**CENTRAL ADMINISTRATIVE TRIBUNAL**
**CUTTACK BENCH : CUTTACK**

Original Application No. 156 of 2003

Thursday, this the 22nd day of November, 2007

**C O R A M :**

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**
**HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER**

Shri Banamali Dalei,
S/o. Satyabadi Dalei,
Vill./P.O. Chanahata,
P.S.: Balipatna, Dist. Puri,
Dismissed as U.D. Clerk from the
Regional Institute of Education,
Bhubaneswar. : Applicant.

(By Advocate M/s. Dhalsamant & P.K. Bahera)

v e r s u s

1. Director,
National Council of Education,
Research & Training (N.C.E.R.T.),
At/P.O. : Sri Aurobindo Marg,
New Delhi.

2. Principal,
Regional Institute of Education,
At/P.O. : Bhubaneswar,
Distt. Khurda. : Respondents.

(By Advocate Mr. J.K. Nayak)

**O R D E R**
**HON'BLE DR. K B S RAJAN, JUDICIAL MEMEBR**

On a careful study of this case, we are reminded of the observations of the Apex Court in the case of ***Lakshmi Ram Bhuyan v. Hari Prasad Bhuyan, (2003) 1 SCC 197*** , as under:-

> *An inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is a typical example wherein a stitch in time would have saved nine.*

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2. Briefly the case of the applicant is as under:-

(a) The applicant while serving as UDC (Cashier), Demonstration Multipurpose School attached to the Regional Institute of Education, Bhubaneswar was kept under suspension vide Annexure A-7 order dated 4th June, 1998 on contemplation of disciplinary proceedings, served with Annexure A-8 charge sheet dated 9th September, 1998 alleging that he had embezzled the collection made by him on behalf of the institution The applicant called for certain documents vide Annexure A-9 and later by Annexure A-10 representation dated 02-10-1998, the applicant had given his version and denied the charges. As regards his request for supply of copies of certain documents, he had been informed that he would get full opportunity by the Inquiry officer to inspect the list of documents during the course of inquiry. Annexure A-11 refers. Applicant's request to engage a legal practitioner was, however, rejected, vide Annexure A-13 order dated 09-12-1998. One Shri C.C. Prusty, IAS (Retired) was appointed to inquire into the matter who had given his report dated 16.04.1999 vide Annexure A-14 report wherein he had observed as under:-

*"On the next date viz 9.2.99, the delinquent remained absent and prayed for allowing him 3 months time on vague grounds. He had been informed categorically, unless he turns up on 9-2-99, the case will be decided ex parte. From 23-2-99 to 19-3-99, six days have been fixed for hearing for prosecution in which the delinquent was present and so aware of the subsequent dates of hearing in support of which he has signed the order sheet. The delinquent officer did not turn up on 26-03-99, the date fixed for hearing his defence. On this occasion he sent his representation through his son, on 26-3-99 on which his prayer for adjournment was allowed and the case was posted to 30-=03-99 on which date he did not turn up too.*

*In view of the above situation i.e. non-cooperation from the delinquent at each stage, I was inclined to take up the hearing ex parte after giving him notice about the same. In the absence of either verbal or written statement of defence, I was inclined to infer that the delinquent has got no explanation or irregularities committed by him as indicated in the charges and established by the prosecution by overwhelming documentary evidences.*

*The prosecution has established beyond reasonable doubt that the allegation made in this paragraph are based on records. Shri Dalei had used several receipt books at one time to confuse audit. The prosecution had admitted, the close supervision needed had not been exercised as there are no head-ministerial officer in the school and the Accounts officer who is attached to the college has not been able to exercise close supervision. In the circumstances, he is found guilty of above charges.*

*.....*

*It is strange that none of the Headmasters have done so nor the Accounts Officer/Accountant have exercised such check which could have prevented such huge loss to the authorities.*

*...*

*As I understand from the Principal during discussion and presenting officer, it may not be possible to realize the misappropriated amount from the delinquent even if he is allowed to continue in his service and deduction made from his salary and pensionary benefits as admissible under Rules. I would suggest that besides FIR already filed, the authority should take immediate steps for realization of the misappropriated amount by instituting money suits after due consultation with the legal counsel.*

*Since all the charges have been established beyond reasonable doubts and the delinquent has betrayed the trust imposed on him as a Government servant and misappropriated a huge amount nearing 7 lakhs in different methods, his further continuance in service will jeopardize the interest of the Government."*

(b) The applicant was supplied with copy of the Inquiry report and he had made his representation the disciplinary authority had imposed the penalty of REMOVAL FROM SERVICE vide order dated 09-07-1999 (Annexure A-17). The applicant had preferred appeal against the above said order of the disciplinary authority and the Appellate authority, vide order dated 2/4-09-2003 dismissed the appeal.

(c) The applicant had come up before the Tribunal, challenging the legal validity of the aforesaid order of removal and the appellate authority's order dismissing his appeal. Various legal grounds have been raised, including violation of principles of natural justice, evidences have not been duly analyzed by the I.O., and the proceedings are **bad in law.**

3. Respondents have contested the O.A. and justified the penalty order and the appellate order.

4. Counsel for the applicant contended that the entire action of the respondents get vitiated on account of the following legal grounds:-

(a) The provisions of CCS(CC&A) Rules have not been duly followed.

(b) There is no provision in the Rules for appointment of retired official to act as the Inquiry officer.

(c) The I.O. has exceeded his jurisdiction inasmuch as he had suggested that the applicant cannot be retained in service.

(d) The I.O. had not made available the depositions of the witnesses and due notice to the applicant after closure of the prosecution evidence.

(e) The Disciplinary authority had been influence by the suggestion of the I.O. as regards punishment.

(f) The appellate authority has not analyzed the matter as is required to under the Rules.

5. The counsel for the applicant relied upon the following decisions to support his case:-

(i) 2005(3) ATJ 40

(ii) 2006 SCC (L & S) 882

(iii) AIR 1961SC 1070

(iv) AIR 1991 SC 1507

6. Counsel for the respondents submitted that the applicant having chosen not to participate in the inquiry beyond certain stage, the I.O. was well within his powers to conclude the inquiry by setting the applicant ex parte. The applicant in one of his statements admitted the charge.

7. Arguments were heard and documents perused. The following are the mandatory requirements under the provisions of CCS(CC&A) Rules, 1965:-

> **"Rule 14:**
>
> (16) When the case for the disciplinary Authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded, and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any appointed.
>
> (18) The Inquiring Authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him."

8. True, the case has been proceeded ex parte but once the prosecution closes its evidence, due notice should be given to the delinquent, to enable him to participate in the inquiry from that stage. In this regard, the Apex court in the case of ***Ministry of Finance v. S.B. Ramesh, (1998) 3 SCC 227*** , held as under:

> ***13.*** *It is necessary to set out the portions from the order of the Tribunal which gave the reasons to come to the conclusion that the order of the Disciplinary Authority was based on no evidence and the findings were perverse. The Tribunal, after extracting in full the evidence of SW 1, the only witness examined on the side of the prosecution, and after extracting also the proceedings of the Enquiry Officer dated 18-6-1991, observed as follows:*
>
> > *"After these proceedings on 18-6-1991 the Enquiry Officer has only received the brief from the PO and then finalised the report. This shows that the Enquiry Officer*

*has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18-6-1991. Under sub-rule (18) of Rule 14 of the CCS (CCA) Rules, it is incumbent on the Enquiry Authority to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not off er himself for examination as a witness. This mandatory provision of the CCS (CCA) Rules has been lost sight of by the Enquiry Authority. The learned counsel for the respondents argued that as the inquiry itself was held ex parte as the applicant did not appear in response to notice, it was not possible for the Enquiry Authority to question the applicant. This argument has no force because, on 18-6-1991 when the inquiry was held for recording the evidence in support of the charge, even if the Enquiry Officer has set the applicant ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry hereafter/or even if the Enquiry Authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under sub-rule (18) of Rule 14 of the CCS (CCA) Rules. The omission to do this is a serious error committed .....*

**14.** *Then, again after extracting the relevant portions from the Disciplinary Authority's order, the Tribunal observed as follows:*

*"We have extracted the foregoing portions from the order of the Disciplinary Authority for the purpose of demonstrating that the Disciplinary Authority has placed reliance on a statement of Smt K.R. Aruna, without examining Smt. Aruna as a witness in the inquiry and also on several documents collected from somewhere without establishing the authenticity thereof to come to a finding that the applicant has conducted himself in a manner unbecoming of a government servant. The nomination form alleged to have been filed by Shri Ramesh for the purpose of Central Government Employees Insurance Scheme, was not a document which was attached to the memorandum of charges as one on which the Disciplinary Authority wanted to rely on for establishing the charge. This probably was one of the documents which the applicant called for, for the purpose of cross-examining the witness or for making proper defence. However, unless the government servant wanted this document to be exhibited in evidence, it was not proper for the Enquiry Authority to exhibit it and to rely on it for reaching the conclusion against the applicant. Further, an*

*inference is drawn that S.B.R. Babu mentioned in the school records (admission registers) and Shri Ramesh mentioned in the municipal records was the applicant, on the basis of a comparison of the handwriting or signature or telephone numbers are only guesswork, which do not amount to proof even in a disciplinary proceedings. It is true that the degree of proof required in a departmental disciplinary proceeding, need not be of the same standard as the degree of proof required for establishing the guilt of an accused in a criminal case. However, the law is settled now that suspicion, however strong, cannot be substituted for proof even in a departmental disciplinary proceeding. Viewed in this perspective we find there is a total dearth of evidence to bring home the charge that the applicant has been living in a manner unbecoming of a government servant or that, he has exhibited adulterous conduct by living with Smt K.R. Aruna and begetting children."*

*15. On a careful perusal of the above findings of the Tribunal in the light of the materials placed before it, we do not think that there is any case for interference, particularly in the absence of full materials made available before us in spite of opportunity given to the appellants. On the facts of this case, we are of the view that the departmental enquiry conducted in this case is totally unsatisfactory and without observing the minimum required procedure for proving the charge. The Tribunal was, therefore, justified in rendering the findings as above and setting aside the order impugned before it.*

9. The above dictum of the Apex Court when applied to the facts of this case, it would be evident that the Inquiry Authority has not at all followed the above drill. On this ground itself, the inquiry proceedings get vitiated.

10. The above have not been followed as could be seen from the Inquiry Report and the Appellate authority's orders.

11. Certain basic principles of holding inquiry may be discussed here. The proceedings in question are quasi-judicial in nature. In the case of ***Canara Bank Vs. Debasis Das*** (2003) 4 SCC 557 of page 570, the Apex Court further held that in such proceedings "Principles of Natural Justice would be fully

followed and principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the Individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority, while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice. Thus, when the applicant chose not to appear before the I.O. as per the provisions extracted above, the IO ought to have made available the prosecution case before coming to a definite finding. This is conspicuously missing.

12. Even before going to the above, as rightly pointed out, the I.O. cannot be a retired official, as held in 2005(3) ATJ 40, **Sri Vijay Bhatnagar vs. Union of India and Ors.** It has been held as under:-

> "4. We have considered the matter. The grievance of the applicant is against the appointment of a retired person as Inquiry Officer. Rule 14(2) of the Rules Rules has already been noted enables the disciplinary authority to appoint an authority to act as Enquiry Officer. There cannot be any doubt that the authority contemplated under Rule 14 (2) must be an officer of the Government or the institution concerned. It is also necessary to bear in mind that while appointing Enquiry Officer, adequate care should be taken to ensure that only such officials are chosen as enquiry officer who are sufficiently senior in rank as compared to the defending officials and also who cannot be suspected of any prejudice or bias against the defending officials. In the instant case, the Commissioner, KVS, had appointed a retired Assistant Commissioner Mr. M.M. Lal, as inquiry officer only under the provisions of Rule 14 (2) of the Rules. In that view of the matter since Mr. M.M. Lal is a retired Assistant Commissioner he cannot be appointed as Inquiry Officer, since he is not an authority contemplated under Rule 14(2).
>
> 5. In the facts and circumstances of the case, we quash the impugned order dated 14.12.04 (Annexure E) in this application. The Commissioner, KVS, Respondent No. 2, is free to appoint any authority other than a retired person as Inquiry officer."

13. The I.O. has certainly exceeded his jurisdiction when he had made certain suggestion to the effect that the applicant is not to be retained in service. Though the Disciplinary authority has not specifically stated that he had taken into account the suggestion, the said suggestion from a retired IAS Officer would have certainly influenced the Principal, the Disciplinary Authority. Thus, from many angles, when the case is viewed, violation of the statutory provisions of holding the inquiry is manifest. Hence, the OA deserves to be allowed. At the same time as the alleged misconduct is grave, it is for the disciplinary authority to order a fresh enquiry from the time of making available the depositions of the witnesses and asking the applicant to present his witnesses and documents he relies upon. He may stand in the witness box or else, he should be asked the mandatory question. And a fresh Inquiry Report shall be furnished, and further action to follow. Meanwhile, as per the provisions of F.R. 54-A, the applicant may be kept under deemed suspension from the date of removal till the same is revoked by the competent authority.

14. In view of the above, the O.A. is allowed and the impugned Annexure A-17 and A-20 orders are quashed and set aside and the applicant should be reinstated and if the authorities choose to proceed further with the inquiry as stated above, necessary orders be passed. Passing of suitable orders as above should be within a period of 2 months from the date of receipt of this order, while in case of conducting the inquiry, the same shall be completed within six months thereafter. The applicant shall be entitled to subsistence allowance in case of deemed suspension from the date of removal, while no back wages shall be available save notional increment in case the applicant is reinstated without any further proceedings.

15. No costs.

(Dated, the 22nd November, 2007)

(TARSEM LAL)
ADMINISTRATIVE MEMBER

(Dr. K B S RAJAN)
JUDICIAL MEMBER