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CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA No.1837-A/90

New Delhi this the 26th day of July, 1996.

Hon'ble Mr. S.R. Adige, Member (A)
Hon'ble Dr. A. Vedavalli, Member (J)

Smt. Chander Surekha,
W/o Sh. T.R. Bhardwaj,
R/o 4/51, Old Rajinder Nagar,
New Delhi-110 060. ...Applicant

(By Advocate Sh. G.D. Gupta)

Versus

1. Union of India
through the Secretary
to the Govt. of India,
Ministry of Energy,
Department of Power,
Shram Shakti Bhawan,
New Delhi-110 001.

2. The Chairman,
Central Electricity Authority,
Sewa Bhavan, R.K. Puram,
New Delhi-110 066.

3. The Member,
Central Electricity Authority,
Sewa Bhawan, R.K. Puram,
New Delhi-110 066.

4. Sh. T.P. Vats,
Deputy Director and Branch Officer,
Tidel Power Development Directorate,
Central Electricity Authority,
Sewa Bhawan, R.K. Puram,
New Delhi-110 066.

5. Dr. H.R. Sharma,
Chief Engineer, (Tidal),
Central Electricity Authority,
Sewa Bhawan, R.K. Puram,
New Delhi-110 066.

(By Advocate Sh. K.L. Bhandula)

1. Whether Reporters of Local Papers may be allowed to see the judgement or not? —

2. To be referred to the Reporter or not? Yes

(Dr. A. Vedavalli)
Member(J)
26.07.96.

(73)

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ORDER
(Hon'ble Dr. A. Vedavalli, Member (J))

The applicant, Smt. Chander Surekha is aggrieved by the order of the disciplinary authority dated 9.2.89, dismissing her from service, (Annexure A-1 colly.) the order of the

appellate authority dated 25.8.89, rejecting her appeal against the dismissal order (Annexure A-2), suspension order dated 10.3.88 (Annexure A-9) and the enquiry report dated 13.1.89 (Annexure A-1 Colly.) and has prayed, inter alia, for quashing of the said orders and to reinstate her in service retrospectively from the date of her dismissal with all consequential benefits.

2. The facts of this case, briefly stated, are as under.

3. The applicant was working as a Tracer in the Central Electricity Authority since 23.8.75. She was placed under suspension in view of the contemplated disciplinary proceedings against her on 10.3.88. Thereafter, the following articles of charge were framed against her by the disciplinary authority (Annexure-I):

"Smt. Chander Surekha, Tracer, Central Electricity Authority:-

i) is in the habit of coming late and for leaving office early without prior intimation/permission of the Controlling Officer;

ii) is creating nuisance in the Office by using abusive language and hindering others in the Office in the proper discharge of their duties by incessant talking;

iii) has caused damage to the Office properties by throwing telephone instrument from the table of a senior officer resulting in material damage to the instrument;

iv) has tampered with the attendance register and has also exhibited serious subversion of discipline in the Office by her presence.

2. That by her aforesaid acts Smt. Chander Surekha, Tracer has failed to maintain devotion to duty and absolute integirity and has behaved in a manner unbecoming of a Government servant as enjoined under Rule 3(1)(i), 3(10(ii) and 3 (1)(iii) of the Central Civil Services (Conduct) Rules, 1964."

4. The said articles of charge alongwith the statement of imputation of misconduct or misbehaviour (Annexure-II), a list of documents in support thereof and a list of witnesses by whom the articles of charge framed against the applicant were proposed to be sustained were served on the applicant by a memo dated 24.3.88. The applicant by her letter dated 7.4.88 (Annexure A-11) denied the charges intoto and requested for a personal hearing. Thereafter an enquiry was ordered by the disciplinary authority on 9.5.88 (Annexure A-12 colly.) under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (CCS (CCA) Rules for short) against the applicant and an Enquiry Officer was appointed to enquire into the charges against her and a Presenting Officer was also appointed by an order dated 16/19.5.88 (Annexure A-12 Colly.). The applicant submitted her formal statement on 13.6.88 (Annexure A-13) and stated, inter alia, that she will intimate the name of her defence assistant etc. on 17.6.88. The applicant appeared before the Enquiry Officer on 13.6.88. She gave a

representation to the disciplinary authority for change of the Enquiry Officer, alleging bias etc. against him (Annexure A-14). But this request after consideration was rejected on 12.7.88. However, the applicant was given further time upto 20.7.88 for nomination of a defence assistant (Annexure A-15). The applicant filed an appeal dated 28.7.88 (Annexure A-16) to the appellate authority for change of Enquiry Officer and stay of enquiry proceedings. The said appeal was rejected after consideration by the appellate authority on 5.8.88.

5. Thereafter the Enquiry Officer proceeded with the enquiry against the applicant. It is seen from his report dated 13.1.89 that he gave the finding against each charge against the applicant has been proved and that she failed to maintain devotion to duty and absolute integrity and had behaved in a manner unbecoming of a Government servant as enjoined under Rule 3 (1) (i) (ii) & (iii) of the aforesaid CCS (CCA) Rules, 1965.

6. The disciplinary authority by his order dated 9.2.89 (Annexure A-1 Colly.) held that the charges against the applicant have been duly established and imposed a major penalty of dismissal from service with immediate effect. The applicant thereafter filed an appeal dated 11.5.89 (Annexure A-19)against the aforesaid order of dismissal. The appellate authority considered the

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appeal as time barred but still entertained the same as a special case and ultimately rejected the same stating that the rejection is on merits and confirmed the order of dismissal passed by the disciplinary authority as per the communication dated 25.8.89 (Annexure A-2). The applicant thereafter submitted a revision appeal dated 6.11.89 (Annexure A-22). This O.A. was filed on 24.8.90. The revisionary authority, i.e., the Chairman of the Central Electricity Authority, who, after giving a personal hearing to the applicant, confirmed the penalty of dismissal from service and rejected the revision appeal by order dated 14.11.90, as per the counter filed by the official respondents (said order has not been filed by either party. But, the Departmental files contain a copy of the same).

7. The O.A. is contested by the respondents, who have filed their counter replies, to which the applicant has filed her rejoinders.

8. The learned counsel for the parties have been heard. The material papers and documents, which have been filed by the parties and the relevant departmental records regarding the disciplinary proceedings, which have been produced by the respondents for our reference, have been perused.

9. One of the main grounds pressed before us by the applicant is that the charges framed against her are vague and baseless and were the result of harassment, misbehaviour and teasing by respondent No.4, Sh. T.P. Vats, who was her controlling authority in the Tidal Power Development Directorate since September, 1983 against whom she made a complaint also. She had made certain allegations against respondent No.5 Sh. H.R. Sharma that he too turned against her after he became related to respondent No.4.

10. The above ground has been denied by the official respondents 1-3. They have submitted that there is nothing on record to show the alleged misbehaviour etc. by respondent No.4. In the counter reply filed by respondent No.4 himself also the aforesaid allegations are stated to be false and were denied. He adopted the counter reply filed by the official respondents. Respondent No.5 also denied the allegations made by the applicant in his counter and also adopted the counter filed by the official respondents.

11. The applicant denied the submissions of the applicant regarding the above ground. She submitted that she had given a detailed complaint/representation regarding the harassment and misbehaviour etc. by respondent No.4. She had referred to Annexures A-7 and A-8 of the OA in this connection.

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12. The learned counsel for the applicant Sh. G.D. Gupta during the course of his arguments relied on a judgement of the Hon'ble Supreme Court in Surat Chandra vs. State of West Bengal (AIR 1971 SC 752) wherein it was held, inter alia, that the charges should not be vague and indifferent.

13. We have perused the aforesaid documents. The complaint at Annexure A-7 addressed to respondent No.4 himself is dated 10.3.88 and refers to a memo given to her on 2.3.88. While so, the complaint/representation at Annexure A-8 is addressed to the higher authority (respondent No.2) is also dated 10.3.88. In the said complaint/representation at Annexure A-8 the applicant has referred to the torture and harassment by respondent No.4 for about 4 and a half years, but there is no reference to any written complaint/representation having been made to the higher authorities earlier. It is indeed very strange as to why the applicant was putting up with the alleged torture by respondent No.4 for such a long period without bringing her grievance to the notice of the higher authorities for redressal. Moreover, both the aforementioned complaints are dated 10.3.88, i.e., the same date on which she was suspended from service (Annexure A-9). There is no explanation from the applicant as to why no complaint was made to the higher authorities regarding respondent No.4 alleged torture and harassment etc. before the said date.

She has also not substantiated her complaint/ representation with any supporting material. Regarding the torture by respondent No.5 also she has not been able to support her allegation with any material. Further, the charges framed against her are quite clear and definite and the applicant herself admitted partly the first charge against her during the enquiry proceedings. The decision of the Hon'ble Supreme Court mentioned in para 12 supra, relied upon by the learned counsel for the applicant, therefore, would not be applicable to the facts of the present case. In view of the above circumstances and the fact situation, we find that the aforesaid ground taken by the applicant itself is vague and untenable. Hence, it fails.

14. The second ground is that the rejection of the request of the applicant for change of the Enquiry Officer is illegal and arbitrary and hence the enquiry is bad in law.

15. Re: the above ground the official respondents have submitted that the enquiry officer is of a higher rank than that of the applicant's controlling officer (respondent No.4) and he is on deputation to the department. They have stated that the applicant had not raised any objection in the beginning when she was having knowledge about the appointment of the Enquiry Officer. It is only after attending the hearing on 13.6.88 the she made her request for change of

Enquiry Officer. However, her request was duly considered on merits by the disciplinary authority and also the appellate authority and was rejected since there were no sufficient grounds for change of the Enquiry Officer. The respondents have contended that there is nothing arbitrary or illegal about the rejection of the applicant's request.

16. After considering the rival contentions of the parties, we are of the view that the applicant had not been able to establish any arbitrariness or specific illegality in the rejection of his request. Further, change in the Enquiry Officer cannot be claimed as a matter of right. There should be sufficient grounts supported by relevant material. In the circumstances, we find that this ground also is without any merit and, therefore, cannot be sustained.

17. The third ground is that the impugned order of dismissal is vitiated in law because:

(a) the enquiry was wrongly held exparte;

(b) copy of the enquiry report was not supplied before imposing the penalty;

(c) findings of the Enquiry officer and the disciplinary authority are perverse, as it was not legally permissible evidence on record; and

(d) the order is non-speaking.

18. Re:(a), the exparte enquiry, the applicant submitted that though she was ill and had given intimation to that effect and also the medical certificates, the enquiry scheduled for 25.10.88 was not adjourned and hence she was not given an opportunity to participate in the enquiry.

19. The respondents, in reply, have contended that the submissions of the applicant regarding the exparte enquiry are not maintainable. They have submitted that the ailment of the applicant consequent upon her meeting with an accident was taken into consideration and she was unfit due to illness only for three days, i.e., w.e.f. 14.9.88. She was afforded an opportunity to present her case before the Enquiry Officer on 25.10.88. She was also advised to submit a written brief by that date in her defence so that the same could be considered before the enquiry report is finalised. It was further submitted that it was made clear to the applicant that her failure to do this would lead to the presumption that the applicant had nothing to say and the enquiry would be finalised

and that if she wanted a personal hearing she can do so on 25.10.88. It was also submitted by the official respondents that though the applicant turned up before the Enquiry Officer on 25.10.88 she initially refused to submit any written brief inspite of the advice of the Enquiry Officer. She stated later on that she would submit the brief in consultation with her adviser and left the room. She came back after some time and asked for extension of time for submission of her defence statement by 15 or 20 days, even though the statements of the witnesses were provided to her. The respondents have stated that the applicant was not sincere in her attitude from the first hearing, i.e., 13.6.88 and had been avoiding the enquiry proceedings and, therefore, the request for extension of time was not agreed to by the enquiry officer. They have also given the details regarding the dates of her presence and absence during the enquiry proceedings. It was further submitted that the statement of all the witnesses were completed on 6.10.88 and copies of the same were sent to the applicant regularly to keep her duly informed and to afford her an opportunity to defend her case. But still she did not appear before the Enquiry Officer and had not nominated any defence assistant.

20. The learned counsel for the applicant Sh. G.D. Gupta, however, contended that no notice was given for the exparte hearing held on 25.10.88, as required under Rule 14 (11)

(iii) of the CCS (CCA) Rules, 1965 and hence the enquiry is bade in law. He also relied strongly on the decisions of the Hon'ble Supreme Court in Smt. Indrani Basu vs. U.O.I. (JT 1994 (3) SC 580) and U.O.I. and Others vs. I.S. Singh (1994 (28) ATC 53).

21. In the former case the delinquent officer raised objections regarding bias of the Enquiry Officer but he was not changed and the direction of the higher authorities to reopen the exparte enquiry was not complied with by the Enquiry Officer. The dismissal order was quashed for not giving a fair and reasonable opportunity to the delinquent officer, resulting in violation of the principles of natural justice.

22. In the latter case, the exparte enquiry was quashed for the rejection of the request of the delinquent officer for adjournment on medical grounds by the enquiry officer and he proceeded with the enquiry exparte in violation of Rule 14 (2) of the CCS (CCA) Rules, 1965 and the principles of natural justice.

23. The learned counsel for the applicant has also referred to certain judgements of the High Courts and this Tribunal in 1994 (4) SLR 356, 1994 (6) SLR 183 and 1993 (23) ATC 760 in support of his above contention.

24. It is noticed on a perusal of the relevant departmental files made available for our reference and the enquiry report dated 13.11.89 by the respondents that the first hearing in the enquiry proceedings was fixed on 13.6.88. The applicant attended that hearing and admitted the first charge partly to the extent thhat she came to the office late on a few occasions without prior permission/intimation of the controlling officer due to illness. She denied the other charges. Though she was directed to indicate the name, designation of her defence assistant by 28.7.88 by a memo dated 12.7.88 there was no reply from her. The next date of enquiry was fixed on 4.8.88 by notice dated 27.7.88. The said notice contained a clear warning that in case he fails to appear without sufficient cause the enquiry proceedings will be held exparte against her. It was sent by registered post A.D. to the applicant's given address but was not returned undelivered. It can, therefore, be presumed that it was delivered to the addressee, i.e., the applicant in the usual course. But she did not attend that hearing. The next date of hearing was fixed for 16.8.88 by a notice dated 5.8.88. This second notice sent by registered post A/D also contained a warning for exparte hearing but this was returned to the sender stating that the addressee was not available. The third and the final notice regarding exparte proceeding dated 25.8.88 fixing the next date of hearing as 7.9.88 was delivered to the applicant by special

messenger. Since she did not attend this hearing also, exparte proceedings were started. Further hearing by notice dated 8.9.88 was fixed on 14.9.88. This notice was received by the applicant on 10.9.88 but she did not attend the hearing on 14.9.88 stating that she was ill and submitted a medical certificate and requested another chance to defend her case. The next date of hearing for 26.9.88 by notice dated 16.9.88 as well as a memo dated 16.9.88 enclosing statements of the witnesses recorded and a notice dated 26.9.88 fixing the date of hearing for 6.10.88 were returned undelivered by postal authorities. Ultimately another notice dated 11.10.88 fixing the next date of hearing as 25.10.88 was obviously delivered as the applicant attended that hearing.

25. It is noticed from the order of the enquiry officer dated 25.10.88 (placed in the depatemental file) passed on the application of the applicant received on the said date seeking adjournment for submitting defence statement on medical grounds that she was already informed on 11.10.88 that since she failed to appear for the hearing the proceedings were started exparte, but in view of the circumstances explained in her application dated 10.10.88 another chance was given to her to present her case and copies of the statments of the witnesses which were returned undelivered earlier were again made available to her and she was clearly advise to submit written brief latest by 25.10.88 so that the same could be

considered before finalisation of the enquiry report. The enquiry report, it appears made it further clear to her that in case she fails to submit the brief by that date it would be presumed that she had nothing to submit and the enquiry report would be finalised. She was also informed that this may be treated as the last opportunity and no further correspondence would be entertained.

26. The Enquiry Officer ordered therein that since the applicant failed to submit any written brief and also has not nominated any defence assistant inspite of earlier advice on a number of times and has only asked for extension of time her representation only indicates that she has nothing to represent and is interested only in delaying the enquiry proceedings. It is decided that no further chance need be given to her as no useful purpose will be served in continuing the proceedings further and no further notice need be served on her.

27. Coming to the rule position, it is seen that Rule 14 (11) (iii) of the aforesaid C.C.S. (C.C.A.) Rules on which reliance was placed by the applicant runs thus:-

> "(11) The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a

later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence--

(i) **********

(ii) **********

(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3)."

28. The learned counsel for the applicant stated that no such notice as mentioned in the aforesaid rule has been given on 25.10.88 or thereafter. But we find that the exparte proceedings were already started and the notice for hearing on 25.10.88 in fact was the final notice and since the case was closed on that date the question of reopening the case or prolonging the proceedings any longer would not obviously arise in the circumstances. Further, the decisions of the Hon'ble Supreme Court referred to at para 20 (supra) also would not help the applicant's case since the facts and circumstances in the aforesaid decisions are distinguishable from those in the instant OA. That apart, the basic cardinal principles followed in that decision is that the delinquent officer who should be afforded a fair and reasonable opportunity of being heard and there should not be any violation of the principles of natural justice. While so, we find that in the instant case the Enquiry

Officer had proceeded exparte and he is empowered to do so under Rule 14 (20) of the CCS (CCA) Rules which is as under:-

> "(20) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte."

29. It is noticed that the aforesaid rule itself does not even indicate that notice is required to be given for such exparte hearing. Inspite of that it is seen that a number of opportunities of hearings were afforded to the applicant in accordance with the basic principles of natural justice inspite of her non-cooperative attitude. In the above facts and circumstances we are of the considered view that there is no apparent illegality, arbitrainess, unfairness or violation of the principles of natural justice in the exparte proceedings in the present case. Hence, this ground raised by the applicant is devoid of any merit and cannot be accepted.

Re:(b), the ground of <u>non-supply</u> of <u>enquiry report</u> to the applicant before the penalty is imposed, it is seen that the said report is dated 13.1.89 and the order of dismissal is dated 9.2.89. The respondents' contention is that as per the relevant rule 15 of the CCS (CCA) Rules,

as prevailing at that time, the delinqunet official is not entitled to a copy of the said report. However, she was given a copy of the said report while imposing the penalty. It was also submitted by the respondents that the relevant instructions were amended by OM No.11012/13/85.Estt(A) dated 26.6.89 (Annexure-I to the counter). It has been provided in the said instructions, inter alia, that if the disciplinary authority is different from the enquiring authority copy of the enquiry report should be furnished to the Govt. servant concerned to enable him to make a representation if he so wishes within a period of 15 days from receipt of the communication. However, those instructions are prospective and it is contended by respondents that in view of the above there is no illegality involved in the non-supply of the enquiry report before the penalty is imposed. The applicant in reply has contended that the aforesaid instructions are irrelevant in view of the law laid down by the Hon'ble Suprme Court.

30. However, the applicant has not been able to establish as to which decision of the Hon'ble Supreme Court will help her case since it is clearly laid down from the judgement in UNION OF INDIA VS. MOHD. RAMZAN KHAN (JT 1994 (4) SC 456 That the rule laid down therein viz., supply of a copy of the enquiry report to the delinquent officer before the penalty is imposed is a must, is only prospective from the date of the said

judgement, i.e., 20.11.90. This decision is followed in a number of susbsequent judgements also of the Hon'ble Supreme Court. The applicant has not been able to substantiate his contention with any specific decision of the Hon'ble Supreme Court in this regard. In the circumstances, we are of the view that there is no illegality involved in the non-supply of the enquiry report as per the law laid down by the Hon'ble Supreme Court and the instructions prevailing at the relevant time. Hence, this ground also is not sustainable in law.

31. Re:(c), i.e., the ground that the findings of the Enquiry Officer in the enquiry report and the disciplinary authority are perverse as based on 'no evidence', the learned counsel for the applicant relied upon the decision of the Madras High Court in M. DEVEN VS. TAMIL NADU CIVIL SUPPLY CORPORATION LIMITED (1993 (4) SLR 273) wherein the termination order was quashed since there was no sufficient evidence to substantiate the charges framed against the delinquent officer.

32. The respondents have denied this ground also and have contended that enquiry has been conducted in accordance with the CCS (CCA) Rules.

33. We have perused the enquiry report as well as the disciplinary authority's order imposing the penalty of dismissal.

34. It is seen from the enquiry report dated 13.1.89 that the Enquiry Officer had proceeded exparte in the facts and circumstannces already noted earlier. He had examined and admitted the documents, the material and the statement of witnesses listed therein including that of the applicant recorded on 13.6.88 and on assessment of the evidence gave his findings against each article of charge as proved (the first charge has already been admitted partly by the applicant, as already noted earlier).

35. The disciplinary authority's order of dismissal dated 9.2.89 also indicates that the factual position and the report of the enquiry officer were duly considered by him and he came to the conclusion that the applicant is a habitual late comer and she generally remains absent from duty without prior permission. Further her behaviour in the office and tampering with official documents and damaging the office property tantamounts to insubordination and conduct unbecoming of a Government servant. He was also of the opinion that the applicant was absenting herself from appearing before the Enquiry Officer without proper justification and with a view to delay the enquiry.

36. In view of the above position the major penalty of dismissal from service was ordered by the disciplinary authority.

37. It is obvious that it is not a case of 'no evidence' here and the findings of the Enquiry Officer and the disciplinary authority cannot be termed as being perverse on that ground. Moreover, it has been held by the Hon'ble Supreme Court following a number of earlier decisions, inter alia, in a recent judgement of B.C. CHATURVEDI VS. UNION OF INDIA AND OTHERS (JT 1995 (8) SC 65 thus:-

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findigns on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no

reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

38. In view of the well settled legal position as noted supra, the decision of the Madras High Court (supra) on which reliance has been placed by the applicant will not help her case. In the circumstances the ground of 'no evidence' in the instant case is devoid of any merit and cannot be sustained.

39. Re:(d), the ground of dismissal order being non-speaking, the applicant's contention is that the disciplinary authority did not consider her case and defehce and has given an order without reasons, which vitiate the said impugned order in question.

40. This ground is denied by the respondents. They have submitted that the order in question is a well considered one.

41. On a perusal of the impugned order of dismissal we do not find any lack of reasons in the same as contended by the applicant, as already noted, the disciplinary authority has examined the facts and circumstances and after due consideration of the same has given a reasoned order. In that view of the matter, we are of the opinion that the above ground is untenable and, therefore, fails.

42. The 4th main ground is that the impugned appellate order dated 25.8.89 is wholly illegal and the order itself is non-speaking.

43. The above ground is denied by the respondents. They have contended that the said order is legal and maintainable.

44. We have gone through the impugned order, as communicated to the applicant by memo dated 25.8.89. It is noticed that though the appeal was treated as time barred, it was ultimately entertained as a special case by the appellate authority on merits and was rejected. The dismissal order dated 9.2.89 was confirmed. The applicant has not spelt out any specific illegality in the appellate order except submitting that it is a non-speaking order. Our attention has not been drawn to any specific provision in the relevant rules in this regard. Nevertheless, even in the absence of any specific rules imposing an obligation on the appellate authority to give a speaking order it is one of the facets of the principles of natural justice which is to be followed by every quasi-judicial authority and the appellate authority being one, he should of course give a speaking order while disposing of an appeal. This obviously has not been done, as is seen from the impugned memo dated 25.8.89, referred to earlier.

45. Now the question is whether such a non-speaking order vitiates the entire disciplinary proceedings in the instant case. In this connection the law laid down by the Hon'ble Supreme Court in the recent case of STATE BANK OF PATIALA & ORS. VS. S.K. SHARMA (1996 (3) SC 722) is as follows:-

> "29. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk [1949 (1) All.E.R.109] way back in 1949, these principles cannot be put in a straight-jacket. Their applicability depends upon the context and the facts and circumstances of each case. [See Mahender Singh Gill v. Chief Election Commissioner (1978 (2) S.C.R. 272)]. The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. [See A.K.Roy v. Union of India 1982 (1) S.C.C. 271) and Swadeshi Cotton Mills v. Union of India (1981(1) S.C.C. 664)]. As pointed out by this Court in A.K. Kraipak & Ors. v. Union of India & Ors. (1969(2) S.C.C. 262), the dividing line between quasi-judicial function and administrative function (affecting the rights of a party] has become quite thin and almost indistinguishable - a fact also emphasised by House of Lords in C.C.C.U. v. Civil Services Union [supra] where the principels of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the stand-point of fair hearing - applying the test of prejudice, as it may be called - that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding - which may result in grave prejudice to public interest. It is for this reason that the rule of post decisional hearing as a sufficient compliance with natural justice was

evolved in some of the cases, e.g., Liberty Oil Mills vs. Union of India (1984 (3) SCC 465). There may also be cases where the public interest or the interests of the security of the State or other similar considerations may make it inadvisable to observe the rule of in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311 (2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary order and enquiries: a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of facet of the said principle. In other words, distinction is between "on notice"/"on hearing" and "no adequate hearing" or to put it in different words "no opportunity" and "no adequate opportunity". To illustrate - take a case were the person is dismissed from service without hearing him altogether [as in Ridge v. Baldwin] it would be a case falling under the first category and the order of dismissal would be invalid - or void, if one chooses to use that expression [Calvin vs. Carr.]. But where the person is dismissed from service, say without supplying him a copy of the enquiry officer's report (Managing Director, E.C.I.L. v. B.Karunakar] or without affording him a due opportunity of cross-examining a witness [K.L. Tripathi] it would be a case falling in the latter category - violation of a facet of the said rule of natural justice - in which case, the validity of the order has to be tested on the touch-stone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct - in the light of the above decisions to say that for any and every vilation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the

> approach and test adopted in B.Karunakar should govern all cases where the complaint is not that there was no hearing [no notice, no opportunity and no hearing] but one of not affording a proper hearing [i.e., adequate or a full hearing] or of violation of a procedural rule or requirement governing the enquiry, the complaint should be examined on the touch-stone of prejudice as aforesaid."

46. Therefore, the absence of or non-compliance with a facet of natural justice, viz., "speaking or reasoned order" in the instant case has to be examined on the touch-stone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing.

47. It has already been opined by us, inter alia, that the impugned enquiry report as well as dismissal order passed by the disciplinary authority are not vitiated by any of the grounds raised by the applicant. We are of the view that the applicant had been given a fair and reasonable opportunity of being heard including a personal hearing. If the applicant has not availed herself of the same and exparte proceedings had to be conducted by the authorities, they cannot be accused of not affording a fair hearing. In fact the expate proceedings also are not vitiated by any of the grounds raised by the applicant, as already noted.

48. Moreover, it had also been noticed earlier that as per the respondents' submission, the applicant was given a personal hearing by the

Revisionary Authority when she preferred an application for revision against the impugned Appellate Authority's order rejecting her appeal and the penalty of dismissal was confirmed by the Revisionary Authority by his order dated 14.11.90 after considering her application on merits. No doubt, the present OA was filed on 24.8.90, i.e., before the disposal of the applcant's application for revision before the Revisionary Authority. However, it is indeed a mystery as to why the said revisionary order dated 14.11.90 was not challenged by the applicant either by seeking to amend the OA appropriately or by filing another OA impugning the said order, as she ought to have done, if she is aggrieved by the same. She merely stated in her rejoinder dated 21.10.91 to the counter filed by the official respondents that she is reiterating that even the rejection of the application for revision was without application of mind. Since the factum of rejection of the application for revision was itself not brought on record of the OA by the applicant the question of reiteration of any challenge to the order does not, obviously, arise. In fact, this OA can even be dismissed summarily only on the ground that she has apparently acquieced in the revisionary order and hence the OA itself has become infructuous in the circumstances.

49. In view of the above, we are of the opinion on an examination of the facts and circumstances of this case in the light of the law

laid down by the Hon'ble Supreme Court in the case of State Bank of Patiala vs. S.K. Sharma (supra) we do not find any violation of the principels of natural justice or fair hearing, even though "speaking and reasoned order" has not been given by the Appellate Authority's order as contained in the memo dated 25.8.89 (Annexure A-2). Hence, the aforesaid 4th ground challenging the Appellate Authority's order also is devoid of any merit and is unsustainable in law.

50. As the OA can be disposed of on the preceding grounds, which had already been discussed, we do not think it necessary to go into certain other minor grounds which have been raised by the applicant in the OA.

51. In the facts and circumstances of the case and in view of the foregoing discussion, we are of the considered opinion that the grounds raised by the applicant are not valid, sustainable or maintainable under the law and are devoid of any merit. Therefore, there is no justification for our interference with the impugned orders challenged by the applicant. Hence, the OA is dismissed. No costs.

(DR. A. VEDAVALLI)
MEMBER(J)

(S.R. ADIGE)
MEMBER(A)

'Sanju'