

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.2411 of 1989

New Delhi, this the *Second* day of ~~Sept~~, 1994.

HON'BLE SRI A.V. HARIDASAN, MEMBER (JUDICIAL)

HON'BLE SRI B.K. SINGH, MEMBER (ADMV.)

Shri Harish Chand Gupta,
1/6477, Azad Gali No.1,
East Rohtas Nagar,
(Near Balbir Nagar)
Shahdra,
DELHI - 110 032

.. Applicant

By Sri S.C. Gupta, Advocate

V/s

Union of India,
Through Secretary,
Ministry of Finance,
Department of Revenue,
North Block, Central Secretariat,
New Delhi-110 001

.. Respondent

By Sri M.M. Sudan, Advocate

ORDER

HON'BLE SRI A.V. HARIDASAN, MEMBER (J)

The Presidential order dt.23-2-89 (Annexure-Y) imposing on the applicant the penalty of dismissal from service in exercise of the powers of revision vested in the President under Rule 29(1)(i) of the C.C.S. (CCA) Rules revising the order dt.25-1-1982 of the Disciplinary Authority viz. the Collector of Customs and Central Excise, New Delhi dropping the

disciplinary proceedings against the applicant giving him the benefit of doubt is under challenge in this application filed U/s 19 of the A.T. Act.

2. A short resume of the fact necessary for disposal of this application can be stated thus. The applicant Sri Harish Chand Gupta who joined service as Inspector of Customs and Central Excise in the year 1975 was posted as Air Custom Officer at Delhi Airport in January, 1979. The posts of Inspector of Customs and Central Excise and Air Customs Officer are equivalent and interchangeable. On the night of December 22/23, 1979, the applicant was posted in the Departure Hall in Delhi Airport assigned the duty of clearing outgoing passengers, checking of TBRE forms (Tourist Baggage Re-export Forms) was part of his duties. The TBRE forms are given to incoming passengers on the basis of their declaration that the particular item of baggage they brought with them would be taken back by them while leaving India after their visit. The passenger is bound to take back such items of baggage included in the TBRE form when they leave the country. In the Departure Hall the Air Customs Officer has to check the TBRE forms and to ensure that the items covered by the TBRE form is taken away by the passenger back. While the applicant was thus performing his duties, as Air Customs Officer in the Departure Hall on the night of 22/23rd December, 1979 he checked the TBRE No.15569, dt.25-9-79 of a passenger by name Sohan Singh who was to leave by Air India flight No.115. The said TBRE showed one Sanyo Radio-cum-Recorder Sterio model valued at Rs.1800/-. The passenger

produced the Sanyo Radio-cum-Recorder and the applicant made an endorsement to that effect on the TBRE. This endorsement on the TBRE was as required under rules verified by the Air Customs Superintendent, Sri A.S. Ahluwalia having satisfied that the passenger had with him the Recorder to be taken back. Annexure-A is a copy of the TBRE in question with the endorsement of the applicant and the verification of the Air Customs Superintendent. After the TBRE was cleared by the applicant and the Air Customs Superintendent, the passenger left for boarding the aircraft through security. But, however, on the basis of an alleged anonymous telephone call received by Sri S.S. Ranjhen, Asst. Collector (Customs) that the passenger Sohan Singh had left behind the TBRE baggage item after its customs clearance, Sri Renjhen accompanied by Sri A.K. Nijhawan, Air Customs Officer came and enquired of Air Customs Superintendent, A.S. Ahluwalia as to who were the Air Customs Officers concerned with the TBRE clearance. Being informed that the Flight No. AI-115 had been cleared by Sri Bhupender Singh and the applicant, Sri Renjhen checked the documents on the counters of both the Air Customs Officers. As the TBRE form pertaining to the passenger Sohan Singh was available at the counter of the applicant, The Assistant Collector, Sri Renjhan took the form, went to the security area along with Sri Ahluwalia and Nijhawan, spotted the passenger Sohan Singh and brought him back to the Departure Hall. Allegedly finding that the TBRE item had not actually been re-exported, ^{and} had been passed on to the son of the passenger. As permitted by the applicant on receiving a sum of

Rs.1500/- from the passenger, Sri Renjhan instructed Sri Ahluwalia, Air Customs Superintendent to conduct a preliminary enquiry and send his report. Sri A.S. Ahluwalia, the Air Customs Superintendent sent up two reports on 23-12-1979 and 24-12-1979 stating that on questioning the passenger Sohan Singh, it was disclosed that the applicant had for a consideration of Rs.1500/- permitted Sohan Singh to pass on the Sanyo Radio-cum-Recorder to his son, and that the applicant had confessing his guilt, handed over a sum of Rs.1500/- back to the passenger Sohan Singh. The passenger, Sohan Singh was not allowed to take his flight AI-115 on 23-12-79. The authorities detained his Passport pending investigation. Statements of Sohan Singh were recorded on 23-12-79, 27-12-79, and on 21-1-80. In the meanwhile, a telegram dated 13-1-80 alleged to have been sent by Sohan Singh was received in the office of the Additional Collector, Customs which reads as follows:

" passport wrongly seized on 23rd December (.)
Statement extracted under threats Visa expiring
Request immd. (.) Release of passport etc. "

However, on the basis of the preliminary enquiry, a charge sheet (Annexure-B) was issued to the applicant on 14-1-80 alleging that the applicant had after clearing the TBRE No.15569 of Sri Sohan Singh showing that the Sanyo Radio-cum-Recorder Stereo model No.9994-K valued at Rs.1800/- had been reexported, for a Allowed the passenger to retain in India ~~for~~ consideration of Rs.1500/- which resulted in loss to the Government Exchequer. The applicant was, by order dt.

or

17-1-80, directed to file a written statement of defence before 19-1-80. By another order dt. 18-1-80 the applicant was placed under suspension and also was directed to appear before the Assistant Collector (Vigilance) on 21-1-80. The applicant raised ~~a~~ grievance against cutting short of the time for submission ~~of~~ his written statement of defence while denying the charge against him, and did not agree to appear before the Assistant Collector, because, according to him, after the charge sheet has been issued to him he ~~could~~^{could} ~~not~~^{be} required to be present for a preliminary enquiry and would be entitled to face a regular departmental enquiry. Thereafter, by order dt. 12-2-80 (Annexure-I). The charge sheet dt. 14-1-80 was cancelled and fresh charge sheet dt. 12-2-80 was issued to the applicant directing him to submit within 10 days his written statement of defence. The article of charge read as follows:

" That Sri H.C. Gupta, Inspector of Customs and Central Excise, while functioning as Air Customs Officer at Delhi Airport during the month of December, 1979 failed to maintain absolute integrity, devotion to duty and behaved in a manner which is unbecoming of a Government servant in as much as that he (Shri Gupta) cleared a T.B.R.E. No. 15569 dt. 25-9-79 of Shri Sohan Singh, holder of Indian Passport No. J-764758 on 23-12-79 by AI flight No. 115 and showed one Sanyo Radio/Recorder-cum-Stereo Model 9994-K valued at Rs. 1800/- to have been re-exported by making an endorsement on the said T.B.R.E. as such whereas the same was allowed to be retained in India by said Shri Gupta in consideration of Rs. 1500/- which resulted in a loss to the Government Exchequer.

He, therefore, contravened the provisions of Rule 3(1)(i), (ii) and (iii) of the C.C.S. (Conduct) Rules, 1964. "

3. In the statement of imputation annexed to the Memorandum of Charge; it was alleged that on getting an anonymous telephone call that passenger, Sohan Singh travelling by flight No. AI-115 had left his TBRE goods after the customs clearance; Assistant Collector (Customs), Sri Renjhan accompanied by A.K. Nijhavan went to the Departure Hall, that day after taking the TBRE from the counter of the applicant, went to the Security area along with Sri Ahluwalia and Nijhawan, that they brought back Sri Sohan Singh who on interrogation had said that he left the ~~Radio-cum~~ - Taperecorder with his son after it was cleared by Sri Gupta in consideration of Rs. 1500/- and that the applicant had confessed his guilt and handed over a sum of Rs. 1500/- to the passenger Sohan Singh. The list of documents by which the Article of Charge framed against the applicant was proposed to be substantiated ~~and~~ contained a statement of Sohan Singh ~~statement~~ recorded on 23-12-79. Another statement of Sri Sohan Singh recorded U/s 108 of Customs Act, 1962 on the same date, ~~Another~~ statement dt. 27-12-79 of Sri Sohan Singh recorded U/s 108 of the Customs Act, 1962, ^a and further statement of Sri Sohan Singh recorded on 21-1-80 among 13 documents. The list of witnesses by whom the Articles of Charge was sought to be established contained 9 names, but the name of Sri Sohan Singh, the passenger was not there. In the written statement of defence, submitted by the applicant, he had denied his guilt and had also indicated that ~~as~~

Sri Ahluwalia and he had jointly cleared the TBRE of the passenger, Sohan Singh, and as a complaint was allegedly received that the passenger had left behind the TBRE item, Sri Ahluwalia who had jointly cleared the TBRE in question had every reason to implicate the applicant so that he could be safe, that in that circumstances it was manifestly unjust to direct Sri Ahluwalia to conduct preliminary investigation and that the passenger who appeared to have committed an offence under the Customs Act has put the blame on the applicant and ^{that} the entire investigation has been conducted at a tangent making him a scapegoat ~~has~~ denied to have received Rs.1500/- from Sohan Singh and denied the allegation that he returned the money to him and pleaded innocence.

4. As the applicant denied the charge an enquiry was ordered. Sri Phool Chand, Asst. Collector Central Excise was appointed Inquiring Authority and Sri S.K. Sharma, Air Customs Superintendent, Delhi Airport was appointed Presenting Officer. The applicant participated in the inquiry. ~~By~~ his letter dated 24-6-80 to the Inquiring Authority, the applicant sought recovery and production of 21 documents which included a copy of the anonymous telephone message, and statement of Sri A.K. Nijhvat, ~~statements~~ of other witnesses. The Inquiring Authority allowing this request and by his order dt.24-6-80 requested the Additional Collector of Customs, Palem Airport and Asst. Collector (Hqrs.), Central Excise Collectorate, New Delhi for recovery and production of documents other than the item No.13, if available. However, only two documents, ~~manifest~~ manifest of the flight, second Duty Roster along were made available. The other items were not made available on the ground that many of them were not relevant and some were

privilege ones. The applicant on 24-7-60, by his letter (Annexure-E) stated that the stand taken by the Asst. Collector was against the rules and procedure, that ^{as} the order for recovery and production was made by the Inquiring Authority, since he did not feel any doubt about the relevance of the documents it was not for the Asst. Collector to determine what document would be relevant for the applicant to make his defence and further requested that the documents may be made available to him to enable him to make a proper defence. However, these documents were not given to him. After completion of the inquiry, the Inquiring Authority in his report dt. 21-7-67 after discussion of the evidence recorded by him, felt that as Sri Sohan Singh, the passenger the principal witness in the case, had not been examined and as the testimonies of the other witnesses excepting Sri Ahluwalia were solely basing on ~~their~~ say could not be given any credence, and ~~as~~ the Ahluwalia's testimony has not been corroborated, ~~it~~ is ~~a~~ case in which the benefit of doubt should be given to the applicant, as the procedure laid down in the evidence for taking evidence had not been strictly followed.

5. The Disciplinary Authority, the Collector of Customs by his order dt. 25-1-82 (Annexure-S) ~~agreeing~~ with the finding of the Inquiring Authority held the charge against the applicant not proved beyond doubt and dropped the proceedings against the applicant ~~and~~ giving him the benefit of doubt. More than two years thereafter, the applicant received a letter

dt.29-3-64 enclosing a copy of the Memo. of Ministry of Finance case No.C-11015/3/83-Adv. dt.16-3-84. The Memo. dt.16-3-84, a copy of which is available at page 210 of the paper book, stated that the President had after going through the records of the disciplinary case against the applicant decided to revise the decision of the Disciplinary Authority dt.25-1-82 to drop the proceedings in exercise of the powers conferred on him under Rule 29(1)(i) of CCS (CCA) Rules, 1965, as apart from the vital circumstantial evidence available on record which had been overlooked by the Inquiry Officer the following points ^{went} a long way to establish the charge against the applicant.

(i) Sri Ranjhan, the Asst. Collector got an information and it was indicated that ~~the clearance of Sanyo Recorded~~ had been given with the complicity of the Customs Officer (Sri H.C. Gupta).

(ii) The oral admittance of guilt by Sri Gupta before the Superintendent, Sri Ahluwalia, as recorded by him in his report dt.23-12-79 put up to Assistant Collector, and also again brought out clearly by Sri Ahluwalia during oral enquiry.

(iii) Apparent refusal of Sri Gupta to give a statement on the night of 23-12-79 when approached by Sri Ahluwalia, as per orders of the Asst. Collector (recorded in his report by Sri Ahluwalia on the same day i.e. 23-12-79).

(iv) Following part of the statement of Asst. Collector, Shri Ranjhan, during oral enquiry:-

"Sri H.C. Gupta did meet me before I left at the close of the shift at about 8.15 A.M. I do not remember exactly what Shri Gupta may have uttered before me but Sri Gupta had pleaded guilty and had requested me to pardon him.

Sri Gupta had admitted the mistake/lapse on his part, as envisaged by Shri Ahluwalia in his report...."

(v) The statement of Sri Nijhavan, Inspector during oral enquiry indicating that when he came back to Departure Hall, he learnt that the pax had paid some money around Rs.1500/- or so to Shri Gupta at the time of clearance and the pax said in his presence that he has paid Rs.1500/- to Shri Gupta. Sri Nijhavan states that Sri Gupta did not confess having accepted the amount to Shri Ahluwalia in his presence nor in his presence the amount was returned by Sri Gupta. He has, however, indicated that he learnt from Sohan Singh (pax) that he had got his money back.

(vi) The statement of Sri Gurcharan Singh during oral enquiry on 23-2-82 to the effect that the statement dt.23-12-79 was made voluntarily by Sri Sohan Singh (Pax) in his presence in answer to the queried by Customs Officers and nobody was harsh to Sri Sohan Singh.

(vii) The consistency in the statement of Sri Sohan Singh about the reasons for leaving the Sanyo Recorder on payment of money to Sri Gupta and its return subsequently. "

and that considering the above and having regard to the ~~criteria~~ criteria of "propoundance of probability" applicable to the disciplinary proceedings, the charge of failure to maintain absolute integrity, devotion to duty and behaviour in unbecoming of a government servant had been ~~established~~ established and that having regard to the gravity of the proved charge, the President had provisionally come to the conclusion that Sri H.C. Gupta having not a fit person to retain in government service, ~~provisionally decided that~~ ~~should~~ be dismissed from service and directing the applicant to show cause against the proposed action within one month from the date of receipt of this communication.

6. In reply to the above communication, the applicant on 12-4-82 submitted an explanation to the President in which he contended that after such an inordinate delay, a revision invoking the powers under rule 29(1)(i) of the CCS(CCA) Rules could not have been resorted to, that there was no reason for reviewing the order and also requested that the materials which were over-looked by the Disciplinary Authority might be made known to him so that he could make the effect of the representation. Thereafter on 13-7-84 (Annexure-X) the applicant made a detailed representation to the President explaining as to ~~xxxxxxx~~ ~~xxxxxx~~ how he was denied a reasonable opportunity to

defend his case in not making available to him the additional documents which he wanted for cross-examination and the witnesses examined in support of the charge, as to how the case was one of nil evidence and why an order against him should not be passed. Though this representation was made by him on 13-7-84, the Presidential order dismissing him from service was issued only on 23-2-89 in which it was stated that after careful consideration of various submissions made by Shri Gupta and taking into view the various aspects of the case the President had accepted the finding and advise of the U.P.S.C. a copy of which was enclosed and considered that for the proved charges penalty of dismissal from service should be imposed on the applicant and therefore it was ordered accordingly. This order is under challenge in this application.

7. The applicant has alleged in the application that the enquiry was held in violation of principles of natural justice as copies of the documents sought by him for making a proper defence was not supplied to him, that even the preliminary enquiry was held by a person who was interested in the matter, that the finding that the applicant is guilty is perverse and not warranted by the evidence on record, that he had been prejudiced in as much as the principal witness has not been offered for examination, that a grave error of law was committed in replyign on the statement of Sri Sohan Singh alleged to have been recorded behind the back of the applicant under threat and coercion, and that

the inordinate delay in revising the order of the Disciplinary Authority and imposing ^{the} penalty of dismissal from service is manifestly unjust, and that for all these reasons the impugned order is liable to be set aside.

8. The respondents in their reply statement have raised preliminary objections that the application is barred U/ss 20 and 21 of the A.T. Act, and that the applicant is debarred by doctrine of estoppel from challenging the impugned order under Rule 115 of the Indian Evidence Act as he had participated in the enquiry without raising any objection. On merits they contend that the President, Has on a scrutiny of the proceedings of the enquiry being satisfied that the decision of the Disciplinary Authority to drop the proceedings giving the applicant benefit of doubt was not correct, decided to revise the order exercising the powers under Rule 29(1)(i) of the C.C.S. (CCA) Rules, ~~and~~ after considering the representation submitted by the applicant and the advise of the U.P.S.C. decided that the applicant is guilty of misconduct and to award him the punishment of dismissal from service, on the basis of cogent and convincing evidence and that therefore the applicant is not entitled to the relief as prayed for. They ~~have~~ further contended that the enquiry was held in conformity with the principles of natural justice and the allegation to the contrary is not correct.

9. We have considered in detail the facts and circumstances brought out in the pleadings and

documents on record and have heard at length the arguments of Sri S.C. Gupta, learned counsel for the applicant and of Sri M.M. Sudan, learned counsel for the respondents. Though several grounds have been raised in the application, the learned counsel for the applicant stressed the following points in his arguments:

(a) As the applicant was not given the additional documents which he requested for for the purpose of effectively cross examining the witnesses who were examined in support of the charge and as the principal witness was not offered for examination, the enquiry has been held in gross violation of principles of natural justice enshrined in Art.311(2) of the Constitution, and therefore the entire disciplinary proceedings and the consequential order thereof are vitiated.

(b) The impugned order of the President imposing on the applicant the penalty of removal from service is based on the finding that he was guilty of misconduct with he was charge-sheeted without there being any legally acceptable evidence to reach such a conclusion and therefore the finding being perverse, the impugned order is liable to be struck off.

(c) The impugned order of the President dt.23-2-89 (Annexure-Y) is vitiated for non-application of mind and the order being cryptic and non-speaking.

(d) As the Disciplinary Authority had, by his order dt.25-1-82 passed a final order in the

disciplinary proceedings against the applicant dropping the charges against him finding that the evidence of the enquiry did not establish guilt. The action taken by the President under Rule 29(1)(i) of the C.C.S.(CCA) Rules more than two years thereafter and the impugned order dismissing the applicant from service passed seven years after the order of the Disciplinary Authority is liable to be struck down solely on the ground of unreasonable delay.

10. We shall consider these points one by one. Though a charge sheet dt.14-1-1980 was first issued to the applicant, by order dt.12-2-80 the charge sheet was dropped and a fresh ~~charge~~ sheet of the same date was issued. Annexure-3 to the Memo. of Charges issued on 12-2-80 contained the list of documents and Annexure-4 thereto contained the list of witnesses proposed to be examined in support of the charge. The statements of S/Sri S.S.Ranjhan, A.K.Nijhavan, R.D.Mathur, G. Singh etc. recorded at the preliminary enquiry was considered by the applicant as necessary for the purpose of making a proper defence by cross examining these witnesses at the enquiry. He also felt that certain documents such as a copy of the telephonic message received by Sri S.S.Ranjhan, panchanama for the search of baggage of Sri Sohan Singh, seizure memo of the passport of Sri Sohan Singh, seized Memo. of Rs.1,500/- alleged to have been given back to Sri Sohan Singh, order of Asst. Collector (Vig.) directing him to appear before him on 21-1-80, notification under which orders ^{appears to} have been given to

Asst. Collector (Vig.) U/s 108 of the Customs Act and the passenger manifest of Air India flight No. AI-115 dt. 23-12-79 were also considered necessary by him. The applicant therefore submitted a requisition before the Inquiring Authority on 24-6-80 (Annexure-M) requiring discovery and production of certain documents and statements listed 1 to 21. The Inquiry Authority had allowed this request and required the concerned official to cause the production of the documents other than item No. 13 which was the notification, but from the proceedings of the enquiry it is seen that apart from the manifest of flight and Duty Roster, other documents and statements of witnesses were not given to the applicant. It is seen that the applicant had been going on making representations to the Inquiring Authority as well as to the Disciplinary Authority requesting them to make available to him these statements and documents so that he could make an effective defence by cross examining the witnesses concerned with reference to the statements and documents, and that most of these documents were not made available to the applicant and the Asst. Collector (Vig.) taking a view that those documents were not relevant. The grievance of the applicant that he has not been able to make proper defence arises on account of the non-supply of these documents to him. The Inquiring Authority had on the request of the applicant felt that it was necessary to supply to the applicant the statements and documents requested for by him and called upon the respective officers to produce the documents and statements, but the direction of the Inquiring Authority was not complied with.

11. The learned counsel for the applicant argued that it is for the person who is facing the charge to determination of the documents would be relevant to him to make a defence subject to the discretion of the Inquiry Authority to have a decision regarding their relevance and it is not for the department to deny the applicant the use of the documents and statements, stating that they were not relevant. None of these documents, learned counsel argues, can be said to be privileged ones and therefore the refusal on the part of the department to make available to the applicant the materials which he badly needed for making a proper defence at the enquiry amounted to denial of reasonable opportunity to defend and violation of the principles of natural justice, argued the counsel.

12. Annexure-2 attached to the Reply Statement is the reply to the Inquiry Authority by the Assistant Collector (Vigilance) in reply to the requisition for production of documents which reads as follows:

" The position regarding documents mentioned in the annexure to your letter under reference is explained below in seriatim:

<u>Sl.No.</u>	<u>Document</u>	<u>Position</u>
1.	Order of HAC to A.C.(Vig) directing Sh.H.C.Gupta to appear before him on 21-1-80.	Hqrs. Asst. Collector's letter directing Sh.H.C.Gupta, Inspector to appear before A.C.(Vig) on 21-1-80 is already with the Charged Officer.
2.	Statement of Sh.R.D.Mathur	No statement of Sh.R.D.Mathur was recorded.

Contd. from prepage

<u>Sl.No.</u>	<u>Document</u>	<u>Position</u>
3.	Statement of Shri Bhaktawar Singh	No statement of Shri Bhaktawar Singh was recorded.
4.	Notification under which powers have been given to A.C. Vigilance U/s 108.	No summons under Sec. 108 were issued by A.C. (Vig.)
5.	Order of the Addl. Collector Customs taken in the case referring it to the Collector	Not relevant under rules. Hrs. Asst. Collector is the Competent disciplinary Authority in respect of the Charged Officer.
6.	Order of the Collector in the case for issue of charge sheet.	As above
7.	The report of A.C.(Vig.)	Cannot be furnished, being a privileged document. "

Regarding items No.5 and 6 it has been mentioned that they are not relevant under rules as Assistant Collector is competent disciplinary authority in respect of the Charged Officer. Once the Inquiry Authority has considered the documents relevant, it is not proper for the department to withhold his documents saying that they are not relevant. It is for the officer facing the charge to decide what document would be relevant for the purpose of his defence and his opponent cannot dictate which document should be relied on for the purpose of making his defence. The Inquiry Authority has however got the discretion to decide the question of relevance of a document once a decision has been taken by the Inquiring Authority that these documents are relevant the department has no right withholding them on

the ground ~~that~~ they are irrelevant. Further, the report of the Asst. Collector (Vigilance) in regard to the preliminary enquiry cannot be considered to be a privileged documents because in what way the privilege is claimed is not mentioned in the letter. Further, it is not the way in which privilege has to be claimed. Statement of Sri A.K. Nijhavan has been relied on in the imputation of misconduct against the applicant. It was necessary in the interest of justice to have made available to the applicant the statement of Sri A.K. Nijhavan and ~~there is no justification~~ for not supplying it to him. In State of Madhya Pradesh V/s Chintaman Sedashiva Waishampayan reported in the AIR 1961 SC 1623, where a relevant ~~file~~ was not made available to the employee facing a departmental proceedings, The contention of the department that the Enquiry Authority has in his discretion decided not to supply the file to the Charged Officer was rejected ^{therein} by the Supreme Court. The respondents/relied upon the decision of Patna High Court in Dr. Tri-bhuvan Nath V/s State of Bihar AIR 1960 Patna 116 in which a public officer wanted to have a copy of the report made by the anti-corruption department as a result of a confidential enquiry made against him. The High Court held that ~~failure~~ to supply ~~the~~ ^{the} said document did not constitute serious infirmity in the enquiry as the report was not relied on at the enquiry against the petitioner. ~~Based on~~ Seeking support from the above decision,

the appellant urged before the Hon'ble Supreme Court that the decision not to supply the report did not vitiate the proceedings. Rejecting the above contention, the Hon'ble Supreme Court observed as follows:

" In our opinion, this decision cannot assist the appellant's case because, as we have already pointed out, the documents which the respondent wanted in the present case were relevant and would have been of invaluable assistance to him in making his defence and cross-examining the witnesses who gave evidence against him. It cannot be denied that when an order of dismissal passed against a public servant is challenged by him by a petition filed in the High Court under Art. 226 it is for the High Court to consider whether the constitutional requirements of Art. 311(2) have been satisfied or not. In such a case it would be idle to contend that the infirmities on which the public officer relies flow from the exercise of discretion vested in the enquiry officer. The enquiry officer may have acted bona fide but that does not mean that the discretionary orders passed by him are final and conclusive. Whenever it is urged before the High Court that as a result of such orders the public officer has been deprived of a reasonable opportunity it would be open to the High Court to examine the matter and decide whether the requirements of Art. 311(2) have been satisfied or not. In such matters it is difficult and expedient to lay down any general rules; whether or not the officer in question has had a reasonable opportunity must always depend on the facts in each case. The only general

an

statement that can be safely made in this connection is that the departmental enquiries should observe rules of natural justice and that if they are fairly and properly conducted the decisions reached by the enquiry officers on the merits are not open to be challenged on the ground that the procedure followed was not exactly in accordance with that which is observed in Courts of Law. As Venkatarama Aiyar, J. has observed in *UDI v. T.R. Varma*, 1958 SCR 499 at p.507:(S) AIR 1957 SC 882 at p.885) "stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them". It is hardly necessary to emphasise that the right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with rules of natural justice."

13. In this case before us as stated supra, the Enquiry Authority having satisfied about the relevance of the document required to be produced to enable the applicant to make a proper defence, the action of the respondents in not producing them

✓

has resulted in denial of reasonable opportunity to the applicant to make a proper defence. For the above said reason we are convinced that there is considerable force in the argument of the learned counsel for the applicant that the enquiry is vitiated for non-observance of principles of natural justice.

14. We shall now take up the case of the applicant that the finding arrived at by the President that the applicant is guilty of the charge is not based on any legal evidence and is perverted for that reason. The gravamen of the charge against the applicant is that he received a sum of Rs.1500/- from Sri Sohan Singh as illegal gratification and has in consideration thereof allowed Sri Sohan Singh to leave back the Sanyo Radio-cum-Tape recorder, after clearing the TBRE. So, the important fact to be established is that the applicant has received a sum of Rs.1500/- from Sri Sohan Singh and that he had permitted Sri Sohan Singh to leave back the TBRE item. In this regard the evidence of Sohan Singh is highly material. As many as four statements of Sri Sohan Singh have been recorded at the fact finding enquiry, and all of them have been listed as documents by which the charge against the applicant was sought to be established. In the notice issued by the President on 16-3-84 in exercise of the powers conferred on him under Rule 29(i)(i) of the C.C.S. (C.C.A.) Rules the President had placed reliance on "the consistency in the statements of Sri Sohan Singh about the reasons for leaving the Sanyo Recorder on payment of money to Shri Gupta and its return subsequently."

It was also mentioned in that notice that Sri Gurucharan Singh, during oral enquiry on 23-2-82 has stated that Sri Sohan Singh had given the statement voluntarily in his presence in answer to the queries made by the Customs Officer. Since Sri Sohan Singh was not offered for cross examination no reliance would have been placed on the statements alleged to have been recorded from Sohan Singh behind the back of the applicant. The Calcutta High Court has in Amulya Ratan V/s Dy. Chief Mechanical Engineer, Eastern Railway and Ors reported in AIR 1964 Calcutta 40 observed as follows:

" Thus, the evidence given by the witnesses during the fact-finding enquiry has been liberally relied upon, without producing them at the enquiry proper, so that their evidence would be on record, and the petitioner, would not (?) get an opportunity to cross-examine them. Briefly put, the respondents were not entitled to rely on evidence which had been given at the fact-finding stage, without producing those witnesses at the enquiry proper. In effect, the petitioner is justified in saying that the proceedings were conducted in a manner as if at the enquiry proper, the onus was on the petitioner to establish his innocence. This is not the position in law, and the departmental enquiry has been conducted in a manner contrary to law.

We are in respectful agreement with the view taken by the Calcutta High Court.

15. In M/s Bareilly Electricity Supply Co.Ltd.
V/s The Workmen & Ors. AIR 1972 SC 330, the Hon'ble
Supreme Court has observed as follows:

"The application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. "

The above observation of the Hon'ble Supreme Court is ~~an~~ authority for the position that no statement recorded behind the back of an employee facing a charge can be used against him unless the maker of the statement has been offered for cross examination for testing the veracity of the statement. In this case, the decision has been taken heavily relying on the statement of Sri Sohan Singh without offering the applicant an opportunity to cross-examine the witnesses. It is not the case where Sri Sohan Singh could not be made available for examination. The very fact that while the statements alleged to have been made by Sohan Singh have been listed as documents on which reliance was placed for establishing the charge against the applicant, Sri Sohan Singh has been conspicuously omitted from the list of witnesses for proving the charge against him. Even in the opinion and advice given by the UPSC ~~accepting~~ which the President

had found the applicant guilty of the charge. Considerable reliance has been placed on the statement alleged to have been given by Sohan Singh. The following part of the Commission's advise can be profitably extracted.

"The Commission finds that the evidence of Sri Sohan Singh is in the form of four statements. Two of these statements were recorded on 23-12-79, one was recorded on 27-12-79 and the last one on 21-1-80. The officers of the customs department, the statement recorded on the day of the incident (23-12-79) U/s 108 of the Customs Act had also been attested by independent witnesses. Sri Gupta has not put forward any convincing reason as to why any of the persons before whom the statements were given should have been prejudiced against him. The Commission also observe that it is also not true that he had not been confronted with Sri Sohan Singh. In fact the very first ~~xx~~ report of Sri Ahluwalia dt. 23-12-79 states that Sri Gupta was confronted with Sri Sohan Singh in his (Sri Ahluwalia's) presence that the passenger reiterated that he had earlier stated in writing and that the Customs Officer (Sri Gupta) except for feeling sorry could not say a word and returned the amount of Rs. 1500/- to Sri Sohan Singh. The version of Sri Ahluwalia is corroborated by the two statements given by Sri Sohan Singh on the same day. Sri Sohan

Singh clearly mentioned that the amount of Rs.1500/- given by him to Sri Gupta was returned to him by Sri Gupta in the presence of the Customs Officer (Sri Ahluwalia). In the circumstances, the Commission are of the view that it cannot be held that the statements given by Sri Sohan Singh in his own hand before responsible officers and independent ~~xxx~~ witnesses have no evidentiary value whatsoever."

This opinion and advise of the UPSC is against the dictum of the ruling of the Hon'ble Supreme Court in UOI V/s T.R.Varma AIR 1957 SC 882 which reads as follows:

" Stating it broadly and without intending to be exhaustive it may be observed that Rules of Natural Justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of his apponent should be taken in his presence, and the he should be given the opportunity of cross-examining the witnesses examined by that party, and that no material should be relied on against him without his being given an opportunity of explaining them".

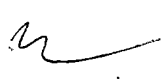
It is ~~pertinent~~ to mention that a telegram was admittedly received in the office of the respondents on 14-1-80 in which Sri Sohan Singh has

complained about the illegal detention of his passport and extortion of statements against his will. The case of the applicant is that the alleged statements of Sri Sohan Singh have been recorded under threat and coercion and the respondents have purposefully kept Sri Sohan Singh away from the Witness Box as otherwise the whole edifice of the prosecution case against him would tumble down as back of cards. If Sri Sohan Singh is examined and disowns the statements we are of the opinion that there is considerable force in this argument. Non-examination of Sri Sohan Singh, the principal witness in this case is fatal to the case against the applicant. It should be noted that though there is an allegation in the charge sheet that the applicant had received a sum of Rs.1500/- from Sri Sohan Singh and that this money was returned to him, it is curious to say that the money was not seized.

15. The TBRE was cleared by the applicant and Sri Ahluwalia. If the item covered by the TBRE was later found to have been detained without being reexported the blame may fall either on Ahluwalia or on the applicant because both are responsible for clearance. Under these circumstances it was absolutely unsafe to have entrusted the task of conducting the preliminary investigation with Ahluwalia without being sure that the hands of Sri Ahluwalia were clean. The suggestions of the applicant that Ahluwalia had made use of the opportunity to turn the table against the applicant and to implicate him cannot be brushed aside as far fetched. Therefore, the

testimony of the Ahluwalia cannot be accepted without corroboration because his testimony has to be weighed with great caution. Viewed in this respect, we are of the considered view that there is absolutely no reliable material on which the guilt of the applicant can be said to have been established. The Inquiry Authority has examined the evidence available on record and has finding the infirmity in the evidence held rightly that the guilt of the applicant has not been established though he has mentioned that the applicant had to be given the benefit of doubt. According to us it is not the case where the benefit of doubt has to be invoked, but it is the case where there is total lack of legally dependable evidence to bring home the guilty of the applicant. Though it is well settled that the degree of proof required in the departmental proceedings is not the same as that required in a criminal case, It is also well settled that suspicion however strong, cannot be substituted for legal proof even in a departmental proceedings. Under these circumstances, on a careful appraisal of the facts and circumstances brought out from the pleadings and the various documents on record, we are of the considered view that the finding of the applicant is guilty is based on no evidence at all and ^{is} therefore perverse.

16. The next argument of the learned counsel for the applicant is that the order of the President cancelling the order of the Disciplinary Authority



dropping the proceedings and imposing on the applicant the penalty of dismissal is non-speaking and cryptic. In the final order dt.23-2-89 (Annexure-Y) after discussing the circumstances under which a notice was issued to the applicant under Rule 29(1)(i) of the CCS (CCA) Rules, it has been stated in the concluding paragraph as follows:

" After careful consideration of various submissions made by Sri Gupta and taking into view the various aspects of the case, the President had accepted the findings and advice of the Commission as contained in their abovesaid letter. The President, therefore, considers that for the proved charge, the penalty of 'dismissal from service' should be imposed upon Sri Gupta and has ordered accordingly. "

The learned counsel for the applicant invited our attention to the GOI Instructions No.(1) below Rule 15 of the C.C.S. (CCA) Rules contained in Swamy's Compilation of CCS (CCA) Rules, 19th Edition at pages 69 and 70 which is extracted below:

(1) Self-contained, speaking and reasoned order to be passed and to issue over signature of prescribed disciplinary/appellate/reviewing authority.

As is well known and settled by courts, disciplinary proceedings, against employees conducted under the provisions of CCS(CCA) Rules, 1965, or under any other corresponding rules, are quasi-judicial in nature and such, it is necessary that orders in such proceedings are issued only by the

competent authorities who have been specified as disciplinary appellate/reviewing authorities under relevant rules and the orders issued by such authorities should have the attributes of a judicial order. The Supreme Court, in the case of Mahavir Prasad v. State of UP (AIR 1970 SC 1302) observed that recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal.

2. However, instances have come to the notice of this Department where the final orders passed by the competent disciplinary/appellate authorities do not contain the reasons on the basis whereof the decisions communicated by that order were reached. Since such orders may not conform to legal requirements, they may be liable to be held invalid, if challenged in a Court of law. It is, therefore, impressed upon all concerned that the authorities exercising disciplinary powers should issue self-contained, speaking and reasoned orders conforming to the aforesaid legal requirements.

3. Instances have also come to notice where, though the decisions in disciplinary/appellate cases were taken by the competent disciplinary/appellate authorities in the files, the final orders were not issued by that authority but only by a lower authority. As mentioned above, the disciplinary/appellate/reviewing authorities exercise quasi judicial powers and as such they cannot delegate their powers to their subordinates. It is, therefore, essential that the decision taken by such authorities are communicated by the competent authority under their own signatures, and the order as issued should comply with the legal requirements as indicated in the preceding paragraphs.

It is only in those cases where the President is the prescribed disciplinary/appellate/reviewing authority and where the Minister concerned has considered the case and given his orders that an order may be authenticated by an officer, who has been authorised to authenticate orders in the name of the President.

(G.I., MHA, DP & AR. OM No.134/1/81-AVD I, dated the 13th July, 1981.)

In spite of the above instructions it has come to notice that speaking orders are not issued while passing final orders in disciplinary cases. It has been essential legal requirement that, in the case of decisions by quasi judicial authorities, the reasons should be recorded in support thereof. As orders passed by the disciplinary authorities are in exercise of quasi-judicial powers, it is necessary that self-contained, speaking and reasoned orders should be issued while passing final orders in disciplinary cases.

(G.I., Dept. of P&T, OM No.134/12/85-AVD I, dated 5th November, 1985.)

Shri Gupta argued that the application of mind according to the GOI Instruction should be by the competent reviewing authority. From the order (Annexure-Y) no such independent application of mind of the President is seen. The learned counsel for the respondents however brought to our notice ~~of~~ the fact that in the presidential order it has been stated that the President had agreed with the finding and ^{which} advice given by the UPSC has been accepted by the President and that it has also been mentioned ^{that} a copy of the finding and advise of the UPSC has been enclosed

in the Presidential Order. He argued that as the President agreed with the finding and advise, it is not necessary for the President to reiterate the reasons for arriving at the conclusion. The competent authority cannot ~~delete~~^{-gate} the function of arriving at the finding which is different from the finding of the disciplinary authority, if it has decided to cancel the finding of the disciplinary authority and to enter into a different finding. Though it is permissible in accordance with the rules that a consultation may be made with the UPSC yet it is incumbent on the competent revising authority to state the evidence and support of the charge, The case of the delinquent government servant and to state as to how the charge has been established against the delinquent government servant. Though the finding and advise of the UPSC may be relevant irrespective of the finding of the UPSC, the application of the mind of the President should be evident from the order. If, the competent authority enters a finding accepting the finding of the Inquiry Authority or Tribunal which held the enquiry, it may not be necessary for the revising authority to reiterate the reason for the finding. Here that is not the case. The Inquiry Authority as well as the Disciplinary Authority has after a thorough discussion of the evidence pro and against the applicant concluded that the charge of the applicant has not been established. The President has cancelling that finding held the applicant guilty of the charge and imposed on him the penalty of dismissal from service. Under such

circumstances though the finding of the President is after consideration of the evidence as also the finding and advise of the UPSC an independent application of mind is a must.

17. In R.P.Bhatt Vs. U.O.I. reported in 1986(1) SLR 775, the Hon'ble Supreme Court has observed as follows:

" It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusions of the Tribunal, though even in such a case, it is not necessary that the reasons should be detailed ~~or~~ elaborate. "

In this ~~case~~ the finding of the President which is against the finding of the Inquiry Authority and of the Disciplinary Authority does not contain any reason at all for the finding other than that it has accepted the finding and advise of the UPSC. In our view, the finding of the UPSC cannot be treated on par with that the Inquiry Authority or that of Inquiry Tribunal, and therefore it is ~~xxxx~~ incumbent on the President to state the reasons for the decision against the applicant. Hence, we accept the arguments of the learned counsel for the applicant that the ~~order~~ of the President is non-speaking and cryptic ~~xxxx~~ and the consequent order of punishment imposing on the applicant dismissing him from service is bad for non-application of mind.

18. The last point argued by the learned counsel for the applicant is that the impugned order (Annexure-Y) imposing on him the punishment of dismissal from service passed on 23-2-89, cancelling the order of the Disciplinary Authority dropping the charges dt.25-1-82 after issuing the notice Under Rule 29(1)(i) on 16-3-84 is unduly belated and therefore not sustainable. Though, According to Rule 29(1)(i) of the CCS(CCA) Rules, when the President is invoking the powers of revision, there is no period of limitation prescribed yet it is necessary that the powers have to be exercised within a reasonable time. The G.O.I. Instructions No.2 under Rule 29 contained in Swamy's Compilation of CCS(CCA) Rules, 19th Edition at page 108 G.I., MHA., OM No.43/109/64-AVD, dt. 18-11-1964 addressed to the Vigilance Officers of all Ministries/Departments of the Govt. of India, and (2) D.G., P&T Letter No.8/42/64-VIG, dt. 7-1-1965, addressed to all Heads of Circles and Administrative Officers contain instructions as to the necessity of scrutinising the disciplinary orders and suggesting scope for revision. This was intended to obviate delay in initiating proceedings for review. Though these instructions are also applicable to revision by Appellate Authority, in the interest of justice even if the power of revision is exercised by the President, it is necessary that the power should be exercised within a reasonable time. In this case, though the charge against the applicant was dropped by the

41

Disciplinary Authority in the year 1982, it was only two years thereafter that a notice was issued by the President informing the applicant that it has been proposed to revise the order of the Disciplinary Authority. Though the applicant had made a detailed representation in the year 1984 itself & for a period of five years no order was passed and it was only in the year 1989 that the order dismissing the applicant was passed. Since all the materials necessary for the President for taking decision were available or could have been made available within a reasonable period of six months, or even one year, after the reply of the applicant to the notice issued to him was received by the President, but it is not known why a decision could not be taken for a period of five years. Under these circumstances, we are of the considered view that the inordinate delay had caused considerable prejudice to the applicant and for that reason also the order is bad.

19. In the result, in the light of the foregoing discussions, we find that the impugned order of the President at Annexure-Y imposing on the applicant a punishment of dismissal from service is unsustainable in law. We, therefore, set aside the order and direct the respondents to reinstate the applicant in service with continuity of service with all the attendant benefits and to pay him arrears of salary for the period during which he was kept out of service within a period of 3 months from the date of communication of a copy of this order. There is no order as to costs.

(B.K. Singh)
Member (A)

(A.V. Haridasan)
Member (J)

21/9/94