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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 394 of 1990

Date of Decision : March, 6, 1992

Akshoy Kumar Jee Applicant

Versus

Union of India & Others Respondents

For the applicant M/s.S.S.Mohanty
R.C.Sahoo
Ms.S.L.Patnaik
Advocates

For the Respondents Mr.Aswini Kumar Mishra
Standing Counsel (Central)

...

C O R A M

HON'BLE MR.K.P.ACHARYA, VICE-CHAIRMAN

AND

HON'BLE MR. I.P.GUPTA, MEMBER (ADMINISTRATIVE)

....

1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes

2. To be referred to reporters or not ? Yes

3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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For the Respondents: Mr. Aswini Kumar Misra,
Standing Counsel(Central)

- -

C O R A M:

THE HONOURABLE MR. K.P.ACHARYA, VICE CHAIRMAN

A N D

THE HONOURABLE MR. I.P.GUPTA,MEMBER(ADMN.)

- -

J U D G M E N T

K.P.ACHARYA,V.C. In this application under section 19 of the Administrative Tribunals Act,1985, the applicant prays to quash the order dated 22.5.1989 contained in

Annexure-15 imposing penalty over the applicant resulting from a disciplinary proceeding.

2. Shortly stated, the case of the applicant is that the applicant joined the Post of Senior Inspector in the Ministry of Defence Production and supplies on 9.7.1953 and ultimately entered into the Gazetted Cadre in October,1958. While serving as such, vide order dated 30.7.1986 contained in Annexure-2, the applicant was placed under suspension because of a contemplated proceeding and ultimately a Memorandum of charges dated 9.9.1986 contained in Annexure-4 was delivered to the applicant calling upon him to submit his explanation.

3. Shorn of unnecessary details of the averments finding place in the application, it may be succinctly stated that an exparte enquiry was conducted in respect of the said disciplinaryproceeding and the enquiring Officer submitted his findings on 17.1.1987. The Disciplinary Authority vide its order dated 1.9.1987 directed further enquiry and in pursuance to the said order further enquiry was

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concluded on 14.1.1988 and the enquiring officer submitted his findings on 8.2.1988. In the enquiry report, the enquiry officer had opined that two charges namely stopping of inspection over of copper crusher gauges and the unauthorised visit of the applicant to Delhi,Dehradoon,Haradwar and Benarus were not established. The disciplinary authority disagreed with the findings of the enquiring Officer and found that all the charges levelled against the applicant had been established and ultimately imposed a penalty of cut in pension to the extent of Rs. 63/- and the period of suspension cannot be treated as qualifying period of service for pension and the period of suspension to be treated as such. Being aggrieved by the order of penalty imposed on him, the applicant has filed this application with the aforesaid prayer.

4. In their counter, the Respondents maintained that the case involves overwhelming evidence to bring home the charge against the applicant(the delinquent Officer) and the principles of natural justice having been followed in its strictest terms, the case is devoid of merit and is liable to be dismissed.

5. We have heard Mr. S.S.Mohanty learned Counsel for the applicant and Mr. A.K.Mishra learned Standing Counsel(CAT) for the Respondents at considerable length.

6. Before we proceed to express our opinion on different contentions raised by Counsel for both sides, it is worthwhile to note the latest pronouncement of the Honourable Supreme Court defining the powers of the Tribunal in regard to cases of punishment imposed in a disciplinary proceeding, The said judgment is reported in AIR 1989 SC 1185(Union of India Vs. Parma Nanda). Their Lordships were pleased to observe as follows:

> " In an original proceeding instituted before the Tribunal under section 19, the Tribunal can exercise any of the powers of a civil court, or High Court. The Tribunal thus could exercise only such powers which the Civil Court or the High Court could have exercised by way of judicial review. It is neither less nor more. Becuase the Tribunal is just a substitute to the Civil Court and High Court."

Law is equally well settled that while adjudicating culpability or otherwise in regard to a punishment resulting from a disciplinary proceeding, the High Court in its exercise of writ jurisdiction could only interfere when it is a case of no evidence

or principles of natural justice have been violated in the procedure followed in the disciplinary proceeding and a Civil Court being a Court of fact has the powers to weigh the evidence on record and then come to its conclusion regarding justifiability or otherwise in regard to the findings of the enquiring Officer and/or the disciplinary authority. This settled position of law was rightly and fairly not disputed at the Bar. Keeping in view the above mentioned settled position of law we would now proceed to examine the contentions raised by either parties and before we go into the questions of fact it would be convenient for all concerned to deal with the questions of law mooted at the Bar, in regard to the prejudices said to have been caused to the Petitioner amounting to violation of the principles of natural justice.

7. The admitted fact before us is that enquiry into the disciplinary proceeding was at first set exparte and ultimately the disciplinary authority vide its letter No. A/97833 dated 1.9.1987 directed further enquiry. While trying to assail the order of punishment, it was contended by Mr. Mohanty learned Counsel for the applicant that serious prejudice has been caused to the applicant on account of the fact that in the

memorandum of charges only one witness was proposed to be examined and only six pieces of documents were mentioned to be relied upon against the delinquent Officer. But surprisingly 26 administrative exhibits, 19 technical exhibits and 22 exhibits regarding T.A. and D.A. were proved during the exparte enquiry - total being 67 pieces of documents. In addition to the single witness mentioned in the chargesheet, three more witnesses were examined - total being four in number during the exparte enquiry. According to Mr. Mohanty during the second enquiry (while the applicant was present) the enquiring officer and the disciplinary authority both took into account all these documents proved during the exparte enquiry about which neither the applicant had any knowledge nor any notice was given to the applicant that in addition to the documents mentioned in the charge sheet, these documents would also be utilised against the applicant and therefore, the applicant had no opportunity far less to speak of reasonable opportunity to give any explanation about the documents or meet the case of the prosecution in this regard. The above-mentioned assertion made during course of argument also finds place in paragraph 4(25) of the averments in the Original Application and

in reply thereto, in the counter it is stated as follows:

" Although, the applicant did not cooperate with the inquiry proceedings from the beginning the disciplinary authority afforded him full opportunity and justice by referring back the inquiry report to the Inqu ry Officer for further inquiry. There had been no illegality and irregularities as stated by the applicant in asmuch as-

(A) It is within the competence of the inquiry officer that he may admit additional documents, if the same are relevant to the charges. The inquiry officer has permitted the admission of relevant additional documents and in this there was no violation of rules. The applicant was given a show cause notice along with inquiry reports containing all the documents relied upon by the Inquiry Officer before award of the penalty. In his reply to the show cause notice wherein he was offered the opportunity to represent his case, he had no where protested against the admission of these documents. In fact, the inquiry officer has asked the Presenting Officer to produce all the documents relevant to the case to ensure a fair deal and to avoid any injustice to the applicant. The applicant was told about the admission of all the documents during further inquiry and his defence was based on these facts. All the relevant papers were shown to the Defence Assistant during the course of Supplementary inquiry . At no point of time, the applicant had protested verbally or in writing that he was not being shown the additional documents and as such, this is only an after thought and not based on facts. The defence Assistant was allowed to inspect all the relevant documents."

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8. No doubt, the above quoted statements made in the counter not only goes uncorroborated but on a perusal of Annexure-18, which is the second enquiry report dated 8.2.1988, it would be found that a part of the contents thereof run contrary to the facts quoted above. In second paragraph of Annexure-18 it is stated as follows:

> " All the documentary evidence pertaining to the framed charges shown in the First Enquiry Report(submitted to the Govt.earlier) have been taken into consideration in the Supplementary Enquiry."

9. From the charge-sheet, Annexure-4, it is found that only one witness was cited to be examined on behalf of the prosecution and it is Shri M.K. Sen, Controller and in the list of documents furnished to the applicant only six letters were sought to be proved to bring home the charge against the delinquent officer. This fact was also not disputed before us. From the records it is found that besides the witnesses mentioned in the charge sheet three others were examined during the exparte enquiry and reliance has been placed by the enquiring officer on the evidence of these four witnesses and so also more number of

documents than the documents mentioned in the list annexed to the Charge-sheet forming subject matter of Annexure-4 have been relied upon both by the enquiry officer and disciplinary authority. This was also not disputed before us. No doubt, prosecution can examine more number of witnesses than the witnesses cited in the charge sheet and equally the prosecution is at liberty to prove more number of documents than the documents mentioned in the charge sheet. But it is subject to the provisions contained in Rule 14(15) of the Central Civil Services(Classification, Control & Appeal) Rules, 1965 which runs thus:

> "(15) if it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presiding Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and reexamine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjournment. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interest of justice."

NOTE: New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect inthe evidence which has been produced originally."

From the above quoted provision in the rule, it is crystal clear that no new evidence can be adduced to fill up the lacunae. In case, any new evidence is sought to be adduced(either oral or documentary),the enquiring authority in its discretion may allow the presenting officer to produce such evidence which eventually means that the presting officer will make a prayer to the above effect with due notice to the delinquent officer so that the delinquent officer shall not be taken by surprise and he must be given sufficient opportunity of meeting the evidence sought to be proved through the new oral or documentary evidence. This reasoning gains support from the provision contained in the said rule that in such a case the enquiry has to be adjourned for three clear days before the production of such new evidence excluding the days on which the enquiry was adjourned and the date on which the enquiry is to commence after adjournment. The rule contains this provision because natural justice has to be complied by giving sufficient

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opportunity to the delinquent officer to meet the case of the prosecution. Of course, in the said rule, there is a provision 'if he deems fit'. It was therefore contended by learned Senior Standing Counsel(CAT), Mr.M.K.Mishra that the delinquent officer had made no demand of it. We have no dispute with learned Senior Standing Counsel(CAT) that such an adjournment could be granted if there is a demand made by the delinqnent officer but in the present case there was absolutely no scope for the delinquent officer to make such a demand. Because in the exparte enquiry the new witness were examined and the additional documents were proved and in the second enquiry neither those witness were examined in the presence of the delinquent officer nor those documents were again proved so as to give an opportunity to the delinquent officer to test the evidence of the prosecution witness by way of cross-examination and/or plead his defence to explain the incriminating circumstances if any, appearing against the delinquent officer in relation to the contents of the documents. The disciplinary authority rightly ordered a further enquiry because of the absence of the delinquent officer at the time when the first inquiry was

conducted. Having no knowledge of the evidence adduced against the delinquent officer(both oral and documentary) necessarily for compliance of the principles of natural justice, the disciplinary authority remanded the case for futher inquiry Thereby the first enquiry is deemed to have been set aside/cancelled. It eventually means that a fresh enquiry has to be conducted. Fresh enquiry postulates that all witnesses on whom the prosecution proposes to rely upon, have to be examined a-fresh and the documents relied upon by the prosecution have to be once again proved so that the delinquent officer would have an opportunity to test the evidence of the witnesses in cross-examination and equally the delinquent officer would have an opportunity of meeting the incriminating circumstances, if any, contained in the documentary evidence. In the present case, it was not so done. The oral and documentary evidence adduced in the earlier stage were only taken into consideration in the second enquiry without the formalities being complied. This would be borne out from the facts stated in paragraph 2 of the second enquiry report.

" All the documentary evidences pertaining to the framed charges shown in the First

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Enquiry Report(submitted to the Government earlier) have been taken into consideration in the Supplementary Enquiry. As the earlier enquiry was ex-parte,photostat copies of the statements of the State Witnesses,Presentation Officer etc. were sent to the SPS in his Cuttack address on 9.9.1987 where he was on leave at that time. The receipt of these papers were acknowledged by the SPS later (Page No.66 in the correspondence file) after initial denial. As mentioned in the Daily Orders on 30.11.1987 copies of the 6 letters vide Annexure-III of Ministry of Defence Memorandum No.A/97833/DIG(Vig.Cell) dated 09.09.1986, on the basis of which the charges were framed against the SPS by the disciplinary authority, were made available to the SPS and PO in the very beginning of the Enquiry i.e. on the morning of 30.11.1987 before commencing any transaction. As desired by the D.A., relevant papers/letters in the files from CI(Met)/I of Metals, Ichapur were shown to him in presence of PO on 1st and 2nd of December,1987.The DA was also allowed to take notes from the letters/papers shown".

From the above quoted portion of the enquiry report

it is patently clear that only one witness was made available for cross-examination by the applicant and the rest were not made available to the applicant for cross-examination. Copies of the six letters relied upon by the prosecution and as mentioned in the charge sheet were supplied to the applicant on 30.11.1987 i.e. the date on which the second enquiry commenced which evidently means that along with the charge sheet copies of these letters were not given to the applicant. From the above statement made by the enquiry officer it is also evidently clear that copies of other documents which have been proved in the first enquiry and taken into consideration in the second enquiry have not been supplied to the delinquent officer. In such circumstances there was no scope for the delinqnent officer to ask for an adjournment as contemplated in the rule. Even if it is presumed that certain papers and letters in the files from CI(Met.)/I of Metals, Ichapur were shown to the applicant and they pertain to those documents which were not subject matter of the list of documents annexed to the charge sheet, yet the irregularity/illegality is not cured in view of the law laid down by the Hon'ble Supreme Court in a plethora of judicial pronouncements which would be mentioned hereunder.

10. Before we deal with the judg-made-laws, it is pertinent to note that the reppondents have maintained in their counter that no objection was ever raised by the delinquent officer. In our opinion, it was no part of the duty of the delinquent officer to fill up the lacunae of the prosecution. The delinquent officer has a right to remain silent and wait till the prosecution proves its case with satisfactory evidence (not beyond reasonable doubt) and thereafter onus shifts to the delinquent officer to repudiate the prosecution evidence. That apart, if any irregularity/ illegality is being committed by the prosecution during the course of enquiry, evidently and naturally the delinquent officer would keep silent to reap the benefit later because of non-compliance of the principles of natural justice by the prosecuting agency. Again we repeat that it is no part of the duty of the delinquent officer to fillup the lacunae of the prosecution. Supply of copies of the statement of the witnesses and that of the documents to the delinquent officer sought to be relied upon by the prosecution is mandatory. In a judgmentreported in AIR 1974 SC 2335(The State of Punjab Vs. Bhagat Ram) Hon'ble the Chief Justice of India speaking for the Court was pleased to observe as follows:

> " The meaning of a reasonable opportunity of showing cause against the action

proposed to be taken is that the Government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servant he will not be able to have an effective and useful cross-examination.

8. It is unjest and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the Government servant."

The very same view was also taken by Their Lordships of the Supreme Court in a judgment reported in AIR 1982 SC 937(State of U.P. Vs. Mohd. Sarif). In another judgment reported in 1986 SCC (L&S) 502(Kashinath Dikshita Vs. Union of India and others) a very stringent view has been taken by Their Lordships in regard to non-supply of copies of statements of witnesses and documents. In this case, 38 witnesses were examined and 112 documents were produced to substantiate the charges. The appellant before Their Lordships had requested for supply of copies of all the statements made by the

witnesses at a pre-enquiry stage as also for copies of the documents on which reliance was placed in support of the charges. The disciplinary authority turned down the request but permitted the appellant to inspect the copies of the statements and documents in question and make notes without taking help of his Stenographer. Their Lordships were pleased to observe as follows:

> " When a Government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a Departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against are made available to him. In the absence of such copies the concerned employee cannot prepare his defence, cross-examine the witnesses, and point out the inconsistences with a view to show that the allegations are incredible. Whether or not refusal to supply copies of documents or statements has resulted inprejudice to the employee facing the departmental enquiry depends on the facts of each case. In the facts and circumstances of the present case , the appellant had been prejudiced in regard to his defence on account of the non-supply of the statements and documents. The appellant would have needed those documents and statements in order to cross-examine the 38 witnesses and to make effective arguments. Although the disciplinary authority gave an opportunity to the appellant to inspect the documents and take notes, but even in this connection the reasonable request of the appellant to have the help of his stenographer was refused. Thus, the appellant had been denied reasonable opportunity to defend himself."

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11. In the present case, from the averments in the counter quoted above, it would be found that the Petitioner was told about the admissibility of all the documents during further enquiry. The relevant papers were merely shown to the defence Assistant during the course of supplementary enquiry. Applying to the principles laid down by Their Lordships in the above quoted judgments in our opinion, this is not sufficient compliance of the principles of natural justice. Orally informing the delinquent officer or showing the papers to the defence assistant does not atall comply with the principles laid down by Their Lordships. Copies of documents must be supplied well in advance to enable the delinquent officer to effectively meet the charges by cross-examining the witnesses. Apart from the above, at the cost of the repeatition, it may be said that witnesses were not examined in the presence of the delinquent officer whose evidence is being made use against the delinquent officer except one and even though strict compliance of the law of evidence is not required in a quasi judicial proceeding like a domestic enquiry but documents have to be proved and witnesses have to be

examined in the presence of the witnesses so that the delinquent officer would have sufficient opportunity of testing the evidence in cross-examination and meet the incriminating circumstances, if at all appearing against him in the documents sought to be proved against him. Our view gains support from a judgment of the Hon'ble High Court of Allahabad reported in 1975(1) SLR 323(Ghirrao Srivastava Vs. State of U.P. and others). At paragraph 5 of the judgment the Division Bench observed as follows:

> " On his finding on charge No.6 reliance was placed by the Sub-Divisional Officer again on the reports of the Naib Tahasildar and the statement of Ramdeo made before him. The submission is that the Naib Tahasildar Hari Krishna Bajpai and the Tahasildar Mr. Chauhan on whose reports reliance was placed by the Subdivisional Officer were not called and no opportunity to cross-examine them was afforded to the appellant. It is further submitted that Naumi Lal and Devi Dayal on whose statements also reliance was placed for the findings on some of the charges, were also not produced before the enquiring officer and no opportunity to cross examine those witnesses also was afforded. None from the public of Bareha nor Shital Prasad were examined and no opportunity was afforded to cross examine them to test the correctness of the allegations made in the applications (Annexures 5 and 6). In addition it was also submitted that these applications did not contain any allegations against the appellant but against Naumi Lal and the complaint of Ram Deo also did not contain any allegations against the appellant but against the Naib Tahasildar Hari Krishna Bajpai and Naumi Lal and no reliance, therefore, could be placed on these applications (Annexures 5 to 6) to support any charges against the appellant and the order of the Sub-Divisional Officer in resting his findings on these applications disclosed an error of law. On hearing learned counsel

we are of the opinion that all these submissions are well founded. The Chief Standing Counsel submitted that the enquiring Officer was not bound to examine Naumi Lal and Devi Dayal afresh before him in support of the second charge sheet and could well rely upon their previous statements recorded by the Naib Tahasildar and no violation of principles of natural justice could be inferred as the appellant never made a request for calling Naumi Lal and Devi Dayal as he had in the case of other witnesses who were called and cross-examined by the appellant. Learned Chief Standing Counsel places reliance on observations made by the Supreme Court in the case of State of Mysore V. Shivabasappa (1). In that case the Supreme Court ruled that when a witness is called the statement given previously by him behind the back of the party is put to him and admitted in evidence a copy thereof is given to the party and he is given an opportunity to cross examine him, the requirements of the principles of natural justice are sufficiently complied with. No doubt in this case as well as in an earlier case Union of India v. T.R.Varma(2) the Supreme Court held that the Evidence Act has no application to enquiries conducted by Tribunals, even though they may be judicial in character and that the law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry. It was observed that broadly stated the rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, that he should be given the opportunity of cross examining the witnesses examined by that party and that no materials should be relied on against him without his being given an opportunity of explaining them. In the earlier decision: State of Mysore v Shivabasappa(1) also they emphasised that the only obligation which the law casts on domestic tribunals was that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. It is in the background of

> this dominating principle which was emphasised in both these cases that the Supreme Court appears to have slightly modified opinion expressed by it in the case of Union of India V T.R.Varma(2), when it ruled that even if the evidence of the witnesses was not examined in presence of the charged officer observance of the rules of natural justice would be considered sufficient if the statement of the witness recorded at the back of the charged officer is put to the witness in presence of the charged officer, admitted in evidence and a copy thereof is given to the party. They appear to have expressed this modification in the view earlier propounded for the reason that tb require that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission and copies thereof given to the person charged, and he is given an opportunity to cross examine them ".

From the above quoted observations of the Division Bench of Allahabad High Court and that of the judgments of the Hon'ble Supreme Court noticed therein it would appear that the witnesses should be examined in the presence of the delinquent officer and in case previous evidence is marked an admission, such evidence has to be tested in cross examination failing which principle of natural justice is violated. At the cost of repeatition,we may say that no opportunity was given to delinquent officer to cross examine the witnesses and therefore we hold that there is substantial force in the contention of the learned counsel for the petitioner that due to non-compliance of the principles of natural justice the oetitioner has been seriously prejudiced.

12. In the facts and circumstances of the present case discussed above and in view of the infirmities appearing in this case, as stated above, we have no hesitation in

our mind to hold that sufficient opportunity was not given to the delinquent officer(the petitioner) to defend himself and therefore, principles of natural justice have been violated which enures to the benefit of the Petitioner.

13. It was further contended that the order imposing penalty to the extent of reducing the pension is liable to be quashed because the Union Public Service Commission was not consulted before the final order was passed. In paragraph 17 of the Petition it is stated as follows:

> " That the penalties imposed by the President in Annexure-15 are void and liable to be quashed inasmuch as the Union Public Service Commission has not been consulted in terms of the first proviso to Rule 9(1) of the C.C.S(Pension) Rules."

In paragraph 4(17) of the counter it is stated as follows:

> " The case of the applicant was referred to UPSC but in view of the instructions of the Department of Personnel and A.R. Recorded on Ministry of Defence file No.2625/93-PU stating that it will not be necessary to consult the UPSC before imposition of a 'cut in pension', the case was returned by the UPSC. As such action to impose the penalty by the disciplinary authority without concurrence of UPSC was taken."

From the above quoted averments finding place in the pleadings, it appears that the admitted case of the parties is that concurrence of UPSC was not taken before the final orders was passed. We had called upon

the Opposite Parties to cause production of the relevant file so that we would deserve the benefit of acquainting ourselves with the reasonings given by the concerned authority that there was no necessity to consult the UPSC. The file was not produced for the reasons best known to the Opposite Parties.

14. Provisions contained under Rule 9(1) of the C.C.S(Pension) Rules runs thus:

> "9. Right of President to withhold or withdraw Pension.
>
> (1) The President reserves to himself the right of withholding or withdrawing a Pension or part thereof, whether permanently or fora specified period, and of ordering recovery from a pension of the Government if, in any Departmental or judicialproceedings, the Pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:
>
> Provided that the Union Public Service Commission shall be consulted before any final orders are passed."

In view of the above quoted proviso to rule ((1) it is mandatory on the part of the concerned authority to consult the UPSC before any orders are finally passed. Our view gains support from the commentry finding place in Swamy's Pension Compilation -10th

Edition, 1985. At page 9 it is stated as follows:

> " Safeguards provided to Pensioners- A question was raised whether the UPSC has to be consulted under Article 351-A, C.S.R., only in cases which involve gazetted Officers. It was held in consultation with the Ministry of Home Affairs that the UPSC should be consulted in all cases before final orders to withhold or withdraw a Pension or any part of it in terms of this article are passed. This is a measure of safeguard for pensioners. Similarly the provision of departmental proceedings, if not instituted while the officer was on duty should not be instituted save with the sanction of President is also for the Pensioner's Safeguard. (Vide G.I., M.F., U.O. No. 58-E.V(A)/59 dated 7th February, 1959)."

According to the Petitioner he is a Gazetted Officer and there is no denial to this fact by the Opposite Parties. Therefore, the proviso to rule 9(1) of the said Pension rules apply in full force to the present Petitioner. Therefore in our opinion the provisions contained in the said rules have been violated.

15. In view of the aforesaid discussions we hold that principles of natural justice having been violated which has enured to the benefit of the Petitioner, the order of punishment is not sustainable. Hence the Petitioner is exonerated of the charges and the penalty imposed on the Petitioner is hereby quashed.

16. Thus, the application stands allowed leaving the parties to bear their own costs.

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MEMBER(ADMINISTRATIVE) VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench/K.Mohanty.