

16

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.180 OF 2003
CUTTACK THIS THE 29th DAY OF Sept ' 2005

M.Rajamani

....

Applicant(s)

-VERSUS-

Union of India & Ors.

Respondents

FOR INSTRUCTIONS

1. *Whether it be referred to reporters or not ?* 78
2. *Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?* 78

29/09/05
(M.R.MOHANTY)
MEMBER(JUDICIAL)

29/09/05
(B.N.SOM)
VICE-CHAIRMAN

17

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.180 OF 2003

Cuttack this the 29th day of Sep 20005

CORAM:

*THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)*

...

M.Rajamani, aged about 45 years S/o. Mathuchamy, at present Joint Secretary to Govt. of India, Urban Development Department, Ministry of Urban Development and Poverty Alleviation; Nirman Bhawan, New Delhi

... Applicant

By the Advocates

M/s.M.Kanungo
P.K.Rath
S.K.Kanungo
R.R.Padhi
U.K.Mishra

-VERSUS-

1. State of Orissa represented by the Chief Secretary to Govt. of Orissa, Secretariat, Secretariat Building, Bhubaneswar, Dist; Khurda
 2. Special Secretary to Govt. of Orissa, General Administration Department, Secretariat Building, Bhubaneswar, Dist-Khurda
 3. Mr.Santosh Kumar, I.A.S., Principal Secretary to Govt., Home Department, Bhubaneswar-cum-Inquiring Officer, Secretariat Building, Bhubaneswar, Dist-Khurda
 4. Union of India represented by the Secretary, Dept. of Personnel & Training, North Block, New Delhi
- 4

By the Advocates

... Respondents
Mr. A.N. Routray,
Mr. U.B. Mohapatra, SSC

ORDER

MR. B.N. SOM, VICE-CHAIRMAN : This Original Application has been filed by Shri M. Rajamani, at present Joint Secretary to Government of India, Urban Development Department, Ministry of Urban Development and Poverty Alleviation, Government of India, New Delhi, assailing the Memorandum No. AIS/V-19/02-26415/AIS-I dated 19.8.2002 issued by the Special Secretary to Government of Orissa, General Administration Department, Bhubaneswar (Respondent No.2) framing Article of charges and the order No.4716/AIS-I dated 18.2.2003 of the said Res.No.2 communicated under Memorandum No.4717/AIS/1 dated 18.2.2003 to the applicant appointing Res. No.3 as the Inquiry Officer (in short I.O.) under Rule 8(2) of AIS (D&A) Rules, 1969. The applicant has prayed for the following relief:

- i) to allow this original application;
- ii) to quash and/or set aside the article of charges communicated under Annexure-2;
- iii) to quash and/or set aside the institution of enquiry and appointment of enquiring officer (Respondent No.3) under Annexure-4;

- iv) any other relief or reliefs to which the applicant is/are entitled to and as the Hon'ble Tribunal deems fit and proper to grant such relief or reliefs as the case may be".

2. The facts of the case in a nut shell are that the applicant earlier was posted as Vice Chairman of Bhubaneswar Development Authority (in short B.D.A.) under the Housing and Urban Development Department of Government of Orissa during the period from May, 1995 to February, 1999. During this period, he, as the Vice Chairman of the B.D.A., had functioned as Chairman, Development Plan and Building Promotion (in short D.P. & B.P.) Committee. The allegation is that while working as such, the applicant had recommended for approval of the plan of the Harapriya Apartment over the Plot No.2727 and 2727/3743 without raising any objection with regard to non submission of NOCs from OSEB and the Fire Prevention Officer and for contravening the provisions of the BDA Planning and Building (Standards) Regulations, 1993. Further, it has been alleged that the applicant also recommended approval of the plan of a multi-storeyed building on Plot No.110, 244 of Mouza, Jayadev Vihar ignoring the provisions of the Multi storeyed Building Regulations, 1998. It is in this background disciplinary proceeding has been initiated against the applicant vide Annexure-1 dated 19.8.2002.

3. After receipt of the said Memorandum of charges, the applicant had filed a written statement of defence by his letter dated 30.10.2002 under Annexure-3. The grievance of the applicant is that the Disciplinary Authority (in short D.A.) did not consider his written statement of defence with due seriousness but passed an order dated 18.2.2003 (Annexure-4) in a routine manner directing initiation of departmental proceeding against him and simultaneously appointing Res. No.3 as the Inquiry Officer (in short I.O) merely on the ground that "as the delinquent officer denied all the charges framed against him, a departmental inquiry to be instituted". It is the case of the applicant that while directing initiation of departmental proceeding, the D.A. had not even 'whispered a single syllable' under Annexure-4 as to whether he had taken into consideration the defence of the applicant submitted to him. This action of the D.A. has been assailed by the applicant on the ground of non application of mind to his defence amounting to infraction of the principles of natural justice and speaks of prejudice and mala fide. Relying on the letter No.11018/8/81-AIS(III) dated 25.11.1981 of the Department of Personnel & Administrative Reforms, it has been submitted that the disciplinary authority has the inherent power to review and modify article of charges or drop some of the charges or all the charges after receipt and examination of the written statement of defence.

submitted by the accused member of an All India Service under Rule 8(6) of AIS (Discipline and Appeal) Rules, 1969. But the D.A., in this case, did never examine his written statement according to the procedure laid down in the Govt. of India letter referred to earlier in this regard either in letter or in spirit causing prejudice to his interest. The applicant has also alleged that the procedure adopted in his case by the Respondents is in variance with the instructions laid down in the Ministry of Personnel, Public Grievance & Pensions O.M. No.11018/3/98-AIS(III) dated 9.6.1995. It is his grievance that no explanation was ever called from him prior to serving the charge memo and that no proposal to take any disciplinary action against him was ever concurred by the Ministry of Urban Development Department for any purported acts of omissions or commission while he was working as Vice Chairman, B.D.A. Hence the charge memo served on him is in violation of the procedure laid down in the aforesaid Govt. O.M. for initiation of departmental proceedings against a Civil servant. It has been submitted that the decision to initiate disciplinary proceeding against the applicant was taken in a very mysterious manner. The applicant has taken the stand that his successor Vice Chairman of B.D.A. vide his letter dated 13.11.2001 approached the Housing and Urban Development Department of the State Government (in short H & U.D.D.) to initiate disciplinary proceeding

against one Mr.C.J.Mishra, Ex-Planning Member, BDA for certain omissions and commission purportedly committed by the latter with regard to approval of building plan over Plot No.1110, 294 of Mouza Jayadev Vihar and building plan of Harapriya and Amtita Apartments by misleading the higher authorities. On examination of this proposal the Commissioner-cum-Secretary to Govt. of Orissa, U.D.D. in his note dated 18.3.2002 to the Minister, Urban Development Department had suggested that an explanation might be obtained from Sri Mishra as to why disciplinary action should not be initiated against him for the lapses and irregularities committed in initiating action for approval of the building plan of the said apartments. The Minister, however, in his note dated 19.3.2002 to the Chief Minister of Orissa did not accept that suggestion but sought latter's approval for initiation of disciplinary proceeding against Shri Mishra. The draft charges were also put up for approval of the competent authority. The Chief Minister, on the other hand, for reasons not disclosed, was pleased to direct by his order dated 11.4.2002 that draft charges against all the members of the DP & BP Committee, who were parties to the said "wrong decision" to be put up. The applicant's case is that from the above facts of the matter it is clear that the disciplinary proceeding initiated against him was done without any material being available before the D.A. at that point of time

27

and such an action was in violation of the basic principles of natural justice and in utter violation of the procedure laid down in this regard in the Govt. orders, referred to above. Besides, it has been submitted that as malice and arbitrariness on the part of the Respondents are glaring in the instant disciplinary proceeding, the same is vitiated and therefore, not sustainable in the eye of law.

4. Respondent Nos. 1 and 2 have opposed the prayer of the applicant by filing their counter both on point of law and fact. At the outset, they have taken the stand that the Original Application being a premature one is not maintainable. It has been averred by the Respondents that the applicant has failed to show anything to the effect that the contemplated action of the Government was an action without any authority of law. The Respondents have taken the stand that in view of the settled position of law laid down by the Hon'ble Supreme Court in State of Uttar Pradesh v. Shri Brahm Datt Sharma and another (AIR 1987 SC 943) that interference by the Tribunal/Court before a final decision in the matter is taken would be premature, the present O.A. is not maintainable.

5. On the merit of the case it has been submitted by the Respondents that the present disciplinary proceeding is in the stage of inquiry and, therefore, at this juncture the Tribunal lacks in jurisdiction to go

2

into the correctness or otherwise of the charges and that the Tribunal cannot take over the function of the D. A. since the truth or otherwise is a matter to be looked into by the D.A. after receipt of the inquiry report. In support of this, they have relied on the decision in Union of India vs. Upendra Singh (1994 27 ATC 200). It is the further submission of the Respondents that the decision to initiate the disciplinary proceeding against the applicant was taken on the ground of gross negligence in Government duty, for showing illegal favour to the builders with mala fide intention for personal gain and for failure to ensure scrutiny and examination of documents during his incumbency as Vice Chairman, BDA. They have also submitted that the applicant was given reasonable opportunity to file written statement of defence and the disciplinary authority decided to appoint an inquiry officer after due consideration of his written statement. While the inquiry is in progress, the applicant has approached this Tribunal in the instant O.A. and the Tribunal, vide order dated 11.4.2003 has stayed the departmental proceeding initiated against the applicant, which, they have submitted, deserves to be vacated.

6. The Respondents in their counter have also clarified some of the factual aspects of the case, like, if the G.A. Department did not call for explanation of the applicant before framing the charge memo, it was


because that was not the requirement of law since the applicant had denied all the charges in his written statement of defence. They have further submitted that as the H & U D D had duly obtained orders of the Government for initiation of disciplinary proceeding, there was no occasion for Res. 2 to ask for explanation from the applicant and that the explanation, if offered by the applicant, could not have at all been different from the one given in the written statement. With these submissions the Respondents have prayed for dismissal of this O.A. being devoid of merit.

7. We have heard the learned counsel for the rival parties and have perused the records placed before us. The learned Senior counsel for the applicant, in support of his contention, had placed reliance on the following case laws.

- i) Champaklal v. Union of India (AIR 1964 SC 1854)
- ii) Gulam Mohiuddin v. State of W.B. (1964) 1 LLJ 462/489
- iii) State of Punjab v. V.K.Khanna (2001)2 SCC 300
- iv) State of Uttar Pradesh v. Brahmdudd Sharma (AIR 1987 SC 943)
- v) Sangram Keshari Mishra vs. State of Orissa(O.J.C. NO.6354/98)

8. The applicant has approached this Tribunal at the threshold of initiation of disciplinary proceeding against him. He has assailed initiation of the said proceeding on the ground of being unfair, mala fide and arbitrary.


The Respondents have resisted the application on the ground that it is



premature and have repeatedly submitted before us that the Court/Tribunal has no role to play before the disciplinary authority has passed any order after considering the inquiry report. It is, therefore, necessary for us to answer the question, i.e., whether there is any scope of judicial review of the disciplinary proceeding at its threshold, initiated by Res.2 against the applicant by his memorandum dated 18.2.2002.

9 The concept of judicial review in disciplinary matters has, over the last one decade, developed as follows. First, the Apex Court in *Transport Commissioner v. A Radha Krishna Moorthy* (1995) 1 SCC 322 has held that the departmental inquiry even at the preliminary stage may also be available for judicial review in a case where the charges are vague. It has further been held that "the jurisdiction of the Tribunal is akin to that of the High Court under Article 226 of the Constitution". However, the Tribunal is allowed to examine the procedural correctness of the decision making process and in case the order of the Tribunal goes into or discusses the truth or correctness of the charges that would be unsustainable in law.

10. The law was further developed encompassing all the facets of disciplinary proceedings in *B.C. Chaturvedi* case (AIR 1996 SC 484), which reads as under :



24

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings of conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re appreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case".

11. The same question, i.e., whether interference by the Court/Tribunal at the stage of issuance of charge sheet is permissible, was again answered in State of Punjab v. V.K.Khanna (AIR 2001 SC 343). In that case, the Hon'ble Apex Court held as under :


"While it is true that justifiability of the charges at the stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry, but it is equally well settled that in the event there is an element of

2

malice or mala fide, motive involved in the matter of issue of a charge-sheet or the authority concerned is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious to do, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion..."

12. From the above decision it is clear that the object of judicial review is to ensure that the individual receives fair treatment. The question, in this case therefore, to be answered is whether the applicant before us had received fair treatment in the hands of the Respondents and if the answer to this is in the negative then and then only there would be a case for us to intervene in the matter. It has also been laid down there that when an inquiry is conducted on charges of misconduct on the part of the Govt. servant, it would be our concern to determine whether the rules of natural justice were complied with. It has also been held by the Apex Court in B.C.Chaturvedi case (supra) that the Court/Tribunal may interfere where the authority holds the proceedings in violation of statutory rules or in a manner inconsistent with the rules.

13. The grievance of the applicant may, therefore, be examined in the touch stone of the said parameters of judicial review. The applicant has repeatedly submitted that the charge memo was served on him without holding a preliminary inquiry. He has assailed the very initiation of disciplinary proceeding as bad in law. He has also alleged that the reply/written statement of defence that he had filed after receipt of the charge memo was not considered by the D.A. with due application of mind; instead it directed initiation of departmental proceeding against him with the appointment of Inquiry Officer in a routine manner. Referring to DOP & A.R. Letter No.11018/8/81-AIS(III) dated 25th 11.1981, he has submitted that All India Services Rules, 1969 empowers dropping of charges by the disciplinary authority after considering the written statement of defence submitted by the accused member of the Service and therefore, by this letter, the disciplinary authority was directed to carry out detailed examination of the written statement of defence submitted by the accused member, so that only in cases where the disciplinary authority is satisfied that even after consideration of written statement of defence there exists further cause to proceed with the charges, then and then only disciplinary proceeding should be initiated. But in his case the disciplinary authority had mechanically examined the written statement of defence and appointed I.O. to enquire into the Apticle of charges. It is also his allegation that he was unfairly treated all through and that the action of the D.A. is tainted with instances of malice and bias and total non application of mind.

14. We had called for the relevant disciplinary proceeding files of the G.A. Department (File No.AIS/5-19/2002) as well as of H& U D. 

Department (Con/DP/02/05) to examine the validity of the grievance of the applicant.

15. From a perusal of the relevant files, we find that it was after about two years' of the applicant's demitting office as Vice Chairman, B.D.A., his successor was directed vide order dated 3.5.2001 of the Minister, U D, P G & P.A. to demolish the unauthorized construction over Plot No.2727/3743 at Gautam Nagar within a month after observing due formalities and to prepare draft charges against the officers responsible for allowing construction of the building up to a height of 74 ft. and that draft charges be "submitted to the Government in three days". Further, the said Minister had also observed "All the officers who are involved in the approval of the plan are responsible". In pursuance of the said order, necessary actions were taken and notice to stop construction was also issued by the B.D.A. This was further followed by submitting a proposal for initiation of disciplinary proceeding against Shri C.J.Mishra, Ex-Planning Member, B.D.A. by his letter No.6444/BDA dated 13.11.2001 with the approval of Minister U.D. P.G. & P.A. who is also the Chairman of B.D.A.. In that letter, the circumstances leading to initiation of disciplinary proceeding against Shri C.J.Mishra and his acts of omissions and commission were listed out. The allegations include showing illegal favour

to the private parties with mala fide intention, failure to ensure proper scrutiny and examination of documents and, tampering with documents. The proposal was processed in the U D Department and the Minister in charge of the Department put up the proposal before the Hon'ble Chief Minister, the Disciplinary Authority for his approval to the charges framed against Shri C.J.Mishra under Rule 15CCA Rules on 19.3.2002. The D.A., instead of approving the proposal, passed the following order on 11.4.2002.

“Please put up the draft charges against all the members of the DP &BP Committee, who were parties to this wrong decision”.

16. We find from the relevant records that it is in pursuance of the above order of the D.A., the Principal Secretary, H & U.D.D. listed out the names of the officers who were the members of the DP & BP Committee and who had attended the 112th and 118th meeting held on 24.4.1998 and 10.2.1999 respectively and also framed the draft charges against them including the applicant. It was stated in the said note that the draft charges against all the members of the Committee including the applicant who were parties to the “wrong decision” were being put up “as desired” by the D.A.(Emphasis supplied). The draft charges thereafter were approved by the D.A. for further follow up action. From the above, it is clear and the Respondents have also not denied that the draft charges were put up only because the D.A. had desired that such charges were to be framed against the

applicant and not that the disciplinary action so initiated was an outcome of having found a prima facie case against the applicant based on the evidence collected during the preliminary inquiry.

17. Thus the grievance of the applicant is that the charges framed against him were arbitrary and were not based on any evidence nor were those framed on the basis of the findings of any preliminary inquiry holding that a prima facie case exists against the applicant. From the facts of the case as stated above, we find that the decision to prepare draft charges against all the members of the DP & BP Committee was taken by the D.A. on 11.4.2002 on the ground that they had taken "wrong decision". While putting up the draft charges for approval of the D.A., as we have mentioned earlier, the Principal Secretary, H & U.D. D had also stated that the applicant was a party to the 'wrong decision' taken in the said meetings of the DP & BP Committee. The learned Senior counsel for the applicant during oral argument repeatedly submitted before us that taking mere wrong decision which is not tainted with mala fide is not culpable. The officers responsible for preparing article of charges could not have thus adjudged the purported omissions and commission on the part of the applicant, if any, together with seven other members as tainted "with extension of favour to the parties with mala fide intention", when the Hon'ble Chief Minister had already held

those purported acts of omission and commission to be 'wrong decision'. He has further submitted, even if for arguments sake it is accepted that the applicant had taken a wrong decision, to take a "wrong decision" is not the same thing as "showing illegal favours to the parties with mala fide intention". While reiterating that wrong decision is not a punishable offence, he submitted that virtually there was no material before the D.A. to come to a conclusion that the applicant should be proceeded against. Therefore, the order of the disciplinary authority suffers from the vice of non application of mind. It is also arbitrary and unfair. He has also submitted that the disciplinary authority had taken a view without considering the facts of the case and that the respondent-administration on receipt of the order of the D.A. went on not only fabricating charges to fill up the gaps but went far beyond to state that the applicant had failed to ensure proper scrutiny and examination of documents and showed illegal favour to the private parties with mala fide intention or that he had violated the provisions of Multistoried Building Regulations 1998 and the B.D.A. Building & Planning (Standard) Regulations 1993. In effect, whereas the disciplinary authority by his order dated 11.4.2002 decided to initiate disciplinary proceedings against the members of the BP & DP Committee for taking 'wrong decision', the draft charges later on approved by him on 26.6.2002 were

made on ground of gross negligence in duty. These two decisions being substantially at variance with each other can not be called fair and reasonable nor exhibit any application of mind. We are unable to disagree with the above submissions of the learned Senior counsel for the applicant.

18. The Apex Court in Bhawagati Prasad v. F.C.I. (C.A.No.10642/83 dated 25.11.1987 has held that error of judgment or taking wrong decision does not constitute misconduct. The same view was also taken by the Apex Court while defining misconduct in the case of Union of India vs. J. Ahmed (1979 (SC) 308 and while defining the word 'misconduct' in the case of Ministry of Finance & another v. S.B.Ramesh (1998 SCC (L&S) 865. Further in the case of Zunjarro Bhikaji Nagarkar (AIR 1999 SC 2881) the Apex Court had held that mere mistake of law or wrong interpretation of law on the part of an officer could not be the basis for initiating disciplinary proceedings and then went to say if every error of law were to constitute the charge of misconduct it would impeach upon the individual functioning of the authority.

19. Another allegation of the applicant is that the disciplinary authority was so biased against him that it did not properly consider his written statement of defence before the appointing I.O. Referring to Department of Personnel letter dated 25.11.1981, the learned Senior counsel

for the applicant submitted that had the disciplinary authority examined the written statement of defence submitted by him with an open mind, there could have been no scope to appoint the I.O. The provision as made by the order of the Government dated 25.11.1981 has been made with a view to ensuring that the civil servants receive free and fair treatment and they are not subjected to harassment merely on suspicion. This is the hall mark of free and impartial administration. But in the instant case the applicant has been made a victim of suspicion.

20. We have perused the relevant file (AIS/V/19/20002) wherein the written statement of defence filed by the applicant was processed. In the office note dated 21.12.2002 from page 9 to page 15 the explanation rendered by the applicant (and another officer) on the various issues raised in the charge memo were set forth for consideration of the competent authority. However, all the clarifications that the applicant had given on the issues he had raised in his written statement of defence remained unanswered.

21. In fact the Asddl. Secretary, by his note dated 22.1.2003 advised the D.A. not to consider the noting from page 9 to 15, although the noting in those pages contained the issues raised/answers given by the applicant in support of his defence. The note of the Deputy Secretary, which

started from page 16 of the note-sheet did not contain any material to show why the answers given by the applicant in respect of his defence should not be accepted by the D.A. On the other hand, the said functionary, i.e., Deputy Secretary in his note dated 2.1.2003 gave his opinion as under :

"No doubt the charges were established by the H & U.D.Department. Both the delinquent officers have denied the charges drawn up against them. Government may consider for appointing an Inquiry Officer to investigate the charges ..."

22. Ipso facto, the real import of the noting of the Deputy Secretary was that as the charges have already been 'established' by the H & U.D.Department, the view point of the accused officer was of no value. That undoubtedly, depicted the illegal mind set of the administration and to that extent the decision of the D.A. was clouded with the views of his staff officers who did not deal with the matter fairly and squarely.

23. From the above facts of the case, it would appear that the stand taken by the applicant that his written statement of defence was not duly considered by the D.A. before deciding appointment of the I.O., appears to be unassailable. The defence put up by the applicant in his written statement should have been considered by passing a reasoned order before D.A. could have appointed the I.O. We have, therefore, no hesitation to hold that the steps taken to initiate this disciplinary proceeding against the applicant was

not done strictly within the parameters laid down in Govt. of India letter dated 25.11.1981 and exhibits non-application of mind.

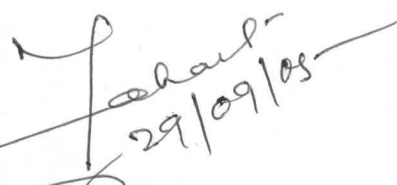
24. The learned Senior counsel for the applicant has further assailed the charge memo being vague and unspecific. Referring to the Charge No.1, he submitted that to sustain the allegation that the applicant had failed to ensure proper scrutiny and examination of documents, the D.A. had listed four documents, viz., copy of the proceeding of 112th meeting of DP & BP Committee, copy of the proceeding of 118th meeting, copy of the letter No.6444 dated 13.11.2001 and copy of the letter No.6788 dated 28.11.2001 of the Vice Chairman, B.D.A. to H & U.D. Department. None of those documents had any relevance to the charges leveled against the applicant. The same is the position with regard to Charge No.2. The learned Senior counsel for the applicant has elaborated before us that the copy of the proceedings of DP & BP Committee as listed with the charge memo are only the minutes of the meetings disclosing the decisions of the Committee taken in these meetings. The other two listed documents are the proposals sent by the Vice Chairman, B.D.A. for initiation of disciplinary proceeding against Shri C.J.Mishra, ex Planning Member to the H & U.D.D. These documents, therefore, have no relevance to the charges and by attaching these documents, the D.A. has in fact adduced more than enough evidence to show


that the charges were framed without due application of mind and are arbitrary, vague and unspecific and also not based on evidence. The Respondents having failed to rebut these arguments, we find merit in the submission.

25. For the reasons discussed above, we are of the view that the applicant has not received fair treatment at the hands of the Respondents in the matter of initiation of disciplinary proceeding. This apart, the allegation of denial of natural justice or that the charges were vague and unspecific and that the charge memo was a product of a pre-determined mind cannot be overlooked by the Tribunal. We are also of the view that reliance placed by the Respondents on the decision of the Supreme Court in *State of UP vs. Bramh Dutta (supra)*, is of no help as the facts and circumstances of that case are distinguishable. On the other hand, our view that in the facts and circumstances of this case as discussed above there is a case for judicial intervention gains support from the decisions of the Apex Court in *Champak Lal vs. Union of India*, *State of Punjab vs. V.K.Khanna*, *Transport Commissioner, Madras vs. A.Radhakisha Murty* and *B.C.Chaturvedi* cases (supra), all those decisions having direct application to the facts and law involved in this case. We are also of the view that it was not appropriate and legal on the part of the Respondents to have first taken a decision to hold the

applicant responsible on one ground and then frame charges on altogether different grounds. As the saying goes that what is good for the goose is not good for the gander, i.e., the charges which are found good against the Planning Member may not be good for blaming the Vice Chairman. In any case, no decision in any matter can be taken without first finding out the facts of the case, or without assessing the role and responsibility of the individuals in the first instance and that also after giving them opportunity to be heard or to defend their conduct.

26. The cardinal principle of fair play and justice having not been adhered to, the disciplinary action initiated against the applicant fails. In effect, the O.A. succeeds. Accordingly, we set aside the article of charges leveled against the applicant under Annexure-2 and consequently set aside the initiation of inquiry by appointing the I.O. under Annexure-4. Liberty is, however, granted to the Respondents to take any other action in the matter, if so advised, after carrying out proper preliminary enquiry into the matter. No costs.


 (M.R. MOHANTY)
 MEMBER (JUDICIAL)


 (B.N. SOM)
 VICE-CHAIRMAN