CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 447/03

.....THURSDAY....this the 13th day of April, 2006

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

G.Sivasankaran Nair,
S/o late R.Gopala Pillai,
aged 60 years,
Enforcement Officer,
Enforcement Directorate,
Hyderabad, residing at
Kailas,Chempazhanthy PO,
Thiruvananthapuram.-695587.

.....Applicant

(By Advocate M/s M.R.Rajendran Nair/MR Hariraj)

V.

Union of India, represented by the
Secretary to Government of India,
Ministry of Finance and Company Affairs,
Department of Revenue,
New Delhi. .....Respondent

(By Advocate Mr. TPM Ibrahim Khan,SCGSC)

The application having been heard on 13.3.2006, the Tribunal on 13.4.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

This OA is against the Annexure.A4 order dated 27.3.03 by which the President has imposed the penalty of withdrawing the entire pension and gratuity of the applicant on permanent basis in

exercise of the power conferred upon him by Rule 9(1) of the CCS (Pension) Rules, 1972.

2 Briefly stated the facts are as under:

3 While the Applicant was working as Enforcement Officer, vide Annexure.A1 Memorandum dated 25.1.99, the disciplinary authority proposed to hold an inquiry against him under Article 14 of CCS (CCA) Rules, 1965 for the following articles of charge:

> "That Shri G.S.Nair, while functioning as Enforcement Officer,Enforcement Directorate, Hyderabad,demanded and accepted an amount of Rs. 20,000/- as illegal gratification, on3.10.97 from Shri M.Krishnamurthy, Proprietor Kumar Traders, Kothapet for taking a lenient view in the case of violation of FERA against Shri M.Krishnamurthy, which was being investigated by Shri G.S.Nair.
>
> Thus Shri G.S.Nair, Enforcement Officer being a public servant, failed to maintain integrity, devotion to duty, and acted in manner unbecoming of public servant and thereby contravened Rule 3 (1)(i) of the Central Civil Services (Classification, Conduct and Appeal) Rules, 1965."

4 The following statement of imputations in support of the aforesaid article charge was also served on him along with the said memorandum.

> "Shri G.S.Nair, was working as Enforcement Officer, Enforcement Directorate, Hyderabad from May, 1997 and his duties included verification information about violation of FERA, issue of summons and recording of statements under the Act.
>
> The CBI Hyderabad had registered a case in RC 23 (A)/97-Hyd on 3.10.97 against Shri G.S.Nair on a complaint from one Shri Dungarchand Jain, alleging that Shri G.S.Nair had demanded an amount of

rs.25,000/- from him for taking a lenient view towards him in one of the cases of alleged Hawala transactions being investigated by Shri G.S Nair, where Shri Nair had questioned the complainant. During the investigation of the case Shri G.S.Nair was caught red handed by Shri K.R.K.V.Prasad, Inspector of Police, CBI on 3.10.97, while demanding and accepting he amount of Rs. 25,000/- from Shri C.D.Jain in the presence of two independent witnesses namely Shri Syed Vigaruddin Ahmed, Technical Assistant, FCI, RO, Hyderabad and Shri R.Jayaprakash, Officer (Vigilance), Syndicate Bank, Hdyerabad.

During the search of the possessions of Shri G.S.Nair, subsequent to the trap, two 100 Rupee notes bundles (totalling Rs. 20,000/-) were seized from the Black zip bag carried by Shri G.S.Nair. Investigation revealed that this amount of Rs. 20,000/- had been demanded and accepted by Shri G.S.Nair from one Shri M.Krishnamurthy, of Kumar Traders, Kotahpet No.T3/EXP-43/II/97 pertaining to alleged violation of FERA by Shri M.Krishnamurthy. Investigation also disclosed that the case against Shri Krishnamurthy was being handled by Shri Jitendra Nattoo, Assistant Enforcement Officer but Shri Nair had issued summons and examined Shri Krishnamurthy as he was only competent under FERA, and he had thus misused his official position to receive illegal gratification from Shri Krishnamurthy."

5 During the course of the inquiry proceedings, the applicant retired on 30.6.2000 and the departmental proceedings pending against him at the time of his retirement deemed to have proceeded under Rule 9(2) of the CCS (Pension) Rules, 1972. After a detailed inquiry, the inquiry officer has submitted his report on 9.10.2000 holding the charges against the applicant proved. The conclusion arrived at by the Inquiry Officer was as under:

"In my opinion, there is sufficient evidence to

establish that on 3.10.97, CO had accepted Rs. 20,000/- from Shri M.Krishnamurthy of M/s Kumar Traders. There is further evidence to show that because of his association with investigation of FERA violations by M/s Kumar Traders, CO was in a position to take a lenient view against Shri M.Krishnamurthy and M/s Kumar Traders. In this context, the only inference that is possible is that CO demanded and accepted an illegal gratification of Rs. 20000/- from Shri M.Krishnamurthy for taking a lenient view in the FERA violations by M/s Kumar traders. By such acts, CO has acted in a manner unbecoming of a government servant and has exhibited lack of devotion to duty and failed to maintain integrity. The CO has violated Rule 3(1) of CCS (Conduct)Rules, 1965. The article of charge is held as proved."

6 A copy of the inquiry report was served on the applicant on 20.11.2000 and he submitted a detailed representation vide Annexure.A3 dated 27.11.2000. The Applicant's explanation regarding the seizure of Rs. 20,000/- from his bag on 3.10.97 when he was trapped was that the said amount was entrusted to him by Shri M.Krishnamoorthy for performing pooja in various temples in Kerala and Shri Krishnamoorthy himself had corroborated his explanation during the inquiry proceedings. The other submissions of the Applicant were that he was denied inspection of certain documents at the time of inquiry, the inquiry officer was prejudiced towards him as he did not allow any adjournment except one on medical ground, that his oral request for permission to take the assistance of a lawyer was not accepted on the ground that the Presenting Officer was not a law graduate and that the inquiry officer

did not believe the version of SW-6 without any justifiable reason.

7 The disciplinary authority after receipt of the aforesaid representation of the applicant dated 27.11.2000 consulted the Central Vigilance Commission and the UPSC. The UPSC advised the disciplinary authority to impose the penalty of withholding the entire pension and gratuity of the applicant on permanent basis as the charge against the applicant constituted grave misconduct. The President, considering the representation of the Applicant, advice of the Central Vigilance Commission and the UPSC, in exercise of his power conferred upon him under Rule 9(1) of the CCS (Pension) Rules, 1972 imposed penalty of withholding the entire pension and gratuity on permanent basis on the applicant vide the impugned order dated 27.3.2003.

8 The applicant in this OA has challenged the said penalty order dated 27.3.03 on the grounds that the findings of the Inquiry Officer were based on no evidence; findings of the Inquiry officer were based on surmises and conjunctions as he had concluded the report stating that the only possible inference was that the Applicant had demanded and accepted the illegal gratification of Rs. 20,000/- from Shri Krishnamoorthy for taking a lenient view in the FERA violations by M/s Kumar Traders; the Inquiry Officer denied him the opportunity to adduce evidence on closure of the evidence on behalf of the disciplinary authority thereby Rule 14(17) of the CCS (CCA) Rules

has been violated; likewise, he was not questioned generally on the circumstances arising against him as required under Rule 14(18) ibid. He supported his argument that the violation of Rules 14(17) and 14(18) of the CCS (CCA) Rules have prejudicial to his interest in the inquiry proceedings by relying upon the judgments of the Apex Court in **State Bank of Patiala and others Vs. S.K.Sharma, (1996) 3 SCC 364, M/o Finance and another Vs. S.B.Ramesh (1998) 3 SCC 227** and **Dena Bank Vs. Smt.Shakuntala Madhavan, 1999(1) ILR 396** respectively. In S.K.Sharma's case (supra) the Apex Court has held as under:

> ".....In our opinion, the approach and test adopted in B.Karunakar (supra) should govern all case where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (ie., adequate or a full hearing) or of violation of a procedural rule or requirement governing the inquiry, the compliant should be examined on the touchstone of prejudice as aforesaid."
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> 33 We may summarize the principles emerging from the above discussion (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary inquiries and orders of punishment imposed by an employer upon the employee):
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> (1)An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental inquiry in violation of the rules/regulations/statutory provisions governing such inquiries should not be set aside automatically. The Court or the Tribunal should inquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.
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> (2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3)In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are,generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the inquiry held or order passed. Except cases falling under - "no notice, "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the inquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom , it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where Three is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case the inquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self evident. No proof of prejudice as such need be called for in such a case. To repeat,the test is one of prejudice. ie., whether the person has received a fair hearing considering all things. Now this very aspect can also be looked at from the point of view o directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

4(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may,the order passed in violation of such a provision can be st aside only where such violation has occasioned prejudice to the delinquent employee.

(b) in the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of th person proceeded against or in public interest. If it is found

to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B.Karunakar (supra). The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5)Where the inquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice – or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action – the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteam partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and "no adequate opportunity ie., between "no notice"/"no hearing" and "no fair hearing" (a) In the case of former, the order passed would undoubtedly be invalid (one may call if 'void' or a nullity if one chooses to). In such cases, normally liberty will be reserved or theauthroity to take proceedings afresh according to law, ie., in accordance with the said rule (audi alteram partem). (b) but in the latter cases, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query (it is made clear that this Principle (No.5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.)

(6)While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always hear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7)There may be situations where the interests of State or

public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the court may have to balance public/State interest with the requirement of natural justices and arrive at an appropriate decision."

In S.B.Ramesh's case (supra), the Apex Court has held as under:

"8. The Tribunal, on a consideration of the pleadings and documents placed before it, found that the findings were rendered on surmises and presumptions and the documents marked as exhibits were not properly proved and the non-examination of Smt.Aruna was also fatal to the case of the prosecution. The Tribunal was aware of the well-settled position that the degree of proof required in the departmental disciplinary proceedings need not be of the same standard as the degree of proof required for establishing the guilt of an accused in a criminal case. However, the Tribunal found that there was a total dearth of evidence to bring home the charge that the delinquent officer has been living in a manner unbecoming of a government servant or that he has exhibited adulterous conduct by living with Smt. K.R.Aruna and begetting children. On that basis the Tribunal set aside the order impugned before it, namely, the order of compulsory retirement of the delinquent officer....."

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

In **Dena Bank V. Smt.Shakuntala Madhavan and another (1999) 1 ILR 396**, the Hon'ble High Court of Kerala held as under:

"9 Unlike general principles of natural justice, when principles of natural justice are enshrined in a

regulation the authorities are bound to obey the rule strictly. As held in *Wiseman and another V. Borneman and others (1971 AC 297)* it is well established that when a statute has conferred on anybody the power to make any decisions affecting individuals, court will ensure that the procedural safeguards as mentioned in the rules are followed. It is true that procedural objections are often raised by unmeritorious parties. Judges may then be tempted to refuse relief on the ground that a fair hearing could have, made all difference to the If result. But, in principle, it is vital that the procedure and the merits should be kept strictly apart, since otherwise the merits may be prejudiced unfairly. In *General Medical Council V. Spackman (1943 AC 627)* it was held by Lord Wright as follows:

> "If the principles of natural justice are violated in respect of any decision it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision."

9 The other major grounds of challenge in the OA are that the advice of the Central Vigilance Commission was unnecessary and without jurisdiction; the disciplinary authority has acted under the unauthorized dictation of the CVC but copy of the advice of the CVC was never furnished to him; the Applicant came to know about it only from the impugned punishment order dated 27.3.2003; the advice of the UPSC was not furnished to him before it was acted upon which was in violation of the principles of natural justice; the punishment imposed on him was grossly disproportionate to the gravity of the charge leveled against him.

10 In support of his contention that consultation with CVC behind

his back and it constituted violation of principles of natural justice, the Applicant relied upon the judgment of the Apex Court in **Mohd.Quaramuddin (dead) by LRS Vs. State of A.P. (1994) 6 SCC 118** in which it was held as under:

> "On merits the tribunal came to the conclusion that the principle of natural justice had been violated in that the delinquent was not supplied copy of the Vigilance Commission Report although it formed part of the record of the inquiry and material which the disciplinary authority had taken into consideration. The tribunal observed that where such a material which the disciplinary authority relies on is not disclosed to the delinquent it must be held that he was denied the opportunity of being heard, meaning thereby that the *audi alteram, partem* rule had been violated".
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> "....The finding of the tribunal that the dismissal order was vitiated on account of the violation of the *audi alteram partem* rule makes it necessary to quash and set aside the dismissal order and grant consequential benefits to the applicants....."

11 As regards his contention that the non-supply of UPSC's advice before it was acted upon in passing the impugned penalty order was in violation of the principles of natural justice, he relied upon the orders of this Tribunal in **Charanjit Singh Khurana Vs. Union of India, (1994) 27 ATC 378** wherein it was held as under:

> "In Managing Director, ECIL, Hyderabad V. B.Karunakar (1993) 4 SCC 727 it has been held by a Constitution Bench of the Supreme Court that any statutory rule which forbids the supply of a material to a delinquent servant on the basis of which the disciplinary authority is called upon to pass an order of

> punishment, would be held as violative of principles of natural justice. Reliance, therefore,cannot be placed by the respondents on Rule32.
>
> The reasoning given by their Lordships of the Supreme Court in the case of Managing Director, ECIL, Hyderabad (supra) for the supply of a copy of a report of the Inquiry Officer to a delinquent also apply to the advice given by the Commission. The reasonings given by the Commission in support of its advice are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusion. The advice of the Commission constitutes an important material before the disciplinary authority, which is likely to influence its conclusion. We, therefore, take the view that the right to receive a copy of the advice of the Commission is an essential part of the reasonable opportunity at the first stage, as envisaged in Article 311(2) of the Constitution and also a requirement of the principles of natural justice. Before the judgment of the Hon'ble Supreme Court in Managing Director,ECIL, Hyderabad (supra) the legal position was fluid and the mist has been cleared now."(emphasis added).

11.2 The Respondents in their reply statement has refuted the aforementioned grounds taken by the Applicant in challenging the impugned order of punishment. They have in the first instance refuted the contention of the applicant that it was a case of no evidence. As regards the plea of the applicant that only one person SW2 ie., Shri Jaiprakash alone had stated that two bundles of Rs. 100/- each amounting to Rs. 20,000/- was found in the bag which was with the applicant when he was trapped by the CBI on the investigation of the complaint made by Shri D,.C.Jain, the respondents have submitted that this witness has testified that apart from a sum of Rs. 25,000/- found available in the hand bag of the

applicant at the time of the trap (ie., the bribe amount accepted by the applicant in the case of Shri DC Jain), another sum of Rs. 20,000/- in two bundles of Rs. 100/- each were recovered from the said bag. Though the other witnesses to the trap proceedings of the CBI, CW1 Shri Syed Viqaruddun Ahmed in his testimony did not expressly quantify the amount recovered from the applicant at the time when he was apprehended by the CBI officers on 3.10.1997, yet he confirmed the contents of the records of proceedings relating to the said trap which were drawn by him on the day of search by the officers of CBI in which details of money recovered from the petitioner were recorded and were inclusive of a sum of Rs.20,000/- as well. Shri Krishnamoorthy in his depositions has also admitted the payment of this amount to the applicant which he made in the presence of the applicant during the course of the inquiry proceedings and the applicant has not cross examined him on this. The findings against the applicant was on a firm footing as there were overwhelming evidence available against the applicant about his having demanded and accepted an amount of Rs. 20,000/- on 3.10.1997 as illegal gratification from Shri M.Krishamurthy. The fact, according to the respondents, was that the applicant was connected with the investigation of the case against Shri Krishnamurthy and he was in a position to influence Shri Krishnamurthy to favour M/s Kumar Traders and consequently Shri Krishnamurthy parted with the

bribe amount of Rs. 20,000/- to the applicant. The defence of the applicant was that it was an amount given to him by Krishnamurthy for performing pooja is simply an afterthought. As the applicant was having official business with Sri Murthy in the contest of FERA violation investigation matter there was no reason why he accepted money from Shri Krishnamurthy. Moreover, Shri Murthy too had admitted having given this amount of rs. 20,000/- to the applicant. Shri Murthy had made the deposition before the inquiry officer that he had given Rs. 20,000/- to the applicant for performing pooja in various temple at Kerala. It is neither the assigned role of the petitioner to hold assessees in distress to perform pooja nor was he accepted to do such roles. Such suggestion from the applicant to Shri Murthy placed in such a situation clearly tantamounts to conduct of unbecoming of a Government servant. As regards violation of Rule 14(17) and Rule 14(18), the respondents have refuted the same and relied upon the para 4.19 of the inquiry report which is extracted below:

> "4.19: The claim of the CO that he has been denied a reasonable opportunity is not correct. One reason for such claim is that "I was not given sufficient number of adjournment". A perusal of correspondents of this case shows that the PH was held on 30.11.99 and RH was concluded only on 5.6.2000 and he was given adjournment as and when sought and possible. The fact that he participated in regular hearing establishes that he was satisfied with the proceedings. The RH was taken up only after CO had completed inspection of documents. All witnesses were examined when CO was present and he has signed all such statements where it has also been

> indicated that there was no cross-examination by CO. Therefore, his claim that he was not given an opportunity to cross-examine witnesses is not correct. His last letter dated 5.6.2000 was also discussed during the regular hearing and this fact has been incorporated in the order sheet that was signed by CO himself. To sum up, there is no substance in claim of CO that he was not given sufficient or reasonable opportunity."

They have submitted that the applicant was given enough opportunity in terms of Rule 14(17) of the CCS (CCA) Rules 1965. During the general examination of the applicant on 5.6.2000 he was specifically asked by the inquiry officer whether he wishes to state anything in his defence to which he merely stated that he would submit his defence in his written brief. Therefore, the applicant at this belated stage was not called upon to adduce evidence on closure of the evidence on behalf of the disciplinary authority in violation of Rule 14(17) of the CCS (CCA)O Rules, 1965. The respondents have also refuted the contention of the applicant that the Disciplinary authority has simply acted upon the dictation of the CVC. They have submitted that they have acted in accordance with the Vigilance Manual and the advice of the CVC was obtained at two stages, one prior to the issue of the charge sheet and again after finalization of the oral inquiry. Since the CVC is only an advisory body its advice has been considered by the Disciplinary authority and therefore, it cannot be said that the disciplinary authority had acted upon the dictation of the CVC. As regards furnishing of the advise of the UPSC to the applicant the respondents have submitted that they

have followed the relevant rule 32 of the CCS (CCA) Rules, 1965 which provide as under;:

> "Whenever the Commission is consulted as provided in these rules, a copy of the advice by the Commission and where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance, shall be furnished to the Government Servant concerned along with a copy of order passed in the case, by the authority making the order."

Therefore, the respondents have supplied a copy of the advice of the UPSC to the applicant along with the final order of the disciplinary authority. As regards the quantum of punishment, the respondents have submitted that the charges levelled against the applicant were very grave as he demanded and accepted the bribe of Rs. 20,000/- from a person whose case he was investigating and he was in a position to influence the said case by misusing the official powers. This charge was fully proved beyond doubt. Had the applicant been in service, dismissal from service, which entails forfeiture of entire service rendering him ineligible to draw pension and gratuity thereafter imposed upon him. Since the applicant retired from service at the time of completion of disciplinary proceedings, the penalty of withholding of the entire pension and gratuity is commensurate with the gravity of the charge.

12. We have heard Shri M.R.Rajendran Nair, Senior Counsel alongwith Advocate Shri M.R.Hariraj for the applicant and Shri TPM Ibrahim Khan, SCGSC for the respondents. We have gone though

the entire proceedings and records of the disciplinary case. The grounds taken by the applicant in challenging the impugned order of penalty clearly relate to two stages of the inquiry proceedings; one is from initiation of the proceedings from the Annexure.A1 Memorandum dated 25.1.99 to submission of the Inquiry Report dated 9.12.2000 by the Inquiry Officer, the other stage is from the date of receipt of the Inquiry Report by the disciplinary authority till the imposition of the penalty vide order dated 27.3.03. After hearing the counsels for both parties and perusing the records relating to the inquiry proceedings , we do not consider that it is a case of no evidence or the findings are based on surmises and conjunctions. We agree with the submissions of the respondents in the reply to the aforesaid ground of no evidence. The submissions of the respondents are based on the records of the inquiry proceedings. As observed by the Apex Court in S.B.Ramesh's case (supra) the degree of proof required in the departmental disciplinary proceedings, need not be of the same standard as the degree of proof required in establishing the guilt of an accused in a criminal case. As regards the other allegations of the applicant that he had denied opportunity for adducing evidence during the inquiry proceedings and the Inquiry Officer has violated Rules 14(17) and 14(18) of the CCS (CCA) Rules are concerned, they do not borne of the records which we have perused. However, we find substantial merit in the contention

of the applicant that the respondents have consulted and relied upon the advice of the CVC behind his back and the respondents did not furnish a copy of the UPSC's advice before the impugned penalty order has been passed, which are in violation of the principles of natural justice. The applicant has rightly relied upon the judgment of the Apex Court in the case of Mohd. Quaramuddin (dead) by LRs (supra) and the orders of this Tribunal in Charanjit Singh Khurana (supra). The non-supply of the CVC report and supplying of the UPSCs advice only along with the penalty order are clear violations of the principles of natural justice. In our considered opinion such an action of the respondents has greatly prejudiced the applicant in as much as he was denied a fair hearing.

14 We, therefore allow this OA and quash and set aside the orders of the disciplinary authority. Since the applicant has already retired from service, the only direction that can be given at this stage is to direct the disciplinary authority to continue with the inquiry in accordance with the rules after serving copies of the reports of the CVC and UPSC and consider his representation afresh and to pass a speaking order thereafter. As the departmental proceedings cannot be treated as concluded, it will continue to be proceeded under Rule 9(2) of CCS (Pension) Rules, 1972. The Respondents shall ensure that the entire proceedings shall now be completed within six months

from the date of receipt of this order. The applicant also shall fully cooperative with the respondents. There is no order as to costs.

Dated this the 13th day of April, 2006

GEORGE PARACKEN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN

S.