IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 3000/1991

NEW DELHI, THIS 22nd DAY OF FEBRUARY, 1994.

HON'BLE SHRI N.V.KRISHNAN, VICE-CHAIRMAN(A)
HON'BLE C.J. ROY, MEMBER(J)

Dr. V.P. Bansal
s/o Shri Hazoor Chand Aggarwal
D-II/52, West Kidwai Nagar
NEW DELHI .. Applicant

By Shri G.D.Gupta and Shri S.M.Rattanpal, Counsel

VERSUS

Union of India through,

1. Secretary
Ministry of Health & Family Welfare
Nirman Bhavan, New Delhi

2. The Director General
Health Services
Ministry of Health & Family Welfare
Nirman Bhavan, New Delhi

3. The Medical Superintendent
Safdarjung Hospital
New Delhi

4. Shri M.S. Dayal
Additional Secretary to the Govt. of India
Ministry of Health & Family Welfare
Nirman Bhavan, New Delhi

5. Dr. J.L.Srivastava
Head of the Department of Burns
(Formerly Medical Superintendent)
Safdarjung Hospital, New Delhi .. Respondents

By Smt. Raj Kumari Chopra, Counsel for the respondents

ORDER
(HON'BLE MEMBER (J) SHRI C.J. ROY)

The applicant, while working as the Director of the Central Institute of Orthopaedics, Safdarjung Hospital, New Delhi, filed this OA seeking the following reliefs:

"i) Quashing the charge-sheet dated 19.1.90 and all consequent proceedings held in pursuance thereof;

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ii) in case the applicant is not held entitled to relief in terms of prayer clause (i) above, then declaring the present Inquiry Officer to be changed as he has been biased against the applicant and/or he has been conducting the inquiry in such a manner that the applicant has reasonable apprehension that he can not expect any justice at his hands; and

iii) also declaring the proceedings held so far in consequence of the aforesaid illegal charge-sheet and by the present Inquiry Officer as illegal and vitiated in law."

2. To understand the circumstances in which this OA has been filed, it is necessary to peruse the charge framed against the applicant by the impugned Annexure A-11 Office Memorandum dated 19.1.1990 of the Respondents. The charge reads as follows:

> "That the said Dr. V.P.Bansal while functioning as Director of Central Institute of Orthopaedics, Safdarjung Hospital, New Delhi on 11.9.89 acted in a manner unbecoming of a Government servant in as much as he misbehaved with Dr. (Smt.) S.H. Manke, Anaesthesia Specialist, Department of Anaesthesiology, Safdarjung Hospital, New Delhi.
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> "By his aforesaid act Dr. Bansal has acted in a manner unbecoming of a Government servant violating Rule 3(i)(iii) of the CCS(CCA) Rules, 1964"

3. The statement of imputations in respect of the charge reads as follows:

> "Dr. V.P. Bansal, Director, CIO, Safdarjung Hospital, New Delhi, was working in the same capacity during September, 1989. That on 11.9.1989 at 9.00 hrs. Dr. Bansal was to perform an operation at the Orthopaedic Operation Theatre at the Third Floor Operation Theatre of the Safdarjung Hospital. Dr. (Smt.) S.H.Manke, Specialist in Anaethesia of the Hospital was the Floor Incharge as well as the Supervisor of the cases at the Third Floor Operation Theatre. When Dr. (Smt.) Manke had been supervising the patients during that period, Dr. Bansal called her and started shouting at Dr. (Smt.) Manke. He pulled the sleeve of her blouse and asked her to get out of the Operation Theatre.

> By his aforesaid acts, Dr. V.P.Bansal, Director, CIO, Safdarjung Hospital, acted in a manner unbecoming of a Government servant and contravened the provisions of Rule 3(1)(iii) of CCS(Conduct) Rules, 1964".

4. Thus, the charge is that the applicant misbehaved with Dr. Smt. S.H. Manke, Anaesthesia Specialist, hereinafter referred to as the complainant.

5. In his letter dated 15.3.90 (Annexure A-22) to the Health Secretary (Respondent No.1), the applicant denied the charge. He drew attention to his earlier letter dated 22.9.89 to the DGHS, a copy of which had been sent to the Secretary, Ministry of Health also, giving his version of the incident. That letter dated 21.9.89 (and not 22.9.89) is at Annexure A-17. He also enclosed a copy of a representation signed on 21.9.89 and 22.9.89 by 30 doctors of the Central Institute of Orthopaedics addressed to the Director General, Health Service (DGHS) (Respondent No.2) giving their version of the incident which took place on 11.9.89. In the representation they stated,inter alia, as follows:

> "Incident cropped up and when Prof. V.P. Bansal pointed out politely to the improprieties indulged in by the aneasthetist Dr. Manke viz. improper dress in operation theatre like blouse and petticoat with which she came from her home, gown, jewellery, uncovering of the nose out of the mask, to which she did not pay any heed."

He, therefore, requested that the enquiry be dropped.

6. In a more detailed letter dated 24.8.90 to the Minister of Health & Family Welfare,(Annexure A-23) he submitted as follows:

> "You will appreciate, Sir, that no senior Surgeon-in-charge would first call Anaesthesia Specialist and start shouting at her as

> alleged unless there is something seriously wrong or patently irregular. This vital fact has been ignored by the Investigating Officer as well as the Min. of Health & Family Welfare and no efforts were made to find out the full facts of the case. Dr. Manke had lodged false conplaint against me in order to cover up her acts of indiscipline and insubordination."

He then gave his version of the incident which was that he had to admonish the complainant on 11.9.89 when the latter came to his Operation Theatre improperly dressed and wearing ornaments which were not conducive to maintain the medical cleanliness of the operation theatre necessary to prevent infection - "Asepsis' as it is called. She not only did not correct herself but shouted at him and stopped anaesthesia of the patient.

7. When the charge was not dropped, this OA was filed. The application was admitted on 14.1.1992 and the following interim order was passed:

> "1) The inquiry on the basis of the memorandum of charge dated 19.1.1990 may be held but final orders may not be passed by the disciplinary authority till the final disposal of the OA or till the modification of this order, whichever is earlier;
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> 2) The disciplinary authority should appoint another inquiry officer and he may proceed with the inquiry in accordance with rules. Such an inquiry officer will hold the inquiry de novo and the inquiry held so far by the present inquiry officer shall not be taken into account."

In the light of this interim order only the first prayer in the OA (reproduced in para 1) is pressed.

8. The applicant filed MP 1324/92 for modifying the interim order dated 14.1.1992 for restraining the respondents from proceeding further with the departmental enquiry because the counter affidavit of the respondents did not disclose any prima facie case

against him. He also filed MP 2327/92 for summoning the documents mentioned in para 5 thereof from the respondents for a proper disposal of the case. The respondents filed their reply opposing the MPs. No orders have been passed on MP 1324/92. However, a direction was issued on 18.1.92 to the respondents to keep the records ready at the time of hearing to be perused by the Bench, if necessary.

9. The learned counsel for the respondents felt that when the OA had been admitted, it could be heard in its turn. We noticed that the main thrust of the application is that the charge memo has been issued by the impugned Annexure A-11 order only on the complainant's one sided allegation without holding a preliminary enquiry into the incident which took place on 11.9.89. Therefore, the charge is without any foundation, excepting for the uncorroborated allegation and statement of the complainant. It was for this reason that we felt desirable to hear the case finally on this ground, as it went to the root of the matter and hence it was heard finally.

10. We can now see the two versions of the incident.

11. The complainant, Dr. (Smt) S.H. Manke, first sent a complaint on 11.9.89 to the Medical Superintendent,(MS) Safdarjung Hospital (i.e., Dr. J.L.Srivastava, Respondent No.5).A copy of the complaint was eclosed to the applicant's letter dated 21.9.89 addressed to the DGHS (Annexure A-17). That complaint reads as as follows:

"I, Dr. S.H. Manke, Specialist in Anaesthesia, reported at IIIrd Operation theatre today i.e. 11.9.89 at 9.00 hrs. While I was conducting anaesthesia and providing supervision in the Operation Theatre, Dr. Bansal called me and said that he wanted to talk to me. I went to him. As soon as I entered the room, he suddenly started shouting and started using unparliamentary language which is beyond me to report or write. I was totally shocked. He then pulled my blouse and said why it is visible which was barely visible at the neck under my OT cloths. He again started shouting and abusing and asked me to get out of the OT. It was such a great shock that I became dumbfounded and was unable to speak. He again chased me and asked me to get out of the OT. I in order to save my respect and dignity and in view of his abnormal and psychopaedic behaviour and apprehending further physical assault, I left the OT. All this happened in presence of all Operation theatre staff and doctors.

"Under these circumstances it is not possible to work in such unsafe and hostile atmosphere for the female staff. Such indignities which have been heaped upon me have totally shaken me.

"I request you to kindly hold immediate inquiry into the matter and in initiate suitable necessary disciplinary action against Dr. Bansal."

12. This complaint was sent by the MS to the DGHS by his letter dated 11.9.89. A copy of this complaint was received by the applicant with the Annexure A-18 letter dated 19/21.9.89 from the office of the DGHS asking for his comments.

13. At about the same time, the applicant gave his version of the incident to the DGHS in his Annexure A-17 letter dated 21.9.89. His version reads as follows:

"For the record, I wish to state that I had not known or even heard of Dr. Manke prior to the incident of the 11th September. On that day, I was due to perform an operation. Upon entering the operation theatre at about 9.45 a.m., I noticied a lady dressed in a light green decorative night gown worn over a blue blouse with its sleeves protruding. The

petticoat could also be seen below the gown. On enquiry I learnt that this lady was the anaesthetist deputed for orthopaedic cases that day. I saw Dr. Manke proceeding to operation theatre No.3. I requested her to stop. I told her that she was improperly dressed for the operation theatre, she should conform her dress to the rules. She however, ignored the request and proceeded towards operation theatre No.1, where I was due to operate. Inside the theatre Dr. Manke began giving meedicines to the patient to be operated upon who was already under anaesthesia and being draped for surgery by assistants.

"I once again politely requested Dr. Manke to heed my earlier request but she again remained silent ignoring me.

"For the third time, I explained to Dr. Manke that she ought to know that she was not permitted to be dressed in the manner she was. I pointed out the gold bangles on her wrist and other jewellery on her neck. Even her mask was not properly covering her face. I told her that I would not operate on a patient with an anaesthetist in this condition. I did this in front of the operating team.

"Dr. Manke suddenly began to shout and threatened to teach me a lesson. She stopped the anaesthesia of the patient and went out threatening me with dire consequences. I waited for an hour in the surgeon's room but nobody came to anaesthetise the patient. Apparently, Dr. Manke had instructed to other anaesthetists not to cooperate. The operation eventually had to be abandoned.

"You will appreciate that Dr. Manke's entire conduct has put in jeopardy the life of a patient. I can not be faulted for wanting to maintain rigorous standards of asepsis in the operating room. The risk of post operative infection in the conditions we have to work in is already kwown to us only too well."

14. It is therefore contended in the OA that without holding a proper preliminary enquiry, the respondents ought not to have issued the Annexure A-11 memo of charge. It is further contended that the charge itself is unfounded and therefore, the entire proceedings should be quashed. This is the only matter we are looking into in the present OA as this allegation goes to the root of the matter. We make it clear that we are not concerned

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with the merits of the allegation made by the complainant or the version given by the applicant, both of which have been reproduced above.

15. A reply was filed on 20.2.1992 by Shri Lakhan Pal, Section Officer in the Ministry of Health and Family Welfare. Apparently the reply is only on behalf of the first respondent. It is contended that the applicant is not entitled to any relief. It is urged that the truth of the allegation can be found out only after a thorough enquiry,which has already been ordered. Therefore, this Tribunal should not issue a direction at this stage as it is open to the applicant to defend himself in the departmental enquiry and if the charge is not substantiated, he is bound to be cleared of the charge. It is stated that the disciplinary authority viz. Union Minister for Health & Family Welfare, after taking into consideration all facts and circumstances of the case, decided to charge sheet the petitioner. It is also contended as follows:

> "The petitioner can not question the competence of DA, viz. President that he came to conclusion to charge sheet the petitioner without any material before him. Even if it is presumed that there was no material before the DA, it will only benefit the petitioner. The petitioner is exceeding all limits by saying that the decision was taken by DA without application of mind".

It is further contended as follows in para 4.15:

> "It is not necessary that there should be some background leading to each and every incident. It may be added that no honourable lady doctor holding such a responsible post will make a false complaint."

Referring to the representation of 30 doctors enclosed to the Annexure A-22 letter, the respondent states that on the applicant's own admission, as many as 26 doctors were not witnesses to the incident. It is further contended as follows:

> "No sensible person can believe that a lady doctor holding such a responsible post will come to the operation theatre in petticoat. In any case, Dr. Bansal is free to produce his defence witnesses during the course of enquiry and this aspect does not fall under the jurisdiction of the Tribunal"

16. We have heard the learned counsel for the parties and we have carefully perused the records.

17. The learned counsel for the applicant submits that this is a case where the respondents ought not have initiated any disciplinary proceeding without first conducting a preliminary enquiry. As a matter of fact, the DGHS to whom Dr. J.L.Srivastava, Medical Superintendent,forwarded on 11.9.89 the complaint of Dr. Mrs. Manke,(enclosure to Annexure A-18) instituted a preliminary enquiry. He directed Dr.(Mrs.) Ira Ray, Additional Director, to enquire into the matter. It is pointed out that in her report dated 26.9.89 (Annexure A-20) to Shri M.S. Dayal, she stated as follows:

> "As desired, I called both Dr. Manke, Specialist (Anaesthesia), Safdarjung Hospital and Prof. V.P.Bansal, Head of the Department (Ortho), CIO to my office separately today at 12 noon and 3 p.m. respectively. I got their statements recorded which are placed below. It will be seen from the statements that Dr. Manke has reiterated her earlier complaint while Dr. Bansal has denied the same. Moreover, Dr. Bansal insisted that being the Head of the Deptt. of Ortho, he has to adhere to certain discipline. Since the feelings on both the sides appear to be very strong, I am of the opinion that for the

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smooth functioning of the organisation, it would be desirable not to post both of them in the same organisation."

The learned counsel, however,points out that a decision to charge sheet the applicant had already been taken on 23.9.89 by the Minister as alleged in para 4.37(o) of the OA and in ground (c), which have not been denied. Therefore even this report was not taken note of. Therefore this is a proceeding without any factual basis and has, therefore, to be quashed.

18. In reply, the learned counsel for the respondents alleged that the applicant had used unfair methods in obtaining copies of documents to which he never had access and that he is liable to be proceeded against in criminal proceedings. This was particularly with reference to the source from which the applicant obtained the proceedings (Annexure A-20) of the enquiry conducted by Dr. (Smt.)Ira Ray. She further contended that the DGHS was, in any case, not authorised to conduct any such enquiry and he was also not directed to do so. The competent authority has considered all aspects and initiated the disciplinary proceedings for the reasons given in the Annexure A-11 memo of charge. That memo can not be challenged in the OA before this Tribunal. It is premature and the Tribunal should not interfere with the proceedings at this stage. The applicant can rebut the charge and establish his innocence before the Enquiry Officer/Disciplinary Authority.

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19. In so far as the allegation that the applicant has used unfair means to get hold of secret reports etc., the applicant has stated in para 4.25 of the OA that copies of the statement recorded by Dr. (Smt.) Ira Ray and of her report were given to him on 5.7.91 by the Inquiry Officer.

20. It is clear ~~is~~ that the first respondent did not order any preliminary enquiry to find out the truth about the complaint made by Dr. (Smt.) S.H.Manke. The decision to institute disciplinary proceedings was thus taken without such an enquiry.

21. It is true that a preliminary enquiry is not always needed before a person is charged under Rule 14. For example, if the charge is that a person is unauthorisedly absent, the charge can be framed without any preliminary enquiry on the basis of the report or complaint of the official who maintains the attendance register or of the official under whom the employee works. For, this is purely a matter between the employer and the employee. Where, however, two employees have blamed each other, a proper preliminary enquiry should be held to arrive at a tentative decision. The decision could be that party "A" alone is to be blamed and therefore charge-sheeted or that party "B" alone is to be blamed and therefore charge-sheeted or that both the parties "A" and "B" deserve to be charge-sheeted or that there is no independent evidence to establish anything against either party. May be, some other conclusion is also possible. Without getting such a preliminary report,if a charge-sheet is served

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only on one person accepting the complaint of the other, it would obviously amount to bias on the part of the diciplinary authority This is the situation in the present case.

22. This is a case where the complainant has alleged misbehaviour by the applicant against her on 11.9.89. On the contrary, the applicant states that the complainant had come to the operation theatre improperly dressed and was wearing jewellery which was not conducive to avoid infection. Therefore he had to admonish her on this account. In our view, this is eminently a case where a preliminary enquiry was required before arriving at any conclusion as to who, if any, was to be charged or what action should be taken.

23. The enquiry conducted by Dr. Mrs. Ira Ray - which has been disowned by the respondents as pointed out in para 18 - is totally unsatisfactory. She did not probe into the matter properly either while examining the complainant or while examining the applicant. The complainant has stated that four doctors in the operation theatre were witnesses to the incident. She did not even care to ascertain the names of the doctors who were on duty at that time from the official records which shall be helpful for evidence. She also failed to examine those witnesses. It is, however, evident from the statement of Dr. Saxena recorded by Dr. Ira Ray that there was some dispute about the dress worn by the complainant. In his statement (Annexure A-20), Dr. Saxena states that Dr. Manke had told him that Dr. Bansal, i.e. the applicant, "put his finger inside her

blouse sleeve and pulled it and told her "look, this is coming out of your blouse. You are not supposed to show this clothing here and niether are you supposed to come in undergarment"". Likewise, Dr. Bansal also came to him(Dr. Saxena) in his office and complained against Dr. Manke that she did not listen to him when he called her and she was putting on a blouse in which the sleeve of the blouse was longer than the sleeve of the surgical gown. Dr. Mrs. Iray Ray has not given any finding on this matter.

24. We also fail to understand, how a responsible person like the applicant has been charged with shouting at the complaint on 11.9.89 for no rhyme or reason as it were, as is clear from the statement of imputation, as in Annexure A-11. These imputations do not give any reason for the strange behaviour of the applicant. The respondent has stated that it is not necessary that there should be a background to every incident. We cannot even remotely agree with this submission. Unless the applicant had gone mad he would not have acted in the manner he is charged with. That shows that the charge is not based on any ascertained evidence, except the complaint of Dr.(Smt.) S.H. Manke.

25. We are clearly of the view that issuing a memo of charge to the applicant without a preliminary enquiry by accepting the complainant's version amounts to bias on the part of the respondents. We hasten to add that the enquiry held by Dr. Smt. Ira Ray can hardly be called a preliminary enquiry as pointed above. In any case, her report is neutral.

26. The bias of the respondents is also revealed in the suppression of material in connection with the departmental enquiry. The list of documents which would be used in the disciplinary proceedings against the applicant is given with the Annexure A-11 memo of charge at Annexure A-3 thereto. The documents at Sl.No.2 & 3 are the statements of the complainant and Dr. R.S. Saxena, Head of Department of Anaesthesia recorded by Dr. Mrs. Ira Ray. One can not fail to note that the statement of the applicant which was also recorded by her is suppressed from the list of documents. Nor is her report included therein. To say the least, this action is highly objectionable, as the respondent has thus doctored Dr. Smt. Ira Ray's report which is never done by Government. When a record is referred to, it is the duty of the first respondent to produce the whole record and not use it selectively. This action conclusively establishes the bias of the first respondent.

27. It was contended by the respondents that it is open to the applicant to face the departmental proceedings and establish his innocence and that therefore this Tribunal has no authority to quash the proceedings at this stage. We are unable to agree. It is to be remembered that the inquiry officer is only a delegatee of the disciplinary authority. He has been authorised to only enquire into the truth of such of the charges as may have been denied by the employee. That being the case, the Inquiry Officer has no authority to decide the vires of the charge sheet or as to whether the charge sheet is valid and competent. For the purpose of the

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departmental enquiry, he has to assume that the charge is valid and competent and does not suffer from any infirmity because he has no right to pronouce on this issue. Such an issue can be adjudicated only before this Tribunal, unless the disciplinary authority itself accepts the allegation made and takes necessary corrective action. As this is not the case, we can quash the proceedings if we find at the threshold that it has been instituted without any evidence whatsoever and that this is the result of bias, writ large.

28. The learned counsel for the respondents has relied on a number of authorities in support of her contentions.

29. She contended that merely because the complaint has been made only by Dr. Smt. S.H. Manke, the complainant, and no eye witnesses have been examined, it can not be held that it can not be relied upon to initiate proceedings against the applicant. No lady holding a responsible position would have made such a complaint unless it was well founded. Therefore, the respondents have not committed any mistake in relying on that complaint to initiate disciplinary proceedings. In this connection, she has drawn our attention to the judgement of Supreme Court in the case of State of Maharashtra & Another Vs. Madhukar Narayan Murdikar (SLJ-1991(1)-164). That was a case where disciplinary proceedings were initiated against the respondent, who was a police inspector, alleging that he visited the hutment of Banubi w/o Babu Sheikh on the night of 13.11.65 in police uniform and had tried to ravish her.

The respondent was removed from service. He approached the High Court of Bombay, where the order of penalty was quashed. The High Court observed that as Banubi was an unchaste woman, it would be extremely unsafe to rely on her uncorroborated version to find the respondent guilty. Reversing this judgement, the Supreme Court held that Banubi too was entitled to protect her person and that none can violate her person against her wish. It was observed that merely because she was a woman of easy virtue, her evidence could not be thrown overboard. At best, the officer called upon to evaluate her evidence would be required to caution himself before accepting her evidence. However, it found that her evidence was corroborated by the evidence of her husband and also by the evidence of the police authorities who went to her house later. In our view, this judgement hardly lends any support to the respondents' claim. It only holds that one can not refuse to believe evidence tendered by any one on moral grounds but one has to be circumpect in the matter. In the present case such an issue does not arise. The complainant had specifically stated that doctors in the operation theatre were witnesses to the incident. Therefore, it was the bounden duty of the respondents to have examined them in a preliminary enquiry before accepting the complaint to be prima facie true and considering proceedings against the applicant.

30. She has cited some authorities for her contention that at this stage when only a charge-sheet has been served on the applicant, the Tribunal can not interfere

in the matter and the applicant can put up his defence in the disciplinary proceedings. These authorities are considered below:

i) Reliance is placed on the judgement of the Patna Bench of the Tribunal in I.S. Khan Vs. UOI (1991(1)-SLJ-CAT-104). That was a case where the applicant claimed that the memo of charge dated 30.5.87 should be quashed because identical charges were made earlier on 21.2.86 and the applicant had already been awarded censure as penalty. That application was dismissed, not on the ground that the Tribunal can not quash the charge-sheet in such circumstances, but because of the fact that the OA was barred by limitation, having been filed on 9.7.90.

ii)The other decision relied upon is of the Bangalore Bench in M. Sankaranarayanan, IAS Vs. State of Karnataka & Ors. (1991(3)SLJ(CAT-278). The applicant therein was suspended while holding the post of Chief Secretary and this was challenged in the OA. It was held that it was not open to the Tribunal to interfere in the action taken by the Government in exercise of statutory power unless it is shown that the power is tainted with legal malafides or it is absolutely perverse. For this purpose, the Tribunal relied on the following observations of the Supreme Court in Barium Chemicals & Others Vs. Company Law Board, AIR 1967/SC,295:

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> "Though an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency it is liable to be quashed on the ground of malafides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best intention to further the purpose of the legislation which confers the powers, since the authority has to act in accordance with and within the limits of the legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts"

We have held in the present case that without a preliminary enquiry, no one can reasonably arrive at a conclusion that the applicant was the guilty person to be proceeded against. We have also found that the respondents have shown bias in this matter. Therefore, considering the law laid down by the Supreme Court, we are of the view that this is is a fit case where we should interfere to protect the interest of the applicant.

iii) It is also urged that the memo of charge issued is not an order and hence it can not be challenged before this Tribunal as held in Gopal Joshi Vs. UOI, 1992-ATC-371. That was a case where, in addition to challenging the order of the President, dismissing him from service, the applicant also challenged the report of the Enquiry Officer. It is in this context that it was held that the report of the Enquiry Officer was not an order by which the applicant could have been aggrieved under Section 19 of the AT Act. That

decision has no application in the present case. In our view, the Annexure A-11 order initiating disciplinary proceedings, if allowed to continue, will subject the applicant to unnecessary harassment, as we have held that the decision to initiate such proceedings is without any foundation and is born out of bias.

31. In regard to the preliminary enquiry, the learned counsel for the respondents has drawn our attention to the decision of a Constitution Bench of Apex Court in Champak Lal Vs. UOI, AIR-1964(SC)-854. Attention has been drawn to head-note "D" of the report wherein it was noted that a preliminary enquiry is conducted by the disciplinary authority for his satisfaction to decide whether punitive action should be taken or action should be taken under the contract of appointment or action should be taken under the Temporary Service Rules. The only point made is that such preliminary enquiry is not covered by Article 311. We do not see how this judgement is relevant for our purpose. Our finding is that in the present case, the disciplinary proceedings ought not to have been initiated without instituting a preliminary enquiry in the first instance.

32. Lastly, reference was made to the judgement in Jai Singh Vs. UOI, AIR-1977-SC-898. That was a case where the High Court dismissed the writ petition of the applicant on the ground that it involved determination of disputed facts and the High Court held that it should not, in exercise of the extraordinary jurisdiction, grant relief to the appellant when he has an alternate

remedy. In that case, the applicant had filed a suit in regard to the same matter which was pending. In the present case, as can be seen from our judgement, no disputed facts have to be considered.In fact, we have not gone into the merits of the case at all. The respondents themselves have admitted that no preliminary enquiry has been held and the disciplinary proceeding has been initiated on the complaint of Dr. Smt. S.H. Manke alone. We have only considered the consequence of this omission in the circumstances of this case.

33. The learned counsel for the respondents also referred to the following authorities which are not strictly relevant to this case:

i) ICN Babu Vs. Director of Police Services (1991 (18) ATC-323);
ii) Gopal Joshi Vs. UOI (1992-19-ATC-371); &
iii) Dr. B.K.Yashoda Devi Vs. State of Karnataka (1991 (3) SLJ-394 CAT)

34. We have only to note the decisions that we rely on for our conclusion.

i) The decision of the Rajasthan High Court, in the case of Sukhraj Singh Vs. High Court of Judicature for Rajasthan (1989(3)-SRL-424) is the first one. It was held that "A case of no evidence at all would be not only a harassment to the petitioner but would also be sheer wastage of precious time of the disciplinary authority as well as wastage of money of the public exchequer. Thus, in the facts and circumstances of this case, we are fully convinced that there is no basis, ground or

justification for holding any disciplinary inquiry against the petitioner on the basis of the charges levelled against the petitioner".

ii) The Calcutta High Court has held in the case of Surendra Chandra Das Vs. State of West Bengal & Ors. (1981(3)SLR-737) that where a chargesheet is issued with a closed mind, which depicted bias against the petitioner, initiation of disciplinary proceedings is illegal.

iii) The decision of the Supreme Court in the case of Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre (AIR 1988 SC 709) may be referred to. It deals with the power of the court to quash the charge-sheet in a criminal case even though it may be at a preliminary stage. It was held as follows:

"The legal position is well settled and when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations made, prima facie establish the offence. It is also for the court to take into consideration and special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosection to continue. This is so on the basis that the court can not be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage".

35. For the foregoing reasons, we find it necessary to interfere in the disciplinary proceeding initiated by the Annexure A-11 memo as we hold that the proceedings are based on bias and are without any prima facie evidence. We are, therefore, of the view that Annexure A-11 memo is liable to be quashed. We do so. The OA is allowed with this order. MP 1324/92 is dismissed as having become infructuous. In the circumstances, there will be no order as to costs.

22/2/94

(C.J. ROY)
Member (J)

22/2/94

(N.V.KRISHNAN)
Vice-Chairman(A)

/tvg/