19

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO. 22 OF 2004
Cuttack this the 16th day of NOV '2005

HADIBANDHU BEHERA ... APPLICANT(s)

-VERSUS-

...UNION OF INDIA & Ors ...RESPONDENT(s)

FOR INSTRUCTIONS

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

16/11/05

(M.R.MOHANTY)
MEMBER (JUDICIAL)

(B.N.SOM)
VICE-CHAIRMAN

80'

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.22/2004
Cuttack this the 16th day of NOV' 20005

CORAM:

THE HONE'BLE MR.B.N.SOM, VICE-CHAIRMAN

AND

THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDICIAL)

...

Hadibandhu Behera, aged about 71 years, S/o. late Padmalochan Behera, retired Telecom District Engineer, At: Bhanjpur, PO:Baripada, District-Mayurbhanj

...Applicant

By the Advocates: Mr.D.P.Dhalasamant

-VERSUS-

1. Union of India represented through its Secretary, Department of Telecommunications, Ministry of Communications and Information Technology, West Block No.1, Wing No.2, Ground Floor, R.K.Puram, New Delhi-110 066

...Respondents

By the Advocates: Mr.U.B.Mohapatra, Sr.S.C.

ORDER

MR.B.N.SOM, VICE-CHAIRMAN:

Shri Hadi Bandhu Behera, a retired Telecom District Engineer (in short T.D.E.) under the Respondent-Department has

filed this Original Application challenging the order No.8-46/94-Vig.II dated 31.10.2003 (Annexure-3). He has also prayed for the following relief:

a) to quash the order of punishment dated 31.10.2003 as communicated in Annexure-A/3 series
b) to quash the charge under Annexure-A/1 and the report of the enquiry under Annexure-A/2 series
c) to hold that the applicant is not liable to be punished; and
d) to pass any order/orders as deemed fit and proper

2. The facts of the case in brief are that the applicant had faced a proceeding under Rule-9 of CCS(Pension) Rules after his retirement in July, 1991 as T.D.E., Rourkela on the allegations mentioned in Respondnets' Memo No.8/46/96-Vig.II (i) dated 31.8.1994. The allegations leveled against him were that while working as T.D.E., Rourkela during the period 1990-91, he passed order for the sale of unserviceable store materials to one contractor, Shri M.Kotesswar Rao without inviting sealed tenders or holding public auction in violation of the specific order of the General Manger (in short G.M.) (Planning) Orissa Circle, Bhubaneswar thereby causing an estimated loss to the tune of Rs.~~8.87~~ 8.17* lakhs to the Respondents and for causing undue pecuniary advantage to the said contractor. The Respondents held inquiry as prescribed under the rules and after receipt of the inquiry report, the disciplinary authority

* Corrected vide order dt 8.12.2005.

vide his letter dated 31.10.2003 (Annexure-A/3) reduced the monthly pension of the applicant to the minimum level of pension, to Rs.1275/- per month and also forfeited the entire amount of gratuity on the basis of the advice tendered by the Union Public Service Commission (in short U.P.S.C.) and Central Vigilance Commission (in short C.V.C.). The applicant has assailed the said order of the disciplinary authority on the ground that the charge framed against him under Annexure A-1 does not ex facie show any misconduct within the meaning of Rule 3(1) of the CCS(CCA) Rules, 1965. He has alleged that the charge suffers from vagueness since he had not been precisely told as to what was the motive attributed to him and hence the charge sheet stands vitiated. He further submitted that the disciplinary authority without forwarding a copy of the inquiry report to him had forwarded the same along with the advice of the C.V.C. dated 25.4.2002 without expressing his tentative opinion and thus had acted as a mere post office. In the circumstances, the applicant has submitted that the order of punishment is not sustainable in the eye of law.

3. Further that the disciplinary authority had obtained the advice of the C.V.C. before examining the inquiry report after receipt of the written statement of defence of the applicant and thus the punishment order is bad in law. The applicant has also alleged that

the disciplinary authority had acted upon the advice of the C.V.C. who had also not dealt with the matter on the basis of relevant documents and on application of mind. He further submits that whereas he was charged under Rule 9 of CCS (Pension) Rules, 1972 for causing pecuniary loss to the exchequer, the C.V.C. in its note dated 24.5.2004 held that "the charges are fully proved". He, therefore, concluded that the C.V.C. had tendered its advice in a mechanical manner without due application of mind and the same is liable to be ignored being bad in law. He also submits that the copy of the advice of the U.P.S.C. was not supplied to him before imposition of the impugned punishment and for this reason also the punishment order stands vitiated. The applicant has also assailed the order of the disciplinary authority on account of non application of mind that because the disciplinary authority has ordered forfeiture of the amount of gratuity payable to the applicant without finding out that the applicant had already been paid the full amount of gratuity after his retirement on superannuation. The applicant has alleged that certain vital documents, like letter No.ENG/9-33/90 dated 25.5.1990 stated to have been issued by the then G. M. (Planning) Orissa Circle was not exhibited before the inquiry and also the material witness i.e., Shri M.G.Gilani, the then G. M. (Planning) whose name appeared in the list of witnesses and by whom the charge against the

applicant was proposed to be sustained had not been examined by the prosecution. As it is well settled in law that if the material witness is not examined by the prosecution then the entire proceeding is vitiated. In the circumstances, on account of failure to produce Mr.Gilani as also failure to produce the letter referred to earlier in the charge memo, the inquiry proceeding stands totally vitiated.

4. The applicant has also assailed the decision to reduce the amount of his pension or forfeiture of his gratuity on the ground that the Government has not suffered any pecuniary loss. Finally, his argument is that no case of "grave misconduct" having been established there is no case for initiating action under Rule 9 and therefore, the impugned order is illegal, arbitrary and hit by the provisions of Articles 14, 16 and 21 of the constitution.

5. Per contra, the Respondents have resisted the application on the ground that the impugned order was passed after following the due procedure of law laid down in this regard in the Pension Rules, 1972/CCS(CCA) Rules, 1965. They have submitted that it is the prerogative of the disciplinary authority to examine the charge based on documentary as well as oral evidence. They have submitted that the charged official would have the right to cross examine the witness during inquiry, but when no witness was produced the question of exercising the right to cross examination did not arise at all in that

situation and that the materials and evidence produced during inquiry were sufficient to prove the charge. The Respondents have also denied that there was any violation of the constitutional mandates or any statutory rules. It is also their stand that the Tribunal has no jurisdiction to sit over the judgment of the authority competent to impose punishment on the basis of valid evidence on record. Relying on the decision of the Apex Court in State of Andhra Pradesh vs. Shree Rama(AIR 1963 SC 1723) the Respondents have submitted that as the inquiry was properly held and if there is some legal evidence on which the findings could be based, the adequacy or reliability of that evidence is not the matter which can be permitted to be canvassed in a disciplinary proceeding before the Tribunal. They have finally submitted that the competent authority, after taking into account the relevant materials, gravity of allegation, findings of the inquiry officer, representation of the officer and advice of the statutory body, i.e., UPSC had come to the conclusion that the charge against him is very grave and deserves suitable cut in pension under the statutory rules.

6. We have heard the learned counsel for the rival parties and have also perused the records placed before us. We had also called for the relevant files dealing with the vigilance/disciplinary case against the applicant and accordingly, the Respondents had

produced those files bearing Nos.9-30/94-Vig.I, 8/46/94-Vig.II and Vig.8-114/1994.

7. We have given our anxious thoughts to the issues raised in this O.A. and the reply in counter filed by the Respondent-Department.

8. At the outset we would like to refer to the objection raised by the Respondents relying on the judgment in Sree Ram Rao (AIR 1963 SC 1723) as well as in the case of A.S.Sethi vs. Union of India (AIR 1968 Delhi 26) and in State of Andhra Pradesh vs. Chitra Venkata Rao (1975 SCC (L&S) 349) with regard to jurisdiction of the Tribunal over the decision of the disciplinary authority. There is no doubt that the Court/Tribunal has got limited role to play in so far as disciplinary matters are concerned. However, that is not to say that the Court/Tribunal is divested of jurisdiction to enter into the matter concerning disciplinary proceeding. Before we go into the discussion about the extent and scope of judicial review in such matters, we would like to clarify that the Court/Tribunal not being the Court of Appeal is not expected to sit in judgment over the order of punishment or the quantum of punishment imposed in a disciplinary matter, but has the jurisdiction to look into the decision making process to see whether it was un trammeled, free and fair - abiding by the procedure and rules laid down in this regard. The scope of

judicial review has been extensively laid down in the case of B.C.Chaturvedi (AIR 1996 SC 848). In this context, we would like to quote the relevant portion of the observation of their Lordships in B.C.Chaturvei case, which reads as under:

> "Judicial review is not an appeal from a decision but 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 or 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 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".

9. It has further been held by the Apex Court that judicial intervention is also available in case the charge(s) is vague or unspecific or if the disciplinary proceeding is assailed on the ground of mala fide. In the instant case, the applicant has assailed the proceeding initiated against him as misconceived, that it is in contravention of the laid down rules and procedure, that he was denied reasonable opportunity to defend his case, the material witnesses were not produced during inquiry nor was he given access to a vital document which formed the basis of leveling allegation against him that he flouted the orders of the G.M. (Planning). He has also argued that the disciplinary authority never exercised his mind independently but it did what was dictated to it either by CBI or CVC or UPSC. And at the top of all, the allegation against him was vague and unspecific and therefore, the same could not come under the definition of "mis- conduct". In effect, his allegation is that he was unfairly treated all through. It would, therefore, be in the aptness of things to examine the reply of the Respondent against each of the allegations so leveled.

10. The facts of the matter are that the applicant functioned as T.D.E. Rourkela for some time during the period 1990-91 before he retired on superannuation on 31.7.1991. During this period he had passed orders for sale of unserviceable store materials. The allegation

leveled against him consists of two elements. Firstly, that in passing the said order he flouted the order of the then G.M.(Planning) as contained in the latter's letter No.ENG.9/33/90 dated 25.5.1990. Secondly, that the action of the applicant in passing orders for sale of unserviceable store materials to a contractor of Teneli without calling for sealed tender or by public auction, had caused loss to the tune of Rs.8.17 lakh to the exchequer and caused undue pecuniary advantage to the said contractor. The said act committed by the applicant was considered as "grave misconduct".

11. From the above, it would be clear that the Respondent proceeded against the applicant under Rule 9 of Pension Rules on two counts viz., the applicant had violated the order of G.M. (Planning) Orissa thereby violated the provisions in P & T Manual, Vol.X and P & T (Financial) Rule, Vol.III (Part.II) and that he had failed to maintain absolute integrity thereby contravening CCS(Conduct) Rules. To establish those allegations, the Respondents had appointed an inquiry officer to carry out detailed inquiry (Commissioner of Departmental Inquiry, Department of Telecommunications) (I.O. in short). We have perused the report of the I.O. to know his findings on the charges. The I.O. had submitted his report to the disciplinary authority on 29.1.2002. His findings are contained in Para 13 of his report which read as follows :

30

" FINDINGS:

13. On the basis of oral and documentary evidences adduced before me during inquiry and in view of the reasons given hereunder before, my findings are that the charged officer passed orders for sale of unserviceable store materials in Rourkela Telecom District to Shri N.Kotesswar Rao, a contractor of Tenali (A.P.), without inviting tenders or by public auction, as ordered by the General Manager (Planning), Office of Chief General Manager, Telecom, Orissa, Bhubaneswar are proved beyond doubt".

12. .From the above, it is clear that the finding of the inquiry authority was only to the extent that the applicant did not invite tender or did not order disposal of unserviceable stores by public auction in violation of the orders of the G.M.(Planning), but he had no finding as to the allegation whether the Government had sustained any financial loss or not which was stated to be to the extent of Rs.8.17 lakh in the charge memo. In fact, the report of the I.O. is altogether silent on the issue whether the 2nd element of charge, i.e., sustatining financial loss of Rs. 8.17 lakh is proved or not. When this report was considered by the D.A. in File No.8/46/94-Vig.II (Page 24 'N' of the note), the D.A. appears to have agreed with the finding of the I.O. as would appear from a plain reading of Para 3 of the said note. From a reading of Para 4 of the said note, it is found that the said finding of

31

the I.O. along with department's observations were sent to the C.V.C. for its 2nd stage advice and it was noted there that the said Commission had found "the charges fully proved" and also held that the lapses committed are serious showing doubtful integrity on the part of the applicant and therefore, advised imposition of penalty of suitable cut in pension of the applicant. It further reveals from that note that the D.A. had accepted the 2nd stage advice of the C.V.C before the report of the I.O. was supplied to the applicant and before considering his defence. In other words, C.V.C. tendered advice without examining the written statement of the charged officer which is in clear violation of the principles of natural justice and fair play.

13. From the above narration of facts, we are also of the view that the I.O. had not given any finding with regard to any pecuniary loss caused to the Government. The I.O. had not also found any mala fide intention in the action of the applicant in not adopting either tender procedure or public auction procedure. As the I.O. has given no finding whether the action of the applicant had caused any pecuniary loss to the Government, this allegation remains unproved and the 2nd stage advice of the C.V.C, that "the charge against the applicant stands fully proved" is erroneous and, therefore, liable to be quashed.

32

14. Further, the processing of the report of the I.O. also exhibits total non application of mind and denial of natural justice to the applicant. Firstly, the Article of Charge against the applicant being based on the allegation that the applicant had flouted the order dated 25.05.1990 of the G. M. (Planning) and not listing that document to the charge memo and not producing the same during inquiry in spite of the requests made to that extent by the applicant had definitely vitiated the inquiry proceedings and makes the Article of Charge untenable on that score. The applicant has never disputed that he had not floated any tender or that he did not go for public auction. He has submitted that he adopted the approved tender of neighboring Telecom District of ~~Tenali~~ * Kurnool, a practice which was also followed by other District ~~Managers~~ * Engineer in Orissa Circle, like, Bhubaneswar, Sambalpur, ~~Balasore~~ * Dhenkanal etc. The I.O's report throws no light on this aspect of the case. Hence his report could have been of little value to the D.A. to come to the conclusion that the applicant was guilty of grave misconduct. It has to be noted that the inquiry proceeding was also vitiated because of the failure of the prosecution to produce the then G. M. (Planning), Shri M.Gilani, as witness in the inquiry. The reason is not far to seek. It is this officer who could have testified whether any such order(i.e., order dated 25.5.1990) he had issued and whether the action taken by the applicant in the matter of

* corrected vide order Dt 8.12.2005

disposal of unserviceable stores smacked of misconduct. The Respondent has not come up with clean hands in the matter even in their counter as to why the prosecution failed to produce Shri Gilani as a witness during inquiry. He being the vital witness to prove the allegation, his absence becomes fatal to the credibility of inquiry. Nor could they explain the reason for non-production of the letter dated 25.5.1990. In an overall view of the matter, there is no doubt that the applicant had committed codal irregularity in not following the tender procedure. But in terms of the Govt. of India instruction(as noted in Annexure-2 of the D.G., P & T letter No.6/79/77-Disc.I dated 29.11.1972 (Item No.3)), gross irregularity or negligence in discharge of official duty alone does not merit major penalty. Gross irregularity or negligence in discharge of duties, coupled with a dishonest motive only merits imposition of one of the major penalties. That being the declared policy of the Government for taking disciplinary action and determining quantum of punishment to be awarded to commensurate with the gravity of the offence committed, the Respondent having found that there was no dishonest motive in the action on the part of the applicant, as revealed in the inquiry, its decision to resort to action under Rule 9 of the Pension Rules was violative of its own policy, which is not sustainable in the eye of law. In the fitness of things it would be profitable to quote what their

34

Lordshis in the case of Rama Chandra Keshav Adke v. Govind Joti Chavare and Ors. (AIR 1975 sc 915) which reads as under:

> "...where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. This rule squarely applies where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other. This decision of the Apex Court was based on Taylor v. Taylor, (1875) 1 Ch.D 426, Naxir Ahmed V. Emperor 63 Ind.App. 372, Shiv Bahadur Singh v. State of V.P. (1954) SCR 2098, Deep Shand v. Stand of Rajasthan (1962) SC 662".

15. More than that when we come to the genesis of this case, we get the answer whether the action taken by the applicant in disposal of unserviceable stores had any dishonest motive in it or not. We get the answer on perusal of File No.9-30/94 Vig.I. The action of the applicant regarding disposal of unserviceable stores was referred to the CBI, which had registered a case R.C. 45(A)92-BBS against the applicant. The CBI, after detailed inquiry remitted the matter as under:

> "Investigation disclosed that Shri Hadi Bandhu Behera (S.I) had worked as T.E., Rourkela during 1990-91. The charges of criminal conspiracy, cheating etc. could not be substantiated against S.1, i.e., Mr.Hadi Bandhu Behera and S.2 (i.e. Shri Kotesswar Rao, contractor). However, it has been proved that Shri H.B.Behera S.I had committed gross misconduct in the alleged disposal of U.Ss".

35

16. It is stated in that report that they had found nothing 'doubtful' against the applicant. However, in the end they recommended major penalty action against him which appears to be an irrational conclsion. From perusal of the concerned file, it appears that without due application of mind and without having any regard to the findings of the CBI that the charges of criminal conspiracy, cheating etc. were not found to be true against the applicant, the Respondent-Department routinely accepted the concluding view of the CBI that it was a matter of grave misconduct because the applicant had violated the codal procedure. It would appear that the disciplinary authority was least influenced in the detail findings of the CBI, but was more influenced by its recommendation to initiate a major penalty action, though no reason was available in the report of the CBI to sustain such a recommendation. This failure on the part of the Respondent to apply its mind has spelt undoing for the applicant. However, justice demands that such miscarriage of justice should not be allowed to go on unchecked.

17. Similarly, the allegation of loss to the tune of Rs.8.17 lakh arises out of the statutory audit report. The applicant, in his written statement to the I.O., had stated that the audit officer had calculated loss to the Department by comparing the rates available in open tender rates though those were not approved by the TDE/

*C.G.M.T

*: Corrected vide order dt. 8.12.2005.

~~C.G.M.T~~. The applicant has, therefore, urged that the calculation of loss was made on a hypothetical basis which cannot stand to reason. He has also pointed out that the same rates offered by Shri Koteswar Rao were also adopted by T.D.E., Sambalpur Telecom District, which was approved by C.G.M.T., Orissa and no audit objection was ever raised against that T.D.E. Further, in the tender of Koraput District for one unserviceable item, viz. cable wire, the rate approved was Rs.11per kg., whereas this item was disposed of by Rourkela District @ Rs.11.25 per kg. The applicant claims that this transaction had brought maximum benefit to the Department. He had highlighted these points in his defence brief to the I.O. From a reading of the report of the I.O., we find that at Para 11 of his report he had discussed the defence brief submitted by the applicant, but the IO. surprisingly did not touch upon any of these vital issues raised by the applicant in his brief. It is, therefore, necessary for us to take a view in the matter if the audit party had used the rate of the tenders of CCMT as bench mark for assessing the viability or justness of the tender rates adopted by Rourkela District and if that tender was one which was approved by the C.G.M.T., it hardly requires emphasis to say that the whole edifice on which the charge of causing pecuniary loss to the Government rests appears to be an exercise in futility.

37

18. We also observe that the audit report was given wide publicity in the media and the then C.G.M.T. felt it necessary to rebut the news item by defending the action taken by the T.D.E., Rourkela and informing the public about the benefit that the Department had derived from the action taken by the concerned authority. We also find from the record that the audit objection was vehemently rebutted by the CGMT. In the face of this official position taken in the matter by the CGMT, Orissa during 1991, how the department could later on come up so heavily on the applicant taking a completely opposite stand. No material has been placed before us either in the counter or during oral hearing, as to what all materials the Respondents had in their possession to change their official position subsequently from what they had taken before the audit as well as before the media, and to approach the President to take action against the applicant under Rule 9 of Pension Rules.

19 We had made anxious queries with the learned Sr.Standing Counsel repeatedly on these points as to what explanation they could place before us for changing their stand from what they had taken before the Audit authorities and before the media for our appreciation. However, we did not get any illuminating reply. However, after going through the relevant files as mentioned above, we get the answer that the CBI had influenced the decision of the

Government by recommending major penalty action against the applicant, though, as we discussed earlier, the final recommendation of the CBI was not based on the strength of their findings in this case. When no ill motive is found by them as admitted in the report, when no evidence of collusion between the applicant and the contractor is established, when the rates of the same tender adopted by other TDEs got approval or were not objected to by the Audit, the allegation of 'grave misconduct' in this case is not only unreasonable but unsustainable also. Not only that, we find that the CBI along with its report had supplied a calendar of evidence (oral and documentary evidence), had prepared articles of charge and statement of imputation, list of witnesses and documents and submitted the same to the Government for initiating departmental action against the applicant. The Government, on receipt of this report and the documents from the CBI should have gone through the evidence and the report of the Superintendent of Police, CBI to take a final view in the matter. Had they analyzed the materials available with the CBI report with an open mind, they could not have failed to see that when the charge of criminal conspiracy or cheating was not proved, and when action taken for sale of unserviceable items without calling for open tender was not only confined to Rourkela, but had been adopted by other districts, like Sambalpur,

39

corrected vide order Dt. 8.12.2005

Dhenkanal, ~~Balasore~~, Bhubaneswar and neither the CBI nor statutory Audit party did object to those transactions in respect of other districts, it defies reason to understand how the applicant could be singled out for action under Rule 9 of Pension Rules.

20. We need also to answer the issue raised by the applicant that even if it is true that he disposed of unserviceable stores without following the procedure laid down in P & T Manual, Vol. X, the said action of his does not come within the definition of 'misconduct'. The I.O. had found the charge that the applicant had not followed the codal procedure for disposal of unserviceable stores proved. It cannot, therefore, be disputed, as we have stated earlier, that his decision to dispose of the unserviceable stores by adopting the procedure outside the ambit of P & T Manual Vol-X was irregular. We have also noted earlier that as per D.G. P & T decision contained in letter dated 29.11.1972 (referred to above), gross irregularity or gross negligence if not coupled with dishonest motive does not constitute misconduct which does not merit action for imposing one of the major penalties. 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) 318) and in the case of Ministry of Finance & Another vs. S.B.Ramesh (1998 SCC (L&S) 865. Further, in the case of Zunjarro Bhikaji Nagarkar vs. Union of India & Ors. (AIR 1999 SC 2881) the

Apex Court 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 independent functioning of the authority. Having regard to the above position of law laid down in this regard the decision taken by the applicant even if not within the four corners of the laid down procedure can by no stretch of imagination be construed as misconduct, let alone a grave misconduct as that decision was not taken with dishonest motive. Resultantly, therefore, it does not attract the rig- our of Rule 9 of the Pension Rules.

21. Besides the points we have discussed above on the sustainability of the charge against the applicant under Rule 9 of Pension Rules, the O.A. merits consideration on the ground that the D.A. had imposed punishment under Rule 9 of the Pension Rules, being swept away by the recommendation of the CBI and, thereafter, on the advice of the UPSC. The law is now been settled by the Apex Court in the case of Nagaraj Shivarao Karjagai vs. Syndicate Bank Head Office Manipal And Anr. (AIR 1991 SC 1507),which reads as follows:

> "19. xxx The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the

facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer (See: De Smith's Judicial Review of Administrative Action, Fourth Edition, P. 309). The impugned directive of the Ministry of Finance, is therefore, wholly without jurisdiction, and plainly contrary to the statutory Regulations governing disciplinary matters"

22. Having regard to the above position of law, the coordinating Bench of this Tribunal (Jodhpur Bench) in O.A.No.320/2004 (disposed of on 30.8.2005) in the case of Sanchal Bilgrami vs. Secretary, Indian Council of Agricultural Research , New Delhi & Ors., relying on the decision of Lucknow Bench of the Tribunal in the case of Raja Ram Verma vs. Union of India & Ors. 2003(3) SLJ cat 365 and also the Lucknow Bench in the case of Dr.Guru Deep Singh vs. Union of India & Ors. (O.A.NO.464/2000) has held that if the punishment is imposed on the dictation of third party, like Central Vigilance Commission or the Union Public Service Commission without supplying a copy of the advice of the UPSC to the accused officer before imposing punishment, the disciplinary proceedings are liable to be held as illegal and vitiated.

23 In the context of the aforesaid decisions, we come to the inescapable conclusion that the O.A. deserves to be allowed and

accordingly the same is allowed. The impugned order of punishment dated 31.10.2003 (Annexure-A/3) and the report of the I.O. under Annexure-A/2 and the charge under Annexure-A/1 stand quashed. Resultantly, the consequential benefits be given to the applicant. No costs.

-X- Corrected vide order dt 8.12.2005.

16/11/05

(M.R.MOHANTY)
MEMBER(JUDICIAL)

(B.N.SOM)
VICE-CHAIRMAN