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Reserved

Central Administrative Tribunal, Allahabad.

O.A.No. 290 of 1986.

G.H.Tewari

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Applicant

Vs.

Union of India and others.....

Respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

In this application under section 19 of the Administrative Tribunals Act XIII of 1986 (hereinafter referred to as the Act), the applicant has prayed that the disciplinary proceedings initiated against him by the Chief Engineer Jabalpur Zone - respondent no.2 be quashed and the inquiring authority- respondent no.3 be directed to supply the copies of the required documents and to permit him to engage defence assistant including a lawyer in the inquiry.

2. The applicant was appointed by the Chief Engineer, Eastern Command, Lucknow on the post of Superintendent B/R Grade II on 29.1.1963 and in July 1985, he was posted as SAI in the office of the Commander Works Engineer, Jhansi Cantt. On 19.7.1985, tenders invited for special repairs were opened by AGE E/M I and II in the office of Garrison Engineer, Jhansi in the temporary absence of the applicant and they were handed over to V.K.Gupta, Surveyor Assistant Grade II for being handed over to the applicant and they were handed over to him by Sri Gupta on the same day at 3.15 p.m. for safe custody. On the complaint of Builders Association, Jhansi regarding the tampering of some tenders to the Garrison Engineer, an inquiry was ordered on 31.7.1985 but it was subsequently cancelled on 3.8.1985. The Builders

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Association had also sent the complaint to the Commander Works Engineer, Jhansi and the Chief Engineer, Jabalpur Zone whereupon the Commander Works Engineer, Jhansi ordered an inquiry in the aforesaid matter which was conducted by Sri J.K.Dadlani (S.W.). He had recorded the statement of some persons. The respondent no.2 thereafter intervened in the matter and sent for the tenders and other connected documents for his own verification. Sri J.K.Dadlani also submitted his fact finding report to the respondent no.2. Sri V.K.Gupta had stated before the inquiry officer Sri Dadlani that he had given the tenders to the applicant in the same position in which they appeared at the time of ^{opening} ~~opening~~ but the respondent no.2 ordered an inquiry in the aforesaid matter in Sept.1985 and appointed Col.S.Chopra as the inquiry officer. The applicant was thereafter served with a charge sheet dated 12.12.1985 (copy Annexure 5) under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the charge against him was that the tender documents were tampered with between 19.7.1985 and 23.7.1985 after they were handed over to Sri V.K.Gupta by the opening officer on the request of the applicant. The applicant submitted his interim defence statement on 21.12.1985 denying his involvement in the matter and made a request that the copies of the statement of all the persons recorded by Sri J.K.Dadlani and Col.S.Chopra be furnished to the applicant to prepare an effective written statement of defence and also prayed for supplying the copies of the finding/report of Sri J.K.Dadlani and Col.S.Chopra as well.

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as copy of the complaint made by one of the tenderers Sri V.K.Bhargava. The applicant had also prayed that he be granted permission to engage a counsel of his choice and a defence assistant but he received no reply. The applicant was intimated on 20.2.1986 that Sri K.L.Kakkar - respondent no.3 has been appointed as inquiry officer by respondent no.2 and thereafter the applicant heard nothing about his representations for supplying the copies of documents and permission for defence assistant and legal practitioner to assist him in his case. The applicant then reported the matter to the Chief Engineer, Eastern Command, Lucknow but he too did not send any reply. The respondent no.3 thereafter, informed the applicant on 16.5.1986 that his representation/ appeal has been considered by the respondent no.2 but he did not agree to his request to employ a legal practitioner. The representation made by the applicant for review was also rejected. 15.7.86 was fixed by the inquiry officer for holding the inquiry at Jhansi intimating that Sri T.D.Narula could not be appointed by the applicant as his defence assistant in view of the provision of para 8 (a) of Rule 14 of CCS (CCA) Rules, 1965. The present application was then filed challenging the correctness of the orders passed by the respondent nos.2 and 3. The applicant has challenged the authority of the respondent no.2 for initiating the disciplinary inquiry against the applicant on the ground that he is lower in rank than the appointing authority and could not order a disciplinary inquiry against him.

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3. In the counter affidavit filed on behalf of the respondents, it has been contended on their behalf that on the report that some tampering was done in the tender documents, the respondent no.2 after examining the tender documents had ordered a court of inquiry on 12.8.1985 and on the report dated 9.10.1985 of the court of inquiry, a memorandum of charge-sheet was served on the applicant and Sri V.K.Gupta for having caused tampering with mala fide intention. Since the documents required by the applicant were not listed in the charge sheet, they could not be made available to him. His request for engaging a legal practitioner as his defence assistant was refused because the presenting officer of the department is not a lawyer. The applicant had not made the request for appointing T.D.Narula as his defence assistant to the competent authority, as such his this request was rejected but later on, respondent no.2 allowed the applicant to appoint Sri Narula as his defence assistant. The respondent no.2 can impose the penalties specified in clauses (v) to (ix) of Rule 11 of the CCS (CCA) Rules. It is further alleged that the applicant should have examined the tender when they were handed over to him by Sri V.K. Gupta and the tampering had taken place between 19.7.1985 to 23.7.1985. In his rejoinder, the applicant reiterated the grounds taken by him in his application and further alleged that the allegations of tampering against him is not correct. The rules do not prohibit the permission to the delinquent official for appointing a legal practitioner/as his defence assistant and the documents required by him are necessary for preparing his defence statement and to cross-examine the witnesses effectively.

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4. We have heard the learned counsel for the parties. The first point arising for determination in this case is whether the respondent no.2 was competent to initiate disciplinary proceedings against the applicant. It has not been disputed in this case on behalf of the respondents that the Chief Engineer, Eastern Command, Lucknow is the appointing authority of the applicant, which is also clear from the copy of the appointment letter (Annexure 1). The Chief Engineer Jabalpur Zone- respondent no.2 is admittedly junior to the appointing authority of the applicant. The charge sheet, copy annexure V, served on the applicant is under Rule 14 of the CCS (CCA) Rules for major ~~offences~~ ^{punishments}. The respondents have placed their reliance on the Presidential order dated 16.8.1979 (annexure CA 1) which lays down that Chief Engineer Zone is the authority competent to impose all penalties in respect of grade 'C' posts including Office Superintendent grade I and II and the Chief Engineer Command is the appellate authority. Clause (1) of Art.311 of the Constitution of India provides that no person who is a member of a civil service of the Union shall be dismissed or removed by an authority subordinate to that by which he was appointed. We are, therefore, of the view that the Chief Engineer Command being the appointing authority of the applicant, the Chief Engineer Zone is not competent to dismiss or remove the applicant from service on the basis of the report in the disciplinary proceedings against him and the Presidential order, annexure CA 1 cannot override the provisions of the Constitution. He can, however, award the minor penalties mentioned in clause (i) to (iv) of Rule 11.

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5. Our attention has been further drawn² to the provisions of sub-rule(21) of Rule 14 which lays down that where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (iv) of Rule 11 but not competent to impose any of penalties specified in clauses (v) to (ix) of Rule 11, has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties. This rule further provides that the disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witnesses and examine, cross-examine and re-examine the witnesses and may impose on the Government servant such penalty as it may deem fit in accordance with these rules. In view of this special provision, the applicant cannot challenge the authority of the respondent no.2 to initiate the disciplinary proceedings against him under Rule 14. In case the disciplinary authority, respondent no.2, comes to the conclusion after having the report of the inquiry that the wrong committed by the applicant can be punished by awarding any of the penalties mentioned in clause (i) to (iv) of Rule 11, the respondent no.2 will be quite competent to do so. On the other hand, if the respondent no.2 comes to the conclusion that the penalties specified in clauses (v) to (ix) are to be imposed on the applicant

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he can forward the record to the Chief Engineer Command for further necessary action as provided by sub-rule (21) of rule 14. We thus, find no force in this contention of the applicant and in view of the Presidential order aforesaid, the respondent no.2 was fully competent to initiate the disciplinary proceedings against him.

6. The second point raised by the applicant is that the authorities summarily turned down his request for engaging a legal practitioner to defend him in the departmental proceedings without considering rule 14 (8) of CCS (CCA) Rules. Clause (a) of Rule 14(8) provides that the Government servant may take the assistance of any other Government servant.....
... but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits. The contention of the applicant is that his request for engaging ~~the~~ legal practitioner was turned down by the respondent no.2 merely on the ground that the present-ing officer of the department is not a legal practitioner without considering the fact whether in view of the peculiar circumstances of this case, the permission to engage a legal practitioner can be allowed or not. The orders dated 16.5.1986 (Annexure X) and 18.6.1986 (Annexure XII) do not show that the permission to engage a legal practitioner was refused merely on the ground that the departmental presenting officer was not a legal practitioner. The orders are however, not speaking and they do not show that both the conditions under which the legal practitioner could be allowed to be

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engaged by the applicant, existed in his case or not.

7. It will not be out of place to mention that the authorities have permitted the applicant to appoint Sri T.D.Narula, retired Administrative Officer as his defence assistant vide paragraph 26 of the Counter Affidavit. This gentleman appears to be an expert in service matters and disciplinary proceedings. We say so because after the arguments were advanced on behalf of the applicant before us, the learned counsel for the applicant requested us to permit Sri Narula to address us. We however, declined his request as under the provisions of Section 23 of the Act, none except the applicant himself or his legal practitioner can address the Tribunal. The learned counsel for the applicant had put his case in a very lucid and convincing manner with all ability at his command and the fact that despite the best done by him, he made a request for supplementing his argument by Sri T.D.Narula goes to show that he is well versed in the service matters and can safe-guard the interest of the applicant in the disciplinary inquiry. ~~According to~~ ^{After} the permission accorded to the applicant to take the help of Sri Narula, the applicant should now have no grievance in this respect. In any case, it will be open to the applicant to move the inquiring authority again at the proper stage for engaging legal practitioner explaining the special circumstances of his case and the inquiring authority may thereafter consider his request on merits in the light of the provisions contained in clause (a) of Rule 14(8) of the CCS (CCA) Rules.

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8. Regarding the third submission of the applicant, it appears that the applicant has been insisting for supplying the copies of the statements of all the officials recorded in the preliminary inquiries by Sri J.K.Dadlani and Col.S.Chopra as well as copies of their reports and the copy of the complaint made by one of the tenderers Sri V.K. Bhargava. A request to this effect was made by the applicant in his interim written statement, copy annexure VI. The applicant further sent reminders to this effect but the respondents did not accede to his request and their stand is that for filing written statement of his defence, the copies of these documents and statements are not necessary and as these documents and witnesses were not cited as evidence in the memorandum of charge sheet served on the applicant, he is not entitled to have their copies at this stage.

9. The Government instructions in para 8 of point (20) under Rule 14 CCS (CCA) Rules provide that "the copies of statements of witnesses recorded at the stage of preliminary inquiry should be made available within a reasonable time before the witnesses are examined. It would be strictly legal to refuse access to the copies of the statements prior to the evidence stage in the departmental enquiry.

However, if the Government servant makes a request for the supply of the statements recorded in the preliminary inquiry before he files written statement, the request shall be acceded to". In view of these clear and mandatory directions of the Government of India and the insistence of the applicant, we are of the opinion that the copies of the statements recorded at the stage of preliminary inquiry of such witnesses, who have been cited in the memorandum of charge sheet Annexure V, have to be made available by the respondents to the applicant even before he files his regular written statement of defence and if so requested by him, the applicant may be allowed to inspect the other records cited in his interim defence statement at this stage.

10. We will like to quote below some observations of the Hon'ble Supreme Court in the case of Kashi Nath Dixit Vs. Union of India (A.I.R. 1986(2) SC-186) on the point in controversy :-

"..... It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question : "What is the harm in making available the material? " and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude.

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On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the Courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it. It is not even the case of the respondent that there was involved any consideration of security of State or privilege."

11. In the case before the Hon'ble Supreme Court, 38 witnesses were examined at the stage of the preliminary inquiry and 112 documents running into hundreds of pages were produced to substantiate the charge. The inquiring authority had allowed the delinquent in that case to examine the records and take the notes himself. He was neither allowed the assistance of a Stenographer nor the copies of the statements and documents were furnished to him. Under the circumstances of that case, the Hon'ble Court had observed as follows:-

"..... In the facts and circumstances of the case we find it impossible to hold that the appellant was afforded reasonable opportunity to meet the charges levelled against him. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental inquiry depends on the facts of each case.

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Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself. "

12. In view of what has been laid down by the Hon'ble Supreme Court as above, it is in the interest of respondents themselves that all sort of assistance is afforded to the applicant in the disciplinary inquiry against him to defend himself afterwards so that he may not be able to take the plea that the reasonable opportunity to defend was denied to him and the principles of natural justice have been violated by the departmental authorities. We feel that the documents, whose copies are required by the applicant, are not confidential or privileged documents, and as such the respondents should have no hesitation in issuing their copies

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to him. We accordingly direct that the copies of the statements recorded at the stage of preliminary inquiry of such witnesses, who have been cited in the charge sheet, be supplied to the applicant without further delay. Inspection of other documents, whose copies are desired by the applicant will suffice at this stage. The copies of the statements of witnesses, other than those cited in the memorandum of charge sheet, be supplied 3 days before they are sought to be examined by the presenting officer. In case they are not to be examined by the department, the applicant cannot claim their copies unless he himself desires to produce such witnesses in his defence. The copies of other documents, if lengthy and if the applicant wants to file the same in his defence, should be supplied to him after the evidence of the prosecution is closed and the applicant is asked to make his defence. There is no other point for determination in this case.

13. The application is decided accordingly and the parties are directed to bear their own costs.

[Signature]
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Member (A)

[Signature]
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Member (J)

Dated 16.10.1986
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