**CENTRAL ADMINISTRATIVE TRIBUNAL**
**PRINCIPAL BENCH**

**O. A. No. 2211/2004**

New Delhi, this the 24th day of February, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman**
**Hon'ble Mr. S.A.Singh, Member (A)**

Shalini Makhija
Administrative Officer,
India Meteorological Department,
Mausam Bhawan,
Lodhi Road,
New Delhi – 110 003. ...Applciant

(By Advocate: Sh. S.N. Anand)

Versus

1. The Director General of Meteorology/
Disciplinary Authority,
India Meteorological Department,
Mausam Bhawan, Lodhi Road,
New Delhi – 110 003.

2. Shri J.S. Arya,
Formerly Deputy Director General Meteorology
(Admn. & Stores),
India Meteorological Department,
Presently at
IDAS (Indian Defence Accounts Service)
Office of the Controller
General Defence Accounts,
West Block – V, R.K. Puram,
New Delhi – 110 066. ....Respondents

(By Advocate: Sh. Rajiv Bansal)

**O R D E R**

**By Mr. Justice V.S. Aggarwal:**

Applicant (Shalini Makhija) is an Administrative Officer in India Meteorological Department. She has been served with the following Article of Charges:

> **"ARTICLE – I**
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> Smt. Shalini Makhija while working as Admin Officer in General Section and holding charge of telephone bill seat among other responsibilities got her personal phone bills included in official phone bills and collected payments against the same thereby misappropriated Government money by misusing her own official position and thereby displayed lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant. She thus violated rule 3(1)i, ii & iii of CCS Conduct Rules of 1964.
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> **"ARTICLE – II**
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> Smt. Shalini Makhija while functioning as an Admin Officer, wrote letters directly to higher authorities including Minister and constitutional authorities making baseless allegations against senior officers solely to embarrass her seniors and in an attempt to escape charges of misappropriation. She, by her action, violated Rule 20 and Rule 3(1) ii & iii of CCS Conduct Rules of 1964.

2. By virtue of the present Original Application, she seeks to quash the chargesheet of 11.08.2004.

3. Some of the other facts are that according to the applicant, the chargesheet has been issued to wreak vengeance against her. She had spearheaded the formation of a separate Association, which was not to the liking of the authorities. The initiation of disciplinary proceedings, thus, is not bona fide and is an abuse of the power. Furthermore, it has been pleaded that the disciplinary authority had issued the chargesheet without any application of mind. The charge alleges misappropriation of Government money. Applicant was posted as In-charge of the Guest House and Caretaker Unit during 2002-2003. She was entitled to re-imbursement of local calls made by her from her private residential telephone used for official purpose. This facility is also available to other officers of the Department. She was not the sole beneficiary of the said facility. Three bills for reimbursement had been duly sanctioned for payment by the competent authority and, thus, the charge requires to be quashed.

4. The applicant's further plea, pertaining to other charge, is that in accordance with the instructions of the Govt. of India issued under Rule 20 of the CCS (Conduct) Rules, straightaway departmental action could not be initiated against the applicant.

5. The application has been contested.

6. According to the respondents, the applicant, while working in the year 2002-03 as In-charge of the Guest House and Caretaker Unit,

presented her private residential telephone bills for reimbursement to which she was not entitled. The same was not approved by the Director General of Meteorology i.e. the Head of the Department. The applicant had withdrawn certain amounts. She herself had certified all these bills being Section In-charge and got the amount reimbursed. Respondents' plea is that the applicant is a Group `B' employee. She is not entitled to avail the facility of residential telephone at the expenses of the office, as per rules. The only facility being provided to her is intercom telephone system. She had wrongly certified her bills.

7. Pertaining to the other charge, it is stated that the applicant had approached directly to the political personage. She wrote letters to Secretaries of various departments, constitutional bodies, such as, National Human Rights Commission, National Commission for Women with the purpose of intimidating the competent authority. It is denied that there are any mala fides. According to the respondents, the disciplinary proceedings can continue.

8. The principle of law is well settled that at the threshold when notice or chargesheet is served, the Tribunal would be reluctant to interfere.

9. We know from the decision of the Supreme Court in the case of ***Shri Chanan Singh*** *v.* ***Registrar, Co-operative Societies, Punjab and others,*** AIR 1976 SC 1821 that when a show-cause notice is

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served, the petition challenging the same ordinarily would be premature. In the cited case, the disciplinary proceedings were dropped by the inquiry officer who was not competent to impose the punishment. The same were revised by the competent authority and a fresh show cause notice was issued. It was held that such a show cause notice could not be challenged. The petition was dismissed as premature. The Supreme Court held:

> "5. Other obstacles in the way of granting the appellant relief were also urged before the High Court and before us, but we are not inclined to investigate them for the short reason that the writ petition was in any case premature. No punitive action has yet been taken. It is difficult to state, apart from speculation, what the outcome of the proceedings will be. In case the appellant is punished, it is certainly open to him either to file an appeal as provided in the relevant rules or to take other action that he may be advised to resort to. It is not for us, at the moment, to consider whether a writ petition will lie or whether an industrial dispute should be raised or whether an appeal to the competent authority under the rules is the proper remedy, although these are issues which merit serious consideration.
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> 6. We, are satisfied that, enough unto the day being the evil thereof, we need not dwell on problems which do not arise in the light of the view we take that there is no present grievance of punitive action which can be ventilated in court. After all, even the question of jurisdiction to re-open what is claimed to be a closed enquiry will, and must, be considered by the Managing Director. On this score, we dismiss the appeal but, in the circumstances, without costs."

CS Agree

10. Similarly in the case of ***State of Uttar Pradesh*** *v.* ***Shri Brahm Datt Sharma & Another,*** AIR 1987 SC 943, a show cause notice had been served to a Government servant called upon to show cause. The same was challenged and the Supreme Court held that the purpose of issuing the show-cause notice is to afford an opportunity of hearing and thereafter a final decision has to be taken. Interference, at this stage, by the Court was held to be not called for and petition was stated to be premature. The Supreme Court held:

> "9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a Govt. servant under a statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature. The High Court in our opinion ought not to have interfered with the show cause notice."

11. The same principle was carried forward in the case of ***Union of India & Ors.*** *v.* ***Upendra Singh,*** 1994 (2) SLJ 77. The Supreme Court held that the inquiry has to be held by the disciplinary authority and granting relief at the initial stage is not permissible and

to that effect, therefore, the petition would be premature. The Tribunal should not interfere with the truth or correctness of the charges. The findings recorded were:

> "6. In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interference only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the Court/Tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal & Ors. v. M/s Gopi Nath & Sons and Ors. (1992 Supp.(2) S.C.C. 312). The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus:
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> > "Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a

> matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

> 7. Now, if a Court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is un-understandable how can that be done by the Tribunal at the stage of framing of charges? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but mainly on the basis of the material produced by the respondent before it, as we shall presently indicate."

12. No different was the view expressed in the case of ***The Executive Engineer, Bihar State Housing Board*** *v.* ***Ramesh Kumar Singh & Ors.***, JT 1995 (8) SC 331. In the cited case, a show cause notice had been issued. The High Court had entertained the Petition. The Supreme Court held that it would be premature because there was no attack on the vires of the statute nor there was any

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fundamental rights violated. The findings of the Supreme Court are reproduced for the sake of facility.

> "10.We are concerned in this case, with the entertainment of the Writ Petition against a show cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is ex facie a "nullity" or totally "without jurisdiction" in the traditional sense of that expression – that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorized. In such a case, for entertaining a Writ Petition under Article 226 of the Constitution of India against a show-cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him, to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India."

13. Similarly in the case of ***Union of India & Anr. v. Ashok Kacker,*** 1995 SCC (L&S) 374, the charge-sheet was being impugned without waiting the decision of the disciplinary authority. The Supreme Court held that it is premature. The findings of the Supreme Court are:

> "4. Admittedly, the respondent has not yet submitted his reply to the charge-sheet and the

respondent rushed to the Central Administrative Tribunal merely on the information that a charge-sheet to this effect was to be issued to him. The Tribunal entertained the respondent's application at that premature stage and quashed the charge-sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned counsel for the respondent made no attempt to support. The respondent has the full opportunity to reply to the charge-sheet and to raise all the points available to him including those which are now urged on his behalf by learned counsel for the respondent. In our opinion, this was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the respondent to adopt is to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the respondent had refused to the Tribunal, we do not consider it necessary to require the tribunal at this stage to examine any other point which may be available to the respondent or which may have been raised by him."

14. In the case of ***Managing Director, Madras Metropolitan Water Supply and Sewerage Board and Anr.*** *v.* ***R. Rajan & Others,*** (1996) 1 SCC 338, the Supreme Court held that no interference was called for at an interlocutory stage of the disciplinary proceedings. The findings of the Supreme Court are:

"7. As rightly held by the learned Single Judge and the Division Bench, no interference was called for at an interlocutory stage of the disciplinary proceedings. The enquiry was no doubt over but the competent authority was yet to decide whether the charges against the respondents are established either wholly or partly and what punishment, if any, is called for. At this stage of proceedings, it was wholly unnecessary to go into

the question as to who is competent to impose which punishment upon the respondents. Such an exercise is purely academic at this stage of this disciplinary proceedings. So far as the learned Single Judge is concerned, he did not examine the regulations nor did he record any finding as to the powers of the General Manager, the Board or the Government, as the case may be. He merely directed that in view of the statement made by the learned counsel for the Board, the punishment of dismissal shall not be imposed upon the respondents even if the charges against them are established. When the respondents filed writ appeals, the Division Bench was also of the opinion that this was not the stage to interfere under Article 226 of the Constitution nor was it a stage at which one should speculate as to the punishment that may be imposed. But it appears that the Board insisted upon a decision on the question of power. It is because of the assertion on the part of the appellants (that the Managing Director has the power to impose the penalty of compulsory retirement) that the Division Bench examined the question of power on merits. The said assertion of the Managing Director that he has the power to impose the punishment of compulsory retirement probably created an impression in the mind of the Court that the Board has already decided to impose the said punishment upon the respondents and probably it is for the said reason that they examined the said question on merits. (Insofar as the respondents are concerned, it was their refrain throughout that the Board had already decided to impose the punishment of dismissal/compulsory retirement upon them and that the enquiry and all the other proceedings were merely an eye-wash).

Same was the view expressed by the Supreme Court in the case of ***State of Punjab & Ors.*** *v.* ***Ajit Singh,*** (1997) 11 SCC 368 and in the case of ***Air India Ltd.*** *v.* ***M. Yogeshwar Raj,*** 2000 SCC (L&S) 710.

15. The Delhi High Court in the case of ***Than Singh vs. Union of India & Ors.,*** 2003(3) ATJ 42, dealt with the same controversy and held that the chargesheet at the initial stage can only be quashed and correctness challenged, when it does not disclose any misconduct; if it discloses bias or pre-judgment of the guilt, there is non-application of mind, if it is vague, based on stale allegations or there are mala fides.

16. With the above said limited scope of interference, we are dwelling into the contentions raised at the Bar.

17. So far as mala fides or bias is concerned, the ground floated was that the applicant was responsible for forming of an Association. She became an eye sore and there are mala fides in this regard. At this stage, we find little ground on mere allegation to accept that on the said plea, it can be termed that there was real danger of bias in this regard. While fairness is synonymous with reasonableness, bias stands excluded within the attributes and probable view of the term has to be taken, but still mere allegations cannot be a substitute of something that should be shown. Mere apprehension, thus, on this ground, in the absence of any other material, at this stage, does not prompt us to interfere.

18. On an earlier occasion, the applicant had filed OA No. 391/2004, which was decided on 2.9.2004. This Tribunal had allowed the said Original Application. It was recorded that the applicant has

not been provided sufficient opportunity to defend herself. Office Memorandum had been quashed but liberty was given to issue comprehensive notice in this regard and even initiate disciplinary proceedings. This clearly shows that the Tribunal had permitted that, if deemed appropriate, disciplinary proceedings can be initiated. However, learned counsel for the applicant contended that when they have used the expression that applicant misappropriated Government money, it is pre-judging the issue and, therefore, it should be quashed.

19. In support of the plea, reliance was placed on the decision of the Calcutta High Court in the case of ***Nag Narayan Singh vs. Union of India,*** 2001(3)ADJ 158. In the peculiar facts, the Calcutta High Court held that the charge indicated that there is pre-judging of the facts.

20. It must be stated that, if in a particular facts it is held, it cannot be taken that merely stating in the charge that a particular conclusion is to be drawn is a pre-judging of the chargesheet. As yet the matter has to be gone into and on mere assertions, therefore, factum of pre-judging the controversy, will not be appropriate to be so presumed.

21. It was further argued that so far as Article No. 1 of the charge is concerned, it could not have been drawn because some of the bills of the applicant were duly sanctioned.

22. While giving the resume of the position in law, we have already recorded that at the threshold the findings should not go on recording by appreciating the facts. According to the applicant, while no charge can be drawn, respondents contend that the applicant has misused her position. She was not entitled to get her personal phone bills included in the official bills. These are factual problems have to be gone into by appreciation of the facts by the authorities and at this stage no further opinion needs to be expressed which would be embarrassing for either party nor the Tribunal would be competent to do so.

23. Pertaining to Article no. 2, it was urged that the instructions of the Government of India, when a person is alleged to be exerting extraneous things, permit that firstly the concerned person should be warned and thus straightaway departmental action could not be taken. The instructions of the Govt. of India dated 12.1.1995 reads:

> "**(1 )Procedure to be adopted for dealing with communications from public representatives/outside authorities relating to the service matters of Government employees.** – Rule 20 of the CCS(Conduct) Rules, 1964, provides that no Government servant shall bring or attempt to bring any political or other outside influence to bear upon any superior authority to further his/her interest in respect of matters pertaining to his/her service under the Government. The Government of India has, from time to time, emphasized that Government

servants should not approach Members of Parliament or State Legislatures or other political/outside authorities to sponsor their cases in respect of service matters. As per the existing instructions vide O.M. No. 11013/85-Estt.(A), dated 22.5.1985, the following action should be taken against Government servants approaching Members of Parliament or State Legislatures for sponsoring individual cases:-

(i) A Government employee violating the aforesaid provisions of the Conduct Rules for the first time should be advised by the appropriate disciplinary authority, to desist from approaching Members of Parliament/Members of State Legislature to further his/her interest in respect of matters pertaining to his/her service conditions. A copy of this advice need not, however, be placed in the CR dossier of the employee concerned.

(ii) If a Government employee is found guilty of violating the aforesaid provisions of the Conduct Rules a second time despite the issue of advice on the earlier occasion, a written warning should be issued to him/her by the appropriate disciplinary authority and a copy thereof should be placed in his/her CR dossier.

(iii) If a Government employee is found guilty of violating the aforesaid provisions of the Conduct Rules, despite the issue of warning to him/her, disciplinary action should be initiated against him/her by the appropriate disciplinary authority

under the provisions of the CCS(CCA) Rules, 1965."

24. As one glances through the same, we find no reason to accept the arguments. They are directory in nature and not fettish on the power of the disciplinary authority that in a particular case, it may initiate disciplinary proceedings straightaway.

25. Resultantly, at this stage, we find no reason that at the threshold the chargesheet can be quashed.

26. For these reasons, the Original Application, being without merit, fails and is dismissed.

**(S.A. Singh)**
Member (A)

**(V.S.Aggarwal)**
Chairman

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