CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Common Order in
OA 476/04, 477/04 & 478/04

.....FRIDAY.....this the 17th day of March, 2006

CORAM

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

O.A. No.476/2004:

R.Parameswaran Pillai,
Assistant Purchase & Stores Officer,
Purchase No.1.
Vikram Sarabhai Space Centre,
Thiruvananthapuram-695022. ....Applicant

(By Advocate Mr. P.N.Santhosh)

V.

1 Union of India, represented by
the Secretary to Government of India,
Department of Space
(Branch Secretariat)
3rd Floor, Loknayak Bhavan
New Delhi-110 003.

2 The Chairman,
Indian Space Research Organization,
Department of Space Administration,
Government of India, Anthareeksha Bhavan,
New BEL Road, Bangalroe-560 094.

3 The Director,
Vikram Sarabhai Space Centre,
Thiruvananthapruam.22.

4 The Union Public Service Commission
represented by its Chairman,
Dholpur House, Shahjahan Road,
New Delhi-110 011. ...Respondents

(By Advocate Mr.TPM Ibrahim Khan,SCGSC)

O.A.No.477/2004:

V.Narayana Das,
Senior Purchase & Stores Officer,
Avionics Entity (Unit.II)
Vikram Sarabhai Space Centre,
Thiruvananthapuram.22. Applicant

(By Advocate Mr. P.N.Santhosh)

V.

1 Union of India, represented by
the Secretary to Government of India,
Department of Space
(Branch Secretariat)
3rd Floor, Loknayak Bhavan
New Delhi-110 003.

2 The Chairman,
Indian Space Research Organization,
Department of Space Administration,
Government of India, Anthareeksha Bhavan,
New BEL Road, Bangalroe-560 094.

3 The Director,
Vikram Sarabhai Space Centre,
Thiruvananthapruam.22.

4 The Union Public Service Commission
represented by its Chairman,
Dholpur House, Shahjahan Road,
New Delhi-110 011. ...Respondents

(By Advocate Mr.TPM Ibrahim Khan,SCGSC)

O.A.No. 478/2004:

N.Rajagopalan Nair,
Senior Accounts Officer,
MVIT, PSLV Accounts,
Vikram Sarabhai Space Centre
Thiruvananthapuram.22. .....Applicant

(By Advocate Mr. P.N.Santhosh)

V.

1 Union of India, represented by
the Secretary to Government of India,
Department of Space
(Branch Secretariat)
3rd Floor, Loknayak Bhavan
New Delhi-110 003.

2 The Chairman,
Indian Space Research Organization,
Department of Space Administration,
Government of India, Anthareeksha Bhavan,
New BEL Road, Bangalroe-560 094.

3 The Director,
Vikram Sarabhai Space Centre,
Thiruvananthapruam.22.

4 The Union Public Service Commission
represented by its Chairman,
Dholpur House, Shahjahan Road,
New Delhi-110 011. ...Respondents

(By Advocate Mr.TPM Ibrahim Khan,SCGSC)

All these applications having been heard together on 24.2.2006, the Tribunal on 17.3.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

All these Original Applications are disposed of by this common order as they are identical. As far as the facts are concerned, the averments made in OA 476/04 is narrated hereunder. There are only minor factual variations in the other two O.As which are not very relevant for the purpose of adjudication of these O.As.

2 The Applicant Shri Pameswaran Pillai, vide Annexure.A4 Memorandum dated 12.2.97, was served with the following Article of Charge:

> ***"Shri R.ParameswaranPillai, SC No.14336,while functioning as Assistant Purchase Officer in LPSC, Valiamala, was found to be negligent in his duties resulting in pecuniary loss to the Government of a sum of Rs. 34,91,059/.***
>
> ***2 Negligence in duty is a serious misconduct exhibiting lack of devotion to duty amounting to violation of clause (ii) of Sub-rule (1) of Rule 3 of Central Civil Service (Conduct) Rules, 1964.***

In support of the aforesaid Article of Charge, the following statement of imputations of misconduct was also served on him along with the aforesaid Memorandum.

> *"A Purchase Order No.LPV/40/0387/94/6350 dated 7.2.1995 was placed by LPSC,Valiamala on M/s Hitech Alloys (UK) Ltd., UK for the supply of Titanium Alloy Forgings. As per the quotation submitted by the supplier and also as per the terms and conditions of the Purchase Order, the price of the forgings was to be paid in US Dollars through an irrevocable letter of credit to be opened by LPSC in favour of M/s HTA on 6.6.1995 the prescribed application and Guarantee for Letter of Credit on Form No.2 along with a note No.LPV/40/0387/94 dated 6.6.1995 requesting the Accounts Officer, LPSC, Valiamala to open a Letter of Credit in favour of M/s HTA was prepared by Smt.Lathakumari, SC No.62202, Office Clerk B, Purchase Section, LPSC, Valiamala. In the said documents and also int eh Note dated 6.6.1995, Smt. Lathakumari, Office Clerk B entered the notation of the currency erroneously as Sterling Pound instead of US Dollars. The documents prepared by Smt.Lathakumari were submitted to Shri Parameswaran Pillai. Asst.Purchase Officer for his signature through Shri C.V.Joseph, Purchase Assistant B. Shri Pramswran Pillai as an officer was expected to sign the documents only after satisfying*

that all the entries made therein by his subordinates were correct and conform to the terms and conditions of the Purchase Order. But Shri Parameswaran Pillai without exercising due diligence in the matter signed the note dated 6.6.1995 and forwarded the documents with the said erroneous entries tot he Accounts Officer, LPSC for further action.

2 Further, a Letter of Credit was opened on12.6.95 by SBI,Valiamala and a copy of t he same was later on received by the Purchase Section on 16.6.1995 through LPSC Accounts Section. The currency in the LC opened was shown as "GBP" instead of "US Dollars", that is to say, the erroneous entries in the documents emanated from the Purchase Section continued to go unnoticed. The copy of LC received in the Purchase Section was perused by Shri Parameswarna Pillai on 16.6.1995 when also he failed to verify the accuracy of the Letter of Credit opened in terms of its contents with reference to the purchase order. Had Shri Parameswaran Pillai exercised proper care and diligence and made a scrutiny of the copy of the LC when received, the grave mistake of showing the notation of currency a Sterling Pound instead of US Dollars would have been noticed and necessary timely action to avert the over-drawal by the Party could have been taken. Due to the said act of omission on he part of Shri Parameswaran Pillai, the suppliers M/s HTA, overdrew the amount against LC. The suppliers who had received the amount in excess of what was due and admissible to them in terms of the Purchase Order refused to refund the excess with the result that the Government sustained a pecuniary loss of Rs. 34,91,059/. Thus, Shri Parameswaran Pillai was responsible for the loss of rs. 34,91,059/- to the Government due to his negligence in duty.

3 Negligence in duty is serious mis-conduct exhibiting lack of devotion to duty which amounts to violation of clause (ii) of Sub-Rule (1) of Rule 3 of CCS (Conduct) Rules, 1964."

3 The applicant has given theAnnexure.A5 written statement pleading not guilty of the charges framed against him. He has contended that there was neither any negligence on his part nor he

has violated any provisions of CCS (Conduct)Rules, 1964. Not being satisfied with the explanation given by the applicant, the respondents have gone ahead with appointing an Inquiry officer and the Presenting Officer to conduct the inquiry. After detailed inquiry, the Inquiry Officer submitted the Annexure.A11 Inquiry report dated 3.3.99 to the disciplinary authority, The Disciplinary Authority furnished a copy of the same to the applicant vide Anenxure.A10 Memorandum dated 29.2.2000 with copy of the disciplinary authority's finding inviting his representation or submission, if any.

4 After a thorough and detailed examination of both prosecution and defence witnesses, the listed documents and discussion of evidence, the Inquiry Officer held that the charges against the applicant were not proved. The operative part of the Inquiry Officer's report is as under:

> *"There are two issues for determination in this case:*
> *(i) Was the charged officer negligent in not verifying the denomination of the currency in the draft application for opening the LC with reference to the Purchase Order and the Order acknowledgment and subsequently when the LC copy was received from the bank through the Accounts Section?*
> *(ii) Assuming that he was indeed negligent, did this lead to financial loss amount to rs. 34,91,059/- to the Government?*
>
> *The first issue for determination is whether the charged officer was negligent in not verifying the denomination of the currency in the draft application for opening the LC with reference to the Purchase Order and the Order acknowledgment when he processed the case. It is an undisputed fact that the Purchase Order and the Order Acknowledgment from M/s HTA shows the price in US Dollars and that the draft applciation for opening the L C had an error int hat if showed the price in Pound Sterling. It is*

also a fact that the draft application was processed by the charged officer who after signing the covering Note sent it to the Accounts Officer Shri Unnikrishnan Nair without the error in the denomination of the currency being noticed. The charted officer has in fact admitted that he had not noticed the error in the denomination of the currency in the draft application for the opening of the LC. It is also admitted that he had processed the case and signed the covering note without verifying the entry relating tot he denomination of the currency with reference to the purchase order or the Order Acknowledgment even though both documents were available in the file that was being processed. It is also clear that the charged officer was expected to cross check the entries made in draft applications for opening LCs before forwarding them tot he Accounts Section. Even a cursory cross-check with the accompanying documents would have shown that the denomination of the currency had wrongly been entered as "stg pds" (Pound Sterling) instead of US Dollars. It is difficult to appreciate the argument that the charged officer was not negligent in not cross checking th entries in the draft application with the Purchase Order and the Order Acknowledgment when he processed the file. This was nothing but a routine task which had to be performed by the charged officer before he draft application for opening the LC could be sent to the Accounts Section. There can be no doubt about the fact hat the charted officer was expected to check whether the draft application for opening the LC had been filled in correctly for sending it to the Accounts Section. It is equally a fact that the charged officer did not check the entries in the draft application and that he did not notice the error in the denomination of the currency. The charged officer should also have verified the terms of the LC when the LC copy was forwarded to him by the Accounts Section. He could have done this himself or through any of his subordinates in the Purchase Division. This is a matter of simple prudence particularly when high value LCs are opened. This was another act of omission on the part of the charged officer. It,therefore follows that the charged officer was negligent in not checking the draft application for opening the LC and in not detecting and correcting the error in the denomination of the currency in its. He was also negligent in not verifying the terms of the LC when he received the LC copy from the Bank through the Accounts Section. The first issue for determination is decided accordingly.

The second issue for determination is whether the negligence of the charged officer led to the loss of Rs.

34,91,059/- by the Government. The Presenting Officer has argued that it was indeed the negligence of the charged officer that was responsible for the loss to the government. It has been argued that had the charged officer detected and corrected the error in the denomination of the currency in the draft application or if he had verified the terms of the LC when he received the LC copy, M/s HTA would not have been able to draw payment in Pound Sterling and the loss to the Government on account of over payment would not have occurred. This is not an argument that can withstand logical analysis. There were a number of stages between the time the charged officer processed the case for opening the LC and the drawl of payment by M/s HTA and subsequently the over payment to the bank. At each stage the case was handled by different employees both in LPSC and in the SBI. The progress of the case can be shown thus:

xx xx xx xx

The loss to the Government occurred due to payment having been made by LPSC to the Bank in Pound Sterling rather than in US Dollars. This loss would not have taken place if the LC had been opened correctly in US Dollars in the first place. Even after M/s HTA had drawn payment, it would have been possible to avoid loss to the Government if LPSC had made payment to the Bank in US Dollars in terms of the Purchase Order. The casual connection between the acts of omission on the part of the charted officer in not detecting the correcting the error in the draft application for opening the LC and in not verifying the terms of the LC and the loss of Rs.34,91,059/- to the Government is very tenuous. It does not make sense for the charged officer to be held responsible for the loss suffered by the Government when there were many subsequent stages in the case when the loss could have been prevented. It has not been established that there is a direct casual connection between the negligence of the charged officer and the loss suffered by the Government. The second point for determination is decided accordingly.

An analysis of the articles of charge is in order so as to determine what exactly has to be proved. The first article of charge says that the charged officer was negligent in his duties and that this resulted in a pecuniary loss to the Government of Rs. 34,91,069/-. A simple reading of this charge will show that the two parts to this charge – (a) that he was negligent, and (b) that this negligence resulted in pecuniary loss to the Government - are casually related. For the charge to be proved, it will, therefore be necessary not only to show that the charged officer was indeed negligent

but that this negligence caused the loss of Rs. 34,91,059/- to the Government. Merely proving that the charged officer was negligent will not be sufficient to prove the first article of charge. It will be necessary to first prove the negligence of the charted officer and to then prove that this negligence was responsible for the loss of Rs. 34,91,059/- to the Government. The direct casual relationship between the act of negligence and the loss to the Government has to be established for this article of charge to be proved. Why the first article of charge has been formulated in this particular way or, rather, why it has not been split up into two separate charges is not clear, but this is not a matter for the Inquiring Authority to speculate about. It has to be assumed that the Disciplinary Authority had good and sufficient reason for formulating the article of charge in this manner. The second article of charge that "negligence in duty is a serious misconduct exhibiting lack o devotion to duty amounting to violation of Rule 3(1)(ii) of the Central Civil Service (Conduct) Rules, 1964, logically flows from the first article of charge.

On the basis of the evidence adduced, it has not been proved that the negligence of the charged officer resulted in the Government suffering a loss of Rs. 34,91,059/-. This being the case, I therefore find the first charge, that the charged offer was negligent in his duties and that this resulted in a pecuniary loss to the Government of Rs. 34,91,059/-, to be Not proved. Logically, therefore, the second charge that "negligence in duty is a serious misconduct exhibiting lack o devotion to duty amounting to violation "of Rule 3(1)(ii) of the Central Civil Service (Conduct) Rules, 1964 also fails. I, therefor, find the second charge to be Not proved."

5 The disciplinary authority in his Anenxure.A12 note dated 25.8.99 did not agree with the findings of the Inquiry Authority and recorded:

"**I do not** agree with the findings of the Inquiring Authority."

In the concluding remarks of his note the disciplinary authority's has further observed as under:

"For the reasons recorded as above, I hold that the accused in this matter would need to be penalized for

the negligence and laxity in supervision resulting in the over-payment to M/s HTA UK Limited resulting in the erroneous outflow of Government money tot he tune of Rs. 35 lakhs.

I hold that the Charged Officers and employees are guilty and I hold that a penalty is called for on all the eight accused."

6 The applicant has submitted Annexure.A13 representation/submission on the inquiry report and the findings of the disciplinary authority. He submitted that when the Chairman, the highest authority, ISRO has recorded in his note that he "does nit agree with the findings of the Inquiry Authority" and held that "the accused in this matter would need to be penalized' and that 'the charged officers and employees are guilty and that a penalty is called for on all the eight accused." it is clear that the disciplinary authority has already made up his mind against him even before considering his submissions which have been called for from him. He has also submitted that his representation would serve no useful purpose as he has no right of appeal in the matter and there lies no reasonable opportunity before adverse order, if any, is passed by the disciplinary authority. He has submitted that communicating an adverse decision of penalty far ahead of the receipt of the representation smacks of a pre-determination to punish him, which is arbitrary. He has also submitted that such an anticipatory decision to penalize him is malafide as well. The applicant has, therefore, requested the disciplinary authority to accept the findings of the Inquiry Authority that the charges are not proved and issue appropriate orders

relieving him of all the charges and imputations thereto.

7 On receipt of the representation from the Applicant, the disciplinary Authority consulted the UPSC. The Commission in its letter dated 5/8-10-2000 noted that though there was no malafide involved and there was no accusation of ulterior motive against anyone, yet the role played by the charged officer is a lapse on his part showing his inability to detect the mistake made by the lower staff Smt.Lathakumari, before forwarding the documents to the SBI for opening the LC in Pound Sterling. The UPSC had come to the conclusion that the article of charge stand proved against the applicant and advised to impose the penalty of "reduction by one stage in time scale of pay for two years with cumulative effect". The respondent department being not satisfied by the drastic punishment proposed by the Commission, suggested the minor penalty of withholding of increment for three years with cumulative effect. The Commission on request of the Respondent Department considered the matter but again reiterated their earlier advice. The Disciplinary Authority thereafter imposed the same penalty proposed by the Commission ie., "reduction by one stage in time scale of pay for two years with cumulative effect" on the applicant, vide the impugned Annexure.A14 order dated 21.5.2004. The order further says that the pay of the applicant is reduced " by one stage from Rs.9700 to Rs. 9500 in the time scale of pay of Rs. 6500-200-10500 for a period of two years with effect from the first of next

month." It is further directed that the Applicant will not earn increments of pay during the period of reduction and this reduction will have the effect of postponing his future increments of pay."

8 The applicant has approached this Tribunal aggrieved by the aforesaid Annexure.A14 penalty order dated 21.5.2004 seeking the following reliefs:

> *(i) Call for the records leading tot he issuance of Annexure.A.14 and to quash the same and grant the applicant all consequential befits thereof;*
>
> *(ii)Grant such other relief, as this Hon'ble Tribunal deems fit and proper in the nature and circumstances of the case including the cost of this proceedings.*

9 The factual variations in the other two O.As 477/04 and 478/04 are insignificant. The penalty imposed to the applicant in OA 478/04 is the same as that of the applicant in OA 476/04. The Applicant in OA 477/04 was awarded the penalty of only "stoppage of the next one increment for a period of one year with cumulative effect." While the articles of charges in all the three O.As remained the same, the statement of imputations are slighly different depending upon the role alleged to have been played by the applicants in committing the misconduct. The report of the Inquiry Officer and the disagreement note of the disciplinary authority are same as in all three O.As.

The grounds adduced by the applicants to challenge the impugned orders passed by the disciplinary authority are briefly as under:

(i) The impugned Annexure.A14 order dated 21.5.04 is totally

arbitrary,discriminatory, contrary to law, opposed to the basic principles of natural justice and hence violative of the rights guaranteed under Article 14,16 ,21 and 311 of the Constitution of India. The entire proceedings are ab initio void because it has been initiated by an authority lacking jurisdiction. Being a Group A Officer in the scale of Rs. 10000-15200, the authority competent to institute the proceedings is the President and the third respondent, namely, the Director VSSC,Trivandrum in the absence of any general or special delegation in this behalf cannot do so. In this case, the inquiry proceedings were initiated by the 2nd Respondnet on behalf of the President and it was to him that the Inquiry Report was submitted. However, the dissenting note was made by the first respondent in the capacity as Secretary of Department of Space/Chairman of ISRO and the same was not in exercise of the power of the President. In other words the dissenting note is not that of the disciplinary authority. (ii) Even assuming the dissenting note is issued by the disciplinary authority, the same is opposed to the principles of natural justice. Right to represent against the findings in the report before the disciplinary authority takes into consideration of the findings is part of the reasonable opportunity. After the 42nd Amendment the right to show cause against the proposed penalty has been dispensed with but the right to have the opportunity of making representations on the report of the Inquiry officer before the Disciplinary Authorities takes into consideration of the findings in the

report was always there and it cannot be denied. In support of this proposition, the applicant's Counsel has relied upon the judgment of the Apex Court in **Managing Director,ECIL, Hyderabad and Others V. B.Karunakar and others (1993) 4 SCC 727** wherein it has held as follows:

> *"The reason why the right to receive the report of the inquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the inquiry officer form an important material before the Disciplinary Authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the Disciplinary authority while drawing tis conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the Disciplinary Authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenants of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the inquiry officer without giving the employee an opportunity to reply to it. Although it is true that the Disciplinary authority is supposed to arrive at its own findings on the basis of th evidence recorded in the inquiry, it is also equally true that the Disciplinary Authority takes into consideration the findings recorded by the inquiry officer along with the evidence on record. In the circumstances, the findings of the inquiry officer do constitute an important material before the Disciplinary authority which is likely to influence tis conclusions. If the inquiry officer were only to record the evidence and forward the same tot he disciplinary authority, that would not constitute any additional· mate4rial before the disciplinary Authority of which the delinquent employee has no knowledge. However, when the inquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary tot he same or in ignorance of tis,*

such findings are an additional material unknown tot he employee but are taken into consideration by the disciplinary authority while arriving at its conclusion. Both the dictates of the reasonable opportunity as well as the principles of nature justice, therefore, require that before the Disciplinary authority comes to its own conclusion,t he delinquent employee should have an opportunity to reply to the inquiry officer's findings. The Disciplinary authority is then required to consider the evidence,t he report of the inquiry officer and the representation of the employee against it.

XXXX XXXX XXXX

The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him." The findings on the charges given by a third person like the inquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso tot he said Article states that "where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representations on the penalty proposed", it in effect accepts two successive stages of differing scope,. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the inquiry officer being only his delegate appointed to hold the inquiry and to assist him) the employee's reply to the inquiry officer's report and consideration of such reply by the Disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the inquiry officer. The latter right was always there. But before the forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., th stage of

considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty second Amendment of the constitution is to advance the point of time at which the representation of the employee against the inquiry Officer;s report would be considered. Now the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges."

10 The question as to when the inquiry officer during the course of disciplinary proceedings comes to a conclusion that all or some of the charges alleging misconduct against an official are not proved, whether the disciplinary authority can differ from that and give a contrary finding without affording any opportunity to the delinquent officer was considered by the Apex Court in **Punjab National Bank and others Vs. Kunj Behari Misra and others (1998) 7 SCC 84.** Reiterating its observations in Karunakar's case (supra) , the Apex Court held as under:

"It will not stand to reason that when the finding in favour of the delinquent officer proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the Disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer hold the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the Disciplinary authority take further action which may be prejudicial to the delinquent officer."

11 Further, the Apex Court in **Yoginath D.Bagde Vs. State of Maharashtra and another (1999) 7SCC 739,** was considering the

Rule 9 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 which is at pari materia with Rule 12 of the Department of Space Employees (Classification,Control and Appeal) rules, 1976 which is quoted below:

> *"(1) The Disciplinary authority if it is not itself the Inquiring authority, may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report; the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 11, as far as may be.*
>
> *(2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.*
>
> *2A. The Disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary authority or where the Disciplinary authority is not the inquiry authority, a copy of the report of the inquiry authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.*
>
> *2B. The disciplinary authority shall consider the representation, if any submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3)and (4).*
>
> *(3) If the Disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Clauses (i) to (iv) of Rule 8 should be imposed on the employee, it shall, notwithstanding anything contained in Rule13, make an order imposing such penalty;*
>
> *Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any*

penalty on the employee.

(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 8 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed.

Provided that in every case where it is necessary to consult the Commission,t eh record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant."

The Apex Court has held as under:

"In view of the provisions contained in the statutory rule extracted above, it is open to the Disciplinary Authority either to agree with the findings recorded by the inquiring authority or disagree with those findings. If it does not agree with the findings of the inquiring authority, it may record its own findings. Where the inquiring maturity's has found the delinquent officer guilty of the charges framed against him and the disciplinary Authority agrees with those findings, there would arise no difficult. So also, if the Inquiring Authority has held the charges proved, but the disciplinary authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the inquiring Authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the rules made under Article 309 of the Constitution or the Disciplinary Authority may, of its own, provide such an opportunity. Where the rules are in this regard silent and the

Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings different from those of the inquiring Authority that the charges were established, "an opportunity of hearing may have to be read into the rule by which the procedure for dealing with the inquiring authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be "not guilty" by the inquiring Authority, is found "guilty" without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded.

We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 which enables the disciplinary Authority to disagree with the findings of the inquiring Authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The rule does not specifically provide that before recording its own findings, the disciplinary Authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary Authority finally disagrees with the findings of the inquiring Authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the inquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the Inquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the inquiring authority are not germane and the finding of "not guilty": already recorded by the inquiring authority was not liable to be interfered with".

(ii)The other ground taken by the Applicant was that the disciplinary Authority itself wanted to impose a minor penalty of withholding of increment, but it was the UPSC which directed to

impose upon penalty of reduction of stage. The Disciplinary Authority's proposal to award the minor penalty was turned down by the UPSC. The Applicants have submitted that while the UPSC has only an advisory role and the ultimate arbitrator is the Disciplinary Authority, the Disciplinary Authority in this case has been influenced by the dictation of the UPSC. The Applicants' counsel has relied upon the judgment of the Apex Court in **State of UP and others Vs. Maharaja Dharmander Prasad Singh and others, (1989) 2 SCC 505** in this regard wherein it has been held as follows:

> *"It is true that in exercise of powers of revoking or canceling the permission is akin to and partakes of a quasi-judicial complexion and that in exercising of the former power the Authority must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the matter consistent with the principles of natural justice. The Authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the Authority's discretion that is exercised, but someone else's. If an Authority "hands over its discretion to another body it acts ultra vires". Such an interference by a person or body extraneous to the power would plainly be contrary tot he nature of the power conferred upon the Authority. De Smith sums up the position thus:*
>
> *The relevant principles formulated by the courts may be broadly summarized as follows. The authority in which discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which ti is committed. That Authority must genuinely address itself to the matter before it: it must not act under the dictation of antoehr body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant*

considerations and must not be swayed by irrelevant consideration, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories: failure to exercise a discretion, an excess or abuse of discretionary power. The two classes are not, however, mutually exclusive."

(iv) The last contention on behalf of the Applicants is that there was inordinate delay in concluding the disciplinary proceedings. The proceedings have commenced in the year 1995 and the same was conducted after a long period of nine years. The inordinate delay was on the part of the Respondents alone and the Applicants have never contributed to it in any manner. The delay caused great prejudice to the Applicants as many of their juniors have been promoted during the pendency of the proceedings. If the proceedings were finalized within a reasonable time, the currency of even the impugned punishment orders would have been over long back and the Applicants would also have been promoted. The Applicants relied upon the judgment of the Hon'ble Supreme Court of India **State of A.P. Vs. N.Radhakrishnan, (1998) 4 SCC 154** wherein it was held as under:

"It is not possible to lay down any predetermined principles applicable to all cases and in all situations, where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the mater is that the court has to take into consideration all the relevant factors and to balance

and weigh them to determine if it is int eh interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularity when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

He has also relied upon the order of this Tribunal in **K.S.Subramanian Vs. Union of India and others, 2004(2) SLJ (CAT) 170** wherein it was held as under:

"We now proceed to consider the applicant's grounds and contentions with regard to the inordinate delay in completing the disciplinary proceedings. According to us, there is considerable force in the applicant's contention in that regard. We notice that the inquiries instituted in pursuance of A.2 charge memo dated 8.6.89 commenced only in April, 1992. Thought he Applicant had filed some O.As raising grievances in regard to issue of the second charge memo, denial of pensionary benefits etc., there was no stay from any authorities as far as the inquiry proceedings were concerned. Thus, the Respondents were in no way inhibited from proceeding further with the inquiries and taking those in their

logical conclusion. It is relevant to note that in 1992, the criminal proceedings arising out of the very same act of misconduct were over and the applicant was acquitted. This fact is not in dispute. The respondents have not been able to draw our attention to any real delay caused by the applicant in regard to the progress and conclusion of the inquiry. No doubt, the applicant had raised a grievance tot he effect hat he was denied opportunity to inspect all the required documents. No chance of self examination was offered nor was he questioned in relation to the allegedly existing evidence as provided under Rule 9(21) of the Railway Servants (Discipline & Appeal) Rules. With II these, we see no significant delay on the applicant's part. On the other hand, the applicant co-operated with the inquiries. There is no reasonable explanation for the delay in completing the disciplinary proceedings against the applicant with expedition. We see from the records that in 1994, the inquiry report was served on the applicant and the applicant's objections were also received within a short time. The long delay of six years thereafter is unexplained and inexplicable. The issue involved were not so complex as to justify protracted investigations/inquiry. In the case of State of Andhra Pradesh Vs. N.Radhakrsihnan (supra) the Apex Court considered the question of inordinate delay vitiating the proceedings and held as under:

> *".....The essence of the mater is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is int eh interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularity when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the*

rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

In this case where the delinquent employee did not at any stage try to obstruct or delay the inquiry proceedings and the case depended on records already available, the delay would be wholly unjustified and the principle laid down by the Apex Court in the above case would apply. In our opinion, the respondents could have proceeded with the disciplinary proceedings at least from the date of issue of the second charge memo in 1989. The UPSC even on a second consultation by the Ministry, has taken note of the long lapse of time as a mitigating circumstance permitting reduction of penalty from 100% permanently to 20% for three years vide Para 7 of A.19 dated 22.9.99. In any case, since the applicant is seen to have submitted his objection to the inquiry report within a few days of receipt of the inquiry report in 1994, we are of the view that there is no justification for the delay of six long years at the end of which the applicant was punished with 100% cut in pension in August, 2000. We hold that the delay has vitiated the impugned penalty proceedings and that for that reason, the impugned A.1 order is liable to be set aside."

12 The respondents have filed their reply statement. They have stated that the applicants should have exhausted the statutory remedies as provided under Rule 26 of the Department of Space Employees'(Classification, Control and Appeal Rules), 1976 which provided for submitting representations against the impugned order. They have submitted that the Annexures.A3 and A4 orders were issued by the Director, Government of

India,Department of Space, Bangalore who is empowered to issue orders and sign communications on behalf of the President of India. In Ministries and Departments of Government, there are posts of Director in between Joint Secretary and Deputy Secretary who are empowered to sign communications on behalf of the President of India. They have also submitted that in terms of Department of Space order No.5/5(1)/93-I dated 29.3.94, Secretary to the Governments of India, Department of Space is empowered to initiate disciplinary proceedings and to take action ancillary to the issue of the charge sheet. Therefore, the Secretary,Department of Space who is the Respondent No.1 in this case has examined the the Inquiry report and recorded disagreement with the findings of the Inquiry Officer. The respondents have also submitted that by virtue of provisions contained in the Office Memorandum No.22011/4/91-Estt.(A) dated 14.9.1992 issued by the Ministry of Personnel, Public Grievances and Pensions, the Department of Personnel and Training, New Delhi, the recommendations of the Departmental Promotion committee in respect of Govt. servants against whom disciplinary proceedings are pending have to be kept in a sealed cover. On conclusion of the disciplinary proceedings which results in dropping of allegations against the Government servant, the sealed cover or covers shall be opened. If the Government servant is completely exonerated, the due date of

his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior. The Respondents have also justified the time taken to conclude the proceedings as reasonable in view of the fact that eight persons were involved in the misconduct; the prescribed procedure had to be followed meticulously; outside agencies had to be consulted and fair opportunities had to be given to the charged officials. The respondents have denied that the disciplinary Authority has passed the order without applying his mind and without exercising the discretion and acted on the directions of the UPSC. The Disciplinary Authority had disagreement with the advice of the UPSC and the matter was referred to them for re-consideration. The UPSC on reconsideration, reiterated the penalties earlier advised. The disciplinary authority on review of the case accepted the advice of the UPSC and imposed the penalty, considering the gravity of the misconduct, extend of involvement of the applicants, the procedures and practices applicable in processing the cases of similar type in Government. The Respondents have contended that the copy of the Inquiry report was forwarded to the applicants in accordance with the provisions contained in Rule 12(2)(A) of the DOSE (CCA) Rules, 1976, according to which the disciplinary authority shall forward or cause to be forwarded a

copy of the report of the inquiry held by the disciplinary authority, or where the disciplinary authority is not the inquiry authority, a copy of the report of the inquiry authority, together with its own tentative reasons for disagreement, if any to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days. According to the respondents the disciplinary Authority in terms of the aforesaid provision of the rule has disagreed with the findings of the inquiry officer and recorded its reasons for disagreement and sent to the applicants vide Memorandum dated 29.2.2000 and in response to the said Memorandum the Applicants have submitted their respective representations. The respondents do not find any infirmity in doing so.

13 We have heard Shri P.N.Santhosh, for the applicants and Shri TPM Ibrahim Khan, SCGSC for the Respondents. We have also perused the various documents made available on record. We consider that the main question to be considered is whether the procedure adopted by the disciplinary authority in disagreeing with the findings of the inquiry officer is in accordance with the provisions contained in Rule 12 of the DOSE (CCA) Rules, 1976 and in consonance with the various judgments of the Hon'ble Supreme Court of India in the matter or not. The other issue for consideration is whether there was an

inordinate delay in finalizing the disciplinary proceedings and if so, whether such delay has caused any prejudice to the applicants. In our opinion, the other grounds raised by the Applicants have been adequately met by the respondents in their reply. We will therefore, consider the issue No.1 first. The contentions of the respondents is that they have followed the provisions contained in Rule12 (ibid) and there was no infirmity in the action of the Disciplinary Authority in disagreeing with the findings of the Inquiry Officer. The said rule has been extracted elsewhere in this order. Rule 12(2A) enjoins upon the Disciplinary Authority to forward a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant. The next step is that the Disciplinary Authority shall consider the representation, if any, submitted by the Government servant and record its findings. Only after following the aforesaid procedure as prescribed in Sub Rules 2, 2A and 2B of Rule 12, the Disciplinary Authority can proceed further in the matter of imposing any penalty as prescribed in Sub Rules (3) and (4) of the said Rules. As held by the Apex

Court in the case of Managing Director,ECIL, Hyderabad and others (supra) the Disciplinary authority has to consider the representation of the employee before it arrives at its conclusion with regard to the guilt or innocence of the charge. In Kunj Behari Misra's case (supra), the Apex Court has further held that where the findings in favour of the delinquent officer is proposed to be overturned by the disciplinary authority, he shall be granted an opportunity for hearing. The opportunity thus granted shall be an effective opportunity. In Yoginath D.Bagde's case (surpa), the Apex Court has dealt with a situation where the rule is silent regarding giving an opportunity of hearing to the delinquent officer who was recommended to be exonerated by the Inquiry Officer but the Disciplinary Authority disagreed with those findings and recorded its own finding. The Apex Court held that even in such a situation, the opportunity of hearing may have to be read into the rule by which the procedure for dealing with the inquiring authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be "not guilty" by the inquiring Authority, is found "guilty" without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded. The judgment further says that the disciplinary authority, has to communicate to the delinquent officer the

"TENTATIVE" reasons for disagreeing with the findings of the Inquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the inquiring authority are not germane and the finding of "not guilty": already recorded by the inquiring authority was not liable to be interfered with.

14 The position in the present cases is quite contrary to the law laid down by the Apex Court in all the aforementioned cases, especially in Yoginath D.Bajde's case (surpa). The Rule 12(2A) (ibid) clearly enjoins upon the disciplinary authority to forward the TENTATIVE reasons for disagreement. While on the one hand the Respondents claim that the Disciplinary Authority has followed the procedure as prescribed in Rule 12 (ibid), what is recorded by the Disciplinary Authority in his disagreement note is in uttercontrary to the said Rule. In the disagreement note the Disciplinary authority has stated as under:

"I do not agree with the findings of the Inquiring Authority."

Without considering the representation, the Disciplinary Authority further says in his disagreement note as under:

> *"For the reasons recorded as above, I hold that the accused in this matter would need to be penalized for the negligence and laxity in supervision resulting in the over-payment to M/s HTA UK Limited resulting in the erroneous outflow of Government money tot he tune of Rs. 35 lakhs.*
>
> *I hold that the Charged Officers and employees are*

guilty and I hold that a penalty is called for on all the eight accused."

The aforesaid disagreement note of the Disciplinary Authority is clearly not a tentative finding. In **Bhavnagar UniversityVs. Palitana Sugar Mills (P) Ltd and others, (2003) 2 SCC 111** the Apex Court has held as under:

> "...when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof."

The Hon'ble Supreme Court in a rent case of **Canara Bank Vs. V.K.Awasthy, ATJ 2005(3) SC 627** has observed as under:

> "Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

In **Kumon Mandal Vikas NigamLtd.Vs.Girja Shankar Pant and others, (2001) 1 SCC 182** the Apex Court held as under:

> "Since the decision of this Court in Kraipak case (A.K.Kraipak V. Union of India (1969 2 SCC 262) one golden rule that stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice."

In **Canara Bank and others Vs. Debasis Das and others (2003)4 SCC 557** the Apex Court held as under:

> "...Principles of natural justice are those rules which have been laid down by the courts as being the

> minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

Further, when the Disciplinary Authority has already decided that the charged officers are guilty and they need to be penalized, it only shows his closed mind. Any opportunity for hearing, thereafter is nothing but an empty formality and a negation of principle of natural justice.

15 Now let us consider the other issue regarding delay in finalizing the disciplinary proceedings in all these cases. The proceedings commenced in the year 1995 and it was concluded in 2004 after a period of nine long years. The following table would be useful to see whether there was any inordinate delay in finalizing the disciplinary proceedings:

Date	Particulars	Time taken		
		Year	Month	days
16-6/95	Incident			
20-12-95	Show cause notice		6	4
11-1-96	Reply to show cause file			21
12-2-97	Memo of charges was issued	1	1	
5-5-97	Explanation/Reply to the memo of charges given		2	20
9-6-97	Inquiry Officer was appointed		1	4
15-2-99	Inquiry completed	1	8	6
3-3-99	Inquiry report			16
29-2-00	Communicated the Report and decision of the Disciplinary Authority.		11	29
12-4-00	Representation against			

	inquiry report		1	12
21-5-04	Punishment imposed	4	1	9

Total time taken to complete the inquiry. 9 years

From the above table it is seen that the inquiry report was finalized on 15.2.99 but it was communicated to the applicants only on 29.2.2000 after a lapse of about one year. Even then the applicants have made representations against the inquiry report on 12.4.2000, it took more than further four years for the Disciplinary Authority to act upon it and to impose the punishment. Now the question is whether the delay has caused any prejudice to the applicants. The penalty imposed in OA 476/04 and OA 478/04 is reduction by one stage in the time scale of pay for two years with cumulative effect. The penalty imposed in OA 477/04 is only stoppage of one increment for one year with cumulative effect. If the proceedings were finalized within a reasonable time in accordance with rules, the currency of the penalty would have expired long back. Since the respondents have taken nine long years to pass the penalty order of reduction of one stage in the time scale for two years, the result is that the applicants have to be denied any promotion for two more years from 21.5.2004 ie., from the date of commencement of the penalty order. Altogether the applicants will have to undergo the rigors of this punishment for 11 long years. As submitted by the applicants and not disputed by the respondents, many of the juniors of these applicants have since

been promoted to the next higher grades. Therefore, there is no doubt that the inordinate delay of nine years in passing the disciplinary authority's order has caused serious prejudice to the applicants. As already observed earlier in the case of State of AP Vs. N.Radhakrishnan (supra) the delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or there is proper explanation for the delay in conducting the disciplinary proceedings. This Tribunal in K.S.Subramanian (supra) has followed the dictum laid down by the Hon'ble Supreme Court in the case of State of A.P. Vs. N.Radhakrsihnan (supra). Neither the delay is attributable to the Applicants nor any satisfactory reasons are forthcoming from the respondents for such delay.

16 We are conscious of the fact that whenever the inquiry is found to be faulty, the best course open to the courts is to remit the matter to the disciplinary authority to follow the procedure properly from the stage at which the fault was pointed out and take action in accordance with law. (**State of Punjab and others Vs. Dr.Harbajan Singh Greasy (1996) 4 SLR 30**). The same position has been reiterated by the Hon'ble Supreme Court in the case of Canara Bank and others Vs. Debasis Das and others (supra), wherein it has been held as under:

> "Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are

left open. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated."

However, considering the facts of the present cases that the applicants have been subjected to the disciplinary proceedings for nine long years and thereafter another nearly two years before this Tribunal and the maximum penalty imposed was only reduction by one stage in the time scale of pay for two years with cumulative effect in OA 476/04 and 478/04 and stoppage of one increment for one year with cumulative effect in OA 477/04, we do not consider that it will be in the interest of justice to remand the case to the disciplinary authority to start the proceedings again from the stage of furnishing the Inquiry Reports.

17 We, therefore, quash and set aside the impugned order No.2/1/2/95-V.(ii) dated 21.5.2004 in OA 476/04, No.2/1/2/95-V (i) dated 21.5.2004 in OA 477/04, and No.2/1/2/95-V.(vi) dated 21.5.2004 in OA 478/2004. It goes without saying that the consequential benefits shall follow. The Respondents shall pass appropriate orders in respect of all the applicants within a period of three months from the date of receipt of this order. In the above circumstances, no order as to costs.

Dated this the 17th day of March, 2006

GEORGE PARACKEN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN

S.