

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 1603/2002
O.A. No. 1626/2002
O.A. No. 1653/2002

New Delhi this the 18th day of November 2002

Hon'ble Shri M.P.Singh, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

O.A. No. 1603/2002

Kuldeep Kaul
273-C, Pocket II,
Mayur Vihar, Phase I,
Delhi-110 091 (India)

Applicant

(By Advocate: Shri S.K. Sinha)

Versus

1. Ministry of Science & Technology
Through its Secretary
Anusandhan Bhawan, Rafi Marg,
New Delhi-110001.
2. Council of Scientific & Industrial Research
Through its Director General
Anusandhan Bhawan, Rafi Marg,
New Delhi-110 001.
3. National Institute of Science Communication,
(NISCOM)
Dr. K.S. Krishan Marg,
New Delhi-110 012.
4. V.K.Gupta,
Director,
National Institute of Science Communication
(NISCOM)
Dr. K.S., Krishnan Marg,
New Delhi-110 012.
5. K.L. Jain
Inquiry Officer,
National Institute of Science Communication
(NISCOM)
Dr. K.S., Krishnan Marg,
New Delhi-110 012.

Respondents

(By Advocate: Shri Manoj Chatterjee with
Ms. K. Iyer)

O.A. No. 1626/2002

Dr. J.Sundaresan Pillai,
F-62, CSIR Scientists Apartments,

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Maharani Bagh,
New Delhi-110 065

Applicant

(By Advocate: Shri S.M. Garg)

Versus

1. Counsel for Industrial & Scientific Research,
Through its Director General,
Anusandhan Bhawan
Rafi Marg,
New Delhi-110 001.
2. National Institute of Science Communication,
Through its Director,
Dr. K.S. Krishnan Marg,
New Delhi-110 012.

K.L. Jain,
Inquiry Officer,
Through The Director,
National Institute of Science Communication,
Dr. K.S. Krishnan Marg
New Delhi-110 012.

Respondents

(By Advocate: Shri Manoj Chatterjee with
Ms. K. Iyer)

O.A. No. 1653/2002

G.Chandrasekar,
E-33 CSIE Scientist Apartment,
Maharani Bagh,
New Delhi-110065

Applicant

(By Advocate: Shri S.M. Garg)

Versus

1. Counsel for Industrial & Scientific Research,
Through its Director General,
Anusandhan Bhawan
Rafi Marg,
New Delhi-110 001.
2. National Institute of Science Communication,
Through its Director,
Dr. K.S. Krishnan Marg,
New Delhi-110 012.
3. K.L. Jain,
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Through The Director,
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(By Advocate: Shri Manoj Chatterjee with
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O R D E R

Hon'ble Shri Shanker Raju, Member (J)

As these three OAs are founded on common question of fact and law, they are being disposed of by this common order.

2. In all these OAs there has been a challenge to disciplinary proceedings at an inter-locutory stage. Relief is claimed for setting aside the disciplinary proceeding order against the applicants who had been working as Scientists in NISCOM under CSIR.

3. Before dealing with the issue, for proper adjudication, brief facts are enumerated. In June, 1996 a Joint Action Committee of NISCOM comprising of Scientific Workers Association and CSIR Workers Association was constituted. Applicants were members who have been placed under suspension. A meeting was held between the officer bearers and the Minister of State where it has been decided to appoint one man fact finding committee headed by retired Secretary Sh. D.K. Sanghal. Suspension of the applicants was revoked on the basis of the report of fact finding committee. Several officers of the respondents have been indicted though the report was not made public but no action was taken on it. A public interest litigation was filed before the High Court of Delhi. Thereafter the applicants and other

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members of the JAC were placed under suspension and disciplinary proceedings have been initiated. By an order dated 5.5.99 High Court of Delhi has directed to take action on the report. At the instance of the women employees a criminal case was filed before the Metropolitan Magistrate, which ultimately resulted in discharge of the applicants whereupon through several OAs filed, the enquiry was kept in abeyance, but later on was re-opened as the High Court has ruled out that mere discharge would not preclude holding of a disciplinary proceeding. Applicants' request for supply of additional documents was directed to be considered. Review Application against the CWP was also rejected. Respondents disposed of the request of the applicants for supply of documents.

4. Through these OAs the proceedings, which are at an interlocutory stage have been assailed mainly on the ground of bias, no misconduct, non-supply of the relevant documents, non-acceding to the request to change the enquiry officer and dropping the charges on which the applicants stood discharged from the criminal case. Several pronouncements of the Apex Court have been placed reliance to substantiate the plea.

5. We consider the OAs chronologically. In OA-1603/2002 it is contended that the chargesheet served upon the applicants basically includes the charges

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pertaining to criminal case of using indecent language and threatening bodily harm and as the applicant has been discharged on the same charges he should not be proceeded in a disciplinary proceeding and for this learned counsel Sh. S.K. Sinha, appearing for the applicant placed reliance on DOP&T OM dated 19.9.75 and the decision of the Apex Court in Kundal Lal v. Delhi Administration, AIR 1976 SC 133. Shri Sinha further states that the enquiry is vitiated by malafides and bias, as the impugned order dated 6.5.2000 was passed by Sh. V.S. Gupta, against whom applicant has made a representation and he is tantamount to dismiss applicant from service and from his letter dated 28.2.2002 addressed to applicant it is contended that bias is real apparent on the face of it, as such in view of the decision of the Apex Court in State of Punjab v. V.K. Khanna, Civil Appeal No.6963/6964 of 2000 decided on 30.11.2000, disciplinary proceedings can be interfered at an interlocutory stage if malafides or bias are established at the outset.

6. It is further stated that the applicant has not been served upon the material documents, including the original complaint which has greatly prejudiced the applicant in his defence and this is not permissible in the light of the decision of the Apex Court in Chandramma Tiwari v. Union of India, 1987 (supp) SCC 518.



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7. In OA-1626/2002 and OA-1653/2002 Shri S.M. Garg, learned counsel appearing for the applicants states that the OAs do not suffer from res judicata as earlier OA-234/2000 was filed to seek quashment of chargesheet on the ground that Articles 2,3 and 4 were subject matter of FIR No.213/88 under Section 354 in which applicants were discharged by the Metropolitan Magistrate on 28.7.2000. The earlier OA was dismissed on the ground that article of charge of entering the name of Bhardwaj and misbehaviour and intimidation is not covered by the discharge order. CWP-7656/2001 filed in the OA was disposed of on 18.12.2000 where the decision of the Tribunal as regards continuation of disciplinary proceedings even after discharge in criminal case has been upheld but the representation dated 7.2.2002 filed for dropping the charges 2,3 and 4 has been rejected on 7.2.2002.

8. Sh. Garg further states that in view of the decision of the Apex Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr., JT 1999 (2) SC 456 discharge in a criminal case stand on a better footing than acquittal and as the prosecution has failed to connect them with the alleged offence holding disciplinary proceedings on the same ground is not legally sustainable.

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9. Sh. Garg further alleges that Sh. K.L. Jain who was appointed as enquiry officer against whom a PIL was filed before the High Court, alleging correction and nepotism and the applicants being members of the Association which filed the PIL, an impartial enquiry by Sh. K.L. Jain cannot be accepted. As such they made a request for change of the enquiry officer as there was the real likelihood of bias and in view of the decision of the Apex Court in S. Parthasarthi v. State of Andhra Pradesh, 1974 (3) SCC 459, enquiry officer should have been changed. The request for change of enquiry officer has been rejected without any basis.

10. He has also assailed the proceedings on account of non-supply of additional documents. On his request of 221 additional documents only 79 have been provided to the applicants but out of which 51 documents were not available. OA-2314/2001 was filed before the Tribunal and by an order dated 11.10.2001 OA was dismissed. On filing Writ Petition No.7562/2001 High Court of Delhi by an order dated 18.12.2001 directed re-consideration of the request of the applicants for supply of relevant document which was rejected by order dated 21.2.2002. According to him these documents were very important for their defence and its non-supply has greatly prejudiced them, which is in violation of principles of natural justice.



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11. On the other hand, respondents' counsel strongly rebutted the contentions of the applicants and objected to interference of the Tribunal at an inter-locutory stage in a disciplinary proceedings in the light of the decision of the Apex Court in Union of India v. Upendra Singh, (1994) 3 SCC 357. It is stated that the Tribunal is precluded from going into the sufficiency of evidence and in absence of any malafide or any misconduct applicants are adopting delaying tactics to linger on the enquiry without any reasonable basis and by repeated litigation which resulted in dismissal of the OAs the present OAs cannot be interfered at an inter-locutory stage. He has also filed his written submissions and stated that no bias is proved against the respondents and malafide is not a ground to interfere. In so far as the plea of proceeding on charges on which the applicants are discharged from the court of Metropolitan Magistrate is concerned, as the same has been held to be proper and affirmed by the High Court the same is no more res-integra and cannot be gone into in the present OA.

12. It is further stated that the respondents have passed reasoned orders to decline the request of the applicants to change Sh. K.L. Jain as enquiry officer.



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13. In OA-1653/2002 it is contended that earlier OA-748/98 and OA-3368/2001 have been disposed of as well as the grievance of documents was dealt with and rejected in OA-3368/2001.

14. In OA-1603/2002 it is stated that it suffers from the vice of res-judicata and OA-1173/99 seeking revocation of suspension and quashment of proceedings for non-supply of documents was withdrawn. Furthermore, OA-2121/2000 to stay the disciplinary proceedings till criminal trial is over was also withdrawn. It is stated that in view of Section 11 of the CPC and in the light of the decision of the Apex Court in Lonankutty v. Thomman & Another, AIR 1976 SC 1645 these OAs are barred by the doctrine of res-judicata.

15. In so far as the common ground of continuation of proceedings on the same charge on which the applicants have been discharged by the Metropolitan Magistrate is concerned, the same was justified in view of the decision of the trial court and findings of the High Court holding that the decision of the Tribunal to continue with the proceedings despite discharge has been upheld and in the light of the decision of the Apex Court in Nelson Motis v. Union of India, (1992) 4 SCC 711 as the scope of criminal case is entirely different from disciplinary proceedings order of acquittal would not

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conclude the disciplinary proceedings. He further re-iterates his pleas on the basis of the decision of the Apex Court in Senior Superintendent of Post Office, Pathnamthitta v. A. Gopalan, AIR 1999 SC 1514 as well as State of A.P. v. Allabakash, (2000) 10 SCC 177.

Accordingly the disciplinary proceedings have been held in addition to these charges apart from criminal proceedings.

16. In so far as non-supply of document is concerned, High Court of Delhi in CWP-7656/2001 have directed the respondents to supply relevant documents except Sanghal Committee's report. As few of the documents filed by the applicant are not existing and some are irrelevant all the relevant documents have been served upon them and to this effect an order has been passed which would not constitute violation of principles of natural justice as only relevant and relied upon documents are to be served. Learned counsel relied upon the decision of the Apex Court in Syed Rahimuddin v. Director General, CSIR & Anr., AIR 2001 SC 2418 as well as Krishna Chand Tandon v. Union of India, AIR 2001 SC 2418, to substantiate his plea.

17. In so far as bias of the enquiry officer is concerned, which is taken as a common ground, it is contended that as Sh. K.L. Jain has been indicted by Sanghal Committee's report allegations of bias is only a

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figment of the imagination of the applicants and is not reasonable and based on any documents. The same is founded on conjectures and surmises. Request of the applicants has been first rejected was again referred to the reviewing authority on their representation, but

finding no substance rejected the same. Moreover, it is stated that on the one hand enquiry officer's order to supply the document is supported, on the other hand bias is alleged, which cannot be allowed as no-one can be allowed to aprobate and reprobate on the same issue. Lastly on the basis of Upendra Singh's case (supra) it is contended that as the misconduct of the applicant is apparent on the face of it and the applicants have failed to establish malafides or case of no evidence, interference at this inter-locutory stage is not permissible. However, the applicants would be afforded reasonable opportunity to be to be defended in accordance with rules and instructions and procedure and if they are aggrieved by the final order they can resort to appropriate proceedings in accordance with law. It is also stated that the apprehension that they would be dismissed is neither well founded nor justified on reasonable grounds.

18. We have carefully considered the rival contentions of the parties and perused the material on record. Before proceeding to adjudicate the legal issues, individual chart in all the three cases indicating the various litigation undertaken by the applicants is reproduced below:

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IN THE MATTER OF J.S. PILLAI

S. NO.	PETITION NO.	RELIEF PRAYED	REMARKS
1.	O.A. 748 / 1998	(a) to quash the charge sheet on the ground of mala fides. (b) Change of Inquiry officer on the ground of Bias. (c) Revocation of suspension.	The Hon'ble CAT by order dated 1 July 1998 held that: (a) The applicants have failed to make a ground to interfere with the impugned chargesheets. (b) Merely because some accusations have been made against the Inquiry officer by the applicants, no bias has occasioned in this case. (c) A statutory remedy of filing an appeal against those orders which have not been exhausted. (at P. 113 - 118)
2.	O.A. 2130 / 1998	To engage a practicing lawyer as defence assistant.	The Hon'ble CAT by order dated 18- 5-1999 dismissed the petition.
3.	CWP 3249 / 1999 in the High Court against the above order in O.A. 2130 / 1998.	To engage a practicing lawyer as defence assistant.	The Hon'ble by order allowed the writ with direction that The applicant could engage a defense assistant furnished by him in his affidavit dated 5-6-1999 and with a direction to co-operate with the department to ensure expeditious disposal of the enquiry.
4.	O.A. 2314 / 2000	(a) to quash the memo of charges in view of discharge in the criminal proceedings. (b) To quash the order of suspension and charge memo on the ground of mala fides. (c) Quash the proceedings for non- supply of documents.	The Hon'ble CAT by order dated 11- 10-2000 held that: (a) the discharge order is by no means sufficient to quash the charge memo. (b) The charge memo is not contrary to law and cannot be gone into at the interlocutory stage by the Tribunal. It can or cannot be established only during the course of disciplinary proceedings. (c) This is covered by rules, regulations and precedents and the same cannot be a ground to

			Interdict the proceedings at the inter-locutory stage (at P. 204-208)
5.	CW 7656 / 2001 before the High Court against the order in above O.A. 2314 / 2000.	(a) to quash disciplinary proceedings on the ground of discharge in the criminal proceedings. (b) Enquiry against him was malafide and to be quashed. (c) Non-supply of doc. is prejudicial to his interest.	The Hon'ble High Court by order dated 18-12-2001 held that: No infirmity with the Tribunal order in O.A. 2314 / 2000. (a) & (b) Discharge in the criminal case was not enough to do away with disciplinary proceedings. (c) The respondent was directed to supply copies of relevant existing documents except Sangal Committee report. (at P. 209- 211)
6.	O.A. 76 / 2002	to quash the order dated 1-7-98 rejecting the request of applicant to change the enquiry officer on the ground of Bias.	The order dated 1-7-98 was quashed and the reviewing authority was directed to consider the application on the allegation of bias against the Inquiry officer. The disciplinary authority may also consider dropping articles of charge and pass suitable orders. (at P. 215-217).
7.	O.A. no. 1626 / 2002	(a) Order dated 15-2-2002 rejecting the reprsn. For change in Enquiry officer. (b) Order dated 7-2-2002 rejecting application to drop the charges. (c) Non-supply of documents. (d) Omission in deciding reprsn. Dated 20-1-2002 to revoke the suspension.	



IN THE MATTER OF G. CHANDRASEKHAR

S. NO.	PETITION NO.	RELIEF PRAYED	REMARKS
1.	748 / 1998	(a) to quash the charge sheet on the ground of malafides. (b) Change of Inquiry officer on the ground of Bias. (c) Revocation of Suspension	The Hon'ble CAT by common order dated 1 July 1998 held that: (a) The applicants have failed to make ground to interfere with the impugned chargesheets. (b) Merely because some accusations have been made against the Inquiry Officer by the applicants, no bias has occasioned in this case. (c) A statutory remedy of filing an appeal against the order of suspension have not been exhausted. (at P. 113)
2.	O.A. 1293 / 1999	To quash the departmental proceedings on the ground of non-supply of documents.	The Hon'ble CAT directed the respondent to supply the documents as prayed by the applicant and record the reason for non-supply of any requested document.
3.	Contempt Petition	To initiate contempt action for non-compliance with the above order.	The Hon'ble CAT dismissed the CP and held that the enquiry officer concluded that the documents were not available and there was no disobedience of the Tribunals order.
4.	CWP. No. 2189 / 2002 by Association for advancement of Science	Challenging the recruitment process of 21 Scientists in NISCOM	PENDING.

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5.	O.A 3368 / 2001	<ul style="list-style-type: none"> (a) Quash the departmental proceedings. (b) quash the departmental proceedings on the ground of ground of non-supply of documents. 	<p>The Hon'ble CAT by order dated 19 December 2001 held that as the issues have already been decided and the authority has passed reasoned order no directions as sought for can be given. If the documents are not available adverse inference can be drawn, but merely because the documents have not been supplied, we cannot restrain the department from holding the enquiry further.</p> <p>(at P. 80 - 84)</p>
6.	O.A 1656 / 2002	<ul style="list-style-type: none"> (a) to drop departmental proceedings in view of discharge in the criminal proceedings. (b) Representation of bias has not been properly decided. (c) Representation for revocation of suspension has not been decided. 	

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IN THE MATTER OF KULDEEP KAUL

S.NO.	PETITION NO.	RELIEF PRAYED	REMARKS
1.	O.A. 748 / 1998	(a) to quash the chargesheet on the ground of malafides. (b) Change of Inquiry officer on the ground of Bias. (c) Revocation of Suspension.	The Hon'ble CAT by common order dated 1 July 1998 held that: (a) The applicants have failed to make a ground to interfere with the chargesheets. (b) Merely because some accusations have been made against the Inquiry officer by the applicants, no bias has occasioned in this case. (c) A statutory remedy of filing an appeal against those orders which have not been exhausted.
2.	O.A. 1137 / 1999	(a) Revocation of order of suspension. (b) Engagement of practicing lawyer as defense assistant. (c) To quash the proceeding for Non-supply of documents including the Sanghal committee report.	The Hon'ble CAT by its order dated 21-5-2001 allowed the Petitioner to withdraw the petition. (at Page 87 of the Counter)
3.	O.A. 972 / 2000	Permission to attend the Annual Council meeting of the CSIR Scientific Workers Association at Bangalore from 1 to 3 June, 2000.	The Hon'ble CAT by order dated 29-5-2000 allowed the Petitioner to attend the meeting.
4.	O.A. 2121 / 2000	to direct the Respondents not to proceed with the departmental proceedings till the	The Departmental proceedings were stayed. The Hon'ble CAT allowed the petition to be withdrawn after the completion of the criminal
5.	O.A. 1603 / 2002	completion of the criminal proceedings. (a) to drop the disciplinary proceedings in view of the discharge in criminal proceedings. (b) To quash OM dated 6-5-2002 as Reviewing authority can only decide a representation of bias against the Inquiry officer.	proceedings. (at P. 86 of the Counter)

19. As crystallised by various pronouncements of the Apex Court and more particularly Upendra Singh's case (supra) the interference of the Tribunal in a disciplinary proceeding at an interlocutory stage is permissible only when the case established is of no misconduct and the charges framed are contrary to any law. The truth or correctness of the charge cannot be gone into. In the light of the aforesaid contentions the first ground taken by the applicants as to continuance of the proceedings on the same charge on which they stood exonerated at the charge stage by the Metropolitan Magistrate is concerned, we find that in FIR No.213/92 under Section 354 IPC the Trial Court has discharged the applicants. Having challenged the proceedings before this court in OA-2121/2000 it has been held that proceedings despite discharge can be continued. The aforesaid decision was carried to the High Court of Delhi in CWP-7656/2001 and by an order dated 18.12.2001 the observations of the Tribunal were upheld and it was also held that discharge of the petitioners in the criminal case was not enough to do away with the disciplinary proceedings, as other charges have been surviving against them. Moreover, discharge cannot be placed on the same footing as acquittal in a criminal case. In the discharge the evidence and the material cited in support of the chargesheet is not scrutinized by the trial court and no evidence takes place. It is only on acquittal on merits which can be done away with the proceedings as the finding of the quasi-judicial authority has to give way to the finding of judicial finding of the judicial court. The case of Paul Anthony (supra) would have no application in such circumstances. Moreover, apart from criminal case there are other charges of misbehaviour and



assault, which are independent of the criminal trial and as such the enquiry can be gone into. In Nelson Motis's case (supra) the following observations have been made:

"So far as the first point is concerned, namely whether the disciplinary proceedings could be continued in the face of acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceedings."

Further in Gopalan's case (supra) the Apex Court has held as follows:

"In that case the court has rejected the contention that Disciplinary proceedings not to be continued in the face of acquittal in the criminal case and has held that the nature and scope of the criminal case are different from those of a departmental proceeding and an order of acquittal, therefore, can not conclude the departmental proceedings."

20. In Union of India & Anr. v. Bihari Lal Sidhana, (1997) 4 SCC 385 held that it is true that the respondent was acquitted by the Criminal Court but acquittal does not automatically give him the right to be reinstated into the service.

21. Moreover, under Section 300 Cr.PC acquittal is distinct from discharge. In discharge a trial can be conducted again on the same charges. As the finding of the Tribunal is upheld by the High Court regarding continuance of proceedings on the same charges on which applicants have been discharged and the same is no more res-integra. On the basis of the decisions cited above, we are of the view that the charge-sheet does not deserve to be quashed on this ground.

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22. In so far as supply of documents is concerned, as 23 documents were existing and the defence documents have already been allowed by the enquiring authority to be available for inspection, non-supply of these documents cannot be sufficient to set aside the proceedings as the Sanghal Committee's report was not made public and other documents have been served upon applicants. In so far as documents which are not available the same have not been served upon applicants. Moreover, if the applicants has any grievance regarding non-supply of the documents, it would be a valid ground of challenge to the ultimate order passed by the respondents. Only because the documents have not been supplied the enquiry cannot be installed. The documents which are not placed reliance in the enquiry proceedings need not be supplied to the applicants. Petition regarding supply of Sanghal Committee's report has been dismissed by the High Court of Delhi that irrelevant documents have not been served upon applicants and the material documents available with the respondents have already been served and inspection allowed in view of the decision of the Apex Court in Syed Rahimuddin's case (supra), we do not find any infirmity or the grounds justifiable to warrant our interference at this stage in the disciplinary proceedings.

23. A specific ground has been laid down in OA-1603/2002 of alleged malafides. Shri Sinha states that a conspiracy has been hatched against the applicant, as he was member of the JAC is concerned, the impugned order passed by V.S. Gupta who was indicted is not maintainable as he is not likely to get any justice from the disciplinary authority being biased, it is stated



that as the applicant has filed PIL before the High Court the malafide issue has not been gone into. A favour has been meted out to the complainant. Reliance on V.K. Khanna's case (supra) by Sh. Sinha cannot be of any avail to him as merely on malafide or bias enquiry cannot be interfered at an inter-locutory stage. The same would be interfered if an element of malafide or bias which is real on the face of it has cropped up in the enquiry. A general statement of ill will would not be sufficient and the test is that if the allegations of bias are fanciful apprehension in an administrative action and as malafide or bias cannot be put in a straight-jacket formula and depends upon facts and circumstances of each case merely because applicants are members of JAC and were instrumental in PIL which led to indicting of several officers would not alone be sufficient to do away with the proceedings at this stage. As the applicants have failed to establish by credible relevant material as to the real apprehension of bias applicants would be given all the required reasonable opportunity as per the rules to prove their innocence in the proceedings. It is very strange that the applicants in the guise of violation of natural justice and malafide want to avoid disciplinary proceedings on one pretext or other by resorting to litigation before this court and having found in several decision no bias or malafide this ground has no legs to stand and is accordingly dismissed.

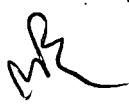
24. In so far as last legal plea taken by the applicants as to change of Enquiry Officer is concerned, it is stated that the Scientific Workers Association filed PIL before the High Court of Delhi, alleging corruption and nepotism prevalent in CSIR and as Sh.



K.L. Jain, enquiry officer was Controller of Administration it is apprehended that there would be a likelihood of bias on his part and he would not act independently. It is contended by the respondents that the bias is only a figment of their imagination, as, first of all, Sanghal Committee's report is not public and moreover during the relevant period enquiry officer was posted at Orissa. Mere vague apprehension would not be enough to establish bias. Circumstances would be such that a reasonable man would think probable about the prejudice. Enquiry was stayed on his request and subsequently on the direction of the Tribunal the matter has been reconsidered by the reviewing authority and his request for change of enquiry officer has been rejected. Apex Court in Parthasarthi's case (supra) held that "the Inquiry Officer appointed for conducting an Inquiry against the Government Officer should be free from bias. The Hon'ble Supreme Court has further held that there must be a "real likelihood" of bias and that means there must be a substantial bias."

25. Moreover in G. Nageswara Rao v. State of A.P., 1960 (1) SCR 580 the Apex Court has further held that if a member of job is subject to a bias in favour of, or against, in party to a dispute, or in such a position that a bias must be assumed to exist, he ought not take part in the decision or sit in the Tribunal.

26. We have perused the documents, including the orders passed by the respondents, rejecting the request of the applicants for change of enquiry officer. The Apex Court in Indrani Bai v. Union of India, 1994 SCC (L&S) 981 has held as follows:



"5. While issuing notice to the respondents, we had directed the respondents to place before us the entire record. A counter-affidavit has been filed and record also has been placed before us. In fairness, Shri Kailash Yasdev, learned counsel for the Union of India, having gone through the entire record, has placed necessary material before us. As seen from the narration of the facts, that after the direction was issued by the Director General in his letter dated 26.9.1981, the enquiry officer had not recalled the ex parte order dated 14.12.1981 and 30.9.1981 for cross-examination nor had given him an opportunity to adduce his evidence in rebuttal. On the other hand, it is clear from the letter extracted hereinbefore that despite the direction issued by the higher authorities, the enquiry officer directed the delinquent to submit written brief, in other words, he proceeded from the stage where he last closed the proceedings. That was not the spirit of the order of the Director General. Thus, it is a clear case of the violation of principles of natural justice. It is seen that right through, the delinquent officer had entertained a doubt about the impartiality of the enquiry to be conducted by the enquiry officer. When he made a representation at the earliest, requesting to change the enquiry officer, the authorities should have acceded to the request and appointed another enquiry officer, other than the one whose objectivity was doubted. Unfortunately, that was not done. Even after the Director General had given an opportunity to the delinquent to participate in the enquiry, the enquiry officer obviously was expected to recall the ex parte order and given the delinquent an opportunity to cross-examine the witnesses already examined and to adduce his evidence in rebuttal. However, the enquiry officer did not adopt the said procedure which would have been just, fair and reasonable."

27. Moreover, the Apex Court in Registrar of Cooperative Society v. F.X. Fernando, 1994 SCC (L&S) 756 has held as follows:

"17. Then again the finding that there is long delay in initiating of departmental proceedings cannot be supported because in this case the Directorate of Vigilance and Anti-corruption had not been prompt. Therefore, the appellant cannot be faulted. Accordingly, we set aside the order of the Tribunal and direct the matter be proceeded



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with from the stage at which it was left. It is a settled principle of law that justice must not only be done but must be seen to be done. Therefore, we would direct that another Enquiry Officer be appointed in order to remove any apprehension of bias on the part of respondent. The civil appeal will stand allowed with no cost."

28. It is irresistible from the rulings cited that in the event delinquent official apprehends bias against the enquiry officer and more particularly when he is directly or indirectly involved himself in the case as apparent from the material that the applicants were instrumental in keeping the various officers posted in different organisations of CSIR being indicted in Sanghal Committee's report where K.L. Jain, enquiry officer was also one of the controller, there exists a real apprehension of bias against him. Moreover, if there is a likelihood of bias in order to have impartial enquiry the enquiry officer should changed and more particularly when the request has been made by the applicants at the outset of the proceedings. Rejection of request without passing a speaking order is also not tenable in the eye of law.

29. As the enquiry officer has not been changed despite request of the applicants and the request is rejected summarily without assigning any reasons even after the directions in Pillai's (OA No.1626/2002) case in OA No.76/2002 the same is not sustainable in the eye of law.



30. In the result, for the foregoing reasons, we partly allow these OAS without interfering with the chargesheets issued to the applicants on several other grounds and set aside the orders rejecting the request of the applicants for change of enquiry officer. The respondents are directed to change the enquiry officer Sh. K.L. Jain and appoint another enquiry officer within one month from the date of receipt of a copy of this order. The applicants are also directed not to indulge in vexatious proceedings and to sincerely cooperate in the proceedings. However, liberty is accorded to them to approach this court if they are aggrieved by any final order passed in the disciplinary proceedings after exhaustion of the remedies available to them, in accordance with law. No costs.

31. Interim orders passed in these cases are hereby vacated.

A copy of this order be placed in the case file of each case.

S. Raju
(Shanker Raju)
Member (J)

M.P. Singh
(M.P. Singh)
Member (A)

"San."