

In the Central Administrative Tribunal  
Principal Bench, New Delhi

Regn. Nos.:

Date: 22.1.1992.

1. OA-2488/90
2. OA-2492/90

1. Smt. Kavari Gaur ) ... Applicants  
2. Shri Ram Niwas Gaur )

Versus

Union of India & Others ... Respondents

For the Applicants .... Shri Vijay Kumar Mehta, Counsel

For the respondents .... Shri M.L. Verma, Counsel

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)  
Hon'ble Mr. D.K. Chakravarty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

(Judgement of the Bench delivered by Hon'ble  
Mr. P.K. Kartha, Vice-Chairman)

The applicant in OA-2488/90 is the wife of applicant in OA-2492/90, both of whom have challenged the impugned orders dated 21.10.1989 whereby the penalty of dismissal from service was imposed on both of them. At the time of their dismissal, they were working as UDCs in the office of the respondents. As common questions of law have been raised, it is proposed to dispose them of in a common judgment.

2. The applicants were charge-sheeted under Rule 14 of the C.C.S. (CCA) Rules, 1965 vide Memorandum dated 20.1.1986. The Articles of Charge served on them were as follows:-

Article of Charge framed against Smt. Gaur

"Article-I

That the said Km. Kavari Shandilya while functioning as LDC during 1974 in HQ UP Area, Bareilly, was ineligible for appointment to

the post of LDC owing to the fact that she married to No. 6639166A Shri Ram Niwas Gaur, who was already married having his wife, Smt. Wati living, which is contrary to the Central Civil Services (Conduct) Rules, 1964."

Articles of Charge framed against Shri Gaur

"Article-I

1. That the said Shri Ram Niwas Gaur, UDC, while functioning as LDC during the period 1973 in H.Q., UP Area, Bareilly had committed bigamy by marrying Km. Kaveri Shandilya, daughter of Shri Kishori Mohan Shandilya, resident of 6, Lakhert Lines, Bareilly Cantt. on 10 Mar 73 while having his first wife, Smt. Wati, daughter of Shri Babu Ram Sharma, resident of Village Luhari, Tehsil Garhmukteshwar, Dist: Ghaziabad (UP) living, which is contrary to the Central Civil Service (Conduct) Rules, 1964.

Article-II

1. That during the aforesaid period and while functioning in the aforesaid office, the said Shri Ram Niwas Gaur, UDC, had committed gross misconduct by concealing the facts about his first wife, Smt. Wati, living, which is in violation of Central Civil Services (Conduct) Rules, 1964."

3. The Inquiry Officer found both of them guilty of the charge framed against them. The Commandant B.E.G. and Centre, Roorkee considered the Inquiry Report and imposed on them the punishment of dismissal from service, vide orders dated 9.3.1987. Both of them preferred appeals against the punishment which were considered by the appellate authority who remitted the case to the disciplinary authority from final order stage, vide order dated 18.10.89 on the ground that the punishment order was issued by an authority lower in rank as compared to the appointing authority. Thereafter, the Engineer-in-Chief, in exercise

of the powers conferred by Rule 15(4) of C.C.S. (CCA) Rules, 1965, imposed on them the punishment of dismissal from service, vide the impugned orders dated 21.10.1989.

4. Several contentions have been advanced by both the applicants, including that the Articles of Charge framed against them cannot be inquired into or proceeded with in a disciplinary proceeding without a finding from a civil court of competent jurisdiction as to the subsistence of the previous marriage and that the Inquiry Officer would have no jurisdiction to inquire into matters which affect civil rights, such as subsistence or dissolution of a previous marriage.

5. We do not consider it necessary to go into the various contentions<sup>or</sup> raised by the applicants<sup>or</sup> for the disposal of those applications. Admittedly, the applicants were not given copies of the report of the Inquiry Officer before the impugned orders of dismissal from service were passed by the disciplinary authority. The stand of the respondents is that the applicants did not attend the enquiry and the Inquiry Officer was compelled to proceed ex parte. In such a case, it was not incumbent on the disciplinary authority to give a copy of the report of the Inquiry Officer to the applicants before passing the final orders of punishment on them. In this context, the learned counsel for the applicants relied upon the decision of the New Bombay Bench

of the Tribunal in Dr. D.B. Rathod Vs. Union of India and Others, 1990 (3) SLJ (CAT) 293, wherein it was held that when the delinquent employee does not appear at all before the authority who conducts the enquiry on behalf of the disciplinary authority, the failure to furnish a copy of the report of the Inquiry Officer before the disciplinary authority imposes the order of penalty, does not amount to denial of reasonable opportunity and hence cannot vitiate the proceedings.

6. In our opinion, the aforesaid decision is clearly distinguishable. The decision in the aforesaid case was given on 3.7.1990. The Supreme Court, in Union of India and Others Vs. Mohd. Ramzan Khan, passed its authoritative judgement on the same subject on 20.11.1990 (1990(2) SCALE 1094). In that case, the Supreme Court has observed as follows:-

"We make it clear that wherever there has been an Inquiry Officer and he has furnished a report of the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter".

7. It is clear from the aforesaid judgement of the Supreme Court that there is no difference between an ex parte enquiry and regular enquiry as regards the

obligation of the disciplinary authority to give a copy of the report of the Inquiry Officer to the charged employee. It is also pertinent to state that even in the case of an ex parte enquiry, the disciplinary authority is bound to follow the procedure laid down in the CCS(CCA) Rules, 1965.

8. In the above view of the matter, we direct that the impugned orders dated 21.10.1989, whereby the penalty of dismissal from service was imposed on the applicants, be set aside and quashed. This decision will not preclude the disciplinary authority from holding enquiry in accordance with law from the stage of supply of the inquiry report with an opportunity to <sup>& the applicants &</sup> to represent, including personal hearing. The applicants will be at liberty to advance before the disciplinary authority/ appellate authority all the contentions they wish to raise in their defence and the authorities concerned shall duly consider them before passing the final orders. There will be no order as to costs.

Let a copy of this order be placed in both the case files.

*D.K. Chakravorty*, 22/11/82  
(D.K. Chakravorty)  
Administrative Member

*P.K. Kartha*, 22/11/82  
(P.K. Kartha)  
Vice-Chairman(Judl.)