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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./~~T.A.~~ NO. 2062 of /19 93 Decided on : 24.11.1995

R.D. Aggarwal
... Applicant(s)

(By Shri Gyan prakash Advocate)

versus

Union of India & Ors.
... Respondent(s)

(By Shri V.P. Uppal Advocate)

CORAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI~~ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not ?

2. Whether to be circulated to other Benches of the Tribunal ?

(DR. A. VEDAVALLI)
Member (J)

(S.R. ADIGE)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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O.A. No. 2062/1993

New Delhi this the 24th November, 1995

Hon'ble Shri S.R. Adige, Member (A)

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

R.D. Agarwal,
Income Tax Offiicer (Retd.)
Office of the Commissioner of Income Tax,
Meerut. ... Applicant

(By Advocate: Shri Gyan Prakash)

Vs

Union of India, through

1. The Secretary to the Govt. of India,
   Ministry of Finance,
   Dept. of Revenue,
   New Delhi.

2. The Chairman,
   Central Board of Direct Taxes,
   New Delhi.

3. The Commissioner of Income Tax,
   Ayakar Bhawan,
   Meerut. ...Respondents

(By Advocate: Shri V.P. Uppal)

O R D E R

Hon'ble Shri S.R. Adige, Member (A)

In this application Shri R.D. Agarwal, Income Tax Officer (Retd.) has impugned the Order dated 20.4.1992 (Annexure A-1) imposing a penalty of a cut of 25% in the pension admissible to the applicant for a period of five years, and the order dated 19.11.1992 (Annexure A-24) restricting his pay and allowances for his suspension period to the amount of subsistence allowance already paid to him under FR54-B and treating the suspension period as non-duty which would not count towards qualifying service.

2. The case of the applicant, who superannuated as ITO (Group 'B') Commissionnerate Income Tax, Meerut on 31.12.1983 is that while functioning as Tax Recovery Officer, Muzzaffnagar under Commissioner I.T. Meerut, he sent a detailed representation dated 22.6.1982 addressed to Chairman CBDT alleging humilation,harassment etc. at the hands of the then Commissioner, I.T.Meerut Shri R.P. Kapur which was forwarded to the Commissioner and within a couple of months of his representation, he was suspended vide order dated 30.8.1982 (Annexue A-5) by the Commissioner, on the ground that disciplinary proceeding were contemplated against him and by Memo dated 15.9.19823 (Annexure A-6) 3 Articles of charge were communicated to him, namely that while functioning as ITO C Ward, Muzzaffarnagar during the period 27.3.1981 to 31.3.1982 he :

I. completed assessment without reference under Section 144 B IT Act: com-pleted assessment beyond jurisdiction; completed assessment to help fake capital building by assessee; completed assessment U/S 144 IT Act and then reopened U/S 146 IT Act on the same facts; under assessed certain cases; did not complete assessments within reasonable time; completed assessment without enquiry into investment; completed wealth tax assessment by adopting different value in different assessment years on the same

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facts; ignored direction of C.I.T. (Appeals) and AAC and completed assessments without proper scrutiny.

II. Did not inspect the files and offer comments on various inspections etc. forwared to him in spite of repeated opportunities and submitted irrelevant and rude replies in response to inspection notes sent to him for comments; and

III. He flouted the directions of the IAC and CIT given to him in case of Shri J.P. Goel for the assessment year 1979-80 and completed the assessment ignoring such directions.

3. The applicant further contends that these charges were conceived by the C.I.T. Meerut, Shri Kapur who was inimically deposed towards him and who was the Disciplinary Authority. In his letter dated 30.9.1982 he denied the charges and informed the Disciplinary Authority that his defence statement would be submitted as soon as he was given opportunity to inspect the relevant documents and records and sought a personal hearing before commencement of the D.E. which was denied to him.

4. On 6.4.1983 the applicant's suspension was revoked but subject to the regulation of his pay and allowances for the suspension period after the D.E. concluded.

5. The applicant states that by letter dated 8.11.1983 addressed to the Presenting Officer he forwarded a list of certain documents which were not made available for his inspection but was informed by letter dated 26.12.1983 that the records mentioned therein could not be traced out despite best efforts.

6. The applicant further states that initially Shri Lachman Singh, Commissioner, Departmental Eqnuiries was appointed as I.T.O. for conducting the enquiry U/R 14 CCS(CCA) Rules on 3.11.1982 and on his demitting office, Shri A.K. Garde, C.D.E. was appointed as I.O. on 29.10.1985 and upon his relinquishing charge Shri Naidu, C.D.E. was appointed as I.O. on 18.11.1985 under Rule 9(2) CCS (Pension) Rules. The applicant submitted his detailed written statement on 30.3.1986 denying the charges. The I.O. submitted his report to the Disciplinary Authority on 30.5.1986 who remitted it back to the I.O. under Rule 15(1) CCS (CCA) Rules, for restarting the proceedings afresh from the stage of assessment of evidence and arguments and submitting a fresh report. The applicant alleges that remittal order dated 15.10.1986 was non-speaking and unreasoned and he challenged the same in his letter dated 22.2.1987 addressed to the Chairman, CBDT (Respondent No. 2). Thereafter, the disciplinary Authority, Respondent No. 3 amended his earlier remittal order dated 15.10.1986 and furnished reasons. He alleges that these reasons were not based on the Disciplinary Authority's own satisfaction, but he went by the advice of the Central Vigilance

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Commissioner, which was denied to him when the Disciplinary Authority stated in his letter dated 11.3.1987 that a copy of the I.O's report dated 30.5.1986 and CVC's advice could not be supplied to the applicant. The applicant further contends that after the matter was remitted to the I.O., he appeared before the I.O. on 23.10.1986 and asked him as to how proceedings already closed had again been revived and what he was expected to present during the fresh proceedings. The applicant alleges that at this stage the I.O. lost his temper, and during the conversation, the applicant apprehended that the I.O. was biased and had a pre-determined mind. Apprehending injustice he requested the disciplinary authority vide letter dateed 29.10.1986 (Annexure A-20) to transfer the case to another I.O. and followed it up with a reminder on 5.12.1986 but was informed on 4.2.1987 (Annexue A-18) that there was no material on record to indicate that the present I.O. was biased towards the applicant, and it was not possible to accede to his request for a change in the I.O. As regards, the applicant's request for supply of a copy of the enquiry report and CVC' advice, the applicant states that he was informed by the above letter dated 4.2.1987 and subsequent letter dated 11.3.1987 (Annexure A-17) that the same could not be supplied to him at this stage.

7. The applicant further alleges that neither in first report dated 30.5.1986,nor indeed in his revised inquiry report dated 31.1.1989 did the I.O. properly evaluate all the material contentions made by the applicant in his written brief dated 30.3.1986 and

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without appraising the applicant's defence in its entirty, he hurriedly held the Articles of Charge as "held established", despite the C.I.T's observations in the remittal order dated 9.3.1987 on the first inquiry report that in none of the Article of Charge had, the defence points been taken into account and the I.O's conclusions seem to have been based on the versions continued in the charge sheet itself, without taking into account the defence contention before arriving at the conclusions. It is contended that despite the I.O's report dated 31.1.1989 lying with the Disciplinary Authority for over 7 months, it was not pointed out that even this second inquiry report was deficient and was not according to Rule 14(23)(1) CCS(CCA) Rules in as much as all the defence points were not considered; the evidence was not properly assessed; and reasons for findings on each charge were not given properly. The aplicants states that the I.O's report was finally supplied to him on 16.10.1989 and he was called upon to file a representation, if any, within 15 days, to which in his reply dated 9.11.1989 he questioned the validity of calling for a representation/submission from him without the advice of the C.I.T, Meerut, the findings on the facts and the advice of the UPSC about the penalty proposed to be imposed upon him, and he requested for copies of the above documents to be supplied to him, but he received no reply and eventually after two and a half year he received the impugned order dated 20.4.1992 (Annexure A-1) together with the UPSC's advice dated 14.2.1992

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which forms part of the impugned order, imposing a cut of 25% in the pension admissible to the applicant for a period of 5 years.

8. The applicant further states tht consequent upon his appeal against his suspension, the same was revoked by order dated 6.4.1983 but the question of determining his pay and allowances for the said period was left to be considered after the D.E. concluded. He states that this matter was neither considered by the comptent authority i.e. the disciplinary authority, who placed him under suspension, nor the President who was pleased to reinstate him. Instead the Under Secretary who was not the competent authority ordered vide impugned order dated 19.11.1992 that the suspension period may be treated as "non duty" and the pay and allowances for the suspension period may be restricted to the subsistence allowance already paid. He was separately advised vide letter dated 19.11.1992 (Annexure A-24) to move a separate application for convesion of the suspension period into leave admissible to him. He states that without prejudice to his claim entailing him to have his suspension period treated as on duty he moved a separate application as advised on 5.5.1993 followed by letters dated 15.6.1993 and 16.8.1993 but received no reply.

9. Thus being aggrieved by the impugned orders dated 20.4.1992 (Annexure A1) and 19.11.1992 (Annexure A-24) he has filed this O.A. M.P. No. 3002/1993 has also been filed praying for condonation of delay in filing the O.A on the ground that during 1992 and

thereafter he remained sick and had to spend a considerable sum on his medical treatment and the delay in release of his pension further aggravated his financial condition and hence the delay of approximate 4 months in filing the O.A. was not wilful.

10. The respondents have in their reply challenged the O.A. They state that the penalty of 25% cut in pension was imposed on the applicant after holding an inquiry under the CCS(CCA) Rules wherein reasonable opportunity was given to the applicant for putting forward his defence. They state that the applicant was proceeded against for grave misconduct in passing an improper assessment order in complete disregard of the instructions given to him by CIT and IAC (now designated as DCIT) along with allowing building up of a bogus capital to the assessee and not offering proper comments on various inspection notes etc. The Inquiry Officer held Charge I partly proved and Charges II and III wholly proved and the Disciplinary Authority after obtaining comments of the CVC and examining the inquiry report sent a copy of the inquiry report to the applicant for giving him opportunity to make his submissions on the same. Thereafter the record was sent to the UPSC for advice who after examing the records had advised 25% cut in pension, which penalty was accepted by the President. The respondents state that a copy of UPSC's advice was

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supplied to the applicant with the President's order dated 20.4.92 as per rules and deny any bias or malafide on their part and reiterate that the entire inquiry was held in accordance with Rules. They have also stated that the application is hit by limitation and also suffers from misjoinder of cause of action as the impugned orders dt. 20.4.92 and 19.11.92 constitute two separate and distinct causes of action whose period of limitation also expired on different dates. They therefore state that the O.A. is fit to be dismissed.

11. The applicant in his rejoinder has denied the contention of the respondents and has broadly reiterated the contents of this O.A.

12. We have heard Shri Gyan Prakash for the applicant and Shri V.P.Uppal for the respondents. We have also perused the materials on record and considered the matter carefully.

13. The first ground taken is that the impugned order dated 20.4.92 imposes a penalty of a cut of 25% in the pension admissible to the charged officer for a period of 5 years, without specifying the date from which it is enforceable, and the order is thus incomplete, defective and unenforceable under law. The respondents contend that when no date is mentioned, the order comes into effect immediately on passing and the pension cut has therefore been effected from 1.1.84 i.e. from the applicant's date of retirement and will be effective upto 31.12.88. It is well settled that no penalty order can be issued with retrospective effect. The respondents would therefore be acting illegally if they sought to make it effective from the date the applicant retired that is 31.12.83 and continued it till 31.12.88.

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However, merely because no date was specified in the impugned penalty order dated 20.4.92 from which it would take effect, would not make it per se illegal, because in the absence of any specific date mentioned in the impugned penalty order from which it would come into effect, it would take effect from the date of its issue i.e 20.4.92 and would be effective from 20.4.92 upto 19.4.97. We also note that whether the operative period would be 1.1.84to 31.12.88 or 20.4.92 to 19.4.97, in actual fact it would not effect the recoveries of pension in view of Rule 69(2) CCS(Pension) Rules,1972. For the above reasons, this ground alone would not warrant interference in the impugned penalty order d-ated 20.4.92.

14. The next ground taken is that a cut in pension is warranted only in the cases of grave misconduct or negligence of duty(and not in all cases of misconduct) which must be so recorded in the penalty order itself. It is contended that nowhere in the impugned order has it been held that the applicant was guilty of grave misconduct which omission is fatal to the entire proceedings. Support has been sought by applicant's counsel Shri Gyan Prakash from the rulings in K.M.Sharma Vs. UOI - ATR 1987(1)(CAT) 307; P.S.Rao Vs. UOI & others - ATJ 1992(2) 326 and D.V. Kappor Vs. UOI -1990(14) ATC 906.

15. Rule 9(1) CCS(Pension) Rules,1972 reserves a right to the President to withhold or withdraw pension or gratuity in full or in part, permanently or for a specified period and to order recovery from pension or gratuity of the whole or part of any pecuniary loss caused to Government, if in any departmental or judicial

proceedings the pensio-ner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement, provided the UPSC shall be consulted before any final orders are passed. A plain reading of this sub-rule makes it clear that if in any departmental proceedings, the pensioner is found guilty of (i) grave mis-conduct or (ii) of negligence, a cut in pension can be imposed. From the perusal of the impugned order dated 20.4.1992, we note that the Inquiry Officer had held Article I of Charge to be established in respect of all sub-charges except in respect of sub-charges XVIII and XXII; and Articles II and III of the charge as fully established. The Disciplinary Authority (CIT, Meerut) accepted the findings of the Inquiry Officer and made recommendations to the President for consideration under Rule 9 CCS (Pension) Rules, 1972. Thereupon the applicant's comments were called for, and the President after examining the applicant's comments and the report of the Disciplinary Authority, tentatively concluded that the Inquiry Officer's findings deserved to be upheld, and a penalty of forfeiture of pension was required to be imposed on the applicant. The case was therefore referred to the UPSC for their statutory advice who opined on 14.2.1992 that Article I was partly proved and Articles II and III were fully proved. The UPSC advised that considering all the facts and circumstances of the case, a penalty of 25% cut in the pension admissible to the applicant be imposed for a period of five years and agreeing with the same, the penalty was imposed vide impugned order dated 20.4.1992.

16. We note that in Article I of the charge, the applicant was alleged to have contravened Rule 3(1), (ii) and (iii) of CCS (Conduct) Rules, 1964 while in Articles II and III, the applicant was alleged to have contravened the provisions of Rule 3(1)(ii) and (iii) of the CCS (Conduct) Rules, 1964. The relevant Rule 3(1)(i), (ii) and (iii) CCS (Conduct) Rules, 1964 reads as follows:

> Every Government servant shall at all times -
>
> (i) maintain absolute integrity;
>
> (ii) maintain devotion to duty; and
>
> (iii) do nothing which is unbecoming of a Government servant."

By holding the applicant guilty to the extent indicated by UPSC in their advice in respect of Article I of the charge, and by holding him fully guilty in respect of Articles II and III of the charge, it would appear that the respondents held the applicant guilty of contravening Rule 3(1) (i), (ii) and (iii) of the CCS (Conduct) Rules, 1964 i.e. (i) he failed to maintain absolute integrity; (ii) he did not maintain devotion to duty; and (iii) he acted in a manner of unbecoming of a Government servant.

17. We take judicial notice of the fact that the President after full and proper application of mind, agreeing with the UPSC advice has held the applicant guilty of failing to maintain absolute integrity, which manifestly is an act of grave misconduct. Similarly he has held the applicant guilty of not maintaining devotion to duty. The Chambers 20th Century Dictionary defines "Negligence" to mean " the fact or quality of being negligent; want of proper care; habitual neglect; a slight carelessness about dress, manner etc; omission of duty, especially such care for the interests of others as the law may require" . In other words by failing or omitting to do his duty the applicant was guilty of negligence and the respondents were therefore fully entitled in accordance with the provisions of Rule 9(1) CCS(Pension) Rules,1972 to impose the impugned 25% pension cut.

18. In so far as the ruling in K.M.Sharma's case (Supra) is concerned, it no doubt states that the order of penalty itself must disclose that the pensioner has been guilty of grave misconduct and negligence and that if it does not do so, the order is mainifestly illegal. However, a similar situation came to be examined by the CAT Full Bench in O.A. 2372/90 Bhagirath Singh Vs. Delhi Administration & others, decided on 4.8.93. In that case, the applicant Bhagirath Singh who was a Head Constable, was dismissed

from service for unauthorised absence from duty for 198 days and for habitual absence from duty on several previous occasions . It was contended that unless the Disciplinary Authority recorded a finding that the petitioner had committed a grave misconduct rendering him unfit for police service, he would not be justified in dismissing him from service. The Full Bench in its judgment dated 4.8.93 held that it was not the use of precise language that was crucial, but on reading the entire order it had to be ascertained whether the concerned authority had opined that the delinquent official was worthy of being retained in service or not, and what was not expressly said in the Disciplinary Authority's order in that particular case had been made good by the appellate authority who had stated that in his opinion there was no place for the petitioner in a disciplined force, meaning thereby that he was unworthy of being retained in service. While that judgment no doubt related to a serving Govt. servant who was dismissed and not a pensioner who is facing a pension cut, it is clear that it is not the use of the precise language which is crucial, but whether upon reading of order as a whole, we are satisfied that the concerned authority did apply his mind to the facts of the case and conclude thereafter that the applicant had been guilty of

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grave misconduct or negligence. In this very connection, in D.V.Kapoor's case (Supra), the Hon'ble Supreme Court has held that

> " As seen the exercise of the powers by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner has committed grave misconduct or negligence in the discharge of his duty while in office ....."

In this connection from an additional affidavit filed by the respondents enclosing photostate copies of notings from the relevant file, it would appear that the Deputy Director Income Tax (Vigilance) in his noting dated 14.6.89 as a part of the decision making process in the departmental proceeding, has categorically stated that the applicant's acts of omission and commission held established during the enquiry, amounted to a grave misconduct within the meaning of Rule 9 of the Pension Rules and this view was upheld right upto the level of the Finance Minister. Again in his noting dated 7.1.91, the Director of Income Tax (Vigilance) has stated that the applicant has committed serious irregularities in making certain assessments etc. and this view was once again upheld upto the level of Deputy Minister Finance ,

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before the matter was referred to the UPSC for their statutory advice. In other words, it is clear that a finding has been recorded as a part of the decision making process in the departmental enquiry that the applicant has committed a grave misconduct in the discharge of his duties.

19. The third ruling relied upon by Shri Gyan Prakash, namely P.S.Rao's case (Supra) itself relies upon the judgment in K.M.Sharma's case (Supra) but as already pointed out, in the background of the CAT Full Bench Judgment in Bhagirath Singh's case (Supra), it is not the case of the precise language which is crucial, but whether there has been proper application of mind, and having regard to the Hon'ble Supreme Court's dicta in D.V.Kapoor's case (Supra), in the present matter before us a finding has clearly been recorded as a part of the decision making process in the departmental enquiry that the applicant was guilty of grave misconduct. Hence this ground also fails.

20. The next ground taken is that the UPSC's advice which forms part of the impugned order dated 20.4.92 was based on extraneous considerations as the Commission had given its advice as averred by them after taking into account all other facts relevant to the case. According to the applicant, the respondents could not take into account any other factor whether relevant or irrelevant and their advice had to be restricted to the inquiry report.

The respondents deny that the UPSC's advice went beyond the record. They state that the expression which has been underlined above, pointed to the factors evident from the records other than those on which specific findings had been discussed in the body of the UPSC's advice. The applicant has not pinpointed any factor in the UPSC's advice dated 14.2.92 which lay outside the record and which acted to his prejudice. Hence this ground also fails.

20. The next ground taken is that there was great delay in completion of the proceedings which itself is sufficient to vitiate the same. If so, it was open to the applicant to have filed this O.A. much earlier, but the applicant himself filed the O.A. on 24.9.93 i.e. one year five months after the impugned order dated 20.4.92 was passed. In fact a Misc. application for condonation of delay was also filed along with the O.A. Hence the argument that the delay in the conclusion of the departmental proceedings vitiates the enquiry proceedings, is untenable. In this connection, mention may be made of Ruling in J.M.Seshadri Vs. UOI - AI SLJ 1992(2) (CAT) 359 wherein the Madras Bench of the Tribunal held that the mere fact of delay in arriving at a finding and imposing the punishment , does not amount to a denial of opportunity to the applicant to defend himself satisfactorily. Hence this ground also fails.

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21. The next ground taken is that the applicant was not shown certain documents as detailed in letter dated 8.11.83(Annexure-A8). It is contended that he was subsequently informed by letter dated 26.12.83 (Annexure-A9) that some of those documents could not be traced out despite best efforts. The applicant has not been able to successfully establish that the respondents relied upon these records in coming to their conclusions against him, and non-supply of the same, therefore, prejudiced him in his defence. Hence this ground fails .

22. The next ground taken is that the department had claimed previlege in respect of certain documents under Rule 14(13) CCS(CCA) Rules, 1965 but without recording reasons, and when the applicant challenged it, vide his representation dated 15.7.85 (Annexure-A28), this was not replied to. The respondents in their reply have stated that the Enquiry Officer withdrew the requisition in respect of those documents under Rule 14(13)of CCS(CCA) Rules and CIT Meerut in any case had rightly exercised his previlege under the said Rule, as it was not in public interest to produce those documents, and the applicant was informed of the same vide CIT'S letter dated 25/27.5.85. The applicant has reiterated his contention in the rejoinder, but unless he can successfully establish that those documents were relied upon by the prosecution during the

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course of the departmental enquiry, and their non-disclosure to him prejudiced him in his defence, this ground does not advance his case.

22. The next ground taken is that in contravention of the directions contained in CIT's order dated 15.10.86 (Annexure-A12) for furnishing a fresh report without taking any fresh evidence, oral or documentary, the Enquiry Officer obtained a fresh written brief from the Presenting Officer without supplying him a copy thereof, contravening the mandatory provisions of Rule 14(19) CCS(CCA) Rules,1965 and also thereby violating the principle of natural justice. The respondents have stated in their reply that in accordance with CIT Meerut's order dated 15.10.86, the applicant's case was submitted to the Inquiry Officer for a fresh report after restarting the proceedings from the stage of assessment of evidence and argument without taking fresh evidence. The respondents have denied that the Inquiry Officer admitted the brief of the Presenting Officer without supply a copy to the applicant. They have drawn attention to the Presenting Officer's letter dated 11.1.89 (Annexure-R4) addressed to the Inquiry Officer which has categorically stated that the applicant had refused to receive the written brief on 11.1.89 when the same was given by the Inspector of Income Tax. It may be mentioned that during

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hearing, this ground was not pressed by the applicant's counsel and under the circumstances it fails.

23. The next ground taken is that the Inquiry Officer was biased and prejudiced towards the applicant and despite his request that the Inquiry Officer may be changed, the same was not acceded to. No reasons have been given why the Inquiry Officer should have been prejudiced against the applicant. The applicant has nowhere averred that the Inquiry Officer at any point of time worked in the same Organisation as him/or given cogent reasons why the Inquiry Officer was inimically disposal towards him. No doubt, the applicant has contended that when he met the Inquiry Officer on 23.10.86 and enquired from him as to how the proceedings already closed, had again been revived, the Inquiry Officer lost his temper but this by itself is not enough ground for us to conclude that the Inquiry Officer was prejudiced towards the applicant and deliberately set out to harm him. It has been well settled in a catena of judgments that where malafide or bias is pleaded, the pleadings have to be specific and detailed, and the functionary against whom such allegations are made, has to be impleaded as a party to enable him to reply to the charges against him, so that the plea of malafide or bias can be properly adjudicated upon. In the present case, the allegations are too much vague and general in nature and no concrete reasons have been given

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nor specific instances have been cited as to why the Inquiry Officer should have acted malafidely towards the applicant, besides the one instance reported on 23.10.86 when the Inquiry Officer is alleged to have lost his temper. Moreover, the Inquiry Officer Shri Naidu has not been impleaded in the proceedings , Hence we have no adequate ground to hold that the Inquiry Officer acted with malafide and was biased towards the applicant, and this ground therefore also fails.

24. The next ground taken is that the order dated 15.10.86 (Annexure-A6) as specifically amended by order dated 9.3.87 by the Disciplinary Authority remitting the Inquiry Officer's report dated 30.5.86 back to the Inquiry Officer for a fresh report after restarting the proceedings from the stage of assessment of evidence and argument without taking any fresh evidence, oral or documentary, is not in accordance with Rule 15 (1) CCS(CCA) Rules. The respondents in their reply have stated that the Disciplinary Authority is emplowered to remit the case to the Inquiry Officer under Rule 15(1) CCS(CCA) Rules if there is any infirmity in the Inquiry report, for further enquiry from the stage from which it had reasons to so order. No doubt, Rule 15 (1) CCS(CCA) Rules uses the term "further enquiry", while the

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order dated 15.10.86 remitted the matter back to the Inquiry Officer to restart the proceedings afresh from the stage of assessment and argument without taking any fresh evidence, documentary or oral on record. When the remittal order specifically forbidded the Inquiry Officer from taking any fresh evidence, oral or documentary on record, and directed him to proceed from the stage of assessment and argument, it is clear that the direction to the Inquiry Officer was to make a further enquiry from the stage of assessment and argument, even if the word "fresh" was used instead of word "further enquiry". No prejudice could have been caused to the applicant by this direction when the evidence both oral as well as documentary was already on record and all what the Inquiry Officer was required to do, was to reassess the same and submit his report thereon. Hence this ground also fails

25. The next ground taken is that the applicant was entitled to a copy of the advice of the Disciplinary Authority/UPSC before imposing a penalty of cut in pension which was not provided to him. The applicant having retired from service on superannuation, the penalty was imposed by a Presidential order. The Disc. Authority's advice contained in his letter dated 24.5.89 is a mere factual recitation in which he recommended 25% pension cut(which was eventually reduced to 20%) for 5 years and also 10% cut in gratuity with excess payment of pension being recovered from gratuity which was not accepted and non-supply of this letter cannot be said to have prejudiced the applicant in any way. Furthermore, our attention has not been drawn to any rule or provision whereby the copy of the ~~report~~ advice of the CIT or the advice of the Union Public Service should have been furnished to him before the Presidential order is

was passed imposing cut in pension. Hence this ground also fails.

26. The next ground taken is that the inspection of certain documents which were relevant for defence of the applicant, was not allowed. However, in the absence of the specific details of these documents, and particularly whether these documents were relied upon by the prosecution to prove its case, this ground also fails.

27. The next ground taken is that Charge III was not proved, but the Inquiry Officer has held it as proved without considering all what the applicant had stated in his defence. It is well settled that the Tribunal would be going beyond its jurisdiction if it reappraises the evidence on the basis of which the Inquiry Officer reached his findings. Hence this ground also fails.

28. During the arguments Shri Gyan Prakash has forcefully contended that despite the applicant's request, he was denied a copy of the CVC's advice, who was an independent authority, and as the President while passing the impugned penalty order was influenced by that advice, he was entitled to have a copy of the same, and its denial to him was sufficient to vitiate the entire proceedings. Reliance was placed on the ruling in A.K.Roy Choudhary Vs. UOI and others - 1982(1) AI SLJ 186, wherein it has been held that as opinion of the CVC was taken into

account by the disciplinary authority for awarding the punishment but the same was not made available to the delinquent official treating the same as confidential document, the principle of audi alteram partem had been violated, as a result of which the impugned order dated 16.12.78 compulsorily retiring the applicant in that case by way of penalty, was quashed and set aside. That judgment was delivered by an Hon'ble Single Judge of the Gujarat High Court. A similar view was taken by a Division Bench of the Hon'ble Supreme Court in State Bank of India Vs. D.C.Agarwal & another 1993(2) AI SLJ 88, wherein it was held that where the enquiry held and the report sent direct to the CVC proving only 2 out of 13 charges, and the CVC disagreed, drew his findings and proving many more charges recommending dismissal, and the Disciplinary Authority in the State Bank also held the same thing except the amount of penalty, The non-disclosure and non-supply of the CVC's report to the applicant on the ground of being a privileged document was a negation of natural justice. However, a Full Bench of the Hon'ble Supreme Court in Sunil Kumar Banerjee Vs. State of West Bengal & others -1980(3) SCC 304 held as follows:

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" We do not also think that the disciplinary authority committed any serious or material irregularity in consulting the Vigilance Commissioner, even assuming that it was so done. The conclusion of the disciplinary authority was not based on the advice tendered by the Vigilance Commissioner but was arrived at independently, on the basis of the charges, the relevant material placed before the Enquiry Officer in support of the charges, and the defence of the delinquent officer. In fact the final conclusions of the disciplinary authority on the several charges are so much at variance with the opinion of the Vigilance Commissioner that it is impossible to say that the disciplinary authority's mind was in any manner influenced by the advice tendered by the Vigilance Commissioner. We think that if the disciplinary authority arrived at its own conclusion on the material available to it, its findings and decision cannot be said to be tainted with any illegality merely because the disciplinary authority consulted the Vigilance Commissioner and obtained his views on the very same material. One of the submissions of appellant was that a copy of the report of the Vigilance Commissioner should have been made available to him when he was called upon to show cause why the punishment of reduction in rank should not be imposed upon him. We do not see any justification for the insistent request made by the appellant to the disciplinary authority that the report of the Vigilance Commissioner should be made available to him. In the preliminary findings of the disciplinary authority which were communicated to the appellant there was no reference to the view of the Vigilance Commissioner. The findings which were communicated to the appellant were those of the disciplinary authority and it was wholly unnecessary for the disciplinary authority to furnish the appellant with a copy of the report of the Vigilance Commissioner when the findings communicated to the appellant were those of the disciplinary authority and not of the Vigilance Commissioner. That the preliminary findings of the disciplinary authority happened to coincide with the view of the Vigilance Commission is neither here nor there."

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29. In our view, the facts in D.C.Agarwal's case (Supra) are distinguishable from the facts of the present case in as much as there was no disagreement between the view of the Inquiry Officer(Commissioner of departmental enquiries) and those of CVC. As stated above, the enquiry report dated 30.5.86 of the Commissioner for departmental enquiries nominated by the CVC was found to be suffering from some procedural irregularities and, therefore, as advised by the CVC, the enquiry was remitted back to the Inquiry Officer with the direction to recommence the same from the stage of evidence but without taking any fresh evidence on record. The Inquiry Officer therefore submitted a further report on 15.10.86 holding that Article 1 of the Charge was substantially proved while Articles II and III of the charge were fully proved. The CVC at second stage had advised the acceptance of the enquiry report. There is nothing to indicate from the Disc. Authority's letter dated 24.5.89 that he was influenced by the CVC's advice when he recommended to the President the acceptance of the enquiry report and imposition of a penalty of 25% cut in pension for five years and a cut of 10% in his gratuity. As the applicant had retired, the penalty could be imposed only with the approval of the President and after consultation of the UPSC, as per prescribed procedure, the respondents gave an opportunity to the applicant to file his representation, if any, on the contents of the enquiry report. Upon receipt of his representation, the same

was examined and was found to have no merit, upon which the case was referred to the UPSC with a tentative decision to impose a penalty of cut in pension. The UPSC advised to impose a penalty of 25% cut in pension. Accordingly the President imposed the said penalty vide the impugned order. In this regard, we feel that the judgment of the Hon'ble Supreme Court in S.K.Banerjee's case (Supra) is fully applicable in the present case because as in that case, so in the present one, there is nothing to indicate that the CIT, Meerut's (the Disciplinary Authority) recommendation who proposed acceptance of the Inquiry report, was influenced in any way, by the CVC's advice when he recommended acceptance of the I.O's report. Furthermore, the President had before him the Inquiry Officer's report, the Disciplinary Authority's recommendations, the CVC's advice and the UPSC views when he took the decision to impose the impugned penalty, and in the light of the Hon'ble Supreme Court's Full Bench decision in S.K.Baneerjee's case (Supra), it is not possible for us to agree with Shri Gyan Prakash that the entire proceeding is vitiated merely because the CVC's advice was not made available to the applicant. Hence this ground also fails.

30. We may also note that by judgment dated 13.3.95 in O.A.No.206/93 Dr. B.S.Johri Vs. UOI & others -AISLJ

1995(2) (CAT)381, a Division Bench of Tribunal had held that Disciplinary Authority can consult the CVC, CBO etc. in disciplinary proceedings and there is nothing wrong for the Disciplinary Authority to consult others so long it itself takes all the substantive decisions. This ruling also makes it clear that the applicant cannot contend that prejudice was caused to him, merely because the advice of CVC was sought.

31. Lastly it has been urged that the Under Secretary was not competent to issue the order dated 19.11.92 treating the suspension period as non-duty and restricting the pay and allowances for that period to the amount of subsistence allowance already paid to the applicant. It is manifest that the suspension was not wholly unjustified, because eventually the applicant was visited with a penalty, Article 1 of the Charge having been substantially proved and Article II and III of charge having been fully proved. That being the position the period of suspension cannot be treated as on duty and the applicant cannot be entitled to anything more than the subsistence allowance which has already been paid to him. Merely because the suspension order was revoked by the order of the President, does not necessarily mean that the impugned order dt. 19.11.92 under FR 54B (3) had also to be a presidential order. Furthermore, the

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contents of the order is more important than the form and for this reason also this ground carries no weight.

31. In the result, we see no good reason to interfere in the matter. This O.A. is dismissed. No costs.

(DR. A.VEDAVALLI)
MEMBER(J)

(S.R.ADIGE)
MEMBER(A)

/ug/