OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the **30th** of **March** 2011

Original Application No. 1391 of 2006

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)

U. Madhav Rao, S/o Shri P. Kamea Rao, R/o A.R.C. Sarsawa, P.O. Sarsawa, Distt: Saharanpur.

. . .Applicant

By Adv : Sri H.N. Sharma, Sri R.P. Maurya & Sri M.K. Updhayaya

V E R S U S

1. Union of India through the Defence Secretary, Govt. of India, New Delhi.

2. Assistant Director (A) No. ARC/SWA/Estt. Disc./UMR/04 Aviation Research Centre, Govt. of India P.O. Sarsawa, Distt: Saharanpur.

3. Deputy Director (A), and Appellate Authority No. ARC/Cant./ 58 2004 Aviation Research Centre, Directorate General of Security (Cabinet Secretariat) Block V (East) R.K. Puram, New Delhi.

. . .Respondents

By Adv: Shri R.K. Srivastava

O R D E R

By Hon'ble Dr. K.B.S. Rajan, Member (J)

The applicant, a Group D employee, while on duty in the morning shift of 19-02-2004 and 20-02-2004, who was not assigned any duty of bringing the children from a School, took a female child of 5 years of age on both the days and on the second day, from the school, he had taken the child to an isolated place (sugarcane field) tried to abuse and molest her and left her crying there. On a complaint made by the father of the child, a preliminary enquiry was conducted and written statements of some of the witnesses and the applicant were also taken. There being ample evidence to show that the child was taken in a cycle by the applicant the finding of the inquiry is that the applicant had committed the

crime of abduction, wrongful confinement with an intention to molest and outrage the modesty of a female child of five years which is beyond imagination of a normal mind. Lust of abnormal sex and act of perversion has driven the alleged accused to commit such an heinous crime. After giving due opportunity to the applicant, the disciplinary authority, invoking the provisions of Rule 19(ii) of the CCS(CC&A) Rules, 1965 imposed the penalty of compulsory retirement vide order dated 31-03-2004. Appeal filed by the applicant had also been rejected, vide order dated 21-06-2004 and hence this O.A. inter alia on the following grounds:-

(a) No regular inquiry had taken place

(b) Failure to consider the facts stated in the memo of appeal;

(c) No opportunity was given to the applicant

(d) Evidences relied upon are inadmissible

(e) Against such a serious allegation, no F.I.R. was lodged.

(f) Violations of principles of natural justice

2. Respondents have contested the O.A. According to them, the due opportunity had been given and the regular inquiry was not conducted as the provisions of rule 19(ii) of the CCS (CC&A) rules had been invoked for justifiable reasons. The evidences are sufficient to prove the guilt of the applicant.

3. The applicant has filed his rejoinder and supplementary counter has also been filed by the respondents. Both sides stuck to their gun.

4. Counsel for the applicant argued that this is a case of no evidence and of violation of principles of natural justice. Further, no FIR has been lodged which goes to show that the applicant has been victimized and there is no basis for the allegation. The counsel for the applicant relied upon a decision of the High Court (Lucknow Bench) in the case of ***Nanhey***

Lal gupta vs U.P. Upbhogta Sahkari Singh Limited and Another [2007 (2) UPLBEC 1510].

5. Counsel for the respondents submitted that the decision by the disciplinary authority and the rejection of appeal by the appellate authority are fully justified when the gravity of misconduct is kept in view. There is no need to hold regular inquiry in such cases and provisions of Rule 19(ii) of the CCS(CC&A) Rules have been rightly invoked.

6. Arguments were heard and documents perused. The preliminary inquiry report clearly shows that there were as many as 13 individuals including the applicant whose statements were taken. There has been full consistency in the statement of witnesses, as to the factum of the applicant having taken the child in the bicycle on 20-02-2004, the child having disclosing her identity to one Shri Narendra Ahuja (who on seeing the child in the school dress and with a fag in a frightened state asked her why she was standing there alone on the road. She disclosed the name of her parents, the name of the school and the residence), her having narrated the incident to the mother; her quickly recognizing the "uncle" (Laxman's papa who is the applicant) who had taken the child on both the days, would all go to prove that the preliminary inquiry committee had arrived at the correct findings. The Appellate authority's discussion before rejecting the appeal as extracted below, would give sufficient satisfaction that the case has been dealt with, strictly in accordance with law.

> ***" In his present appeal, Shri U. Madhav Rao has submitted that the allegations contained in the memorandum dated 15/03/2004 were never explained to him nor any written notice given to him prior to 15/03/2004 that an inquiry was being conducted against him, that he did not understand the seriousness of the communication dated 15/03/2004, that he signed his acknowledgment for the letter on 15/03/2004 but he actually received two letter (the communication dated 15.03.2004 and the order dated 31.03.2004) on 31.03.2004. That he did not understand the contents of both the letter and that it was only on 01.04.2004 when he reported for duty that he came to know that he had been compulsory retired form service. The appellant***

makes further allegation that Sgt. P.K. Roy was utilizing the services of himself and his wife for doing domestic work at their residence and that the complain was the result of personal vengeance and a falsehood. The appellant has also raised a number of questions as to why was it only on 20.02.2004 and not on 19.02.2004 that the alleged act was committed by him? What was the justification for abandoning the child after the alleged incident on 20.02.2004 (if the incident had taken place, he "would have tried to dis-appeal the evident"). What prevented him from completing the act of molestation/child abuse, etc.? Who brought the child back from the sugareane field? How could he know that the child belonged to ARC, Sarsawa? Why was the child not subjected to a medical examination? etc. etc. The appellant also contends that the requirement of conduction a formal inquiry has not been complied with the thus grave injustice has been done to him.

The undersigned has carefully considered the appeal and the evidence on record. The discussion of the complete facts of the case would also show that the case was one where an immediate on the spot inquiry had been conducted by the Disciplinary Authority himself and in the presence of the appellant and the witnesses had stood their ground that the appellant had indeed taken the child from school on both 19/02/2004 and 20/02/2004. The inquiry subsequently ordered was only to marshal the evidence in a proper manner and the written statements of the witnesses were also obtained before reaching any final conclusion as to the guild of the appellant. Given to delicateness of the case and the mental trauma and social repercussions on the child and the family which would be caused by ordering a formal inquiry under Rule 14 of CCS (CCA) Rules, 1965, the satisfaction recorded by the Disciplinary Authority that it is not reasonable practicable to hold an inquiry into the charges against the appellant. On this account, the undersigned does not find any reason to take a different stand. Rule 19(ii) of the CCS (CCA) Rules, 1965 the provisions of which are almost on the same lines of clause (b) of the second proviso to Article 311 (2) of the Constitution, does permit the Disciplinary Authority to dispense with an inquiry upon reaching such satisfaction.

As regards the order issues raised by the appellant, they are al found to be devoid of any merit in the face of the evidence available on record that the appellant had been confronted with the witnesses on the day of the incident itself, that he had been aware that action against him was under way, that the memorandum dated 15.03.2004 was indeed delivered to him on the same day under proper acknowledgement. The contentions made by the appellant all fall flat on their fact, on the basis of the evidence on record. As regards the various questions raised by the appellant, those questions are found to be hyper technical and the answer to these questions are too obvious from the brief facts of the case as outlined above.

On an overall analysis of the case, the undersigned finds the present appeal totally devoid of any merit. Having regards to the extreme depravity of mind and the grievous nature of the misconduct on the part of Shri U. Madhav Rao, the penalty awarded by the Disciplinary Authority is found to be the result of a rather lenient view. The undersigned, therefore, does not find any ground to alter the quantum of the penalty imposed by the Disciplinary Authority.

The appeal fails and is accordingly rejected."

7. The counsel for the applicant has argued that dispensation of regular inquiry is not called for in this case. This has to be rejected, for the following legal position and the actual facts in this case:

(a) In *Union of India v. Tulsiram Patel, (1985) 3 SCC 398* the Apex court has held as under:-

> ***"101. Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the nemo judex in causa sua rule as also to the audi alteram partem rule. The nemo judex in causa sua rule is subject to the doctrine of necessity and yields to it as pointed out by this Court in J. Mohapatra & Co. v. State of Orissa. So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Maneka Gandhi case. If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiori so can a provision of the Constitution, for a constitutional provision has a far greater and all-pervading sanctity than a statutory provision. In the present case, clause (2) of Article 311 is expressly excluded by the opening words of the second proviso and particularly its keywords "this clause shall not apply". As pointed out above, clause (2) of Article 311 embodies in express words the audi alteram partem rule. This principle of natural justice having been expressly excluded by a constitutional provision, namely, the second proviso to clause (2) of Article 311, there is no scope for reintroducing it by a side-door to provide once again the same inquiry which the constitutional provision has expressly prohibited. Where a clause of the second proviso is applied on an extraneous ground or a ground having no relation to the situation envisaged in that clause, the action in so applying it would be mala fide, and, therefore, void. In such a case the invalidating factor may be referable to Article 14. This is, however, the only scope which Article 14 can have in relation to the second proviso, but to hold that once the second proviso is properly applied and clause (2) of Article 311 excluded. Article 14 will step in to take the place of clause (2) would be to nullify the effect of the opening words of the second proviso and thus frustrate the intention of the makers of the Constitution. The second proviso is based on public policy and is in public interest and for public good and the Constitution-makers who inserted it in Article 311(2) were the best persons to decide whether such an exclusionary provision should be there and the situations in which this provision should apply."***

(b) Again, **in *Kendriya Vidyalaya Sangathan v. S.C. Sharma, (2005) 2 SCC 363*** the requirement to be fulfilled before invoking the provisions has been mentioned in the following terms:-

"We find that for application of Rule 19(ii) in the background of Rule 14 of the Rules the basic requirement is that a conclusion has to be recorded that it is not reasonably practicable to hold the inquiry proceedings."

(c) In the instant case prior notice to the applicant with the reasons for the same has been given vide order dated 15-03-2004, which inter alia reads as under:-

"3. The preliminary inquiry conducted by Shri SS Chauhan, Asstt. Tech. Officer submitted his report on 3.3.2004 who after conducting the enquiry, concluded that a Prima-facie case exists against Shri Madav Rao, MTC as that Shri Madhav Rao allegedly committed the crime of abduction with an intention to molest and outrage the modesty of a female child of 5 years ago, which is beyond imagination of a normal mind.

4. The undersigned being the Disciplinary Authority carefully after having gone through the preliminary enquiry report and statements of various witnesses particularly Ms. Pranavi Roy, it is well established beyond doubt that Shri Madhav Rao, MTC had taken Ms. Pranavi Ray D/o Sgt. PK Roy JTO (A/F) from School on 19.02.2004 and on 20.02.2004 with malafide intention. Shri Madhav Rao MTC has accepted of taken Ms. Pranavi Roy on 19.02.2004 but denied having taken her from School. On 20.02.2004 after school hours i.e. around 1300 hrs. However, there are a number of witnesses to prove that Shri Madhav Rao, MTC has infact taken Ms. Pranavi Rao on both days i.e. on 19.02.2004 and 20.02.2004.

5. It is a fact that on both these days, Shri Machav Rao, MTC was on duty in the morning shift and was not detailed for the School duty of bringing children from ST. Mary's Academy, Sarsawa. It has also been confirmed by the parents of the child that they have not asked Shri Madhav Rao to bring the child from the school on both the days mentioned above or at any other occasion. On verbal enquires by the undersigned Shri Madhav Rao could not offer any plausible reply as to why he had gone to the said school for ringing Ms. Pranavi Roy. He could also not given any reply as to with whose permission he left his duty point and prove his present in the MT Section during that period.

6. The undersigned in the capacity of Disciplinary Authority afte careful conscientious and judicious consideration of the case proposes to compulsorily retire Shri U. Mahava Rao, MTC from service under Rule-11 (vii) read with 19 (ii) of CCS (CCA) Rules, 1965 and Rule 3 (iii) of CCS Conduct Rules 1964.

7. Shri U Madhav Rao, MTC is hereby given an opportunity to make his submission within 10 days from the date of receipt of this Memorandum as to why the aforesaid punishment i.e. Compulsory Retirement cannot be imposed against him."

8. It is a matter of record that there has been no response to the above show cause notice as has been endorsed in the order of compulsory retirement. Thus, dispensation of regular inquiry is adequately satisfied in this case.

9. In so far as the argument of the applicant as to the non filing of F.I.R. is concerned, the most justified answer is "fear of society is greater",

as Dr. S. Radhakrishnan stated in "Religion and Society". The Apex Court has in the case of *Satpal Singh v. State of Haryana,(2010) 8 SCC 714* approved the observations of the High court of Punjab and Haryana, and the observations are as under:-

> ***"The High Court observed as under:***
> ***'It was a case where the life of a young child of the complainant was at stake. A tendency on the part of the villagers or the parents of a young child, who is ravished, would normally be to save the honour of the child as first priority. .....' "***

10. The decision cited by the applicant's counsel does not apply to the nature of this case and hence the same cannot support his case.

11. In view of the above discussion, the OA is devoid of merits and thus, is dismissed. No cost.

Member (A) Member (J)

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