CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.748 of 2001

New Delhi this the 19th day of September 2001.

HON'BLE MR. M.P. SINGH, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Dr. Y.R. Midha,
S/o Shri V.S. Midha,
R/o B-87, Anand Vihar,
Delhi-110 092.

...Applicant

(By Advocate Shri D.N. Goburdhan)

-Versus-

Union of India & Others ...Respondents

(By Advocate Shri M.K. Gupta)

1. To be referred to the Reporters or not? YES/~~NO~~

2. To be circulated to other Benches of the Tribuntal? ~~YES~~/NO

S. Raju
(Shanker Raju)
Member (J)

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-Versus-

1. Union of India throg.ugh
   Ministry of Finance,
   Deptt. of Expenditure,
   North Block,
   New Delhi.

2. Office of the Comptroller and
   Auditor General of India,
   10, Mahadur Shah Zafar Marg,
   New Delhi.

3. Sh. V.K. Shunglu,
   The Comptroller and Auditor
   General of India,
   10, Bahadur Shah Zafar Marg,
   New Delhi.

4. Sh. T.S. Narasimhan,
   Inquiry Officer,
   10, Bahadur Shah Zafar Marg,
   New Delhi.

...Respondents

(By Advocate Shri M.K. Gupta)

ORDER

By Mr. Shanker Raju, Member (J):

The applicant, a member of the Indian Audit and Accounts Service has assailed a memorandum issued to him under Rule 14 of the CCS (CCA Rules, 1965 on 21.7.2000 as well as an order passed on 1.9.2000 wherein his request for quashing the chargesheet has been rejected as well as an order passed on 5.10.2000 whereby the disciplinary authority has appointed an inquiring authority to enquire into the charges framed against the applicant.

2. Briefly stated the applicant has joined Indian Audit and Accounts Service in 1977 and was promoted as a Director of Audit at Washington and had dealt with sensitive matters and was promoted in the Senior Administrative Grade in 1993. He was posted as Principal Director, Commercial Audit in 1997 and was holding the status of an Ex-Officio Member of Audit Board IV, where physical verification of stocks held in the Godowns of the Food Corporation of India were being conducted under the directions of the respondent No.3. On 4.7.97 through a Note of the Cabinet Secretary respondent No.3 has been directed to conduct a special audit into the discrepancies in the stocks of food grains held by the Food Corporation of India. Respondent No.3 without inviting tenders or professionals and without disclosing that his son works in the Swiss Company M/s SGS India Ltd, awarded the said contract for straggling Rs.10.25 crores on 13.8.97. Although CAG was ordered to conduct an audit check as per Comptroller General Act 1971, instead of conducting the special audit through its own strong staff, respondent No.3 awarded the contract of physical verification to a Swiss firm. Later on that firm curtailed the contract and reduced the term with the result substantial work was not being done but the amount has not been registered to the Swiss Firm. The FCI in August, 1997 informed respondent No.3 regarding irregular work conducted by the Swiss Firm the predecessor of the applicant in November, 1997 had expressed here concern regarding the check which was informed to respondent No.2 as to non-adoption of laid down norms for physical verification and the payment was reduced to be made. Ultimately on 3.12.97 respondent No.2's office

sanctioned Rs.2 crores to the Swiss Company as an interim payment but the same was not implemented and withdrawn and as a result the predecessor of the applicant was transferred. Later on Rs.2 crores were released by R-3 and further directions have been issued by R-3 to exhaust the fund of Rs.17 crores by 31.3.98. As the applicant informed R-2 that the work was poor, full of discrepancies and deficiencies as such the payment cannot be made. On bringing this to the notice of R-3 the applicant was reprimanded and directed not to interfere. The office of R-2 directed the applicant to have a meeting with the Swiss Firm to assess the work but the meeting failed as no proper explanation was forthcoming from the Swiss company. A committee was later constituted to assess the work which ultimately found that only one per cent of the work has been done as per the contract and the report was furnished by the CAG to the Parliament on the nature of work done by the Swiss company was shoddy and the verification was unreliable and the figures arrived at were fabricated. The fictitious bills were created and settled. The Deputy CAG (Commercial) informed R-3 that the report prepared by Swiss company was not genuine and the same cannot be acted upon till CAG endorse the same. Ultimately by a unanimous decision it was held that the report was unreliable and CAG should not give his name to the report. The Deputy CAG was told by the CAG to make payment who wanted a constitution of a committee to negotiate with Swiss company, but on the intervention of R-3 on the ground that R-3 had accepted the report the officer concerned was directed to make payment. On an attempt by the applicant to seek clarification he was threatened with dismissal. Rupees 10.25 were paid to the Swiss company and its associates for no work on which there

has not been any certification by the CAG. The purpose for which the work was allotted viz. to ascertain the actual position of foodgrains stock as a loss of foodgrains was upto a tune of Rs.650 crores, but the same was not done. Information of which was never communicated to the Parliament. On enquiry by the applicant it was learnt that respondent No.3's son was working for the said firm, as such the PIL, by way of CWP No.7344/99 was filed by the applicant before the High Court stating all the facts leading to the contract and payment to Swiss firm without getting the work done. This has been done in public interest and purity of administration and the applicant was not going to be personally benefited by the same. It was solely for the purity of administration and cleansing the administration, as there had been a national loss of crores of rupees and the officers failed to perform their duties. A notice has been issued on 7.8.2000. The records of the respondents were ordered to be sealed and have been kept in the custody of the High Court since August, 2000. In the High Court the proceedings started and continued with examination of the documents and hearing of the matter and after that judgment was reserved by the Division Bench. The respondents have not claimed any privilege regarding the documents. Later on the applicant has been chargesheeted by issuance of a memorandum wherein the applicant has been charged for unauthorisedly securing possession and communication of contents of official documents, including letters and notes and files to persons to whom he is not authorised to communicate and has been alleged to have violated the provisions of Rule 11 of the CCS (CCA) Rules, 1965 and has also acted in a manner unbecoming of a Government servant as despite his

suspension he refused to obey the repeated instructions to return the computer, peripherals and other official furniture. The applicant thereafter made an application for dropping the chargesheet against him which was rejected and also objected to the appointment of Inquiry Officer as well as CAG having acted as a disciplinary authority despite personally biased has named one of the officers involved in the scamp in the PIL filed by the applicant. The appeals have been rejected as no inter-locutory order is appealable in a disciplinary proceedings. The preliminary hearings have been held and the enquiry is pending at the stage when the same is complete and the inquiring authority has to issue its inquiry report.

3. The learned counsel of the applicant has raised two fold contentions. According to him the charge is not legally sustainable as from the perusal of the articles of charge as well as the imputation no misconduct is made out against him. The second contention of the applicant is that the enquiry has been initiated against him by R-3 against whom he has filed a PIL and as such as the inquiry is an after myth of PIL there is real apprehension of bias on the part of R-3 and he cannot be a judge of his own cause and should have appointed a disciplinary authority and should not have acted as a disciplinary authority in the instant case. It is also stated that communication of contents of official documents in PIL to the High Court would not amount to communication to an unauthorised person and the second article of charge which relates to disobeying the instructions regarding the return of the articles after suspension is not a misconduct and even presuming, without admitting the same constitute a

misconduct is of a trivial nature, which cannot be gone into in a disciplinary proceeding to punish the applicant. The learned counsel of the applicant to propagate the aforesaid stated pleas as placed reliance on the following decisions:

(i) Union of India & Ors. v. Pratibha Bonneriea & Anr., JT 1995 (8) SC 357, wherein it has been held by the Apex Court that a Judge of the High Court does not hold any post under the Union or State and there is no relationship of master and servant and is not a Government servant but holder of a constitutional office, by making the following observations:

> "It is, therefore, plain that a person belonging to the judicial wing of the State can never be subordinate to the other two wings of the State. A Judge of the High Court, therefore, occupies a unique position under the Constitution. He would not be able to discharge his duty without fear or favour, affection or illwill, unless he is totally independent of the executive, which he would not be if he is regarded as a Government servant. He is clearly a holder of a constitutional office and is able to function independently and impartially because he is not a Government servant and does not take orders from anyone."

(ii) Jayalalitha v. Govt. of T.N. & Others, 1999 (1) SCC 53 , wherein it has been held that a tax payer can file a PIL.

(iii) Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802, wherein the following observations have been made by the Apex Court:

> "Public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the government and its officers to make basic huyman rights meaningful to the derpived and

vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. The Government and its officers must welcome public interest litigaytionm because it would provide them an occasion to examine whether the poor and the down-trodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections economic justice has become a meaningful reality for them or it has remained merely a teasing illusion and a promise of unrealtiy, so that in case the complaint in the public interest litigation is found to be true, they can in discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements. When the Court entertains public interest litigation, it does not do so in a cavilling spirity or in a confrontational mood or with a view to tilting at executive authroity or seeking to usurp it, but social and economic rescue programmes, legislative as well as exectuive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basis human rights, which is also the constitutional obligation of the executive. The Court is thus merely assisting in the realisation of the constitutional objectives."

(iv) Union of India v. J. Ahmed, 1979 (2) SCC 286 wherein the following observations have been made:

"A single act of omission or error of judgment would ordinarily not constitute misconduct though if such earro or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in P.H. Kalyani v. Air France, Calcutta (AIR 1963 SC 1756), wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aricraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There my be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of

dutby but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of neglgence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence."

(v) State of Puniab v. V.K. Khanna & Ors., 2001 (2) SCC 330, where the Apex Court was pleased to make the following observations:

"33. While it is true that justifiability of the charges at the stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide, motive involved in the matter of issue of a chargesheet or the authority concerned is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious to do, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion and the High Court, in the contextual facts, has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this Court dealt with the issue in so great a detail so as to examine the judicial propriety at this stage of the proceedings."

(vi) 2001 (1) SCC 182, Kumaon Mandal Vikash Nigam Ltd. v. Girja Shankar Pant & Ors. wherein the following observations have been made:

"35. The test, therefore, is as to whether a mere apprehension of bias or there being a real dange of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom -- in the event

however the conclusion is otherwise inescapable and there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, Tribunal or authroity, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent eviddnce and it is in this context that we do record our concurrenct with the view expressed by the Court of Appeal in Locabail case. (2000 QB 451)"

4. The contention of the applicant is that the Tribunal has jurisdiction to interfere at an inter locutory stage in a disciplinary proceeding by way of judicial review in the event it is found that the chargesheet has been issued without any jurisdiction or from the perusal of the article and imputation no misconduct is made out and for this he placed reliance on a decision of the Apex Court in Union of India v. Upendra Singh, 1994 (2) SLJ 77. In this background the contention of the applicant is that the allegations levelled against him with regard to contravention of Rule 11 of the Conduct Rules ibid by unauthorisedly securing possession and communication of the official documents to an unauthorised person, i.e., the High Court does not amount to a misconduct. Placing reliance on Rule 11 of the rules ibid the learned counsel of the applicant stated that firstly the documents were in possession officially and secondly the same have been communicated not to an unauthorised person but to a juristic person, i.e., the High Court in the interest of purity of administration by way of filing a PIL. Taking resort to the decision of the Apex Court in Javalalitha's case as well as in Bandhua Mukti Morcha's case (supra) it is stated that a PIL can be filed by a tax payer which the applicant is and further the PIL provides an occasion to examine the issue whether the social and economic justice

has been meted out and it is to ensure observance of rule of law and also to see whether the executive functions are carried on in an efficient manner free from the vice of dis-honesty, favouritism or victimisation. It is further stated that this has come to the notice of the applicant when the son of R-3 was employed in Swiss firm to whom the contract was given and despite ample proof and approval of the committee concerned, this has been found that the audit has not been completed and has been done in a most negligent and inefficient manner and the payment has been directed to be made by R-3 using his official position which amounts to wastage of public exchequer and consequent loss to the national revenues. In this conspectus the documents which have been furnished to the applicant and to which he has access for the purpose of giving his reply to the adverse remarks have been filed by the applicant before the High Court in the PIL. Apart from it in the affidavit filed by the Government before the High Court it has been admitted that these documents have been given to the official, as such there has been no misconduct as regards unauthorisedly securing possession and has held in Pratibha Bonneriea case that High Court Judge is not a Government servant it cannot be alleged that the documents have been disclosed to an unauthorised person.

5. As regards the misconduct, the learned counsel of the applicant has contended that the misconduct has been defined in J. Ahmed's case (supra) wherein it has been observed that a single act of omission or error would not constitute misconduct and mere error of judgement would not amount to a misconduct. As there is nothing suggestive of the fact that by communicating the document in PIL to

the High Court the applicant has gained or by this commission he has acted in a manner unbecoming of Government servant as the communication of these documents are now seized by the High Court for its perusal for disposal of PIL would amount to any unauthorised communication. The circumstances preceding and attending to filing of PIL do indicate that the decision to hold the disciplinary proceeding against the applicant was in fact an after myth and retaliation or counter attack to the action of the applicant by filing a PIL where the disciplinary authority is one of the parties.

6. The learned counsel of the applicant has also placing reliance on DGP&T OM dated 27.1.65 and by referring to Rule 12 of the CCS (CCA) Rules, 1965 contended that in case the prescribed appointing authority which is R-3, CAG in the present case if is interested in any manner or is concerned with the charges proper course for the authorities is to refer such a case for nomination of an ad hoc authority by a Presidential order under Rule 12 (2) of the Rules ibid. Placing reliance on the decision of Arjun Chaubey v. Union of India, AIR 1984 SC 1356 it is contended that anybody having interest in the proceeding should stay aloof to avoid any apprehension of bias. The learned counsel of the applicant has also placed reliance on a latest decision of the Apex Court in V.K. Khanna's case (supra) and contended that fairness is synonymous with reasonableness. The test of bias is that if there existed a real danger of bias and it passes the test of a reasonable prudent man, the proceedings can be interfered with and set aside. Further placing reliance on the decision of Girija Shanker Pant (supra), it is contended

that there is not fairness in the procedure. The disciplinary authority, i.e., CAG is personally involved in the matter as the applicant has clearly mentioned in the PIL that there had been several irregularities and illegalities on his part. The Swiss firm despite having not completed the work as per the criteria and having been observed by a committee not to have completed the work efficiently and had completed only one per cent of the work sanctioning payment and getting the same paid to the concerned firm is a clear cut example of the fact that having retaliated against the PIL the present disciplinary proceedings have been taken against the applicant. In an issue which is directly before the High Court and despite claiming privileges the documents have been seized to ascertain allegations levelled by the applicant against the officers, including the disciplinary authority. The learned counsel of the applicant has further by referring to the preliminary hearing stated that the malice is proved also from the fact that the IO had specifically asked the question to the applicant during the preliminary hearing as to some comments have been made regarding enclosure of the copy of the PIL and portions thereof whereby material has been taken from internal note, documents and official records.

7. As regards the second article of charge pertaining to retention of office furniture and other accessaries despite suspension and refusal to return the same is also actuated with malafide as firstly the applicant has returned the same and despite this the applicant who is yet to be dismissed or retired from service cannot be subjected to such a charge as firstly he

can retain the furniture and quoting the examples of similarly situated persons viz. Satyamurthi and R.P. Singh who despite on deputation have not returned the furniture but have not been charged for any misconduct. Also placing reliance on OM dated 7.2.97 it is contended that while issuing a chargesheet the disciplinary authority should first satisfy that the allegation if forming grounds of unbecoming conduct should not involve the cases of trivial nature. In this background it is stated that the present allegation of return of furniture etc. is a misconduct of trivial nature for which he cannot be dealt departmentally. Lastly, it is stated that when the respondents could not give requisite information before the Parliament and the applicant as a responsible citizen and Government servant highlighted the same in a PIL and with regard to the previous departmental enquiry is concerned, it is stated that the applicant has been falsely implicated in the same which has nothing to do with the present charges in the disciplinary proceedings.

8. The learned counsel of the respondents strongly rebutting the contentions of the applicant stated that what has been filed by the applicant before the High Court is only a Private Interest Litigation and by giving the sequence of events it is stated that in July, 1997 Government requested the CAG for special audit of foodgrains stock of FCI for which the physical verification was completed in December, 1997 and in March, 1998 report was submitted to the Government. Thereafter on serious charge of sexual harassment an enquiry was proceeded against the applicant for which he was placed under suspension and just to save himself from the charges he has

resorted to filing of the PIL as the applicant was aware of the discrepancies in the audit and he chose not to take any action and waited for such a long which shows his malafide and his action cannot be bonafide. The learned counsel of the respondents stated that it does not lie within the jurisdiction of this Tribunal to interfere at the inter-locutory stage in a disciplinary proceeding in a judicial review. By referring to the decision of this court in V.N. Pathak v. Union of India, 1993 (24) ATC 853, it is contended that unauthorised production of the extracts of the record even before the Court has been taken seriously. Further placing reliance on the decision of the Apex Court in Transport Commissioner, Madras-5 v. A. Radha Krishna Moorthy, 1995 (29) ATC 113 it is stated that it is not proper for the Tribunal to go into the correctness of the charge prior to conclusion of the disciplinary proceedings. It is only the correctness of the decision-making process is to be gone into. The learned counsel of the respondents stated that previously the applicant has filed OA-394/2000 wherein he has challenged the enquiry at an inter-locutory stage, which was rjected by this Tribunal by an order dated 11.7.2000 and in the High Court no infirmity was found in the order passed by this court which was ultimately affirmed by the Apex Court. As such in this background it is stated that the applicant is in the habit of challenging the proceedings at inter-locutory stage and his contention on the same ground has been found untenable. It is also stated that the applicant has resorted to challenge of the chargesheet even before submission of the enquiry report and during the pendency of this case the enquiry has been

completed and the enquiry officer has issued an enquiry report and the enquiry is complete for all practical purposes.

9. As regards the bias of the disciplinary authority the same has been denied and it is stated that for the purpose of Rule 11 of the CCS (Conduct) Rules, the Court is to be treated as a juristic person and the applicant has not been access to the document which he has attached with the PIL, has unauthorisedly procured the same violating the provisions and prima facie the misconduct is made against him. As regards his bias in the appointment of the inquiry officer the same was considered and rejected by the competent authority. In a nutshell, it is the contention of the respondents that the OA is pre-mature and on perusal of the statement of imputation a common prudent man would not have formed the opinion that there is no evidence or material or a misconduct made out against the applicant from the documents attached. As regards the PIL wherein the conduct of food audit has been challenged on irregularities the same has no relation or connection with the allegations alleged against the applicant in the disciplinary proceeding. Placing reliance on the decision of the Apex Court in Upendera Singh's case (supra) it is stated that the Tribunal has no jurisiction to interfere in the enquiry by way of judicial review at an inter-locutory stage. As regards the allegation of retaining the furniture and computer etc. during the period of suspension the learned counsel of the respondents has brought to our notice the decision taken by the Ministry of Finance on 24.3.2000 wherein it has been held that under suspension an official is not entitled to avail the

residential telephone facility and also a letter dated 13.3.80 wherein it is observed that the officers under suspension are not eligible for retaining furniture etc. but also not obeying the orders of the concerned competent authority while directions have been issued to the applicant to return the articles and ultimately the same have been procured through the intervention of police. It is also stated that for the purpose of preparing his reply to adverse remark the applicant has been allowed access to the concerned papers confidential in nature but the applicant has annexed certain internal note to which he could not have any authorisation to keep the same. These communications were exchanged in the course of the official business and the applicant was prevy to such information and as per para 87 of the Central Secretariat Manual on Office Procedure as no authorisation, general or specific was accorded to the applicant he has unauthorisedly taken these documents and annexed it with the PIL, which ultimately constitute a misconduct and shows that the applicant has acted in a manner unbecoming of Government servant for which he is liable to be dealt with in a disciplinary proceeding. According to the respondents the applicant has already been accorded a reasonable opportunity to defend himself during the course of inquiry. As such the present OA filed by the applicant cannot be entertained for want of jurisdiction as laid down in Upendra Singh's case (supra).

10. We have carefully considered the rival contentions of the parties and perused the material on record.

11. As regards the interference of a disciplinary proceeding at an inter-locutory stage, we are conscious of our jurisdiction to that effect. As held in Upendra Singh's case (supra) by the Apex Court the disciplinary proceeding can be interfered with at an inter locutory stage on two counts, firstly the chargesheet has been issued by an incompetent authority without jurisdiction and secondly after perusal of the imputation and annexed documents if the court finds that there is not misconduct made out the same can be set aside. Another factor to vitiate the enquiry at the inter locutory stage is that when there is an element of malice and motive involved in issuance of chargesheet or the authority concerned is so biased that the enquiry would be a mere farcical show and to avoid harassment and humiliation to a public servant at an earlier stage to maintain the rule of law the enquiry can be interfered with. It is, however, true that malafide or bias cannot be equipped to a straight jacket formula but depends on the facts and circumstances of each case.

12. Having regard to the position of law as existing we proceed to examine the facts and circumstances of the present case to know whether the chargesheet issued to the applicant in the present case is vitiated on account of malice and bias on the part of the issuing authority and also to see whether the misconduct attributed to applicant amounts to misconduct within the parameters and relevant instructions, rules and law. The applicant having worked in Group 'A' service for the last 23 years was deputed in the office of the respondents wherein the Cabinet Secretary has ordered conduct of a special audit pertaining to

alarming discrepancies in the stock of the foodgrains held by the FCI. The CAG, respondent No.3, without inviting tenders and without disclosing the fact that his son works for a Swiss company viz. M/s SGS India Ltd., awarded the said contract to the same upto the tune of Rs.10.25 crores on 13.8.97. The above stated company curtailed the contract and reduced the term with the result the substantial work remained uncompleted but corresponding the amount payable to the company has not been reduced. On a specific information by FCI regarding not following the norms by the Swiss Company in conduct of the audit the applicants predecessor expressed here concern, which was ultimately conveyed to the office of respondent No.2 and in these circumstances the payment was refused to the company and an amount of Rs.two crores was sanctioned to the Swiss company but had been not withdrawn and the predecessor of the applicant was transferred. On the directions of the CAG the respondent No.2 directed the applicant to exhaust the fund of Rs.17 crores by 31.3.98 but the applicant showed his inability as the results of the Swiss company were not desired one. The aforesaid deficiencies had been brought to the notice of Respondent No.3. A meeting was held to assess the work of Swiss company but there also the company failed to give proper explanation regarding deficiencies. Later on a committee of respondent No.2 was constituted which found that the Swiss company had hardly done one per cent of the work as per the contract and this has been expressed that the report should be furnished by CAG by CAG to the Parliament as there were discrepancies and fictitious bills being prepared by the company. The certification of CAG was pre-requisite. The verification report was not found authentic and reliable and till that

time nobody knew that the son of R-3 has been working in the Swiss company. The Deputy CAG (Commercial) was directed by R-3 to make the payment for which a Committee was to be constituted but this decision was veto and the formation of the Committee was dispensed with. As the applicant was was the Principal Director sought clarification but was threatened with dismissal. The said report of the company was accepted on 29.3.98 and the decision was taken to make payment and ultimately Rs.2.15 crores were paid. The CAG has not certified the work done by the company. The applicant stated that having a status of citizen of India and with a view to highlight this issue which is of concern and whereas the public exchequer has been wasted for no useful purpose and to upkeep the purity of administration he filed a PIL wherein after considering the entire record the High Court directed production of the record which was later on sealed and a decision is awaited in the PIL. In this background it is stated that even before the High Court the respondents have stated that the documents attached to the PIL were entrusted to the applicant in his official capacity and later on their stand in the imputation that these documents pertained to internal files to which the applicant has no access is contrary to their stand taken before the High Court. As per the applicant these documents have been made access to him by the respondents when he asked for the same while replying to the adverse remarks. No privilege has been claimed by the respondents in the PIL. More particularly in the PIL one of the parties is V.K. Shunglu, the CAG, who happened to be the disciplinary authority of the applicant and who had chargesheeted the applicant in the present case. The applicant contends that in the instant

case there is a real apprehension of bias on the part of R-3 being the disciplinary authority who with a view to retaliate and to force the applicant to withdraw his PIL and having personal interest in the audit conducted in FCI episode should not have resorted to issuing a chargesheet and rather appointed an ad hoc disciplinary authority as provided under Rule 12 of the CCS (CCA) Rules 1965. The aforesaid chargesheet/memorandum is an after myth of PIL the same is motivated and patently illegal. The resort of the respondents to para 87 of the Manual on Office Procedure of Central Secretariat has no application to an officer of IAAS as the applicant is dealt under Article 145 of the Constitution which is a complete code in itself. As R-3 had already admitted before the High Court that his son was working in the Swiss company the aforesaid disclosure has been made only after the applicant had pointed out these facts before the High Court in the PIL. The arbitrariness and malafide of R-3 who has issued a chargesheet is well apparent from the fact that on a mere petty misconduct of not returning the official furniture etc. he has been alleged for unbecoming of a Government servant whereas in similar circumstances certain officers who has been allowed to retain the same and the fact that the recovery of the same can also be affected from the retiral benefit. The resort of the respondents to contend that the sequence of events show that after being aware of the report submitted in March, 1998 the applicant has kept mum and only after he has been placed under suspension and issued a chargesheet for major penalty he had resorted to PIL to save himself from the charges. The aforesaid chargesheet has no relevance with the charges issued herein. That has been a case where the applicant has been

charged for complaint of sexual harassment and to which a proceeding has already been initiated and under way. What matters is that after filing the PIL the R-3 issued a chargesheet to the applicant on 21.7.2000 and thereafter appointed his deputy as enquiry officer to enquire into the imputation. The further bias of the authority is apparent that in the list of documents there has been no reference to the PIL but during the personal hearing the Inquiry Officer has stressed upon to bring to record the copy of the PIL and also the relevant portion where the notes and documents are highlighted by the applicant. By letter dated 26.3.98 it has been written by the Deputy CAG before the chargesheet has been issued there had been a threat of disciplinary action to the applicant for not carrying out the orders of CAG regarding the payment pertaining to FCI episode. Another letter which has been written on 23.3.98 Assistant CAG has requested regarding the payment of fee pertaining to FCI. By a correspondence dated 10.2.98 the applicant has been asked to keep the record regarding stock verification of FCI with him. In this background the applicant raises the plea of personal bias and malice on the part of the disciplinary authority in issuance of a chargesheet which is only a false and with a view to harass and humiliate him with consequences well know that the applicant has been chargesheet for being punished to teach him a lesson to what he had done by way of filing a PIL. As held in V.K. Khanna's case (supra) the fairness is synonymous with reasonableness. The test of bias has been held in Giria Shankar Pant's case (supra) which is as to whether mere apprehension of bias or there being a real danger of bias. In the event their exists a real danger of bias the administrative action cannot be sustained. If on

the other hand the allegation pertaining to basis is to avoid a particular Court/Tribunal or authority the same would not be a real basis. The test of reasonable bias is of a common prudent man and the same cannot be put in a straight jacket formula if the totality of the circumstances do indicate that the common prudent man would have thought of the same then this would be sustainable. A person cannot be a judge of his own cause. In Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School & Others, 1993 (4) SCC 10 it has been held that real likelihood of bias is where there must be at least substantial possibility of bias in order to render an administrative order invalid.

13. Applying the aforesaid test to the facts and circumstances of the present case where the applicant who has refused to be a party in the payment made to the Swiss Firm, which has not even completed its contract and found to have acted against the norms as decided by the Committee as well the CAG without certification and having regard to the fact that his son was working in the Swiss firm accorded the payment and has not made any statement before the Parliament clearly indicates towards involvement of R-3 on a personal basis apart from official duties in the audit pertaining to FCI. The applicant having endeavoured to highlight the discrepancies by way of PIL with the help of certain documents which were officially in his possession in his attempt to purify the system and administration has been subjected to disciplinary proceedings that too on charges of communicating unauthorisedly the documents attached to the PIL to unauthorised persons. The disciplinary authority was well aware that being a

constitutional body the High Court Judge is not to be treated as a Government servant. He holds a constitutional post, as such the norms as laid down in CCS (Conduct) Rules would not, inter alia, include within its definition of persons the High Court Judge before whom the PIL was presented. The applicant after highlighting the various discrepancies and irregularities in payment upto the tune of crores of Rupees to a firm which has not even discharged its liability as per the contract and inter alia bringing on record the fact of R-3's son being employed there and having his interest in the contract who was called without any tender and despite the availability of staff with the CAG to conduct the same makes the disciplinary authority, i.e, R-3 to retaliate and to issue a chargesheet to the applicant immediately on the allegations which even do not, to our considered opinion, form a misconduct as defined under CCS (Conduct) Rules 1964 and also in view of the ratio of J. Ahmed's case (supra). The applicant filed this PIL on 8.12.99 and the matter is still sub-judice. R-3 immediately resorted to issue a charge-sheet on 31.7.2000 and also appointed an Inquiry Officer on 5.10.2000. The inquiry proceeded upto the stage of inquiry report without acceding to the request of the applicant to change the Inquiry Officer and also to drop the proceedings by rejecting it on the ground that the same being the inter-locutory order cannot be interfered with and there is not infirmity in appointment of the Inquiry Officer which is subordinate to R-3 upon which he can exercise his influence to the detriment of the applicant.

14. Having regard to the aforesaid circumstances, preceding and attending and later on pursuing the filing of PIL, we are of the considered view that R-3 was biased against the applicant and the contention of the applicant that this bias is real and the chargesheet has been issued with malice and is only a farcical show where the consequences have already been drawn and pre-determined to punish the applicant are justifiable. There is an element of malice and motive involved in the issuance of the chargesheet which is reflected from the background as well as the documents. We are of the considered view that the present chargesheet issued to the applicant suffers from bias, malice and is not legally sustainable.

15. On the other hand, we proceed to examine on the basis of the imputation and the annexed material as to whether there is any misconduct alleged against the applicant or what has been alleged amounts to a misconduct within the meaning of the CCS (Conduct) Rules. In a nutshell what has been alleged against the applicant that he has unauthorisedly secured possession of documents and communicated the same to unauthorised persons. As regards the possession of the documents which are annexed with the PIL by the applicant this has been admitted by the respondents in their affidavit before the High Court that these documents were in official custody of the applicant and further by a letter dated 10.2.98 these documents after being impounded have been asked to be kept by the applicant. Further while making a request to make comments against the adverse remarks the documents pertaining to stocking of foodgrains by the FCI were allowed to be

inspected by the applicant. As regards the access the contention of the respondents that he has not access to such documents which were having internal note and was not authorised to keep the copy is negated from their own documents. Further more, presuming without admitting if these documents are procured by the applicant unauthorisedly but the same have been produced and used by the applicant in the later interest of the society and for the upkeep of pure administration the endeavour of the applicant to highlight financial irregularities taken placed in his office would not be construed as a misconduct whereas in Bandhu Mukti Morcha's case (supra) as well as in the case of Jayalalitha's case (supra) it has been held by the Apex Court that a PIL can be maintained by a tax payer in the interest of purity of administration and is not in a nature of adversary litigation. As regards the applicability of Rule 11 is concerned, it is a misconduct when these documents are communicated to an unauthorised person to whom the applicant is not supposed to. In fact as held in Pratibha Bonneriea's case (supra) a Judge of the High Court has been held to be a holder of constitutional office having no relationship of master and servant to the Government and has not been a government servant. Communicating certain documents to a court for seeking redressal that too not personal but involving the interest of the nation and the issue regarding financial discrepancies and illegalities at a personal level while discharging official duties by no stretch of imagination would be treated as an unauthorised communication, that too, to a court which is competent under PIL to take appropriate action against the erring officials and even against the Government. Rule 11 would have not application

in such an event. What has been alleged against the applicant does not constitute a misconduct within the meaning of Rule 11 of the CCS (Conduct) Rules. Apart from it, the Apex Court in J. Ahmed's case (supra) clearly observed that in order to constitute a misconduct there must be a negligence in performance of the duties or lapse or error of judgement to misconduct would not be construed unless the consequences directly attributable to negligence would be such as to put irreparable loss or the resultant damage would be so heavy that the degree of culpability would be very high. Failure to attain higher standard of efficiency would not constitute a misconduct. Moreover the malafides of the respondents are apparent from the fact that even on notice in PIL and while making an affidavit and producing the relevant record no privilege under Sections 23 and 24 of the Indian Evidence Act has been claimed by the respondents. This shows the status of the documents and its importance to the Government. In this view of the matter we are of the considered view that from the perusal of imputation and articles of charge there exists no misconduct against the applicant as alleged by the respondents. This finding of ours is not in pursuance of judging the correctness of the charge but prima facie the allegations are found to be lacking in misconduct attributable to the applicant.

16. As regards the charge of retaining furniture items and computer and refusal to obey the instructions of the respondents we find that the respondents' counsel has placed reliance on their internal circulars dated 13.3.80 and their clarification of 21.3.2000 which stipulate that officers under suspension are not eligible to retain

furniture at residence and also to get a telephone facility. Admittedly the applicant has returned these articles much before the issuance of the chargesheet. The similarly circumstance persons to whom the applicant has named in the OA have retained these articles but not action has been taken against them. This is a glaring example of hostile discrimination against the applicant under Articles 14 and 16 of the Constitution of India. Apart from it, mere retention of furniture items to which the applicant is otherwise entitled would not construe as a misconduct and rather in our considered view this amounts to a misconduct of trivial nature and as per the guidelines of Government contained in OM dated 7.2.97 it was incumbent upon the disciplinary authority to have first satisfied itself as to the trivial nature of the misconduct alleged against the applicant. Apart from it, the aforesaid article of charge also substantiates the malice of the disciplinary authority towards the applicant as in view of the matter we are satisfied that this article of charge would not amount to a misconduct in absence of any statutory rules but indicates that retaining the furniture amounts to a misconduct and more particularly when the same has been returned the very foundation of the allegation goes. We have not expressed any opinion on the correctness of the charge but from the perusal of the charge we find it not to be a misconduct warranting a disciplinary proceeding.

17. Furthermore, we also take cognizance of the fact that as the applicant has impleaded R-3 as one of the charges in his PIL he would have constrained himself to be associated with the disciplinary proceeding on his own to preserve the dignity and sanctity of the cardinal

principles of personal bias and also should not have become Judge of his own cause. As there has been a specific provision contained in Rule 12 of the CCS (CCA) Rules, which inter alia, provides that where the appointing authority or the disciplinary authority is unable to function as a disciplinary authority on account of being personally concerned with the charges, the proper course for him to refer such cases to the Government in a normal manner for nomination of ad hoc disciplinary authority by a Presidential order under Rule 12 (2) of the Rules ibid. Respondent No.3 has unmindful of the statutory provisions with a personal bias and malice has not dis-associated himself with the inquiry and rather ordered disciplinary proceedings against the applicant which also shows the state of affairs existing in the office of respondents 2 and 3. Even applying the test of reasonable prudent man we are of the considered view that even a common prudent man would not have considered whatever has been alleged against the applicant as a misconduct and would have definitely arrived at a conclusion that being personally involved in the episode as well as the PIL R-3 should not have acted as a disciplinary authority and the charge-sheet is defective and illegal on account of his personal bias and malice. This is with heavy heart we are constrained to hold as not legally sustainable.

18. In view of the discussion made and the reasons recorded, we set aside the memorandum dated 21.7.2000 as well as order passed on 1.9.2000. The applicant shall also be entitled to all consequential benefits which flows from this decision. The respondents

are directed to comply with the aforesaid directions within a period of two months from the date of receipt of a copy of this order. The OA is allowed, as above. No costs.

S. Raju

(Shanker Raju)
Member(J)

(M.P. Singh)
Member (A)

"San."