

 
**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**OA 70/2006
OA-452/2002
with
OA-453/2002**

**Order Reserved on: 19.08.2014
Order Pronounced on: 05.12.2014**

**HON'BLE MR. G. GEORGE PARACKEN, MEMBER (J)
HON'BLE MR. SHEKHAR AGARWAL, MEMBER (A)**

OA No.70/2006

J.M. Sharma,
S/o late Shri C.R. Sharma,
Retd. Assistant Engineer
Irrigation & Food Control Department
Government of N.C.T. of Delhi.


Residential Address:-
J.M. Sharma
House No. E-186,
East of Kailash,
New Delhi-110 065.

...Applicant.

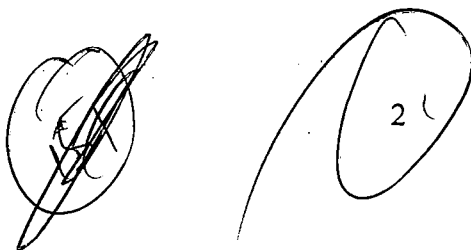
(None Present)

Versus

Union of India, through

1. The Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi.
 2. The Lt.Governor,
Govt. of N.C.T. of Delhi.
Raj Niwas,
Delhi.
 3. The Chief Secretary,
Govt. of N.C.T of Delhi.
Delhi Sachivalaya,
I.P.Estate
New Delhi.
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OA 70/2006
OA-452/2002
with
OA-453/2002

4. The Secretary
Irrigation & Food Control Department
Govt. of N.C.T. of Delhi.
5/9 Under Hill Road,
Delhi.

...Respondents.

(By Advocate: Mrs. P.K. Gupta)

O.A. 452/2002

Shri S.C. Gupta,
S/o Shri Hem Chand Gupta
R/o J/36-C, Phase-I,
Ashok Vihar, Delhi-110052

.Applicant

(By Advocate: Shri S.K. Gupta)

Versus

1. Union of India,
Through Secretary,
Ministry of Water Resources,
Sharam Shakti Bhawan,
New Delhi.
2. Lt. Governor of Delhi,
Govt. of NCT of Delhi,
Raj Niwas, Delhi.
3. Chief Secretary,
Govt. of NCT of Delhi,
I.G. Stadium, I.P. Estate,
New Delhi.
4. Chief Engineer ,
Irrigation & Flood,
IVth floor, I.S.B.T Building
Kashmere Gate, Delhi.

.Respondents.

(By Advocate: Sh. N.K. Singh for Mrs. Avnish Ahlawat)

O.A. 453/2002


Upendra Agnidev,
S/o Shri Pershu Ram Sharma
R/o D.G. I/25-A, Vikaspuri,
New Delhi.

Applicant

(By Advocate: Shri S.K. Gupta)

Versus



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1. Union of India,
Through Secretary,
Ministry of Water Resources,
Sharam Shakti Bhawan,
New Delhi.
 2. Lt. Governor of Delhi,
Govt. of NCT of Delhi,
Raj Niwas, Delhi.
 3. Chief Secretary,
Govt. of NCT of Delhi,
I.G. Stadium, I.P. Estate,
New Delhi.
 4. Chief Engineer ,
Irrigation & Flood,
IVth floor, I.S.B.T Building
Kashmere Gate, Delhi.

□ Respondents.

(By Advocate: Mrs. P.K. Gupta)


ORDER

Mr. G. George Paracken, Member (J):

As the facts in all these three Original Applications are identical and the questions of law involved in them are also same, they are being disposed of by this common order.

2. **OA 452/2002** and **OA-453/2002** were earlier partly allowed by this Tribunal by a common order dated 06.04.2004. The relevant part of the said order reads as under:-

"4. Shri G.D. Gupta, learned senior counsel appearing with Shri S.K. Gupta, learned counsel though raised several legal contentions to assail the impugned orders inter alia amongst the grounds, violation of Rule 14 (18) of the Rules and non-furnishing of first and second stage advice of the CVC has been raised to call for quashing of the orders.



5. The learned counsel for the applicants placing reliance on a decision of the Apex Court in State Bank of India vs. D.C. Aggarwal (JT 1992 (6) SC 673) contends that non-furnishing of CVC advice vitiates the orders.
6. In so far as Rule 14 (18) of the Rules is concerned, it is stated that as per the aforesaid rule, if a delinquent official has not examined himself earlier after the examination of witnesses, it is mandatory upon the Inquiry Officer to generally question him on the circumstances appearing against the delinquent in the evidence for the purposes of enabling the Government servant to explain circumstances appearing in evidence against him.
7. To the aforesaid contention, learned senior counsel places reliance on a decision of the Apex Court in Ministry of Finance vs. S.B. Ramesh (1998 (3) SSC 227) to contend that non-compliance of the aforesaid provision goes to the root and vitiates the inquiry as well as the consequent order.
8. Referring to the decision of the Tribunal in OA 1826/98, Charanjit Singh Khurana vs. Union of India and Ors. decided on 14.9.2001, it is stated that the aforesaid contention has been upheld to quash the orders. In furtherance, it is stated that the above order was challenged by the Government in CW 69/2002 and by an order dated 7.1.2002 passed by the High Court of Delhi, the contention has been affirmed. He further states that SLP (Civil) No. 9816/2002 filed against the judgment of the High Court was dismissed on 9.5.2002.
9. In so far as the CVC report is concerned, it is stated that the same has been relied by the authorities at both the stages. As such, non-furnishing of the CVC report vitiates the inquiry.
10. On the other hand, Shri Ashwani Bhardwaj, learned proxy counsel for the respondents has produced the entire disciplinary proceedings record before us. In so far as the contention raised by the learned senior counsel as to violation of Rule 14 (18) is concerned, it is stated that the same has been complied with as

the applicant has been examined by the Inquiry Officer on 8.4.1998 and in his defence has given his statement which is a valid compliance of the above provision. It is stated that as no prejudice has been caused and the applicant has been subsequently given a right of defence statement, inquiry is vitiated.

11. In so far as the CVC report is concerned, it is stated that the same has not been relied upon by the disciplinary authority to hold the applicant guilty of the charge.

12. The other legal pleas raised in the O.A. are not adjudicated.

13. On careful consideration of rival contentions and after scanning through the disciplinary proceedings record, we have come to a definite conclusion that the provision of Rule 14 (18) are mandatory in nature and substantive provisions. The test of prejudice shall not apply in the light of the decision of the Apex Court in State Bank of Patiala vs. S.K. Sharma (JT 1996 (3) SC 722).

14. As per Rule 14 (18), on examination of evidence, it is mandated upon the Inquiry Officer to generally examine the delinquent and in that process question him on the circumstances appearing against him in the evidence which is the object sought to be achieved and afford him opportunity to the Government servant to explain any circumstances appearing in the evidence against him. Accordingly, the sine qua non for application of this provision is examination by the Inquiry Officer and questioning on the circumstances appearing in the evidence.

15. From the perusal of statement recorded on 8.4.1998 in another O.A. after giving an opportunity to accept or admit the charge, the only thing which has been asked and put is a question do you want to say anything. This culminates into an explanation by the applicant. We do not find the circumstances appearing against the applicant on the basis of evidence being put to him.

16. Rules of principles of natural justice cannot be put in a straight jacket formula. Each case depends on its facts and circumstances. The sanctity of Rule 18 and the object which is sought to be achieved is to provide an opportunity to the delinquent to be questioned on the evidence appearing against him. This facilitates explanation to the circumstances on the basis of evidence. By not putting questions, there is no valid compliance of the provision.

17. In so far as the prejudice is concerned, the validity of the mandate of the provision has been upheld by the Apex Court in S.B. Ramesh's case (supra). In Charanjit Singh Khurana's case (supra) decided by the Tribunal while giving a meticulous and detailed finding on non-compliance of the provisions under Rule 14 (18) *ibid*, being a mandatory substantive procedure of law though the test of prejudice would not be attracted but assuming it has to be established then by not putting the evidence and circumstances, the applicant has been deprived of a reasonable opportunity to defend which cannot be cured by subsequent opportunity of defence statement. Once a provision has been enacted in the procedural rules, which is substantive in nature, its non-compliance goes to the root and vitiates the action not only to the effect that the disciplinary proceedings goes but also the consequent orders. As non-compliance vitiating the order is no more *res integra* as per the decision of the Apex Court in Charanjit Singh Khurana's case (supra), this infirmity is sufficient to vitiate the inquiry.

18. In so far as the supply of CVC report is concerned, though there is no reference to the CVC report in the order passed by the Lt. Governor, but from the perusal of the notes proposed which led to issue of the aforesaid penalty orders, we find both at the first and second stage of CVC, there has been some disagreement in imposing the penalty which has been taken into consideration and thereafter a final order has been passed. Non-supply of the CVC report vitiates the proceedings in the light of the decision of the Apex Court in D.C. Agarwal's case (supra).

19. Having regard to the reasons recorded above, O.As are partly allowed. Impugned penalty and appellate orders in both the O.As are set aside. As a result, the respondents are directed to forthwith reinstate the applicants in service. However, this shall not preclude them from proceeding further in the disciplinary proceedings against them if so advised from the stage of supplying the copy of CVC report. The intervening period shall be regulated by the respondents as per FR and the orders to that effect shall be issued within three months from the date of receipt of a copy of this order. No order as to costs".

3. The respondents have filed **W.P. (C) Nos.18387/2004** and **19395/2004** respectively against the aforesaid common order before the Hon'ble High Court of Delhi. The High Court, vide its common order dated 29.09.2010, remanded the case to this Tribunal saying that all contentions urged and pleas raised in those OAs were not decided by this Tribunal. The relevant part of the said order is as under:-

"14. The Tribunal has remanded the matter with a direction that the inquiry officer should examine the respondents as per the mandate of Rule 14(18) of the CCS(CCA) Rules and additionally that the Disciplinary Authority should supply the CVC advice rendered to the department pertaining to the penalty to be levied.

15. Now, if the respondents can make good the contentions urged by them in para 4.12 and para 4.16 and the Grounds urged in para 5.1, 5.4 and 5.5 of the Grounds, that would mean that the entire inquiry report stands vitiated and it would be a case of denial of fair opportunity of defence as also a case of the inquiry officer ignoring material evidence.

16. Now, if we allow the two writ petitions and set aside the findings returned on the two pleas as afore-noted, we would be compelled to restore the two Original Applications for adjudication on the

other issues which were urged by the respondents, but have not been dealt with, and which issues strike at the very root of the matter. If we dismiss the writ petitions, it would mean that the department would have to rectify the two deficiencies pointed out by the Tribunal, but we would be compelled to hold that other pleas would be open to be urged, should the Disciplinary Authority still inflict a penalty upon the respondents.

17. Either situation would prolong the further litigation, which is inevitable, because of the reason the Tribunal has ignored the mandate of law which requires all issues to be decided and not only a few.

18. In our opinion leaving open the two issues of substance which were raised by the respondents which have not been decided by the Tribunal would mean that a futuristic battle would obviously be fought.

19. The best solution would be to note whether the Tribunal has covered the entire sweep of the span of the two technical issues decided by it, for if not done, the matter would be required to be remitted to the Tribunal for a decision on all four issues raised.

20. Noting that two issues have not been dealt with by the Tribunal at all and which go to the root of the matter, we note that pertaining to non-compliance with Rule 14(18) of the CCS(CCA) Rules 1965, the Tribunal has not adjudicated whether non-compliance with the Rule has prejudiced the defence and especially when we look to the pleadings in para 4.12 and para 4.16 and the relatable Grounds urged in para 5.1, 5.4 and 5.5 and as noted above. We note that in the decision reported as 1980(3) SCC 304 Sunil Kumar Banerjee vs. State of West Bengal and Ors., non-adherence to Rule 8(19) of the All India Service Disciplinary Rules 1969, which is pari materia with Rule 14(18) of the CCS(CCA) Rules 1965 was held to be non-fatal except upon prejudice caused being shown. A somewhat discordant note has been struck by the Supreme Court in the decisions reported as 2008 (3) SCC 484 Moni Shankar vs. UOI and Anr. and 1998 (3)

SCC 227 Ministry of Finance and Anr. vs. S.B.Ramesh.

21. On the issue of CVC advice not being disclosed to the respondents, the Tribunal has noted the decision of the Supreme Court reported as JT 1992 (6) SC 673 State Bank of India vs. D.C.Aggarwal, but has not factored the fact that the advice by CVC was to dismiss the respondents from service but the Disciplinary Authority has levied a penalty less than what was advised by the CVC and in this context has not considered whether any prejudice was caused.

22. Accordingly, we hold that the facts of the instant writ petitions require the matter to be remanded to the Tribunal for adjudication on all the pleas which were urged including the two pleas which have been decided by the Tribunal but not after spanning the entire sweep of the law pertaining to the said pleas.

23. Impugned order dated 6.4.2004 is set aside and OA No.452/2002 and OA No.453/2002 are remanded to the Tribunal for fresh adjudication with a direction that all contentions urged and pleas raised in the Original Applications shall be decided by the Tribunal including on the two issues on which we find truncated decision by the Tribunal.

24. Endeavour would be made to re-decide the two Original Applications within 6 months of the matters being listed before the Bench upon revival by the Registrar of the Tribunal.

25. No costs".

4. As per the aforesaid directions of the High Court, this Tribunal considered both the aforesaid O.As again and vide Order dated 04.07.2011 again allowed them and directed the respondents to reinstate the applicants in

service with all consequential benefits. The relevant part of the said Order reads as under:-

"14. We have heard the learned counsel for the applicant and learned counsel for respondents and have perused the entire record. A perusal of the earlier Order of this Tribunal dated 06.04.2004 in both these O.As would reveal that they were partly allowed and the respondents were directed to reinstate the applicants in service for the following two reasons:-

- (1) Non supply of the CVC report.
- (2) Non-compliance of the mandatory provisions contained in Rule 14 (18) of the CCS (CCA) Rules, 1965.

However, they were given liberty to proceed further in the disciplinary proceedings against the applicants from the stage of supplying a copy of CVC report, if they were so advised,

15. The High Court considered the aforesaid Order in the respective Writ Petitions filed by the Respondents but they have remanded both the O.As to this Tribunal vide its judgment dated 29.09.2010 for fresh adjudication on all contentions urged and pleas raised in the Original Application especially those in Paras 4.12, 4.16, 5.1, 5.4 and 5.5 which are reproduced elsewhere in this order. The High Court further observed in the said judgment that this Tribunal in its Order has dealt with only the aforesaid two technical pleas but ignored pleas of substance and held, "if the applicants could show that the bridge collapsed due to a faulty design and in respect of the evidence sought to be brought on record that they permitted sub-standard material to be used, could establish that Ground 5.4 urged was correct, they would have successfully demonstrated that the charge of permitting sub-standard material to be used was sustained ignoring the said pleas and deficiency in the evidence brought on record". Again the High Court

observed that if the applicants "can make good the contentions urged by them in para 4.12 and para 4.16 and the Grounds urged in para 5.1, 5.4 and 5.5 of the Grounds, that would mean that the entire inquiry report stands vitiated and it would be a case of denial of fair opportunity of defence as also a case of the inquiry officer ignoring material evidence". The High Court has, therefore, directed this Tribunal to adjudicate upon those issues which "strike at the root of the matter."

16. As far as non-compliance of Rule 14 (18) of the CCS (CCA) Rules, 1965 is concerned, the High Court observed that it has not been established whether the non-compliance of the aforesaid provision has prejudiced the defence considering the pleas in paras 4.12, 4.16 and grounds urged in paras 5.1, 5.4 and 5.5. In this regard, the High Court has relied upon the judgment of the Apex Court in Sunil Kumar Banerjee Vs. State of West Bengal & Ors. (1980 (3) SCC 304) as against the Apex Court's decision in Moni Shankar Vs. Union of India & Anr. (2008 (3) SCC 484) and Ministry of Finance & Anr. Vs. S.B. Ramesh (1998 (3) SCC 227).

17. As far as the issue of CVC advice not being disclosed to the applicants is concerned, according to the High Court, this Tribunal has noted the decisions of the Supreme Court in State Bank of India Vs. D.C. Aggarwal, JT 1992 (6) SC 673 but have not factored the fact that the advise of the CVC was to dismiss the applicants from service but the disciplinary authority has levied a lesser penalty.

18. The contention of the Applicant in Paras 4.12 and 5.1 is that he sought for copies of 34 additional documents which have been permitted by the Inquiry Officer but the respondents have given him only some of those documents and the crucial documents for proving his defence were not given. He has also stated that some of the crucial documents were supplied to him on 1, 3, 5 and 7 of April,

1998 whereas the regular hearing commenced already on 01.04.1998 and completed on 08.04.1998 thereby denying him a reasonable opportunity to defend his case. He has listed 16 crucial documents which have been asked for but not furnished to him. According to him, the non-supply of those documents has caused serious prejudice to him. The respondents have replied that the aforesaid request of the Applicant for additional documents was only to divert the attention from the core issues. However, they have stated that copies of all listed documents and 25 additional documents sought by the Applicant have been given to him. They have denied his allegation that those documents have been given to him in piecemeal. They have also stated that the following documents were not relevant and, therefore, they were not given to him:-

- (i) Work file maintained at Circle Level & Sub-Divisional Level.
- (ii) Complete file maintained at S.S.W. Office.
- (iii) Duties and responsibilities.
- (iv) Notification issued by the L.G.

19. The contention of the Applicant in Para 4.16 is that the disciplinary authority has imposed the penalty of compulsory retirement upon him without considering the depositions of the defence witnesses. In their reply, the respondents have denied that allegation.

20. In Para 5.4, the Applicant has stated that the case against him was one of 'no evidence' as none of the PWs have proved the charge. The respondents denied the said contention and stated that there was sufficient proof on record to prove the charge.

21. His contention in Para 5.5 is that it was proved that the design submitted by M/s Project Consultants vide their drawing have

serious deficiencies which ultimately resulted in the collapse of the Bridge. However, the respondents have submitted that though there were serious defects in the design and the persons concerned have been punished by the disciplinary authority, ultimately the collapse of the bridge was due to poor quality of construction and the Applicant was responsible for the same.

22. As observed by the Hon'ble High Court, the plea of substance raised by the applicants which strikes at the root of the matter is that the cracks have been developed in the bridge and one of its span was collapsed entirely due to the serious deficiencies in the designs submitted by M/s. Project Consultants and not because of any lack of devotion to duty or integrity on their part. In this regard, it is seen that when the bridge has collapsed and payment to the contractor Sh. Khem Chand was stopped by the Govt. of NCT of Delhi, he approached the Arbitrator. The plea of the Govt. of NCT of Delhi before the Arbitrator was that the cause of the collapse of the bridge was the use of substandard material by the contractor. The copy of the Award of the learned Arbitrator dated 19.02.1999 made available by the learned counsel for the applicants during the course of argument is quite relevant in this context. The contention of the Govt. of NCT of Delhi before the learned Arbitrator was that the failure of the structure was on account of poor workmanship and use of substandard material by the contractor but the contention of contractor was that the structure has failed on account of inadequate and defective design prepared and drawings supplied by the respondents. The learned Arbitrator came to the conclusion that the "evidence led indicates failure of the structure on account of inadequate designs and drawings". The relevant part of the said Award is as under:-

"6.4 The Respondent contends that the failure of the structure is on

account of poor workmanship and use of sub-standard material by the Claimant. Whereas the Claimant contends that the structure has failed on account of inadequate and defective designs prepared and drawings supplied by the Respondent.

7.1 The evidence led by the Respondent does not support his contention that the Claimant had executed the super-structure work with unsound workmanship and sub-standard material as a result of which one span has collapsed.

7.2 The work was executed by the Claimant under supervision of the Respondent's engineers. Also the work as executed had been accepted and paid for without any reservation by the Respondent, at the relevant time.

7.3 On the other hand evidence led indicates failure of the structure on account of inadequate designs and drawings. This is also borne out from the site inspection as the collapsed span has broken at the location of about $\frac{1}{4}$ to $\frac{3}{8}$ of the span from the end where both shear as well as flexural reinforcements in the main girders were inadequate. Longitudinal reinforcement in the main girders was mistakenly curtailed in the drawing at $\frac{3}{8}$ of the span instead of $\frac{1}{4}$ of the span from the end and as such the flexural reinforcement actually shown in the drawings at these sections was inadequate."

23. The Govt. of NCT of Delhi filed objections against the aforesaid Award before the Hon'ble High Court of Delhi vide OMP No.174/1999

and the High Court vide its decision dated 29.04.2003 dismissed them and upheld the aforesaid findings of the Arbitrator. The relevant part of the said decision is as under:-

"13. In the case on hand, the arbitrator noticed that the work was executed under the supervision of the engineers of the petitioner-objector. Further, the work as executed was accepted and payment in respect thereto was made without any reservation. On the basis of evidence produced before him, he concluded that the failure of structure was rather attributable to deficiency in designs & drawings. Spot inspection also, according to the arbitrator, led to the same finding."

24. The aforesaid Award and the decision of the Hon'ble High Court on the Objections filed by the Govt. of NCT of Delhi which attained finality would show that it was categorical finding of the learned Arbitrator that the collapse of the bridge was due to failure on account of inadequate and defective designs and the drawings supplied to the Govt. of NCTD and not because of the poor workmanship and use of substandard material by the contractor. Therefore, the respondents failed to prove that the applicants, as In-charge of the construction of the Bridge, were responsible for collapse of the bridge. The same was the charge against them in departmental proceedings also.

25. Now let us see the report of the inquiry officer dated 30.05.1998 in respect of Sh. S.C. Gupta which was prior to the aforesaid Award dated 19.02.1999. According to the

Prosecution Witnesses, the concrete was weak and the bridge was liable to collapse. Further, they added that many of the concrete samples had honey combing and voids proving that the concrete had not been compacted well resulting into the reduction in the strength of the concrete. Therefore, the Enquiry Officer held that the charges against the applicants have been proved.

26. Thus the Award of the Arbitrator as upheld by the Hon'ble High Court and the report of the Enquiry Officer in the departmental enquiry proceedings have entirely opposite conclusions on the issue which is the crux of the matter. The argument of the learned counsel for the respondents that Award of the Arbitrator and the decision of the High Court on the Objections filed by the Govt. of NCT of Delhi has no relevance in the matter, cannot be accepted. In this connection, the statement of Article of charge framed against Shri R.C. Sood, Superintending Engineer is quite relevant. The charge against him was that the structural drawings for the construction of the bridge as approved by him was found deficient in detailing of reinforcement loading to reduced capacity. In the statement of imputation, it has been further stated that the few fine hair crack here and there on the exposed surface of main girder of right and left prior. These fine cracks being of the nature/type which do appear on almost all concrete surface in the cover portion outside the reinforcement and particularly in the repair and finishing work done with cement and mortar/plaster due to temperature variation/expansion and contraction.

27. We are, therefore, of the considered view that the charges against the applicants were not based on any rationale. Rather, the respondents

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themselves were of the opinion that the fine cracks appeared on bridge were quite a normal feature and collapse of the bridge was actually due to the deficiency in the structural drawings for which the applicants were admittedly not responsible. Thus, the charge against the applicants being baseless, the evidences adduced against them during the departmental proceedings have also rendered worthless. We, therefore, find merit in the contention of the applicants that there were no valid evidences against them in the departmental proceedings and the conclusion of the Enquiry Officer that the charges against them have been proved is wrong. In such a situation, the other grounds raised by the applicants in challenging the impugned orders of the disciplinary authority as well as the appellate authority have no relevance.

28. Resultantly, both the O.As are allowed. The impugned respective orders of the disciplinary authority and the appellate authority are quashed and set aside. Consequently, the respondents are directed to reinstate the applicants in service with all consequential benefits except the back wages. They shall also issue appropriate orders in this regard within a period of two months from the date of receipt of a copy of the order. No order as to costs".

5. During the pendency of the aforesaid proceedings before this Tribunal as well as the High Court, D.A. No.70/2006 was also filed but it was adjourned sine die awaiting the judgment by the High Court. However, since this Tribunal once again vide its order dated 04.07.2011 allowed those two OAs, OA No.70/2006 was also allowed

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on the same terms, vide Order dated 21.02.2012. The relevant part of the said order reads as under:-

“6. Admittedly, this O.A is also an identically placed one as the O.As 452/2002 (supra) and 453/2002 (supra). There is no dispute with regard to the similarity of these cases by the parties. Only difference in the charge sheet is with regard to the designations and the duties of the officers concerned. The learned counsel for the respondents Mrs. P.K. Gupta has also admitted that the legal issues raised in all these O.As are the same.

7. In view of the above facts and circumstances of the case, in our considered opinion, it is not necessary for us to go into the details of this case once again. Rather, we are inclined to allow this O.A on the very same premises on which O.A 452/2002 (supra) and O.A 453/2002 (supra) have been allowed by this Tribunal vide its order dated 04.07.2011. Accordingly, this O.A is allowed. The impugned disciplinary authority's order dated 23.04.2003 and the appellate authority's order dated 11.04.2005 are quashed and set aside. As in the case of the aforesaid two O.As - O.A 452/2002 (supra) and O.A 453/2002 (supra), the respondents shall reinstate the applicant in service with all consequential benefits except back wages. They shall also issue appropriate orders in this regard within a period of two months from the date of receipt of a copy of this order. However, as regards the question of treating the suspension period from 06.04.1994 to 15.05.1995 in terms of FR 54-B (6) is concerned, the respondents shall consider the entire facts and circumstances of the case and communicate the decision to the applicant within the aforesaid period. There shall be no order as to costs”.

6. The respondents challenged orders in all the three O.As again before the Hon'ble High Court of Delhi vide Writ Petitions Nos. 1054/2012, 1228/2012 & 5792/2012 respectively. The High Court again, vide its orders dated 22.04.2013, remanded all the three cases to this Tribunal on

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the ground that the issues highlighted by the High Court in its earlier order dated 29.09.2010 were not considered by this Tribunal. The relevant part of the said order reads as under:-

12. It was noted that the impugned judgment and order dated April 06, 2004 passed by the Tribunal had dealt with only two pleas i.e. the two technical pleas and has not dealt with the pleas of substance.

13. It was noted that the respondents in the two writ petitions would be entitled to an adjudication on the pleas urged by them and the grounds urged in support thereof. Indeed, it did require to be considered whether the inquiry officer erred in not ensuring the documents production whereof was sought after holding that they were relevant and the effect thereof. If the charged officers could show that the bridge collapsed due to a faulty design and in respect of the evidence sought to be brought on record that they permitted sub-standard material to be used, could establish that Ground 5.4 urged was correct, they would have successfully demonstrated that the charge of permitting sub-standard material to be used was sustained ignoring the said pleas and deficiency in the evidence brought on record.

14. It was noted that the Tribunal has remanded the matter with a direction that the inquiry officer should examine the respondents as per the mandate of Rule 14(18) of the CCS(CCA) Rules and additionally that the Disciplinary Authority should supply the CVC advice rendered to the department pertaining to the penalty to be levied.

15. Now, if the charged officers can make good the contentions urged by them in para 4.12 and para 4.16 and the Grounds urged in para 5.1, 5.4 and 5.5 of the Grounds, that would mean that the entire inquiry report stands vitiated and it would be a case of denial of fair opportunity of defence as also a case of the inquiry officer ignoring material evidence.

16. Pertaining to the two issues decided by the Tribunal, it was opined that the Tribunal has not adjudicated whether non-compliance with the Rule has prejudiced the defence and especially

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when we look to the pleadings in para 4.12 and para 4.16 and the relatable Grounds urged in para 5.1, 5.4 and 5.5 and as noted above. It was noted that in the decision reported as 1980(3) SCC 304 Sunil Kumar Banerjee vs. State of West Bengal & Ors, non-adherence to Rule 8(19) of the All India Service Disciplinary Rules 1969, which is pari material with Rule 14(18) of the CCS(CCA) Rules 1965 was held to be non-fatal except upon prejudice caused being shown. A somewhat discordant note has been struck by the Supreme Court in the decisions reported as 2008 (3) SCC 484 Moni Shankar vs. UOI & Anr. and 1998 (3) SCC 227 Ministry of Finance & Anr. vs. S.B.Ramesh.

17. On the issue of CVC advice not being disclosed to the charged officers, the Tribunal had noted the decision of the Supreme Court reported as JT 1992 (6) SC 673 State Bank of India vs. D.C.Aggarwal, but has not factored the fact that the advice by CVC was to dismiss the charged officers from service but the Disciplinary Authority has levied a penalty less than what was advised by the CVC and in this context has not considered whether any prejudice was caused.

18. Accordingly, vide decision dated September 29, 2010 the impugned order dated April 06, 2004 was set aside and OA No.452/2002 and OA No.453/2002 were remanded to the Tribunal for fresh adjudication with a direction that all contentions urged and pleas raised in the Original Applications shall be decided by the Tribunal including on the two issues on which we find truncated decision by the Tribunal.

19. We are now concerned with the same issue for the second time pertaining to S.C.Gupta and Upender Agnidev and one more person Sh.J.M.Sharma.

20. Without deciding the issues which the Tribunal was called upon to do, deciding the Original Applications filed by Upender Agnidev and S.C.Gupta vide impugned order dated July 04, 2011 challenge in W.P.(C) No.1054/2012 and W.P.(C) No.1228/2012 the Tribunal has short cut the matter by holding that the bridge collapsed due to faulty design and for which the Tribunal has heavily relied upon the fact that in an arbitration dispute between the contractor who

constructed the bridge and the department, the award was in favour of the contractor who successfully established that the bridge collapsed due to a faulty design. Accordingly, the Tribunal has held that the said two officers i.e. S.C.Gupta and Upender Agnidev could not be indicted. Vide separate order dated February 21, 2012, following the decision dated July 04, 2011, relief has been granted to J.M.Sharma.

21. Regretfully, the matter has to be remanded back to the Tribunal once again. The reason is that, the design of the bridge was approved by the Superintending Engineer Sh.R.C.Sood, in spite of deficiencies pointed out in the drawing by the consultant and at the inquiry evidence was led of said fact. Sh.R.C.Sood has been visited with a penalty, and we are not concerned with the same.

22. As regards the other charged officers, the report of the inquiry officer has taken into account evidenced of sub-standard material being used. This evidence could not have been ignored by the Tribunal. Indeed, at the earlier round of litigation when the matter was remanded to the Tribunal, said aspect was highlighted by the Division Bench requiring the Tribunal to take into account said evidence but at the same time keep in mind the contentions urged by the charged officers.

23. As regards the arbitral award, it is not unknown to see Government briefs being lost due to inapt handling by lowly paid counsel who are pitted against the might of contractors who have the benefit of the best counsel. Further, as in the instant case, it would be in the interest of the officers themselves to see and ensure that the award is against the department for then the evidence pertaining to the defective material used by the contractor would be buried and the view taken would be that it was a design fault. This would be used by the officers as a shield in domestic proceedings.

24. Noting that the Tribunal has once again done a clumsy job and regretfully has not instructed itself with the issues highlighted by a Division Bench of this Court in the decision dated September 29, 2010, we dispose of the writ petitions quashing the impugned orders dated July 04, 2011 and February 21, 2012. OA

No.70/2006, OA No.452/2002 and OA No.453/2002 are restored for fresh adjudication by the Tribunal with a direction that all issues required to be decided keeping in view the decision dated September 29, 2010 passed by this Court would be decided.

25. Parties shall appear before the Registrar of the Tribunal on May 20, 2013 who shall list the original applications before the concerned Bench for fresh adjudication.

26. No costs.

27. DASTI".

7. It is in the aforesaid facts and circumstances, this Tribunal has heard these three OAs once again.

8. We have considered the observations made by the Hon'ble High Court of Delhi in its orders dated 29.09.2010 and 22.04.2013, while remanding OA No.452/2002 and OA No.453/2002, vide order dated 29.09.2010. What the High Court observed was that this Tribunal in its order dated 06.04.2004 had decided only two pleas raised by the Applicants but did not decide the other pleas raised by them.

The other pleas raised by them are the following:-

(1) The Respondents have not made available the documents demanded by the Applicant and allowed by the Enquiry Officer and it has caused material prejudice to him.

Those documents are:-

(i) Work files maintained at Circle Level in the office of

Superintending Engineer Shri R.M. Puttaswamy and at the Sub Divisional level in respect of the work in question.

(ii) Agreement number EE/SDDV/2/90-91 entered into with the contractor for construction of work in question.

(iii) Complete file maintained at SSW Office in the year 1993-94, in respect of Ranhola Bridge containing letter number CEF/SSW/Ranhola Bridge/93-94 (PF) 3308 dated 06.12.1994 and documents disclosing action taken by the addressee and endorsee authority to take suitable action.

(iv) Duties and responsibilities attached to the post of Junior Engineer, Assistant Engineer, Executive Engineer and Superintending Engineer while performing duties in field.

(v) Letter No.PS/JS/(IF)/623 dated 25.07.1995 issued by Development Commissioner/Secretary (I&F) to Director General (Road Development, Ministry of Surface Transport) along with letter No.RW/NH/34066/2/95-S&R dated 16.08.1995 issued by Superintending Engineer (Bridges) for Director General, Road Development, in response to the above said letter along with the document disclosing action the same.

(vi) Reply by CWC in response to letter number PA/JS/I&FC/214 dated 05.09.1994 by Secretary (I&F) to Chairman, Central Water Commission.

(vii) Minutes of the meeting held on 03.02.1995.

(viii) Documents disclosing the base, data, documents on the

basis of which Ex.S-5 had been framed.

(ix) The documents, data, drawings etc. on the basis of which document listed S.No.4 of the impugned charge sheet had been framed including the details of type of equipment used while conducting the said inspection and the codes relied upon while framing the said report.

(x) The Applicant had demanded the details of the methodology adopted in collecting and testing the core samples and chipping concrete samples and disclosure of their respective standardized codes on basing which such methods had been adopted as stated in para 1 in conclusions and listed document number 3 along with strict proof to the effect that such instructions had been followed.

(xi) Literature of machines appearing in Fig.1 at page of listed document No.3 and the maintenance register proving the fact of maintenance of said machines as per norms and standards as suggested by Manufactures to give due performance and proof of specific training imparted to the as core cutting is a specialized job and requires skilled workers and good machines.

(xii) Documents proving the fact that due care and caution had been taken by NCB as stated in 2nd para at page 2 of the report of document listed at Sr. No.3.

(xiii) Documents, codes etc. disclosing and explaining the variables which are standardized and some of which are non-standardized.

(xiv) Documents disclosing variation allowed in the result of

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chemical analysis and the method of testing and deducting the compressive strength and variation allowed in the result including the disclosure of the equipment used to test the samples with that respective manufacturer literature.

(xv) Log books of vehicles number DLV-3, DED-3784, DNA-1935, DDV-403, DAE-30 for a period of January, 1992 to September, 1993.

(xvi) Complete Court File and Arbitration File in respect of the appointment of the Arbitrator and claim counter claim of the department in case number 736/98 in Suit No.2559-A/94.

(xvii) Notification issued by the competent authority, i.e., LG approving the adopting of CPWD Manual in Irrigation and Flood Department.

(2) Prosecution deliberately withheld the witness Shri O.P. Sharma, the Chief Engineer, who was earlier cited as a witness and he was a very vital witness in the case.

(3) There was no evidence against the Applicants as none of the prosecution witnesses have deposed against them.

(4) It was proved on record that the design submitted by M/s Project Consultants **vide** drawing Ex.-D3A was having serious differences which ultimately resulted in the collapse of the bridge.

(5) The findings of the Enquiry Officer are contrary to law and facts inasmuch as:

(i) the prosecution miserably failed to bring any evidence on record to prove the authenticity of the CRRI reports.

(ii) the CPWD Manual and code etc. relied upon by the Presenting Officer were not applicable as mandatory code on the department of the Applicant

which was under the Government of NCT of Delhi.

(iii) due to improper test specimen, that were drawn from the concrete, the tests were not proper as a result whereof the conclusion of the reports were inaccurate and biased.

(6) The Disciplinary Authority was biased and punished the Applicants with mala fide as it considered the very same crack in the bridge as "fine hair line cracks" for awarding lesser penalty to the co-delinquents while in their case it was described as "serious cracks". The relevant part of the order of the Disciplinary Authority in the case of N.K. Sharma, ASW/AE, Shri R.N. Sharma, AE and Shri M.I. Farooqui, JE reads as under:-

"....After completion, the bridge was opened to traffic on 13.12.1993 and had to be closed on 20.12.1993 when certain fine hair cracks were noticed. Subsequently, one of the three spans of the bridge collapsed..".

But in the case of the Applicant, it was as under:-

"...After completion, the bridge was opened to traffic on 13.12.1993 and had to be closed on 20.12.1993 when serious cracks were developed in RCC girders. Subsequently, one of the three spans of the bridge had collapsed...".

7. The Appellate Authority's order is illegal and arbitrary as:-

(i) it does not deal with all the grounds raised by the Applicant in his appeal dated 28.02.2000;

(ii) the point which has been dealt, has not been dealt properly, for the reasons it did not deal with

(a) the Applicant's request for. The Appellate Authority itself has admitted that the documents runs into the volumes whereas only the inspection was allowed.

(b) on the demand raised by the Applicant

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for the supply of 34 additional documents, 9 documents which were relevant documents for the purposes of defence of the Applicant were not supplied to the Applicant. Whatever the remaining 25 documents were given those were supplied partly and some of the documents were incomplete for which the Applicant had also raised the objection during the course of inquiry.

(iii) In the appellate order it has been admitted by the Respondents that the faulty design was the reason for the collapse of the bridge but, the persons responsible for faulty

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design have been inflicted a lessor punishment, i.e., only stoppage of three increments etc. and no action has been taken against the Designer.

9. As regards the contention of the Applicants that the Disciplinary Authority has not made available the documents demanded by them, the Respondents have stated that the Applicants have been making requests for additional documents on every proceedings, so as to divert the attention from the core issues and mislead the Inquiry Officer and linger on the case for his advantages. However, every efforts had been made by the Presenting Officer to make available the demanded defence documents to the Applicants considering the relevance on merits, as per the orders of the IO, who was the final authority to decide the demand of the defence documents. All the relied upon documents have been supplied to the Applicants.

10. As regards the contention of the Applicants that the prosecution deliberately withheld the witness Shri O.P. Sharma, the Chief Engineer, who was cited as a witness and was a very vital witness in the case, the Respondents response was that since Mr. Sharma was a state witness, his evidence would have been more damaging to this CO and he had already retired from Government service at the relevant

time, when the case was being heard and he did not attend the hearings despite summons served on him. Moreover, it is the prerogative of the prosecution to produce or drop any witness listed in the charge sheet.

11. As regards the contention of the Applicants that there was no evidence against them as none of the prosecution witnesses have deposed against them, the Respondents have submitted that the Enquiry Officer has drawn his conclusions based on sufficient evidence advanced during the enquiry. Based on the material documents, statement of witnesses and as such, the submissions made by the Applicants that there is no evidences against him is totally false.

12. As regards contention of the Applicants that it was proved on record that the design submitted by M/s Project Consultants vide drawing Ex.-D3A was having serious differences which ultimately resulted in the collapse of the bridge, the Respondents have stated that although some discrepancies in the design and drawings were also found and the officer responsible for such lapse have also been charge sheeted and suitably penalized by the disciplinary authority, various structural members of the bridge was of poor quality and caused the untimely collapse of the bridge. They have also stated that the Applicants cannot save themselves by pointing out the mistakes of others and further shifting the responsibilities on others

13. As far as the allegation of bias levelled against the Disciplinary Authority, the Respondents have stated that they are after thought and are liable to be rejected. They have also stated that there is no discrepancy in the penal orders as alleged and further that can give no benefit to the Applicants as their misconduct was fully proved in the departmental enquiry.

14. As regards the contention of the Applicants that the findings of the Enquiry Officer are contrary to law and facts, they have stated that the report of the CRRI is totally authentic, reliable and based on specimens collected at site and tested in the laboratory. They have also stated that the CPWD Manual and codes are fully applicable in I&FC Department, as per the orders issued by the Government. Further, they have stated that the test specimens have been taken by an organization which itself either frames codes or is associated with their framing. No doubts can be casted on integrity and reliability of these experts or their organizations.

15. As regards the submission of the Applicants with regard to the orders of the Disciplinary Authority are concerned, they have stated the said authority has passed the orders after thoroughly considering all the facts and points raised by the Appellants, the records and the comments and mentioning all the requisite proceedings, requirements as laid down in the statutory CCS (CCA) Rules, 1965. The detailed reasons and

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full justifications for imposing of penalty was given in the order. Apart from the above, the facts of the being heard in person by the disciplinary authority has also been elaborated in the penalty order, which is self explanatory.

16. In the hearing held on 19.08.2014, the learned counsel for parties again made their submissions. The learned counsel for the applicants, Shri S.K. Gupta has submitted the charges against the applicants are not sustainable, as the applicants were denied reasonable opportunity to defend their case as no preliminary show cause notices before issuing charge sheets were issued to them. They were also denied opportunity to file written statement of defence which is a statutory right of the charged employee. He has also stated that in view of the Arbitration Award dated 19.02.1999 as affirmed by Hon'ble High Court of Delhi vide OMP No.174/1999 order dated 29.04.2003, stating that the bridge was collapsed because of its faulty design, the charges are not sustainable. As the applicants are no way responsible for the design of the bridge, they cannot be held responsible. Therefore, the entire inquiry is bad in law. Further, non supply of documents and non production of "non availability certificate" by the Presenting Officer while not producing the additional documents as admitted by the inquiry officer constitutes denial of reasonable opportunity to defend the case and vitiates the inquiry proceedings. He has also submitted that

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the supply of Skelton additional documents at the belated stage when the cross examination of the witnesses were already taken place or going to take place amounts to denial of reasonable opportunity to defend the case and vitiates the inquiry proceedings. Again, non adherence to sub Rule 18 of Rule 14 of CCS (CCA) Rules by the inquiry officer vitiates the inquiry in the light of the facts that the applicant was seriously prejudiced as he could not explain his defence in the light of the fact that even the additional documents including the documents pertaining to faulty design were not supplied to him. The non supply of CVC's 1st stage and 2nd stage advice has also vitiated the inquiry proceedings in view of the fact that the punishment of compulsory retirement inflicted upon the applicants is one of the extreme punishments.

17. However, the respondents' counsel Mrs. P.K. Gupta submitted that the charge sheet containing article of charges framed against the officials are neither indictment nor an order of penalty. It was the first formal notice as per CCS(CCA) Rule 1965 asking him to show cause as to why disciplinary proceeding should not be initiated against him. Further, the issuance of charge sheet is meant to elicit a response from the charged officials as they may take any defence in their favour while submitting the reply thereto. She has also stated

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that the Arbitration proceedings have no relevance in the disciplinary proceedings, as the quality of work undertaken was the core issue in the instant case. During the Arbitration proceedings, it was made clear that the super structure of the bridge was constructed with unsound, imperfect and unskillful workmanship with material of inferior description and of quality inferior to that contracted for, which has resulted in failure of super structure of the bridge. The same was already established by various tests conducted on this bridge by CRRI & NCCBM subsequent to collapse of one span of this bridge under its own weight. The arbitrator did not take any cognizance of this fact especially the investigation reports which comprehensively proved the fact that the work was of inferior quality with poor workmanship and gave a decision on his wisdom ignoring the findings of the investigations and Inquiry Officer. Moreover, an Arbitrator is judge in himself and his decisions are not challengeable and not generally entertained by the courts. Furthermore, it was a case relating to payments and disputes arising out of the contract between the govt. and the contractor under clause 25 of the agreement and as such cannot be equated with the disciplinary case. Moreover, the other

hand, Dr. P Rathnaswamy, Commissioner for departmental inquiries and the Inquiry Officer submitted the inquiry report on 30.05.1998/02.06.1998 whereas the Arbitrator has given his award only on 19.02.99 and it was affirmed by Hon'ble High Court, Delhi on dated 29.04.2003. Further, the enquiry report is not bar in law as Dr. P Rathnaswamy, Commissioner for departmental inquiries and inquiry Officer has submitted the enquiry report based on various test conducted on this bridge by CRRI and NCCBM and also report of experts in this field. In this regard she has also referred to the following depositions of the witnesses and other documents.

Deposition dated 1.4.1998 of Dr. S C Maiti an expert associated even with the writings of I S Codes.

"Therefore, the concrete was weak and was liable to collapse. Many of the concrete samples had honey combing and voids; proving that the concrete had not been compacted well, leading to 'reduced strength of concrete'."

Findings of Dr. Mittal of CWC:

"As per the computations, the bridge could have not collapsed due to its own weight. But it appears that due to poor quality of concrete the failure occurred."

Deposition of Dr. D V Singh, Ex. Director CRRI:

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He confirmed the authenticity and correctness of the two reports of CRRI, in July, 1994 and March, 1995 which squarely established that the concrete used in the work was of poor quality containing voids and allows. He also deposed that the above investigations were conducted by two teams of experts, whose inferences and conclusions drawn in regard to poor quality of concrete, cited in the reports, cannot be doubted.

Deposition of Sh. K B. Rajoria, Engineer-in-Chief, PWD NCT of Delhi:

He vouchsafed for the correctness of his first expert opinion report, submitted vide his letter dt. 4.3.94. This letter contained his first hand opinion in regard to possible causes of cracks (That had developed in the bridge structure) when he inspected the bridge on 1.3.1994.

Concluding para of his letter dated 04.03.1994:

"The total structure is of poor quality, and it is feared that the first span on the left side may continue to sag even without load. The bridge structure may be got thoroughly examined to ascertain as to whether it is possible to rehabilitate the same or it is required to be demolished".

18. The learned counsel for the respondents has also submitted that the request of the additional documents made by the applicant was only to divert the attention from the core issue. The mere supplying those documents to C O could not have improved the quality of concrete used in the bridge and the applicants cannot shield themselves from it. She has also submitted that "it is clear from the investigation conducted by the experts that the failure of the bridge.

occurred due to poor quality of concrete. Supplying of Skeleton
 additional documents at the belated stage can vitiate the
 inquiry proceedings". As regards, the allegations of non-
 compliance of Rule-14(18) is concerned, she has submitted
 that in para 7 of the inquiry report, it has been clearly
 mentioned that "the CO was examined in general by the
 undersigned. Shri Gopal Krishnan acted as a defence
 assistant of Sh. Upendra Agnidev." The proceedings of the
 inquiry dated 2.4.1998 clearly show that Sh. Upendra
 Agnidev was examined in detail by the inquiry officer and
 questions were asked which were replied by Sh. Upendra
 Agnidev in detail. She has further submitted that the
 Respondent No.1 never raised his objection in his defence
 statement filed during the inquiry. The representation made
 in the inquiry report before the disciplinary authority and
 also the appeal filed before the President of India. This clearly
 establishes the fact that it is an afterthought of Sh. Upendra
 Agnidev. As regards non-supply of the CVC's first and
 second stage advice, she has stated that there were no orders
 of the Vigilance Commission to give copies of CVC's advice to
 the delinquent employee as it was being considered
 confidential document. Para 3.6(iii) Chapter-XI and para 8.1
 Chapter XII of the Vigilance Manual Vol. I provide that the
 advice tendered by the Central Vigilance Commission is of
 confidential nature meant to assist the disciplinary authority
 and could not be shown to the concerned employee. It also

mentions that the Central Vigilance Commission tenders its advice in confidence and its advice is a privileged communication and, therefore no reference to the advice tendered by the Commission should be made in any formal orders. Much after the passing of the final order by the disciplinary authority the Central Vigilance Commission considered this aspect in view of the judgment of the Hon'ble Court in the case of **State Bank of India Vs. D C Aggarwal** and permitted to give the copies of advice of Central Vigilance Commission to the delinquent employees vide it is circular no. 99/VGL/66 dated 28.9.2000. This fact was vehemently argued by the Counsel for the Respondents but this Tribunal did not consider the same. The learned counsel has also stated that while the advice of Central Vigilance Commission in the matter was for imposition of major penalty of removal/dismissal from service, the penalty awarded by the Disciplinary Authority was a lower one, i.e. compulsory retirement.

19. We have considered the submissions made by the learned counsel for the parties Shri S.K. Gupta as well as Mrs. P.K. Gupta. We have once again gone through the entire case file very carefully. As observed earlier, **OA Nos.452/2002** and **453/2002** were partly allowed by this Tribunal vide Order dated 06.04.2004. While doing so, this Tribunal held that the mandatory provisions contained in Rule 14(18) of the

CCS (CCA) Rules, 1965 were not complied with by the Enquiry Officer. In this regard, this Tribunal has placed its reliance on the judgment of the Apex Court in the case of **Ministry of Finance vs. S.B. Ramesh** 1998 (3) SSC 227. This Tribunal has also rejected the contention of the Respondents that by the non-compliance of the aforesaid provision, no prejudice has been caused to the Applicants relying upon the judgment of the Apex Court in the case of **State Bank of Patiala vs. S.K. Sharma** JT 1996 (3) SC 722 as well as the earlier order of a coordinate Bench in **OA 1826/98 - Charanjit Singh Khurana vs. Union of India and Ors.** decided on 14.9.2001, wherein it was held that the provisions contained in Rule 14(18) ibid "being a mandatory substantive procedure of law though the test of prejudice would not be attracted but assuming it has to be established then by not putting the evidence and circumstances, the applicant has been deprived of a reasonable opportunity to defend which cannot be cured by subsequent opportunity of defence statement. Once a provision has been enacted in the procedural rules, which is substantive in nature, its non-compliance goes to the root and vitiates the action not only to the effect that the disciplinary proceedings goes but also the consequent orders.

20. The other reason for allowing the aforesaid OAs was that the first and second stage of CVC, there has been some

disagreement in imposing the penalty which has been taken into consideration and thereafter a final order has been passed. Therefore, this Tribunal held that in the light of the decision of the Apex Court in the D.C. Aggarwal (supra), non-supply of the CVC report has vitiated the proceedings. In view of those findings, other grounds taken in the OA were not considered. However, the High Court while considering these orders in **W.P. (C) No.18387/2004 and 19395/2004** held that the Tribunal has ignored the mandate of law which requires all issues to be decided and not only a few. Further, the High Court noted that pertaining to non-compliance with Rule 14(18) of the CCS(CCA) Rules 1965, the Tribunal has not adjudicated whether non-compliance with the Rule has prejudiced the defence. In this regard, the High Court relied upon the judgment of the Apex Court in Sunil Kumar Banerjee vs. State of West Bengal and Ors, 1980 (3) SCC 304 wherein it was held that unless prejudice has been caused to the Applicant, non-adherence of the similar provision contained in Rule 8(19) of the All India Service Disciplinary Rules 1969 is not fatal. High Court has also, this regard, relied upon the judgment of the Supreme Court in Moni Shankar vs. UOI and Anr. 1998 (3) SCC 227. On the issue of CVC advice, the High Court observed that the Tribunal has not factored the fact that the advice by CVC was to dismiss the respondents from service but the Disciplinary Authority has levied a penalty less than what

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was advised by the CVC and in this context has not considered whether any prejudice was caused. The High Court, therefore, remitted the case to this Tribunal with the direction to adjudicate all the pleas which were urged including the two pleas which have been decided by the Tribunal but not after spanning the entire sweep of the law pertaining to the said pleas. Accordingly, the Tribunal again reconsidered the matter and **vide** its order dated 04.07.2011 held that the charges against the Applicants again were not based on any rationale as the Respondents themselves were of the opinion that the fine cracks appeared on bridge were quite a normal feature and collapse of the bridge was actually due to the deficiency in the structural drawings for which the applicants were admittedly not responsible. The Tribunal has, therefore, held that in the aforesaid selection, the other grounds raised by the applicants in challenging the impugned orders of the disciplinary authority as well as the appellate authority have no relevance. Resultantly, both the OAs were allowed. However, the High Court was pleased to remand the case again for fresh adjudication on all issues.

21. We, therefore, list out the following issues raised by the Applicants in these cases and the Respondent's response to them:-

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- (1) Non-compliance of the provision contained in Rule 14(18) of the CCS CCA) Rules, 1965.
 - (2) Non-supply of the CVC Report.
 - (3) Non-supply of the various other documents relied upon by the Applicants during the enquiry proceedings to defend their case.
 - (4) The prosecution deliberately dropped the Prosecution Witness Shri O.P. Sharma, the Chief Engineer.
 - (5) The cases against the Applicants are of 'no evidence' as none of the Prosecution Witnesses have deposed against them.
 - (6) The collapse of the bridge was due to its design submitted by M/s Project Consultants.
 - (7) The Disciplinary Authority was biased inasmuch as the Disciplinary Authority considered the very same crack in the bridge as "fine hair line cracks" for awarding lesser penalty to the co-delinquents while in their case it was described as "serious cracks".
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(8) The Appellate Authority's order was illegal and arbitrary.

22. The Respondents have refuted the contention of the Applicants that the Enquiry Officer has not adhered the procedure prescribed in sub-rule (18) of Rule 14 of CCS (CCA) Rules, 1965. They have pointed out that in the report of the Enquiry Officer report, it has been clearly mentioned that the CO was examined in general by the Enquiry Officer. However, the Respondent's stand with regard to the advice tendered by the CVC is that it was a confidential document and it was not to be shown to the delinquent employee. As regards, the non-supply of relied upon documents, the response of the Respondents is that mere supplying those documents to CO could not have improved the quality of concrete used in the bridge and the Applicants cannot shield themselves from it. As regards dropping of the defence witness Shri O.P. Sharma, the Chief Engineer was concerned, they have stated that he had already retired from service at the relevant time when the case was being heard and he did not attend the hearing despite summons served on him. As regards the contentions of the Applicants that there were no evidences against them and the collapse of the bridge was due to its design submitted by M/s Project Consultants, the Respondents have referred to the depositions of the Prosecution Witnesses Dr. S.C. Maiti, Dr. Mittal, Dr. D.V.

Singh and Shri K.B. Rajoria. All of them have deposed against the Applicants that the concrete was weak and it was liable to collapse, the bridge could have not collapsed due to its own weight but it appears that due to poor quality of concrete the failure occurred, the concrete used in the work was of poor quality containing voids and allows. etc. They have also denied the allegations made against the Disciplinary and the Appellate Authorities.

23. It is seen that Articles of Charges against the Applicants Shri J.M. Sharma, Shri S.C. Gupta and Shri Upendra Agnidev were identical. The charge was that while they were in-charge of execution of the construction of Bridge at RD.30825 mt. on the supplementary drain and the cracks have developed in the bridge and that one span of the bridge collapsed and they have failed to maintain devotion to duty and absolute integrity. While S/Shri Sharma and Gupta were Assistant Engineers, Shri Upendra Agnidev was a Junior Engineer. The Enquiry Officer has held that the aforesaid charges have been proved against the Applicants. Shri Gupta and Shri Agnidev were awarded the penalty of compulsory retirement from service and Shri Sharma was awarded the penalty of reduction of pay by two stages in the time scale of pay with cumulative effect. The Appellate Authority has confirmed these punishments.

24. The Applicants have challenged the aforesaid orders alleging various substantial and procedural irregularities. As observed by the Hon'ble High Court in its order dated 29.09.2010, the question here is whether non-observance of sub-rule 14 (18) of the CCS (CCA) Rules, 1965 has vitiated the entire enquiry report or not. But after hearing the learned counsel for the Respondents afresh it is seen that the said question does not arise at all. The Enquiry Officer in his report has clearly stated that he had examined the Applicant in general. As regards supply of the CVC report is concerned, as observed by the Hon'ble High Court in its order dated 29.09.2010, the advice by CVC was to dismiss the respondents from service but the Disciplinary Authority has levied a penalty less than what was advised by the CVC. The Applicants have not shown that any prejudice was caused to them due to the non-supply of those documents. As regards the documents sought by the Applicants are concerned, there was no objection on the part of the Respondents to inspect them as they were quite voluminous. However, all the relied upon documents by the prosecution have been furnished to the Applicants. The Respondents have explained the reason why one of the Prosecution Witness Shri O.P. Sharma was dropped. His evidence could not be recorded as he had already retired from service. But there were other Prosecution Witnesses, namely, Dr. S.C. Maiti, Dr. Mittal, Dr. D.V. Singh and Shri K.B. Rajoria. All of them have stated that

the concrete was weak, many of the concrete samples had honey combing and voids, proving that the concrete had not been compacted well, leading to 'reduced strength of concrete', due to poor quality of concrete the failure occurred etc. Therefore, there was sufficient evidence against the Applicants and the findings of the Enquiry Officer are based on them. We also do not find that the allegations against the Disciplinary Authority as well as the Appellate Authority have any legal basis. The minor discrepancy in the statement of the Disciplinary Authority as to whether the crack in the bridge was 'hair line' or 'serious' is not the issue. The Appellate Authority has also passed a well reasoned order considering all the issues raised by the Applicants.

25. The Apex Court in its judgment in the case of **State Bank of Patiala and Others Vs. S.K. Sharma** 1996 (3) SCC 364 held that the principle of natural justice cannot be reduced to any hard and fast formulae and the object of the said principle is to provide fair hearing. The Apex Court summarized the principles in the said judgment as under:-

"32. We may summarize the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee) :

- (1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the

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rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that

after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside

of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar, (1994 AIR SCW 1050). The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and not adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing." (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the stand-point of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.)

(6) While applying the rule of audi alteram partem (the primary

principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing or the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision”.

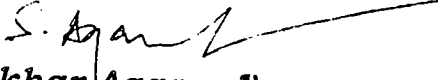
26. Again in judgment in the case **Bank of India and Another Vs. Degala Suryanarayana** 1995 (5) SCC 762, the Apex Court has held that “strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer”. In the present case there is no dearth of convincing evidences against the Applicant.


27. Further, in its judgment in the case of **B.C. Chaturvedi Vs. Union of India** 1995 (6) SCC 749, the Apex Court held that the scope and power of the Tribunal in judicial review in disciplinary proceedings is very limited. It says further that “when an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the

inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence".

28. We, in the above facts and circumstances of the case, do not find any merit in these OAs and accordingly they are dismissed. There shall be no order as to costs.

Let a copy of this order be placed in all the files.


(Shekhar Agarwal)
Member (A)


(G. George Paracken)
Member (J)

Rakesh