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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR**

Original Application No. 215 of 2004

Thursday, this the *26th* day of April, 2007

CORAM :

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

Ved Prakash Khatri,
S/o. Late Shri Madan Lal Khatri,
Resident of 440, Ramdev Chowk,
Near Arya Samaj School,
Rath Khana Colony,
Bikaner : 334 001,
Last employed as Clerk
in the Office of the Accountant General
(Audit) I, Rajasthan, Jaipur.

.... Applicant.

(By Advocate Mr. S.K. Vyas)

v e r s u s

1. Union of India through
Comptroller and Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi - 110 002
2. Principal Accountant General Audit) I,
Rajasthan, jaipur - 302 005
3. Senior Deputy Accountant General (Admn.),
Office of the Accountant General (Audit) I,
Rajasthan, jaipur - 302 005

... Respondents.

(By Advocate Mr. Ravi Bhansali)

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

One wrong act in the disciplinary proceedings would be sufficient to vitiate the entire proceedings and this case would prove the same.

2. The Facts of the case as contained in the OA are as under:-



(a) The applicant, appointed as Clerk and confirmed and posted on deputation as Data Entry Operator in 2000, was placed under suspension with effect from 16.03.2001. Charge sheet for major penalty was given on 06.06.2001. An inquiry was held against the applicant from 22.08.2001 to 14.03.2002. Inquiry Officer had ordered that the applicant should also be supplied the copies of the earlier statements, if any, made by witnesses during the preliminary inquiry. However, the statement of the witnesses recorded during the preliminary inquiry were not furnished to the applicant.

(b) The controlling authority of Shri D.K. Sharma who was nominated by the applicant as Defence Assistant was not permitted to act as Defence Assistant which forced the applicant to nominate another Defence Assistant who was not conversant with disciplinary proceedings. 29 documents were submitted which were taken on record of Inquiry on 25.02.02. The authors of these documents were not examined to vouch and authenticate these documents. The applicant could not therefore cross examine these witnesses with a view to

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impugn the contents of these documents. A copy of written brief submitted by the presenting officer was not furnished to the applicant.

(c) On 4.3.2002, four prosecution witnesses were asked to be present during the proceedings. In the presence of all the four prosecution witnesses, the presenting officer examined the applicant. The prosecution witnesses were only asked to confirm the allegations levelled against the applicant. None of the prosecution witnesses were examined by the presenting officer with the result that no cross examination of any of these witnesses was possible. Again in the inquiry held on 08.03.2002 all the four prosecution witnesses were present throughout the inquiry. None of these witnesses were properly examined by the learned presenting officer and therefore, no cross examination of these witnesses also could take place. The procedure adopted was that applicant will deny the charge, explain the position and prosecution witness would be asked to confirm the allegation. After formality of some mandatory questions by the Inquiry Officer, the inquiry was conducted on 14.03.2002. The applicant submitted his defence brief on 20.03.02 vide Annexure A/5.

(d) Inquiry Officer submitted his report on 17.05.02 which was forwarded to the applicant who was asked to submit his representation against it. The disciplinary authority had issued show cause notice dated 21.05 2002 enclosing copy of the Inquiry Officer's report without looking into the said report and forming a tentative opinion as would be apparent from the said notice at Annexure A/6. Disciplinary Authority has imposed



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the penalty of removal from service vide impugned order at Annexure A/1.

(e) Applicant submitted an appeal dated 19.09.2002 vide Annexure A/7. Appellate Authority has rejected the appeal and confirmed the penalty. The applicant then submitted a revision petition vide Annexure A/8 and the Revisioning Authority also turned down the petition vide Annexure A/3.

Grounds :



(i) The Appellate Authority has not permitted said Shri D.K. Sharma to act as Defence Assistant.

(ii) Inquiry officer had ordered that copies of statements of prosecution witnesses taken during the preliminary inquiry may be supplied to the applicant. These statements were not supplied to the applicant.

(iii) All prosecution witnesses were allowed to participate in the inquiry. They were not called separately one after another examination-in-chief of these witnesses was not done by the learned presenting officer and therefore, an opportunity to cross examine each of them by the defence did not arise.

(iv) Written brief filed by the presenting officer was not furnished to the applicant. Instead of presenting the presenting officer questioned the applicant and then asked the prosecution witnesses to confirm the allegation.

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(v) The Inquiry Officer, when the case for disciplinary authority was closed on 08.03.2002, did not ask the applicant to state his defence. The disciplinary authority had not looked into the Inquiry officers report but had forwarded the said report without indicating the tentative opinion formulated by him.

(vi) Disciplinary Authority has treated the Article III of charge as proved only on the basis that the applicant had expressed his regrets for having sent a representation to the Comptroller and Auditor General of India and not through proper channel. The Disciplinary Authority did not at all consider the non observance of procedure laid down in conducting enquiries.

(vii) The Appellate Authority has erred in rejecting his appeal and confirming the penalty of removal from service. The Revisionary Authority has also erred in rejecting the revision petition of the applicant.



3. Respondents contested the OA and their contentions as contained in the reply are as under:-

(a) The disciplinary authority is the sole judge of facts . In this regard reliance is placed on the judgements of Hon'ble Supreme Court in **Commissioner and Secretary to Government vs. C. Shanmugam**, (1998) 2 SCC, 394, **State of T.N. vs. S. Subramanian**, (1996) 7 SCCC 509, **Government of**

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T.N. vs. A. Rajapandian, 1995) 1 SCC 216, **State of T.N. vs. Thiru K. Perumal**, (1196) 5 SCC 474 and **B.C. Chaturvedi vs. Union of India**, (1995) 6 SCC 749.

(b) It is submitted that the applicant's charges have been established in the inquiry after the applicant has been given reasonable opportunity to participate in the inquiry. Accordingly, the penalty order passed by the disciplinary authority accepting the report of Inquiry officer is legal and valid. The applicant failed to select some Defence Assistant upto 25.02.02 and the Inquiry Officer was under an obligation to complete the inquiry.



(c) As regards the averment of the applicant that authors of 29 documents were not examined is concerned, it is submitted that for better appreciation of facts, it is necessary to glance through the charge sheet issued to the applicant. The list contains various memos etc. issued to the applicant and other documents of his misconducts listed in the charge sheet. A perusal of Daily Order Sheets of disciplinary proceedings (Annexure A/4) would reveal that all witnesses were examined during the course of inquiry. If the applicant or his defence assistant is ignorant of art of cross

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examination, then the fault does not lie on the part of the respondents.

(d) The written brief was nothing but presentation of his case. No preliminary inquiry was conducted in this case. During the proceedings the Defence Assistant of the applicant was present and the witnesses were cross examined by the Defence Assistant, therefore, his contention that the cross examination of the witnesses could not take place is not correct. Daily order sheets would clearly reveal that the applicant or his defence assistant had accepted the charges I, II, IV and V and charges II and VI were disproved, therefore, the case of the defence was automatically completed.



(e) It is totally wrong to say that the Inquiry officer did not conduct inquiry against applicant as per the provisions of Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. The refusal by the superior officer to grant permission to the nominated Government servant on reasonable grounds would not amount to denying the right of representation under CCS (CCA) Rules, as it would be open to the delinquent official to nominate another Government

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servant.

(f) Copies of all listed documents were made available to the applicant and all prosecution witnesses had attended the inquiry proceedings and were available for cross examination. The examination-in-chief is the process by which the facts are narrated by the witnesses before the Inquiry officer. In this particular case, the charge against the applicant was dereliction of duty as well as insubordination. The witnesses were staff members of one section in which applicant posted and the cause of action had arisen before them. Therefore, they were called simultaneously and they told the truth before the Inquiry Officer. Thus, there was nothing irregular in the proceedings. The applicant or his Defence Assistant was present at the time of recording of evidence. They had opportunity to put questions to the witnesses. There is no indication that the Inquiry Officer refused to allow cross examination.

(g) Since the applicant's performance on the higher post was not satisfactory he was not granted further extension. But his contention that there was no justification to penalize him again is not correct due to the fact that his misconducts of



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non performance, disobedience, insubordination and other proven charges in the charge sheet were sufficient to justify imposing a major penalty.

4. Counsel for the applicant, bereft of untenable arguments and keeping in view the legal position that in the case of disciplinary proceedings, it is the decision making process and not the very decision that is subject to judicial review, cogently presented his arguments. For him 'longer or louder was no better' The following are the main arguments of the applicant's counsel:-



(a) Documents as required were not made available to the applicant, which has detrimental effect in defending his case.

(b) Injustice had been meted in not making available the services of a particular defence assistant.

(c) The documents relied upon by the prosecution are without due authenticity inasmuch as the signatories were not examined.

(d) The report of the I.O. was mechanically forwarded.

(e) While examining a particular witness, all other the witnesses were allowed to be present which is fatal to the very inquiry.

(f) Charge No. 1 is vague and hence cannot be taken into account.

(g) Charges No. 2 and 6 having dropped, they have no sting to

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(h) Charge No. 3 could at best be construed as 'irregular' but not a misconduct.

(i) When the applicant submitted that the period of absence on those days when he went to present himself before the Medical Board but the Board was not available, could be treated as leave for which he would submit leave application had been misconstrued as 'admission of charge No. 4', which is illegal.

(j) Apology tendered in respect of Charge No. 5 has been taken as 'admission' of misconduct.

(k) Other deficiencies as contained in the grounds relating to the failure on the part of the Appellate and Revisional authorities to strictly follow the provisions of the Rules.



5. Counsel for the respondent, on the other hand tried to dilute the above arguments.

(i) As regards non supply of documents, he has submitted that all the documents were made available and no documents which had not been made available were relied upon or taken into account. In fact, there was no statement of witnesses and depositions were made by the witness and the applicant was allowed to cross examine them. Thus, there is no legal infirmity as contended by the applicant.

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(ii) As regards refusal to spare a particular person from acting as defence assistant, attention was invited to para 5(A)(i) of the reply wherein referring to GOI instructions No. 17 below Rule 14 of the CCS (CC&A) Rules, it has been stated that refusal by the superior officer to grant permission to the nominated Govt. Servant on reasonable grounds would not amount to denying the right of representation under the rules as it would be open to the delinquent official to nominate another Government servant.

(iii) As regards the contention that the documents have not been authenticated in respect of the signatories, it has been submitted by the counsel that the procedure prescribed under the Rules have been fully complied with.



(iv) For the contention that the report of the I.O. was mechanically followed, the counsel submitted that what was contemplated in the rules is the same as there was no need to give any comment by the disciplinary authority while forwarding the copy of the inquiry report to the applicant, save when he wanted to disagree with the report of the Inquiry Officer.

(v) In respect of the contention that all the witnesses were allowed to be present when a particular witness was being examined, counsel invited our reference to reply to ground 5A(iii) wherein it has been stated, "***The witnesses were staff members of one section in which applicant was posted and the cause of action had arisen before them. Therefore, they were called simultaneously and they told the truth before the Inquiry Officer. Thus there was nothing irregular in the proceedings.***"

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Other contentions of the applicant's counsel have been rebutted by reference to the corresponding portions of the counter.

6. Arguments were heard and documents perused. First we take up those contentions of the respondents which are to be approved.

7. In so far as non availability of documents, respondents are right that all the listed documents were already made available and there cannot be any grudge in this regard from the side of the applicant. Since no statement of the witnesses was before the Inquiry Officer and these witnesses were examined and opportunity was available to cross examine them, no flaw could be discerned in the action on the part of the Inquiry officer that documents were not made available.

8. In so far as the episode of defence assistant of applicant's choice not being permitted, the applicant cannot have any grievance as he could of his choice choose some other defence assistant. For, sparing the services of a particular person to function as Defence Assistant is the discretion of the authority concerned and if there be compelling circumstances whereby the services of such persons cannot be spared, the same cannot be held to be illegal. For, it is not the prerogative of the disciplinary authority but of that authority under whom the person sought to be engaged as defence assistant working. In any event, the applicant has been aided by a defence assistant



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and as such, no fault could be found against the respondents in this regard.

9. As regards the contention that the the authors of documents have not been examined, it appears that the applicant had not denied the existence of documents. It is not known from the pleadings whether he had ever objected to introduction of such documents, whose authenticity he would like to ascertain, as exhibits. If he had objected to and if the prosecution had not called the signatories to such of the objected documents, then the same would vitiate the inquiry. The case of **Ministry of Finance vs S.B. Ramesh (1998) 3 SCC 227**, wherein quoting from the judgment of the Hyderabad Bench of the Tribunal, the Apex Court had held that it did not incline to interfere with the findings of the Tribunal is appropriate to be referred to at this juncture. The extract of the judgment of the Tribunal included the following:-

"Even if the documents which were produced along with the charge-sheet were all taken on record, unless and until the applicant had requested the Enquiry Officer to mark certain documents in evidence on his side, the Enquiry Authority had no jurisdiction in marking all those documents which he had called for the purpose of defending himself on the side of the applicant while he has not requested for marking of these documents on his side. It is seen that some of these documents which are marked on the side of the defence not at the instance of the applicant, have been made use of by the Enquiry Authority to reach a finding against the applicant. This has been accepted by the Disciplinary Authority also. We are of the considered view that this is absolutely irregular and has prejudiced the case of the applicant. These documents, which were not proved in accordance with law should not have been received in evidence



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and that, any inference drawn from these documents is misplaced and opposed to law. We further find that the Enquiry Authority as well as the Disciplinary Authority have freely made use of the statement alleged to have been made by Smt K.R. Aruna in the presence of SW 1 and it was on that basis that they reached the conclusion that the applicant was living with Smt K.R. Aruna and that, he was the father of the two children of Smt K.R. Aruna. SW 1 in his deposition which is extracted above, has not spoken to the details contained in the statement of Smt K.R. Aruna which was marked as Ex. 1. Further it is settled law that any statement recorded behind the back of a person can be made use of against him in a proceeding unless the person who is said to have made that statement is made available for cross-examination, to prove his or her veracity. The Disciplinary Authority has not even chosen to include Smt K.R. Aruna in the list of witnesses for offering her for being cross-examined for testing the veracity of the documents exhibited as Ex. 1 which is said to be her statement. Therefore, we have no hesitation in coming to the conclusion that the Enquiry Authority as well as the Disciplinary Authority have gone wrong in placing reliance on Ex. 1 which is the alleged statement of Smt K.R. Aruna without offering Smt K.R. Aruna as a witness for cross-examination. "



10. It has, however, been contended by the respondents in their reply to para 4.10 of the O.A. where the applicant had raised this issue, that in all 29 documents were marked as prosecution exhibits and many among them were from the witnesses who were cross examined and more over all were official documents and hence, which were produced in original and need not be proved. However, in his rejoinder, the applicant has not reacted to the above contention of the respondents. In the absence of any rebuttal to this part of the counter in the rejoinder, this objection is also ruled out.

11. As regards contention that the report of the I.O. was mechanically

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forwarded, in fact there is no need to give the opinion of the Disciplinary authority at this juncture. Rather, it goes well with the principles of natural justice for, the Disciplinary authority in such a case, without any pre conceived notion, would keep the Inquiry Report on the one hand and the representation of the applicant against the inquiry report on the other and dispassionately go through the same, to arrive at a just conclusion.

12. As regards the next contention that while examining a particular witness, all other the witnesses were allowed to be present which is fatal to the very inquiry, the same does go in favour of the applicant. There is no rebuttal to this ground. It has rather been admitted but attempt has been made to justify the same. Examining any of the witnesses in the presence of other witnesses is a serious mistake as that would enable the other witnesses also to corroborate the statement of the witness already examined in their presence. It is not exactly clear as to how the inquiry officer could permit the same. Respondents have in reply to ground No. 5A(iii) have stated, **"The witnesses were staff members of one section in which applicant was posted and the cause of action had arisen before them. Therefore, they were called simultaneously and they told the truth before the Inquiry Officer. There was nothing irregular in the proceedings."** Thus, there is a clear admission that all the witnesses were together at all times and each one of them was examined in the presence of the other. This is impermissible. It appears that the Inquiry Authority



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wanted to follow a "short cut" . " **A short cut may often be wrong cut** "(S. Ramachandra Raju v. State of Orissa, 1994 Supp (3) SCC 424).

13. The Inquiry Officer while recording the findings on each charge, in respect of Art. 1 stated, "***all the witnesses categorically supported the charge as discussed earlier. All the four witnesses produced by the prosecution possess high prestige and known for their impartiality , judicious behaviour and regard for work***" . The above finding is sufficient to vitiate the inquiry report.



Now the contentions of the applicant against the charges:-

- (i) Charge No. 1 is vague and hence cannot be taken into account. This is to be ignored since the statement of imputation and the inquiry report spell out that sufficient clarity is available in respect of this charge.
- (ii) Charges No. 2 and 6 having dropped, they have no sting to attack. True. There is no quarrel.
- (iii) Charge No. 3 could at best be construed as 'irregular' but not a misconduct. This charge relates to direct communication to the highest authority against some officer, without routing the communication through proper channel. The applicant had regretted for this error and the authorities have taken the same as admission. First, if it were taken as admission, there was no need to ask the inquiry officer to inquire into the same. Thus, admission cannot be presumed. But the

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question is whether the above act of the applicant comes within the term "misconduct" as in that case alone, inquiry could be conducted. The contention of the applicant appears to be logical that his act of directly sending communication is only an irregularity and not a misconduct. Realizing the irregularity the applicant had tendered his apology.

(iv) As regards the contention of the applicant that when the applicant submitted that the period of absence on those days when he went to present himself before the Medical Board but the Board was not available, could be treated as leave for which he would submit leave application had been misconstrued as 'admission of charge No. 4', which is illegal, this has to be rejected since findings of the Inquiry officer is after full analysis and not on the basis of any such admission. And so is in respect of charge No. 5. Hence, contention in respect of charge No. 5 that apology tendered in respect of Charge No. 5 has been taken as 'admission' of misconduct cannot be accepted.



15. Now, as to the challenge to Appellate and Revisional Order. As regards the manner in which the appeal in disciplinary proceedings is to be dealt with, the same has been lucidly explained by the Apex Court in a latest case of **Narinder Mohan Arya v. United India Insurance Co. Ltd., (2006) 4 SCC 713**, wherein the Apex Court has held as under:-

32. *The Appellate Authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule (2) of Rule 37 of the Rules. The judgment of the civil court being inter partes was*

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relevant. The conduct of the appellant as noticed by the civil court was also relevant. The fact that the respondent has accepted the said judgment and acted upon it would be a relevant fact. The authority considering the memorial could have justifiably come to a different conclusion having regard to the findings of the civil court. But, it did not apply its mind. It could have for one reason or the other refused to take the subsequent event into consideration, but as he had a discretion in the matter, he was bound to consider the said question. He was required to show that he applied his mind to the relevant facts. He could not have without expressing his mind simply ignored the same.

33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.



In the instant case, the applicant clearly spelt out the legal lacunae in conducting the inquiry proceedings. Especially Ground (iii) of the Appeal refers to the legal lacuna that all the prosecution witnesses were collectively examined which is not permissible and this point was required to be considered by the appellate authority.

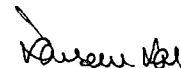
17. In view of the above discussion the **OA succeeds**. Impugned (Annexure A-1 to A 3) orders dated 13-09-2002, 08-11-2002 and 28-01-2004 are hereby quashed and set aside. It is directed that the respondent No. 3 shall reinstate the applicant, regularize the period of suspension from 16-03-2001 to 12-09-2002 as per rules and also grant pay and allowances to the applicant from 13-09-2002 till the date of reinstatement, treating the same

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as duty for all purpose, including seniority, increment etc., While reinstatement shall be effected within a period of fifteen days from the date of communication of this order, payment of arrears of pay and allowances and order relating to regularization of period of suspension etc., shall be within a period of four months from the date of communication of this order.



Under the circumstances, there shall be no orders as to costs.


TARSEM LAL

ADMINISTRATIVE MEMBER


Dr. K B S RAJAN
JUDICIAL MEMBER

Cvr.


Part II and III destroyed
in my presence on 23-6-14
under the supervision of
section officer () as per
order dated 26-3-14


Section officer (Record)

Received copy by K.V. Yashwanth (Babu)

(D.V. Yashwanth)
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Copy recd. today


for R. Khensali
Adv.

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