

28

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI:

O.A.NO.1814/89

New Delhi, this the 20<sup>th</sup> January, 1995

Dr. B. Ramakrishna Rao (Deceased)  
through the L.Rs.

2. Smt. B. Sreemahalakshmi (Wife)
3. Smt. B. Susheela (Daughter)
4. Shri B.P.G. Raju (Son)
5. Smt. B. Bhanumathi (Daughter)

All residing at No. 447, 11th Cross  
Upper Palace Orchards,  
Sadarhivnagar, Bangalore.

... Applicants

Vs.

Union of India,  
represented by Additional  
Secretary to Govt. of India,  
Department of Space,  
Lok Nayak Bhavan,  
New Delhi.

... Respondent

By Advocate: Shri P.H. Ramchandani

ORDER

Hon'ble Shri J.P. Sharma, Member (J)

The deceased B. Ramakrishna Rao on 12.11.62 was appointed as a Research Associate in Physical Research Laboratory, hereinafter referred to as PRL. PRL was an autonomous organisation established under the agreement amongst the Govt. of India, Govt. of Gujarat, the Karmakshetra Educational Foundation and the Ahmedabad Education Society with the object of taking over the activities of the department of Atomic Energy of Govt. of India in the field of research and exploration of space and its utilisation for peaceful purpose christened as Indian Space Research Organisation, hereinafter referred to as ISRO. The conditions of

service, discipline and other related matters of the employees of the organisation were regulated by the fundamental rules framed by the council of the management of IRL. On 1.4.75 ISRO of IRL became part of the Govt. of India. While the deceased employee was working as Systems Engineer at Thumba Equatorial Rocket Launching Station Trivandrum, the Central Bureau of Investigation, hereinafter referred to CBI conducted a raid of his house and noticed various activities that called for a further detailed examination. On the basis of the information collected by the CBI and others, the IRL decided to hold a disciplinary departmental enquiry into the various acts of mis-conduct alleged to have been committed by the deceased employee in the discharge of his duties in that organisation. The charges framed against the deceased employee are as follows:-

- (i) That the said Sri B. Ramakrishnan Rao while functioning as the Head of the Electronic Division, ELD(R), SSTC, Thumba and the Head of the Communications Division of 'SHAR Project of the ISRO at Sriharikota during 1968-72, committed gross misconduct inasmuch as he, by the end of 1968 unauthorisedly removed to his residence, one Voltas Crystal Window Air-conditioning Unit bearing No. 184997 purchased as per purchase Order No. SSTC/F/CVN/83/ELE/514 dated 29.4.1968 from M/s. Voltas Ltd., Cochin against the budget provided for the ELD(R) Division, Thumba, and also unauthorisedly removed a Viking Valiant II Transmitter No. 3/N-1461( NASA NO.30447) with its serial left back by Mr. Edwar E. Bissel, India Programme Manager and Head of Sounding Rocket Instrumentation Division, NASA, Washington for official use on his departure from India in March, 1968; a Micrometer with Serial No. 70195 purchased for his Division as per Purchase Order No. SSTC/P/5004/68 dated 5.1.68, a Racal Receiver No. 913 forming part of Racal, FSK receiving, terminal purchased as per Purchase Order No. SHAR/P/ELIS/KV/1/25/2748/69 dated 12.3.1970; a Beltronix Stepdown Transformer No. 15:44 purchased by ISRO, Thumba as per purchase order No. SSTC/P/ELET/120/ETR/5410/69

dated 19.5.68; and two Lafayette Hi-Fidelity Speakers (Nos. 21-4715/328626 and 21-4715-32870) made in USA purchased as per purchase Order No. SSTC/P/ELS/EIDR/KV/934/9698/69 dated 10th March, 1970 and converted them for his private use till 19.4.1972.

He has thereby rendered himself liable to be proceeded with under Rule 4.1.10 of the Fundamental Rules of the Physical Research Laboratory, Ahmedabad.

(ii)

That the said Sri B. Ramakrishna Rao, while functioning as the Head of the Electronic Division, SS&TC, Thumba and the Head of the Communications Division of 'SHAR' Project of the ISRO at Sriharikota during 1970-71, committed misconduct by engaging himself directly/indirectly in the business of the partnership concern run in the name and style of National Electronic Equipment Corporation with its registered office at Kalpana, Karamana, Tribandrum, by taking initiative for the formulation of the said partnership with his wife Smt. Balajapalli Mahalakshi, S/ Sri G. Gopinath, N.J. Chandi, Smt. Kamala Krishna Iyer and Rukmini Ammal as partners and by personally soliciting the assistance and help of the Head of the Deputy Director of the National Physical Laboratory at Delhi, Director of Industries, Hyderabad, Joint Controller of Industries, New Delhi, Mr. Toyofumi Minomiya Nippon Electronic Co. Ltd., Tokyo, Japan etc. in his individual capacity, and by personally contacting Sri Shaju V. Mathew of M/s. Valcan Engineering Co., Kottayam for the manufacture of certain components of Electronic Equipments and unauthorisedly giving four imported connectors belonging to the organisation and by taking active interest in the sponsoring of the concern without obtaining the previous permission of the Director and falsely representing to the Director that his wife had invested Rs. 5,00,000/- in the concern and his technical know-how has no bearing on the products manufactured by the said industrial undertaking when in fact 35% of the shares owned by his wife was given as consideration for imparting his technical know-how.

He has thereby violated rule 4.1.7 of the Fundamental Rules of the PRL, Ahmedabad.

(iii)

That during the aforesaid period and while functioning in the aforesaid office, the said Sri. B. Ramakrishna Rao committed an offence in June, 1968 under the Indian Telegraph Act in failing to maintain a running record of all transmissions from the Wireless Transmitter in his possession in violation of condition No. VI of Amateur W/T licence No. 725 issued to him by the Department of Communications and Civil Aviation, Govt. of India, New Delhi.

- (iv) That during the aforesaid period and while functioning in the aforesaid office, the said Sri B. Ramakrishna Rao committed misconduct in acquiring during the period January, 1964 to April, 1972 assets to the tune of Rs. 1,23,564.00 which were disproportionate to his known sources of income.

On receipt of the said charge memo. the deceased employee filed a statement denying the charges

Dr. Brahm Prakash, one of the employees of IRL was appointed as Inquiry Officer and called upon the deceased employee whether he would admit the aforesaid charges or deny them justifying an enquiry. Subsequently one Kanwal Krishan, who was working as Commissioner for Departmental Enquiries in the Central Vigilance Commission of the Govt. of India was appointed as Inquiry Officer on 25.6.74 in place of Dr. Brahm Prakash. Shri P.V. Narayanaswamy, a Superintendent of Police attached to the CBI was appointed by IRL as its presenting officer. The deceased employee requested for the services of a trained lawyer as Defence Assistant, which was disallowed by the Chairman of the organisation on 3.12.74. After completing the enquiry witnesses examined by the organisation as well as 3 other witnesses in support of the defence, the Inquiry Officer submitted its report and found that the deceased employee was guilty of Charge No.1 in respect of Voltas Air-conditioner and Lafayette Speakers, charge No.2 in its entirety and charge No.4 to the extent of Rs. 42,539/- and exonerated of charge No.3 and submitted the report to the Govt. of India.

2. In the meantime w.e.f. 1.4.75 ISRO was taken over by the Govt. of India and became a part of its space department from that day. As one of the steps in the take over, Government gave an option to the employees of IRL that were willing to be absorbed to its service. The deceased employee exercised the option given to him and became an employee of Govt. of India

from 1.4.75. The disciplinary authority after consultation with the UPSC dismissed the deceased employee from service by an order dated 10th March, 1977. On 17th March, 1977, the deceased employee moved the Karnataka High Court under Article 226 of the Constitution of India challenging the aforesaid order of dismissal from service and the learned Single Judge allowed the writ petition, quashed the impugned order and the enquiry and granted all the consequential benefits emanating thereto to the deceased employee. In the writ appeal No. 112/80 the Union of India challenged the judgement of the learned Single Judge dated 21.11.79 in writ petition No. 2496/77. The Division Bench heard the said appeal and by its judgement dated 3.9.81 quashed the order of the learned Single Judge dated 21.11.79 upholding the order of dismissal of service of the deceased employee. The deceased employee filed the SLP before the Hon'ble Supreme Court but by the order dated 26.11.92, the Hon'ble Supreme Court refused to interfere. Thereafter the deceased employee preferred a review petition before the Division Bench of Karnataka High Court which was rejected on the ground of delay. The deceased employee preferred a writ petition under Article 32 of the Constitution of India before the Hon'ble Supreme Court on which the Hon'ble Supreme Court issued notice to the other side and by the order dated 28.5.86 after notice to the respondents against the allowed the writ petition giving liberty to the respondents/deceased employee to re-initiate enquiry after applying mind as to whether it was necessary in the interests of justice to do so quashing earlier order of dismissal of service of the deceased employee.

3. In pursuance of the direction of Hon'ble Supreme Court in Writ Petition No.12554/84 where liberty was given to initiate disciplinary departmental proceedings against the deceased employee, the disciplinary authority issued fresh memo of charge on 2.1.85. The memo. of charges issued to the deceased employee are almost the same excepting that in Article of charges it is stated that the deceased employee failed to maintain absolute integrity and acted in a manner of unbecoming of a Govt. servant and thereby contravened rule 3(1)(i)(iii) of the CCS Conduct Rules. Here it may be stated that earlier charges were framed against the deceased employee in 1974. It was stated that the deceased employee rendered himself liable to be proceeded with under rule 4.1.10 of the Fundamental Rules of the PRL, Ahmedabad and has violated rule 4.1.7 of the Fundamental Rules of the PRL, Ahmedabad. Alongwith this memo of charge, the imputation of misconduct with annexures listing the documents by which the article of charges are to be established as well as witnesses by which the article of charges framed are proposed to be sustained. This enquiry against the deceased employee was held under Rule 11 of the Department of Space employee CCA Rules, 1976. The disciplinary authority by the order dated 24.5.85 appointed Shri A.K. Garde, Commissioner for Departmental Inquiries, New Delhi as the Inquiring Authority but since he was not available, so in his place by the order dated 18.7.86 appointed Shri M.K. Dixit, Commissioner for Departmental Inquiries as Inquiring Authority. However, this appointment of Shri M.K. Dixit continued for some times and by the

order dated 17.6.86 because of administrative reasons another Inquiring Authority Shri A.K. Rastogi, Commissioner for Departmental Inquiries was appointed as Inquiring Authority to inquire into the charges against the deceased employee. In the meantime, the deceased employee filed O.A.No.887/88 and by the order dated 17.5.88 stayed further proceedings for 14 days. O.A. 887/88 was again taken up by the Principal Bench of CAT on 31.5.88 and stay granted earlier by the order dated 17.5.88 was vacated. After vacation of the stay order, the deceased employee made a request by the letter dated 3.6.88 that the charges framed against him be withdrawn. The deceased employee filed QMP No.2289/89 before the Hon'ble Supreme Court in the writ petition No.12554/84 on 2.1.89 for drawing contempt proceedings against the respondents. The Inquiry Officer in his report dated 27.6.88 held that all the 4 charges framed against the deceased employee were established. The case record was forwarded to the UPSC for its opinion and the UPSC by the memo dated 31st March, 1989 gave its opinion proposing penalty of dismissal from service. The disciplinary authority by the order dated 8.6.88 passed the order dismissing the deceased employee from service. Since the service of the order was <sup>evaded</sup> ~~awaited~~ by the deceased employee, so it was served by the publication dated 26.6.89. QMP No.2289/89 filed before the Hon'ble Supreme Court was subsequently withdrawn by the order dated 5.10.89 with the liberty to the deceased employee to take all the points in O.A.No.1814/89 pending before the Principal Bench. It appears that the deceased employee also filed the writ petition No.786/89 before the Hon'ble Supreme Court which was dismissed at the preliminary hearing by the Hon'ble Supreme Court by the order dated 1.8.89

that the deceased employee has adequate alternate remedy before the C.A.T.

4, O.A. 1814/89 was filed by the deceased employee on 6.9.89 before the Principal Bench. In this O.A., the deceased employee has challenged the order dated 26.6.89 which was published in Deccan Herald mentioning about the order passed by the disciplinary authority of removal from service dated 8.6.89.

5. The reliefs prayed for by the deceased employee in this O.A. are as follows:-

- (a) The impugned order dated 8.6.89 published in the newspaper on 27.6.89 which is an Annexure be quashed;
- (b) Appropriate directions may be issued to the respondents to reinstate the deceased employee with continuity of service and full wages;
- (c) Issue appropriate directions, directing the respondents to pay interest to the deceased employee on the backwages due;
- (d) Issue appropriate directions directing the respondents to pay in addition to the arrears payable by them damages for harrassing humiliating the deceased employee by the prolonged disciplinary action and for illegal termination of the services of the applicant and without prejudice to the deceased employee right for reinstatement;
- (e) Issue appropriate direction, directing the respondents to grant all consequential reliefs to the deceased employee including promotion, to the higher post by granting him promotion which his immediate junior has been given, with retrospective effect and with direction to pay the arrears arising therefrom;



- (f) Issue appropriate directions to pay costs of this application to the deceased employee.

6. The respondents contested this application. It is averred that O.A.877/88 was also filed by the deceased employee for stay of the departmental proceedings against him but the stay was vacated by the order dated 31.5.88. It is stated that the first enquiry proceedings was initiated in 1974 and concluded in 1977. The deceased employee has taken of the matter before the various courts repeatedly since then. The dismissal order passed in that enquiry was quashed by the Hon'ble Supreme Court on technical grounds vide its order dated 28.5.84, with liberty to the respondents to initiate denovo disciplinary proceedings and the same was considered in the interest of justice. The departmental disciplinary proceedings were conducted under the Department of Space Employee(CCA) Rules, 1976. The respondents have also replied to the various grounds taken by the deceased employee in the O.A. stating that the delay in disposal of the departmental enquiry was on account of applicant himself. As the deceased employee took the matter before the various courts, the proceedings initiated in January, 1985 are only de novo proceedings and are in conformity with the orders of Hon'ble Supreme Court. Every opportunity had been provided to the deceased employee for defending himself in the disciplinary proceedings. The chargesheet against the deceased employee is maintainable and even the CCS(CCA) Rules provide that a government servant is liable to be proceeded against departmentally for any act of commission or omission committed even prior to his entry into

: 10 :

government service. The deceased employee himself agreed upon that any act of commission or omission, committed by him in his earlier service including his services under the Physical Research Laboratory will render him liable to be proceeded against under the Government rules. The employees of the IRL were expressly covered under the purview of the Central Vigilance Commission. The respondents have also denied in the counter that the earlier Inquiry Officer has reported for dropping of the charges against the deceased employee. There is no such record and at any point of time the Inquiring Authority had decided that the enquiry should be dropped. The change of the Inquiry Officer was only on account of administrative reasons within the Central Vigilance Commission. The Presenting Officer was also changed due to administrative reasons. The death of some of the witnesses or some of the documents could not be traced did not hamper the findings of the inquiry proceedings and analysis of the evidence by the Inquiry Officer in holding that the charge against the deceased employee is proved. The deceased employee was supplied all the documents which were relevant to the enquiry and the deceased employee in order to delay the enquiry proceedings has sought for supply of irrelevant documents which were not material to the issue of the charges framed against him. The deceased employee has also been allowed the services of a legal practitioner, Thus in nutshell the respondents have taken the stand that the Inquiring Authority has given full opportunity to the deceased employee in the departmental

:11:

enquiry even the services of legal practitioner were allowed and the rules of procedure were fully observed as well as principle of natural justice. The deceased employee has therefore no case.

7. The deceased employee has also filed the rejoinder reiterating the facts already taken in the application.

8. We heard the learned counsel for the deceased employee Shri M.N. Krishmani on 7.9.94 and arguments were continued on 8.9.94. The case was adjourned to 15.9.94 for the arguments of the respondents. But inspite of number of dates fixed in this case, the counsel for the applicant did not appear. The learned counsel for the respondents Shri P.H. Ramchandani has also informed the counsel for the applicant, but he did not respond. The counsel for the applicant, however, while closing his arguments on 8.9.94 has also given written synopsis, his contentions in writing. We therefore fixed a date after hearing the learned counsel for the respondents in the hope that the counsel for the applicant may appear and may conclude his arguments and may reply to the arguments addressed by the counsel for the respondents. Since none appeared on behalf of the applicants, we have adjourned the date of judgement which is being delivered today.

9. Certain points in this case raised by the learned counsel have already been before the Hon'ble Supreme Court while dismissing the SLP filed by the applicant against the judgement of High Court of Karnataka dated 3.9.81 where the UOI filed the appeal against the judgement of the Single Judge dated 21.11.79 quashing the order of dismissal passed on the deceased

le

employee in the departmental enquiry on certain grounds. The dismissal of the SLP therefore amounted to non interference by the Hon'ble Supreme Court in the aforesaid judgement of the Karnataka High Court dated 3.9.81. Thereafter, the deceased employee filed the review petition before the Karnataka High Court which too was dismissed. Thereafter, the deceased employee filed the writ petition No.12554/84 before the Hon'ble Supreme Court which was disposed of by the following order:-

"It is submitted by learned Additional General Mr. K.G. Bhagat, with great fairness than on examining the case he has found that the disciplinary inquiry conducted against the petitioner suffers from various legal infinites and hence he is unable to sustain the validity of the disciplinary enquiry and the further consequential action of removal of the petitioner from service. In the light of the aforesaid submission, the disciplinary proceedings conducted against the petitioner culminating in the order removing the petitioner from service will all stand quashed and the petitioner is directed to be reinstated in service forthwith. The respondents will be at liberty to conduct a fresh disciplinary inquiry against the petitioner in accordance with law in case it is considered/necessary to do so in the interests of justice at this distance of time. The petitioner will be entitled to be paid arrears of salary and other benefits consequent on his reinstatement.

The writ petition is allowed in the manner and to the extent indicated above. There will be no direction regarding costs."

It is in view of this that fresh chargesheet was issued as said above and the impugned punishment order of dismissal from service was passed against the deceased employee which has been assailed in this case.

10. We have already narrated facts in detail from the stage of commencement of the earlier enquiry till the order of punishment was passed <sup>in</sup> ~~denovo~~ enquiry conducted on the basis of the order of Hon'ble Supreme Court of May, 1984 supra. The first contention of the learned counsel is that on 1.4.75 ISRO of IRL became part of Govt. and till then the deceased employee was a private employee as IRL being a private Trust. The article of charge relate against the deceased employee for the period 1963-72 during which he was a private employee. It is therefore argued that the disciplinary action under DOS(Discipline and Appeal) Rules proceeding on the footing that he violated CCS(Conduct) Rules is incompetent and ultra vires since these rules apply only to the Govt. servant. Here it may be stated that by resolution No.1/1(5)/74-75-III dated 31.12.74, Govt. of India decided to convert the ISRO into a Government body w.e.f. 1.4.75. In pursuance of the said policy decision, a notice of option in the printed form filling in the required particulars of the deceased employee was served which <sup>he</sup> received on 5.2.75. On 7.2.75, the deceased employee gave his declaration of election for absorption w.e.f. 1.4.75. As per the aforesaid resolution the terms and conditions offered by the Govt. of India to absorb the deceased employee along with other employees is set out in the memo. and the form of declaration which in fact Form-1 document. Among others, the said memo. stipulated the following terms that are material for determining the questions.

" All Service rendered without a break in ISRO by the employees whose services are accepted by Government as also continuous services are accepted by Government as also continuous service if any rendered by them in Department of Space (DOS), Physical Research Laboratory (PRL) will count for all purposes such as service qualifying under the relevant rule for increments, consideration for promotion, confirmation, entitlement to leave, pension if applicable, and gratuity. Like wise cognisance will be taken of any act of omissions or commission for which they may have been responsible during such service and Government reserves the right to proceed with the disciplinary action in respect of such acts under the disciplinary rules applicable to DOS.

xx xx xx

Those who are not willing to accept service in the Government of India will be required to resign from ISRO with effect from a date not later than 31.3.75. The services of ISRO employees who neither submit their resignation nor an unqualified declaration of their willingness to accept government service will likewise be terminated with effect from a date not later than 31.3.1975. ISRO reserves the right not to accept the resignation of any person against whom any disciplinary action is pending.

xx xx xx

Employees who are willing to accept Government service in the reconstituted ISRO should make an unqualified declaration to the effect and indicate their option regarding the benefits listed in Annexure-I (Parts B and C) by 10.2.1975 in the form prescribed in Annexure-II

The deceased employee expressed his willingness to be absorbed, Govt. absorbed him and he became a civil servant from 1.4.75 subject to the terms and conditions stipulated in the memo. and the law that was in force from 1.4.75 and any to be made from time to time. The deceased employee having once entered into contract of service with the Government by way of absorption, the deceased employee became a civil servant and his service conditions could be regulated

by public law as held by Hon'ble Supreme Court in the case of Roshanlal Tandon V. UOI reported in AIR 1967 SC 1889 and N. Lakshmana Rao and others Etc. V. State of Karnataka and ors. reported in AIR 1975 SC. The contention of the learned counsel <sup>therefore</sup> that he cannot be proceeded under CCA rules of the DOS cannot be accepted. There is no basis in the contention of the learned counsel that the DOS(Discipline & Appeal) Rules, 1976 are <sup>prospective</sup> ~~proceedings~~ in nature and the deceased employee cannot be proceeded for misconduct alleged against him and for which charge is framed for the period 1963-72 has no basis. The Hon'ble Supreme Court has given liberty to the respondents to hold de novo enquiry and as such the holding of an enquiry by the respondents cannot be said to be in violation of the statutory rules.

11. The learned counsel for the deceased employee further argued that the Inquiry Officer did not allow the proxy counsel for the original lawyer to assist in the departmental enquiry when the counsel already engaged could not reach. In fact the department had approved engaging an identified person as Defence Assistant who was a legal practitioner. The Inquiring Authority at its discretion had only refused using of a proxy by the deceased employee as legal assistant only for the final hearing, as the disciplinary authority had approved engaging of the identified legal practitioner and not the proxy proposed on the day of final hearing, without any

advance notice. The action of the Inquiring Authority cannot therefore said to be in any way unfair or irregular. If the counsel for the deceased employee could not reach or participate in the final hearing of the enquiry, a request for adjournment could have been made or an early permission to engage another lawyer in place of already representing the deceased employee could have been obtained. The deceased employee, however, was present and whole proceedings had gone in his presence. At the earlier occasion the enquiry was conducted without the help of a legal practitioner and the de novo enquiry was conducted with the assistance of legal practitioner. The deceased employee was not at all prejudiced either in his defence or in placing the case before the Inquiring Authority. A perusal of whole of the case and the manner it has been dealt with goes to show that the charges were of such a simple nature that the deceased employee understood and the witnesses have been cross-examined at length to shatter them in proving the aforesaid charges. The contention of the learned counsel has therefore no force.

12. The learned counsel for the deceased employee also argued that there has been inordinate delay in taking the enquiry on the charge which was for the period 1963-72. However, we find that first charge memo. was framed in 1974 and the orders were passed in 1977 dismissing the deceased employee from service. That order of dismissal was quashed by the Single Judge of Karnataka High Court but on an appeal, the Division Bench upheld the order of dismissal of the



deceased employee and quashed the order of the Single Judge. The deceased employee thereafter filed SLP before the Hon'ble Supreme Court which was not admitted. The deceased employee filed the Review petition before the Division Bench which was too dismissed. The deceased employee also filed a writ petition before the Hon'ble Supreme Court in 1984 which was allowed and the order of dismissal passed in 1977 was quashed with a direction to the respondents if so desire to commence de novo enquiry against the deceased employee. It was only thereafter the charge memo. was served in 1985. Thus, there has been no delay which could not be explained taking all the events into account. It may also be recalled that the deceased employee has filed during the pendency of the enquiry O. A. No. 877/88 in which the enquiry was stayed earlier but subsequently vacated by the order dated 31.5.88. The deceased employee again filed OMP No. 2289/89 in the year 1989 before the Hon'ble Supreme Court in the earlier writ petition filed in 1984. Thus, the delay has been occasioned by the deceased employee himself and he cannot take benefit of his own acts.

13. The learned counsel for the applicant also argued that copy of the Inquiry Officer's report was not supplied but he did not press the argument in view of the case of Ramzhan Khan reported in 1991(1) SCC 588.

14. The learned counsel has placed reliance in the case of UOI Vs. E. Bashyan reported in JT 1988(1) SC 627. The Hon'ble Supreme Court has referred this matter regarding supply of Inquiry Officer's report to the Constitution Bench. The Constitution Bench in Ramzhan Khan case has considered this matter in

detail and thereafter held that copy of the Inquiry Officer's report is to be supplied to the delinquent employee. But the judgement in the case of Ramzhan Khan was delivered on 23.11.90 and the judgement was made applicable to the disciplinary proceedings only from that date. In the present case, order of the disciplinary authority was passed in June, 1989. The matter has been further considered by the Hon'ble Supreme Court in the Constitution Bench judgement of Managing Director, ECLL, Hyderabad V. B. Karnakar reported in (1993) 25 ATC 705. The same view has been upheld by the Hon'ble Supreme Court that only those cases in which the orders have not been passed by the disciplinary authority before 23.11.90 it shall be mandatory to supply the report of the Inquiry Officer. Thus, in this case the learned counsel cannot reagitiate the matter which has already been settled. We are also fortified in our view by the authority of State of U.P. & Anr. V. Abhai Kishore Masta JT 1994(7) SC 748.

15. The deceased employee replied to the memo.

of charge served upon him in the de novo enquiry on 23.8.35. In this the deceased employee has taken a vague stand that the documents listed in the charge memo. are incomplete and inadequate for the enquiry, So Complete bank account for the entire period is provided in this period 1963-72 to establish truth in disproving the article of charge on Article-IV. Certain documents are also required for disproving on Article I and II. The deceased employee has not given any better details as to which of the document is required by him which is listed document and has not been supplied. The

Inquiry Officer by the order dated 17.8.87(Annexure XV) noted that out of total of 134 listed documents(deleting 3 Nos. which have been repeated), 55 are reported to be not available by the P.O. The inspection of 74 documents was already completed by the C.O. and the remaining 5 were inspected on that date. Regarding defence documents, the C.O. has informed that he has furnished a list of 57 documents out of which 51 are in the custody of the P.O. and the remaining in CO's self custody. The inspection of all these documents have already been carried out by the C.O. He is directed to furnish copies of the 6 documents which are in his custody to the P.O. He is also directed to furnish a consolidated list of 57 defence documents required by him as the list earlier submitted are totally confusing. The Inquiry Officer also allowed certain defence witnesses to be examined. The deceased employee by a letter dated 17.11.87 addressed to Inquiry Officer desired certain more information regarding certain documents (Annexure XVI). The Inquiry Officer has made available to the deceased employee all the relevant documents and <sup>only</sup> thereafter fixed 2nd June, 1988 the date for regular hearing of the enquiry from 6th June to 8th June, 1988 at Bangalore. The reply filed by the delinquent goes to show that the deceased employee has been given due opportunity to examine the documents and also to produce his defence both by examining defence witnesses and by tendering certain documents. The deceased employee was also allowed the help of a lawyer Shri M.N. Krishna Mani. A perusal of the

Inquiry Officer's report goes to show that he has considered all the relevant documents, testimony produced before him oral and documentary and has fully appreciated the evidence. The report of the Inquiry Officer runs in 42 pages. The Inquiry Officer has touched all the article of charges separately and discussed the evidence with respect to each and every article of charge. The scope of judicial review in the matter of appreciation of evidence is very much restricted. In this connection, the decision of Hon'ble Supreme Court in the case of Govt. of Tamilnadu and another V. A. Rajapandian reported in JT 1994(7) S.C.492 is relevant. Para 4 of the said report is material, and is quoted below:-

"The Administrative Tribunal set aside the order of dismissal solely on re-appreciation of the evidence recorded by the inquiring authority and reaching the conclusion that the evidence was not sufficient to prove the charges against the respondents. We have no hesitation in holding at the outset that the Administrative Tribunal fell into patent error in reappreciating and going into the sufficiency of evidence. It has been authoritatively settled by string of authorities of this Court that the Administrative Tribunal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably support the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority. The Administrative Tribunal in this case, has found no fault with the proceedings held by the inquiring authority. It has quashed the dismissal order by re-appreciating the evidence and reaching a finding different than that of the inquiring authority."

16. The Hon'ble Supreme Court has also in the aforesaid judgement referred the case of UOI V. Parma Nand reported in (1989) 2 SCR 19. The relevant portion is as follows:-


"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso of Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."

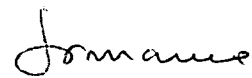
The Hon'ble Supreme Court has also referred to another case of UOI Vs. Sardar Bahadur (1972) 2 SCR 218 and that is reproduced below:-

"A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that Nand Kumar was a person likely to have official dealings, with the respondents was one which reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Art. 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court."

It is therefore the consistent view that the judicial review cannot take place in an order of punishment in departmental enquiry to reappreciate evidence though conclusion may be drawn differently on judicial review.

17. In the conspectus<sup>of</sup>/facts and circumstances of the case, we are of the considered opinion that the impugned order of punishment does not call for any interference. The original application is therefore dismissed as devoid of merit leaving the parties to bear their own cost.

  
(B.K. SINGH)  
MEMBER (A)

  
(J.P. SHARMA)  
MEMBER (J)

'rk'