

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 353/1987
T.A. No.

198

DATE OF DECISION 18.5.1990

Shri Partap Singh

Petitioner

Shri K.L. Bhatia, Counsel.

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri M.L. Verma, Counsel.

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *✓*

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PRINCIPAL BENCH
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.... Applicant.

Versus

Union of India and Others.

.... Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the Applicant.

... Shri K.L. Bhatia,
Counsel.

For the Respondents.

... Shri M.L. Verma,
Counsel.

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji,
Chairman)

Shri Partap Singh, the applicant, has filed this Application under Section 19 of the Administrative Tribunals Act, 1985 against an order of compulsorily retiring him from service.

The applicant states that he was charged for falsely marking his attendance on certain dates in the attendance register for the month of September, 1982 and making entry of work including progress register in September, 1982 in the office of the respondent No. 4, Commandant, Ordnance Depot, Shakurbasti, Delhi during his service. A Departmental Enquiry was held and he was compulsorily retired from service vide order dated 2.6.1984 and his appeal against the above order was also rejected vide order dated 14.3.1986. He states that the entire enquiry proceedings were vitiated as the Enquiry Officer proceeded in an arbitrary manner and contrary to the settled procedure laid down in the provisions of

CCS(CCA) Rules. He has prayed for the quashing of the order of compulsory retirement and the Appellate order and has also prayed for his immediate reinstatement in service.

Before we proceed to consider the arguments raised at the Bar, it will be necessary to state the essential facts briefly.

The applicant joined service as a L.D.C. in 1963 with the respondent No. 4, Commandant, Ordnance Depot Shakurbasti, Delhi in Control Branch. A charge-sheet was issued by respondent No. 3, the Officer Incharge AOC (Record), Secunderabad on 26.7.1983. Respondent No. 3 appointed an Enquiry Officer and a Presenting Officer for the Departmental Enquiry against the applicant. The Enquiry Officer was one Shri M.L. Gupta. The Enquiry Officer held the enquiry in the office premises of Respondent No. 4 at Delhi and had summoned the applicant to appear before him on 5.1.1984 and 23.1.1984. The applicant was on leave and he never entered the office premises on 5.1.1984. He had not been informed about the date of 5.1.1984 either. He attended the enquiry on 23.1.1984. The applicant's case is that he was made to sign certain papers purporting to contain the enquiry proceedings of 23.1.1984 and also of the previous date of 5.1.1984. The enquiry proceedings were closed on 23.1.1984. He submitted his findings to Respondent No. 3

on which the latter issued the punishment order dated 2.6.1984. The applicant was neither given a copy of the Enquiry Officer's report nor was he given an opportunity of show cause. He had, however, received a copy of the enquiry report, proceedings and the punishment order on 13.6.1984 at his home. He preferred an appeal to respondent No. 2 through respondent No.4. The applicant also sent a copy of his appeal dated 14.6.1984 to the respondent No. 2 (Director, Ordnance Service (OS-8C) Master General of Ordnance Branch, Army Headquarters, DHQ, New Delhi. The applicant was verbally told that his appeal had been rejected and consequently he sent a notice under Section 80 CPC through his counsel to respondent No. 1 and 4. The applicant did file a suit. In the meanwhile, the Central Administrative Tribunal came into being and the result of the appeal dated 14.6.1986 reached him. Consequently, he filed the present O.A.

We have heard, Shri K.L. Bhatia, learned counsel for the applicant, who took us through the Enquiry Officer's report, proceedings, the findings and the appellate order. He urged that from a perusal of the report of the Enquiry Officer, particularly about the proceedings and his findings, it would be evident that a novel procedure was adopted by the Enquiry Officer which is not in accordance with CCS(CCA) Rules nor it

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adheres to the rules of natural justice. A most arbitrary order had been passed for the applicant's compulsory retirement from service. He urged that a perusal of the counter-affidavit showed that the order of compulsory retirement was not passed merely on the basis of the Enquiry Officer's report but also took into account the past record of the applicant. The learned counsel submitted that the past record could not be taken into consideration when the charge-sheet indicated specific items only.

Shri M.L. Verma, counsel for respondents took a preliminary objection about the maintainability of the O.A. on the ground of being barred by limitation. Secondly, he urged that this court does not sit in appeal to appraise the evidence adduced and it must strictly go by the conclusions arrived at by the Enquiry Officer and Disciplinary and Appellate authority. Thirdly, he urged that the proceedings were not vitiated either under or the Rules for breach of rules of natural justice. The applicant had appeared before the Enquiry Officer and had signed all the papers. He is stopped from challenging either the proceedings or the conclusions.

Having heard learned counsel for the parties and having perused the Enquiry Officer's report in detail, we are of the opinion that this is a case where the Enquiry Officer did not go through the procedure nor followed the

rules of natural justice. We are further of the view that the order of compulsory retirement of the applicant was passed on the basis of grossly erroneous and unwarranted procedure followed by the Enquiry Officer. The order of compulsory retirement cannot stand. Our reasons are as follows:

Article of Charge I reads as follows:
Gross Misconduct.

That the said Shri Pratap Singh while functioning as LDC in OD Shakurbasti during the period Sep 82 indulged in falsification of the records and tampered with the official records and thus committed an act of "Gross Misconduct".

Statement of imputations of misconduct in support of the articles of charge framed against Shri Pratap Singh, LDC Ordnance Depot, Shakurbasti.

In that the said Shri Pratap Singh while functioning as LDC in OD Shakurbasti has indulged in falsification of records. He was absent on 02 Sep 82, 06 Sep 82 to 08 Sep 82, 13 Sep 82, 16 Sep 82 and 29 Sep 82 to 30 Sep 82 as per daily progress register but he has marked himself as present on S-37 (Attendance Register) except 30 Sep 82. Further, he has cleaned 44 items (by converting L into 44 of indent checking of AF&S on 16 Sep 82 where as he was actually absent on that date.

Shri Pratap Singh by his above acts exhibited conduct unbecoming of a Govt. servant in violation of Rule 3 of CCS(Conduct) Rules, 1964.

List of documents by which the Articles of charges framed against Shri Pratap Singh, LDC Ordnance Depot Shakurbasti are proposed to be sustained:

- (a) Control Branch progress Register of Sep 82 of OD Shakurbasti.
- (b) S-37 (Attendance Register) of Sep 82.
- (c) Records of Indent Checking of AF&S of OD Shakurbasti.

However, under the heading 'List of witnesses by whom the articles of charge framed against Shri Pratap Singh are proposed to be sustained', contained not a single name.

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A perusal of Annexure C-1 shows that it is a part of the proceedings of 5.1.1984 to investigate into the charges levelled against the applicant. After re-citing Article of Charge I and then the ~~status~~ ^{ment} of imputations and misconduct and the list of documents, there is the following entry:

"After reading the articles of charges, the Inquiry Officer asked Shri Pratap Singh the following:-

Q (1) Do you plead guilty of the charges framed against you?
Ans: 'No'

Q (2) How do you propose to defend yourself? Will you defend yourself or do you want someone else to defend on your behalf? In case you want a defence assistant, please nominate names of three persons in the order of precedence.

Ans: The court adjourns same day.

Sd/- xxxxx
(Mahar Singh)

Signature of the
Presenting Officer

Sd/- xxxxxx
(Pratap Singh)
Signature of the accused."

Sd/- xxxxxxxxxx
(M.L. Gupta)
DOC (S)
Inquiry Officer

This indicates that the applicant was present on 5.1.1984 when he was asked whether he pleaded guilty to the charges framed against him. The answer is in the negative. The next question is also significant. How did he propose to defend him and whether he needed someone to defend him and to indicate the name of such a person, in the space against the answer the words are "the court adjourns same day". All this is enigmatic. The applicant's

case is that he was not even present on 5.1.1984. He was on leave. He had no information of the date and he had not attended the enquiry proceedings on that date. The applicant further states that he had information for the proceedings on 23.1.1984 and when he went there, certain papers were placed before him and he had to sign those papers and that included the above answer to Question No. 1 mentioned above. Since he was not present, giving answer to Question No. 2 does not arise. His case is that had he been asked, he would have surely indicated that he wanted himself to be defended by a proper person and he would have disclosed the name. We need not trouble ourselves as to what he would have said. The question that remains to be considered is 'was he or was he not present on 5.1.1984.' It would be relevant to look at the answer given in paragraph 6(f) of the reply by the Brig Commandant:

"Not agreed. The applicant was given full opportunity to defend himself. It is agreed that the applicant was on leave on 5 Jan 84 but when he signed the proceedings of inquiry on 23rd Jan 84 he could have objected to sign the said papers but he did not do so. On 23 Jan 1984 when the prosecution witnesses gave statements and cross examined by the Inquiry officer, the applicant was given full chance to cross examine the witnesses but he declined to do so. Since he was proved guilty the individual was punished."

The above statement clearly shows that the applicant was on leave on 5.1.1984. There is assumption in the counter-affidavit that the applicant was present during the enquiry

proceedings but the fact is that he was not present. The proceedings of 5.1.1984 which indicate that questions were asked of him and he answered one question is patently wrong. If he was present on that date, there can be no reason for not answering the second question in the proceedings of 5.1.1984. Thus the inclusion of Question No. 1 and its answers were therefore, wholly incorrect and has vitiated the proceedings of enquiry. Question No. 2 as seen above, required a definite answer from the applicant but no answer is mentioned. All that the Enquiry Officer writes is "court adjourns same day". There are several defects in the proceedings. The enquiry proceedings are not court proceedings nor is it a court. If it was being adjourned, a date should have been fixed simultaneously. That has not been done. The absence of an answer to Question No. 2 further supplements the conclusion that the applicant was not present on that date. Otherwise, he would have given an answer one way or the other.

A perusal of the proceedings of 23.1.1984 is also indicative of proper procedure not being followed. It will be relevant to quote the same:

"The court again re-assembled in LPO's office on 23 Jan 84 at 10.50 Hrs and the following were present:-

- (a) No. 20324 O/S gde I Shri Mohar Singh (Presenting Officer)
- (b) No 6955872 LDC Shri Pratap Singh (person charged)
- (c) O/Supdt Shri Murari Lal (Control Branch)
- (d) UDC Shri Jagdish Raj

2. The Inquiry Officer asked office Supdt Shri Murari Lal (I/c Coord Section Control Branch) to state facts of the case.

Having been duly warned Shri Murari Lal states as under:-

I am working as I/c Coordination Control Branch since April 1982. Normally, I check the attendance Register S-37 of Control Branch daily to adjust the staff warranting situation to avoid the creation of arrears of control branch. On 29th Sep 82, LDC Shri Pratap Singh did not attend the office on that day. On checking the attendance Register it revealed that signatures both for incoming and out going for 29th Sep 82 appeared against the name of the Shri Pratap Singh. This matter was brought to the notice of control officer Major SP Gandhi, who ordered to investigate the matter. During investigation it revealed that he is absent from duty on 2nd Sep 82, 6 Sep 82 to 8 Sep 82, 13th Sep 82, 16th Sep 82. It was further revealed that daily progress given by the I.B. Staff being maintained in daily progress register was also shown as 44 items against the name of Shri Pratap Singh. On 16 Sep 82, this figures did not include in the total No of items cleared on that day. It appears that this figure was added subsequently. Attendance register of Control branch are daily sent to Est (NI) for making of absentees. Scrutiny of attendance register revealed that the signature against the date mentioned above i.e. 2nd Sep 82, 6 Sep 82, 13 Sep 82, 16 Sep 82 and 29th Sep 82 already appears against his name. Shri Pratap Singh submitted a leave application for three days leave commanding from 6th Sep to 8 Sep 82. This leave application was put up to control officer in the leave register being maintained in the control branch for the recommendation of control officer. The leave application in question was removed from the leave register before being sanctioned by the control officer. It appears that some one was acting on his behalf who were helping to mark him present on the dates mentioned above.

The above statement has been read by me and I sign it as correct.

S/d x x x
(Murari Lal)
O/Supdt gds. I
Control Branch

It shows that two persons, apart from the Presenting Officer and the Applicant present there were the O/Supdt Shri Murari Lal and UDC Shri Jagdish Raj. It is not indicated whether these persons were there as witnesses. The last sentence of Para 2 is significant:

"It appears that someone was acting on his behalf who were helping to mark him present on the dates mentioned above."

The allegation is not that the applicant did it but someone on his behalf. The name of that some one has not been revealed nor has it been proved that the said person was acting on behalf of the applicant or under his instruction.

Immediately thereafter, we find that the Enquiry Officer asking ~~—~~ Shri Murari Lal three questions. Learned counsel for the applicant states that these were in the nature of cross-examination and this is not permissible under the CCS(CCA)Rules. He can only elicit certain information by way of clarification but is not entitled to cross examine any witness of the prosecution.

Thereafter, the Enquiry Officer asked Jagdish Raj to state the facts of the case. He was duly warned (whatever that may mean). After he had signed the statement, the Enquiry Officer asked 4 questions which were also in the nature of cross examination. After Shri Jagdish Raj completed his answers to the Enquiry Officer, the proceedings indicate the following sentence :

" Thereafter the court asked LDC Shri Pratap Singh (accused) if he wants to cross examine the prosecution witnesses but he declaimed to do so. The court then sustained the charges levelled against Shri Pratap Singh who has made the following statement in his defence:-

I did not attend the depot on the dates 2nd Sep 82, 6 Sep to 8 Sep 82, 13 Sep 82, 16 Sep 82, 29 Sep to 30 Sep 82, and I submitted the leave applications for the said dates in my office. The question of signing the attendance register S-37 by me as the above dates does not arise since I was on leave."

At the bottom of the page is the signature of the applicant, Enquiry Officer and the Presenting Officer. All this shows that the procedure followed by the Enquiry Officer was a novel one. Two witnesses appeared. Their statements are recorded and they were cross examined. After cross examination by the Enquiry Officer was over, then a question was asked to the applicant on 23.1.1984 whether he would like to cross examine the prosecution witnesses. The Enquiry Officer writes that the applicant declined to do so. The Enquiry Officer then writes 'the court then sustained the charges levelled against Shri Pratap Singh who made the statement in his defence'. It means that he upheld the charges framed against the applicant and therefore he asked the applicant if he had anything to say. The procedure followed by the Enquiry Officer is not only strange but contrary to rules.

A perusal of Rule 14 of the CCS (CCA) Rules, 1965 requires the Disciplinary Authority to deliver to the government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained. In the present case the proceedings commenced before the Enquiry Officer on 5.1.1984 and there is nothing to indicate whether the list of witnesses was ever supplied to the applicant. Sub-rule 8(a)

of the Rule 14 entitles the government servant to take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the enquiry is held to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner. The Government servant can also take the assistance of any other Government servant posted at any other station subject to the permission being granted by the Enquiry Officer for reasons to be recorded in writing.

In this case, some questions had been framed but their answers are not there. What is significant is that on the first day of the inquiry i.e. 5.1.1984 the Enquiry Officer first should have enquired from the applicant whether he got a copy of the charge-sheet and whether he wants to have the assistance of some other Government servant and then fix a date for recording the statement of witnesses. What is important is that the Enquiry Officer must enquire from the Government servant whether he admits the charge or not. It is only when he refutes the charges that the Enquiry Officer can proceed in the matter.

Sub-Rule(14) of Rule 14 reads as follows:

" On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary

authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit."

The above procedure was not followed in this case at all. The witnesses were to be examined by the Presenting Officer and a right is granted for their being cross examined by or on behalf of the Government servant. The enquiring authority is also entitled to ask such questions to the witnesses as he thinks fit but only after the cross examination is over. In this case what has happened is that immediately after the examination of the witnesses, the Enquiry Officer has started asking questions. These questions can only be for clarifying something. The questions cannot be asked for the purpose of cross examination and in the present case after he had completed putting questions to the witnesses, he asked the applicant to cross examine the witnesses. The procedure followed is not in consonance with the stipulated rules.

Sub-rules 16 and 17 of the CCS(CCA) Rules, 1965 read as follows:

"When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally, it shall be recorded, and the Government servant shall be required to sign the record. In either case, a copy of statement of defence shall be given to the Presenting Officer, if any, appointed.

The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority."

From a copy of the proceedings, we find there is nothing to show whether the applicant wanted to produce any

witness on his behalf. We have not gone into the evidence actually tendered by the two witnesses or the statement given by the applicant in the enquiry proceedings because it is not a part of the function of this Tribunal to enter into the appraisal of the evidence so adduced before the Enquiry Officer. We have to see whether a proper procedure was followed.

We are satisfied from the perusal of the material on the record that the proper procedure was not followed. Firstly, the proceedings were completed in only two sittings, on one of which, the applicant was not even present. The Enquiry Officer put down the question proposed to be asked to the applicant and its possible answers in the order on the agenda of 5.1.1984 when admittedly the applicant was not present. This was wholly wrong and contrary to the rules of procedure and also amount to deprivation of opportunity to the Government servant. Secondly, the Question No. 2 which was written down and which had no answer to it was not repeated on 23.1.1984 when the applicant was present before him. Both those questions should have been repeated on that date and then the Enquiry Officer should have proceeded. The Enquiry Officer has made no attempt to find out whether the Government servant wanted to defend himself or to take the assistance of another Government servant. Thirdly, the Enquiry Officer has proceeded to cross examine the witnesses. This is not permissible under these procedures. He can only ask questions for clarification and that too after the Government servant had the opportunity to cross examine the

witnesses. The veracity of the statement of witnesses is to be done in cross examination. If there is anything left to be clarified, there alone he can be asked questions by the Enquiry Officer and otherwise. The procedure of "cross examination" and asking questions to the witnesses by the Enquiry Officer even before the cross examination by the Government servant is wholly misconceived and betrays an awful lack of knowledge of procedure. Apart from the above, no notice in writing was ever given to the applicant as required under Rule 14(7) of the CCS(CCA) Rules. It has also been noticed that no witness was named in the charge-sheet yet they were presented and their evidence was recorded. This was also contrary to Rules. After recording the statement of Shri Murari Lal, the applicant was not asked whether he wanted to cross examine him or not. As a matter of fact, he was deprived of an opportunity to cross examine Shri Murari Lal altogether.

A perusal of Annexure C.2 which contains the findings of the Enquiry Officer does not show that he has considered the evidence or appraised it. He has merely given a recital of certain facts but has not applied his mind to record what the witnesses had said and how was the case proved. He has merely come to the conclusion. "The individual Shri Pratap Singh is found guilty of the charges levelled against him by doing the act of gross misconduct (tampered with the official records)." This is not a report in accordance with law in-as-much as it gives no reasons for holding the charge proved.

Suffice it to say that the procedure followed by the Enquiry Officer was vitiated not only by non-compliance of the CCS(CCA) Rules but also of the rules of natural justice. The Disciplinary Authority has also not applied his mind to all these defects in procedure and his order imposing punishment of compulsory retirement from service is also vitiated. There is no speaking order either.

In the case of Shri P.N. Sharma Vs. UOI (1988(6) ATC 904), a Full Bench of the Tribunal has held that a copy of the Enquiry Officer's report must be given before imposing a penalty so that the applicant may represent on it. According to the Full Bench, it is imperative to give a copy of the Enquiry Officer's report to the delinquent before imposing a penalty. This has also not been done in the present case.

In this case a punishment of compulsory retirement has been passed against the applicant. Although it is within the powers of the Disciplinary Authority to impose the punishment of compulsory retirement but that has to be based entirely on the disciplinary proceedings against the applicant. It is not open to the disciplinary authority in such a case to take into consideration the earlier record of the applicant. If he is to be compulsorily retired, there must be a clear finding that he has either completed 50 years of age or 30 years of service. The Disciplinary Authority has not considered this aspect of the matter at all. Assuming that the applicant had falsified the attendance register or made interpolations in the records, then a case has to be made out that it calls for exemplary

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punishment like that of compulsory retirement from service. It is always open to the authorities in the department where the applicant is employed, to move for his compulsory retirement on the basis of his past record. But in the present case that cannot be used. When the applicant was facing a specific charge, the fact that the Disciplinary Authority took into consideration his past record for passing the punishment indicates that the applicant was given no opportunity to meet this aspect of the case.

The fact that the respondents took the past service of the applicant into consideration is writ clearly in the reply filed by the respondents. The record shows that the Enquiry Officer had given a verdict that the applicant is guilty of the charge framed against him. After the Enquiry Officer's report was sent to AOC Records, it was recommended that the penalty of compulsory retirement be awarded to Shri Pratap Singh, if approved, as he had been already awarded punishment earlier in different cases viz., warning issued, censured, increment withheld pay reduced in three stages.

Thereafter, it is recorded that OIC AOC Records being the appointing authority awarded major penalty of compulsory retirement from service with effect from 13th January, 1984 (A/N) on account of gross misconduct (indulged in falsification of records) keeping in view the above record of punishments already awarded to the petitioner.

The Appellate Authority has also not applied its mind to the questions raised nor has carefully scrutinised the

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procedure followed by the Enquiry Officer. In view of the non-observance of proper procedure during the enquiry and by not giving a copy of the Enquiry Officer's report to the applicant, the report of Enquiry Officer as well as the order of the Appellate Authority are not liable to be sustained and must be set aside. We have to consider the question as to whether the matter should be sent back before the Appellate Authority to reconsider the matter and write a reasoned order but we find that the procedure before the Enquiry Officer was vitiated and even a fresh order passed by the Appellate Authority will not be able to undo the erroneous procedure followed by the Enquiry Officer. In this view of the matter both the orders have to be struck down.

This is a clear evidence that the past record had been taken into consideration for imposing the penalty of compulsory retirement. This could not be done as indicated above. We are, therefore, satisfied that there has been a gross failure of justice in this case.

In the result therefore the order dated 2.6.1984 imposing the punishment of compulsory retirement is set aside. The appellate order dated 14.3.1986 is also set aside. The applicant, if he has not reached the age of superannuation, will be reinstated in service forthwith. Further, he will be entitled to the consequential monetary benefits from the date of his compulsory retirement from service to the date of reins-

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statement and if already superannuated then till the date of superannuation. In the circumstances of the case, we grant the applicant a sum of Rs.1000/- as costs.

B.C. Mathur
18.5.90

(B.C. MATHUR)
VICE-CHAIRMAN (A)

AB

(AMITAV BANERJI)
CHAIRMAN

AB
18/5