CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

...

DATE OF DECISION .. 31st JAN. 1990.

PRESENT

HON'BLE SHRI S.P. MUKERJI, VICE CHAIRMAN

AND

HON'BLE SHRI T.S. OBEROI, MEMBER (JUDICIAL)

ORIGINAL APPLICATION No. 215/87

Shri D.P. Khosla .. Applicant

Vs.

1. Union of India through the
Secretary to the Government,
Department of Industrial
Development,
Udyog Bhawan, New Delhi.

2. The Director,
Ministry of Industry,
Department of Industrial
Development,
Udyog Bhawan, New Delhi. ... Respondents.

Shri E.X.Joseph .. Counsel for the Applicant

Ms. Rajkumari Chopra .. Counsel for the Respondents.

ORDER

(S.P.Mukerji, Vice Chairman)

In this application dated 11.2.87 filed under section 19 of the Administrative Tribunals Act, the applicant who had been working as Senior P.A. to Dr. S.P.Bhattacharya, Dy. Director General, Directorate General of Technical Development under the Ministry of Industry, New Delhi and retired on superannuation with effect from 31.10.1984, has prayed that the impugned

..2

order dated 7.1.87 (enclosure to Ann. A-8) withdrawing permanently the monthly pension under Rule 9 of the Central Civil Services (Pension) Rules should be set aside. He has also prayed that the chargesheet dated 10.8.84 should be quashed and Rule 9(1) of the CCS (Pension) Rules 1972 which empowers the President to reserve to himself the right of withholding or withdrawing a pension or part thereof whether permanently or for a specified period if the pensioner is found guilty of grave misconduct or negligence during the period of service through departmental or judicial proceedings, should be declared to be ultravires of the Constitution. His further prayer is that the Respondents be directed to pay to him pension and gratuity with interest. The material facts of the case in brief are as follows.

2. The applicant joined Government service in 1944 and retired on superannuation on 31.10.84. On 10.8.84 departmental proceedings were initiated against him and vide memo dated 10th August,1984 the following charges were framed against him.

"Article of Charge-I

That the said Shri Dharam Pal Khosla while being posted as Sr. PA to Dr. S.P.Bhattacharya, Dy. Director General, DGTD, M/o Industry, New Delhi during the years 1980 and 1981 communicated the copy of the concluding paragraph of the comments dt. 1.8.80 of Dr. V.R.B.Mathur, Asstt. Development

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Officer, DGTD regarding the recommendations for the issuance of Industrial Licence to M/s Nirlon Synthetics Fibres & Chem. Ltd. as available in File No. RC/D(146)/(339)/79-80 of Rubber Directorate, copy of telegram dt. 26.10.81 from M/s Modipon to DGTD., copy of the comments dt. 30.10.81 of Shri G.R.Inamdar, Industrial Adviser, DGTD on the said telegram dt. 26.10.81 and a copy of the D.O. letter dt. 26.10.81 from Shri Narain Dutt Tiwari, Minister for Industry to Shri Ghufram Azam, Member of Parliament regarding the import policy in respect of Polyster filament yarn as available in the file No. RN/5(16)/80-81 of the Synthetics Division, DGTD to Shri R.K.Sood and T.Mukherjee of M/s Nirlon Synthetics Fibres & Chem. Ltd. Barakhamba Road, New Delhi.

The aforesaid copies contained informations of confidential nature and meant for official use only and Shri Dharam Pal Khosla by communicating those copies, without any general or special orders of the Government authorising such disclosure or otherwise than in performance of good faith of the duties assigned to him, contravened the provisions of Rule 11 of the CCS (Conduct) Rules, 1964.

Article of Charge-II

That the said Shri Dharam Pal Khosla by abusing his official position as public servant communicated the aforesaid copies as mentioned in article of charge No.1 which were confidential in nature to Shri R.K.Sood and T. Mukherjee of M/s Nirlon Synthetics Fibres & Chem. Ltd. New Delhi and received an amount of Rs. 150 to 200 otherwise than his legal remunerations from M/s Nirlon Synthetics Fibres & Chem. Ltd., Barakhamba Road, New Delhi in lieu of the aforesaid illegal services rendered by him.

That the said Shri Dharam Pal Khosla by his aforesaid acts also exhibited lack of integrity and thereby contravened the provisions of Rule 3(1)(i) of the CCS(Conduct)Rules, 1964".

The applicant denied the charges and an enquiry was held against him. The Enquiry Officer in his report (Ann.A-6) dated 25th February 1985 came to the following findings:

"Article-I: On the basis of totality of evidence and preponderance of probability, the charge stands substantiated.

..4

"Article-II: There is no direct evidence that CO had accepted money in consideration of supply of documents to the firm. However, the possibility of money having been received by the CO cannot be ruled out in the context of overall evidence in this case. The charge that CO was in the habit of passing on confidential official information to various other firms does not stand substantiated. He may have received petty gifts like ball point pens or calendars but no serious cognisance of it can be taken as the articles are of petty nature."

As indicated earlier, during the pendency of the disciplinary prodeedings the applicant retired and was given full pension with effect from 1.11.84. But on 5.5.86 he was served with a memo stating that the President had provisionally come to the conclusion that the articles of charge against him were proved and it was proposed to withdraw permanently the monthly pension otherwise admissible to him. The applicant submitted a representation on 12.6.86 pointing out that the charges were not supported by any evidence and that the enquiry was vitiated by various factors including violation of the principles of natural justice and rules. By the impugned order dated 7.1.87 his entire pension was withdrawn permanently under Rule 9 of the CCS (Pension) Rules. This order was passed after consulting the Union Public Service Commission. The applicant has challenged the impugned order on various grounds. Firstly he has contended that the denial/withdrawa

of full pension by depriving him of his livelihood in his old age is violative of article 21 of the Constitution. He has also challenged the continuance of disciplinary proceedings after he had superannuated because, according to him, on his superannuation the master-servant relationship between him and the respondents came to an end on 31.10.84. He has also argued that pension being granted as deferred wages in lieu of his 40 years of service, its total withdrawal will be contrary to the modern concepts of welfare society and the observations made by the Supreme Court in various judgements notably in D.S.Nakara Vs. Union of India (AIR 1983 SC 130). He has also challenged the vires of Rule 9(1) of the CCS (Pension) Rules being in violation of Articles 14, 16, 21, 31, 38, 39, 41, 42 and 43 of the Constitution of India. He has further argued that when Rule 9(1) of the Pension Rules itself indicates that "where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of Rs.60 per mensem", the provision of total withdrawal of pension in the same Rule is self-contradictory. He has also argued that under Rule 8 of the Pension Rules, withdrawal of pension or a part thereof is permissible only when the pensioner is convicted of serious crime or is found guilty of grave misconduct and provides for an appeal against the order while Rule 9 of

the Pension Rules does not provide for a revision application against the decision of the President. The applicant's further argument is that since he was granted final pension and given it for two years, and not a provisional pension, Rule 9 of the Pension Rules which applies only when a provisional pension is granted cannot be applied to him. About the enquiry proceedings his contention is that extraneous material has been taken into account by the Enquiry Officer as the impugned order is based on "all other relevant evidences and circumstances of the case". He was not informed what "all other relevant evidences and circumstances of the case" were so that he could have rebutted the same. He has challenged the order on the ground of severity of punishment. He has argued that the Enquiry Officer accepted that the first charge was established on the basis of preponderance of probability as there was no proof or clear evidence. He relied entirely on the statements allegedly made by 4 witnesses during the course of preliminary investigation before the Deputy Superintendent of Police, CBI and since these statements were recorded behind his back, the same could not be admitted as evidence before the Enquiry Officer. He has very pertinently pointed out that these witnesses had disowned these statements which were relied upon by the Enquiry Officer. The witnesses did not make any statement in the course of the enquiry which even remotely indicated

that the applicant had passed on official documents to them. He has therefore challenged the findings of the Enquiry Officer on the first article of charge as perverse and based on no evidence and not even on preponderance of probability. He has argued that during 40 years of his service there was no stigma on his reputation and Dr. Bhattacharya, Dy. Director General himself had certified his integrity. So far as the second charge of accepting money is concerned, the Enquiry Officer himself found that there was no direct evidence and the charge that the applicant was in the habit of passing on confidential official information was not substantiated. He has thus been punished on the basis of suspicion and presumptions and not on evidence and proofs. He has challenged the recommendations of the UPSC also on the ground that it was based on suspicion, presumption and conjectures. He has also argued that the fact that the respondents did not institute a criminal case against him clearly showed that there was no material to substantiate the charges.

3. The respondents have indicated that the Enquiry officer found Article-I of the charge established on the basis of totality of evidence and preponderance of probability and found that Article-II of the charge

..8

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is proved in spite of lack of direct evidence because of the possibility of money having been received by the applicant has not been ruled out. According to them, Rule 9(1) of the CCS(Pension) Rules, 1972 empowers the President to withhold pension in whole or part, permanently or for a specific period, and ordering recovery from pension of the pecuniary loss caused to the Government. These powers have been conferred on the President by statutory rules framed under Article 309 of the Constitution. They have indicated that the payment of gratuity has been ordered. The respondents have argued that in accordance with Article 21 of the Constitution, depriving of life and personal property is permissible in accordance with procedure established by law and pension is not the personal property of the retired employees. Withdrawal of monthly pension can be effected under the established rules. They have clarified that under Section 9(2) of the Pension Rules, departmental proceedings, if [illegible] instituted during service, shall be deemed to be continued after retirement In accordance with Rule 8 of the Pension Rules, pension is subject to future good conduct and therefore the pensioner does not have an absolute right over it. They have denied that Rule 9(1) of the Pension Rules is ultravires of the various provisions of the Constitution as alleged by the applicant. Non-deduction of pension below Rs.60 does not invalidate the statutory provision of total withdrawal of pension under

Rule 9(1) of Pension Rules. They have indicated that the pension sanctioned to the applicant originally was in the nature of a provisional pension. The respondents have denied that principles of natural justice or provision of reasonable opportunity have been violated during the disciplinary proceedings. The UPSC was also consulted before passing the impugned order. The question of instituting criminal proceedings against the applicant had been left to the CBI.

4. We have heard the arguments of the learned Counsel for both the parties and gone through the oral and written arguments submitted by them. The relevant provisions of Rule 8(1) and Rule 9(1) and (2) of the Central Civil Service (Pension) Rules, 1972 are as follows:

> "8(1) (a) Future good conduct shall be implied condition of every grant of pension and its continuance under these rules.
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> *(b) The appointing authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.
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> *Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees sixty per mensem....
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> * * *
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> "9(1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement

"Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees sixty per mensem.

"2(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

"(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,--

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

From the above, it is clear that grant and continuance of pension is not an absolute right of a pensioner and that the pension can be withheld or withdrawn in part or full, permanently or temporarily, if the pensioner is found guilty of grave misconduct. It is also clear that the President has the statutory power of withholding or withdrawing pension in the above manner if in a departmental proceeding the pensioner is found guilty

..11

16

of grave misconduct during the period of his service. It is also clear that if departmental proceedings are instituted before superannuation the same can be continued and concluded by the authority by which they were commenced even after his retirement in the same manner as the Government servant had continued in Government service. The question of sanction of the President arises only if the departmental proceedings were instituted while the Government servant is not in service. On the above basis, the pleas taken by the applicant that the President has no power to withhold the pension or the respondents could not have continued with the departmental proceedings after his retirement without Presidential sanction have no force. The mere fact that the word "provisional" was not mentioned while the pension was sanctioned to the applicant on his superannuation, is a technical matter which cannot change the inherently provisional character of the pension in view of the pendency of the disciplinary proceedings at the time of applicant's superannuation.

5. We, however, find considerable force in the applicant's contention that since no specific charge was formulated to say that he was guilty of grave misconduct and the articles of charge as quoted earlier refers only to contravention of Rule 11 of the CCS(Conduct) Rules, lack of integrity and contravention of Rule 3(1)(i)

17

of the CCS (Conduct) Rules. The charges do not reflect the category of grave misconduct which is contemplated in Rules 8 and 9 of the CCS (Pension) Rules. As has been indicated above, these Rules can be invoked only when "grave misconduct" and not mere "misconduct" is involved. The impugned order dated 7.1.87 also does not anywhere directly or by implication indicate that the applicant has been found to be guilty of grave misconduct. The Union Public Service Commission in their advice also let the matter rest by stating that "the charges which have been proved against the charged officer are of a very serious nature". They have not used the words "grave misconduct" even though in para 2 of their letter they have specifically referred to Rule 9 of the Pension Rules. Even if we assume that the Commission did not consciously make any distinction between "very serious" and "grave misconduct" in their recommendations to the Government, the fact that neither the charges nor the Enquiry Officer nor the Presidential order gave a specific finding about the misconduct being grave, the element of gravity cannot be imported in the Presidential order especially when the chargesheet itself was silent about the same.

6. This very question was under consideration of this Tribunal. In K.M.Sharma V. Union of India, A.T.R.1987 (1) C.A.T. 307 a Bench of this Tribunal while discussing the

provisions of rule 9(1) of the Pension Rules, observed as follows:

> "This rule empowers Government to withhold, withdraw or reduce pension if it finds that the misconduct committed was a grave misconduct or negligence while the pensioner was in service. The power to withhold or withdraw or reduce pension can be exercised only in cases of grave misconduct or negligence of duty and not in all cases of misconduct. The power to withhold or withdraw or reduce pension, which undoubtedly results in serious consequences to a pensioner, can be exercised only in the circumstances enumerated in Rule 9(1) of the Pension Rules and not in all cases. The exercise of power by Government is conditioned by its finding that the misconduct or negligence was a grave one and not otherwise. The order itself must disclose that Government had applied its mind to the nature of misconduct and that misconduct or negligence in duty was a grave one. A fortiori Government must also so record that in its order itself. From this it follows that the order made by Government does not conform with the requirements of Rule 9 of the Pension Rules and is manifestly illegal." (emphasis added)

Repelling the argument of the learned counsel for the Union of India that the misconduct should be taken to be grave on the basis of the report of the enquiry officer and the opinion expressed by the UPSC, the Tribunal observed as follows:

> "When Government had not examined and found on the nature of misconduct or negligence, we cannot examine them for the first time as if we are a court of appeal and hold that the misconduct or negligence if any, committed by the applicant as a grave one. We cannot make good the deficiency in the order of Government and reconstruct the order and sustain it as if we are Government. For these reasons, we see no merit in this contention of Sri Verma and we reject the same."

In view of the above ruling, we find that the findings of the Enquiry Officer and the impugned Presidential order do not fully amount to meet the requirements of Rules 8 and 9 of the Pension Rules for the purposes of withholding the applicant's pension and are thus illegal.

19

7. We are not convinced by the arguments of the learned Counsel for the applicant that since the applicant was not placed under suspension or criminal proceedings were not instituted against him or because he was allowed to superannuate, the disciplinary proceedings could not continue or end in withdrawal of his pension. The most important contention of the applicant is that the finding of the Enquiry Officer that both the charges are established is based on no evidence. Though we are conscious of the self-denying principle of the courts that they are not to assess the evidence in disciplinary proceedings for the degree of proof, it goes without saying that where the allegation is that the finding is either perverse or based on no evidence the courts can look into the corpus of evidence on which the finding of guilt is based. In Union of India Vs. H.C.Goel, AIR 1964 SC 364, a Constitution Bench of the Supreme Court held that where a Government servant is dismissed on no evidence the Court can intervene. In State of Haryana Vs. Rattan Singh, AIR 1977 SC 1512 the Supreme Court held that "sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the Court to look into because it amounts to an error of law apparent on record." We, therefore, proceed to discuss whether

..15

the allegation of the applicant that the finding of his guilt by the Enquiry Officer as accepted by the disciplinary authority, is based on no evidence, has any leg to stand on.

8. The applicant was working as Sr. P.A. to Dr. Bhattacharya, Deputy Director General, Directorate General of Technical Development (DGTD). The DGTD is the technical adjunct of the Ministry of Industry, which makes recommendations on technical aspects of applications for licences, sanctions and other orders of regulatory or developmental nature where assessment of facts and averments of industrial technology, engineering and economics is involved. Though the assessment by the DGTD is recommendatory in nature, naturally their recommendations carry considerable weight with the Government in taking decisions on industrial investment, capacity expansion, export-import licence, extending validity of licences and sanctions and other matters which have considerable financial implications. The first charge against the applicant was that he communicated unauthorisedly the comments given by the Technical Officers of the DGTD on the question of issue of industrial licence to M/s Nirlon Synthetics Fibres and Chemicals Ltd, a copy of the telegram dated 26.10.87 from M/s Modipan alongwith the comments which the Industrial Adviser, DGTD had given on that telegram and a copy of the D.O. letter which the

Industry Minister had sent to a Member of Parliament regarding import policy in respect of polyester filament yarn. These copies were said to have been communicated by the applicant to Shri R.K.Sood and T.Mukherjee of M/s Nirlon Synthetic Fibres and Chem. Ltd. in their office at Barakhamba Road, New Delhi. The second charge was that these copies were communicated to the aforesaid persons in consideration of receiving an amount of Rs. 150-200. Prima facie it appears that the communications, copies of which were said to have been handed over by the applicant, are not terribly confidential or contain such matters which may affect the security of the country or invite other serious consequences. The comments of the Technical Officers are only recommendatory in nature and the contents of the copy of the letter which the Industry Minister had communicated to the M.P. on a policy matter were in any case available to the outside world. The culpable part of the charge is that the applicant communicated these copies unauthorisedly and for monetary benefit. There are two limbs of the two charges framed against the applicant as follows:

a) that the applicant communicated the recommendations of the two Technical Officers and a copy of the letter written by the then Industry Minister to an M.P., and

..17

22

b) that the communication of copies was for the purpose of getting monetary return.

So far as the first limb of the charge is concerned, the Enquiry Officer relied upon the fact that the copies of the aforesaid documents were recovered by a search conducted by the CBI from the residence of Shri Sood, Manager, M/s Nirlon Synthetic Fibres and Chem. Ltd. and from the office premises of that company on 27.5.82. The search list of the office and residence of Shri Sood was signed by Shri Sood and by two independant witnesses who were working as LDC and UDC in DGTD and also by the CBI officer who conducted the search. The two independant witnesses and the CBI officer appeared before the Enquiry Officer and admitted their signatures on the search list. Therefore, it was absolutely right on the part of the Enquiry Officer to conclude that the three incriminating documents referred to in Article-I of the charge were actually recovered from the residence and office of the company.

9. But the crucial question on which the entire edifice of the disciplinary proceedings rests was whether these documents which were recovered, had found their way to the company or its Manager through the applicant or not. It appears that Shri Kapur, Dy.S.P., CBI who conducted the preliminary investigation had

23

recorded the statements of 4 witnesses during preliminary investigation. These witnesses were one Shri R.K.Sood who was the Manager of M/s Nirlon Synthetic Fibres and Chem. Ltd., one Shri P.N.Sharma, Liaison Officer of the same company, one Shri J.C.Mehta who was Superintendent of the Company and the fourth one was Shri T. Mukherjee, Liaison Officer of the Company. The first witness had allegedly stated before the C.B.I. officer that the documents in question were delivered by the applicant either to Shri Sood or to Shri Mukherjee during 1980-81 and the applicant received the amount of Rs. 150-200 at the rate of Rs. 40 to 60 per document. According to Shri Sharma, his recollection was that the documents were supplied by the applicant and some documents by some other officers. He could not however identify any particular document as having been given to the company by the applicant. Shri Mehta also made a general statement that the applicant and some other officers of the DGTD have been visiting the Company's office and meeting Shri Mukherjee for supplying official documents for which they were paid in cash. Shri Mukherjee is said to have stated before the Dy.S.P. that the official documents or copies recovered during the search were delivered by the applicant either to him or to Shri Sood.

10. As has been stated earlier, the aforesaid statements had not been signed by any of the four witnesses. Over and above, when these four witnesses were examined before

the Enquiry Officer, all of them denied having given statements before the CBI officer and they had to be declared to be hostile. During cross-examination, they accepted that they were present during search but disowned that portion of their statements which implicated the applicant by referring to the receipt of the documents through him. The Enquiry Officer has gone into great pains to explain why these witnesses turned hostile and disowned their statements recorded by the CBI implicating the applicant as having been given the documents. The Enquiry Officer has stated in para 13 of his report that on 27.1.85 the witness Shri Sood came before him for examination and gave him a letter of that date saying that on 27.5.82 the CBI officers had carried out search of his office premises and seized certain documents, that he was subsequently called by the CBI for interrogation and he learnt that CBI treats him as one of the accused. Accordingly, in the letter to the Enquiry Officer, he prayed that he should be relieved of the obligation of tendering evidence before the Enquiry Officer as that would prejudice his defence if he is prosecuted by the CBI. The Enquiry Officer rejected the plea and examined him and concluded that the witnesses disowned the statements given before the CBI and turned hostile because by admitting the contents of their statements they would have involved themselves in the commission of the crime of

having accepted copies of official documents from the C.O. It was also argued by the Enquiry Officer that if they had owned their statements before the CBI of accepting documents from the Charged Officer, their company management would have punished them for bringing a bad name to the company. It has also been argued by the Enquiry Officer in his report that since the search documents were signed by these witnesses most probably they must have given the statement to the CBI implicating the applicant. In these circumstances, the E.O. concluded that "the charge that copies of official documents were made available by the C.O. to M/s Nirlon Synthetic Fibres and Chem. Ltd. stands substantiated on the basis of preponderance of probability." He has further come to the conclusion that "therefore, there is no evidence to suggest that the C.O. was in the habit of passing official information to these companies cited in the chargesheet."

As regards the UPSC, they have accepted the statements made by the 4 witnesses before the CBI even though the same was disowned by them before the E.O. on the ground that these witnesses during the enquiry had admitted part of their statements as true and denied the other parts implicating the applicant.

11. As has been stated earlier, even if the recovery of seized documents is accepted as established, that

76

does not in any manner establish the first Article of the charge against the applicant unless it is established that it is the applicant who delivered the seized documents to the company. The sole basis on which the applicant has been implicated is the unsigned statements allegedly made by the 4 witnesses before the CBI, which statements they disowned before the E.O.

12. The question before us now is whether the statements made by some witnesses befo re the CBI which tney had not signed and which they had disowned before the E.O., can be relied upon by the E.O. in establishing that the documents had been delivered by the C.O. It is an established law that the finding of the E.O. or the disciplinary authority should be based only on evidence led before them in the presence of the delinquent officer. Material or evidence which was collected or recorded behind the back of the charged delinquent officer can be considered by the E.O. only on the satisfaction of the following conditions,

a) the evidence collected or recorded during preliminary investigation or behind the back of the charged officer must be admitted and accepted before the Enquiry Officer in the presence of the delinquent charged officer, by the person who gave the evidence;

..22

27

b) the evidence or material so accepted should be subjected to cross-examination by the C.O.;

c) the C.O. should not be taken by surprise by such evidence or material and should be given sufficient opportunity to produce evidence in rebuttal and give arguments in defence.

13. We are afraid that in the case before us the statements disowned by the witnesses could not have been relied upon by the E.O. at all, for the reason that having been disowned by those who are alleged to have made the statements, they could not be incorporated as evidence led before the Enquiry Officer. Further, since because of the denial of those statements by these witnesses the witnesses could not have been corss-examined by the applicant, the statements denied by them will completely lose their admissibility against the applicant. Thirdly, since the statements had not been signed by the witnesses, they cannot be considered even if their denial is not accepted. We are fortified in our strong convictions as indicated above in rejecting the unsigned , unadmitted and un-cross-examined statements given before the CBI against the applicant by some of the celebrated rulings of the Supreme Court and High Courts as discussed below:

In Union of India V. T.R.Varma, (1958) S.C.R. 499 a Constitution Bench of the Supreme Court held as

28

follows:

> "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 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. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed". (emphasis added).

In State of Mysore and others Vs. Shivappa Makapur, AIR 1963 SC 375 a Constitution Bench of the Supreme Court categorically stated that before any statement made behind the back of the delinquent officer is taken into account, the delinquent officer must be given a full opportunity to cross-examine the party which made that statement, and observed as follows:

> "The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him.".

A full Bench of the Supreme Court in Phulbari Tea Estate V. its Workmen, AIR 1959 SC 1111 held that where copies of statements made by the witnesses were not supplied before the delinquent officer was asked to question them and the statements

23-A

were not read over to the employee at the enquiry before he was asked to question the witnesses and where the earlier statements were produced before the Tribunal, but the witnesses were not produced so that they might be cross-examined, the dismissal of the employee was not justified on the ground of proper procedure not having been followed.

In Ram Babu Pushkar V. Union of India and others, (1968) 6 ATC 1004 the Allahabad Bench of this Tribunal held that the statements made during the preliminary enquiry cannot be considered as evidence if the person making those statements is not produced. Of course, the previous statement can be utilised for corroboration or discrediting the witnesses by cross-examination. The evidence heard at preliminary inquiry must be reproduced in the departmental inquiry if it is considered necessary to be relied upon. If the charged officer is not allowed to cross-examine on the preliminary evidence, the principles of natural justice are violated. The Tribunal further held -

> "As already stated, the purpose of the fact-finding inquiry is to ascertain whether it is a fit case for starting a regular departmental proceeding. If the evidence led before the fact-finding body is supposed to be sufficient to connect the delinquent officer with the charge then what is the necessity of holding a departmental inquiry. The departmental inquiry has to be held under the rules for awarding a punishment. There may be cases in which false complaints are made. So it would be hazardous

to believe the complaint only on the ground that the complainant is not normally willing to face cross-examination during the departmental inquiry. There is absolutely nothing to show that those complainants were won over. From the mere fact that the applicant visited the complainants shop or he had past record of 'bad deeds', a reasonable inference cannot be drawn that the applicant has accepted illegal gratification of Rs. 100."

In State of Madhya Pradesh Vs. Chintaman Sadashiva Vaishampayan, AIR 1961 SC 1623(1628), a Constitution Bench of the Supreme Court held as follows:

'As Venkatarama Aiyar, J. has observed in Union of India 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 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.'

In a similar case as before us where the statement made during preliminary enquiry was retracted, the Bombay Bench of the Tribunal in Ramjilal Dhuriram v. Union of India & Others, ATR 1987 (2) C.A.T. 35, held that such statements

....26

cannot be relied upon by the Enquiry Officer. One of the basic rules to be followed in the departmental enquiry is that no information received or recorded in the absence of the delinquent is entitled to any value and such inadmissible evidence cannot be taken into consideration by the Enquiry Officer. Hence the Enquiry Officer should not have relied upon these statements for the simple reason that they were made in the absence of the applicant and not supported during the enquiry. In other words the statements cannot be relied upon as legal evidence.

In M/s Baraily Electricity Supply Co. Ltd. V. The Workman and others, 1971(2) S.C.R. 617 the Supreme Court held that on the principle of natural justice "no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are not subjected to cross-examination by the party against whom they are sought to be used."

In Central Bank of India V. P.C.Jain, AIR 1969 SC 983 the Supreme Court held that "statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act.

14. We cannot also help taking adverse notice of the fact that the Enquiry Officer has concluded that the retracted statements of the witnesses are correct statements on the basis of a letter which the witness Shri Sood produced before him on 27.1.85 seeking exemption from giving statement before the E.O. To rely on this letter without making a copy of the same available to the charged officer and subjecting the witness to be cross-examined is also against the basic tenets of natural justice. The ruling of the Constitution Bench of the Supreme Court in Union of India Vs. T.R.Varma (1958) S.C.R. 499, as quoted earlier, also enjoins that no material can be relied upon against the charged officer without his being given an opportunity of explanation. In State of Assam and another V. Mahendra Kumar Das and others, AIR 1970 SC 1255 the Supreme Court held that any material collected behind the back of the delinquent officer if relied upon by the Enquiry Officer without it having been disclosed to the delinquent officer, the enquiry proceedings are vitiated. In the facts and circumstances we are convinced that there is no evidence at all nor preponderance of probability to bring home the first charge that the applicant delivered copies of the documents in question unauthorisedly to the private company. In P.B.Rocho V.Union of India and others, 1984 (2) SLR 359 it was held by the Kerala High Court

that in disciplinary proceedings although the rules of evidence and procedure of a Civil Court are not strictly applicable, in cases involving serious charges with consequences as grave as dismissal, the standard of fairness and reasonableness as interpreted and adopted by the Civil Court will apply to meet the ends of justice. What is appropriate degree of probability that is required in a given case depends on what is at stake.

15. So far as the second limb of the charge of the applicant's accepting money from the private company for delivering the documents is concerned, the E.O. himself has concluded that there was no direct evidence that the applicant had accepted money but suspected that the possibility of money having been received by the applicant cannot be ruled out in the context of overall evidence. Since, as discussed above, the charge of delivery of documents by the applicant has not been proved, the second article of the charge about the acceptance of money for delivery of documents automatically falls through. Even otherwise it is an established law that the guilt cannot be said to be established on the basis of suspicion and conjectures especially when the punishment is of dismissal, removal or other serious consequences. In Union of India Vs. H.C. Goel, AIR 1964 SC 364 a Constitution Bench of the Supreme Court held that though corruption has to be rooted out from

public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. The principle that in punishing the quilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules. In Nand Kishore Prashad V. State of Bihar and others, 1978 SLJ 591 the Supreme Court held that even in domestic enquiries which are quasi judicial in character, suspicion cannot be allowed to take the place of proof. In State of Assam V. Mohan Chandra Kalita and another, AIR 1972 SC 2535 the Supreme Court held that a charge cannot be sustained on mere conjectures in absence of evidence. In Gian Singh V. The State of Himachal Pradesh and others, 1975 LAB.I.C. 73 the High Court of Himachal Pradesh held that where the penalty involved is dismissal or removal, it is of the utmost importance that the mind of the Enquiry Officer and the Disciplinary Authority should be applied with scrupulous regard to the material on the record and that it should be followed by a clear and definite finding. A halting and inconclusive finding serves no purpose at all. It is meaningless.

16. In view of the overwhelming judicial pronouncements at the highest level against the manner in which the

34

Enquiry Officer, the Disciplinary Authority and the UPSC have accepted against the charged officer unsigned, disowned and un-cross-examined statements made by certain witnesses behind his back to implicate the applicant and based their finding of guilt on suspicion and conjecture without positive proof or admissible evidence and without reference to "grave misconduct" as contemplated in rules 8 and 9 of the CCS (Pension) Rules, we have no hesitation in rejecting the disciplinary proceedings in their entirety. Accordingly, it is not necessary for us to go into the constitutionality and 'vires' of Rule 9 (1) of the CCS (Pension) Rules, 1972. We allow the application to the extent of setting aside the disciplinary proceedings and the impugned order dated 7.1.87 and the chargesheet dated 10.8.84 and direct the respondents to restore and pay, if not already paid, the full pension and other retirement benefits to the applicant in accordance with the rules as if the impugned order dated 7.1.87 had not been passed. Action on the above lines should be completed within a period of three months from the date of communication of this order.

There will be no order as to costs.

31.1.90

(T.S. OBERAI)
MEMBER (JUDICIAL)

(S.P. MUKERJI)
VICE CHAIRMAN