CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 152 OF 2010
with
O.A. NO. 565 OF 2010

Wednesday, this the 4th day of May, 2011

CORAM:

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER

O.A.152/2010

C.G.Sugunan,
Superintendent of Central Excise,
Service Tax Division, ICE Building,
Press Club Road, Trivandrum-1. - Applicant

(By Advocate Mr Mr V.A.Shaji)

v.

1 Union of India represented by its
Secretary,
Ministry of Finance,
Department of Revenue,
Central Board of Excise & Customs,
New Delhi.

2. The Chief Commissioner of Central Excise & Customs,
Cochin Commissionerate, Cochin.

3. The Commissioner of Central Excise & Customs,
Cochin Commissionerate, Cochin-18. - Respondents

(By Advocate Mr A.D.Raveendra Prasad)

O.A.565/2010

Philip Sebastian,Superintendent of Central Excise & Customs,
O/o the Commissioner of Central Excise,
Cochin Commissionerate,
Cochin-682 018. - Applicant

(By Advocate Mr Shafik M.A.)

v.

1. Union of India represented by
the Under Secretary to Government of India,
Ministry of Finance, Department of Revenue,

Central Board of Customs & Excise, New Delhi.

2. The Commissioner of Central Excise & Customs,
Cochin Commissionerate, Cochin-18.

3. The Additional Commissioner,
O/o the Commissioner of Central Excise & Customs,
Calicut Commsisionerate, Calicut-1.

4. The Commissioner,
O/o the Central Excise & Customs,
Thiruvananthapuram-1.

5. The Chairman,
Union Public Service Commissioner,
New Delhi. - Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC

The application having been heard on 23.03.2011, the Tribunal on 4.5.2011...delivered the following:

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

Both the applicants in these Original Applications are aggrieved by the respective orders of the Disciplinary Authority and the Appellate Authority. Except for minor variations, the Article of charges levelled against both them and punishment awarded to them are quite identical. While the applicant in O.A 152/10 is a Superintendent of Central Excise, posted at Air Cargo Complex, Karipur (Calicut), the applicant in O.A 565/10 is an Inspector of Central Excise posted there itself and working under the former at the relevant time.

2. The Articles of charges against them are as under :-

Applicant in O.A.152/2010

Article I:- It appears that Sri C.G. Sugunan while working as Superintendent of Central Excise, Air Cargo Complex, Karipur failed to maintain devotion to duty by not ascertaining the correct quantity of goods and consequential erroneous valuation and thereby suppressing true fact. After open examination of the baggage of Sri. K. Abdulla and valued the goods at Rs. 11500/- as against the value of Rs. 2,41,750/-(CIF) as revalued and reported by D.R.I causing revenue loss to Govt. thus violating Rule 3(I) (ii) of the CCS (Conduct) Rules 1964.

Article II:- It appears that Sri. C.G. Sugunan while working as Supdt of Central Excise, Air Cargo Complex, Karipur failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant by allowing the passenger Sri. K. Abdulla to clear his goods in trade quantities in the guise of bonafide baggage and had approved the incorrect examination report prepared by the Inspector, and extended concessions envisaged under passenger Baggage Rules to the said passenger thus causing evasion of Customs duty and revenue loss to Govt thus violating Rules 3 (I) (ii) and (iii) of CCS (Conduct) Rules 1964.

Article III :- It appears that Sri. C.G. Sugunan while working as Superintendent at Air Cargo Complex, Karipur failed to maintain devotion to duty and acted in a manner unbecoming of Govt. servant by allowing the passenger Sri. K. Abdulla to clear some of his baggage without payment of duty in the guise of used personal effects whereas there was nothing fitting the description of "used personal effects" present in the baggage as per the re-examination report of DRI and had approved the incorrect examination report prepared by the Inspector and extended concession envisaged under passenger Baggage Rules thus violating Rule 3 (I) (ii) and (iii) of CCS (Conduct) Rules 1964 as is evident from the order-in-original No. 09/2004 dt. 20.10.04 passed by Additional Commissioner of Customs and Central Excise, Calicut from File C. No. VIII/10/05/2003 Cus Adj.

Article IV :- It appears that Sri. C.G. Sugunan while working as Superintendent of Central Excise, Air Cargo Complex, Karipur failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant by issuing an additional B.R. for Rs. 1500/- and allowed Shri Mohammed Kunhi @ Mayin to pay duty on behalf of the passenger after the goods were cleared on payment of duty and after interception of the cleared baggage by the DRI thus violating Rules 3(I) (ii) and (iii) of the CCS (Conduct) Rules 1964.

Article V :- It appears that Sri. C.G. Sugunan while working as Superintendent of Central Excise, Air Cargo Complex, Karipur failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant by alerting the entries in the BD No. 16054 to cover the additional BR issued and also entered incorrect BR numbers in the BD thus violating Rules 3(I) (ii) and (iii) of the CCS Conduct Rules 1964 as is evident from the order-in-original No. 09/2004 dt. 20.10.04 passed by Additional Commissioner of Customs and Central Excise, Calicut from file C. No. VIII/10/05/2003 Cus Adj.

Article VI :- It also appears that Sri. C.G. Sugunan while working as Superintendent of Central Excise, Air Cargo Complex, Karipur failed to have proper control and supervision over the functioning of the Inspector in the examination of the baggage of Sri. K. Abdulla leading to clearance of new goods in commercial quantities without payment of duty and without import license thus violating Rule 3 (2) (i) of the CCS (Conduct) Rules 1964 as is evident from the order-in-original no. 09/2004 dt. 20.10.04 passed by Additional

Commissioner of Customs and Central Excise, Calicut in File C. No. VIII/10/05/2003 Cus. Adj.

Applicant in O.A. 565/2010

Article I :- It appears that Sri. Philip Sebastian while working as Inspector of Central Excise, Air Cargo Complex, Karipur failed to maintain devotion to duty by not ascertaining the correct quantity of goods and consequential erroneous valuation and thereby suppressing true fact. After open examination of the baggage of Sri. K. Abdulla and valued the goods at Rs. 11,500/- as against the value of Rs. 2,41,750/- (CIF) as revalued and reported by D.R.I causing revenue loss to Govt. thus violating Rule 3(I) (ii) of the CCS (Conduct) Rules 1964.

Article II :- It appears that Sri. Philip Sebastian while working as Inspector of Central Excise Air Cargo Complex, Karipur failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant by allowing the passenger Sri. K. Abdulla to clear his goods in trade quantities in the guise of bonafide baggage and prepared an incorrect examination report, and extended concessions envisaged under passenger Baggage Rules to the said passenger thus causing evasion of Customs duty and revenue loss to Govt. thus violating Rules 3(I) (ii) and (iii) of CCS (Conduct) Rules 1964.

Article III :- It appears that Sri. Philip Sebastian while working as Inspector at Air Cargo Complex, Karipur failed to maintain devotion to duty and acted in a manner unbecoming of Govt. servant by allowing the passenger Sri. K. Abdulla to clear some of his baggage without payment of duty in the guise of used personal effects whereas there was nothing fitting the description of "used personal effects" present in the baggage as per the re-examination report of D.R.I and had prepared an incorrect examination report and extended concession envisaged under passenger Baggage Rules thus violating Rule 3(I) (ii) and (iii) of CCS (Conduct) Rules 1964 as it is evident from the order-in-original No. 09/2004 dt. 20.10.04 passed by Additional Commissioner of Customs and Central Excise, Calicut in File C. No. VIII/10/05/2003 Cus. Adj.

Article IV :- It appears that Sri. Philip Sebastian while working as Inspector of Central Excise, Air Cargo Complex, Karipur failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant by preparing an additional B.R. for Rs. 1500/- and allowed Shri. Mohammed Kunhi @ Mayin to pay duty on behalf of the passenger after the goods were cleared on payment of duty and after interception of the cleared baggage by the DRI thus violating Rules 3 (I) (ii) and (iii) of the CCS (Conduct) Rules 1964.

Article V :- Sri. Philip Sebastian while working as Inspector of Central Excise, Air Cargo Complex, Karipur failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant by alerting the entries in the BD No. 16054 to cover the additional BR issued and also entered incorrect BR numbers in the BD thus violating Rules 3 (I) (ii) and (iii) of the CCS Conduct Rules 1964 as is evident from the order-in-original No. 09/2004 dt. 20.10.04 passed by Additional Commissioner of Customs and Central Excise, Calicut in File C No. VIII/10/05/2003 Cus Adj.

3. Vide Annexure A-23 order dated 16.3.2005, a common departmental enquiry under sub rules 1(1) and (2) of Rule 18 of the CCS (Classification, Control and Appeal) Rules, 1965 (Rules, 1965 for short) was ordered against both applicants and after following the procedure prescribed in Rules 14 and 15 thereof, the Inquiry Officer, Shri G.A. Das, Assistant Commissioner of Customs, Air Cargo Complex, Shangumugham, Thiruvananthapuram, vide Annexure A-26 letter C. No. VIII/48/37/AC Misc/I/2005 dated 02.05.2006, submitted a very detailed common report holding that the first Article of Charge in both the cases was not proved and the remaining Articles of Charges were not sustainable.

4. Vide Annexure A-27 common letter No. II/IOA/4/2005 Vig.Cx. TVM/225 dated 16.05.06, copies of the aforesaid Inquiry Reports were furnished to the applicants as per Rule 15(2) of Rule 1965 and they were asked to make their representation, if any, within 15 days. Accordingly, the applicant in O.A. 152/10 submitted the Annexure A-28 representation dated 19.05.06 stating that his bonafide in the matter was proved, during the enquiry as the Inquiry Officer has held that the charges levelled against him were either not proved or not sustainable. He has reiterated that he did not do anything against the interest of revenue of the Department and he has always been fully loyal to it. He has also stated that out of the 32 years of his service in the department, he was on deputation to the Directorate of Revenue Intelligence at Trivandrum for more than 10 years and during the said period, on the basis of intelligence gathered

and specific information furnished by him, contraband gold and foreign currencies valued at several crores of rupees have been seized at Madras, Cochin, Trivandrum, New Delhi and Calicut airports/cargo complexes. Further, he submitted that he was bestowed with the "Presidential Award" for Specially Distinguished Record of Service on the occasion of the Republic Day 1989. Besides, the Hon'ble Minister of Finance, Government of India, has presented him Commendation Certificates during the years 1986, 1988 and 1991 for the excellent work done by him in the field of anti-smuggling. He has, therefore, requested the Disciplinary Authority to exonerate him from all the charges levelled against him. Similarly, the applicant in O.A 565/10 has also made Annexure A-9 representation dated 30.05.2006 pointing out that the Inquiry Report was absolutely factual and logical and the Inquiry Officer has correctly and categorically came to the conclusion that he was totally innocent as none of the charges levelled against him have been proved. He has also pointed out certain remarks in Para 19 of the report, which according to him, are contrary to the facts and evidences on record. Further, he has submitted that the allegation made in the Article III in his case that dutiable goods were cleared in the guise of used personal effects was in fact already incorporated in the Show Cause Notice issued by the Department to all the connected parties, including him but the Additional Commissioner of Central Excise who adjudicated the case, had omitted to mention anything about this aspect, in his quasi judicial Order-in-Original. He has, therefore, requested the Disciplinary Authority to exonerate him from all the charges levelled against him as they were found to be unfounded and uncorroborated by evidence.

5. Meanwhile, the Disciplinary Authority, vide its letter No.C.No.II/39/10/2003 Vig.Cx.Tvm. Dated 16.6.2006, has furnished a copy of the Inquiry Report to the Directorate General of Vigilance, Customs and Central

vide its letter dated 28.08.2006 (Annexure A-11 in O.A 565/10), held that the facts in the case clearly reflected lack of devotion to duty and non-application of mind by both the applicants. They have also held that the applicants were found not only negligent in performing their duty but also guilty of covering up their wrong doings. Thus, disagreeing with the report of the Inquiry Officer and the comments of the Disciplinary Authority, the CVO advised the respondents to impose major penalty on the applicants under intimation to them. Based on the said advice, the Disciplinary Authority communicated the non-acceptance of the Inquiry Officer's report to the applicants vide its letter dated 4.9.2006 they submitted their reply on 18.10.2006. Thereafter, the Disciplinary Authority, came to the following conclusions in respect of the applicant in O.A.152/2010:

"Article I: Partially sustained;
Article II: Sustained;
Article III: Not sustained;
Article IV: Sustained;
Article V: Not sustained; and
Article VI: Sustained."

The Disciplinary Authority has also held that there were sufficient grounds to impose any of the major penalties upon him. Similar conclusion was also arrived in the case of the applicant in O.A.565/2010. Therefore, vide separate orders dated 22.03.2007, the Disciplinary Authority imposed the impugned punishment of reduction by one stage in their pay scales. In the case of the applicant in O.A. 152/10, his pay was reduced by one stage from Rs.10750/- to Rs.10500/- in the time scale of pay of Rs.8000-275-13500 for a period of one year with effect from 01.03.2007 but modified later vide corrigendum dated 27.03.2007, making the reduction by one stage from Rs.10,750/- to Rs.10,475/-. It was further ordered that the applicant will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay. Similarly, the applicant in OA 565/10 was also imposed with a punishment of reduction of pay by one

stage from Rs. 9500/- to Rs. 9250/- in the time scale of Rs. 7500-250-12000 for a period of one year with effect from 01.03.2007.

6. Both the applicants have made the statutory appeals dated 04.05.2007 and dated 24.05.2007 respectively but the Appellate Authority rejected them and upheld the orders of Disciplinary Authority.

7. The applicants have challenged the aforesaid orders of the Disciplinary Authority as well as the Appellate Authority in these O.As on various grounds. The learned counsel for the applicant, Mr. Shafik M.A has argued that the Disciplinary Authority has issued the impugned orders without any application of mind but under duress as there was a direction from the Chief Vigilance Officer/Director General of Vigilance Customs and Central Excise to impose major penalty up on the applicants. He submitted that at the time of forwarding the copy of the enquiry report, the Disciplinary Authority did not have any disagreement with the same as there were no reasons for doing so. He has also submitted that it is evident from the Disciplinary Authority's order itself that he disagreed with the findings of the Inquiry officer only on the basis of the advice communicated to him by the Chief Vigilance Officer and therefore, the same is not sustainable.His further submission was that the impugned order was based on irrelevant material which could not have been taken into consideration as they were not furnished to the applicants nor they were given an opportunity to make their submissions against them. However, his main ground of attack against the impugned orders was the violation of the principles of natural justice by the Disciplinary Authority in following the mandatory provisions contained in Rule 15(2) of the CCS (CCA) Rules, 1965, which reads as under:-

> "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 Inquiring 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."

8. Shri Shafik has further argued that if the Disciplinary Authority had any disagreement with the findings of the Inquiry Officer, in consonance with the principles of natural justice, he should have communicated his tentative disagreement to the applicant at the time of forwarding the report itself and not as an after thought or as a result of the change of mind on the advice of any outsider. In this regard, he has relied upon the judgment of the Apex Court in **Punjab National Bank and others v. Kunj Behari Misra (1998) 7 SCC 84,** the operative part of which is as under:-

> "19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.
>
> 20. The aforesaid conclusion, which we have arrived at, is also in consonance with the underlying principle enunciated by this Court in the case of Institute of

Chartered Accountants (supra). While agreeing with the decision in Ram Kishan's case (supra), we are of the opinion that the contrary view expressed in S.S. Koshal and M.C. Saxena's cases (supra) do not lay down the correct law.

21. Both the respondents superannuated on 31st December, 1983. During the pendency of these appeals Misra died on 6th January, 1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings. We, therefore, do not issue any such directions and while dismissing these appeals we affirm the decisions of the High Court which had set aside the orders imposing penalty and had directed the appellants to release the retirement benefits to the respondents. There will, however, be no order as to costs."

9. Shri Shafik has also relied upon the judgment of the Hon'ble High Court of Kerala in **Thomas C.V. V K.S.E.B and others** [2008 ILR (2) 774], wherein the aforesaid judgment of **Punjab National Bank and others v. Kunj Behari Misra** has been relied upon. The Hon'ble High Court has held as under:-

"6. Judged in the light of the above principles, the action taken herein by the disciplinary authority is clearly vitiated. It is a well accepted principle of natural justice that no one shall be condemned unheard. In this case, he was exonerated of the charges by the enquiry officer. The petitioner was well in his rights to assume that no further liability could have been cast upon him. The disciplinary authority before choosing to issue Ext. P-4, did not issue any notice giving opportunity to the petitioner to object to the proposals on the non-acceptability of the enquiry report and also about the tentative conclusions arrived at by him to differ from the findings of the enquiry officer. This is a gross irregularity which vitiates the entire proceedings. As the petitioner was entitled to be given an opportunity at that stage, the show cause notice proposing punishment evidenced by Ext. P-4 does not stand scrutiny in the eye of law. A reading of Ext. P-4 will also show that it is not a case where the disciplinary authority has chosen to differ from the findings based on cogent materials. It is admitted even in the show cause notice that he was relieved consequent on his

transfer on 01.06.1984 on which date the inventory was not taken. The finding rendered is that he did not raise any complaint previously regarding the issue of materials made prior to 18.6.1984 and he had jointly signed the requisition with his successor. In fact, that is not the crucial aspect that should have been weighed with the disciplinary authority. Anyway, the matter need not be examined on the merits in detail in the light of the view I propose to take, as regards the violation of the principles of natural justice as evident from the proceedings.

7 The reasons stated in Exts. P-8 and P-10 are therefore without any legal authority and they are vitiated by non-observance of the principles of natural justice. When the orders suffer from the wise of arbitrariness and violation of principles of natural justice, the consequent action is liable to be set aside on that score. Since the petitioner has already retired from service on 31.5.2001, there is no scope for directing a remand of the matter for a reconsideration by the disciplinary authority also.

8 One more aspect is evident from the proceedings which may have an adverse impact on the same. In this case, the enquiry report is dated 1.4.1987. Ext. P-4 has been issued only on 17.3.1990, nearly three years thereafter. The modified show cause notice was issued only by Ext. P-6 dated 1-8-1994, still four years after the earlier one was issued. Therefore, there is long delay in finalising the disciplinary proceedings which also is an aspect which should be considered in the light of the view taken by this court and the Apex Court in various decisions. Reference in this connection will be of advantage to the decision of the Supreme Court in **P.V. Mahadevan v. MD, T.N. Housing Board** wherein it was held that "the protracted disciplinary enquiry against a Government employee should, therefore, be avoided not only in the interests of the Government employee but in the public interest and also in the interests of inspiring confidence in the mind of Government employee".

9 Therefore, O.P. No. 12562/1997 is allowed. Exts. P-8 and P-10 and all consequential orders issued therein are quashed. It is declared that the disciplinary proceedings taken against the petitioner are illegal and the punishment imposed on him consequently, are invalid.

10 In O.P No. 30476/2002 the petitioner is seeking a direction to compel the respondents to fix the petitioner's pension, gratuity and other benefits in the pay scale of Senior Superintendent. It is averred

that even though the punishment was imposed by the disciplinary authority, that too was kept in abeyance during the pendency of the appeal and in O.P. No. 12562/1997 there is an interim order in force throughout staying the proceedings. Meanwhile, he retired from service on 31.05.2001. The respondents have filed a statement wherein they have produced Annexure I, whereby on 7.11.2002 the Board has released an amount of Rs. 3,06,069 towards the DCRG, Commutation and arrears of pension, to the petitioner. Learned counsel for the petitioner points out that Exts. P-6 and P-7 will show that an amount of Rs. 1,79,341.75 has been withheld from the DCRG towards liability in view of the pendency of the orders of punishment issued against him and obviously due to the pendency of O.P. No. 12562/1997. Since the disciplinary proceedings have been quashed, the petitioner is entitled to be disbursed the said withheld amount. Learned counsel for the petitioner also points out that the retirement benefits already sanctioned to him, were only in the reverted cadre and not in the cadre of Senior Superintendent (NC) and therefore it will have to be worked out again.

11 Therefore, O.P. No. 30476/2002 is disposed of directing the respondents to recompute the retirement benefits including pension, gratuity and other benefits in the cadre of Senior Superintendent (NC) and also to disburse the benefits due to him along with the withheld amount of Rs. 1,79,341.35. The respondents are also directed to pass appropriate orders and disburse the amount legally due to him, within a period of two months from the date of receipt of a copy of this judgement."

10. As regards his contention that the Disciplinary Authority's order was without any application of mind and it was issued under duress, he relied upon the judgment of the Apex Court in **Nagaraj Shivarao Karjagi v. Syndicate Bank Head Office, Manipal and another** [AIR 1991 SC 1507] wherein it has been held that the Disciplinary Authority shall not be under the dictation of the Central Vigilance Commission. The operative part of the said judgment is as under :-

"19. The corresponding new bank referred to in Section 8 has been defined under Section 2(f) of the Act to mean a banking company specified in column 1 of the First Schedule of the Act and includes the Syndicate Bank. Section 8 empowers the Government to issue direction in regard to matters of policy but

there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different cases. The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. the authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise 589 their power and what punishment they should impose on the delinquent officer. (See: De Smith's Judicial Review of Administrative Action, Fourth Edition, p. 309). The impugned directive of the Ministry of Finance, is therefore, wholly without jurisdiction, and plainly contrary to the statutory Regulations governing disciplinary matters.

20. For the foregoing reasons, we allow the appeal and the writ petition quashing the directive issued by the Finance Ministry, Department of Economic Affairs, (Banking Division)dated 21 July 1984. We also issue a direction to the Chairman of the Syndicate Bank to withdraw the circular letters dated 27 July 1984 and 8 September 1986. We further set aside the impugned orders of the disciplinary authority and appellate authority with a direction to the former to dispose of the petitioner's case in accordance with law and in the light of the observation made.

21. The petitioner is entitled to costs which we quantify in both the cases at Rs. 15,000 which shall be paid by the Central Government."

11. Shri A.D. Raveendra Prasad, the learned ACGSC has argued on behalf of the respondents in O.A 152/10 and Shri Rajesh for Shri Sunil Jacob Jose, SCGSC on behalf of the respondents in 565/10. Shri Prasad has denied any violation of principles of natural justice in the entire disciplinary proceedings, as alleged by the applicants. He submitted that no prejudice has been caused to the applicants for not strictly following the procedures contained in Rule 15(2) of

CCS (CCA) Rules, 1965. He has further submitted that there was no miscarriage of justice in both the cases and, therefore, the orders of the Disciplinary Authority as well as the Appellate Authority cannot be automatically set aside.

12. In support of his aforesaid arguments, learned ACGSC has relied upon the judgment of the Apex Court in **Renjith Singh v. Union of India 2006 4 SCC 153** in which the Apex Court held as under :-

> " 22 . In Punjab National Bank and Others v. Kunj Behari Misra [(1998) 7 SCC 84], this Court has clearly held that the principles of natural justice are required to be complied with by the Disciplinary Authority in the event he intends to differ with the findings of the Enquiry Officer observing:
>
> > "The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

13. He has also relied upon the judgment of the Apex Court in **Haryana Financial Corporation and Another v. Kailash Chandra Ahuja (2008) 9 SCC**

31, wherein the Apex Court has followed the principles laid down in **Renjith Singh**'s case (supra) and held as under:-

> "47. From the aforesaid decisions, it is clear that though supply of report of Inquiry Officer is part and parcel of natural justice and must be furnished to the delinquent-employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show `prejudice'. Unless he is able to show that non-supply of report of the Inquiry Officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent-employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down.
>
> 48. In the instant case, no finding has been recorded by the High Court that prejudice had been caused to the delinquent-employee-writ-petitioner. According to the High Court, such prejudice is `writ large'. In our view, the above observation and conclusion is not in consonance with the decisions referred to above, including a decision of the Constitution Bench in B. Karunakar. The view of the High Court, hence, cannot be upheld. The impugned order, therefore, deserves to be set aside and is accordingly set aside.
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> 49. Since the High Court has not considered the second question, namely, whether failure to supply the report of the Inquiry Officer had or had not resulted in prejudice to the delinquent employee, ends of justice would be met with if we remit the matter to the High Court to decide the said question.
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> 50. For the foregoing reasons, the appeal deserves to be allowed and is accordingly allowed with the above observations. On the facts and in the circumstances of the case,however, there shall be no order as to costs.

14. We have heard the learned counsel for the parties. We have given our anxious consideration to the facts and circumstances of these cases and the law

laid by the Apex court in the aforesaid cases. We have also perused the department's file containing the enquiry proceedings. The Disciplinary Authority was in fact "in agreement with the Enquiry Officer's Report". Since it had no disagreement with the findings of the Inquiry Officer, it also did not record its own tentative reasons for disagreement as required under Rule 15(2) of CCS (CCA) Rules, 1965 while forwarding copies of the enquiry report to the Applicants. Even while forwarding the copy of the CVO's advice vide Annexure A-30 letter dated 4.9.2006 (O.A.152/2010) the Disciplinary Authority did not record any note of disagreement with the findings of the Inquiry Officer. Since the Inquiry Report was in their favour, the applicants have made their representation only to the extent of requesting the Disciplinary Authority to exonerate them from the charges and also to correct certain factual errors in the Inquiry Report. It was only after the receipt of the direction from the Chief Vigilance Officer of the Department that the Disciplinary Authority has changed his mind. Even then, the Disciplinary Authority has not formed his tentative disagreement and communicated to the applicants to submit their representations, if any, and issued impugned orders imposing the penalty upon the applicants. Of course, as held by the Apex Court in **Sunil Kumar Banerjee v. State of West Bengal** [1980(3) SCC 304], if the Disciplinary Authority had arrived at its own conclusions on the material available to it, its findings and decisions cannot be said to be tainted with any illegality merely because the disciplinary authority consulted the Vigilance concurrence and obtained its views on the very same material. But in this case, the conclusion of the Disciplinary Authority is purely based on the dictation of the Chief Vigilance Officer of the Department to impose major penalty on the applicants. Therefore, it is seen that the decision of the Disciplinary Authority was not arrived at independently, on the basis of the charges, the relevant material placed before the Inquiry Officer in support of the charges and the defence of the delinquent officers. As held by

the Apex Court in the case of **Nagraj Shivrao Karjogi** (supra), and relied upon by the learned counsel for the applicants, the Disciplinary Authority cannot act under the dictation of the Vigilance Officer.

15. In the above facts and circumstances of the case both these O.As succeed and respective orders of the Disciplinary Authority as well as the Appellate Authority are quashed and set aside. Consequently, the respondents are directed to restore the pay of the applicants with effect from 1.3.2007 and to issue necessary orders accordingly within a period of thirty days from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated, the 4th day of May, 2011.)

K. NOORJEHAN
ADMINISTRATIVE MEMBER

GEORGE PARACKEN
JUDICIAL MEMBER

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