CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(10)

O.A.NO. 243/91
T.A.NO.

DATE OF DECISION 11.9.1997

Dr. K.R.Rajguru — Petitioner

Mr.J.J.Yajnik & Mr.M.R.Anand — Advocate for the Petitioner [s]

Versus

Union of India & Ors. — Respondent

Mr.Akil Kureshi — Advocate for the Respondent [s]

CORAM

The Hon'ble Mr.V.Radhakrishnan : Member (A)

The Hon'ble Mr.T.N.Bhat : Member (J)

JUDGMENT

1, Whether Reporters of Local papers may be allowed to see the Judgment ? No

2, To be referred to the Reporter or not ? No

3, Whether their Lerdships wish to see the fair copy of the Judgment ? No

4, Whether it needs to be circulated to other Benches of the Tribunal ? No

(11)

Dr.K.R.Rajguru,
44, Payal Park
Doctor serving in ISRO
Jodhpur Tekra, Satellite Road,
Ahmedabad. : Petitioner

(Advocate: Mr. J.J.Yajnik)
& Mr.M.R.Anand

Versus

1. Union of India
(Notice to be served
through the Dy.Secretary
to the Govt. of India,
Deptt. of Space,
Antriksh Bhavan,
Bangalore-560 094.

2. The Director,
Space Applications Centre,
Jodhpur Tekra, Ahmedabad.

3. The Secretary,
Union Public Service
Commission, Dholpur
House, Shahjahan Road,
New Delhi. : Respondents

(Advocate: Mr.Akil Kureshi)

:J U D G M E N T:
O.A.243/91

Date: 11.9.97

Per: Hon'ble Mr.V.Radhakrishnan : Member(A)

The applicant in this O.A. is challenging the order dated 24.7.90 (Annexure A-3) imposing the penalty of compulsory retirement on the ground the enquiry held was illegal, unjust, arbitrary, discriminatory, violation of principles of natural justice and contrary to the evidence and material on record and vitiated on account of non-application of mind.

(12)

2. The applicant who was working as Medical Officer (SE), Department of Space, Ahmedabad was issued a charge-sheet dated 4.9.1987. The charges were as follows:-

" Article-I

That the said Dr.Rajguru, while functioning as Medical Officer 'SE' in the Polytechnic Dispensary of SAC has acted as AMO for himself and his family members in violation of instructions contained in SAC Circular No.SAC/CA/138/79 dated June 1, 1979. Moreover, during the year 1982 he had prescribed and withdrawn different medicines for himself and for his family in quantities more than what is actually required for one patient at a time. Different medicines/drugs have been drawn in one lot which are, as per expert judicial opinion, not relevant to any particular disease. These acts imply mala fide intention on the part of Dr.Rajguru and mis-use of his official position for improper gains.

Article-II

Further, during the period 1983-85, Dr.Rajguru has drawn large quantities of medicines, mainly tonics, vitamin preparations, pain killers, digestive preparations, for self and family, in violation of instructions contained in SAC Circulat No.SAC/GA/138/79 dt. June 1,1979 prohibiting the same. Drawal of these medicines in large quantities disproportionate to requirement of one patient on one occasion, implies ulterior motive.

Article-III

Dr.Rajguru has indented for and drawn large quantities of disposable syringes for himself and his wife during the period from 26.5.85 to 24.12.86 contrary to the instructions contained in the SAC Circular No.CHSS:2.8.85 dated 4.6.1985.

Article-IV

Life saving equipments like Oxygen Cylinders have not been properly accounted for by Dr.Rajguru. One of the two oxygen cylinders under the charge of Dr.Rajguru in the Polytechnic Dispensary was not available for emergency use on Sept. 20,1985 and was reported missing when critically needed.

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Article V

Dr.Rajguru failed, on many occasions, to carry out his assigned duties during his service in the Centre. Severl instances have occurred when he has failed in his duties to render assistance expected of a Medical Officer to needy employees and their families, despite distress calls and personal requests. His behaviour in times of medical need and medical emergency can only be termed as callously negligent and highly unbecoming professional conduct. In one case, his delay and response to a distress call lacked elemntary medical ethics. Eventually the patient lost his life. The conduct of Dr.Rajguru as a Medical Officer has thus caused considerable hardship, inconvenience and avoidable anxiety in medical emergencies to the employees and other beneficiaries in the Space Application Centre.

Dr.Rajguru has, thus, exhibited lack of devotion to duty, disobedience to the orders of superior officers and behaved in a manner unbecoming of a Government servant violating Rule 3(1) (ii) and 3(1) (iii) of Central Civil Services (Conduct) Rules, 1964".

3. The applicant denied the charges. An inquiry was held. Out of five charges, four charges were proved. The disciplinary authority agreed with the findings of the Inquiry Officer and after consultation with the UPSC, imposed the punishment of compulsory retirement on the applicant.

4. The applicant challenges the punishment order as well as the proceedings on several grounds. Firstly, he alleges that the inquiry was conducted ex parte. He states that he was given a copy of the report of Inquiry Officer on 9.8.1989 and he was under the impression that as per the letter his case will be decided after taking into account his

representation. He asked for copies of certain documents (Annexure A-2) vide his letter dated August 22, 1989. However, according to him no documents were supplied to him but he was issued a Memorandum dated 18th October, 1989 asking him to submit a representation on the inquiry report to the disciplinary authority within 15 days. Thereafter, the applicant received the punishment order dated 24.7.1990 imposing the punishment of compulsory retirement. The respondents had enclosed a copy of inquiry report as well as copy of the recommendation of UPSC along with the report. The grievance of the applicant is that in this order the respondents had not taken into account the points raised by him in his letter dated August 21,22/89. The order has not taken into consideration any relevant factors but held the applicant guilty of the charges and imposed the penalty of compulsory retirement. According to him, this order is vitiated on account of non-application of mind to the relevant points raised by the applicant.

5. He further claims that even before supplying the copy of Inquiry report to him the respondents had taken the decision to impose the penalty on him. Even though the respondents had supplied the copy of the inquiry report on 9.8.1989 to the applicant, the applicant had called for certain documents mentioned in the inquiry report. These were not supplied to him. On the other hand, he was issued notice to submit his report on the

representation within 15 days by letter dated October, 1989. According to him, the respondents had already decided regarding the penalty imposed on him and asking him to submit a representation against the action to be taken was merely a formality.

6. The second point submitted by the applicant is that the inquiry report was not considered the evidence on record and evaluated the same. The disciplinary authority has also not taken into account the representation made by the applicant. Moreover, the inquiry report was based on an ex parte inquiry.

7. In short, the applicant was not given proper opportunity for making valid representation. The representations made by him were not considered. There was no mention about the points rasied by the applicant in the order of imposing penalty.

8. He further contended that the inquiry was hopelessely delayed which prejudiced the defence of the petitioner, as he could not remember the happenings after a long time. The instances of withdrawal of medicines related to the period 1980-85 the inquiry was commenced in 1987 after lapse of 3 to 5 years. Even then the applicant gave a reply to the charges made against him but they were not considered and an inquiry was conducted behind his back. He also alleges that the inquiry officer did not resort to any cross

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examination to bring out the truth. He cites the judgment of the High Court of Gujarat in Mohanbhai D.Parmar vs. Y.B.Zala and Ors.20 GIR 497 that any delay in undertaking departmental proceedings would constitute denial of reasonable opportunity to the employees and hence the inquiry would amount to violation of principles of natural justice. In this case the instances related to the past period of 3-7 years relating to medicines prescribed on particular days but was not possible to recall the happenings which arose in the past period.

9. He also alleges that as the inquiry was held ex parte and he was not given any opportunity to be heard. There was no cross examination of witnesses and hence, the inquiry is vitiated. He takes the support of the judgment in the case of S.M.Sharma v.South Gujarat University 23(1)GLR 233 that no punishment can be imposed upon the employee on the ground of misconduct without recording evidence on inquiry as per the prescribed procedure. This was not done in this case and penalty imposed on him on 'no evidence'. He also alleges that the main witnesses who were examined were biased and had given the statements against him. They had given the statement on the basis of the memory which was accepted without any cross examination by the Inquiry Officer. The witnesses were having revengeful attitude towards the applicant and he was victimised.

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They were prejudiced against the applicant and hence, their evidence should not have been relied upon the Inquiry Officer. He also alleges that the Inquiry Officer was the person who issued the relevant instructions and as such he was expected to uphold the same. He cites the case of N.S.Dhamankar vs. Cantonment Board, 1987 I LLJ 401, according to which, where the inquiry officer is biased the inquiry report is vitiated. He has also stated that as the inquiry was not held by the proper Medical authority, he could not be expected to decide the medicines prescribed and their use etc. and his findings without any such knowledge, cannot be accepted as correct. Regarding the violation of Centre's instructions dated 1.6.1979 and 29.7.1978, he has stated that there is no absolute prohibition for a Doctor to treat himself andhis families. In case of urgency or emergency a Doctor can treat his family members also.He also states that the applicant is governed by the Contributory Health Service Scheme of the department and not by CSNA (Medical Attendance) Rules. Accordingly, there is no question of violation of latter rules with which he is not concerned. He also refers to the opinio n of the Gujarat Medical Council regarding the right of a doctor to treat himself and his family. He also alleges that other doctors working in the respondents department were also adopting the same practice

of prescribing for themselves and their families which was not objected. The applicant states that he was an M.D.Doctor he could not be expected to get a prescription from an M.B.B.S. doctor. The applicant states that he was paying contribution to the scheme and getting treatment for his family. The prescriptions were given by Dr.Thakore who was on CHSS Panel. He also states that in certain times, it becomes necessary to take treatment from a dispensary other than one in which the employee is registered. He states that in an emergency, medicines were drawn on the case prescriptions given by other doctors. His grievance is that no doctor who had prescribed the medicines was examined by the Inquiry Officer. He states that the medicines were drawn on the basis of proper prescriptions and he has produced the duplicate copies of prescriptions issued by Dr.Thakore. He contends that all these factors were not taken into account by the inquiry officer. He has stated that his wife was under the treatment of Dr.Thakore. The inquiry officer did not consider all these factors and hence, his report is perverse.

10. In so far as the question relating to use of disposable syringes and needles is concerned, they were used as more hygenical, economical and convenient. Hence, the findings of the inquiry officer do not appreicate the relevant factors as such he had no medical knowledge and he has come to a conclusion without application of mind.

In so far as the missing of syringes is concerned he was not aware that it was missing and the complaint was made after 1 ½ years. No report was made by the police. All the above factors mentioned in the representation were not taken into account by the inquiry officer. He also states that the severe penalty of compulsory retirement was not commensurate in the alleged misconduct. He cites the judgment of Gujarat High Court in H.P.Thakore vs. State of Gujarat & Ors. 20 GLR 109 according to which the disciplinary authority should apply his mind before imposing the penalty.

11. In view of all above, the applicant states that the order issued by the disciplinary authority is illegal, unjust, perverse, violation of principles of natural justice and unconstitutional and passed without application of mind to the relevant factors.

12. The respondents in the written statement have refuted the arguments of the applicant made in the application. They have taken a preliminary objection that the applicant has not filed revision petition under Rule 26 of Department of Space Employees (CCA) Rules 1976 read with Rule 29 of CCS (CCA) Rules 1965 to make a revision petition against the order of penalty of compulsory retirement within six months as he has not availed of the departmental remedy. The O.A. is not maintainable in view of Section

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20 of the Administrative Tribunals Act. They have stated that the applicant who was working as Medical Officer (SE) was issued a charge-sheet vide order dated 4.9.87 for misuse of his official position for improper gains, for lack of devotion to duty, disobedience orders of the superior officers, etc. They have stated that the inquiry was conducted against the officer and out of five charges, four charges were found proved by the inquiry officer. After taking concurrence of the UPSC the applicant was imposed penalty of compulsory retirement by the competent authority.

13. The respondents have stated that the applicant did not choose on his own volition to attend the inquiry. He also declined the services of defence agsistant and he did not cite any defence witnesses from his side. The applicant did not change his stand even though the Inquiry Officer had tried to persuade him to appear in the inquiry and cross examine the witnesses. The applicant did not attend the regular hearing except on the first day and then on the last day after the hearings were over. The applicant was given a copy of the inquiry report vide their letter dated 9.8.1989. The respondents have taken into account the statements made by the applicant in his representation on the findings of the inquiry officer. Hence, the contention of the applicant is that the inquiry was held

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ex parte, cannot be accepted as it was his own fault that he did not participate the inquiry.

14. They have also stated that the applicant's allegation of pre-determination mind and non-application of mind of the respondents is baseless. They have stated that the applicant was given reasonable opportunity at every stage of the inquiry proceedings to state his defence but the applicant did not choose to avail the opportunity.

15. Regarding reference to UPSC about the penalty of compulsory retirement, they have stated that it is mandatory for making reference to UPSC. The applicant's submission was also referred to the UPSC. In so far as the allegation that the case of the applicant failed on account of 'no evidence', the respondents have stated that the allegation is baseless inasmuch as the Annexure-III of the chargesheet contains the list of documents relied upon by the disciplinary authority in support of the articles of charge. The inquiry officer on the basis of the documentary evidence as well as oral evidences adduced during the inquiry came to the conclusion that Articles I to IV have been proved. The disciplinary authority after agreeing with the findings of the inquiry officer and after seeking the advice of the UPSC imposed the punishment of compulsory retirement.

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16. The respondents have also contested the applicant's contention that his services were without any blemish. Even earlier there were instances of tampering with the prescription issued by the Hon.Medical Adviser. In so far as the present case is concerned, he was given enough opportunity to state his case and after getting the explanation it was found that there was a prima facie case existed against the applicant. Accordingly, disciplinary proceedings were initiated against him and he was suspended from service. After issuing of charge sheet he was given copies of the documents relied upon. Copies of daily proceedings were made available to him, but he did not participate in the inquiry. He did not ask for any additional documents nor he did ask for any defence witnesses. The inquiry was conducted as per the prescribed rules in accordance with the principles of natural justice. The inquiry officer had also went out of the way to impress upon the applicant the implications of his stand. As he did not participate in the inquiry, he could not cross examine the witnesses. There is no question of cross examination of witnesses by the inquiry officer as alleged by the applicant. They have also denied that the contention of bias and prejudice by Dr.T.K.Patel, Hon.Medical Adviser. The applicant absented himself from the inquiry and he did not cross examine the witnesses. They have stated that in the

preliminary hearing the applicant raised no objection regarding appointment of the inquiry authority. They have also denied that the inquiry officer was the author of the instructions issued by the department on the Contributory Health Service Scheme. The applicant had not x raised any objection regarding bias by the inquiry officer. They have stated that the instructions issued were as a result of provisions of Rule 10 of the CCS (Medical Attendance) Rules, 1944, according to which an AMA cannot treat himself and his family members if one more AMA is available in the station. The applicant cannot be given any exemption from the scheme which is applicable to all the staff members. The applicant instead of complying with the instructions was prescribing medicines for himself and his family. They have stated that the CCS (Medical Attendance) Rules, 1944 are applicable to the employees of the Department and instructions issued under them apply to all the staff without exception. The respondents have also denied the allegation of the applicant that he was victimised. They have stated that if a mistake had been committed by one of the doctors, it did not give him permission to repeat the same. They have stated that medicines have been drawn in large quantities without relevance to any particular decease. Regarding the contention of the applicant that the

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medicines withdrawn by him were prescribed by the consultant doctor Thakore, in the inquiry no such reference had been made to Dr.P.B.Thakore was a vital witness nothing prevented the applicant from calling him as a defence witness. All the prescriptions were given by the applicant himself and the inquiry officer could not take into account the duplicates of the prescription produced by the applicant. They have also stated that the applicant was attached to Laldarwaja/Vijayanagar dispensary. His case file was kept in Polytechnic clinic dispensary where he was the AMO. There was no evidence that the medicines prescribed by the applicant were advised by the consultant Dr.Thakore. They have also denied the applicant's allegation of bias against Dr.Patel. The respondents have also stated that the applicant had withdrawn large quantities of disposable syringes for himself and his wife contrary to the instructions issued by the department and such a large drawal of syringes were not justified. The applicant was also responsible for the loss of oxygen cylinder.

17. The respondents have also denied the allegation that the disciplinary authority did not apply its mind before imposing the penalty. The disciplinary authority after agreeing with the inquiry officer and after considering the representation of the applicant, and the magnitude of charges, took a conscious decision to impose a

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major penalty. They sought the advise of the UPSC and accepted the same. The order issued is a speaking order and quiet legal. As the disciplinary authority had agreed with the inquiry officer, there was no need to give any reasons. They have also stated that the inquiry was conducted as per the rules and the competent authority decided the quantum of punishment which cannot be objected.

18. In view of the above, the respondents have prayed for the rejection of the application.

19. The applicant has filed rejoinder where he has reiterated most of the points shown in the application. The new point raised relates to the non-supply of copy of the advice of the UPSC to him in order to give him opportunity to reply. His contention is that copy of the UPSC report was given to him alongwith penalty order only. In this connection he supported his contention to the judgment of High Court of Gujarat in the case of T.S.Rabari vs. Govt. of Gujarat 32(2) GLR 1035 wherein it has been held that the charged officer should be given all relevant documents before a disciplinary authority considers the question of imposing penalty. Inspite of repeated request of the applicant, copy of the UPSC report was not made available to him. Hence, he has alleged the non-supply of the UPSC report shows bias of the disciplinary authority.

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During oral arguments,
20. Mr.Anand, learned counsel for the applicant mainly stressed the point of non-supply of the UPSC report to the applicant which has prejudiced his defence. The disciplinary authority did not disclose the contents of the UPSC report to the charged officer. He supported his contention with the judgment in the case of Amar Nath Batabyal vs. Union of India & Ors. decided by the C.A.T., Bombay Bench in O.A.545/89 on 9.2.96 wherein it has been held that the non-furnishing of copy of the UPSC report to the charged officer results in denial of natural justice. According to him, the UPSC report/advise was to be supplied to the applicant and his representation thereon should have been taken into account by the disciplinary authority before taking final decision. He also referred to the Gujarat High Court's judgment in State of Gujarat vs. R.G.Teredesai & another regarding furnishing of enquiry officer's report. He has also quoted the judgment in AIR 1983 SC 1197 and AIR 1993(4) SCC 727. He has also pointed out that the inquiry was unduly delayed by the respondents which is against the principles of natural justice. He supported his contention with the judgment rendered by the Gujarat High Court in Mohanbhai Dungarbhai Parmar vs. Y.B.Zala and another in which the Court held that a delay of one and half years in taking disciplinary action was violation of principles of natural justice. The applicant was not allowed to cross examine the

the witnesses. He has also stated that the applicant had acted properly and he had not committed any misconduct and he had acted according to the Medical Rules. He has also mentioned that the Gujarat Medical Council had opined the treatment for himself and his family members and use of drugs under reference prescribed by qualified medical practioner were not unethical, practice. He also pointed out the inquiry officer had not considered the material on record that the case file of the applicant at Vijayanagar Dispensary, Laldarwaja dispensary, polytechnic dispensary and prescriptions (duplicates) issued by Dr.Premal Thakore and prescriptions issued by Dr.Despande, AMO of SAC. He has also pointed out that the inquiry officer had not touched upon any of the points raised by the applicant in his representation on the inquiry report. He has also mentioned that the penalty of compulsory retirement of the applicant is a heavy penalty not commensurate with the misconduct and it only shows that the bias attitude of the respondents. Accordingly, he prayed for allowing the application and notional fixation of pay on retirement benefits.

2. Mr.Akil Kureshi, learned counsel for the respondents pointed out that the disciplinary authority had accepted the recommendation of the UPSC and imposed the penalty of compulsory retirement as such the applicant was not prejudiced by non-supply of the UPSC report. He has pointed

out the judgment in Union of India and Ors.vs. Mohd.Ramzan Khan 1991(1) SCC 588, the effected judgment is only prospective and the applicant's case was decided before the latter judgment of the Ramzan Khan and it was not necessary to supply copy of the UPSC report. In this connection he cited the judgment of the Principal Bench in Charanjit Singh Khurana vs. Union of India (1994) 27 ATC 378 wherein it has been held that the supply of copy of UPSC advise, it is mandatory only after cases & occuring of the judgment of the Hon'ble Supreme Court in Mohd.Ramzan Khan's case. In so far as the question of adequacy of the penalty is concerned, he mentioned that the charges against the applicant were grave. According to him, the punishment pointed out is not disproportionate to the charge which were proved. He pointed out that large quantity of medicines were prescribed for himself and his family. He also pointed out that once the quantum of penalty decided by the disciplinary authority the Court or Tribunal cannot sit in judgment in penalty imposed. He supported his view with the judgment of the Hon'ble Supreme Court in Govt. of India vs. Parma Nanda AIR 1989 SC 1185 and in Director General, Employees State Insurance Corporation & Anr. vs. Vasant L.Patanka & Anr. in SLP (Civil) No.3248 of 1994. In so far as the question of not allowing the applicant to examine the witnesses is concerned, it was the

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fault of the applicant that he did not participate in the inquiry inspite of being given enough opportunity to do so. In so far as the delay in proceedings is concerned, he pointed out that there was no undue delay. The proceedings were commenced in 1987 and concluded in 1990. Moreover, the applicant has not shown as to how the delay has prejudiced him.

22. In so far as the preliminary objection regarding the applicant not exhausting the remedy of revisional petition, this matter would no doubt have been considered at the time of admission. Moreover, the Tribunal has got authority to entertain the O.A. even though the remedy of revision not availed of in certain circumstances. Accordingly, we reject this contention of the respondents.

23. We have heard both the learned counsels and gone through the documents on record. The main contention of the applicant is that he was not given any opportunity to defend himself for cross examining the witnesses in the inquiry, and hence the inquiry should be treated as an inquiry ex parte and as he was not given opportunity to defend himself, the inquiry proceedings are arbitrary and hence, it deserves to be set aside. However, on perusal of the documents, we are unable to appreciate the contention of the applicant that he was not given opportunity to defend the charges. We see from the proceedings

of the preliminary hearing held on 25.2.1988 that "Dr.Rajguru also clarified that he has stated his case in the above documents submitted by him and that he would not like to produce any more documents or examine any witness. He would also not like to be present in the subsequent hearings. Dr.Rajguru was told that under the rules he has the right to ask for additional documents, or call for defence witnesses and also to cross examine the witnesses during the course of the inquiry. He has also the right to have a Defence Assistant to help him, if he so desires. Dr.Rajguru said that since he would not be attending the future hearings, he would also not be asking for any Defence Assistant. He reiterated that all his defence is contained in the documents submitted (D-Ex.I & II). In other words, Dr.Rajguru said that the proceedings could be conducted ex parte based on his written submissions". It is seen that the proceedings have been signed by the applicant. The applicant had voluntarily given up his right for asking/ producing necessary documents or for calling defence witnesses or for cross examining the other witnesses. In other words, he had given up his own rights for his defence. Hence, he cannot after the conclusion of the inquiry turn round and come with the argument that he was not given opportunity to defend himself and the inquiry was conducted

ex parte. Therefore, we reject the contention of the applicant that he inquiry was conducted ex parte and he was not given opportunity to defend his case. In so far as the question of non-supply of UPSC advise is concerned, as stressed by the learned counsel Mr.Anand for the applicant, we are unable to appreciate as to how the non-supply of the UPSC report prejudiced his case. Even assuming that the UPSC report containing advice, should have been given to the charged officer as essential part of reasonable opportunity to state his case as well as a requiremen tof principles of natural justice, the legal position is that the Hon'ble Supreme Court in its judgment in the case of Managing Director, ECIL, Hyderabad vs. B.Karunakar 1993 (4) SCC 727 has decided that the furnishing of a copy of report is mandatory in cases where the punishment order is issued after 1.10.1993. In this case the punishment order was passed on 24.7.1990 and hence non-supply of the UPSC report to the applicant, does not render the punishment invalid.This has also been clarified in the Principal Bench's judgment in Charanjit Singh Khurana vs. Union of India (1994) 27 ATC 378. Accordingly, the contention of the applicant regarding the non-supply of the UPSC report imposing the punishment rendered it as invalid is rejected.

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24. In so far as the question of argument of Shri Anand that the penalty is based on 'no evidence' and hence should be set aside, we are unable to appreciate this point. The Inquiry Officer had conducted the inquiry on the basis of the evidence presented by the presenting officer and has come to the conclusion that four out of five charges were provdd. There is no basis of the contention of the applicant that the O.A. should be allowed on account of penalty was imposed without evidence. As the enquiry has been conducted after analysing the evidence by the Inquiry Officer, the Tribunal cannot reassess the evidence as it is not sitting as an appellate authority. The law in this regard has been settled with the judgment of the Apex Court in Govt. of T.N. vs.A.Rajapandian AIR 1994 S.C. Weekly 4833.

25. In so far as the question of delay in finalising the proceedings is concerned, we find that the proceedings were begun in 1987 and concluded in 1990, this period cannot be stated to be excessive.

26. In so far as the question of bias alleged against the inquiry officer, it has been stated by the respondents that under instructions issued by him on 21.9.1978 and 1.6.1979 were based on the instruction received from the department of Space. However, if the applicant had any doubt about the impartiality of the

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Inquiry Officer, he should have represented against the appointment of the inquiry officer even in the initial stage. This be failed to do. Hence, he cannot claim after the inquiry was completed that the inquiry offer was biased.

27. In so far as the question of speaking order by disciplinary authority is concerned, once the disciplinary authority had agreed with the findings of the inquiry officer, there is no need for him to give detailed reasons for the same. This is the ratio laid down by the Apex Court in Ram Kumar v.State of Haryana AIR 1987 SC 2043. The question of giving detailed reasons, arises only the disciplinary authority disagreed with the findings of the inquiry officer.

28 In so far as the allegation regarding the arbitrary and discriminatory action, the applicant had stated that action has not been taken for a violation of the instructions dated 1.6.1979 against one Mr.J.K.Shah and some others. There is no valid reason for challenging the inquiry simply because action was not taken against the other erring doctors and hence this argument is also rejected.

29. In so far as the question of action against the opinion of the Medical Council is concerned, it is mentioned that the applicant was working under the respondents and was bound by the rules and regulations given by the Department

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and any violation of the instructions issued by the Department cannot be condoned by the Medical Council or any outside body.

30. Keeping in view of the above and in the facts and circumstances of the case, we are unable to find any merit in the O.A. Accordingly, the O.A. is dismissed without any order as to costs.

(T.N.Bhat)
Member(J)

(V.Radhakrishnan)
Member(A)

OA/243/91

Date	Office Report	ORDER
11/9/97		Judgment pronounced in the open court today. (T. N. Bhat) Member(J) (V. Radha Krishnan) Member(Adm)

M.R. Anand

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CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 243/91
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DATE OF DECISION 11.9.1997

Dr. K.R.Rajguru — Petitioner

Mr.J.J.Yajnik & Mr.M.R.Anand — Advocate for the Petitioner [s]

Versus

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CORAM

The Hon'ble Mr.V.Radhakrishnan : Member (A)

The Hon'ble Mr.T.N.Bhat : Member (J)

Dr.K.R.Rajguru,
44, Payal Park
Doctor serving in ISRO
Jodhpur Tekra, Satellite Road,
Ahmedabad. : Petitioner

(Advocate: Mr. J.J.Yajnik)
& Mr.M.R.Anand

Versus

1. Union of India
(Notice to be served
through the Dy.Secretary
to the Govt. of India,
Deptt. of Space,
Antriksh Bhavan,
Bangalore-560 094.

2. The Director,
Space Applications Centre,
Jodhpur Tekra, Ahmedabad.

3. The Secretary,
Union Public Service
Commission, Dholpur
House, Shahjahan Road,
New Delhi. : Respondents

(Advocate: Mr.Akil Kureshi)

:J U D G M E N T:
O.A.243/91

Date: 11.9.97

Per: Hon'ble Mr.V.Radhakrishnan : Member(A)

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2. The applicant who was working as Medical Officer (SE), Department of Space, Ahmedabad was issued a charge-sheet dated 4.9.1987. The charges were as follows:-

" Article-I

That the said Dr.Rajguru, while functioning as Medical Officer 'SE' in the Polytechnic Dispensary of SAC has acted as AMO for himself and his family members in violation of instructions contained in SAC Circular No.SAC/CA/138/79 dated June 1, 1979. Moreover, during the year 1982 he had prescribed and withdrawn different medicines for himself and for his family in quantities more than what is actually required for one patient at a time. Different medicines/drugs have been drawn in one lot which are, as per expert judicial opinion, not relevant to any particular disease. These acts imply mala fide intention on the part of Dr.Rajguru and mis-use of his official position for improper gains.

Article-II

Further, during the period 1983-85, Dr.Rajguru has drawn large quantities of medicines, mainly tonics, vitamin preparations, pain killers, digestive preparations, for self and family, in violation of instructions contained in SAC Circular No.SAC/GA/138/79 dt. June 1,1979 prohibiting the same. Drawal of these medicines in large quantities disproportionate to requirement of one patient on one occasion, implies ulterior motive.

Article-III

Dr.Rajguru has indented for and drawn large quantities of disposable syringes for himself and his wife during the period from 26.5.85 to 24.12.86 contrary to the instructions contained in the SAC Circular No.CHSS:2.8.85 dated 4.6.1985.

Article-IV

Life saving equipments like Oxygen Cylinders have not been properly accounted for by Dr.Rajguru. One of the two oxygen cylinders under the charge of Dr.Rajguru in the Polytechnic Dispensary was not available for emergency use on Sept. 20,1985 and was reported missing when critically needed.

Article V

Dr.Rajguru failed, on many occasions, to carry out his assigned duties during his service in the Centre. Severl instances have occurred when he has failed in his duties to render assistance expected of a Medical Officer to needy employees and their families, despite distress calls and personal requests. His behaviour in times of medical need and medical emergency can only be termed as callously negligent and highly unbecoming professional conduct. In one case, his delay and response to a distress call lacked elemntary medical ethics. Eventually the patient lost his life. The conduct of Dr.Rajguru as a Medical Officer has thus caused considerable hardship, inconvenience and avoidable anxiety in medical emergencies to the employees and other beneficiaries in the Space Application Centre.

Dr.Rajguru has, thus, exhibited lack of devotion to duty, disobedience to the orders of superior officers and behaved in a manner unbecoming of a Government servant violating Rule 3(1) (ii) and 3(1) (iii) of Central Civil Services (Conduct) Rules, 1964".

3. The applicant denied the charges. An inquiry was held. Out of five charges, four charges were proved. The disciplinary authority agreed with the findings of the Inquiry Officer and after consultation with the UPSC, imposed the punishment of compulsory retirement on the applicant.

4. The applicant challenges the punishment order as well as the proceedings on several grounds. Firstly, he alleges that the inquiry was conducted ex parte. He states that he was given a copy of the report of Inquiry Officer on 9.8.1989 and he was under the impression that as per the letter his case will be decided after taking into account his

representation. He asked for copies of certain documents (Annexure A-2) vide his letter dated August 22, 1989. However, according to him no documents were supplied to him but he was issued a Memorandum dated 18th October, 1989 asking him to submit a representation on the inquiry report to the disciplinary authority within 15 days. Thereafter, the applicant received the punishment order dated 24.3.1990 imposing the punishment of compulsory retirement. The respondents had enclosed a copy of inquiry report as well as copy of the recommendation of UPSC along with the report. The grievance of the applicant is that in this order the respondents had not taken into account the points raised by him in his letter dated August 21,22/89. The order has not taken into consideration any relevant factors but held the applicant guilty of the charges and imposed the penalty of compulsory retirement. According to him, this order is vitiated on account of non-application of mind to the relevant points raised by the applicant.

5. He further claims that even before supplying the copy of Inquiry report to him the respondents had taken the decision to impose the penalty on him. Even though the respondents had supplied the copy of the inquiry report on 9.8.1989 to the applicant, the applicant had called for certain documents mentioned in the inquiry report. These were not supplied to him. On the other hand, he was issued notice to submit his report on the

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representation within 15 days by letter dated October, 1989. According to him, the respondents had already decided regarding the penalty imposed on him and asking him to submit a representation against the action to be taken was merely a formality.

6. The second point submitted by the applicant is that the inquiry report has not considered the evidence on record and evaluated the same. The disciplinary authority has also not taken into account the representation made by the applicant. Moreover, the inquiry report was based on an ex parte inquiry.

7. In short, the applicant was not given proper opportunity for making valid representation. The representations made by him were not considered. There was no mention about the points rasied by the applicant in the order of imposing penalty.

8. He further contended that the inquiry was hopelessely delayed which prejudiced the defence of the petitioner, as he could not remember the happenings after a long time. The instances of withdrawal of medicines related to the period 1980-85 the inquiry was commenced in 1987 after lapse of 3 to 5 years. Even then the applicant gave a reply to the charges made against him but they were not considered and an inquiry was conducted behind his back. He also alleges that the inquiry officer did not resort to any cross

examination to bring out the truth. He cited the judgment of the High Court of Gujarat in Mohanbhai D.Parmar vs. Y.B.Zala and Ors.20 GIR 497 that any delay in undertaking departmental proceedings would constitute denial of reasonable opportunity to the employees and hence the inquiry would amount to violation of principles of natural justice. In this case the instances related to the past period of 3-7 years relating to medicines prescribed on particular days but was not possible to recall the happenings which arose in the past period.

8. He also alleges that as the inquiry was held ex parte and he was not given any opportunity to be heard. There was no cross examination of witnesses and hence, the inquiry is vitiated. He takes the support of the judgment in the case of S.M.Sharma v.South Gujarat University 23(1)GLR 233 that no punishment can be imposed upon the employee on the ground of misconduct without recording evidence on inquiry as per the prescribed procedure. This was not done in this case and penalty imposed on him on 'no evidence'. He also alleges that the main witnesses who were examined were biased and had given the statements against him. They had given the statement on the basis of the memory which was accepted without any cross examination by the Inquiry Officer. The witnesses were having revengeful attitude towards the applicant and he was victimised.

They were prejudiced against the applicant and hence, their evidence should not have been relied upon the Inquiry Officer. He also alleges that the Inquiry Officer was the person who issued the relevant instructions and as such he was expected to uphold the same. He cites the case of N.S.Dhamankar vs. Cantonment Board, 1987 I LLJ 401, according to which, where the inquiry officer is biased the inquiry report is vitiated. He has also stated that as the inquiry was not held by the proper Medical authority, he could not be expected to decide the medicines prescribed and their use etc. and his findings without any such knowledge, cannot be accepted as correct. Regarding the violation of Centre's instructions dated 1.6.1979 and 29.7.1978, he has stated that there is no absolute prohibition for a Doctor to treat himself andhis families. In case of urgency or emergency a Doctor can treat his family members also.He also states that the applicant is governed by the Contributory Health Service Scheme of the department and not by CSNA (Medical Attendance) Rules. Accordingly, there is no question of violation of latter rules with which he is not concerned. He also refers to the opinio n of the Gujarat Medical Council regarding the right of a doctor to treat himself and his family. He also alleges that other doctors working in the respondents department were also adopting the same practice

of prescribing for themselves and their families which was not objected. The applicant states that he was an M.D.Doctor he could not be expected to get a prescription from an M.B.B.S. doctor. The applicant states that he was paying contribution to the scheme and getting treatment for his family. The prescriptions were given by Dr.Thakore who was on CHSS Panel. He also states that in certain times, it becomes necessary to take treatment from a dispensary other than one in which the employee is registered. He states that in an emergency, medicines were drawn on the case prescriptions given by other doctors. His grievance is that no doctor who had prescribed the medicines was examined by the Inquiry Officer. He states that the medicines were drawn on the basis of proper prescriptions and he has produced the duplicate copies of prescriptions issued by Dr.Thakore. He contends that all these factors were not taken into account by the inquiry officer. He has stated that his wife was under the treatment of Dr.Thakore. The inquiry officer did not consider all these factors and hence, his report is perverse.

10. In so far as the question relating to use of disposable syringes and needles is concerned, they were used as more hygenical, economical and convenient. Hence, the findings of the inquiry officer do not appreicate the relevant factors as such he had no medical knowledge and he has come to a conclusion without application of mind.

In so far as the missing of syringes is concerned, he was not aware that it was missing and the complaint was made after 1 ½ years. No report was made by the police. All the above factors mentioned in the representation were not taken into account by the inquiry officer. He also states that the severe penalty of compulsory retirement was not commensurate in the alleged misconduct. He cites the judgment of Gujarat High Court in H.P.Thakore vs. State of Gujarat & Ors. 20 GLR 109 according to which the disciplinary authority should apply his mind before imposing the penalty.

11. In view of all above, the applicant states that the order issued by the disciplinary authority is illegal, unjust, perverse, violation of principles of natural justice and unconstitutional and passed without application of mind to the relevant factors.

12. The respondents in the written statement have refuted the arguments of the applicant made in the application. They have taken a preliminary objection that the applicant has not filed revision petition under Rule 26 of Department of Space Employees (CCS) Rules 1976 read with Rule 29 of CCS (CCA) Rules 1965 to make a revision petition against the order of penalty of compulsory retirement within six months as he has not availed of the departmental remedy. The O.A. is not maintainable in view of Section

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20 of the Administrative Tribunals Act. They have stated that the applicant who was working as Medical Officer (SE) was issued a charge-sheet vide order dated 4.9.87 for misuse of his official position for improper gains, for lack of devotion to duty, disobedience orders of the superior officers, etc. They have stated that the inquiry was conducted against the officer and out of five charges, four charges were found proved by the inquiry officer. After taking concurrence of the UPSC the applicant was imposed penalty of compulsory retirement by the competent authority.

13. The respondents have stated that the applicant did not choose on his own volition to attend the inquiry. He also declined the services of defence assistant and he did not cite any defence witnesses from his side. The applicant did not change his stand even though the Inquiry Officer had tried to persuade him to appear in the inquiry and cross examine the witnesses. The applicant did not attend the regular hearing except on the first day and then on the last day after the hearings were over. The applicant was given a copy of the inquiry report vide their letter dated 9.8.1989. The respondents have taken into account the statements made by the applicant in his representation on the findings of the inquiry officer. Hence, the contention of the applicant is that the inquiry was held

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ex parte, cannot be accepted as it was his own fault that he did not participate the inquiry.

13. They have also stated that the applicant's allegation of pre-determination mind and non-application of mind of the respondents is baseless. They have stated that the applicant was given reasonable opportunity at every stage of the inquiry proceedings to state his defence but the applicant did not choose to avail the opportunity.

14. Regarding reference to UPSC about the penalty of compulsory retirement, they have stated that it is mandatory for making reference to UPSC. The applicant's submission was also referred to the UPSC. In so far as the allegation that the case of the applicant failed on account of 'no evidence', the respondents have stated that the allegation is baseless inasmuch as the Annexure-III of the chargesheet contains the list of documents relied upon by the disciplinary authority in support of the articles of charge. The inquiry officer on the basis of the documentary evidence as well as oral evidences adduced during the inquiry came to the conclusion that Articles I to IV have been proved. The disciplinary authority after agreeing with the findings of the inquiry officer and after seeking the advice of the UPSC imposed the punishment of compulsory retirement.

15. The respondents have also contested the applicant's contention that his services were without any blemish. Even earlier there were instances of tampering with the prescription issued by the Hon.Medical Adviser. In so far as the present case is concerned, he was given enough opportunity to state his case and after getting the explanation it was found that there was a prima facie case existed against the applicant. Accordingly, disciplinary proceedings were initiated against him and he was suspended from service. After issuing of charge sheet he was given copies of the documents relied upon. Copies of daily proceedings were made available to him, but he did not participate in the inquiry. He did not ask for any additional documents nor he did ask for any defence witnesses. The inquiry was conducted as per the prescribed rules in accordance with the principles of natural justice. The inquiry officer had also went out of the way to impress upon the applicant the implications of his stand. As he did not participate in the inquiry, he could not cross examine the witnesses. There is no question of cross examination of witnesses by the inquiry officer as alleged by the applicant. They have also denied that the contention of bias and prejudice by Dr.T.K.Patel, Hon.Medical Adviser. The applicant absented himself from the inquiry and he did not cross examine the witnesses. They have stated that in the

preliminary hearing the applicant raised no objection regarding appointment of the inquiry authority. They have also denied that the inquiry officer was the author of the instructions issued by the department on the Contributory Health Service Scheme. The applicant had not raised any objection regarding bias by the inquiry officer. They have stated that the instructions issued were as a result of provisions of Rule 10 of the CCS (Medical Attendance) Rules, 1944, according to which an AMA cannot treat himself and his family members if one more AMA is available in the station. The applicant cannot be given any exemption from the scheme which is applicable to all the staff members. The applicant instead of complying with the instructions was prescribing medicines for himself and his family. They have stated that the CCS (Medical Attendance) Rules, 1944 are applicable to the employees of the Department and instructions issued under them apply to all the staff without exception. The respondents have also denied the allegation of the applicant that he was victimised. They have stated that if a mistake had been committed by one of the doctors, it did not give him permission to repeat the same. They have stated that medicines have been drawn in large quantities without relevance to any particular decease. Regarding the contention of the applicant that the

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medicines withdrawn by him were prescribed by the consultant doctor Thakore, in the inquiry no such reference had been made to Dr.P.B.Thakore was a vital witness nothing prevented the applicant from calling him as a defence witness. All the prescriptions were given by the applicant himself and the inquiry officer could not take into account the duplicates of the prescription produced by the applicant. They have also stated that the applicant was attached to Laldarwaja/Vijayanagar dispensary. His case file was kept in Polytechnic clinic dispensary where he was the AMO. There was no evidence that the medicines prescribed by the applicant were advised by the consultant Dr.Thakore. They have also denied the applicant's allegation of bias against Dr.Patel. The respondents have also stated that the applicant had withdrawn large quantities of disposable syringes for himself and his wife contrary to the instructions issued by the department and such a large drawal of syringes were not justified. The applicant was also responsible for the loss of oxygen cylinder.

17. The respondents have also denied the allegation that the disciplinary authority did not apply its mind before imposing the penalty. The disciplinary authority after agreeing with the inquiry officer and after considering the representation of the applicant, and the magnitude of charges, took a conscious decision to impose a

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major penalty. They sought the advise of the UPSC and accepted the same. The order issued is a speaking order and quiet legal. As the disciplinary authority had agreed with the inquiry officer, there was no need to give any reasons. They have also stated that the inquiry was conducted as per the rules and the competent authority decided the quantum of punishment which cannot be objected.

18. In view of the above, the respondents have prayed for the rejection of the application.

19. The applicant has filed rejoinder where he has reiterated most of the points shown in the application. The new point raised relates to the non-supply of copy of the advice of the UPSC to him in order to give him opportunity to reply. His contention is that copy of the UPSC report was given to him alongwith penalty order only. In this connection he supported his contention to the judgment of High Court of Gujarat in the case of T.S.Rabari vs. Govt. of Gujarat 32(2) GLR 1035 wherein it has been held that the charged officer should be given all relevant documents before a disciplinary authority considers the question of imposing penalty. Inspite of repeated request of the applicant, copy of the UPSC report was not made available to him. Hence, he has alleged the non-supply of the UPSC report shows bias of the disciplinary authority.

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During oral arguments,
21. Mr.Anand, learned counsel for the applicant mainly stressed the point of non-supply of the UPSC report to the applicant which has prejudiced his defence. The disciplinary authority did not disclose the contents of the UPSC report to the charged officer. He supported his contention with the judgment in the case of Amar Nath Batabyal vs. Union of India & Ors. decided by the C.A.T., Bombay Bench in O.A.545/89 on 9.2.96 wherein it has been held that the non-furnishing of copy of the UPSC report to the charged officer results in denial of natural justice. According to him, the UPSC report/advise was to be supplied to the applicant and his representation thereon should have been taken into account by the disciplinary authority before taking final decision. He also referred to the Gujarat High Court's judgment in State of Gujarat vs. R.G.Teredesai & another regarding furnishing of enquiry officer's report. He has also quoted the judgment in AIR 1983 SC 1197 and AIR 1993(4) SCC 727. He has also pointed out that the inquiry was unduly delayed by the respondents which is against the principles of natural justice. He supported his contention with the judgment rendered by the Gujarat High Court in Mohanbhai Dungarbhai Parmar vs. Y.B.Zala and another in which the Court held that a delay of one and half years in taking disciplinary action was violation of principles of natural justice. The applicant was not allowed to cross examine the

the witnesses. He has also stated that the applicant had acted properly and he had not committed any misconduct and he had acted according to the Medical Rules. He has also mentioned that the Gujarat Medical Council had opined the treatment for himself and his family members and use of drugs under reference prescribed by qualified medical practioner were not unethical, practice. He also pointed out the inquiry officer had not considered the material on record that the case file of the applicant at Vijayanagar Dispensary, Laldarwaja dispensary, polytechnic dispensary and prescriptions (duplicates) issued by Dr.Premal Thakore and prescriptions issued by Dr.Despande, AMO of SAC. He has also pointed out that the inquiry officer had not touched upon any of the points raised by the applicant in his representation on the inquiry report. He has also mentioned that the penalty of compulsory retirement of the applicant is a heavy penalty not commensurate with the misconduct and it only shows that the bias attitude of the respondents. Accordingly, he prayed for allowing the application and notional fixation of pay on retirement benefits.

2. Mr.Akil Kureshi, learned counsel for the respondents pointed out that the disciplinary authority had accepted the recommendation of the UPSC and imposed the penalty of compulsory retirement as such the applicant was not prejudiced by non-supply of the UPSC report. He has pointed

out the judgment in Union of India and Ors.vs. Mohd.Ramzan Khan 1991(1) SCC 588, the effected judgment is only prospective and the applicant's case was decided before the latter judgment of the Ramzan Khan and it was not necessary to supply copy of the UPSC report. In this connection he cited the judgment of the Principal Bench in Charanjit Singh Khurana vs. Union of India (1994) 27 ATC 378 wherein it has been held that the supply of copy of UPSC advise, it is mandatory only after cases & occuring of the judgment of the Hon'ble Supreme Court in Mohd.Ramzan Khan's case. In so far as the question of adequacy of the penalty is concerned, he mentioned that the charges against the applicant were grave. According to him, the punishment pointed out is not disproportionate to the charge which were proved. He pointed out that large quantity of medicines were prescribed for himself and his family. He also pointed out that once the quantum of penalty decided by the disciplinary authority the Court or Tribunal cannot sit in judgment in penalty imposed. He supported his view with the judgment of the Hon'ble Supreme Court in Govt. of India vs. Parma Nanda AIR 1989 SC 1185 and in Director General, Employees State Insurance Corporation & Anr. vs. Vasant L.Patanka & Anr. in SLP (Civil) No.3248 of 1994. In so far as the question of not allowing the applicant to examine the witnesses is concerned, it was the

fault of the applicant that he did not participate in the inquiry inspite of being given enough opportunity to do so. In so far as the delay in proceedings is concerned, he pointed out that there was no undue delay. The proceedings were commenced in 1987 and concluded in 1990. Moreover, the applicant has not shown as to how the delay has prejudiced him.

22. In so far as the preliminary objection regarding the applicant not exhausting the remedy of revisional petition, this matter would no doubt have been considered at the time of admission, Moreover, the Tribunal has got authority to entertain the O.A. even though the remedy of revision not availed of in certain circumstances. Accordingly, we reject this contention of the respondents.

23. We have heard both the learned counsels and gone through the documents on record. The main contention of the applicant is that he was not given any opportunity to defend himself for cross examining the witnesses in the inquiry, and hence the inquiry should be treated as an inquiry ex parte and as he was not given opportunity to defend himself, the inquiry proceedings are arbitrary and hence, it deserves to be set aside. However, on perusal of the documents, we are unable to appreciate the contention of the applicant that he was not given opportunity to defend the charges. We see from the proceedings

of the preliminary hearing held on 25.2.1988 that "Dr.Rajguru also clarified that he has stated his case in the above documents submitted by him and that he would not like to produce any more documents or examine any witness. He would also not like to be present in the subsequent hearings. Dr.Rajguru was told that under the rules he has the right to ask for additional documents, or call for defence witnesses and also to cross examine the witnesses during the course of the inquiry. He has also the right to have a Defence Assistant to help him, if he so desires. Dr.Rajguru said that since he would not be attending the future hearings, he would also not be asking for any Defence Assistant. He reiterated that all his defence is contained in the documents submitted (D-Ex.I & II). In other words, Dr.Rajguru said that the proceedings could be conducted ex parte based on his written submissions". It is seen that the proceedings have been signed by the applicant. The applicant had voluntarily given up his right for asking/ producing necessary documents or for calling defence witnesses or for cross examining the other witnesses. In other words, he had given up his own rights for his defence. Hence, he cannot after the conclusion of the inquiry turn round and come with the argument that he was not given opportunity to defend himself and the inquiry was conducted

ex parte. Therefore, we reject the contention of the applicant that he inquiry was conducted ex parte and he was not given opportunity to defend his case. In so far as the question of non-supply of UPSC advise is concerned, as stressed by the learned counsel Mr.Anand for the applicant, we are unable to appreciate as to how the non-supply of the UPSC report prejudiced his case. Even assuming that the UPSC report containing advice, should have been given to the charged officer as essential part of reasonable opportunity to state his case as well as a requiremen tof principles of natural justice, the legal position is that the Hon'ble Supreme Court in its judgment in the case of Managing Director, ECIL, Hyderabad vs. B.Karunakar 1993 (4) SCC 727 has decided that the furnishing of a copy of report is mandatory in cases where the punishment order is issued after 1.10.1993. In this case the punishment order was passed on 24.7.1990 and hence non-supply of the UPSC report to the applicant, does not render the punishment invalid.This has also been clarified in the Principal Bench's judgment in Charanjit Singh Khurana vs. Union of India (1994) 27 ATC 378. Accordingly, the contention of the applicant regarding the non-supply of the UPSC report imposing the punishment rendered it as invalid is rejected.

24. In so far as the question of argument of Shri Anand that the penalty is based on 'no evidence' and hence should be set aside, we are unable to appreciate this point. The Inquiry Officer had conducted the inquiry on the basis of the evidence presented by the presenting officer and has come to the conclusion that four out of five charges were provdd. There is no basis of the contention of the applicant that the O.A. should be allowed on account of penalty was imposed without evidence. As the enquiry has been conducted after analysing the evidence by the Inquiry Officer, the Tribunal cannot reassess the evidence as it is not sitting as an appellate authority. The law in this regard has been settled with the judgment of the Apex Court in Govt. of T.N. vs.A.Rajapandian AIR 1994 S.C. Weekly 4833.

25. In so far as the question of delay in finalising the proceedings is concerned, we find that the proceedings were begun in 1987 and concluded in 1990, this period cannot be stated to be excessive.

26. In so far as the question of bias alleged against the inquiry officer, it has been stated by the respondents that under instructions issued by him on 21.8.1978 and 1.6.1979 were based on the instruction received from the department of Space. However, if the applicant had any doubt about the impartiality of the

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Inquiry Officer, he should have represented against the appointment of the inquiry officer even in the initial stage. This be failed to do. Hence, he cannot claim after the inquiry was completed that the inquiry offer was biased.

27. In so far as the question of speaking order by disciplinary authority is concerned, once the disciplinary authority had agreed with the findings of the inquiry officer, there is no need for him to give detailed reasons for the same. This is the ratio laid down by the Apex Court in Ram Kumar v.State of Haryana AIR 1987 SC 2043. The question of giving detailed reasons, arises only the disciplinary authority disagreed with the findings of the inquiry officer.

28. In so far as the allegation regarding the arbitrary and discriminatory action, the applicant had stated that action has not been taken for a violation of the instructions dated 1.6.1979 against one Mr.J.K.Shah and some others. There is no valid reason for challenging the inquiry simply because action was not taken against the other erring doctors and hence this argument is also rejected.

29. In so far as the question of action against the opinion of the Medical Council is concerned, it is mentioned that the applicant was working under the respondents and was bound by the rules and regulations given by the Department

and any violation of the instructions issued by the Department cannot be condoned by the Medical Council or any outside body.

30. Keeping in view of the above and in the facts and circumstances of the case, we are unable to find any merit in the O.A. Accordingly, the O.A. is dismissed without any order as to costs.

Sd/-
(T.N.Bhat)
Member(J)

Sd/-
(V.Radhakrishnan)
Member(A)