CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION : 10.11.1989

P R E S E N T

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

C.A Sudhakaran O.A-6/89 .. Applicant

v.

1. Head Record Officer,
   RMS 'EK' Division, Cochin-16.
2. Senior Superintendent of RMS,
   RMS 'EK' Division, Cochin.
3. Postmaster General,
   Kerala Circle, Trivandrum.
4. Union of India,
   represented by its Secretary,
   Ministry of Communications, New Delhi.
5. V.Krishnankutty(Inquiry Authority),
   Assistant Superintendent of RMS,
   Cochin Sorting Air/3, Cochin. .. Respondents

M/s.OV Radhakrishnan, K.Radhamani Amma,
Raju K.Mathews & P.O.Jnanasekaran .. Counsel for the applicant

Mr.P.Santhalingam, ACGSC .. Counsel for the respondents

O R D E R

Shri S.P Mukerji, Vice-Chairman

In this application dated 2nd January, 1989 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Extra Departmental Mailman(EDMM) under the Senior Superintendent of RMS at Cochin has prayed that the impugned orders 10.3.1987 (Ext.A-3) removing him from service, the Inquiry Report at Ext.A-4 establishing the charge, the appellate order dated 29.2.1988 (Ext A-6) rejecting the appeal and the order on revision petition at Ext A-8 upholding the penalty should be set aside with all consequential benefits including arrears of pay and allowances and reinstatement. The brief facts of the case are as follows.

2. While working as an EDMM the applicant was put off duty on 26.3.86 and the charge-sheet dated 29.5.86 was

..2..

served on on 2.6.86. He pleaded innocence and an enquiry was conducted between 19.8.86 and 11.12.86. The enquiry report establishing the charge was submitted on 27.1.87 and the disciplinary authority passed the order of removal on 10.3.87. His appeal and the revision petition were rejected on 29.2.88 and 28.9.88 respectively. The charge against him was that on 7.3.86 while he was working as Mailman at Cochin Sorting Station he was sent to Ernakulam College Post Office for replenishing the postage stamps. By mistake an extra sheet of 70 stamps of Rs.2 /- denomination was mistakenly given to him for which no payment was made by him. As soon as the shortage of the sheet was detected the Counter Clerk Smt Suseela came personally to the Cochin Sorting Air Station and reported the excess sheet of stamps having been given to the applicant. The applicant denied having received the excess stamps but when an enquiry was made from the stamp vendor at Cochin Sorting Station, the vendor stated that the applicant had tendered 70 postage stamps of Rs.2/- denomination and asked her for payment and that she paid Rs.140/- to the applicant. The applicant admitted that he had sold 70 postage stamps for Rs.140/-, but explained that he had found the sheet of 70 postage stamps lying outside the counter of Ernakulam College Post Office. The following charge was framed against him:-

"Statement of Article of charge

Article-I: That the said Shri C.A Sudhakaran ED Mailman, Cochin Sorting Air, Cochin-682 035 while working in place of Mailman in a temporary vacancy exchanged 70 postage stamps of Rs.2/-(Rupees two) denomination with the ED stamp vendor of Cochin Soring Air/2 on 15.3.1986 and received Rs.140/- as the value thereof. This stamps have come to his possession as excess stamps on 7.3.1986 when he went for replenishing the stamps of Cochin Sorting Air/2 from Ernakulam College P.O. Shri C.A Sudhakaran therefore failed to maintain absolute integrity and devotion to duty and thus violated Rule 17 of the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964."

The applicant denied the charge and an enquiry was conducted in which the applicant participated. Six witnesses on behalf of the prosecution and two on behalf of the applicant appeared. The Presenting Officer submitted the written brief with a copy to the applicant who in spite of an extended time for submission of written brief sent it to be received late on 27.1.87 on which date itself the enquiry report was finalised without considering the written brief. The written brief which was returned to the applicant was sent by the applicant to the disciplinary authority, who however passed the punishment order after considering the written brief also. The applicant has challenged the order of punishment on the ground that one of the two documents asked for by him for production during the enquiry, i.e, stamp indents was not made available to him, that the written brief submitted by him was not taken into account by the Enquiry Officer, that the appellate authority did not consider the various contentions raised by him in the appeal and that the revision petition was also disposed of by a non-speaking order. He has stated that there is no evidence to establish his guilt and the penalty of removal is disproportionately harsh.

3. The respondents have stated that the stamp indents could not be produced as the same was not readily available but the applicant did not raise this demand as an issue at the enquiry stage or the appeal stage. They have also indicated that the shortage of stamps was noticed only at the closing of the stamp sale and the entries about the indents would have served no purpose. The other documents had been produced for his inspection and the applicant could have taken extracts from the documents. They have also argued that these documents had lost their significance because of the applicant's admission

during the enquiry that the stamps worth Rs.140/- were in excess with him. This was also the shortage in the Post Office.

4. About the facts of the case, the repondents have stated that even though the applicant was not caught red handed on the spot, the evidence adduced before the Enquiry Officer amply proved the guilt of the applicant. There was shortage of 70 postage stamps of Rs.2/- denomination detected on 7.3.1986 at Ernakulam College Post Office. On that very day the applicant had purchased stamps in lot from that Post Office for the Cochin Sorting Unit. Officials of Ernakulam College Post Office on that day enquired with Cochin Sorting Unit whether stamps were received in excess. The applicant was not available then and the Treasurer made good the shortage from his own pocket. After a week the applicant presented 70 postage stamps of Rs.2/-denomination to the stamp vendor of Cochin Sorting Unit and exchanged the same for the value of Rs.140/-. This is admitted by the Extra Departmental stamp vendor who was even offered a tip by the applicant. When the applicant knew that some enquiry is going to be held, he sent his "emissaries" to the Ernakulam College Post Office with money to settle the case. The version of the applicant that he got the stamp sheet from the premises of Ernakulam College Post Office is unbelievable. Thus the guilt of the applicant was clearly established. They have argued that in accordanc with Rule 17 of the Extra Departmental Agents (Conduct and Service) Rules 1964 every employee shall at all times maintain absolute integrity and devotion to duty. According to them an employee of doubtful integrity cannot be retained in service and the penalty is proportionate to the gravity of the offence.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully.

It is fully established that there was a shortage of 70 postage stamps of Rs.2/- denomination at the Ernakulam College Post Office on 7.3.86 when the applicant had purchased stamps in bulk for replenishing the stamps at the Cochin Sorting Unit. The treasurer from Ernakulam College Post Office had gone on that very day to the Cochin Sorting Unit to enquire whether there was any excess stamps received at the Cochin Sorting Unit. The Treasurer had to make good the shortage. The only question is whether the applicant can be reasonably presumed to be involved in this shortage. The Treasurer of Ernakulam College Post Office Smt.Suseela deposed before the Enquiry Officer that she had issued stamps on 7.3.86 only to the applicant of Cochin Sorting Unit. She also deposed that on 7.3.86 itself she detected the shortage of stamps worth Rs.140/- and informed the Sub Post Master immediately and that she made good the shortage of Rs.140/-. She also deposed that after closing the Post Office on 7.3.86 she went to the Cochin Sorting Unit to meet the applicant, but he was not available and therefore she informed the position to the Officer Incharge there.

6. During the self examination the applicant deposed that one sheet of stamps of Rs.2/- denomination which he had exchanged at Cochin Air Sorting Unit on 15.3.86 for cash had been found by him from the waste papers lying in front of the Ernakulam College P.O where the cycles are kept, that he noticed the sheet of stamps in folded condition when he went to take up the cycle to return to the office after purchasing the stamps from the Post Office, that he kept it with him for 4 or 5 days, that the stamps were genuine, that he did not think that it was part of post office stamps. He had also deposed during the examinat-

ion in chief that he had kept the stamps with him for 4 or 5 days and it was on 15.3.86 that he exchanged the stamps for cash at the Cochin Air Unit. The stamp vendor also in the examination in chief deposed that the applicant had told her at the time of exchange of stamps with cash that the sheet of stamps was received from Ernakulam College P.O. The applicant admitted in reply to a specific question from the Enquiry Officer that he had not informed the Sub Post Master or the HSA about the extra sheet of stamps found by him. Keeping the entire conspectus of facts and circumstances in view we have no doubt at all that the applicant had received the extra sheet of stamps worth Rs.140/- and without reporting the matter to his superiors he sold the same to the stamp vendor for his own personal monetary benefit. His admission that he found the extra sheet of stamps of Rs.2/- denomination and that he sold the same for Rs.140/- cannot make us accept the plea that the punishment order was based on no evidence. According to the defence witnesses they had approached the Sub Post Master, Ernakulam College Post Office on 19.3.86 to settle the issue unofficially by offering Rs.140/- which had been entrusted to them by the applicant. In this context non-production of the stamp indents asked for by the applicant does not, to our mind, vitiate the finding after enquiry proceedings. The applicant had himself indicated to the Enquiry Officer that there was no objection to carry out the examination of prosecution witnesses though the list of additional documents required by him had not been submitted by him. Since the witnesses were examined with his consent and the list of additional documents was submitted after the examination of 3 witnesses, the applicant cannot raise the plea of non-production of stamp indents being fatal to the enquiry proceedings.

7. As regards the written brief of the applicant not being considered by the Enquiry Officer we feel that in the circumstances of the case and the admission of the applicant as discussed above, consideration of the written brief submitted by the applicant belatedly does not vitiate the findings of the Enquiry Officer. It has been stated by the disciplinary authority specifically in the impugned order of punishment at Ext A-3 that he had carefully gone through the enquiry report, other connected documents including the written brief submitted by the defence. Thus the punishment order cannot be said to be without consideration of the written brief. We have also gone through the appellate order at Ext A-6 and final order at Ext A-8 and are satisfied that these authorities had exercised their mind in disposing of the appeal and the representation of the applicant. As regards the quantum of punishment, it has been held by the Supreme Court in Union of India v. Parmanand, 1989(10) ATC 30 that this Tribunal has ordinarily no power to interfere with punishment awarded by competent authority in departmental proceedings on ground of the penalty being excessive or disproportionate to the misconduct proved, if the punishment is based on evidence and is not arbitrary, malafide or perverse. Since in the instant case before us we hold that the punishment is based on evidence and is not arbitrary or malafide or perverse, we refrain from considering the propriety of the quantum of punishment.

8. In the facts and circumstances we see no merit in the application and dismiss the same without costs.

10/11/89

(N.DHARMADAN)
JUDICIAL MEMBER

10.XI.89

(S.P MUKERJI)
VICE CHAIRMAN

n.j.j

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 26.2.1990

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

R.A. No. 78/89 in
O. A. No. 6/89

C. A. Sudhakaran — Review Applicant

Vs.

1. Head Record Officer,
RMS 'EK' Division,
Cochin-16

2. Senior Supdt. of RMS,
RMS 'EK' Division,
Cochin,

3. Postmaster General,
Kerala Circle, Trivandrum,

4. Union of India represented by
Secretary, Ministry of Communications
New Delhi and

5. V. Krishnankutty (Inquiry Authority)
Assistant Supdt. of RMS,
Cochin Sorting Air/3, Cochin — Respondents

Mr. O. V. Radhakrishnan — Counsel for the applicant

Mr. P. Santhalingam, ACGSC — Counsel for respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicant in this review application seeks to review the judgment dated 10.11.1989 in O.A. 6/89 on the ground that there are errors apparent on the face of record.

2. According to the applicant he was not given a copy of the enquiry report before Annexure-III order removing him from service and this is a procedural illegality as found by a Full Bench of the Central Administrative Tribunal (Bombay Bench) in Premnath K. Sharma V. Union of India (1988 6 A.T.C. 904). Though this decision was brought to the notice of the Tribunal at the time of the hearing, it was omitted to be considered and it passed the judgment dismissing the Original Application. This is an error apparent on the face of the records in that it does not deal with the most important contention of the applicant raised in the O.A. and argued at the time of hearing.

3. We have heard the arguments of the learned counsel of both the parties. This is a case where the authorities have decided the question of guilt of the applicant in the disciplinary proceedings placing reliance on the admission made by the applicant. In such a case how far the failure of the authorities in supplying the copy of the enquiry report in the light of the principles laid down by the Full Bench in Premnath K. Sharma's case is a matter which requires consideration. This aspect was not considered in the aforesaid judgment passed by us on 10.11.89. Hence in the interest of justice we feel that that the applicant's contention requires a further consideration. Accordingly, we feel that the decision rendered in this case is to be vacated and the case should be heard afresh.

..

4. In the result, we recall our judgment dated 10.11.89 in O.A. 6/89 and vacate the judgment. The case will be heard de novo on 16.3.90. The parties may be informed accordingly.

26.2.90

(N. Dharmadan)
Judicial Member

26/2/90

(S. P. Mukerji)
Vice Chairman

kmn

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 6/89 ~~XXX~~

DATE OF DECISION 18.6.90

C.A. Sudhakaran — Applicant (s)

M/s O.V.Radhakrishnan, K.Radhamani Amma, Raju K Mathew and P.P.Jnanasekharan. — Advocate for the Applicant (s)

Versus

Head Record Officer, RMS and others — Respondent (s)

P.Sankarankutty Nair,ACGSC (R.1 to 4) — Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. N.Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 2nd January, 1989 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Extra Departmental Mailman (EDMM) under the Senior Superintendent of RMS at Cochin has prayed that the impugned orders 10.3.1987 (Ext.A-3) removing him from service, the Inquiry Report at Ext.A-4 establishing the charge, the appellate order dated 29.2.1988 (Ext.A-6) rejecting the appeal and the order on revision petition at Ext.A-8 upholding the penalty should be set

...2

aside with all consequential benefits including arrears of pay and allowances and reinstatement. The brief facts of the case are as follows.

2. While working as an EDMM the applicant was put off duty on 26.3.86 and the charge-sheet dated 29.5.86 was served on 2.6.86. He pleaded innocence and an enquiry was conducted between 19.8.86 and 11.12.86. The enquiry report establishing the charge was submitted on 27.1.87 and the disciplinary authority passed the order of removal on 10.3.87. His appeal and the revision petition were rejected on 29.2.88 and 28.9.88 respectively. The charge against him was that on 7.3.86 while he was working as Mailman at Cochin Sorting Station he was sent to Ernakulam College Post Office for replenishing the postage stamps. By mistake an extra sheet of 70 stamps of Rs.2/- denomination was mistakenly given to him for which no payment was made by him. As soon as the shortage of the sheet was detected the Counter Clerk Smt. Suseela came personally to the Cochin Sorting Air Station and reported the excess sheet of stamps having been given to the applicant. The applicant denied having received the excess stamps but when an enquiry was made from the stamp vendor at Cochin Sorting Station, the vendor stated that the applicant had tendered

70 postage stamps of Rs.2/- denomination and asked her for payment and that she paid Rs. 140/- to the applicant. The applicant submitted that he had sold 70 postage stamps for Rs.140/-, but explained that he had found the sheet of 70 postage stamps lying outside the counter of Ernakulam College Post Office. The following charge was framed against him:-

"Statement of Article of charge:

Article-I: That the said Shri C.A.Sudhakaran ED Mailman, Cochin Sorting Air, Cochin-682 035 while working in place of Mailman in a temporary vacancy exchanged 70 postage stamps of Rs.2/- (Rupees two) denomination with the ED stamp vendor of Cochin Sorting Air/2 on 15.3.1986 and received Rs. 140/- as the value thereof. This stamps have come to his possession as excess stamps on 7.,3.1986 when he went for replenishing the stamps of Cochin Sorting Air/2 from Ernakulam College P.O. Shri C.A.Sudhakaran therefore failed to maintain absolute integrity and devotion to duty and thus violated Rule 17 of the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964."

The applicant denied the charge and an enquiry was conducted in which the applicant participated. Six witnesses on behalf of the prosecution and two on behalf of the applicant appeared. The Presenting Officer submitted the written brief with a copy to the applicant who in spite of an extended time for submission of written brief sent it late to be received on 27.1.87 on which date itself the enquiry report was finalised without considering the written brief also. The applicant has challenged the

....4

order of punishment on the ground that one of the two documents asked for by him for production during the enquiry, i.e., stamp indents was not made available to him, that the written brief submitted by him was not taken into account by the Enquiry Officer, that the appellate authority did not consider the various contentions raised by him in the appeal and that the revision petition was also disposed of by a non-speaking order. He has stated that there is no evidence to establish his guilt and the penalty of removal is disproportionately harsh.

3. The respondents have stated that the stamp indents could not be produced as the same was not readily available but the applicant did not raise this demand as an issue at the inquiry stage or the appeal stage. They have also indicated that the shortage of stamps was noticed only at the closing of the stamp sale and the entries about the indents would have served no purpose. The other documents had been produced for his inspection and the applicant could have taken extracts from the documents. They have also argued that these documents had lost their significance because of the applicant's admission during the enquiry that the stamps worth Rs.140/-

were in excess with him. This was also the shortage in the Post Office.

4. About the facts of the case, the respondents have stated that even though the applicant was not caught red handed on the spot, the evidence adduced before the Enquiry Officer amply proved the guilt of the applicant. There was shortage of 70 postage stamps of Rs.2/- denomination detected on 7.3.1986 at Ernakulam College Post Office. On that very day the applicant had purchased stamps in lot from that Post Office for the Cochin Sorting Unit. Officials of Ernakulam College Post Office on that day enquired with Cochin Sorting Unit whether stamps were received in excess. The applicant was not available then and the Treasurer made good the shortage from her own pocket. After a week the applicant presented 70 postage stamps of Rs.2/- denomination to the stamp vendor of Cochin Sorting Unit and exchanged the same for the value of Rs. 140/-. This is admitted by the Extra Departmental Stamp Vendor who was even offered a tip by the applicant. When the applicant knew that some enquiry is going to be held, he sent his "emissaries" to the Ernakulam College Post Office with money to settle the case. The version of the applicant that he got the stamp sheet from the premises

of Ernakulam College Post Office is unbelievable. Thus the guilt of the applicant was clearly established. They have argued that in accordance with Rule 17 of the Extra Departmental Agents (Conduct and Service) Rules 1964 every employee shall at all times maintain absolute integrity and devotion to duty. According to them an employee of doubtful integrity cannot be retained in service and the penalty is proportionate to the gravity of the offence.

5. This case was heard in detail and we had delivered a Judgment on 10.11.1989 dismissing the application. The applicant sought review of the judgment mainly on the ground that he was not given a copy of the Enquiry Report before Annexure-III order removing him from service was passed and this procedure was found to be illegal by a Full Bench of the Central Administrative Tribunal in Premnath K Sharma Vs. Union of India, 1988(6) ATC 904. The applicant's contention was that though this decision was brought to the notice of the Tribunal at the time of hearing, our judgment dated 10.11.89 did not cover that limb of the argument. The Review Application was allowed and we recalled our judgment dated 10.11.89 through our order dated 26.2.90 on the Review Application. We

felt that the respondents have decided the question of guilt of the applicant in the disciplinary proceedings placing reliance on admission made by the applicant and the question whether in such a circumstance the principles laid down by the Full Bench in Premnath K. Sharma's case would apply required consideration.

6. We have heard the arguments of the learned counsel for both the parties again. The learned counsel for the respondents indicated that the judgment of the Full Bench of the Tribunal in Premnath K. Sharma's case had been stayed by the Hon'ble Supreme Court by its order dated 11.3.88 in C.A.No.839/88 in Union of India Vs. Premnath K.Sharma. The question is whether by the staying of the judgment of the Full Bench, the binding nature of that judgment is extinquished or not. In Roshan Jagdish Lal Duggal and others Vs. The Punjab State Electricity Board, Patiala and others, 1984 (2)SLR 731 the High Court of Punjab and Haryana indicated that even where the High Courts order had been stayed by the Supreme Court in appeal, the order of the High Court has still to be treated as binding precedent and the pendency of appeal and suspension of the judgment does not render that judgment non est.

A similar view was expressed by the High Court of Delhi in Jagmohan Vs. The State, 1980 Cr.L.J. 742. It was observed by the Delhi High Court that "the judgment of the High Court is binding unless and until it is set aside by the Supreme Court and mere pendency of the appeal does not take away its binding force. The learned Magistrate should be cautious in future." The Hon'ble Supreme Court itself in a similar vein observed in Supreme Court Employees Welfare Association Vs. Union of India and others, 1990 Lab. I.C. 324 that where an SLP was dismissed without reason by the Supreme Court, there was no declaration of law. In the above circumstances we find that the decision of the Larger Bench in Premnath K Sharma's case is still binding on this Bench of the Tribunal. We are fortified in adhering to the ruling given by the Larger Bench of the Tribunal further, by the Judgment of the Supreme Court in State of Maharashtra Vs. Baishankar Avalram Joshi and another, AIR 1969 SC 1302. In that case the Hon'ble Supreme Court upheld the decision of the High Court that the failure on the part of the competent authority to provide the delinquent officer with a copy of the report of the Enquiry Officer before the

...9

order of punishment was passed amounted to denial of reasonable opportunity contemplated in Article 311(2) of the Constitution. The Hon'ble Supreme Court observed as follows:

> "It is true that the question whether reasonable opportunity has or has not been afforded to the Government servant must depend on the facts of each case, but it would be in very rare cases indeed in which it could be said that the Government servant is not prejudiced by the non-supply of the report of the Enquiry Officer."

The same question came up before the Hon'ble Supreme Court in Union of India Vs. E. Bashyan, ATR 1989(1) SC 50. In that case the Supreme Court observed that amendment of Article 311(2) of the Constitution dispensing with the notice regarding quantum of penalty proposed to be imposed did not do away with the grant of reasonable opportunity compatable with principles of natural justice. It was observed further that before the disciplinary authority makes up its mind about guilt of the delinquent officer, failure to furnish the report of the Enquiry Officer to the delinquent deprives him of crucial and critical material to defend himself. Even though the Division Bench of the Hon'ble Supreme Court in that case referred the matter to the Larger Bench, they expressed themselves in no uncertain terms in support of the principle which was adumbrated by the Larger Bench of this Tribunal. The

following extracts from the Judgment of the Hon'ble Supreme Court in Bashyan's case will be pertinent:

> "If the report is not made avaialble to the delinquent, this crucial material which enters into the consideration of the Disciplinary Authority never comes to be known to the delinquent and he gets no opportunity whatsoever to have a say in regard to this critical material at any point of time till the Disciplinary Authority holds him guilty or condemns him. Such would be the consequence even if the Enquiry Officer has found him to be blameless and recommended his exoneration in case the Disciplinary Authority has disagreed with the Enquiry Report. There can be glaring errors and omissions in the report. Or it may have been based on no evidence or rendered in disregard of or by overlooking evidence. Even so, the delinquent will have no opportunity to point out to the Disciplinary Authority about such errors and omissions and disabuse the mind of the Disciplinary Authority before the axe falls on him and he is punished. It appears to us to be a startling proposition to advance that the only authority which really and actually holds him guilty need not afford any opportunity to the person against whom such finding of guilt is recorded and the material on which he acts.
>
> (emphasis added)

7. As regards the question that since the respondents in the case before us established the guilt of the applicant on the basis of his admission, the question of vioaltion of natural justice by not making the copy of the Enquiry Report available to him before the order of punishment was passed, should not arise, we are not able to accept this contention. Expatiating on the principles of natural justice the Hon'ble Supreme Court in Management of M/s M.S.Nally Bharat Engineering Co.Ltd Vs. State of Bihar and others, 1990(2) SCC 48, recently observed as follows:

> "25. The management need not establish paricular prejudice for want of such opportunity. In S.L.Kapoor Vs. Jagmohan Chinnappa Reddy J., after referring to the observation of Donaldson J., in Altco Ltd. Vs. Sutherland said that the concept that justice must not only be done but be seen to be done is basic to our system and it is concerned not with a case of actual injustice but with the appearance of injustice or possible injustice. It was emphasized that the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary".

(empahsis added)

From the above it is clear that even where on an admission or by analysis of facts the guilt of the delinquent official is palpably established the non-observance of the principles of natural justice procedurally, would vitiate the finding of guilt.

8. We are also not impressed by the argument of the learned counsel for the respondents that this question had not been taken up by the applicant earlier in the departmental appeal. It is now established law that the question of pure law can be taken up at any stage of litigation be it in the court of last resort. In Chitoori Subbanna Vs. Kudappa Subbanna and others, AIR 1965 SC Page 1325, it was held that an additional plea on question of pure law can be allowed for the first time in grounds of appeal or even as an additional ground

on a later stage at the discretion of appellate and higher courts. In V.B.Kalingarayar Vs. Rajam, AIR 1978 Madras 192, it was held that an issue which is one of law and is self-evident from records can be taken up at the appellate stage even though it did not figure in the original claim. The ratio of these rulings also persuade us to feel that the plea taken by the learned counsel for the applicant about the violation of principle of natural justice cannot be brushed aside.

9. In the conspectus of facts and circumstances we allow this application to the extent of setting aside the impugned order dated 10.3.87 (Exbt.A.3), the Appellate Order dated 29.2.88 (Exbt.A.6) and the order of the Post Master General dated Sept. 28, 1988 (Exbt.A.8) and direct that the applicant should be deemed to be on put off duty from the date of his removal and the disciplinary proceedings be continued from the date of submission of the Enquiry Report. The applicant should give his defence against the findings of the Enquiry Officer in that report within a period of one month from the date of communication of this order and the Disciplinary Authority should

...13

pass orders on the Enquiry Report after taking into consideration the defence adduced by the applicant. The Disciplinary Authority should pass final orders within a period of two months from the date of receipt of the defence of the applicant. In the circumstances, there will be no order as to costs.

18.6.90

(S.P. MUKERJI)
VICE CHAIRMAN

18.6.90

Ksn.

HON'BLE SHRI N.DHARMADAN,JUDICIAL MEMBER

I have gone through the judgment and I agree with the conclusion arrived at by my learned brother, Hon'ble Vice-Chairman. But I would like to give my own reasons for supporting the conclusion.

2. This is a case of disciplinary proceeding initiated against the applicant on the basis of a charge of failure to maintain absolute integrity and devotion to duty while working as a temporary Mailman in the Postal Service. It was originally heard and dismissed by us on 10.11.89 giving due weight to the admission of guilt. The admission of the applicant has been recorded by us in the following manner:-

> " The applicant admitted in reply to a specific question from the Enquiry Officer that he had not informed the Sub Post Master or the HSA about the extra sheet of stamps found by him. Keeping the entire conspectus of facts and circumstances in view we have no doubt at all that the applicant had received the extra sheet of stamps worth Rs.140/- and without reporting the matter to his superiors he sold the same to the stamp vendor for his own personal monetary benefit. His admission that he found the extra sheet of stamps of Rs.2/- denomination and that he sold the same for Rs.140/- cannot make us accept the plea that the punishment order was based on no evidence."

3. Thereafter he filed R.A 78/89 for reopening the judgment on the ground that the Larger Bench decision of the Central Administrative Tribunal, Bombay Bench in Premnath K.Sharma vs. Union of India,1988(6) ATC 904, though cited, was not considered in the judgment. R.A was allowed with the following observation:-

> " This is a case where the authorities have decided the question of guilt of the applicant in the disciplinary proceedings placing reliance on the admission made by the applicant. In such a case how far the failure of the authorities in supplying the copy of the enquiry report in the light of the principles laid down by the Full Bench in Premnath K. Sharma's case is a matter which requires consideration. This aspect was not considered in the aforesaid judgment passed by us on 10.11.89. Hence in the interest of justice we feel that the applicant's contention requires a further consideration".

4. Under these circumstances the pertinent question to be considered on the facts and circumstances of this case is as to how far the applicant is prejudiced by the failure of serving a copy of the enquiry report before imposing the penalty.

5. In a case of apparent admission of guilt by the delinquent employee no useful purpose would be served by giving a copy of the enquiry report finding him guilty. Mere hearing him over again on the matter after serving the report would not improve his case. This is one of the rare cases, indicated by the Supreme Court in the decision reported in State of Maharashtra vs. Bhaishankar Avalram Joshi and another, AIR 1969 SC 1302, in which it was stated that "that the Government servant is not prejudiced by the non-supply of the report of the Enquiry Officer" and there is no violation of principles of natural justice.

6. I am of the view that the Court or the Tribunal will not issue futile directions or writs if such Court or the Tribunal is fully satisfied that no useful purpose would be served by doing so. The

Supreme Court in S.L Kapoor vs. Jagmohan and others, AIR 1981 SC 136 considering a similar situation vis-a-vis the question of violation of the principles of natural justice held as follows:-

> "In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs".

The Division Bench of the Kerala High Court in Super Rubbers (P) Ltd and others v. State of Kerala and another, 1972 K.L.T 989, also has taken the same view:-

> "Anyway, even as regards administrative orders to which application of rules of natural justice is not excluded as no court would indulge in exercise in futility or in other words as no court would act in vain, unless the aggrieved party satisfies the court that if notice had been given to him or he had been heard he would have impressed on the concerned authority that no order against him could have been passed, the court would not interfere".

7. Regarding the general issue of giving a copy of the enquiry report after the completion of the enquiry by following the principles of natural justice, I have my own doubt as to whether it is obligatory on the part of the disciplinary authority to give a further opportunity to a delinquent employee, especially when he has been given the charges against him with sufficient opportunity

to file his written objections, cross-examine the witnesses cited on behalf of the employer, produce his documentary evidence and examination of his own witnesses and argue or give written submission on the basis of the evidence taken by the enquiry authority. By affording such opportunities the requirements of principles of natural justice have been fully fulfilled and the further opportunity on the basis of the enquiry report is equivalent to the provision in Criminal Procedure Code requiring to ask the accused after the decision to punish him, about the quantum of punishment, which is alien to a disciplinary proceeding. This aspect has been specifically dealt with by the Constitution Bench of the Supreme Court in Union of India and another vs. Tulsiram Patel, AIR 1985 SC 1416. The Court held as follows:-

> " The rule of natural justice with which we are concerned in these Appeals and Writ Petitions, namely, the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of audi alteram partem rule in a quasi-judicial or administrative inquiry".

8. In fact the Larger Bench did not advert to this decision while pronouncing the judgment in Premnath K.Sharma's case. Moreover, the facts in that case indicate that the Enquiry Officer exonerated the applicant of all the charges. But the disciplinary authority declined to accept his findings. Considering the facts of this case, the decision is very appropriate. The Supreme Court has held in Narayana Misra's case, 1969 SLR 657, that when there is disagreement by the disciplinary authority with that of the findings of the Enquiry Officer, it is invariably necessary to give the delinquent employee an opportunity of being heard. The Kerala High Court in Thobeas's case , 1987(1) KLT 501 also took the same view. If there is no distinction between the cases of disagreement and agreement between EO and DA about the finding on the guilt of the delinquent employee in a given case of disciplinary enquiry the Courts would not have taken this view as indicated above.

8. Some of the Supreme Court decisions relied on in Premnath K.Sharma's case except in Bhaishankar Avalram Joshi's case(AIR 1969 SC 1302), there was disagreement by DA with the findings in the report of EO and on account of the failure to furnish a copy of enquiry report, there was clear prejudice to the delinquent employee. But in Bhaishankar Avalram Joshi's case the facts do not

indicate as to whether there is such a disagreement between the Enquiry Officer and the Disciplinary Authority. But the Supreme Court has made it very clear that the necessity of supply of enquiry report before the imposition of punishment by the disciplinary authority depends upon the facts of each case and real prejudice on the delinquent employee on account of non-supply of the enquiry report, before the imposition of the punishment. The requirements of natural justice in a given case must depend to a great extent on the facts and circumstances of each case.

9. In the case reported in Union of India and others v. Bashyan(AIR 1988 SC 1000) the Supreme Court while considering the question of furnishing enquiry report to the delinquent employee before the actual imposition of punishment, presumably at the stage of admission of SLP :, observed that it would be a startling proposition to find a delinquent officer guilty without affording him an opportunity of being heard after serving a copy of the enquiry report. The Court also observed that it is "altogether a different matter from serving a second show cause notice to enable the delinquent in the context of the measure of the penalty to be imposed". It further observed as:

> "The matter thus needs careful consideration in depth, and if necessary at length. As this Bench is comprised of two Judges, we do not consider it proper on our part to pass any order in regard to the present petition though prima facie we are not inclined to grant leave

> in view of the two recent decisions cited before us. In any view of the matter we do not think that it is proper on our part to pass any order notwithstanding the fact that it appears to us that this question was not directly in issue and has neither been presented nor discussed in all its ramifications in the aforesaid two matters".

10. From this it is clear that the Supreme Court has not laid down any dictum to be followed by the Courts or Tribunals. They had only exposed certain broad aspects which require elaborate consideration and in depth examination by a Constitution Bench and referred the same for being placed before the Constitution Bench of the Supreme Court. In doing so, the Court failed to consider the observations and conclusion already rendered on the subject by the earlier Constitution Bench in Tulsiram Patel's case.

11. In fact the Supreme Court itself has made it clear that Constitution Bench decisions will prevail over the decisions rendered by the Bench consisting of lesser number of Judges in State of U.P vs. Ram Chandra Trivedi, AIR 1976 SC 2547, while stating the principle as follows:-

> " It is also to be borne in mind that even in cases where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in such a case, as observed by this Court in Union of India v. K.S.Subramanian(Civil)Appeal No.212 of 1975, decided on July, 30,1976, 1976 U.J.(SC) 717) to which one of us was a party, is to try to find out and follow the opinion expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law is followed by this Court itself."

Same view has been taken in Ramdas Bhikaji Chaudhari vs. Sadanand and others, 1980(1) Supreme Court Cases, 550.

12. According to me, a decision has to be understood on the facts of the decided cases therein. Without examining and understanding the facts correctly no observations and sentences in a judgment can be followed in another case as a dictum. In Quinn v. Leathem,(1901 A.C 495) Earl of Halsbury LC. said:

> " Now before discussing the case of Allen v. Flood(1898) A.C.1, and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."

The same view was expressed by the Supreme Court in State of Orissa v. Sudhansu Sekhar Misra (AIR 1968 S.C 647) Hegde,J., observed:

> " A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it".

13. The Supreme Court in Addl.Distt.Magistrate, Jabalpur v. Shivkant Shukla and others, AIR 1976 SC 1207, after quoting the above observations in Quinn v. Leathem, (1901 A.C 495), stated as follows:-

> "that the generality of the expressions which may be found in a judgment are not intended to be expositions of the whole law but are governed and qualified by the particular facts of the case in which such expressions are to be found. This Court in the State of Orissa v. Sudhansu Sekhar Misra,(1968) 2 SCR 154, 163= (AIR 1968 SC 647 at p.652), uttered the caution that it is not a profitable task to extract a sentence here and there from a judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein." (emphasis supplied)

14. Very recently the Supreme Court in the Punjab Land Development & Reclamation Corporation Ltd, Chandigarh v. the Presiding Officer, Labour Court, Chandigarh and others, Judgment Today 1990(2) S.C.489 discussed in extenso the binding nature of the precedents and held as follows:-

> "As regards the judgments of the Supreme Court allegedly rendered in ignorance of a relevant constitutional provision or other statutory provisions on the subjects covered by them, it is true that the Supreme Court may not be said to "declare the law" on those subjects if the relevant provisions were not really present to its mind."
>
> xxx xxx
>
> "An analysis of judicial precedent, ratio decidendi and the ambit of earlier and later decisions is to be found in the House of Lords' decision in F.A & A.B.Ltd. vs. Lupton(Inspector of Taxes) 1972 AC 634, Lord Simon concerned with the decisions in Griffiths vs. J.P.Harrison (Watford) Ltd.(1963) A.C.1, and Finsbury Securities Ltd. vs. Inland Revenue Commissioners (1966) 1 WLR 1402, with their inter-relationship and with the question whether Lupton's case fell within the precedent established by the one or the other case, said:
>
> " What constitutes binding precedent is the ratio decidendi of a case and this is almost always to be ascertained by an analysis of the material facts of the case that is, generally, those facts which the tribunal whose decision is in question itself holds, expressly or implicitly, to be material."
>
> It has also been analysed:
>
> " A judicial decision will often be reached by a process of reasoning which can be reduced

> into a sort of complex syllogism, with the major premise consisting of a pre-existing rule of law (either statutory or judge-made) and with the minor premise consisting of the material facts of the case under immediate consideration. The conclusion is the decision of the case, which may or may not establish new law-in the vast majority of cases it will be merely the application of existing law to the facts judicially ascertained. Where the decision does constitute new law, this may nor may not be expressly stated as a proposition of law: frequently the new law will appear only from subsequent comparison of, on the one hand, the material facts inherent in the major premise with, on the other, the material facts which constitute the minor premise. As a result of this comparison it will often be apparent that a rule has been extended by an analogy expressed or implied."
>
> xxx xxx
>
> " This Court held in State of Orissa v. Sudhansu Misra 1968(2) SCR 154, that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not other observation found therein nor what logically follows from the various observations made in it."

15. So there is nothing wrong in assuming that the judgment rendered in Premnath K.Sharma's case and Bashyan's case are <u>per incuriam</u> without noticing or following a binding precedent of the Supreme Court itself. The Latin expression <u>per incuriam</u> means through inadvertence. 'A decision can be said generally to be given <u>per incuriam</u> when the Court has acted in ignorance of a previous decision of its own or when the High Court has acted in ignorance of a decision of the Supreme Court. It cannot be doubted that Article 141 embodies as a rule of law, the doctrine of precedents on which our judicial system is based'.

16. According to me, since the very question as to the correctness of the decision in Premnath K.Sharma's case and, on the basis of the reference in Bashyan's case, the legal effect of non-furnishing a copy of the enquiry report to the delinquent employee before imposing the punishment by the disciplinary authority are pending consideration before the Supreme Court, it is not appropriate at this stage on my part to take a decision in respect of this matter on either way except to follow the decision of the Larger Bench. Judicial decorum also requires me to respect the Larger Bench decision till it is reversed or set aside by the Supreme Court. Under these circumstances, I agree with the final conclusion arrived at by my learned brother in this case in setting aside the impugned order and directing the respondents to continue the disciplinary proceedings against the applicant from the date of submission of the enquiry report and completing the same within the period mentioned in the judgment in terms of the observations and directions contained therein. The application is allowed to the above extent. No order as to costs.

18.6.90

(N.DHARMADAN)
JUDICIAL MEMBER

n.j.j

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

~~XXXX~~ No. ~~O.A~~ R.A No.87/90 in
~~T.A. No.~~ ~~199~~ O.A 6/89

DATE OF DECISION 26.10.1990

C.A Sudhakaran Applicant (s)

M/s. O.V Radhakrishnan, K.Radhamani Amma Advocate for the Applicant (s)

Versus

Head Record Officer, RMS 'EK' Division ,Cochin-16 and 4 others Respondent (s)

Mr. P.Sankarankutty Nair,ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri N.Dharmadan,Judicial Member)

This is a review application filed by the applicant in OA 6/89. It was allowed as per our judgment dated 18.6.90. We quashed the impugned orders passed by the appellate authority and the disciplinary authority and directed the continuance of the disciplinary proceedings from the stage of submission of the enquiry report following the decision of the Full Bench reported in Premnath K.Sharma's case. We also observed that"the applicant should be deemed to be on put off duty from the date of removal" during the pendency of the proceedings.

2. The complaint in this petition is that the Tribunal lost sight of the fact that the case is governed by the Extra Departmental Agents (Conduct & Service) Rules, which do not contain any provision to keep an ED Agent under deemed put off duty corresponding to Rule 10 (4) and (5) of CCS(CCA) Rules, 1965. The provisions of CCS(CCA)Rules do not apply in this case. Hence the Tribunal

wrongly directed that the applicant should be deemed to be under put off duty. Even the inherent power of the Tribunal cannot be invoked for passing such an order. According to the applicant there is non-perception of the legal aspect and it is a good ground for review. He has cited the following decisions in support of his contention:

i. Padam Sen and another vs. State of U.P, AIR 1961 SC 218
ii. Balvantrai Ratilal vs. State of Maharashtra, AIR 1968 SC 800
iii. Mehra vs. Union of India & others, AIR 1974 SC 1281
iv. Ananda Narain Shukla vs. State of M.P, AIR 1979 SC 1923
v. Savitri vs. Govind Singh Rawat, 1985 (4) SCC 337
vi. Antulay vs. R.S.Nayak and another,1988(2) SCC 602
vii. Saradamma vs. Supdt. of Post Office,1983 KLT (SN) 32

3. While quashing the orders passed against the applicant in the disciplinary enquiry on technical ground of non-furnishing of the copy of the enquiry report, we felt in the interest of justice to continue the enquiry from the stage of the submission of enquiry report . We have also fixed a time limit of two months for passing final order by the disciplinary authority in this case. Since we were satisfied that the applicant should be deemed to be on put off duty from the date of removal, for a proper conduct of the enquiry we have passed such an order having regard to the facts and circumstances of this case notwithstanding the fact that the Extra Department Agent (Conduct & Service) Rules do not contain any provision to keep an ED Agent under deemed put off duty. There is no bar in passing an order as indicated above and there is no illegality or irregularity in the order.

4. None of the grounds urged by the applicant persuades us to interfere in this matter invoking our power of review under the provisions of the Central Administrative Tribunals Act 1985 read with the Rules made thereunder.

5. There is a catena of decisions laying down that no review is admissible merely because the Court or the Tribunal had made a wrong approach to the problem or rendered a decision which appears to be wrong or illegal, according to the parties of the case. A review petition can be entertained only on the basis of some grounds coming within the purview of Order 47 Rule 1 of Civil Procedure Code, ~~xxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~. There would have been some substance in the petition if the applicant had stated that (i) there had been some discovery of any important matter of evidence which after the exercise of due diligence was not within the knowledge or could not be produced by the applicant at the time when the order was passed or (ii) there had been some mistake or error apparent on the face of the record or (iii) any other sufficient and satisfactory reason which calls for a review of the judgment in the interest of justice. Since none of the grounds or criteria of this nature has been brought to our notice nor met in the present case, we see no force in the argument for a review of the judgment already pronounced by us on 18.6.90. The reasons urged by the applicant, perhaps may be grounds for appeal, but do not come within the criteria enumerated above for invoking our power of review in this case. The decisions cited are not directly bearing on the point. They are distinguishable. The cases favouring review or opposed to it are legion, and in every case, point falls to be decided on particular facts and the dictum to be applied with reference to the facts which are identical and not otherwise. 'SUBJECTUM SECONDUM MATERIUM' is the guiding principle. (See Quinn vs. Leathem, (1901) AC 495,

followed in A.D.M. Jabalpur v. S.Shukla, AIR 1976 SC 1207 and 1976 K.L.T 691(FB).

6. We have recently (same bench) considered the scope and ambit of power of review of the Tribunal in RA 9/90 and held as follows:-

> "The Supreme Court in Sow Chandra Kanta and another vs. Sheik Habib, AIR 1975 SC 1500 observed that a review is a serious step and is to be allowed only when there is a glaring omission or mistake of fact. Still in another case A.T.Sharma vs. A.P Sharma and others, AIR 1979 SC 1047, the Supreme Court observed that the power of review cannot be exercised on the ground that the order is erroneous on merits. This Tribunal in Manindra Chakraborty vs. Union of India and others, A.T.R 1986(2) CAT 299 observed that the review cannot be treated as if it is an appeal, because review is a serious matter. The Tribunal still in another case Ranjit Singh vs. Union of India and others, 1988(7) ATC 670 categorically stated that the review cannot be based on a substantive issue which has already been decided or on a particular point which was not pressed in the original application . In M/s. Associated Tubewell Ltd. vs. R.B.Gujarmal Modi, AIR 1957 SC 742, the Supreme Court went to the extent of saying that a view arrived at by a Judge may be erroneous but that by itself can afford no ground for review. The remedy would lie in such cases by appeal."

7. In the result we are of the view that there is no substance in the review petition. Accordingly we dismiss the same. There will be no order as to costs.

26/X/90

(N.DHARMADAN)
JUDICIAL MEMBER

26/X/90

(S.P MUKERJI)
VICE CHAIRMAN

n.j.j

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 26.2.1990

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

R.A. No. 78/89 in
O. A. No. 6/89

C. A. Sudhakaran — Review Applicant

Vs.

1. Head Record Officer,
RMS 'EK' Division,
Cochin-16

2. Senior Supdt. of RMS,
RMS 'EK' Division,
Cochin,

3. Postmaster General,
Kerala Circle, Trivandrum,

4. Union of India represented by
Secretary, Ministry of Communications
New Delhi and

5. V. Krishnankutty (Inquiry Authority)
Assistant Supdt. of RMS,
Cochin Sorting Air/3, Cochin — Respondents

Mr. O. V. Radhakrishnan — Counsel for the applicant

Mr. P. Santhalingam, ACGSC — Counsel for respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicant in this review application seeks to review the judgment dated 10.11.1989 in O.A. 6/89 on the ground that there are errors apparent on the face of record.

..

2. According to the applicant he was not given a copy of the enquiry report before Annexure-III order removing him from service and this is a procedural illegality as found by a Full Bench of the Central Administrative Tribunal (Bombay Bench) in Premnath K. Sharma V. Union of India (1988 6 A.T.C. 904). Though this decision was brought to the notice of the Tribunal at the time of the hearing, it was omitted to be considered and it passed the judgment dismissing the Original Application. This is an error apparent on the face of the records in that it does not deal with the most important contention of the applicant raised in the O.A. and argued at the time of hearing.

3. We have heard the arguments of the learned counsel of both the parties. This is a case where the authorities have decided the question of guilt of the applicant in the disciplinary proceedings placing reliance on the admission made by the applicant. In such a case how far the failure of the authorities in supplying the copy of the enquiry report in the light of the principles laid down by the Full Bench in Premnath K. Sharma's case is a matter which requires consideration. This aspect was not considered in the aforesaid judgment passed by us on 10.11.89. Hence in the interest of justice we feel that that the applicant's contention requires a further consideration. Accordingly, we feel that the decision rendered in this case is to be vacated and the case should be heard afresh.

..

4. In the result, we recall our judgment dated 10.11.89 in O.A. 6/89 and vacate the judgment. The case will be heard de novo on 16.3.90. The parties may be informed accordingly.

26.2.90

(N. Dharmadan)
Judicial Member

26/2/90

(S. P. Mukerji)
Vice Chairman

kmn