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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2044/90.

New Delhi, this the 21st day of March, 1994.

SHRI J.P.SHARMA, MEMBER(J).
SHRI P.T. THIRUVENGADAM, MEMBER(A).
SHRI B.K.SINGH, MEMBER(A).

Shri K.L. Gulati,
s/o Late Shri Gulab Ram Gulati,
resident of 1327, Sector IV,
R.K.Puram, New Delhi, employed at
Army Head Quarter, E-in-C, (Branch)
New Delhi/ G.E.E.P. Surat Garh. ...Applicant

(Applicant present in person)

Versus

1. Union of India,
through Secretary,
Ministry of Defence,
South Block, New Delhi.

2. Army Head Quarters,
Engineer-in-Chief (Branch),
Kashmir House, New Delhi.

3. Chief Engineer,
Western Command,
Chandimandir, Chandimandir.

4. Chief Engineer,
Bathinda Zone,
Bathinda Cantt.

5. Garrison Engineer,
Engineer Park, Surat Garh. ..Respondents

By advocate : Shri P.P.Khurana.

O R D E R

SHRI J.P.SHARMA :

The Original Application came for hearing before a Division Bench and was disposed of by the Order dated 16-12-93 with the observation that the case may be placed before a Larger Bench of the Tribunal to determine whether the disciplinary

proceedings conducted against the applicant are legally valid or not and further to what extent, if any, the relief prayed for by the applicant in this case may be allowed to him. By the order of the Hon'ble Chairman dated 4-2-94, the matter was ordered to be listed before this Bench on 18-2-94. We, therefore, heard the applicant in person and the counsel for the respondents.

2. The applicant K.L.Gulati was Supervisor B.S. Grade I of G.E. Engineer Park, Surat Garh where he was transferred from Delhi by the order dated 20-9-85. Against the said order of transfer, the applicant filed Civil Writ Petition No.2525 of 1985 challenging the aforesaid order of transfer. On 16-10-85, the Delhi High Court passed an interim order : "the operation of the order dated 20-9-85 transferring the applicant is stayed till the next date". The writ petition stood transferred to the Principal Bench of the Central Administrative Tribunal. The stay was vacated by the Tribunal by the order dated 29-7-86. Thereafter, a chargesheet dated 21-10-86 was drawn against the applicant for holding a departmental enquiry under rule 14 of the CCS (CCA) Rules, 1965. The chargesheet was sent to the applicant at his known

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/address
/by registered post but it could not be served. A publication was also made in the newspaper 'Urdu Milap' dated 15-1-87 and in the English newspaper 'The Hindustan Times' dated 24-2-87. Thereafter, the oral enquiry commenced on 28-2-87. The respondents have also taken steps to serve the chargesheet through Superintendent of Police, South District, New Delhi but the applicant refused to accept the service and the registered letter sent to him returned with the endorsement of the postal employee that in spite of repeated visits at adressee's residence, the same was found locked. The enquiry officer fixed the preliminary hearing on 27-4-87. The applicant joined the proceedings before the enquiry officer in May, 1987 but he did not appear after 2nd June, 87 and no further hearing was held and the enquiry officer submitted the report on 15-6-87. The disciplinary authority passed the order on 24-8-87 removing the applicant from service. He was ultimately removed from service w.e.f. 14-9-87 and the punishment order was served upon him. A press notification with regard to the same was issued on 20-11-87.

3. The applicant filed OA 214 of 1988 on 4-2-88 challenging the order of removal. He has prayed for

the reliefs in that O.A. that the public notices issued against the applicant notifying his removal from service be declared null and void and quashed. That O.A. was decided by the common order dated 9-6-89 along with other proceedings filed by the applicant. Regarding OA 214 of 1988, it was disposed of with the observation that in the facts and circumstances of the case, the holding of ex-parte enquiry against the applicant in accordance with the CCS(CCA) Rules, 1965 was justified. It was further observed that the penalty imposed deserves re-consideration in the light of what has been stated in para 43 to 46 of the judgment. It was, therefore, directed that the applicant will file an appeal within one month from the date of communication of this order to the appeallte authority against the impugned order dated 24-8-87 imposing upon him the penalty of removal from service and the appellate authority shall consider the appeal as early as possible but in any event not later than three months from the date of the receipt of the appeal and pass a speaking order. In case he feels aggrieved by the decision of the appellate authority, he will be at liberty to file a fresh application in this Tribunal in accordance with law, if he is so advised.

4. The applicant thereafter filed an appeal to Engineer-in-Chief on 16-6-89. He filed the present application on 4-10-90 in which he did not mention at all regarding the order passed in his appeal. However, the appeal was rejected by Engineer-in-Chief by the order dated 23-11-89. The applicant has not directly assailed this order and only referred to the earlier order passed in OA 214 of 1988 dated 9-6-89 for a declaration that the observation made by the Division Bench in their order that ex-parte departmental enquiry in the case of the applicant was wholly justified be quashed. This original application was contested by the respondents on a number of grounds stating that the applicant has no prima facie case. The applicant with mala fide intentions and ulterior motives refused to accept the order dated 23-11-89 passed on his representation against the order of removal dated 24-8-87. The reply was sent to him through certain officers as well as through registered post and when service could not be effected, it was served by publication in the English daily 'The Hindustan Times' and Hindi daily 'Nav Bharat Times'. It is further stated that on 1-3-90 at the time when certain proceedings between the applicant and the respondents were pending in Court

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No.II, the representative of the respondents produced the sealed envelop before the Bench for being handed over to the applicant but the applicant did not indicate his willingness to receive the same. Further, in the judgment of OA 214/88 decided on 9-6-89, in para 35, it has been observed that the preliminary hearing of the departmental enquiry was held on 27-4-87 in the office of the G.E.(P), Surat Garh and subsequent to this date, the enquiry was held on 7th, 8th, 9th, 28th, 30th May and on 1st and 2nd June of 1987. The Tribunal, therefore, in the aforesaid judgment held that the holding ex-parte enquiry against the applicant in fact and circumstances of the case cannot be held to be unjustified and that the applicant was not entitled to the relief sought. Thus, the contention of the respondents is that if the applicant was aggrieved of the judgment of OA 214/88 dated 9-6-89, the appropriate remedy was for preferring an appeal to the Supreme Court or seek a review of the judgment. Thus, it is stated that the application be dismissed.

5. We have heard the applicant in person and the learned counsel for the respondents at length and perused the records. A preliminary objection has been

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raised by the counsel for the respondents Shri P.P. Khurana that after the decision of the OA 214/88 by the order dated 9-6-89, the scope of this O.A.2044/90 is limited only to the extent whether the appeal has been disposed of by the appellate authority by a speaking order as per direction in the earlier judgment dated 9-6-89. The Tribunal, therefore, cannot go into the merits of the case as the same were considered in the earlier judgment where holding of an ex-parte enquiry was held to be justified. We have given a careful consideration to this preliminary objection. It shall be necessary to refer to certain observation made in the earlier judgment of OA 214/88. We have already referred to the direction issued by the Tribunal on 9-6-89 in OA 214/88 whereby the applicant was directed to file an appeal and the respondents to dispose of the appeal by a speaking order taking into account the observation made in the judgment in paras 43 to 46. The same paragraphs are quoted below :

> " 43. In this context, the question still arises whether in the facts and circumstances of the present case the alleged misconduct of unauthorised absence from duty is of such a nature that imposition of the penalty of removal from service would be justified.
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> 44. Rules 27(2) of the CCS (CCA) Rules, 1965 provides inter alia that in the case of imposition of a major penalty, the Appeallte Authority shall consider (a) whether the procedure laid down in these rules have been complied with, and if not, whether such non-

compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice; (b) whether the findings of the disciplinary authority are warranted by the evidence on the records; and (c) whether the penalty imposed is adequate or inadequate or severe. In the instant case, the appellate authority had no occasion to consider these factors as the applicant did not choose to prefer an appeal.

45. The applicant has served the Government for more than 26 years. There is no allegation of misconduct involving moral turpitude, or any charge of corruption or suspected doubtful integrity on the part of the applicant. The gravemen of charge against him is that he refused to comply with the order of transfer and remained on unauthorised absence from duty. Imposition of the penalty of removal from service entails forfeiture of proportionate pension and other retirement benefits. Does this not cause undue hardship to the family of the Govt. servant dependent on him for survival and sustenance in the evening of his life? Should not the authorities concerned be even-handed while deciding the question of quantum of punishment? These aspects should be considered while deciding the quantum of punishment. In order to avoid the charge of vindictiveness, justice, equity and fair play demand that the punishment must be commensurate with the gravity of the alleged misconduct. This is a well recognised principle of jurisprudence. (vide Shri Ramakant Misra vs. State of U.P., 1982(3) SCC 346 at 350). Any departure from this principle would amount to vilation of Article 14 of the Constitution. (vide Shri Bhagat Ram Vs. State of H.P., 1983(2) SCC 442). In a recent case where the service of an employee was terminated for absenting himself from duty for three days without leave, the Supreme Court set aside the impugned order of termination of service and in its place a punishment of censure to be entered in the service record was ordered to be substituted. (Vide Ashok Kumar vs. Union of India JT 1988(1) SC 652).

46. In the facts and circumstances of the case, we are of the opinion that the penalty imposed deserves reconsideration in the light of what is stated in para 45 above. In the interest of justice, we, therefore, direct that the applicant may prefer an appeal to the appellate authority against the impugned order of removal from service dated 24-8-1987 within a period of one month from the date of communication of a copy of this Order. The

> appellate authority shall dispose of the appeal as early as possible but in any event not later than three months from the date of receipt of the appeal preferred by the applicant and pass a speaking order. The appellate authority should give due consideration to the observations made in para 43 to 46 above. In case the applicant is aggrieved by the decision of the appellate authority, he will be at liberty to file a fresh application in this Tribunal in accordance with law, if he is so advised. "

It shall also be necessary to refer to the conclusions arrived at in the judgment dated 9-6-89 in para 61 which is quoted below :

> " 61. Before parting with these cases, we cannot help observing that throughout the course of this protracted litigation in which numerous M.P.s, C.C.P.s and R.A.s have been filed by the applicant, he did not have the benefit of good counsel. He appeared to be excessively obsessed with the justness of his stand and unduly sensitive to any contrary view advanced by the respondents. This explains for his persistence in his request for initiating proceedings against the senior officers of the respondents for perjury. Certain issues raised by him in the pleadings like corruption in high places in his department, the so-called plot and conspiracy to destablise the nation and to assassinate the head of the department claimed to have been filed by him, are extraneous to the issues involved in the proceedings before us and, at best, might serve as a subtle attempt to influence, if not prejudiced, our minds. We have not in any manner been influenced by these oddities of the litigation and have arrived at our decision on the merits of each case. Likewise, we hope, that the respondents will ignore these extraneous considerations and the events of the past and comply with the directions given to them in this judgment in a fair and just manner.
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> A copy of this judgment is placed in each of the case files. "

6. These observations go to show that the applicant has started a spate of litigation with the

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department soon after his order of transfer from Delhi to Surat Garh on 20-9-1985. He was determined to fight for his right and justice and was unwilling to succumb to an order passed by a person in authority over him. The authority were not willing to continue the applicant at Delhi. The applicant has been having unrelenting attitude towards the department obsessed by his thinking that he still continues to be in service and the disciplinary proceedings drawn against him were only fact finding enquiry. He had not accepted the orders conveyed to him from time to time as these were returned to the respondents with certain endorsement of the postal official and has come to the court. The applicant, in the meantime, after filing the writ petition in the High Court where he was granted interim stay against the transfer on 16-10-85 and the interim order was stayed and that was ultimately vacated on 29-7-86, moved an application to the respondents for voluntary retirement from service in Jan.,87. Soon after the vacation of this stay order on 29-7-86, the applicant applied to the authorities that he intends to proceed on voluntary retirement and the same be granted to him. The question, therefore, involved for decision in the earlier O.A. was also whether after the disciplinary enquiry was held ex-parte against him, the order of punishment imposed

by the disciplinary authority was justified in the circumstances of the case or not? A reading of paras 43 to 46 of the judgment of OA 214/88 leaves no doubt that the Tribunal has not considered the various grounds taken by the applicant against the order of punishment of 24-8-87. It is an established law that if in proceedings the points raised involved certain issues for decision if not covered and decided and in the adjudication arrived at finally in the earlier case, the petitioner was given liberty to assail any final order which may be passed by the competent administrative authority on re-consideration of the impugned order which was assailed in the earlier proceedings, in that case, the correctness or otherwise of the earlier order could be considered after the final order has been passed by the competent administrative authority on a representation against the impugned order assailed earlier.

7. In view of these facts and circumstances, the preliminary objections raised by the learned counsel for the respondents that OA 2044/90 cannot go into the validity or otherwise of the order dated 24-8-87 which was the subject of decision on similar grounds in OA 214/88 has no basis.

8. The first issue that arises in this case is that the respondents have invoked the provisions of CCS (CCA) Rules, 1965, and admittedly the memo of chargesheet dated 21-10-86 showing certain misconduct of unauthorised absence from duty was issued under rule 13(2) of the CCS (CCA) Rules, 1965. The applicant has not directly challenged the application of the CCS (CCA) Rules, 1965, nor this issue has been raised by the respondents in their reply or during the course of the arguments. However, the procedure prescribed under rule 14 of the CCS(CCA) Rules, 1965, has been gone into and the enquiry proceedings have been conducted according to these rules in ex-parte manner. The applicant has also joined in those proceedings of oral enquiry from 7th to 9th May, 28th and 30th May, 1st and 2nd of June, 1987. The applicant also denied the charges against him but he did not attend the hearings thereafter to substantiate his denial. The enquiry officer, therefore, submitted his report to the disciplinary authority who passed the impugned order of punishment of removal from service dated 24-8-87. However, since the point has been argued by the applicant before us, it is to be seen whether the applicant a permanent civilian employee in the defence services and drawing his salary from the defence

estimates would be governed by the CCS (CCA) Rules, 1965 or not. In fact, this matter has been considered at length by the Hon'ble Supreme Court in the case of UNION OF INDIA AND ANOTHER v. K.S. SUBRAMANIAN reported in AIR 1989 SC 662. Para 10 and 11 of the judgment at page 664 are reproduced below :

> " 10. By virtue of Art. 311(2), no civil servant can be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of the charges. Article 311(2) thus imposes a fetter on the power of the President or the Governor to determine the tenure of a civil servant by the exercise of pleasure. Tulsi Ram case (AIR 1985 Sc 1416) concerned with the exclusion of Art. 311(2) by reason of second proviso thereunder. We are also concerned with the exclusion of Art.311(2), if not by second proviso but by the nature of post held by the respondent. We have earlier said that the respondent is not entitled to protection of Art.311(2), since he occupied the post drawing the salary from the defence estimates. That being the position, the exclusionary effect of Art.311(2) deprives him the protection which he is otherwise entitled to. In other words, there is no fetter in the exercise of the pleasure of the President or the Governor.
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> 11. It was, however, argued for the respondents that 1965 Rules are applicable to the respondent, first, on the ground that R. 3(1) thereof itself provides that it would be applicable, and second, that the Rules were framed by the President to control his own pleasure doctrine and, therefore, cannot be excluded. This contention, in our opinion, is basically faulty. The 1965 Rules among others, provide procedure for imposing the three major penalties that are set out under Art.311(2). When Art.311(2) itself stands excluded and the protection thereunder is withdrawn there is little that one could do under the 1965 Rules in favour of the respondent. The said Rules cannot independently play any part since the rule-making power under Art.309 is subject to Art.311. This would be the legal and logical conclusion. "

Subsequent to the decision of this case, the matter was also considered by the Central Administrative Tribunal, Calcutta Bench in the case of Inderjit Dutta Vs. Union of India reported in ATJ 1992 Vol.I p.44. This judgment is solely based on the ratio of the judgment of the Hon'ble Supreme Court in Union of India and Another vs. K.S. Subramanian (Supra). Though we could not get any help from either of the parties on this issue and nothing has been argued on either side, but we have gone further into the matter and have considered the other authorities on the point decided by the Hon'ble Supreme Court earlier in the case of J.M. Ajwani vs. Union of India and Others reported in 1967 SLR p.471. The Hon'ble Supreme Court upheld the dismissal of a engineer holding civilian post connected with defence. In that case, the order was passed without holding of formal inquiry inasmuch as inspection of the documents was also not allowed nor any personal hearing was given to the petitioner of that case. In another case of Lekhraj Khurana Vs. Union of India and Others reported in AIR 1971 SC page 2111, the petitioner of that case was Supervisor holding a civilian post connected with defence. His services were terminated after one month's notice without any enquiry and termination without enquiry was challenged. It was held that he was not entitled

to the protection conferred by Article 311 of the Constitution. Another authority on the point is the earlier case of Union of India and others Vs. K.S. Subramanian reported in AIR 1976 SC page 2433. Here, the Hon'ble Supreme Court has taken the view that since Article 311 of the Constitution is not applicable and the protection is not conferred on the civil defence employee, CCS (CCA) Rules, 1965 will apply where disciplinary proceedings have been taken against him while holding a civil post connected with defence. The appeal of Union of India was dismissed. However, Hon'ble Supreme Court has re-considered this point and reviewed the judgment of the earlier case of K.S. Subramanian in Civil Appeal No.212(NCE) of 1975 on 15-12-1988 which was finally disposed of as said above.

9. The Hon'ble Supreme Court in this later case of K.S.Subramnian also considered the question whether the 1965 Rules framed under the proviso to Article 309 of the Constitution of India apply to respondent or become inoperative in view of the Article 310 of the Consitution of India. Article 310(1) deals with the tenure of the office of persons serving the Union or the State. the doctrine of pleasure of President is embodied in Article 310(1). The Hon'ble Supreme has

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considered the scope of Article 310(1) and of Article 309 of the Constitution in the case of Ram Nath Pillai Vs. State of Kerala (AIR 1973 SC 2641) and it has been observed at page 2645 as follows :

> " 17. Article 309 provides that subject to the provisions of the Consitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. Therefore, Acts in respect of terms and conditions of service of persons are contemplated. Such Acts of Legislature must however be subject to the provisions of the Constitution. This atracts Article 310(1). The proviso of Article 309 makes it competent to the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules and regulating the recruitment and the conditions of service of persons appointed, to such services and posts under the Union and the State. These Rules and the exercise of power conferred on the delegate must be subject to Article 310. The result is that Article 309 cannot impair or affect the pleasure of the President or the Governor therein specified. Article 309 is, therefore, to be read subject to Article 310. "

10. The above authority has also been considered in the latter case of K.S.Subramanian (supra) and the Hon'ble Supreme Court has also considered the Constitution Bench judgment of Union of India vs. Tulsi Ram reported in AIR 1985 SC page 1416. Thus, rules under Article 309 are subject to the pleasure doctrine enunciated in Article 310.

11. In view of the above discussion of law, we hold that the rules framed under Article 309 as in the present case, the CCS(CCA) Rules, 1965 are not competely excluded from application to the civil employees in defence services paid out of defence estimates. Where the order is passed under Article 310(1) for termination, removal or dismissal from service, then these rules are not applicable to such an employee but regarding other punishment likely to be imposed, the Article 310(1) does not restrict the application of these rules as these are not specifically barred by the Constitution and there is a specific provision under rule 3 of the CCS (CCA) Rules that these shall be applicable to the civil employees in defence estimates also. Even in cases where an order of termination, dismissal or removal is passed by application of the rules, that order will not become illegal inasmuch as the deliquent employee has been given an extra benefit of the rules which are nothing but the principles of natural justice codified under the rules, adquate opportunity is afforded to the aggrieved employee to place his submissions by way of defence over and above making a challenge to the impugned order of termination. The total exclusion of the rules from

application to civil defence employee is not envisaged under the scheme of the rules as well as under Article 309 of the Constitution of India. The judgment of the Calcuttta Bench, therefore, of Inderjit Dutta's case has to be understood in the same context.

12. In the case of M.S.DASAN Vs. UNION OF INDIA & OTHERS, /1993(24) ATC p.43, the Ernakulam Bench also considered the plea of the respondents Union of India that the petitioner of that case was connected with the defence service and, therefore, not governed by CCS (CCA) Rules, 1965. This plea was rejected by the said Bench of Central Administrative Tribunal by the order passed in OA-341/91 decided on 15-7-92, reported in 1993 (24) ATC page 43. However, in this case, the Tribunal has considered the judgment passed by the Hon'ble Supreme Court in the case of UNION OF INDIA Vs. K.S. SUBRAMANIAN reported in 1976 (3) S.C.C. page 677. The Tribunal, however, has not considered the view taken by the Hon'ble Supreme Court in the latter case of UNION OF INDIA Vs. K.S. SUBRAMANIAN reported in 1989 SUPPL. (1) S.C.C. page 33. The extract of that judgment has been quoted above. In another case of CH. NARAINA CHAYULU Vs. SECRETARY, MINISTRY OF DEFENCE, NEW DELHI & OTHERS, /((1990)14 ATC p.479), the Hyderabad Bench of

the Central Administrative Tribunal considered the rights of civilian employees in defence service whether they are governed by CCS (CCA) Rules, or not, and in OA 171/89 decided on 19-11-89 reported in 1990 (14) ATC page 479, after discussing the case law on the point including the case of TULSI RAM PATEL reported in 1985 (3) S.C.C. page 398, concluded in para 11 as follows :

> " 11. From the various cases cited as discussed in the preceding paras, the following legal propositions would emerge in regard to the rights of civilian employees in the defence services :
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> (i) These employees are not entitled to the benefits of Article 311 of the Constitution of India when their services are sought to be terminated under Article 310 of the Constitution. They cannot also claim rights similar by virtue of the service rules since the service rules must conform to the provisions of the Constitution. Any rule which eradicates or limits the powers of the President/Governor under Article 310 would be ultra vires.
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> (ii) The power under Article 310 can be exercised by any minister or officer under the rules of business framed either under Article 77(3) or under Article 116(3) or in exercise of powers vested in them by rules framed in this behalf, that is, the pleasure of the President or the Governor can be exercised by a minister/officer on whom the President or the Governor confers or delegates the power.
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> (iii) The right to opportunity by reason of applicability of the principles of natural justice is expressly excluded to defence employees and civilian employees in the defence services when their services are terminated exercising the 'pleasure doctrine' by virtue of Article 310 read with Article 311 of the Constitution of India.

(iv) Where the power under Article 310 of the Constituion has not been delegated by the President and the appointing authority/disciplinary authority seeks to remove such an employee, without affording him a reasonable opportunity, the exercise of such a power would be contrary to the rule of 'audi alteram partem'/principles of natural justice and would be arbitrary and violative of Article 14 of the Constitution. The procedure prescribed by the Government in such cases viz., applying the CCS (CCA) Rules is a valid procedure and subserves or satisfies the test of 'audi alteram partem'. Consequently, non-compliance with the rules in such a case would be illegal and ultra vires of Article 14. "

13. In view of the above facts and circumstances, the first issue referred to the Larger Bench is decided in the manner that /to civilian employees in defence services, the CCS (CCA) Rules, 1965, shall be applicable with the limitations discussed in para 12 above.

14. We will now /consider the other issue whether the order of termination of services of the applicant is legally valid or not and to what extent, if any, the reliefs prayed for by the applicant in this case may be allowed to him. In OA 2148/88, the applicant assailed the order of punishment and the Tribunal has considered that matter by its order dated 9-5-89. The Tribunal has held that in the circumstances of the

case, the holding of ex-parte inquiry cannot be held to be unjustified and, therefore, declined to grant any relief prayed for in that application. However, the Tribunal remanded the case to the appellate authority to decide the appeal under the provisions of Rule 27(2) of the CCS (CCA) Rules, 1965, directing to consider whether the procedure laid down in these Rules has been applied with, and if not, whether the non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice; further whether the findings of the disciplinary authority are warranted by the evidence on the records; and whether the penalty imposed is adequate or inadequate or severe. We have gone through the appeallate order dated 23-11-89 passed under the directions of the Tribunal by the aforesaid order dated 9-6-89. This order has been passed by Engineer-in-Chief. The appellate authority has upheld the punishment order dated 24-8-87. However, no personal hearing was given to the applicant nor the appellate authority has considered regarding the quantum of punishment. In this case, it is material to note that the applicant was transferred by the order dated 20-9-85 from Delhi to Surat Garh. He has served a notice dated 15-10-86 for pre-mature

retirement from the post of P.B.S.O. The chargesheet dated 21-10-86 was despatched to the applicant at his home address. The preliminary inquiry was fixed on 27-4-87. It continued till 2-6-87 when defence case was in progress and the applicant is said to have left the proceedings without permitting the inquiry officer to complete his own examination. Thereafter, the inquiry officer submitted the report on 15-6-87. The appellate authority, however, observed that the applicant could not be construed to have proceeded on voluntary retirement from service as he had never submitted a three months' notice to the appointing authority seeking voluntary retirement. However, this fact appears to be incorrect as the Garrison Engineer, Engineer Park, Surat Garh, by the memo dated 30-4-87, in reference to the letter of 24-2-87, he was informed that if he wishes to seek voluntary retirement, he can do so by submitting an application to the Chief Engineer, Western Command. In the present case, Chief Engineer, Bhatinda Zone has issued the major penalty chargesheet. Thus, the notice of seeking voluntary retirement from service was already pending with the Chief Engineer, Bhatinda Zone, when the proceedings commenced against the applicant in April, 1987. The punishment awarded to the applicant, therefore, does not appear to be

commensurate with the charge established against the applicant. In OA 2148/88 in para 45, the Tribunal has already observed that imposition of penalty of removal from service entails forfeiture of proportionate pension and other retirement benefits. The para 45 of the said judgment has been quoted in full above. The appellate authority has not considered this aspect also. The scope of the Tribunal to interfere in the quantum of punishment is very limited and that is why the appellate authority was directed to consider this aspect also while considering the appeal of the applicant. However, the appellate authority totally ignored this direction. This is all the more necessary in view of the decision of the Hon'ble Supreme Court in the case of RAM CHANDER Vs. UNION OF INDIA reported in 1986 VOL.II SLJ page 240. The Hon'ble Supreme Court in the aforesaid case held that the appellate authority has to consider from every angle the various grounds taken by the appellant in the memo of appeal and after giving a personal /stage /since the enquiry report was not given at earlier/ hearing,/ dispose of the same. In this case, the appellate authority has not considered this particular aspect.

15. The punishment awarded to the applicant is not commensurate with the misconduct alleged against

the applicant. Firstly, when the applicant was transferred by the order of 20.9.85, according to the administration, the movement order was issued on 30.9.85. However, the Delhi High Court granted an interim stay against the said order of transfer. That was only vacated when the case came on transfer to the Tribunal on 29.7.86. The case of the applicant as represented in the inquiry also is that he came over to join in August, 1986 at Suratgarh but he was not allowed to join. His case is also that he moved for voluntary retirement by three months' notice in October 1986. In such a situation when there is no allegation of misconduct involving moral turpitude or any charge of corruption or of suspected doubtful integrity on the part of the applicant, the quantum of punishment of removal from service appears to be wholly disproportionate.

16. Having discussed above the merits of the inquiry proceedings and noting that in the earlier OA 214/88, the proceedings of ex-parte enquiry have not been adversely commented, we do feel that in the circumstances of the case, the appellate authority has not seriously applied its mind to the quantum of punishment awarded to the applicant eventhough there was specific direction given in the earlier decision in OA 214/88. In fact, in the case of PARMANAND vs. UNION OF INDIA reported in AIR 1989 SC p.1185, the Hon'ble Supreme Court laid down the law regarding interference of the court or the Tribunal inthe matter of award of punishment in the departmental inquiry: The Tribunal can only judicially review the praoceedings and may interfere in the circumstances of the case. The Tribunal should not undertake upon itself the judgment of imposing punishment commensurate with the guilt of the delinquent which has been established in the departmental enquiry and that finding has been upheld at judicial review. At the same time, there is a catina of judgments of Hon'ble Supreme Court where it has been held that the quantum of punishment should not be harsh. In Judgment Today 1994 (1) SC 217 STATE BANK OF INDIA vs. SAMARENDRA KISHORE, the Hon'ble Supreme Court felt that the punishment of removal was harsh in the

circumstances and the matter was remitted to the appellate authority for reconsideration.

17. We have come to the conclusion that the punishment in this case is harsh for the following reasons:-

a) That the applicant could not join the place of transfer as per transfer order of 20.9.85 because of interim stay granted by the Delhi High Court by order dated 16.10.85. The stay was vacated on 29.7.86 by the Tribunal when the writ petition stood transferred under Section 29 of the AT Act 1985. However, the applicant has been charged for unauthorised absence for this period also in the charge-sheet drawn against him in October, 1986;

b) The applicant has taken the stand that he went to join his duty on 4.8.86 and there is certain material on record also that the applicant went to Suratgarh but the respondents have denied this fact;

c) The applicant has applied for seeking voluntary retirement from service before the commencement of the inquiry by a notice but the respondents had sent a reply to him by the memo dated 30.4.87 that he should apply for the same according to rules. He has applied to the Chief Engineer, Bhatinda Zone, Suratgarh. This reply to the applicant was given much after a period of three months has expired;

d) There is no allegation of any misconduct on account of either insubordination or of lack of integrity or aggressive behaviour or corruption during the whole tenure of service of the applicant which is about 26 years.

18. The application, therefore, is partly allowed. The order of the appellate authority rejecting the appeal of the applicant is quashed. The appellate authority shall decide the appeal of the applicant after giving him personal hearing. The appellate authority shall consider whether the quantum of punishment is commensurate with the

misconduct which is only of non-joining on the post as per transfer order which itself was assailed by the applicant before the Delhi High Court. The appellate authority will also, while disposing of the appeal, take the mitigating circumstances observed inthe last para. The directions given in the earlier order of OA 214/88 should also be taken into account. The appellate authority may dispose of the appeal within six months from the date of receipt of a copy of this order. Parties are left to bear their own costs.

(B.K. Singh)
Member (A)

(P.T. Thiruvengadam)
Member (A)

(J.P. Sharma)
Member (J)

'KALRA'