural justice does not supplant but supplement the law. The relevant extract from the judgment reads as under:-

> "4…….. Section 14 engrafts an elaborate procedure to conduct an enquiry against the Vice-Chancellor and after giving reasonable opportunity, to take action thereon for his removal from the office. Section 52 engrafts an exception thereto. The condition precedent, however, is that the State Government should be satisfied, obviously on objective consideration of the material relevant to the issue, as on record, that the administration of the University cannot be carried out in accordance with the provisions of the Act, without detriment to the interest of the University, and that it is expedient in the interest of the University and for proper administration thereof, to apply in a modified form, excluding the application of Sections 13 and 14, etc. and to issue the notification under Section 52(1). By necessary implication, the application of the principle of natural justice has been excluded. In view of this statutory animation the contention that the petitioner is entitled to the notice and an opportunity before taking action under Section 52(1) would be self-defeating. The principle of natural justice does not supplant the law, but supplements the law. Its application may be excluded, either expressly or by necessary implication Section 52 in juxtaposition to Section 14, when considered, the obvious inference would be that the principle of natural justice stands excluded."

After recording such finding, the Court examined the record to find out the satisfaction recorded by the Governor in exercise of the powers conferred under Section 52 of the Act. It was found that the action under Section 52 is a statutory action, but subject to judicial review. The said judgment deals with the exercise of the powers by the Governor and that Section 52 of the said Act is an exception to Section

14 of the Act. The said judgment leads to one conclusion that the principles of natural justice can be excluded by implication as well.

08. The Full Bench of this Court in the case of **Laxmi Narayan Hayaran Vs. State of M.P. and another** reported as **2004 (4) MPLJ 555**, which was also referred by the learned Advocate General, deals with dismissal of employee from service without holding an enquiry on the basis of his conviction in bribery case. The Court excluded the principles of natural justice in respect of termination of an convicted employee in view of the Supreme Court judgment in the case of **Union of India Vs. Tulsiram Patel** reported as **(1985) 3 SCC 398.** The Full Bench held as the follows:-

> "10. Rule 19 of the State CCA Rules is similar to Rule 14 of Railway Rules considered in *Challappan* (supra) and unamended Rule 19 of Central CCA Rules considered in *Tulsiram Patel*, which did not provide for any opportunity of hearing in regard to the penalty to be imposed. In *Tulsiram Patel* (supra), the Supreme Court has categorically held that no opportunity need be given to the employee concerned, but the disciplinary authority, on consideration .of the facts and circumstances (in the manner set out in Challappan and Tulsiram Patel) may impose the penalty. It was also clarified that if the penalty imposed was whimsical or disproportionately excessive, the same was open to correction in judicial review. The subsequent decision of the Supreme Court in *Sunil Kumar Sarkar* (supra) dealt with the amended Rule 19 of the Central CCA Rules which provided for a hearing. Therefore, the principle laid down in *Sunil Kumar Sarkar* (supra) can not be of any assistance in interpreting Rule 19 of the State CCA Rules in the absence of an amendment in the State CCA Rules corresponding to the amendment made in

> the Central CCA Rules. As the State CCA Rules stand today, the law applicable is as laid down in *Tulsiram Patel* (supra) and not as laid down in Sunil Kumar Sarkar."

09. Learned Advocate General argued that the judgment in the cases of **Deokinandan Prasad** (supra), **K. R. Erry** (supra), **Iqbal Singh** (supra), **Brahmdatt Sharma** (supra), all pertain to reduction or withholding of pension based upon the misconduct and not based upon conviction in a criminal trial. The case of **Rajesh Kumar** (supra) is said to be distinguishable for the reason that it deals with an administrative action entailing civil consequences, which requires an opportunity of hearing.

10. The rule of natural justice was found to be not necessary in the matter of compulsory retirement of the Government employees on attaining age of 50 years as provided in Fundamental Rule 56(i) in **Union of India v. Col. J.N. Sinha, (1970) 2 SCC 458.** But it was held**,** the exclusion of the principles of natural justice depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power. The Court held as follows:-

> "8. Fundamental Rule 56(i) in terms does not require that any opportunity should be given to the concerned government servant to show cause against his compulsory retirement. A government servant serving under the Union of India holds his office at the pleasure of the President as provided in Article 310 of the Constitution. But this "pleasure" doctrine is subject to the rules or law made under Article 309 as well as to the

> conditions prescribed under Article 311. Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in *A.K. Kraipak* v. *Union of India* "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it". It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

11. The Constitution Bench in **Mohinder Singh Gill Vs. Chief Election Commr., (1978) 1 SCC 405,** held that natural justice is now a brooding omnipresence concept although varying in its play and that the "exceptions" to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. The rule of *audi alteram partem* is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-

defeating or plainly contrary to the common sense of the situation. The Court held as under:-

> "47. It is fair to hold that subject to certain necessary limitations natural justice is now a brooding omnipresence although varying in its play.
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> 48. Once we understand the soul of the rule as fairplay in action — and it is so — we must hold that it extends to both the fields. After all, administrative power in a democratic setup is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation: nothing more — but nothing less. The "exceptions" to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Text-book excerpts and ratios from rulings can be heaped, but they all converge to the same point that *audi alteram partem* is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation.
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> 66. It was argued, based on rulings relating to natural justice, that unless civil consequences ensued, hearing was not necessary. A civil right being adversely affected is a sine qua non for the invocation of the audi alteram partem rule. This submission was supported by observations in Ram Gopal, Col. Sinha. of course, we agree that if only spiritual censure is the penalty, temporal laws may not take cognizance of such consequences since human law operates in the material field although its vitality vicariously depends on its morality. But

what is a civil consequence, let us ask ourselves, bypassing verbal booby-traps? 'Civil consequences' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence. "Civil" is defined by Black (Law Dictionary, 4th Edn.) at p. 311:

> "Ordinarily, pertaining or appropriate to a member of a civitas of free political community; natural or proper to a citizen. Also, relating to the community, or to the policy and government of the citizens and subjects of a state.
>
> The word is derived from the Latin civilise, a citizen .... In law, it has various significations.
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> * * *
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> 'Civil Rights' are such as belong to every citizen of the State or country, or, in a wider sense, to all its inhabitants, and are not connected with the organisation or administration of Government. They include the rights of property, marriage, protection by the laws, freedom of contract, trial by jury etc.... Or, as otherwise defined, civil rights are rights appertaining to a person in virtue of his citizenship in a State or community. Rights capable of being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the Constitution, and by various acts of Congress made in pursuance thereof.
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> (p. 1487, Black's Legal Dictionary)

The interest of a candidate at an election to Parliament regulated by the Constitution and the laws comes within this gravitational orbit. The most valuable right in a democratic polity is the "little man's" little pencil-marking, assenting or dissenting, called his vote. A democratic right, if denied, inflicts civil consequences. Likewise, the little man's right, in a representative system of Government, to rise to Prime Ministership or Presidentship by use of the right to be

candidate, cannot be wished away by calling it of no civil moment. It civics mean anything to a self-governing citizenry, if participatory democracy is not to be scuttled by the law, we shall not be captivated by catchwords. The straight forward conclusion is that every Indian has a right to elect and be elected and this is a constitutional as distinguished from a common law right and is entitled to cognizance by courts subject to statutory regulation. We may also notice the further refinement urged that a right accrues to a candidate only when he is declared returned and until then it is incipient, inchoate and intangible for legal assertion — in the twilight zone of expectancy, as it were. This too, in our view, is logicid sophistry. Our system of "ordered" rights cannot disclaim cognizance of orderly processes as the right means to a right end. Our jurisprudence is not so jejune as to ignore the concern with means as with the end, with the journey as with the destination. Every candidate, to put it cryptically, has an interest or right to fair and free and legally run election. To draw lots and decide who wins, if announced as the electoral methodology, affects his right, apart from his luckless rejection at the end. A vested interest in the prescribed process is a processual right, actionable if breached, the Constitution permitting. What is inchoate, viewed from the end, may be complete, viewed midstream. It is a subtle fallacy to confuse between the two. Victory is still an expectation; qua mado is a right to the statutory procedure. The appellant has a right to have the election conducted not according to humour or hubris but according to law and justice. And so natural justice cannot be stumped out on this score. In the region of public law locus standi and person aggrieved, right and interest have a broader import. But, in the present case, the Election Commission contends that a hearing has been given although the appellant retorts that a vacuous meeting where nothing was disclosed and he was summarily told off would be strange electoral justice. We express no opinion on the factum or adequacy of the hearing but hold that where a candidate has reached the

> end of the battle and the whole poll is upset, he has a right to notice and to be heard, the quantum and quality being conditioned by the concatenation of circumstances.
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> 67. The rulings cited, bearing on the touchstone of civil consequences, do not contradict the view we have propounded. Col. Sinha merely holds — and we respectfully agree — that the lowering of retirement age does not deprive a government servant's rights, it being clear that every servant has to quit on the prescribed age being attained. Even Binapani concedes that the State has the authority to retire a servant on superannuation. The situation here is different. We are not in the province of substantive rights but procedural rights statutorily regulated. Sometimes processual protections are too precious to be negotiable, temporised with or whittled down."

12. In **Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664,** the Court examined as to whether there are any exceptions to the application of the principles of natural justice, particularly the *audi alteram partem* rule. It was held that in the case of express exclusion, there is no difficulty but the urgency, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of a preventive or remedial nature can be a case of implied exclusion. The Court held as under:-

> "32. The maxim audi alteram partem has many facets. Two of them are: (*a*) notice of the case to be met; and (*b*) opportunity to explain. This rule is universally respected and duty to afford a fair hearing in Lord Lore-burn's oft-quoted language, is "a duty lying upon everyone who decides something", in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for,

"convenience and justice" — as Lord Atkin felicitously put it — "are often not on speaking terms".

33. The next general aspect to be considered is: Are there any exceptions to the application of the principles of natural justice, particularly the audi alteram partem rule? We have already noticed that the statute conferring the power, can by *express* language exclude its application. Such cases do not present any difficulty. However, difficulties arise when the statute conferring the power does not expressly exclude this rule but its exclusion is sought *by implication* due to the presence of certain factors: such as, urgency, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of a preventive or remedial nature. …… Similarly, action on grounds of public safety, public health may justify disregard of the rule of prior hearing.

44. In short, the general principle — as distinguished from an absolute rule of uniform application — seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. In short, this rule of fair play "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The

> court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

13. In another judgment reported as **Automotive Tyre Manufacturers Assn. v. Designated Authority, (2011) 2 SCC 258,** the Supreme Court held that the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. The Court held as under:-

> "80. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the

> concept of natural justice can neither be put in a straitjacket nor is it a general rule of universal application.
>
> 81. Undoubtedly, there can be exceptions to the said doctrine. As stated above, the question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of these matters that the question of application of the said principle can be properly determined. (See *Union of India* v. *Col. J.N. Sinha*.)"

14. In view of the Judgments mentioned above, we find that though the applicability of principals of natural justice can be excluded by necessary implication but the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences relating to infraction of property, personal rights and material deprivations for the party affected. The rule of *audi alteram partem* is the rule of the law without which law would be lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. The concept of natural justice can neither be put in a straitjacket nor is it a general rule of universal application. Whether or not the application of the principles of natural justice in a given case has

been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. The procedural pre-condition of fair hearing, however minimal, even post-decisional, has relevance to administrative and judicial gentlemanliness. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. In short, this rule of fair play "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications.

15. The judgment of Full Bench in the case of **Laxmi Narayan Hayaran's case (Supra)** deals with a situation of termination of an employee on account of conviction in a criminal trial. The said judgment of dispensing with the opportunity of hearing to a pensioner cannot be

extended to a case of stoppage of pension. Relationship between employer and employee before the superannuation is governed by the Rules of services. If the rules do not permit any opportunity of hearing, the same can be excluded. It may be required in case of serving officer as it is not in public interest to allow a tainted person in public employment. It has been so ordered relying upon the Constitutional Bench judgment in the case of **Tulsiram Patel's case (supra)**. But after retirement, the pensioner is entitled to pension in view of his past service under the State. An employee earns his pension. Pension is not a bounty, but a benefit earned by him by serving State for many years. The deprivation of such pension affects civil rights of the pensioner, the means of survival. Though sub-rule (2) of Rule 8 of the Pension Rules is silent about opportunity of hearing, but neither the dispensing with an opportunity of hearing is urgent nor is any other purpose expected to be achieved by denying the benefit of opportunity of hearing.

If an opportunity of hearing is granted, an employee can point out the mitigating family circumstance, the role in the criminal trial which led to his conviction or other circumstances as to why the pension should not be stopped and that too for life. Therefore, in case of a pensioner, the rule of natural justice would warrant an opportunity of hearing, at least of serving a show cause and elucidating the reply of the pensioner and thereafter, pass an order as may be considered appropriate by the authority so as to enable the appellate authority or the judicial

courts to test the legality of the same while exercising the powers of the judicial review.

16. Thus, the first question of law is answered that a show cause notice is required to be given to the retired government servant convicted by the criminal Court. As a consequence thereof, we find that the order passed by this Court in the case of **Dau Ram Maheshwar** (supra) is correctly decided.

(Hemant Gupta)
Chief Justice

(Subodh Abhyankar)
Judge

Per Sujoy Paul, J. (Dissenting)

1. The pivotal question before us, in nutshell is whether a retired employee after his conviction in a serious crime is entitled to get an opportunity of hearing before imposition of punishment as per Rule 8 of the Pension Rules?

2. Sub-Rule (2) of Rule 8, in no uncertain terms, makes it clear that where a pensioner is convicted of a serious crime, action against him under Sub-Rule (1) shall be taken *in the light of the judgment of the Court relating to such conviction.* The law makers in Sub-Rule (3) of Rule 8 provided an opportunity of hearing to the retired government servant. This Sub-Rule is applicable when competent authority considers that the pensioner is *prima facie* guilty of grave misconduct.

3. In view of settled legal position, the principles of natural justice are to be read into the provision unless the statutory provision either specifically or by necessary implication excluded the application of principles of natural justice.

4. Before dealing with the rule in hand, it is profitable to refer to certain authorities on this aspect. In ***1970 (2) SCC 458 [Union of India vs. Col. J.N. Sinha]*** the Court opined as under:

> *"8. ..... it is true that if a statutory provision can be read consistently with the principles of natural justice, the Court should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the Court cannot ignore the mandate of legislature or the statutory authority and read into the provision concerned the principles of natural justice."*
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> [Emphasis Supplied]

5. The Constitution Bench in ***Maneka Gandhi vs. Union of India, 1978 (1) SCC 248*** dealt with the aforesaid aspect and held:

> "*14. .... now, it is true that since the right to prior notice and opportunity of hearing arises only by implication from the duty to act fairly, or to use the words of Lord Morris of Borth-Y-Gest, from 'fair play in action', it may equally be excluded where, having regard to the nature of action to be taken, its object and purpose and the scheme of relevant statutory provision, fairness in action does not demand its implication and even warrants its exclusion.*

> *182. .... in this connection, it cannot be denied that the legislature by making an express provision may deny a person the right to be heard. Rules of natural justice cannot be equated with the fundamental rights."*
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> *[Emphasis Supplied]*

6. After considering the judgment of ***J.N. Sinha (Surpa),*** in the same paragraph it is stated-

> "*The rules of natural justice are not embodied rules nor can they be elevated to the position of the fundamental rules.... but if a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice then the Court cannot ignore the mandate of legislature or the statutory authority and read into the concerned provision the principles of natural justice."*
>
> [Emphasis Supplied]

7. In ***Swadeshi Cotton Mills (Supra)***, the Apex Court again held that the rules of natural justice can operate only in areas not covered by any law validly made. They can supplement the law but cannot supplant it. If a statutory provision either specifically or by inevitable implication excludes the application of the natural justice, then the Court cannot ignore the mandate of legislature. (Para 31).

8. In ***1994 (5) SCC 267, Dr. Rash Lal Yadav vs. State of Bihar*** the same principle is reiterated by holding-

> "*9. What emerges from the above discussion is that unless the law expressly or by necessary implication excludes the application of the rules of natural justice, Courts will read the said requirement in enactment that are silent and insist on its*

application even in cases of administrative action having civil consequences."

[Emphasis Supplied]

9. In catena of judgments it was held that the requirements of natural justice depend on the circumstances of the case, the nature of the inquiry, *the rules* under which authority is acting, the subject matter to be dealt with and so forth (**See**: ***2010 (13) SCC 255 [Natwer Singh vs. Director]***, B Sudershan Reddy, J in *Natwer Singh* (Supra) expressed his view that *"concept of fairness is not a one way street. The principles of natural justice are not intended to operate as road blocks to obstruct statutory inquires.... the extent of its applicability depends upon the statutory frame work.*")

10. In view of the aforesaid judgments of Supreme Court, the core issue is relating to the interpretation of Rule 8 of the Pension Rules. Whether Rule 8 (2) specifically or by necessary implication excludes the principles of natural justice, is the point to ponder upon. The contention of the petitioner is that if an opportunity of hearing is granted, the retired employee can point out his personal hardship, the nature of involvement in the criminal case which resulted into his conviction and other circumstances. Hence, there is no harm if principles of natural justice are followed. Such grant of opportunity to the retired employee as per principles of natural justice will not cause any prejudice to the department.

11. Before dealing with aforesaid aspect, it is apposite to mention that in my view Sub-rule (2) of Rule 8 does not expressly excludes the application of principles of natural justice. Sub-rule (3), as noticed, provides an opportunity of hearing when competent authority considers that pensioner is *prima facie* guilty of grave misconduct. In Sub-rule (3), principles of natural justice were inserted in a mandatory form, whereas in Sub-rule (2), it is provided that action shall be taken in the light of the judgment of the Court relating to such conviction. In the manner Sub-rule (2) is worded, in my considered opinion, it has impliedly excluded the principles of natural justice. The golden rule of interpretation of a statute is that interpretation must depend on the text and the context. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted (**See**: ***1987 (1) SCC 424, RBI vs. Peerless General Finance Co. Ltd.***).

12. Article 311 of the Constitution or Rule 19 of CCA Rules provides that an employee can be punished on the ground of conduct which has led to his conviction on a criminal charge. If an existing employee is convicted on a serious criminal charge, he can be dismissed or removed from service. Needless to mention that when an existing government employee is dismissed or removed from service, his source

of livelihood, remaining years of service as well as and right to get pension and retiral dues comes to an end. Thus, penalty/termination on an existing employee on the ground of conviction is much severe than the case of an retired government employee who loses pension.

13. In ***Divisional Personnel Officer Southern Railways vs. T.R. Challppan, 1976 (3) SCC 190*** a three judge Bench of Supreme Court considered a provision analogous to Rule 19 of CCA Rules and held that delinquent employee should be heard before imposition of penalty. This judgment of *Challppan* (Supra) to the extent it holds that the employee should be heard before imposition of punishment was overruled by the Constitution Bench of the Supreme Court in *Tulsiram Patel (Supra).* It is pertinent to mention here that argument advanced before the Supreme Court was that if principles of natural justice are followed, it will not cause any prejudice. The employee will get an opportunity against the penalty proposed. He will be able to convince the disciplinary authority that the nature of conduct attributed to him did not call for his dismissal, removal or reduction in rank . The government servant will be able to point out that the offence of which he was convicted was a trivial or a technical one in respect of which a small punishment can be imposed. It is profitable to quote the relevant para from *Tulsiram Patel* (Supra).

> "*It was submitted on behalf of the government servants that an inquiry consists of several stages and, therefore, even where by the application of the second proviso the full inquiry is dispensed with, there is nothing to prevent the disciplinary authority from holding at least a minimal inquiry because no*

prejudice can be caused by doing so. It was further submitted that even though the three clauses of the second proviso are different in their content, it was feasible in the case of each of the three clauses to give to the government servant an opportunity of showing cause against the penalty proposed to be imposed so as to enable him to convince the disciplinary authority that the nature of the misconduct attributed to him did not call for his dismissal, removal or reduction in rank. For instance, in a case falling under clause (a) the government servant can point out that the offence of which he was convicted was a trivial or a technical one in respect of which the criminal court had taken a lenient view and had sentenced him to pay a nominal fine or had given him the benefit of probation. Support of this submission was derived from Challappan's case ..... It was further submitted that apart from the opportunity to show cause against the proposed penalty it was also feasible to give a further opportunity in the case of each of the three clauses though such opportunity in each case may not be identical. Thus, it was argued that the charge-sheet or at least a notice informing the government servant of the charges against him and calling for his explanation thereto was always feasible. It was further argued that though under clause (a) of the second proviso an inquiry into the conduct which led to the conviction of the government servant on a criminal charge would not be necessary, such a notice would enable him to point out that it was a case of mistaken identity and he was not the person who had been convicted but was an altogether different individual. It was urged that there could be no practical difficulty in serving such charge-sheet to the concerned government servant because even if he were sentenced to imprisonment, the charge-sheet or notice with respect to the proposed penalty can always be sent to the jail in which he is serving his sentence. .... ”

[Emphasis Supplied]

14. The said argument could not find favour and Apex Court ruled that -

> "the consideration under Rule 14 of what penalty should be imposed upon a delinquent railway servant must, therefore, be *ex parte* and where the disciplinary authority comes to the conclusion that the penalty which the facts and circumstances of the case warrant is either of dismissal or removal or reduction in rank, no opportunity of showing cause against such penalty proposed to be imposed upon him can be afforded to the delinquent government servant. Undoubtedly, the disciplinary authority must have regard to all the facts and circumstances of the case as set out in *Challappan case*. As pointed out earlier, considerations of fair play and justice requiring a hearing to be given to a government servant with respect to the penalty proposed to be imposed upon him do not enter into the picture when the second proviso to Article 311(2) comes into play and "….To recapitulate briefly, where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case and the various factors set out in *Challappan* case. This, however, has to be done by it *ex parte* and by itself. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned

> government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service the court will also strike down the impugned order."
>
> (Emphasis supplied)

15. In my considered opinion, neither in Rule 19 of CCA Rules nor in Sub-rule (2) of Rule 8, principles of natural justice can be read into. Indeed, principles of natural justice are excluded by implication in both the aforesaid provisions for same reasons. The sole basis of decision of competent authority will depend upon judgment of conviction arising out of conduct/crime of delinquent. Once an existing or a retired employee is convicted for a serious offence/crime, the only requirement of the rule (Rule 19 of CCA Rules or Rule 8(2) of Pension Rules) is that the competent authority shall take a decision regarding penal action in

the light of judgment of the Court. No opportunity of hearing is required to be provided to such existing/retired employee before taking action under Rule 8 (1) or Rule 19. It is noteworthy that in *Tulsiram Patel (Supra)*, the Supreme Court categorically laid down that the competent authority while taking decision regarding punishment must bear in mind that a conviction on a criminal charge does not automatically entails dismissal, removal or reduction in rank of the government servant. Considering the judgment of conviction, even a lessor punishment can be imposed. The liberty is reserved to the government servant who is aggrieved by the penalty imposed, to assail it in appeal, revision or review or seek judicial review of the same before a court of competent jurisdiction. The said view of *Tulsiram Patel (Supra)* was followed by the Full Bench of this Court in *Laxmi Narayan Hayaran (Supra)*.

16. In view of aforesaid analysis, my opinion regarding question No.1 is that no opportunity of hearing is required to be given to a retired government servant before taking a decision under Sub-rule (1) of Rule 8 and such decision needs to be taken by competent authority in the light of the judgment of the Court relating to such conviction. Since Rule 8(2) impliedly excludes the principles of natural justice, this Court cannot ignore the mandate of statutory authority and read into the provision concern the principles of natural justice. Needless to emphasis that if retired employee is aggrieved by such punishment, he can seek redressal from departmental/judicial Forum, as the case may be. The necessary

corollary of aforesaid view is that *Dauram Mahawar (Supra)* is not correctly decided. It is opined accordingly.

(Sujoy Paul)
Judge

O R D E R

In view of the majority opinion, it is held that opportunity of hearing is required to be provided before an order of stoppage of pension is passed under Section 8(2) of the Civil Services (Pension) Rules, 1976 and that judgment of **Dau Ram Maheshwar Vs. State of M.P. and another** reported as **2017(1) MPLJ 640** is correctly decided.

(Hemant Gupta)
Chief Justice

(Sujoy Paul)
Judge

(Subodh Abhyankar)
Judge

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