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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 46 of 2006
Cuttack, this the 20th day of October, 2006.

AKSHAY KUMAR PARIDA ..... APPLICANT
Versus
UNION OF INDIA & ORS. ..... RESPONDENTS

FOR INSTRUCTIONS

1. WHETHER it be sent to reporters or not? Yes

1. WHETHER it be circulated to all the Benches of the Tribunal or not? Yes

(V.K.AGNIHOTRI)
MEMBER (ADMN.)

(M.A. KHAN)
VICE-CHAIRMAN

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C O R A M:-

THE HON'BLE MR. JUSTICE M.A.KHAN,VICE-CHAIRMAN (J)
AND
THE HON'BLE MR.V.K.AGNIHOTRI, MEMBER(ADMN.)

AKSHAYA KUMAR PARIDA,
Aged about 59 years,
son of late Keshab Chandra Parida,
Village/Post: Bililkana, PS: Aul, Dist. Kendrapara,
at present Senior Auditor,
Office of the Principal Accountant General (Audit-I&II),
Orissa, Bhubaneswar.

... APPLICANT

Applicant in person

VERSUS

1. Union of India represented through the Principal Accountant General (Audit-I), Orissa, At/Po: Bhubaneswar, Dist.:Khurda.

2. The Senior Deputy Accountant General (Administration) and Disciplinary Authority, Office of the Principal Accountant General (Audit-I), Orissa, Bhubaneswar, At/Po: Bhubaneswar, Dist. Khurda.

3. Shri B.K. Mohanty, Senior Deputy Accountant General and Inquiring Authority, Office of the Principal Accountant General (Audit –I), Orissa, At/Po: Bhubaneswar, Dist. Khurda.

....RESPONDENTS

By Legal practitioner: Mr. U.B.Mohapatra,
Senior Standing Counsel.

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ORDER

MR.V.K.AGNIHOTRI, MEMBER(ADMN.)

In this Original Application, the applicant has challenged the report of the Inquiry Officer dated 14.08.2003 (Annexure-A/13), the order of the Disciplinary Authority dated 13.04.2004 (Annexure-A/15) and the orders of the Appellate Authority dated 28.11.2005 (Annexure-A/20 & A/21). He has sought quashing and setting aside of these orders with a direction to the respondents to reinstate him in service and to regularize the period from 04.08.2000 (i.e. the date of his suspension) till the date of re-instatement in service as spent on duty for all purposes, with consequential benefits.

2. The factual matrix of the case is that at the relevant point of time, the applicant was working as Senior Auditor in the office of the Principal Accountant General (Audit-I), Bhubaneswar, Orissa. On 04.08.2000, he was placed under suspension on the ground that disciplinary proceedings were contemplated against him. A memorandum of charges dated 06.10.2000 was then sent to the applicant. According to the applicant, on receipt of this Memorandum of charges, he found that Annexure-III of the Memo had not been

received. Upon representation, the respondents sent Annexure-III vide their letter dated 07.11.2000. On its receipt, the Applicant found that three of the documents mentioned in Annexure-III (namely those are in Sl. Nos. l, 3 and 7) were missing. The applicant then wrote a letter on 17.11.2000 to the respondents for supply of those three documents. But they were not furnished to him. According to the respondents, however, on both the earlier occasions, i.e. at the time of sending the original charge memo and with the subsequent letter dated 07.11. 2000, a complete set of Charges Memo, including Annexure-III along with all enclosures, was supplied to the applicant. Further, on receipt of his letter asking for three missing documents, copies of the three so-called missing documents were sent to the applicant once again vide their letter dated 19/26.l2.2000. Be that as it may, the Disciplinary Authority proceeded to appoint an Inquiry Officer (I.O., for short) vide order dated 13.7.2001. It also revoked the order of suspension of the applicant vide order dated l6.7.2001 and the applicant, accordingly, joined duty on l8.7.2001. Later, the applicant was placed under deemed suspension with effect from 19.07.2001.

3. The I.O. initiated the enquiry by issuing letter dated 07.09.2001, fixing the date for preliminary hearing on 14.09.2001 on which date the applicant was not present. According to the applicant he did not get intimation regarding the date of hearing in advance. Whereupon the applicant filed a Bias Petition against the I.O.The I. O. adjourned the enquiry proceedings, scheduled to be held on 01.11.2001, until further orders. According to the applicant while the said Bias Petition was pending with I.O., he held the sitting of enquiry proceeding on 24.01.2002 and on 01.02.2002, for which again the notice was not received by him in advance. According to the respondents, the Bias Petition of the applicant dated 21.10.2001 was disposed of by the Disciplinary Authority on 10.01.2001, i.e. prior to issue of the notice by the I.O. on 17.01.2002 for the next date of hearing i.e. 24.01.2002.

4. The I.O. then proceeded to complete the enquiry *ex parte*. A copy of the report of the I.O. dated 14.08.2003 was supplied to the applicant. Aggrieved by the disciplinary proceedings, the applicant filed OA No. 692/2003 before this Tribunal with a prayer to quash the enquiry. The Tribunal, vide order dated 17.12.2003,

directed the applicant to file a representation before the Disciplinary Authority, which direction the applicant complied with. The Disciplinary Authority, however, rejected the petition of the applicant, vide order dated 27.01.2004. Aggrieved by the decision of the Disciplinary Authority, the applicant filed OA No. 64/2004 with a prayer to quash the Enquiry Report. During the pendency of the OA, however, the Disciplinary Authority issued the final order dated 13.04.2004, imposing the penalty of reduction of pay of the applicant by three stages from Rs.6725/- to Rs.6,200/- in the time scale of pay of Senior Auditor (Rs.5500-175-9000) for a period of three years with effect from 01.04.2004. It was further ordered that the applicant will not earn increments of pay during the period of reduction and that on the expiry of this period the reduction will have the effect of postponing his future increments of pay. The applicant preferred M.A. No. 354/2004 in the pending O.A. (64/2004) against the aforementioned order of the Disciplinary Authority. This Tribunal passed an *ad interim* stay order on 30.04.2004 against the impugned order of the Disciplinary Authority. However, on 24.01.2005, the Tribunal dismissed O.A. No. 64/2004, on the ground that since the

impugned order dated 13.04.2004 was not under challenge, nothing survived in the case for adjudication. The applicant then filed a Writ Petition before the Hon'ble High Court of Orissa, vide W.P.(C) No. 1720/2005, which was disposed of on 14.03.2005 with a direction that in case the applicant files an appeal, it shall be disposed of as expeditiously as possible. Accordingly, the applicant preferred an appeal before the Appellate Authority, vide his letter dated 15.04.2005. Since the appeal was not disposed of by the Appellate Authority, the applicant preferred a M.A. No. 8285/2005 before the Hon'ble High Court of Orissa, which was disposed of on 27.07.2005 with a direction to the Appellate Authority to decide the appeal within four weeks from the date of receipt of the order. The Appellate Authority, thereafter, issued a Show Cause Notice to the applicant for a proposed enhancement of penalty, vide order dated 22.08.2005. The applicant again filed M.A. No. 11736/2005 before the Hon'ble High Court of Orissa challenging the proposed enhancement of punishment. During the pendency of the said M.A., the Appellate Authority passed an order dated 25.11. 2005 (Annexure-R/21), which was followed up

by a letter dated 28.11.2005 communicating the operative portion of the Appellate Authority's order (Annexure-A/20) and another order removing him from service with effect from 25.11.2005 (Annexure-A/21). The applicant has stated that he did not receive the copy of the order of the Appellate Authority dated 25.11.2005. However, the respondents have stated that it was communicated to him vide letter dated 25.11.2005 (Annexure-R/20). The applicant then approached the Hon'ble High Court of Orissa once again with M.A. No. 15045/2005 with a prayer to amend the pending M.A. No. ll736/2005 which was disposed of vide order dated 14.12.2005 with the following direction:-

> "In view of the fact that a fresh order has been passed enhancing the punishment to the extent of dismissal from service, we feel that the petitioner now should approach the appropriate forum, if he is advised to do so, and the present application is not entertainable at this stage."

Hence the present O.A.

5. Some of the averments made by the applicant have already been incorporated in the factual matrix provided above, such as delayed receipt of Annexure-III of the Charge Memo, non-receipt of three documents mentioned in Annexure-III, conduct of the

proceedings by the I.O. *ex parte*, non disposal of his Bias Petition by the Disciplinary Authority, passing of the penalty order by the Disciplinary Authority during the pendency of the OA No. 64/2004 (supra), non-supply of a copy of the detailed order of the Appellate Authority dated 25.11.2005 etc. In addition to the above, in his pleadings, the applicant has mentioned in para 4.22 of O.A. that a List of Witnesses (Annexure-IV) was not supplied to him along with Charge Memo, especially when Annexure-III of the Charge Memo included the following statements of witnesses:

> "(1) Statement of AAO & AAG dt.06.07.2000.
> (2) Statement of Sr. DAG (RA) Mrs. N.Munish dt.2.8.2000.
> (3) Statement of AAG dated 2.8.2000.
> (4) Statement of Patric Minz, Sr.AO/RA-I dt.2.8.2000.
> (5) Statement of Barua Marandi, CP-D dtd.22.8.2000.
> (6) Statement of R.K.Acharya, Stenographer Grade-I dtd. 21.8.2000.
> (7) Statement of R.C.Mishra, AAO, RA-IV, dt. 2.8.2000."

6. The applicant has further stated that the Charge Memo against him was not issued within ninety days (3 months) from the date of his suspension and the disciplinary proceedings were not completed within six months as per the instructions of DOP&T in OM

dated 16.12.1972. Further, since the complete Charge Memo, including Annexure-IV, was never supplied to him, including the missing documents in Annexure-III, he could not submit his statement of defence. The applicant was also not generally questioned on the circumstances appearing against him in the evidence, as prescribed in sub-rule (18) of Rule 14 of the CCS (CCA) Rules, 1965. He has further averred that there were eight other co-delinquents. However, he alone was suspended and hence the suspension order was *mala fide*, arbitrary and violated the principles of natural justice as well as Articles 14 and 16 of the Constitution of India.

7. While elaborating some of the points mentioned above, the applicant has made the following averments:

(i) It is evident from the enquiry report the witnesses whose statements were listed in Annexure–III,were not examined by or on behalf of the Disciplinary Authority nor a reasonable opportunity was afforded to the applicant to cross-examine them. Since no witnesses were examined nor produced before the I.O., the order passed by the

Disciplinary Authority is without any evidence. Hence the order of the Disciplinary Authority is perverse and violates sub-rule (l4) of Rule l4 of the Rules *ibid.* Further, it is settled law that the statements recorded in the preliminary enquiry, when tendered as evidence in the regular enquiry are required to be proved by examination of deponents as witnesses and an opportunity should be afforded to the government servant to cross-examine them. Till this exercise is complete, the statements cannot be relied upon as legal evidence against the government servant,

(ii) The I.O. held only 3 sitting *in toto* without intimation to the applicant. The details of the sittings are:

Date of Enquiry	Date of letter/intimation issued by the I.O. and sent to the applicant by Regd. Post	Date of receipt of the letter by the post by the applicant
14.09.2001	07.09.2001	18.09.2001
24.01.2002	17.01.2002	25.01.2002
01.02.2002	24.01.2002	05.02.2002

The IO thus, conducted the enquiry without prior intimation to the applicant, which violated the principle of natural justice. The argument of the applicant that he received the intimation regarding the sittings after the expiry of the scheduled dates of the enquiry has been corroborated by the I.O., vide para 4, 5 and 6 of the Inquiry Report (Annexure-A/13).

(iii) Since no appeal has been filed by the Respondents against the order of the Disciplinary Authority dated 13.04.2004 (Annexure-A/15) and the only appeal against it has been filed by the applicant before the Appellate Authority with a prayer for setting aside the order, Appellate Authority should have considered the objections raised in the appeal and passed an order either to dismiss or allow the appeal wholly, or partly and upheld, or set aside or modified the order. It cannot surely have imposed a higher penalty and condemned the applicant to a

position worse than the one he would have been in if he had not hazarded to file an appeal.

(iv) Applicant was directed to show cause for the proposed enhancement of the penalty. Since at that time the wife and the son of the applicant were seriously ill, he could not submit the reply to the Show Cause Notice as directed and sought for time. However, his request for extension of time was not entertained nor was he allowed to meet the Appellate Authority by his secretary.

(v) The Appellate Authority passed its order mechanically without date and without indicating the date from which the impugned order would be effective. Thus, it is evident that the order was passed with *mala fide* intention to harass the applicant.

8. The respondents have initiated their averments with the submission that the Hon'ble Supreme Court in a catena of judgments has already set out the following principles of law with

regard to the role and jurisdiction of the Disciplinary Authority and the extent and limit of powers of judicial review by the Tribunal and superior courts. It is well settled that the following principles would apply to any such inquiry as is the issue in the instant case:-

(i) The Disciplinary Authority is the sole judge of the facts and the quantum of punishment to be imposed in case of proven misconduct, unless the same is completely disproportionate or shocks the judicial conscience of a superior court.

(ii) The Tribunal and courts, by way of a self-imposed limitation, do not exercise the power of judicial review to re-appreciate the evidence or substitute their own view for that of the Disciplinary Authority as the Tribunal and the superior courts are concerned with the decision making process and not the decision itself.

(iii) The Tribunal or the courts will not exercise their power of judicial review if the decision of the Disciplinary Authority is reasonably supported by

some evidence, keeping in mind the "broader possibilities" of the case. The Tribunal or the courts shall only interfere when it is a case of no evidence or where the Disciplinary Authority has acted perversely. In coming to this conclusion, the superior courts have laid down that insignificant discrepancies or narrow technicality cannot come to aid in overturning the conclusions arrived at by a Disciplinary Authority.

Reliance has been placed in this regard on the judgments of the Hon'ble Supreme Court in **Hombe Gowda Edn. Trust & Anr. v. State of Karnataka & Ors.**, 2006 (2) S.L.J. 272; **Commissioner and Secretary to the Govt. & Ors. v. C. Shanmugam**, 1998 SCC (L&S) 562; **State of T.N. & Anr. v. S. Subramaniam,** 1996 SCC (L&S) 627; **Government of T.N. & Anr. v. A. Rajapandian,** 1995 SCC (L&S) 292; and **State of Tamil Nadu v. Thiru K. V. Perumal & Ors.,** AIR 1996 SC 2474.

9. As in the case of applicant, some of the averments made by the respondents have been incorporated in the factual matrix, such

as supply of a complete set of documents along with the Charge Memo as well as supply of a copy of some of the so-called missing documents of Annexure-III, disposal of Bias Petition filed by the applicant by the Disciplinary Authority, supply of a copy of the detailed order of the Appellate Authority dated 25.11.2005 etc.

10. As regards non-supply of the List of Witnesses (Annexure-IV), the respondents have stated that as the Articles of Charge were proposed to be sustained by a list of documents only, a list of witnesses was not forwarded to the I.O. It has been further averred that while sending the Charge Memo, the applicant was given specific instruction to send a written Statement of Defence within ten days from the date of receipt of the Memo and to state whether he desired to be heard in person. However, instead of admitting or denying the charges, he entered into further correspondence. Similarly, the Bias Petition against the I.O. was filed more than three months after the appointment of the I.O., which again was a part of his dilatory tactics. The respondents have further averred that due to failure of the applicant either to submit the Written Statement of

Defence or to appear before the I.O., the enquiry had to be conducted *ex parte*.

11. As regards the averment of the applicant that the order of the Disciplinary Authority, imposing the penalty, should not have been passed during the pendency of OA No. 64/2004, the respondents have extracted the following from the order of this Tribunal dated 24.05.2005 in the said OA:

> "Thus contention of the applicant that the subsequent order of penalty passed by the disciplinary authority is a non-est order being in contravention of section 19(4) of the AT Act 1985 does not meet the scrutiny of law and therefore cannot be sustained...
>
> "Looking the matter from any angle, we are of the considered and firm opinion that the prohibition envisaged under Section 19(4) of AT Act, 1985, does not apply to the penalty order passed by the disciplinary authority including the disciplinary proceeding and such order cannot be termed as non-est or void orders having no existence."

12. As regards the request of the applicant to give him more time to show cause regarding the proposed enhancement of the penalty by the Appellate Authority, the respondents have stated that in his representation dated 22.09.2005, the applicant sought extension of time by one month on the ground of illness of his wife and son, which

was duly considered by the Appellate Authority and he was allowed time up to 20.10.2005. They have further averred that the letter dated 04.10.2005 extending time limit up to 20.10.2005, sent through a special messenger on 07.10.2005, 08.10.2005, and 11.10.2005 was intentionally avoided by the applicant, as per the statement of the special messenger (Annexure-R/17). It was again sent by Registered Post with AD on 13.10.2005, which was returned back undelivered on 26.10.2005 (Annexure-R/18). The applicant made a request on 21.10.2005 for further extension of time by one month, which was rejected by the Appellate Authority.

13. Respondents have further stated that it is not correct to say that the Charge Memo was not issued within the stipulated period of 90 days from the date of suspension. The applicant was suspended on 04.08.2000 and the Charge Memo was issued to him on 06.10.2000 i.e. within 63 days. He too admits to having received this letter on 13.10.2000 without Annexure-III to the Charge Memo. Respondents have averred that the applicant was deliberately trying to delay the process by claiming to have not received certain documents which were actually sent by Registered Post. Similarly, the delay in

finalizing the disciplinary proceedings was caused due to non-cooperation of the applicant by not replying to the Charge Memo and not attending the enquiry proceedings. For this reason, the time limit of six months for completion of the disciplinary proceedings could not be adhered to. In any case, the time lines mentioned above are only in the nature of guidelines and are not mandatory. In this context, the respondents have further stated that the contention of the applicant that he did not receive the complete Charge Memo, sought to have been dispatched by the respondents, is not sustainable in view of the ratio of the judgment of the Hon'ble Supreme Court in **State of Punjab v. Khemi Ram**, AIR 1970 SC 214.

14. As regards compliance of sub-rule (18) of Rule 14 of the Rules *ibid,* according to the respondents, the contention of the applicant is irrelevant, ridiculous and misplaced since the applicant failed to appear before the I.O.

15. As regards the allegation of *mala fide* against the competent authority in not suspending other eight co-delinquents, it has been stated that the competent authority decided each case on its own merit and circumstances considering the degree of breach of

conduct which has no relevance to the suspension of the applicant. As the case of the applicant stood on a different footing, compared to other members, there was no *mala fide* as alleged by the applicant.

16. With reference to the contention of the applicant that the I.O. did not afford reasonable opportunity to him to defend his case, the respondents have provided the following table to argue that sufficient notice was given to him to attend the hearing:

Date of Hearing	Date of sending intimation to Shri Parida
14-09-2001	07.09.2001
01.11.2001(Postponed)	19.10.2001
24.01.2002	17.01.2002
01.02.2002	24.01.2002

The proceedings of the enquiry were also sent to the applicant. However, he was reluctant to cooperate in the enquiry process which was evident from the fact that he did not comply with the provisions of Rule l4 (7) of the Rules *ibid,* and did not approach the I.O. for grant of extension of time.

17. The allegation of the applicant that the Appellate Authority passed the order enhancing the penalty mechanically without considering various aspects is incorrect and baseless. The

Inquiring Authority, the Disciplinary Authority and the Appellate Authority passed orders as per rules and procedures prescribed.

18. Several other contentions of the applicant regarding non-communication of Memo of Charges, conduct of enquiry proceedings *ex parte*, order of Disciplinary Authority etc. were also the subject matter of proceedings before this Tribunal in OA No. 64/ 2004. While dismissing the said OA, this Tribunal made the following observations:

> "6. The applicant has argued his case in a zigzag manner and adduced a lot of contentions. Keeping in view that he might not be in a position to assist us in a professional manner we gave him a lot of leverage but he always sidetracked the facts and grounds mentioned in the pleadings. He did not answer any of the queries, but we gave him patient hearing and endeavoured to go to the heart of the controversy."

19. This Tribunal also took exception to the intemperate attitude of the applicant in dealing with his authorities as follows:

> "13...We have also a note of caution for him that he should be temperate while corresponding with the authorities and for that purpose the letter dated 17.11.2000 (Annexure-R/6) written regarding supply of documents to the Disciplinary Authority is alarming."

20. In his rejoinder, the applicant has re-iterated the arguments advanced by him in the Original Application.

21. In the course of arguments at the Bar, the applicant highlighted the following grounds in support of his prayer:

(a) The Charge Memo issued to him was vague and defective as it did not comply with the requirement of sub-rules (3) & (4) of the Rule l4 of Rules *ibid*, especially, since the list of witnesses was not provided. In support of his argument he has cited the following rulings:

(i) **Ashutosh Kumar Das v. Divisional Commercial Suptd. N.F.Ray, Lumding,** 1988 (l) (CAT: Guwahati Bench) 442;

(ii) **Surath Chandra Chakravarty v. The State of West Bengal**, AIR 1971 SC 752;

(iii) **Shri Mast Ram v. The State of Himachal Pradesh and another**, 1975 (l) SLR (Himachal Pradesh High Court) 369; and

(iv) **Kuldeep Singh v. The Commissoner of Police & Ors.**, 1999 (3) AISLJ 111.

Regarding non supply of documents, he has further cited the judgment of the Hon'ble Supreme Court in **State of U.P. v. Shatrughan Lal & Anr.**, l999 (l) AISLJ 213.

(b) As regards non-supply of Charge Memo within the stipulated period, from the date of suspension, he has relied on the judgment of CAT (Madras Bench) reported in **1987 (6) SLR 417** (copy not supplied).

(c) With regard to his having not been generally questioned on the circumstances appearing against him, in terms of Rule l4 (l8) of the Rules *ibid*, he has cited the decision of CAT (Madras Bench) **in B. Sundaram v. Union of India & Ors.,** 1987 (4) (CAT) AISLJ 453 and the judgment of the Hon'ble Supreme Court in **Ministry of Finance & Anr. v. S.B. Ramesh,** l998 (2) AISLJ 67. In addition, from the additional rulings supplied by the applicant, we find that the following order of CAT (Principal Bench, New Delhi) is also relevant: **Shri R.C.Gupta, U.D.C. v. Lt. Governor of**

National Capital Teritory of Delhi & Ors, 2001 (3) (CAT) AISLJ 335.

(d) Applicant has also averred that he did not get any opportunity to cross-examine the prosecution witnesses in terms of Rule 14 (14) of the Rules *ibid*, which has greatly prejudiced his defence. For this he has relied on a catena of cases, such as **Ministry of Finance & Anr. v. S.B. Ramesh**, (supra); **Ch. Appa Rao v. The Divisonal Operating Superintendent & Ors.,** 1998 Swamy's CL Digest 1996/2, CAT (Hyderabad Bench); **Hari Giri v. Union of India v. Union of India & Ors.**, 1992 (19) Administrative Tribunals Cases 659; **Kuldeep Singh v. The Commissioner of Police & Ors.,** 1999 (3) AISLJ 111; **Managing Director, Uttar Pradesh Warehousing Corporation & Anr. v. Vijay Narayan Vajpayee**, 1980 (3) SCC 459; **Sur Enamel and Stamping Works**

Ltd. v. The Workmen, AIR 1963 SC 1914; and **Ghirrao Srivastava v. State of U.P. & Ors.**, 1975 (1) SLR 323 (Allahabad High Court).

(e) In the context of his allegation of *mala fide* for non- suspension of co-delinquents, he has cited the following rulings to establish that the enquiry was vitiated:

(i) **E.S. Reddi v. Chief Secretary, Government of A.P. & Anr.**, 1987 (3) SCC 258; and

(ii) **Shyamali Chattopadhyay v. The West Bengal Board of Secondary Education & Ors.**, 2003 (6) SLR 593.

(f) In the context of his plea relating to non-disposal of his Bias Petition before proceeding with the enquiry, he has cited the Government of India instructions (16) below Rule 14 of the Rules *ibid* (page 51, Swamy's Compilation, 28th Edition, 2003). He has also cited the order of CAT (Patna Bench) in **Suresh Prasad Rajak v.**

Union of India & Ors, 1996 (2) (CAT) AISLJ 42.

(g) The applicant has laid great emphasis on violation of principles of natural justice in terms of conduct of the disciplinary authorities, particularly the Appellate Authority and relied on the following citations:

(i) **R.P. Bhatt v. Union of India & Ors.**, AIR 1986 SC 1040;
(ii) **R.K.Singh v. Union of India & Ors.,** 1996 (2) (CAT: Patna Bench) AISLJ 460; and
(iii) **Suresh B. Dave v. The Post Master General & Ors.**, 1992 (19) Administrative Tribunals Cases, 374 (FB).

(h) In the context of his averment that the Appellate Authority could not have awarded the enhanced punishment of dismissal while adjudicating on his appeal, when there was no representation in this regard from the Disciplinary Authority, he has cited the ruling of the Hon'ble Supreme Court in **Makeshwar**

Nath Srivastava v. The State of Bihar & Ors., AIR 1971 SC 1106.

(i) With reference to his allegation that the order of the Appellate Authority is non-speaking, he has relied on a catena of cases [**R.P. Bhatt v. Union of India & Ors**. (supra); **Suresh B. Dave v. The Post Master General & Ors.** (supra); **M/s. Mahabir Prasad Santosh Kumar v. State of U.P. & Ors**., AIR 1970 SC 1302; **Ram Chander v. Union of India & Ors**., AIR 1986 SC 1173; **Union of India & Ors. v. Mohd. Ramzan Khan**, AIR 1991 SC 471; and **M. Abdul Karim v. Deputy Director General, NCC (K&L), Trivandrum**, 1993 (1) (CAT: Ernakulam Bench) AISLJ 519].

22. Learned Counsel for the respondents, in course of arguments has attempted to highlight the fact that the charges against the applicant were very serious in so far as they implied refusal to obey the orders of the superiors, indisciplined and intemperate

behaviour towards higher officers and forging the entry in attendance register. He also stated that the applicant did not cooperate in the enquiry proceedings and dragged them on for one reason or another.

23. In response to a specific query made by the Bench, learned counsel for the respondents stated that the persons who had given the statements mentioned in Annexure-III were not called as witnesses since those statement were notes taken from files and given to the I.O. Moreover, if the applicant had attended the enquiry proceedings and asked for cross-examination of persons who had given those statements, the I.O. could have taken a decision to call them.

24. With regard to the allegation of the applicant that the orders of the Disciplinary Authority and the Appellate Authority were not signed by the competent authority, learned counsel for the respondents denied the allegation. He further stated that the orders *per se* were signed by the competent authorities but communicated to the applicant through covering letters signed by other officers. Hence, there was no violation of any rule in this regard.

25. Learned counsel for the respondents has supplied a set of judgments of the Hon'ble Supreme Court in support of the case of the respondents. He has cited several judgments to argue that dismissal of the applicant, in the context of the charges framed against him, was fit and appropriate [**State of U.P. v. Sheo Shanker Lal Srivastava & Ors,** 2006 (1) SCSLJ 520; **Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. & Ors. v. K. Meerabai,** 2006 (1) SCSLJ 239; and **M/s Maharashtra State Seeds Corpn. Ltd. v. Haridas & Anr**, 2006 (1) SCSLJ 507]. In addition, he provided some more citations in the context of the scope of judicial review in disciplinary proceedings [**North Eastern Karnataka R.T. Corpn. v. Ashappa & Anr.**, 2006 (2) SCSLJ 141; **Gen. Officer Comm. in Chief, Lucknow & Ors. v. R.P.Shukla & Ors.**, 2006 (2) SCSLJ 125; and **Director (Mkt.) Indian Oil Corpn. Ltd. & Anr. v. Santosh Kumar,** 2006 (2) SCSLJ 117].

26. We have heard the applicant in person and the learned counsel for the respondents at great length and given our anxious consideration to their averments as well as the material placed on record.

27. In the context of the methodical and meticulous representations made by the applicant, in course of the arguments, we consider it appropriate to present our findings and conclusions in accordance with the schema of his presentation, as far as possible.

28. The flagship argument of the applicant is that in violation of sub-rule (3) and (4) of Rule 14 of the Rules *ibid,* he was not supplied the List of Witnesses (Annexure-IV of the model Charge Memo). His argument is based on the fact that Annexure-III mentioned several 'statements'. This leads to a presumption that some exercise was conducted, behind his back, to obtain those statements from certain persons. This, in turn, raises another presumption that there was some sort of a preliminary enquiry during which these statements were obtained, before the charges were framed. These statements, therefore, could not be brought on record by the I.O., without examining the persons, who had given the statements. Learned counsel for the respondents has argued that these were not statements but notes taken from files. However, on a perusal of these statements, we find that they contain a record of the views expressed by certain officers in respect of the conduct and behaviour

of the applicant. Thus, logically, the respondents should have added an Annexure-IV to the Charge Memo listing the names of persons who had given these statements, especially since it cannot be assumed that the respondents had a premonition that the applicant was not going to cooperate in the enquiry. We, therefore, find that non-supply of list of witnesses and not giving the applicant an opportunity to cross-examine the persons, who had given the statements, has prejudiced the defence of the applicant.

29. As regards the averments of the applicant that he was not supplied the full set of the Charge Memo, we find that the respondents have provided adequate evidence to establish that a complete set of Charge Memo was supplied to the applicant and each and every request of the applicant in this regard was complied with.

30. As regards the averments of the applicant that the Charge Memo was not supplied to him within the stipulated period of 90 days from the date of his suspension and that the disciplinary proceedings were not completed within six months, we find sufficient merit in the averment of the respondents that this allegation is not correct and if

there was any delay in this regard, the applicant has to bear the major share of responsibility for it.

31. As regards the averment of the applicant that he was not heard in person in terms of Rule l4 (18) of the Rules *ibid*, the respondents have stated that this contention is irrelevant, ridiculous and misplaced. We do not find any merit in this response of the respondents. Irrespective of the fact whether the applicant was attending the disciplinary proceedings or not, it was the bounden duty of the respondents to follow the prescribed procedure. In this context we can do no better than to quote from the GOI instructions (6) below Rule l4 relating to the procedure to be followed while holding *ex parte* enquiry, as under:

> "(6) **Procedure for holding *ex parte* enquiry**.... In *ex parte* proceedings, the entire gamut of the enquiry has to be gone through. The notices to witnesses should be sent, the documentary evidences should be produced and marked, the Presenting Officer should examine the prosecution witnesses and the Inquiring Authority may put such questions to the witnesses as it thinks to be fit. The Enquiring Authority should record the reasons why he is proceeding *ex parte* and what steps he had taken to ask the accused official to take part in the enquiry and avail of all the opportunities available under the provisions of Rule l4 of the CCS (CCA)Rules..."

Thus, the respondents should have sent him a notice in compliance of Rule 14 (18) of the Rules *ibid,* and not proceeded on the presumption that he will not attend.

32. The averment of the applicant regarding discriminatory behaviour of the respondents *vis-à-vis* other co-delinquents, in our view, has little merit and the matter has been explained satisfactorily by the respondents. Similarly, the issue relating to treatment of Bias Petition has also been adequately explained by the respondents and it deserves no further consideration.

33. The argument of the applicant that the penalty could not have been enhanced by the Appellate Authority in the context of his appeal pending before him, we have already, in the course of arguments, pointed out that the ruling cited by him in this regard, namely **Makeshwar Nath Srivastava v. The State of Bihar & Ors.** (supra), is not germane to the present case. In the said case, the authority did not have the power to enhance the punishment. In the present case, Rule 27 (2) of the Rules *ibid,* specifically empowers the Appellate Authority to confirm, enhance, reduce or set aside the penalty after giving a reasonable opportunity to the appellant.

34. We also do not agree with the averment of the applicant that the order of the Appellate Authority was non-speaking. The order apparently he is referring to is the summary of the order communicated vide letter dated 28.11.2005 (Annexure-A/20), which is not the order of the Appellate Authority. The order of the Appellate Authority is quite comprehensive and was issued on 25.11.2005 (Annexure-R/20). For the reasons adduced by the respondents, we also do not agree with the averment of the applicant that the said order was signed an authority lower than the Appellate Authority.

35. Before parting with our discussion on the arguments advanced by the applicant, we would like to give our findings on two other points mentioned in the pleadings of the applicant. With regard to the alleged delayed receipt of the notice sent by the I.O. for the various sittings, the applicant has stated as follows:

> "... So it is crystal clear that the regular hearing was not conducted by the I.O. and the I.O. has conducted enquiry without prior intimation to the applicant and violates the natural justice. The argument of the Applicant that he has received the intimation regarding enquiry after expiry of scheduled date has been corroborated by the I.O. vide Para 4, 5 and 6 of the enquiry report (Annexure-A/13)." (emphasis supplied)

From a perusal of paragraphs 4, 5 and 6 of the Report of the I.O., we find that the dates of receipt mentioned therein do not relate to the 'notice of hearing' but to the 'proceedings' of the sittings, which were conducted by him, as follows;

> "4. ...Proceedings were sent to the CO in my letter No. Sr.DAG (WA&P)-Con-85 dt. 14.9.2001 by Registered Post/AD, which was received by him on 18.9.2001.
>
> 5. ....The proceedings were communicated to him in lr. No. Sr.DAG (Admn)-Con-128/24.1.02 by R.P. with AD, which was received by him on 25.1.2001.
>
> 6. ...The proceedings stating that the case is being disposed *ex parte* was communicated to him, which was received by him on 5.2.2002." (emphasis supplied)

36. In his pleadings, the applicant has stated that the order of the Appellate Authority (Annexure-A/20 & A/21) is without date and is also silent about from which date the impugned order is to be effected. From a perusal of the said orders we find that these averments are not correct. Annexure-A/20 is dated 28.11.2005 and so is Annexure-A/21. Moreover, Annexure-A/21 specifically state that the order of dismissal will take effect from 25.11. 2005. As a matter of fact, having already stated in the second part of para 4.15 of the OA that the Appellate Authority had passed the order enhancing the

penalty against the applicant and dismissing him from service vide order dated 28.11.2005, which was received by the Applicant on 08.12.2005, he cannot state that the order did not have a date.

37. Taking the totality of fact and circumstances into consideration, we find that, as already discussed earlier, definite prejudice has been caused to the applicant by the attempt of the respondents to hide their witnesses behind the façade of file notings and describing them as official documents. In the first place, a line needs to be drawn between official correspondence and file notings in this regard. While the former, such as letters and orders, are definitely faceless manifestations of decisions of the concerned authority, the file notings have individual identities. Secondly, what is being touted as file notings by the respondents in the present case are opinions of certain individuals regarding the conduct and behaviour of the applicant, on the basis of which the charges have been proved. Hence it was incumbent upon the respondents to have placed the persons, who had given the statements, in the witness box so that the applicant had an opportunity to cross-examine them, if he so desired. We also find the argument of the respondents, that the

applicant's averment regarding respondents' failure to comply with requirement of Rule 14 (18) of the Rules *ibid.* is irrelevant, ridiculous and misplaced, to say the least, facetious. At the same time we do not find any merit in the general tenor of the applicant's argument that he was not supplied with various documents. We also find that the applicant did, therefore, adopt certain dilatory tactics based on his plea of non-supply of documents. We also take serious note of the observation of this Tribunal in paras 6 and 13 of the order dated 24.01.2005 in OA No. 64/2004 (supra). We, therefore, find that for the unsatisfactory conduct and conclusion of disciplinary proceedings the applicant too is equally, if not more, responsible.

38. In the result, the OA is partly allowed. The report of Inquiry Officer dated 14.08.2003, the order of the Disciplinary Authority dated 13.04.2004 and the order of the Appellate Authority dated 25.11. 2005, along with the consequent dismissal order dated 28.11.2005, are quashed and set aside. The applicant will be reinstated forthwith with liberty to the respondents to decide whether

the applicant should continue under suspension, if the deemed suspension was operative till the date of his dismissal. The case is remanded back to the Disciplinary Authority with the liberty to resume the disciplinary proceedings from the stage of issue of the Charge Memo, i.e. Rule 14 (4) of the CCS (CCA) Rules, 1965. The final order of the Disciplinary Authority shall include its decision regarding the treatment of the periods of suspension/ deemed suspension and the period from the date of his dismissal to the date of reinstatement, in compliance of this order. The disciplinary proceedings from the stage of Rule 14 (4) of the Rules *ibid* shall be completed preferably within a period of six months from the date of receipt of this order, provided that the delay, if any, is not attributable to the applicant. In the event of the disciplinary proceedings being resumed, the applicant is directed to give his fullest cooperation in the conduct of the disciplinary proceedings in order to facilitate their completion expeditiously. There will be no order as to costs.

39. We would like to place on record our acknowledgement of the excellent assistance provided by Shri A.K.Parida, the applicant

and Shri U.B. Mohapatra, the Learned Senior Standing Counsel of the Union of India in facilitating the process of decision making in this case.

(V.K.Agnihotri)
Member(A)

(M.A.Khan)
Vice-Chairman (J)

KNM/PS