CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 25th DAY OF ~~MARCH~~ April 1995

Original Application No. 272 of 1993

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. K. MUTHUKUMAR, MEMBER(A)

Vir Kumar Jain, son of Chatubhuj Jain
resident of Near Ganesh Temple Main Road,
Babina Cantt. Jhansi, presently serving
as General Supervisor Station Head Quarters
Babina Cantt., Jhansi.

BY ADVOCATE SHRI SUDHIR AGRAWAL ..... Applicant

Versus

1. Union of India, Ministry of Defence through Secretary, New Delhi.

2. Director General of Staff Duties, SD 6B, General Staff Branch Army, Head Quarters, D.H.Q, P.O. New Delhi 110011

3. Commander Head Quarters Sub-Area, Allahabad

4. Administrative Commandant Station Head Quarters, Babina Cantt, Jhansi.

..... Respondents

BY ADVOCATE KM. SABIHANA SRIVASTAVA

O R D E R(Reserved)

JUSTICE B.C. SAKSENA, V.C.

Through this O.A,filed under Section 19 of the Administrative Tribunals Act,the applicant challenges two charge sheetsdated 27.7.92 and the disciplinary proceedings initiated against him. The applicant was working as General Supervisor in the office of Station Head Quarters Babina Cantt. Jhansi. The applicant's case is that a departmental inquiry was started against him w.e.f.23rd June 1987. He was placed under suspension by an order

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dated 28.4.1988. The applicant alleges that the charges were not proved and therefore by an order dated 22.5.89 the suspension order was revoked and the applicant was exonerated and reinstated back into service. It is alleged that in the year 1991 inquiry proceedings started afresh. A show cause notice dated 28.2.91 was issued. Thereafter a charge sheet dated 14.9.91 containing four articles of charges as in the earlier charge sheet was issued. The applicant alleges that after submission of reply by him the inquiry proceedings were dropped and he was completely exonerated from the charges. Subsequently according to the allegations made by the applicant inquiry proceedings were started afresh by issuance of charge sheets dated 27.7.92 containing the four articles of charges.

2. On the basis of these allegations the applicant seeks quashing of the charge sheets dated 27.7.92 Annexure I and I-A. The respondents had filed a counter affidavit. The applicant filed a rejoinder. We would advert to the pleadings of the parties contained in the counter affidavit and rejoinder while discussing the submissions made by the learned counsel for the applicant.

3. The learned counsel for the applicant urged that w.e.f. 23.6.87 inquiry proceedings had started against the applicant under Rule 14 of the CCS(CC&A) Rules. He was placed under suspension and thereafter the same was revoked and the applicant was exonerated and reinstated back into service. In the counter-affidavit these averments have been denied. It has been stated that no inquiry proceedings were initiated against the applicant by the Commandor Allahabad Sub-area under Rule 14 of the CCS(CCA) Rules 1965 on 23.6.87. It has been indicated that only a fact finding inquiry was conducted

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by Col. R.K. Ghai on the order of the Station Head Quarters Babina. It has also been denied in the counter affidavit that the applicant was exonerated since the charges were not proved. It has been explained that the applicant was drawing ¾th of his pay and allowance as subsistence allowance and since it was felt that further investigations were necessary and the same would take considerable time, as such the suspension order was revoked and the applicant was re-instated.

4. The applicant though had made a bald averment about the initiation of Departmental proceedings w.e.f. 26.6.87 under Rule 14 of CCS Rules, neither any copy of charge sheets have been filed nor any other documentary evidence in support of the said allegations have been filed. The pleadings in the rejoinder do not prove the situation. Thusw we are satisfied that the applicant has wrongly made an averment about inquiry proceedings having been initiated in 1987 and also that he had been completely exonerated when the suspension order was revoked by an order dated 22.5.89. The order of revocation dated 22.5.89 is Annexure III to Compilation II. It does not bear out the allegation of the applicant having been exonerated. In the first place since the applicant has failed to prove that any departmental proceedings under Rule 14 CCS Rules were initiated against him w.e.f. 23.6.87., we are satisfied that the second allegation of exoneration is wholly baseless. The stand of the respondents on both the questions appears to be correct.

5. The applicant further in para 4(6) has made a misstatement of fact that inquiry proceedings were started

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afresh on the same four articles of charges from which the applicant/allegedly was completely exonerated in the year 1989.

6. The truth of the matter/is that a show cause notice dated 28.2.91 was issued which is Annexure IV and a reading of the same shows that the applicant was called upon to show cause why disciplinary action should not be initiated against him under Rule 14 of the CCS(CC&A) Rules 1965. The applicant submitted his reply to show cause and there after a Memorandum dated 14.9.91 was issued containing four articles of charges. The plea on behalf of the applicant that he had been exonerated of these very charges in the year 1987 is totally unfounded and baseless. In Para 4(10) again the applicant has chosen to make a false averment that the inquiry proceedings pursuant to charge sheet dated 14.9.91 were dropped and the applicant was exonerated of the charge-sheet. There is no material on record that after issuance of the charge-sheet any Enquiry Officer was appointed to hold the disciplinary proceedings or that any disciplinary proceedings pursuant to the charge sheet dated 14.9.91 was held. The respondents are right in stating that no inquiry proceedings were held and thus the question of the applicant being exonerated does not arise at all.

7. It appears, as stated by the respondents in their counter affidavit, that subsequently some more complaints were received on the same issue and the applicant was asked to give his explanation on the subject regarding the four charges levelled against him.

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8. Thereafter two charge-sheets dated 27.7.92 were issued containing two articles of charges in each of them. The learned counsel for the applicant took great pain to show that article 1 and 2 of the charge-sheet dated 27.7.92 and article 1 and 3 of the charge sheet dated 14.9.91 are common. On the basis of the erroneous assumption that in respect to these two charges the applicant has been exonerated earlier, it was submitted that the issuance of the charge sheet dated 27.7.92 was arbitrary. We have held that the allegation about having been exonerated of the charges is wholly misconceived and baseless. We find no illegality in the disciplinary proceedings being taken up on the basis of the two charge sheets dated 17.7.92.

9. The learned counsel for the applicant on the basis of a preliminary report submitted by Lt. Colonel H.S. Verma dated 13.6.92 submitted that the findings therein are in favour of the applicant and thus there was no warrant to hold disciplinary proceedings on the basis of the similar articles of charges. The inquiry proceedings on the basis of the charge sheet dated 27.7.92 are being held for the first time , the assumption by the applicant of his having been exonerated earlier of these charges is wholly baseless.

10. The learned counsel for the applicant on the basis of the articles of charges submitted that there is no truth in the said charges and they do not show that the applicant violated the provisions of Rule 3(i)9ii) of the CCS Conduct Rules or Rule 3(i)(iii) of the said Rules.

11. Before dealing with this submission it is necessary to consider whether the O.A challenging the

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inquiry proceedings on the basis of the two charge-sheets would be maintainable and is not premature. This question was considered by us in our decision rendered in O.A. No. 1509/93 Dev Lal and Ors Vs. Union of India and Ors through the Ministry of Railways and another decided on 25.10.94. In the said decision we had occasion to consider some decisions of the various Benches of the Tribunal on the said question. A specific reference may be made to a decision of the Madras Bench in 'V.P. Sidhan Vs. Union of India and Ors reported in (1988) 7 A.T.C 402. Before the Madras Bench the question of maintainability of petition Under Section 19 of the Administrative Tribunals Act at an interlocutory stage of the disciplinary proceedings was considered. The submission of the learned counsel for the applicant therein was that Sec.19 of the Act does not use the expression 'final order' and it merely refers to 'any order'. Relying on an earlier decision in O.A. 103/87, it was held that the Tribunal cannot interfere with the orders passed at the interlocutory stage and interference at that stage will delay the completion of inquiry. The view taken in the earlier decision that the word 'any order' as occurring in Sec. 19 of the Act has only to be construed as 'final order' was followed and approved in the later decision.

12. We had also in our decision in 'Dev Lal's case (Supra) taken note of the Madras Bench decision in 'N. Gunavijayan Vs. The Asstt. Director Census Operation reported in ATR 1986(2) CAT 603. That was a case dealing

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with challenge against a Memorandum issued to the applicant calling upon him as to why disciplinary action should not be taken against him. It was held in that decision that if an application is entertained against a mere memo or a show cause notice, every one will rush to the Tribunal at the initial stage of a memo or a show cause notice without waiting for a final order to be passed in the matter by the concerned disciplinary authority and in such a case Sections 20 and 21 of the A.T. Act will become practically otiosed.

13. In our earlier decision we had also taken into consideration a Division Bench decision of the Principal Bench in 'Ram Pratap Vs. Union of India O.A. No. 1565/92 decided on 10.9.93. The applicants in the said case were casual labourers who were served with a charge sheet for a major penalty. They submitted their reply. The Enquiry Officer submitted his report and the Disciplinary Authority issued a show cause notice. The show cause notice was challenged on the ground that the charge sheet served was vague as the applicants were not railway servants. It was held that the Tribunal cannot interfere at that stage when the inquiry is almost complete and the disciplinary authority has to take a decision on the basis of the findings arrived at by the Inquiry Officer after considering the reply to the show cause notice submitted by the applicants.

14. The learned counsel for the applicant in the case in hand cited certain subsequent Supreme Court decisions. The first of the said decision is 1993 SCC(L&S) pg.324 'Union of India and Ors. Vs. K.K. Dhawan. From a perusal

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of the said decision it would appear that a charge sheet was served on the respondent and it was proposed to hold an inquiry against him Under Rule 14 of CCS(CCA) Rules 1965. The respondent was an Income Tax Officer and the charges pertained to alleged misconduct in passing some assessment orders. He filed an O.A. before the P.B of the Tribunal and prayed for the stay of the disciplinary proceedings. An interim order was passed and subsequently by a detailed judgment the Principal Bench had held that the action taken by the officer was quasi judicial and should not have formed the basis of disciplinary action. The O.A was allowed and the Memorandum was quashed. Against the interim order as also the final order special leave petition had been preferred by the Union of India. The Hon'ble Supreme Court on a detailed analysis of various decisions laid down that disciplinary proceedings could be initiated against a government servant even in regard to the exercise of quasi judicial powers and indicated certain instances in which disciplinary action could be taken. It was also laid down that the instances catalogued were not exhaustive.

15. The learned counsel for the applicant, however, urged that the Supreme court in the instances enumerated in its Judgement had also indicated as a second instance where a disciplinary action can be taken viz; if there is primafacie material to show recklessness for his misconduct in the discharge of duty.

16. The learned counsel for the applicant urged on the basis of this Supreme Court decision that their Lordships have indicated the instances where disciplinary action can be taken. In this case reliance on the second

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instance whereby it was provided that if there is primafacie material to show recklessness or misconduct in the discharge of the duty/to urge that there is no primafacie material has been placed in the charge to show recklessness or misconduct in the discharge of duty by the applicant. Thus by a negative inference the learned counsel sought to indicate that in the absence of primafacie material disciplinary action was not warranted in the instant case.

17. We are unable to agree. The ratio of any decision must be understood in the background of that case. The Hon'ble Supreme Court in a decision reported in A.I.R 1987 S.C. 1073 'Ambika Quarry Works etc Vs. State of Gujarat and Ors. was pleased to observe:-

> " the ratio of any decision must be understood in the background of the facts of that case. It has been said longtime ago that a case is only an authority for what it actually decides and not what logically flows from it"

18. As noted hereinabove, the question that was canvassed before the Hon'ble Supreme Court and which engaged its attention primarily was whether a disciplinary action can be taken against a government servant with regard to exercise of judicial powers by him. The instances indicated have to be read in the context of the proposition that was canvassed before the Hon'ble Supreme court. Before the Hon'ble Supreme Court, the question under consideration in this case was neither involved nor were considered. The question whether a petition Under section 19 of the Administrative Tribunals Act would be maintainable and would not be pre-matured in view of the provisions of Sections 20 & 21 of the Act had not arisen in the said case.

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19. The next decision on which reliance was sought to be placed by the learned counsel for the applicant is a decision of the Supreme Court reported in J.T. 1994(1) S.C. 658 ' Union of India Vs. Upendra Singh. The appeal before the Supreme Court was against the judgment and order passed by the Principal Bench of the Tribunal allowing the O.A. No. 806/91. A memorandum of charges was issued accompanied by a statement of imputation and misconduct. The respondent Upendra Singh as soon as the memo of charge was served upon him, approached the Tribunal for quashing the charges. The Tribunal admitted the O.A. and passed an interim order. Against the said interim order an appeal was preferred before the Supreme Court which was allowed and the Tribunal was directed "to deal with the matter in the light of the observations made by this court in Union of India and Ors Vs. A.N. Saxena. " The Principal Bench of the Tribunal after this decision had allowed the O.A and the decision under consideration was rendered in an appeal preferred against the final order passed by the Principal Bench of the Tribunal. The Hon'ble Supreme Court in 'Union of India Vs. Upendra Singh(Supra) made the following observation:-

> " We must say the Principal Bench went into the correctness of the charges on the basis of the material produced by the respondents and quashed the charges holding that the charges do not indicate any correct motive or any culpability on the part of the respondent. "

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20. The Supreme Court in the decision under consideration further observed:-

> " We must say that we are little surprised at the course adopted by the Tribunal. In its order dated 10.9.92 this court specifically drew attention to the observations in 'A.N. Saxena that the Tribunal ought not to interfere at an interlocutory stage and yet the Tribunal chose to interfere on the basis of the material which was yet to be produced at the querry. In short, the Tribunal undertook the inquiry which ought to be held by the disciplinary authority (or the Enquiry Officer appointed by him) and found that the charges are not true. ".

21. The learned counsel for the applicant laid great emphasis on the following observations in paragraph 6 of the judgment.

> " In the case of charges framed in a disciplinary inquiry the Tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges if any), no misconduct or other irregularity alleged to have been made out or the charges framed are contrary to any law."

To our mind any observation of a court has to be read in the context in which it has been made. What immediately follows the above observation is very relevant.

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" At this stage the Tribunal has no jurisdiction to go into the correctness or truth of the charges, the Tribunal cannot took over the functions of the disciplinary authority the truth or otherwise of the charges is a matter for the disciplinary authority to go into..... "

22. In paragraph 7, it was observed:-

" now if a court cannot interfere in 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.

23. The other significant observation is in paragraph 14, wherein the contention of the learned counsel for the respondents in thesaid appeal that the case against the respondent does not fall within any of the six clauses enumerated in Union of India Vs. K.K. Dhawan. While considering the said submission their Lordships observed:-

" It is not possible to agree in any event the truth or otherwise of the charges is a matter for inquiry. "

This observation clearly goes to show that the Hon'ble Supreme Court was in effect up-holding its earlier observation that at the initial stage of framing of charges the Tribunal or court had no jurisdiction to go into the correctness of the truth of the charges and the Tribunal

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cannot take over the functions of the disciplinary authority.

24. In the present case, therefore, we find that it would not be a proper exercise of jurisdiction to entertain the O.A. at this interlocutory stage.

25. The learned counsel for the applicant next cited a decision of the CAT, Principal Bench reported in ATR 1990(2) CAT 209 ' Sudhir Chandra Vs. Union of India and Ors. In view of the Supreme Court decisions in 'A.N. Saxena, K.K. Dhawan and Upendra Singh this decision does not call for consideration. Similarly, another Division Bench decision of the P.B. in 'S.C. Sarkar Vs. Union of India reported in ATR 1992(1) CAT 693 is unhelpful in view of the subsequentSupreme Court decisions.

26. The third decision 'Jai Prakash Varma Vs. State of Orissa and Ors reported in Swamy's CL Digest 1993 at sl.108 is a decision of the Cuttack Bench. In this decision it was held that a court can interfere and quash the charge memo when the charge is vague not making out any misconduct. In view of the decisions noted above about the jurisdiction of the Tribunal at an interlocutory stage of a charge sheet to interfere with the departmental proceedings in our view this decision of the Cuttack Bench cannot be helpful to the applicant.

27. In the facts and circumstances of the case as noted by us,the applicant, on the basis of mis-statements of facts had tried to show that he had been exonerated on the very same charges on the two earlier occasions and the inquiry proceedings were dropeed, had proceeded to

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challenge the charge-sheet in question by raising the plea of double jeopardy and harassment. The applicant's allegations have been found to be incorrect by us. We, decline to lend aid to the applicant at this interlocutory stage and see no good reason to interdict the disciplinary proceedings.

28. On a conspectus of the discussion hereinabove, the O.A. merits dismissal and is accordingly dismissed.

(K. Muthukumar)
Member(A)

(B.C. Saksena)
Vice Chairman

Dated: 25-4.... 1995

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