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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

O.A. No.2168 of 1989

DATE OF DECISION: 21.01.1994

Shri Charanjit Singh Khurana Applicant(s)

Versus

U.O.I. through the Secretary, DP&T Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? *yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

*S.K.*  
(S.K. DHAON)  
VICE CHAIRMAN  
21.01.1994

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 2168 of 1989

New Delhi this the 21st day of January, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman  
Mr. B.K. Singh, Member

Shri Charanjit Singh Khurana  
R/o D-16, Airport Lane,  
Safdarjung Airport,  
New Delhi-110 003.

..Petitioner

By Advocate Shri G.D. Gupta

Versus

Union of India through the  
Secretary to the  
Government of India,  
Ministry of Personnel, Public  
Grievances and Pensions,  
Department of Personnel & Training,  
North Block,  
New Delhi.

....Respondents

By Advocate Shri P.H. Ramchandani, Sr. Counsel

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

Since 27.02.1982, the petitioner was working as an Under Secretary in the Department of Administrative Reforms and Public Grievances under the Ministry of Personnel & Public Grievances and Pensions Department. He was a member and Grade-I officer of the Central Secretariat Service. Disciplinary proceedings were initiated against him. An enquiry officer was appointed. The enquiry officer submitted his report. Before passing an order, the disciplinary authority obtained the advice of the Union Public Service Commission (the Commission) on 18.11.1988. On 12.06.1989, the President passed an order of punishment, dismissing the petitioner from service. The order of dismissal is being impugned in the present application.

2. The gravamen of the charge is that the petitioner was absent from duty unauthorisedly from 02.12.1985 onwards.

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3. It is an admitted position that Shri R. Parameswar, the then Additional Secretary of the department was the authority competent to sanction leave. He was designated as Additional Secretary (AR). For the sake of brevity Shri R. Parameswar shall be hereinafter called as Shri . parameswar.

4. The defence of the petitioner in the departmental proceedings is that he was assured by Shri Parameswar that he would be granted leave with effect from 02.12.85 and he acted upon the said assurance honestly and bona fide. He was led to believe that his leave was sanctioned with effect from 02.12.85. In the departmental enquiry, no oral evidence was led by either side. The petitioner remained <sup>out of the country</sup> /throughout the departmental proceedings and he returned to India only after the culmination of the proceedings. The argument of the petitioner, which has been vehemently advanced, is that on the question of assurance as well as on the other question <sup>to</sup> /which we shall presently refer, the enquiry officer has by necessary implication relied upon a written version obtained by Shri Parameswar and yet the petitioner was denied an opportunity to cross examine Shri Parameswar. Therefore, the submission is that the departmental proceedings are liable to be vitiated as they have been held in contravention of Article 311(2) of the Constitution. In this background, we may examine the charges together with the statement of imputation.

5. By a Memorandum dated 21.07.86, the petitioner was furnished with a statement of Article of Charge together with the statement of imputations of misconduct in support of the Article of Charge and also a list of documents by which the Article of Charge was proposed to be sustained plus the list of witnesses by whom the Article of Charge was proposed to be sustained. We may note at

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this stage that amongst the list of witnesses cited, Shri Parameswar was the lone witness to be produced.

6. The charge is, as already stated, that the petitioner was absent from duty unauthorisedly from 02.12.85 onwards.

The statement of imputations, as material, is as follows:

(i) On 08.08.85, the petitioner applied for 70 days earned leave from 16.09.85 on the ground that he planned to visit Unites States. He was asked to furnish some information. He was directed that he should not proceed on leave without getting it sanctioned formally by the competent authority.

(ii) The petitioner sent a note on 14.11.85 in which he requested that, as advised by Shri Parameswar, his leave might be granted from 02.12.85 instead of 16.09.85, as applied for earlier and that leave might be curtailed to 68 days instead of 70 days. Shri Parameswar had subsequently orally advised the petitioner to postpone his leave by a month or so in view of the impending O&M Officers' conference. The petitioner agreed to do so and stated that he would indicate the date from which he would proceed on leave.

(iii) The petitioner did not attend office from 02.12.85 . On 04.12.85, a communication was sent to him at his Delhi addresse informing him that, as his presence in the office was required in connection with some important official work, he should attend office on 04.12.85 (Afternoon) and meet Shri Parameswar at 2.30 P.M. This communication was received by the wife of the petitioner. As there was no response to this communication, a further communication was sent on 05.12.85 informing him that in view of the impending O&M Officers' conference, his presence in the office was necessary in public interest and that Shri Parameswar <sup>the</sup> desired that he should attend / office from 09.12.85

*(Signature)*

positively. The postal authorities returned this communication with the remarks that inspite of repeated visits, the addressee was not available at home. Another Memorandum was sent on 08.01.86 informing the petitioner that he was absenting himself from duty without permission for grant of leave and he was directed to attend <sup>the</sup> office latest by 07.02.86, failing which disciplinary action will be taken against him. This Memorandum was sent to him at his local address as well as at 444, Old Country Road, ORANGE, U.S.A.

(iv) In his reply, sent from U.S.A. to the memorandum dated 08.11.1986 contends that he modified the date of commencement of his leave to 02.12.85 on a suggestion made by Shri Parameswar that in view of the assurance given by Shri Parameswar, he had booked his ticket and finalised other plans. Shri Parameswar called him in the end of November, 1985 and suggested that he should postpone leave his /further by at least a month but he explained his position and expressed his inability to agree to his suggestion and that it is not true that he agreed to postpone his leave further, as stated in the Memorandum.

(v) A Memorandum was sent to the petitioner on 10.02.86 at his address in the U.S.A. informing him that his reply dated 21.1.86 made it clear that he proceeded on leave without formal sanction and left the headquarters despite written and verbal orders not to do so and has been absenting himself from duty unauthorisedly.

(vi) The petitioner has not reported for duty in spite of the clear directions that he should report for duty by 28.02.86.

7. The defence of the petitioner that he had been assured by Shri Parameswar that leave would be granted to him (the petitioner) to visit USA from a date anterior to 02.12.85 and thereafter the petitioner amended his application

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for leave so as to enable him to proceed on leave with effect from 02.12.85 at the suggestion of Shri Parameswar is substantially corroborated by the contents of the statement of imputations. The variance between the version of the petitioner and the department is confined to a narrow limit as to whether the petitioner agreed to the suggestion of Shri Parameswar to postpone his visit to USA and not to take leave with effect from 02.12.85. The petitioner's specific case is that he expressed his inability to accede to the suggestion of Shri Parameswar whereas the case of the department is that the petitioner accepted the suggestion of Shri Parameswar. We may note at this stage that it is not the case of the respondents that Shri Parameswar withdrew the assurance that <sup>petitioner</sup> ~~the~~ would be granted leave. That stage, according to the case of the department itself, did not arrive, as the petitioner agreed not to proceed on leave with effect from 02.12.85 and he also agreed to indicate another date.

8. The proceedings conducted by the inquiry officer may be looked into. The proceedings held on 18.02.87 are relevant. They indicate that the brother of the petitioner, Shri S.B.S. Khurana (Defence Assistant) appeared and asked for a copy of the statement made by Shri Parameswar (Shri Parameswar had been cited as the only witness). The note is: "in the facts and circumstances of the case, it may; be appropriate to call upon the official to send a statement to the inquiry officer, as his cross examination has not been requested for". The proceedings of 25.02.87 indicate that till that day, the statement of Shri Parameswar had not been received. The proceedings of 27.02.87 indicate that the Defence Assistant appeared and he was informed that Shri Parameswar had returned the file and made his statement separately. The proceedings of 18.03.87 go to show that a reply from Shri Parameswar had been

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received. He had confirmed that he had nothing to add to the facts contained in the Articles of charge or statement imputing misconduct. The note of the inquiry officer, which is relevant, may be extracted:

"Having considered the facts and circumstances of the case carefully, I am of the view that no useful purpose will be served by recording the oral evidence of the case as the present inquiry hinges entirely on the records and no miscarriage of justice would result in the absence of cross-examination of the witness". (The inquiry officer directed that a copy of the reply of Shri Parameswar and this order dated 18.03.87 may be supplied to the Defence Assistant). The proceedings of 03.04.87 go to show that the Defence Assistant made a request that Shri Parameswar may be called for cross-examination. The order is:

"I see no reason to reconsider the order dated 18.03.87 deciding against summoning Shri R. Parameswar".

9. The original record, as before the inquiry officer, has been produced before us by and on behalf of the respondents. It consists of two folders, namely, folder No.1 and folder No.2. It is significant to note that we do not find in the original record either a copy of the letter sent by the inquiry officer to Shri Parameswar alongwith the relevant records seeking his version or the copy of the letter sent by Shri Parameswar. However, by means of an additional affidavit filed during the course of the hearing of this application, the petitioner has filed a photostat copy of the letter dated 12.03.87 sent by Shri Parameswar to the inquiry officer. We have accepted this affidavit after a copy of the same was served upon the learned counsel for the respondents, Shri Ramachandani. The respondents having failed to produce a copy of the said

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letter coupled with the fact that a copy of the said letter was not found on record, we have no option but to accept that the photostat copy is the true copy <sup>of the letter</sup> sent by Shri Parameswar. The said letter is: "departmental inquiry against Shri C.S. Khurana, Under Secretary in the Department of Administrative Reforms and Public Grievances". The contents of the letter, may also be extracted: " Please refer to your confidential letter No.MISC/INQ dated 18th February, 1987 on the above subject. The various points mentioned in the documents sent with your letter are on record. I have nothing further to add". On a repeated enquiry from the learned counsel for the ~~respondents~~ as to what were the documents sent by the inquiry officer to Shri Parameswar, we have not been given any positive answer. On the contrary, learned counsel has vehemently urged that we can very well infer the nature of the documents sent. It is difficult to speculate as to which ~~particular~~ document was actually sent. However, it will be safe to infer that all the relevant documents were sent to Shri Parameswar. In substance, Shri Parameswar had in his reply, corroborated the version of the department, as contained in the various documents.

10. Now we may read the inquiry officer's report. The inquiry officer has narrated the events. He observes that it appears from the statement of imputations that Shri Khurana was advised by the then Additional Secretary to defer his leave by a month or so and Shri Khurana agreed to do so. On the other hand, Shri Khurana in his statement of defence averred that he was orally permitted by Shri Parameswar to avail of leave

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from 02.12.85. It is observed: "Shri Khuarana sent a reply to this notice on 21.1.86 (Annexure A-11) from U.S.A. in which he has asserted that he had modified his request to be granted leave from 02.12.85 at a suggestion made by Shri Parameswar and that he acted on his oral assurance and booked his passage and finalised his other travel plans". It is also observed: " the undersigned dispensed with the requirements of oral evidence of Shri Parameswar as it was appareant that a finding on the Articles of Charge in the present case hinged entirely on documentary evidence and that no useful purpose will be likely to be served or miscarriage of justice was likely in the event of non-examination of Shri Parameswar. In fact, having carefully considered the entire facts and circumstances of the case, I am of the view that Shri Parameswar need not have been cited as a witness at all".

11. The inquiry officer observed:

(i) On the question as to whether the petitioner was orally assured that he would be granted leave from 02.12.85, there need not be a detailed inquiry on this point, as assurance to grant leave would not tantamount to granting of leave. The petitioner could not be granted leave with effect from 02.12.85 due to exigencies of work and it is not as if he was being refused leave without any rhyme or reason. In any case, the subsequent request from the petitioner for grant of extraordinary leave and intention of his joining MBA and to take up part-time appointment, clearly indicates that his earlier application for 70 days leave was not a bona fide application in as much as the ground for leave earlier indicating 'meeting the sister' was not the real ground for asking leave. Shri Parameswar was inclined to

grant leave to the petitioner but he could not do so in the exigencies of the work. The inquiry officer summed up his findings by stating that (a) it is thus clear that:

the petitioner started absenting himself from 02.12.85 unauthorisedly in spite of the specific direction that he should not proceed on leave without getting it sanctioned formally by the competent authority. On the other hand, he left the country in violation of the direction; (b) the petitioner was advised by Shri Parameswar towards the end of November, 1985 to postpone his leave in the exigencies of work but he did not care for the advice and started absenting from 02.12.85; and (c) that he was never allowed orally or in writing to proceed on leave from 02.12.85.

12. We may refer to an important piece of material on which the petitioner relies heavily. This document purports to be Action Plan of the Department of Administrative Reforms and Public Grievances for the period October, 1985 - March, 1986. This Plan has been circulated by the Deputy Secretary of the department to (1) All Divisional Heads (ii) All Under Secretaries/Seniors Analysts/ Junior Analyst (iii) PS to Shri Parameswar. Paragraph 3 of the said communication states that the same has been issued with the approval of Shri Parameswar. The Appendix to the said communication shows that Shri R.D. Samplay, an Under Secretary was assigned some work. Against the name of Shri Samplay there is a mark. At the bottom of the statement it is mentioned that Shri Samplay will also be given the charge of O&M Division after the petitioner goes on leave with effect from 02.12.85.

13. The petitioner asserts that this documents was sent to the Prime Minister's Office. This is denied by the respondents. Even the inquiry officer has adverted to this matter and stated that it was not sent to the Prime

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Minister's Office but it was an internal circular issued for the purpose of the department. Be that as it may, this document was prepared with the sanction of Shri Parameswar on 14.11.85. At this stage, we may refer to the communication of the petitioner dated 5.9.85 in reply to the memorandum dated 03.09.85 issued by the Under Secretary whereby the petitioner was called upon to furnish certain particulars in relation to his application dated 08.08.1985 for grant of earned leave for 70 days. The petitioner mentioned that he had spoken to Shri Parameswar about his leave and he had assured him that as soon as a substitute in his place becomes available, he would be allowed to proceed on leave. We may recapitulate that Shri Parameswar sent for the petitioner and asked him to postpone his leave from a certain date.

14. In this background any reasonable person could honestly and bona fide infer that he had been granted leave by Shri Parameswar with effect from 02.12.85. Furthermore, any Court or Tribunal could, in the absence of the deposition of Shri Parameswar, in the circumstances of the case, presume that Shri Parameswar had granted leave to the petitioner with effect from 02.12.85. We may hasten to add that this presumption could be rebutted by the testimony of Shri Parameswar.

15. We have already indicated that the parties are at variance on the question as to whether the petitioner agreed not to proceed on leave with effect from 02.12.85. It is implicit in the findings of the inquiry officer that the charge as well as the statement of imputation was sent to Shri Parameswar. Shri Parameswar without making any commitment, quite cleverly stated in his reply that he had nothing to say beyond what the imputation of charges contained. There can be no getting away from the fact that by necessary implication, Shri Parameswar substantiated the



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the allegations made in the imputation of charge that the petitioner had agreed not to proceed on leave with effect from 02.12.85. The inquiry officer having taken the view that the matter could be and was being decided on the basis of the documentary evidence, it is implicit in his findings that he has placed reliance on the version given by Shri Parameswar in his reply. It follows that the reply of Shri Parameswar has been treated to be a substantive piece of evidence by the inquiry officer to bring home the charge to the petitioner. The petitioner cried hoarse for exercising his right to cross-examine Shri Parameswar. We are not impressed by the submission of Shri Ramachandani, the learned counsel for the respondents that if the petitioner was denied <sup>the right</sup> to cross-examine Shri Parameswar, he could have summoned him as a defence witness. We have already referred to the proceedings of the inquiry officer. We may remember that he took a categorical stand that it was not necessary for the petitioner to cross-examine Shri Parameswar and he even went to the extent of saying that Shri Parameswar has unnecessarily been cited as a witness. He, therefore, made up his mind not to call Shri Parameswar to the witness box.

14. Two crucial questions of the fact were to be decided by the inquiry officer; one was whether the petitioner's leave was sanctioned by Shri Parameswar w.e.f. 02.12.85 and the second was whether the petitioner acted upon the suggestion made by Shri Parameswar not to go abroad w.e.f. 02.12.85. On both these questions, the inquiry officer has recorded a finding against the petitioner relying, impliedly upon the version given by Shri Parameswar. In these circumstances, the inquiry officer while refusing to the petitioner the cross-examination of Shri Parameswar denied to the petitioner a reasonable opportunity to defend himself as guaranteed under Article 311(2) of the Constitution.

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15. In its advice to the President, the Commission, inter alia, observed: "an assurance to grant leave does not tantamount to granting leave. The facts available do suggest that Shri Parameswar was inclined to grant leave to the petitioner but he could not do so in the exigencies of work". Rule 15 of the CCS (CCA) Rules (the rules) in the proviso to sub-rule (3) states that in every case where it is necessary to consult the Commission the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant. Rule 32, inter alia, posits that whenever the Commission is consulted, a copy of the advice by the Commission and where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance, shall be furnished to the Government servant concerned alongwith a copy of the order passed in the case, by the authority making the order. In this background, we may examine the contention of the learned counsel for the petitioner that the President while relying upon the advice of the Commission observed the principles of natural justice in their breach when he did not furnish a copy of the said advice to the petitioner before passing his order. The proviso to sub-rule (3) of Rule 15 clearly mandates that the disciplinary authority shall take into consideration the advice of the Commission before making any order imposing any penalty on the Government servant.

15a. Reliance has been placed by the learned counsel for the petitioner on the following authorities:-

(i) R. Prameshwar Vs. Union of India & Others, 1993 CSJ (Vol.2) page 89, a decision of a Division Bench of this Tribunal. In that case, a member of the All India Service was awarded a minor penalty of censure. This penalty was imposed after receiving the advice of the UPSC. It was held that the principles of natural justice had been violated by the disciplinary authority in so far as it purported to pass the order of punishment without supplying to the delinquent Govt. servant a copy of the report of the advice given by the Commission. This is a case directly on the point.

(ii) State Bank of India & Ors. VS. D.C. Aggarwal & Another, JT 1992(6) SC page 673. This was a case where the disciplinary authority, in the order of punishment, relied upon the recommendation of the Central Vigilance Commission. It was held that the disciplinary authority could not act on the material which was neither supplied nor

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shown to the delinquent Government servant. This case is apposite.

(iii) Union of India Vs. Mohd. Ramzan Khan, AIR SC page 471. This was a case where their Lordships were dealing with the situation whether the inquiry officer's report had to be furnished to the delinquent servant before the disciplinary authority passed the order of punishment. Their Lordships observed that in case the conclusion of the inquiry officer are kept away from the delinquent servant and the inquiry officer submits his conclusion with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the inquiry officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent servant is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected. On principle, the observations made by their Lordships with regard to the non-supply of the inquiry officer's report should also apply to the advice given by the UPSC, as in the present case.

16. In his reply, Shri Ramchandani, the learned counsel for the respondents has placed reliance on Rule 32 of the Rules. The argument is that the statutory rule expressly curtails the ambit of the principles of natural justice. In Managing Director, ECIL, Hyderabad Vs. B. Karunakar, JT 1993(6) SC page 1, it has been held by a Constitution Bench of the Supreme Court that any statutory rule which forbids the supply of a material to a delinquent servant on the basis of which the disciplinary authority is called upon to pass an order of punishment, would be bad as violative of principles of natural justice. Reliance, therefore, cannot be placed by the respondents on Rule 32.

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17. The reasonings given by their Lordships of the Supreme Court in the case of Managing Director, ECIL, Hyderabad (Supra) for the supply of a copy of a report of the inquiry officer to a delinquent also apply to the advice given by the Commission. The reasonings given by the Commission in support of its advice are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusion. The advice of the Commission constitutes an important material before the disciplinary authority, which is likely to influence its conclusion. We, therefore, take the view that the right to receive a copy of the advice of the Commission is an essential part of the reasonable opportunity at the first stage, as envisaged in Article 311(2) of the Constitution and also a requirement of the principles of natural justice. Before the Judgment of the Hon'ble Supreme Court in Managing Director, ECIL, Hyderabad (Supra), the legal position was fluid and the mist has been cleared now. Rule 32 of the rules by necessary implication denied to a delinquent employee the right to receive a copy of the advice of the Commission before the disciplinary authority took its decision on the question whether the charge against such an employee stood established. Keeping in view the fact that innumerable orders of the disciplinary authority would be rendered bad on the ground that a copy of the advice tendered by the Commission to the disciplinary authority had not been supplied to a delinquent employee by the disciplinary authority before imposing a punishment upon him, we feel that such an illegality should not be taken into account in cases where the disciplinary authority had passed orders of punishment before 01.10.1993, the date on which the Hon'ble Supreme Court rendered its judgment in the case of Managing Director, ECIL, Hyderabad (Supra). We, therefore, hold that the petitioner cannot derive any advantage of the fact that a copy of the advice of the Commission was not furnished to him before the passing of the impugned order.

18. The decision of this Tribunal in the case of R. Prameshwar (Supra) does not take notice of Rule 32 of the rules and, therefore, the same is per incuriam.

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19. The last submission made is that it is an admitted position that the petitioner had submitted his representation against the inquiry officer's report which was supplied to him by the punishing authority before passing the impugned order. We may note that the petitioner had sent two representations. It is admitted by the respondents that the first representation was received by them well in time, namely, much before the date when the impugned order was passed. However, in the impugned order, there is not even a whisper of the explanation offered by the petitioner. The contention is that the failure of the punishing authority to consider the explanation of the petitioner renders the order of the disciplinary authority bad. We may note that even in the first representation, the petitioner made a specific grievance that he had been denied <sup>the right</sup> to cross-examine Shri Parameswar. In the counter-affidavit filed, it is admitted that the representation was received. However, it is stated that the representation was considered and rejected by the department.

Shri Ramachandani has been fair enough to tell us that the impugned order of dismissal received the approval of the Prime Minister, who was then <sup>the</sup> Minister-In-Charge of the department. It is not stated in the counter-affidavit that the representation of the petitioner was even placed before the Prime Minister and he rejected the same. If ~~some officer~~ other than the Prime Minister considered the representation and rejected the same, that will not validate the impugned order. Therefore, we come to the conclusion that on this score ~~the~~ top, the impugned order is liable to be quashed.

20. Before parting with this case, we may refer to the conduct of the inquiry officer. It is on record that Shri R. Natarajan, Under Secretary in the department was appointed as Presenting Officer. We have already



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indicated, from a reading of the proceedings of the inquiry officer that, in the absence of an application made by the presenting officer on behalf of the respondents, the inquiry officer on his own sent a confidential note to Shri Parameswar alongwith some record asking him to send to him (the inquiry officer) his version on the facts of the case. We have already indicated that in the files, which were produced before us, neither a copy of the communication sent by the inquiry officer to Shri Parameswar nor the reply sent by Shri Parameswar thereto or a copy thereof are to be found. The inquiry officer has scrupulously avoided any direct reference to the reply sent by Shri Parameswar to him. We have carefully scanned the record with a view to find out as to whether there is any possibility of these two papers being taken out. We note that the files have been well paginated and we do not find any page missing. We may now refer to a very serious matter which we have discovered from a reading of the inquiry officer's report. The inquiry officer

records: "The DA has also demanded a copy of the original article of charge suggested by Shri Parameswar, the former Additional Secretary. It is seen from the records that no formal article of charges were framed in the department and the only fact of unauthorised absence of the charged officer was brought to the notice of the Administrative Vigilance Division of the Department of Personnel & Training for taking necessary action for initiating disciplinary proceedings". We may note that the former additional secretary, referred to in the inquiry officer's report is none other than Shri Parameswar. We have asked Shri Ramachandani to show from the files of the inquiry officer any document or material from which it can be seen, or inferred that the matter had been brought to the notice of the Administrative Vigilance Division (Department of

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Personnel & Training) for taking necessary action for initiating disciplinary proceedings. The learned counsel for the respondents, Shri Ramachandani has very fairly stated that there is no such material in the files of the inquiry officer on the basis of which such an observation could be made. This leads us to an inevitable conclusion that the inquiry officer is referring to the files of the department. It is unfortunate that the inquiry officer, in this case, has been hob-nobbing with the department and has been wading through the departmental files. The above mentioned facts can and could compel any reasonable man to come to the conclusion that the conduct of the inquiry officer smacks of bias to say the least. The enquiry proceedings are, therefore, liable to be quashed on this ground also.

21. It is to be remembered that the disciplinary proceedings are quasi-judicial proceedings and the time honoured norm that "justice should not merely be done but should seem to be done" also apply to quasi-judicial proceedings. In Managing Director, ECIL, Hyderabad's case (Supra), the Supreme Court speaking through Hon'ble P.B. Samant, J; has held: "the rule that the enquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice".

22. In the result, this petition succeeds and is allowed. The impugned order is quashed. We, however, make it clear that we are quashing the same on a purely technical ground. We also clarify that any observation made in this order will have no impact on the merit of the case.

23. There shall be no order as to costs.

(B.K. SINGH)  
MEMBER (A)

(S.K. DHAON)  
VICE CHAIRMAN

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