IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 127 OF 1992.

Cuttack this the 7th day of April, 1998.

GOURANGA CHARAN POI. .... APPLICANT.

VERSUS.

UNION OF INDIA & OTHERS .... RESPONDENTS.

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not?

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

(SOMNATH SOM)
VICE-CHAIRMAN
7.4.98

(S.K. AGARWAL)
MEMBER(JUDICIAL)
7/4/98

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C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE- CHAIRMAN.

&

THE HONOURABLE MR. S.K. AGARWAL, MEMBER(JUDICIAL)

....

IN THE MATTER OF:

GOURANGA CHARAN POI, aged about 40 years,
Son of late Laxmidhar Poi,Plot No.1122,
Kapilaprasad,Ekamra College Road, At/Po:
Bhubaneswar,District: Puri.

.... APPLICANT.

By legal Practitioner :- M/s. A. Rath, A.C. Rath,
Advocates.

-Versus-

(1) Union of India represented by its Secretary, Ministry of Finance Department, Revenue, New Delhi.

(2) Collector, Central Excise and Customs, Rajaswa Vihar, PO: Box.No.166, At/PO:Bhubaneswar, Dist:Puri.

(3) Additional Collector(P&E), Central Excise & Customs, Rajaswa Vihar, PO:Box No.166, At/Po. Bhubaneswar, Dist:Puri.

(4) Deputy Collector(P&E), Central Excise and Customs, Rajaswa Vihar, Po. Box. No.166, At/Po:Bhubaneswar, Dist. Puri.

.... RESPONDENTS.

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BY legal Practitioner :- Mr.P.N.Mohapatra,
Additional Standing Counsel.

.....

O R D E R

MR. S.K.AGARWAL, MEMBER(JUDICIAL):-

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed to quash the impugned orders passed in Annexures-2&3 and to give any other relief to which the applicant is entitled to.

2. In brief, the facts of this case, as stated by the applicant, are that the applicant, while working as Lower Division Clerk, in Central Excise & Customs, Collectorate Bhubaneswar, were chargesheeted under Rule-14 of the Central Civil Services (Classification Control and Appeal) Rules, 1965 vide Memorandum of charges dated 11/15.12.1987 by Respondent No.4 who is the competent authority. The applicant denied the charges but the disciplinary authority appointed an Inquiry Officer to inquire into the charges levelled against him and the enquiry Officer, without giving due opportunity to the applicant, submitted the enquiry report holding, the applicant guilty of the charges. It is

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submitted that the Additional Collector, Respondent No. 3 without giving an opportunity to the applicant to contest, the Enquiring Officer passed the final order on 23.10.1989 on the basis of the said enquiry report and imposed penalty of removal from service. It is further stated that alongwith the final order dated 23.10.1989, Respondent No. 3 supplied a copy of the enquiry report which is at Annexure-2. The applicant preferred an appeal against the order dated 23.10.1989 and the Appellate Authority, Respondent No. 2 vide his order dated 28.2.1991 confirmed the order of the disciplinary Authority vide Annexure-3. It is submitted that the impugned orders are contrary to law as enunciated by the Hon'ble Supreme Court in the case of Union of India Vrs. Md. Ramzan reported in AIR 1991 SC 471 stipulating that nonsupply of enquiry report before passing of the final order to give an opportunity to the delinquent officer to have his say , amounts to violation of principles of natural justice and on that score alone, the proceeding is vitiated. As the enquiry report was supplied to the applicant alongwith the final order vide Annexure-1, the proceedings are vitiated. It is also submitted that during the course of enquiry, the applicant was refused by the enquiry officer to supply the documents which is also in violation of the principles of natural justice as no adequate opportunity was given to the

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applicant to defend his case. It is submitted that chargesheet was issued by the competent authority i.e. Deputy Collector, who is the disciplinary authority of the applicant but unfortunately, the proceeding was concluded and final order was passed by the Additional Collector who stands on the footing of the appellate authority . It is also submitted that the appeal preferred by the applicant, has been disposed of by the Collector, vide Annexure-3, and as such the applicant has been prejudiced.

3. We have heard Mr. Antaryami Rath, learned counsel for the Applicant and Mr. P.N. Mohapatra, learned Additional Standing Counsel (Central) appearing on behalf of the Respondents and perused the whole records.

4. Learned counsel for the applicant Mr. Rath makes the following submissions;

a) From the charge Memo, the misconduct as per Rule-3(1) of the Central Civil Services (Conduct) Rules, 1964 does not at all spell out. In support of his contention he has referred a decision reported in AIR 1984 SC 1361 (Dr.) Mrs. Sushila Mishra Vrs. Union of India and others which was also followed in a case reported in CLT 1986 (Vol.61) at page 7 and the decision reported in AISLJ

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1988(2) Page-178 (Durgeswar Hazarika Vrs. Union of India and others);

b) The Inquiring Officer was appointed on 13-1-1988 whereas, the applicant has submitted his written statement of defence on 14.1.1988. Therefore, the Disciplinary Authority formed the opinion to initiate Disciplinary proceeding against the applicant without considering the written statement of defence which has prejudiced the applicant and thereby Rule-14, sub rule 2, 3, 4 and 5(a) violated;

c) Inquiring Officer, did not provide full opportunity of hearing to the applicant i.e. by non-supplying the documents to the applicant, during the enquiry proceedings. In this connection, learned counsel for the applicant has relied upon a decision of the Hon'ble Supreme Court reported in AIR 1996 SC 1669 (STATE BANK OF PATIALA AND OTHERS VERSUS S.K.SHARMA.

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d) Copy of the enquiry report was not supplied to the applicant before the Disciplinary Authority passed the order at Annexure-2.

On the above submissions, learned counsel appearing for the applicant, requested that the order at Annexures-2 & 3 be quashed.

5. Learned Additional Standing Counsel Mr. Mohapatra, appearing on behalf of the Respondents, on the other hand, vehemently opposed the submissions made by the learned counsel for the applicant and contended that the enquiry was conducted by the Inquiring Officer after following proper procedure and the applicant was given full opportunity of hearing at the very stage of proceeding. He has also averred that it was not obligatory on the part of the Respondents to supply copy of the enquiry report in this case. Therefore, non-supply of copy of the enquiry report before passing the impugned order by the Disciplinary authority, does not prejudice the applicant in any way. It is further submitted that from the charge memo, misconduct as defined in rule 3(1) of CCA (Conduct) Rules, 1964 was prima facie made out. Therefore, it is false to say that from the charge memo misconduct as defined in rule 3(1) of CCA(Conduct) Rules, 1964 does not spell out.

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6. We have given out thoughtful consideration to the contentions of the rival parties and perused the whole records. We have also considered the written submissions filed by the learned counsel for the applicant. According to the charge memo, the following two charges have been made out against the applicant:

i) .... Committed gross misconduct in as much as he frequently remained absent from Office without prior permission and/or without submitting any application for grant of leave. Shri Poi (applicant) also failed to furnish any reason to explain his lapses when asked by the A.O. Thus, he failed to maintain devotion to duty and acted in a manner unbecoming of a Government Servant violating Rule 3(i)(ii) and 3(i)(iii) of C.C.S.(Conduct) Rules, 1964.

ii) Shri Poi (applicant), while working as L.D.C. in Office habitually failed to maintain punctuality in attending office."

7. On the perusal of the charges against the applicant, prima facie, it can be said that the charge of mis-conduct is not without any basis. The applicant, did not challenge this chargesheet before the competent Court or Tribunal on the ground

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that no mis-conduct is spell out. The Tribunal is not a Court of Appeal. The power of judicial review of the Under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same in the Tribunal by Central Administrative Tribunal Act. It is settled law that the Tribunal has only power of judicial review of the Administrative action of the appellate on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the concl sion which the authority reaches is necessarily correct inthe view of the Court or Tribunal . When the Concl sion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and would come to its own conclusion. on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is

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to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is the consistent view of the Hon'ble Supreme Court vide B.C.CHATURVEDI VRS. UNION OF INDIA reported in (1995) 6 SCC 749, STATE OF TAMIL NADU VRS. T.V.VENUGOPALAN reported in (1994) 6 SCC 302.

8. In the instant case, as per the counter filed by the Respondents, it appears that the applicant absented himself from duty for 363 days in the year 1982, 365 days in the year 1983, 366 days in the year 1984, 365 days in the year 1985 and 298 days in the year 1986 upto 6.11.1986. Apart from the charge regarding absence from duty, the applicant was transferred to Sambalpur in October, 1987 and never joined there and remained absent till he was removed from the service on 23.10.1989. From these facts, it becomes abundantly clear that charge of mis-conduct under rule 3(1) of CCS (Conduct) Rules, 1964 is spell out from the charge memo itself and thereafter, enquiry was done and the Inquiring Officer has submitted his report and after going through the report and the explanation of the applicant, the Disciplinary Authority has passed the impugned order of punishment. Therefore, it is wrong to say that no charge is spell out from the charge memo against the applicant.

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9. As regards the second contention of the applicant, it appears that no such averment has been made in the Original Application. Therefore, there is no reply in the counter to this effect. Moreover, the applicant has not explained at all as to what prejudice has been caused to him by appointing Inquiring Officer before receipt of the written statement of defence when charges against the applicant are mainly based upon the records. Therefore, in our considered view, it can not be said that the appointment of Inquiring Officer before receipt of written statement of defence of applicant caused prejudice to the applicant in any manner. Thus, the said action of the Disciplinary Authority can not be said to be in violation of Rule 14, sub rule, 2, 3, 4 and 5 of CCS (Conduct) Rules, 1964.

10. The next contention of the applicant that the Inquiring Officer did not supply the applicant the documents called for and non-supply of the documents called for by the applicant, has prejudiced his case to defend properly. Para-4 of the application, it is averred that nonsupply of documents asked for by the applicant, which was received by the Inquiring Officer, is in violation of the Principles of Natural Justice as no adequate opportunity was given to the applicant by the Inquiring Officer to defend his case properly.

11. In the case of STATE OF TAMILNADU VRS. THIRU K.V. PERUMAL AND OTHERS REPORTED IN 1996 Supreme Court Cases (L&S) 1280, Their Lordships of the Hon'ble Court have held that

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the duty of the Authorities is only to supply the relevant documents and not each and every document asked for by the delinquent. It is for the delinquent to show the relevance of the documents asked for by him and the manner in which the nonsupply thereof was prejudicial to his case. In the instant case, the applicant failed to show as to how the documents, called for were relevant and what prejudice he has caused by nonsupply of those documents. In the averments made by the applicant, the applicant also failed to mention what documents, he has asked for and when the Inquiring Officer, has refused to delivery the same. Therefore, looking to the facts and circumstances of the case, it can not be said that by nonsupply of documents called for by the applicant, there has been any violation of the principles of natural justice.

12. In the case of STATE BANK OF PATIALA VRS. S.K. SHARMA REPORTED IN 1996(3) SCC 364, the question of natural justice in departmental inquiries has been dealt with at length. The following passage summarises the principles settled by the Court.

> "33. We may summarise the principles emerging from the above discussion(These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/ departmental enquiry in violation of the rules/ regulations/statutory provisions governing such enquiries should not be set aside uautomatically. The court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) Ansubstative provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/ employee. They are generally speaking, conceived in his interest. Violation of any and every procedural provision can not be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'No notice', "No opportunity" and "No hearing", categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice viz. whether such violation has prejudiced the delinquent officer/ employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence and in a given case, the enquiry officer does not give that opportunity inspite of the delinquent officer/employee asking for it. The prejudice is self evident. No proof of prejudice, i.e. whether the person has received a fair hearing

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considering all things. Now this very aspect can also be looked at from the point of view of directory and mandatory provisions if one is so inclined. The principles stated under (4) herein below is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principles.

(4)(a) In the case of procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived, it then the order of punishment can not be set aside on the ground of the said violation. If on the other hand, it is found that the delinquent officer/ employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (including the setting aside of the order of punishment) Keeping in mind the approach adopted by the Constitution Bench in B. Karunakar (1993) 4 SCC 727. The ultimate test is always the same viz. test of prejudice or the test of fair hearing, as it may be called.

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(5) Where the enquiry is not governed by any rules/ regulations/statutory provisions and the only obligation is to observe the principles of natural justice or for that matter, where ever such principles are held to be implied by the very nature of impact of the order/action- the court or the Tribunal should make the distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no notice"/"no hearing" and "no fair hearing" (a) In the case of former, the order

passed would undoubtedly be invalid(one may call it 'void' or a nulity if one chooses to).In such cases,normally,liberty will be reserved for the Authority to take proceedings afresh according to law, i.e. in accordance with the said rule (audi alteram partem) (b) But in the latter case the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudie,in otherwords,what the Court or Tribunal has to see is whether in the totality of the circumstances,the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query.(It is made clear that this principle (No.5) does not apply in the case of rule against bias,the test in which behalf are laid down elsewhere).

(6) While applying the rule of audi alteram parterm(the primary principle of natural justice, the court-tribunal/authority must always bear in mind the ultimate and overriding objective underlying the said rule,viz.to ensure a fair hearing and to ensure that there is no failure of justice.It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem.In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision".

13. The next contention of the learned counsel for the applicant is that copy of the enquiry report has not been supplied to the applicant before disciplinary authority passed the order at Annexure-2. Admittedly, the order of the Disciplinary Authority is dated 23.10.1989 at Annexure-2. In Managing Director ECIL Vrs.B.Karunakar,reported in (1993) 4 SCC 727,it has been

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held that orders of punishment passed prior to the date on which the decision in Union of India Vrs. Mohd. Ramzan Khan (reported in (1991) 1 SCC 588), was made i.e. on 20.11.1990, should not be disturbed for non-furnishing of the enquiry report and the Disciplinary proceedings which gave rise to such orders should not be reopened on that account.

14. Learned Counsel for the applicant, during the course of argument, has referred a circular dated 26.6.1989 stating that the Board has issued a circular to supply the copy of the enquiry report to the delinquent. But no compliance of this circular has been made.

15. Learned Additional Standing Counsel appearing for the Respondents submitted that copy of the enquiry report was sent to the applicant with the order of the Disciplinary Authority and according to the legal proposition as propounded by the Hon'ble Apex Court in the country, it was not mandatory or obligatory on the part of the Disciplinary Authority to supply copy of the enquiry report, after passing the 42nd amendment of the Constitution of India and on this count, in view of the above authority decided by the Apex Court, it has been held that no enquiry, on this count, could be vitiated. In view of this proposition of law, in our considered view that the contention of the learned counsel for the applicant, on this point, has no force.

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15. We have given our thoughtful consideration on the question of quantum of punishment. As per the counter filed by the Respondents, it appears that the applicant absented himself for duty for 363 days in the year 1982, 365 days in the year 1983, 366 days in the year 1984, 365 days in the year 1985 and 298 days in the year 1986 upto 6.11.1986. Apart from the charge regarding absence from duty, the applicant was transferred to Sambalpur in October, 1987 and he never joined there and remained absent till he was removed from service on 23.10.1989. There is no rejoinder to the above contentions of the Respondents. In the light of the submission of the Respondents and looking to the gravity of the charge, we can not hold that the punishment of removal from service is disproportionate to the gravity of the misconduct of the applicant. Therefore, on the basis of the law laid down in INDIAN OIL CORPORATION VRS. ASHOK KUMAR ARORA reported in AIR 1997 SC 1030, we are not inclined to interfere on the quantum of punishment in this instant case.

16. On the basis of the above all, we are of the opinion, that the applicant has failed to make out his case for interference of this Tribunal. We, therefore, reject this Original Application but without any order as to costs.

(SOMNATH SOM)
VICE-CHAIRMAN

(S.K. AGARWAL)
MEMBER (JUDICIAL)

KNM/CM.