CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 473/2002

New Delhi this the 11th day of ~~June~~ July, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S.TAMPI, MEMBER (A)

Dinesh Kumar Chabba
S/o Late Sh.S.K.Chabba
R/o Sector 4/916
R.K.Puram
New Delhi.

... Applicant

(By Shri G.D.Bhandari, Advocate)

vs.

Union of India, through

1. The Secretary
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi-110 011.

2. The Deputy Secretary (Admn.)
Union Public Service Commission
Dholpur House, Shahjahan Road,
New Delhi-110 011. .....Respondents

(Dr.Shyamala Pappu, Sr. Advocate with Mrs. B.Rana and Ms.Abhilasha Dewan, Advocacte)

O R D E R

Justice V.S.Aggarwal:-

What is under the gaze of this Tribunal are the orders passed by the disciplinary authority as well as the appellate and revisional authorities dated 20.1.1998, 29.1.1999 and 18.4.2001 respectively. As a result of the departmental proceedings, a penalty of removal from service had been inflicted upon the applicant and his subsequent appeal as well as the revision did not

VS Ag

19

improve upon the position. The disciplinary authority had served the four articles of charge on the applicant while he was working in the Union Public Service Commission. The said articles of charge read as under:-

"Article-I

The said Shri D.K.Chabba, indulged in acts of gross indiscipline and grave misconduct during the period from 6.11.1986 to 18.11.1986 inasmuch as he organised/participated in demonstration/meeting/rallies in the premises of UPSC even though permission had been refused for holding such demonstrations etc. Therefore it was imputed that Shri Chabba violated rule 7 of CCS (Conduct) Rules, 1964. He failed to maintain devotion to duty in violation of rule 3(1)(ii) and exhibited conduct unbecoming of a Government servant in violation of rule 3(1)(ii) of the said conduct rules.

Article-II

The said Shri Chabba committed acts of gross indiscipline and grave misconduct during the period from 11.11.1986 to 18.11.1986 for instigating and abetting a pen down strike by employees of UPSC. In doing so, Shri Chabba violated the provisions of rule 7 of CCS (Conduct) Rules, 1964, and he failed to maintain devotion to duty and exhibited conduct unbecoming of a Government servant in violation of rule 3(1)(ii) and 3 (1)(iii) of CCS (Conduct) Rules, 1964.

Article-III

The said Shri Chabba raised/shouted defamatory and derogatory slogans in a highly intemperate language. Defamatory and objectionable posters were also put on various places within the UPSC premises during the course of aforesaid demonstrations and pen down strike. These demonstrations disrupted smooth functioning of the office of UPSC and caused great disturbance and destruction to the candidates and supervisory staff of Civil Services (Main) Examination, 1986, which commenced on 7.11.1986. The said Shri Chabba went round various corridors and sections of the office building shouting as well as asking employees working there to come out and join meetings/demonstrations. He intimidated

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employees who were detailed on closed days viz. Saturday and Sunday, 8th and 9th November, 1986, for urgent work particularly in connection with C.S. (Main) Examination, 1986. On 17.11.1986, Shri Chabba displayed in the office premises at the reception gate of the Main Building, an effigy of a human body on a bier. He prevented employees of the office of UPSC from entering the office building after the lunch break on 18.11.1986. During the course of aforesaid demonstrations, Shri Chabba alleged corruption and malpractices in the conduct of Civil Services Examination by the Commission for recruitment of IAS and other services thereby undermining credibility of the institution of UPSC. By his aforementioned acts, which were unbecoming of a Government servants, subversive of discipline, harmful of public interest, violative of decency and had the effect of an adverse criticism of the institution of UPSC, the said Shri Chabba contravened rule 3(1) (iii), 7 and 9 of CCS (Conduct) Rules, 1964, respectively.

Article-IV

The said Shri Chabba indulged in acts of gross indiscipline and misbehaviour when at about 12.30 p.m. on 17.11.1986 he went about shouting in the corridors of the Main Building of the office of UPSC and was part of the group that misbehaved with Shri H.C.Katoch, OSD (C). The said Shri Chabba committed an act of gross indiscipline and misconduct at about 11.00 a.m. on 10.11.1986 by violating the security arrangements in existence for the Confidential Branch of UPSC, when he unauthorisedly entered the aforementioned Branch in spite of specific request of Shri Katoch not to do so. By his aforesaid acts of gross indiscipline, misbehaviour, Shri Chabba exhibited conduct unbecoming of a Government servant in contravention of rule 3(1)(iii) of CCS (Conduct) Rules, 1964."

The report of the inquiry officer was adverse to the applicant which resulted in the abovesaid penalty to be inflicted on him. On various pleas the applicant assailed the findings and the penalty imposed.

2. The respondents have contested the application controverting the pleas taken which we shall be considering hereinafter.

3. At the outset, the learned counsel for the applicant contended that the articles of charge were vague and, therefore, when no date, time or place had been given when the applicant is alleged to have indulged in the abovesaid acts referred to in the articles of charge, the penalty so imposed should be quashed. In support of his claim, the learned counsel relied upon the decision of the Supreme Court in the case of **Surath Chandra Chakravarty** v. **The State of West Bengal**, AIR 1971 SC 752. Therein the Supreme Court was considering a similar argument and held that if the charges are vague and the person concerned cannot defend the same, then prejudice is caused. The Supreme Court had noted as under:-

> "The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstances which it is proposed to be taken into consideration in passing orders has also to be stated. This Rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him."

Similar argument had been advanced and considered

by another decision of the Supreme Court in the case of **Sawai Singh** v. **State of Rajasthan**, AIR 1986 SC 995. Once again, the Supreme Court held that where the charges framed against the delinquent were vague and no allegations regarding the same have been made by him before the inquiry officer even if he had participated in the enquiry, the department would not be exonerated from establishing the charges. The enquiry based on such charges would be vitiated. We have already referred to above that this provision is not in controversy. The charge necessarily has to be specific and told to the delinquent in precise and clear terms.

4. However, the vagueness of the charge is one where on the facts alleged, the delinquent cannot defend the matter properly. It has always to be seen from the facts of each case. When a person contests the matter and is fully aware of the controversy and the charges also conveyed the precise assertions against the said person, in that event, it is improper to allege that the charges are vague and indefinite.

5. Reverting back to the charges, it is obvious that when examined on the touch-stone of the aforesaid assertions, in our view, it cannot be termed that the charges were vague or that the

applicant could not defend the matter properly. The applicant was told about the alleged gross indiscipline on his part. He was told that between 6.11.1986 and 18.11.1986, he had held certain meetings. He had organised demonstrations. He also instigated and abetted a pen down strike by the employees of the Union Public Service Commission. He used highly intemperate language and misbehaved with one Shri H.C.Katoch, Officer On Special Duty (C) at about 11.00 on 10.11.1986.

6. Reading of the charges, which we have reproduced above, clearly shows that they conveyed what were the assertions against the applicant. They were precise and the applicant knew what he had to contest. The objective was to tell the employee as to what are the assertions against him. That objective was achieved and, therefore, at this stage to state that the charges were vague would be travesty and running away from the facts. Therefore, the plea must fail.

7. In that event, it was pointed by the learned counsel that certain names of the witnesses had been added which were not there in the original list. Once the names of the witnesses had been added, the same had caused prejudice to the applicant, Therefore, the entire enquiry should be vitiated. The letter in this regard written by the

Deputy Secretary (Administration), Union Public Service Commission on 27.10.1987 to Shri B.D.Sharma, Inquiry Officer reads as under:-

> "The undersigned as the Disciplinary Authority considers that in the interest of justice and of a fair inquiry, some additional witnesses and additional documents are required to be produced so as to enable the Inquiry Officer to have a complete picture. A list of such additional witnesses and documents is forwarded herewith with a request that these may be added to Annexure-III & IV of the Memorandum of even number dt.20th February, 1987.
>
> A copy of this letter with the enclosures, has been sent to Shri Dinesh Kumar Chabba, against whom the disciplinary proceedings are pending."

The learned counsel urged that this controversy had been raised before this Tribunal in an earlier OA No.299/1990 in the case of **Om Prakash** v. **Union of India & others**, decided on 5.4.1991 and it was held that the list of witnesses could not be supplemented. Perusal of the decision rendered by this Tribunal in the case of Om Prakash (supra) would reveal that this Tribunal had recorded that the respondents therein had not given any reason why the additional evidence was proposed to be added after a lapse of eight months from the date of issue of the charge-sheet. It was recorded further that the objections of the delinquent were not forwarded to the disciplinary authority. The new witnesses could not be added. Perusal of the totality of the facts alleged clearly show that

this Tribunal recorded that this had caused prejudice to the alleged delinquent. That is not so in the present case as would be noticed hereinafter.

8. Otherwise also, we take liberty in referring to another decision of this Tribunal brought on the record by the respondents in OA No.2504/1989 in the case of **Shri Ved Prakash** v. **Union of India** rendered on 26.8.1993. Herein also a similar controversy came up for consideration. In another OA No.2364/1995 in the case of **Nathu Ram** v. **Union Public Service Commission and ors.** decided on 10.8.2000, the plea which is being ~~flouted~~ floated in the present case was raised and rejected.

9. It has to be remembered that each matter as to whether the witnesses' names could be added or not subsequently has to be seen in the light of the facts that are brought on the record. If the names of the witnesses had been added at the initial stage and the person gets full opportunity to know what is the evidence likely to be led against him, in that event, the said person cannot later on claim prejudice or say that he was not given proper opportunity to defend the matter. In that view, we reject the present contention because herein before the evidence had started, the names of the witnesses were added and the applicant had full opportunity to put forward his case.

10. Another limb of the argument was that the inquiry officer was biased and the applicant requested for change of the same. A request had been made on 5.10.1988, copy of which is at Annexure A-24-a. The request is on the record. The proceedings were not stayed by the inquiry officer. On the strength of the same, the applicant's learned counsel contended that this shows that the inquiry officer was totally biased.

11. We are afraid that even the said contention is totally without any merit. A person can only claim bias provided it is shown on basis of the material on the record. Mere allegations in this regard will be of no use. It is not shown as to how the inquiry officer was biased or had any prejudice been caused to the applicant. In day to day working, many orders are passed which would be in favour or against the applicant. Some of them may not be suitable to him. When that is the position, as it appears in the present case, it cannot be termed that the inquiry officer as such was biased because our attention has not been drawn to any specific instance to make us conclude that the inquiry officer in this regard was biased.

12. While enumerating the argument, the learned counsel for the applicant further contended that the applicant had requested that he should be

allowed to enter the premises of the Union Public Service Commission so that he could point out and pinpoint the witnesses on his behalf because some of them may or may not be working there. According to the learned counsel, the applicant was not allowed to enter the premises of the Union Public Service Commission and, therefore, he could not produce his evidence in a proper manner. However, the applicant had not given the names of those witnesses whom he wanted to see or examine. In the absence of any such names and a robing inquiry, the aforesaid request if made had been rightly rejected.

13. It was contended on behalf of the applicant that it took 13 years for the inquiry to be completed and because of undue delay that had occurred, the same should be quashed. At the outset, we admit that it took large many years to complete the enquiry. Still the question that comes up for consideration would be as to whether when there is delay in completion of the enquiry whether as a straight-jacket formula, the report of the inquiry officer should be quashed followed by the order that may be passed by the disciplinary authority or the appellate authority.

14. We are aware of a decision of the Supreme Court in the case of **State of Madhya Pradesh** v.

28

Bani Singh and Another, 1990 (Supp) SCC 738 where that Court was concerned with a similar controversy. In paragraph 4 of the judgement, the Supreme Court held:-

> "The appeal against the order dated December 16, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no ground to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

In another decision, in the case **B.C.Chaturvedi v. Union of India and Ors.**, JT 1995 (8) S.C. 65, the Supreme Court dealt with a controversy where there was delay in initiation of departmental proceedings. The Supreme Court further held that the delay by itself will not be a ground to quash the proceedings. Each case depends on its own facts. The Supreme Court held:-

> "11. The next question is whether the delay in initiating disciplinary proceedings is an unfair procedure depriving the livelihood of a public

servant offending Article 14 or 21 of the Constitution. Each case depends upon its own facts. In a case of the type on hand, it is difficult to have evidence of disproportionate pecuniary resources or assets or property. The public servant, during his tenure, may not be known to be in possession of disproportionate assets or pecuniary resources. He may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tardious journey, as the Government has to do a lot to collect necessary material in this regard. In normal circumstances, an investigation would be undertaken by the police under the Code of Criminal Procedure, 1973 to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in this type of cases. It is seen that the C.B.I. had investigated and recommended that the evidence was strong enough for successful prosecution of the appellant under Section 5 (1)(e) of the Act. It had, however, recommended to take disciplinary action. No doubt, much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of the Constitution."

In the case of **State of Andhra Pradesh v.N.Radhakishan**, JT 1998 (3) S.C.123, once again there was undue delay in conducting the inquiry. The inquiry was not completed for many years. The Supreme Court held that in those circumstances, the charge should be quashed.

15. From the aforesaid, it is obvious that if there is no explanation for the delay and it has caused prejudice, the proceedings could be quashed,

but it has to be seen in the light of the facts of each case. However, merely because there is delay, the same by itself will not be a ground to quash the proceedings or the report of the inquiry officer.

16. In the present case, the applicant had been demanding a large number of documents. Thereafter the inquiry proceeded. There were some complaints, but the totality of the facts indicated that the applicant had not been prejudiced because he contested the matter, as already pointed above, fully conscious of the allegations against him. Thus there was no prejudice caused which will by itself be a ground to quash the proceedings. Therefore, taking stock of the totality of the facts, even the case of Bani Singh (supra) will not come to the rescue of the applicant. So far as the decision in the case of N.Radhakishan (supra) is concerned, the same was obviously confined to the peculiar facts and will have little impact on the facts of the present case.

17. In that event, it was further argued that the disciplinary authority was the Deputy Secretary (Administration), but the impugned order had been passed by the Joint Secretary. However, when the matter was remitted to the inquiry officer, the disciplinary authority himself continued to conduct

the enquiry.

18. The facts certainly indicate that the Deputy Secretary (Administration), Union Public Service Commission was the disciplinary authority. On 7.1.1993, the inquiry officer had returned the case to the disciplinary authority. The disciplinary authority had ordered further enquiry from the stage of examination of defence witnesses. On 19.6.1993,the Deputy Secretary (Administration) had written to the applicant to nominate his defence assistant. It was followed by another letter of 29.6.1993 written by the Deputy Secretary (Administration) asking the applicant to nominate his defence assistant. Thereafter even if the disciplinary authority conducts the inquiry himself, there could be no objection to the same. The disciplinary authority can pick up the loose threads and conduct the enquiry if deemed appropriate. Nothing prevented the disciplinary authority from conducting the inquiry himself and further if the higher authority passes an order, the right of appeal is not materially affected and no prejudice was caused. Therefore, both the submissions on that count raised at the Bar must have to be rejected.

19. Main argument further advanced was that the relevant documents were not supplied and, therefore, prejudice was caused to the applicant.

20. There is little controversy at either end that proper and relevant documents must be supplied so that the concerned person can draw his defence. It is not only that the documents relied upon by the department should be supplied, the alleged delinquent may require certain documents for his defence.

21. The Supreme Court in the case of **Kashinath Dikshila v. Union of India and Others**, 1986(2) SLR 620 was considering a matter where a similar argument had been advanced. The Supreme Court held that refusal to supply copies of documents caused prejudice. It was concluded in paragraph 10 as under:-

> "10. And such a stance was adopted in relation to an inquiry whereat as many as 38 witnesses were examined, and 112 documents running into hundreds of pages were produced to substantiate the charges. In the facts and circumstances of the case we find it impossible to hold that the appellant was afforded reasonable opportunity to meet the charges levelled against him. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental inquiry depends on the facts of case. We are not prepared to accede to the submission urged on behalf of the respondents that there was no prejudice caused to the appellant, in the facts and circumstances of this case. The appellant in his affidavit (page 309 of the SLP Paper book) has set out in a tabular form running into twelve pages as to how he has been prejudiced in regard to his defence on account of the non-supply of the copies of the documents. We do not consider it necessary to burden the record by reproducing the said statement. The respondents have not been able to satisfy us that no prejudice was occasioned to the

appellant."

In the case of **Chandrama Tewari v. Union of India**, 1987 (Supp) SCC 518, the Supreme Court held that certain documents which were not relevant and not referred to in the charge need not be supplied and no prejudice in this regard could be caused. The conclusions of the Supreme Court were as under:-

> "It is now well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges framed against the officer, the enquiry would be vitiated for the violation of principles of natural justice. Similarly, if the statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent officer that would amount to denial of opportunity of effective cross examination. It is difficulty to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied on in support of the charges. If a document has no bearing on the charges or if it is not relied on by the enquiry officer to support the charges, or if such document or material was not necessary for the cross examination of witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer. The decision of the question

whether a document is material or not will depend upon the facts and circumstances of each case."

Similarly in the case of **State Bank of Patiala and Others** v. **S.K.Sharma, (1996) 3 SCC 364**, the Supreme Court held that where copies of the statements of witnesses were not furnished but the concerned person was permitted to peruse the documents and take notes and no objection was raised that the non- furnishing of the copies of the statements disabled proper enquiry, it must follow that no prejudice was caused.

22. In the case of **State of T.N.** v. **Thiru K.V.Perumal and Others**, (1996) 5 SCC 474, it was concluded that the duty of the authorities is only to supply relevant documents and not each and every documemt asked for by the delinquent. It is for the delinquent to show the relevance of the documents asked for by him and the manner in which the non-supply thereof was prejudicial to his case. Similarly, in the case of **Secretary to Government and others** v. **A.C.J.Britto**, (1997) 3 SCC 387, the Supreme Court once again held that when irrelevant documents were not supplied no prejudice would be caused and the departmental proceedings should not be quashed.

23. Reverting back to the facts of the case, it is obvious that the applicant asked for certain

documents. The inquiry officer had written to the Secretary, Union Public Service Commission that the documents are relevant and the same should be supplied. On 9.11.1987, the inquiry officer had written to the applicant that he could inspect the documents. On 9.10.1987 also it was written by the inquiry officer to the applicant that certain documents were not diarised but rest of the documents, he could inspect along with his defence assistant.

24. Applicant again wrote on 19.9.1988 that he should be furnished a copy of the documents or the enquiry should be postponed. It was followed by another letter of 29.9.1988. The applicant was shown and allowed inspection of the documents except a copy of the First Information Report.

25. The grievance so made that such a copy was not given in the facts of the case does not appear to be having much basis and has no legs to stand. The charge pertained to alleged dereliction of duty on the part of the applicant and we have already reproduced above the same. The concerned documents were either given or allowed the inspection. The First Information Report even if not given cannot be termed to be causing prejudice to the applicant because when evidence has been produced on the record pertaining to the grounds or

36

the charges that were communicated, the report even if not communicated would be having little impact to claim that the inquiry was not properly conducted. When the matter is examined in that light, we are of the considered opinion that the non-supply of copy of the First Information Report when other documents were supplied will be of little consequence. When the matter is examined on the totality of the facts and circumstances, the said plea must be held to be without any force.

26. No other argument was raised.

27. For these reasons, the application being without merit must fail and is dismissed. No costs.

(Govindan S. Tampi)
Member (A)

(V.S. Aggarwal)
Chairman

/sns/