IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

~~O. A. No.~~ ~~T. A. No.~~ 107/91 ~~199~~

DATE OF DECISION 30-4-92

M. Abdul Karim Applicant (s)

Mr. Sasidharan Chempazhanthiyil Advocate for the Applicant (s)

Versus

~~Deputy Director General, NCC (K&L)~~ Respondent (s)
(K&L), Trivandrum and others

Mr. N. N. Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. MR. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. 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 ? No

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant, in this application filed under section 19 of the administrative Tribunals' Act, is challenging the Annexure A-VI, order of the disciplinary authority, and Annexure A-VIII, order of the appellate authority imposing the punishment.

2. The applicant while working as UDC in the N.C.C. Directorate of Kerala & Lakshadweep, was imposed with a penalty of withholding of two annual increments with cumulative effect as per punishment order dated 8.6.1987. When the appellate authority upheld the same, he filed

O.A. K. 322/87 which was allowed by Annexure-I judgment by this Tribunal dated 9.6.1989 with the following directions:

> "In the above facts and circumstances we allow the application to the extent of setting aside the impugned orders at Annexure-4 and Annexure-7 to the application and direct that de novo disciplinary proceedings should be taken against the applicant in accordance with law, from the stage of framing and serving of the charge sheet. ..."

3. Pursuant to the direction, the disciplinary proceedings were continued and the enquiry authority submitted Annexure-4 enquiry report dated 19.2.90 finding the applicant guilty of the charge which is extracted below:

> "Article I:
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> That the said Shri M.A. Karim while functioning as Lower Division Clerk in NCC Directorate, Kerala and Lakshadweep Trivandrum on 20 March, 1987 at 1320 hours committed an act subversive of discipline and unbecoming of a Government servant violating rule 3(1)(iii) of CCS (Conduct) Rules 1964 as amended from time to time."

4. The applicant submitted that there is no evidence to find him guilty. The evidence adduced by the applicant namely Annxure-V deposition of D.W.-I to contradict the evidence on behalf of the department was not appreciated and accepted by the enquiry authority. The applicant was not also given a copy of the enquiry report so as to enable him to submit his objection to the finding of the enquiry authroty. The disciplinary authority after accepting the enquiry report passed Annexure-VI order dated 16.7.90 imposing the following punishment:

> "It is therefore ordered that the pay of Shri M.A. Karim LDC be reduced by four stages from Rs. 1350 to Rs. 1250 in the time scale of Rs. 950-20-1150-EB-25-1500 for a period of four years with effect from 1.8.90. It is further directed that Shri M.A. Karim will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay."

5. The appeal Annexure-VI filed by the applicant against the punishment order was rejected by Annexure-VIII order dated 23.11.90. The applicant is challenging the enquiry report, Annexure-IVpunishment order as well as Annexure-VIII appellate order.

6. The main arguments advanced by the learned counsel is that the enquiry proceedings are vitiated by non observation and violation of the principles of natural justice in the light of the decision of the Supreme Court in Union of India Vs. Mohammed Ramzakhan, 1991 SC 421, because of the failure of the disciplinary authority to furnish a copy of the enquiry report before imposing the punishment and passing Annexure-VI order.

7. This contention is opposed by the learned SCGSC on two grounds:

(i) The decision in Mohammed Ramzakhan's case applies to only in cases of punishment of dismissal, removal and redduction in rank coming within the purview of Article 311(2) of the Constitution of India.

(ii) since the applicant is a civilian employee in the Defence service whose salary is being paid out of defence fund, he does not enjoy the protection under Article 311(2) in the light of the reported pronouncement of the Supreme Court in the decision in AIR 1989 SC 662

8. Having heard the argument, we are of the view that admittedly there is failure on the part of the disciplinary authority to furnish a copy of the enquiry report. The question whether a copy of the enquiry report should be given to the applicant even in cases of punishments other than dismissal, removal and reduction in rank, is a matter to be considered while considering the contentions of the applicant.

9. In Mohmed Ramzakhan's case, the Supreme Court has held as follows:

> " We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitledoto make a representation against it, if he so desires and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."

10. The Supreme Court has made the above observation while considering the case coming within the purview of Article 311(2) after the 42nd Amendement. We are well aware of the dictum that a decision had to be understood on the facts and circumstances of the case decided thereon. In Quinn v. Leathem, (1901 A.C. 495) Earl of Halsury 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 articular 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."

11. Bearing in mind the above principle we have to perüse the observation of the Supreme Court in Mohammed Ramzakhan's case. The Supreme Court granted relief to the delinquent in that case by putting his case within the ambit of principle of natural justice, which according to us can be restricted by stating that such violation is applicable only in a case

which comes under the scope and ambit of Article 311(2) of the Constitution of India as contended by the learned counsel for the respondents because the facts of that case indicate that the court was only considering the grievances of an employee who invoked Article 311(2) and contended that the failure to serve a copy of the enquiry report violates principles of natural justice. It is to examine these contentions that the court considered the matter and granted relief to the applicant therein whose services were terminated after disciplinary enquiry. So the dictum laid down by the court should be assessed and understood on the facts of that case. The decision cannot be applied uniformly to all cases of punishments without any restrictions or limitations.

12. The Rules of natural justice demand that reasonable opportunity applying the rule of 'audi alterma partem' be afforded to a delinquent employee if an action is proposed which results incivil consequence or prejucial to him. But following the judgment in Mohamed Ramzakhan's case the action contemplated should be treated as a qualified action viz. dismissal, removal or reduction in rank. They are very serious punishment which can be classified as 'capital punishments' in service parlance.

13. The requirement of fair play in all proceedings of course, demands to give the delinquent employee a fair opportunity to defend the action proposed against him unless there is a statutary provision precluding the

giving of such opportunities. The Supreme Court in Union of India v. J. N. Sinha and another, AIR 1971 SC 40, while examining the scope of application of natural justice held as follows:

> "Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in Kraipak v. Union of India, AIR 1970 SC 150, "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it." It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural justice, then the court cannot ignore the mandate of the legislature or the statutory authority and read in to the concerned provision the principles of natural justice whether the the exercise of power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

But this principle when read in the light of the decision in Mohamed R mzakhan's case should be understood in the disciplinary cases as applicable only to the 'capital punishments' coming within the purview of Article 311(2) of the Constitution. Otherwise, the danger would be that in every case of disciplinary proceedings which end in penal action, even in cases of trivial charges and punishment of simple censure the plea of violation of principles of natural justice would be raised giving a liberal interpretation to the observations of the Supreme

Court in Mohamed Ramzakhan's case, which of course was not the intention of the Supreme Court when the dictum was laid down in that case.

14. There is also another reasons for taking a restricted view and limiting the application of the dictum in Mohamed Ramzakhan's case only in cases of punishment of dismissal, removal and reduction in rank. In a disciplinary enquiry, xxxxx Rule 14 of the CCA(CCS) Rules 1965 contemplates elaborate procedure which would fully satisfy the requirements of the principles of natural justice. One of us (Hon'ble Shri N. Dharmadan) while writing a separate concurring judgment in O.A. 6/89 (Sudhakaran Ls. Head Record Officer, 1990(2) KLT Case No. 2 page 10) examined these aspects and observed as follows:

> "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 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 v. Tulsiram Patel, AIR 1985 SC 1416. The Court held as follows:
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> > "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

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> 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 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 enquiry."

15. The learned counsel for the respondents relied on Rule 17 of the CCS(CC&A) Rules and submitted that a copy of the enquiry report need only be furnished to the delinquent employee after the order of punishment along with the copy of the order is given. The said provision reads as follows:

> "17. Communication of Orders.
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> Orders made by the disciplinary authority shall be communicated to the Government servant who shall also be supplied with a copy of the report of the inquiry if any, held by the disciplinary authority and a copy of its findings on each article of charge or where the disciplinary authority is not the inquiring authority, a copy of thereport of the inquiring authority and a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority unless they have already been supplied to him and also a copy of the advice, if any, given by the Commission, and where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance."

This provision does not in any manner exclude the principle of natural justice xxx expressely or by implication. But there is nothing wrong in assuming that the Supreme Court laid down the law in Mohamed Ramzakhan's case only after adverting to this provision. In the light of the pronouncement of the Supreme Court in Mohamed Ramzakhan's case, it is obligatory on the part of the disciplinary authority to

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furnish a copy of the enquiry report before such authority comes to any conclusion about the guilt of the delinquent notwithstanding the provisions of Rule 17. But it is to be found that the application of the principles of natural justice in a given case depends upon the facts of each case and the nature of prejudice caused to the delinquent employee who raises the ground of failure to furnish copy of enquiry report and proceedings thereof. The application of principles of natural justice cannot normally be controlled or limited depending upon the nature of the punishment. But having regard to the fact that in a disciplinary enquiry the delinquent gets the full opportunity to defend his case for proving the innocence in the form of serving the enquiry report a further opportunity after conclusion of enquiry can be limited only to cases of 'capital punishment' coming within the scope of Article 311(2) of the Constitution. Therefore, the contention that the rules of natural justice have been excluded under Rule 17 cannot be accepted as correct legal position after Mohamed Ramzakhan's case.

16. The Central Administrative Tribunal, Jodhpur Bench, while considering the case of punishment of barring and reduction of salary in five stages in the time scale for a period of two years with cumulative effect held in Uma Shankar V. Union of India and another, 1991 (3)SLJ(CAT) that the observations in Mohamed Ramzakhan's case based on principles of natural justice, will equally apply to the punishment of reduction in time-scale of pay. All the aspects were not considered by the Tribunal and as such we are not inclined

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join issue at this stage and express our final view in regard to this issue as decided by Jodhpur Bench particularly because we feel that the applicant's case can be considered and he may be granted relief on different considerations on the facts and circumstances of the case which we will discuss later.

17. A decision of the Madras Bench of the Tribunal in G. Tamilselvan v. The Divisional Railway Manager and another, 1991 (3)SLJ (CAT) 251, was also brought to our notice in which the Tribunal had taken the view thatthe penalty of reduction in pay in two stages could not be held to be vitiated on account of the claim of non-supply of a copy of the enquiry report to the applicant before the impugned order of penalty imposed by the disciplinary authority. Even though, this decision was rendered after the Supreme Court decision in Mohamed Ramzakhan's case, it appears that the same was not considered presumably because of the fact that it was not brought to the notice of that Bench in the course of argument.

18. The contention of the respondents raised in the addl. reply statement that the applicant does not get the protection of Article 311(2) because of the fact that he is being paid out of the estimate of the Defence Ministry is based on the decision Union of India and another Vs. K. S. Subramanian, AIR 1989 SC 662. He submitted that the applicant is not entitled to the protection under Article 311(2) and hence, it is to be dismissed. It is true that

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the provisions of Article 311(2) would apply only to civil servants and holders of civil post under the Union or States. The applicant in that case was an employee in the Defence service and the application of the provisions of Article 310 and pleasure doctrine was considered in the light of the statutory rules under CCS(CCA) Rules. The issue which came up for consideration in that case was whether the decision of the High Court upholding the compensation awarded by the lower court can be sustained in the light of the contention that though Article 311(2) is not applicable and the provisions of CCS(CCA) Rules would apply. In other words, the question was:

> "whether the 1965 Rules framed under the proviso to Article 309 of the Constitution 'proprio vigore' apply to the respondents or become inoperative in view of Article 310 of the Constitution."

The court after consideration of the issue held that the Rules made under the proviso to Article 309 would be subject to Article 310(1) and Article 311. The court further held:

> "We are also concerned with exclusion of Art.311(2), if not by second proviso but by the nature of post held by the respondent. . That being the position, the exclusionary effect of Article 311(2) deprives him the protection which he is otherwise entitled to. In other words, there is no fetter in this exercise of pleasure of the President or Governor."

In this view the court though reversed the question of law but sustained the decree on equity. The facts in the instant case are distinguishable and we are of the view that the Supreme Court decision would not appy to this case.

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19. Let us examine the facts. The charge against the applicant is that:

> "while functioning as Clerk in the N.C.C. Directorate on 20th March, 1987 at 1320 hours, he misbehaved in a manner unbecomming of a Government servant towards Smt. G. Santhakumari another LDC of the same Directorate by using indecent language to her."

After enquiry, by order dated 8.6.1987 he was punished by imposing a penalty of withholding of two annual increments with cumulative effect. This punishment was quashed by this Tribunal as per Annexure-I order and remitted the case back to the disciplinary authority for de novo disciplinary proceedings from the stage of serving the chargesheet.

20. After the judgment, the first respondent issued Annexure-II memorandum of charges dated 20.11.89 containing the same charges. There were only two witnesses apart from the complainant. Their statements are examined by us. The applicant submitted his objection, Annexure-III denying the charges. The evidence of DW-1 given on behalf of the applicant was not considered. Annexure-IV enquiry report was submitted finding the applicant guilty of the offence. A more harsh punishment was imposed by the disciplihary authority. He passed order Annexure-VI imposing a penalty of reducing his pay by four stages from Rs. 1350/- to Rs. 1250/- for a period of four years. The applicant will not earn increments during the period of reduction which will have the effect of postponing his future increments. No reason is given for imposing such an enhanced punishment on the same set of facts.

21. We have perused the enquiry files. The enquiry report shows that apart from some documents produced

in the enquiry three witnesses were examined on the side of the management and three on the side of the defence. The incident alleged against the applicant happened on 20th March, 1987 at 1320 hours while the applicant was seated in his chair in the office. The points considered by the enquiry officer after analysing the evidence are as follows:

> "To prove such a charge the main points to be considered are (i) whether Smt. G.Santhakumari (SW1) visited the seat of Shri M.A. Karim the CO(DW3) for requesting tin of Palmoil (ii) Did Shri Karim use the expression "I want to fuck you" to Smt. G. Santhakumari (iii) could or did the alleged incident actually take place or not (iv) specially as the case involves colleques of opposite sexes the extent upto which dignity and reputation could cross parameters of decency and morality (v) other points of relevance."

Though the disciplinary authority considered the evidence and agreed with the report of the enquiry officer in coming to the conclusion that the applicant is guilty of the charges, the learned counsel for the applicant contended that there is no evidence to substantiate the allegations made against the applicant. The appellate authority in Annexure-VIII order disposed of the contentions in this behalf in two sentences which read as follows:

> "As per records the Addl. DG,NCC(A), who has acted as Disciplinary Authority in the present case, has considered in detail the enquiry report, the oral and documentary evidence produced by the Presenting Officer as well as the defence assistant. The disciplinary authority has rightly considered it fit to impose the penalty of reduction to lower stage in the time scale of pay by four stages from Rs.1350 to Rs. 1250/- in the pay scale of Rs. 950-20-1150-EB-25-1500 for a period of four years w.e.f. 1st August 90 with the further directions that Shri MA Karim would not earn increments of pay during the period of reduction and the reduction will have the effect of postponing his future increments of pay."

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22. In the appeal memorandum Annexure-VII filed by the applicant on 27.8.90 he has raised three grounds:

"(i) the disciplinary authority violated the direction in the judgment of the Tribunal and relied on the original charge sheet and thereby the entire proceedings and findings are vitiated;

(ii) the decision of the disciplinary authority is perverse because he has considered records which was not part of the enquiry and

(iii) the disciplinary authority on the very same charge after the judgment "doubled the punishment" for the original punishment before the judgment was only banning of two increments without cumulative effect and it is excessive and disproportionate to the offence alleged."

23. The appellate authority misunderstood the grounds and framed the reasons in the appeal memo as follows:

"(a) Consideration of a document of original disciplinary proceedings. The individual has alleged that the DDG NCC Kerala has submitted the document dated 25th Mar 87 to the Enquiring authority which has prejudicial to the presenting officer/Enquiring authority resulting in biased view and biased report.

(b) Second show cause notice not given before imposing of punsihment. Shri M.A. Karim has contended that as per article 311(2) of the constitution, no major punishment can be imposed at the end of disciplinary proceedings without giving show cause notice to the delinquent govt. servant. He has also contended that the disciplinary authority has acted in a non judicious manner by awarding him a severe punishment as compared to the original penalty imposed on him."

24. Under sub rule (2) of Rule 27, the appellate authority while dealing with an appeal has the statutory obligation to examine appeal and satisfy:

"(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Cosntitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;"

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25. When an appeal is filed against an order of the disciplinary authority and it has been duly entertained by the appellate authority, the entire matter is at large before it and it has all powers to do justice. The Full Bench of Kerala High Court in Dharmadas Vs. State of Transport Appellate Tribunal, 1962 KLT 505(FB) considering the scope of appellate authority's power under Motor Vehicles Act, held as follows:

> "16. An appeal is a complaint to a superior body of an injustice done or error committed by an inferior one with a view to its correction or reversal. It is a creature of statute, not a consititutional or inherent right. But, as pointed out by Maxwell, where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution (11th Edition, page 350).
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> 17. A remand by an appellate court is usually made when the record before it is in such shape that the appellate court cannot in justice determine what final judgment should be rendered and the power to do so cannot but be an essential requisite of the very jurisdiction to entertain the appeal. It is an old maxim of the law that to whomsoever a jurisdiction is given, those things also are supposed to be granted, without which the jurisdiction cannot be exercised: Cui jurisdictio data est ea quoque concessa essee videntur, sine quibuts jurisdictio explicari non protest."

In Lilly Kurian Vs. Lewina, AIR 1979 SC 52, the Supreme Court said:

> "The confirment of a power to hear an appeal necessarily invests the appellate authority with the power to annul, vary or set aside the order appealed from. Such power is incidental to or is implied in the power to hear an appeal. It necessarily has the power to grant an appropriate relief. Indeed, the extent of the appellate power under ordinance 33(4) is not defined. When a teacher is dismissed from service, the Vice Chancellor cannot only direct reinstatement, but also modify nature of punishment. <u>The whole matter is at large before him</u>.

26. Even the appellate court in civil cases under order XLI Rule 2, though not bound to raise or consider the points not urged by the aggrieved party, has to reconcile two

conflicting view points, namely on the one hand the undoubted duty of the court of appeal to review the recorded evidence and to draw its own inference and conclusions of the lower authority. See Sbhapthi Vs. Hutley and others, AIR 1945 PC 38-41, Vassiliades Vs. Vassiliades, AIR 1951 SC 120. The appellate court is thus not literally and strictly confined in deciding the appeal to the points raised or taken in the memorandum of appeal.

27. The appellate authority, under the CCS(CCA) Rules 1965 has certain statutory obligation while discharging the quasi-judicial duty of considering and disposing of the appeal. It should bear in mind the provisions of Rule 27. The authority under sub rule (2) of Rule 27, has the duty to examine the entire evidence and decide whether the findings of the disciplinary authority are warranted by the evidence which is sufficient enough to sustain the punishment imposed in the case. It is also a well established principle of law that unless the statute otherwise provides an appellate authority has the same power of dealing with all questions either of fact or of law arising in the appeal before it as that of the authority whose order is the subject of scrutiny in the appeal. See Union of India Vs. Sardar Bhahadur (1972 SLR(G) 355(SC))

In the Union of India Vs. Panhari Saren, 1974 (1) SLR 32, the Allahabad High Court held that:

> "It is the duty of the Appellate authority to peruse the whole records of the case and come to its own findings."

This Tribunal held in C. Sukumaran Vs. D.G, ICAR, New Delhi, 1990 (7)SLR 249 held as follows:

> "recalling its earlier ruling in R.B. Bhat Vs. Union of India, AIR 1986 SC 143, the Supreme Court in

Ram Chander V. Union of India and others, ATR 1986 (2) SC 252 held the word 'consider' in Rule 27(2) of CCS CC(A) Rules for the appellate authority casts an obligation to him to give reasons for its findings for its findings by applying his mind. A mechanical reproduction of the provision of the rule in the appellate order without marshelling the evidence to sustain the findings of the disciplinary authority will not cure the legal flaw of the routine appellate order."

This Tribunal in O.A.K. 283/87 considered similar issue in connection with Rule 22(2) of the Railway Service (Discipline & Appeal) Rules, 1968 and observed as follows:

"Under the above rule, the appellate authority has to consider whether the lower authority has committed any irregularity or illegality with regard to the procedure followed by him so as to eatisfy that there is no violation of any right under the constitution or there is no miscarriage of justice. Secondly, he must examine whether the findings of the disciplinary authority after evaluating the evidence and state whether they are sustainable and are warranted by the evidence adduced in that case. Thirdly, he has a further duty to examine as to the quantum of penalty and decide whether it is commensurate with the offence found to have been committed by the delinquent officer. Above all, he has got a more important as also a bounden duty of giving reasons in support of his decision and it is a 'incident of the judicial process."

The scope and abmit of this Rule 22(2) of Railway Servants (Discipline & Appeals) Rules 1968 have been considered by the Supreme Court in Ramchander Vs. Union of India, 1986 SC 1173. Paragraph 9 of the judgment read as follows:

"These authorities proceed upon the principles that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. Here, R 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under R.27(2) of the CCS (CC&A) Rules, 1965. R.22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in R.6 or enhancing any penalty imposed under the said rule, the appellate authority shall 'consider as to the matters indicated therein. The word 'consider has different shades of meaning and must in R.22(2) in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision."

The Supreme Court after examining all earlier decisions proceeds further and concludes in para 24 in the following:

"Professor de Smith at pp 242-43 refers to the recent greater readiness of the courts to find a breach of natural justice 'cured' by a subsequent hearing before an appellate tribunal.... Such being the legal position it is of utmost importance after the 42nd Amendment as interpreted by the majority in Tulsiram Patel's case

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> that the appellate authority must not only give a bearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasis that reasoned decisions by tribunals such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given."

28. Unlike in the case of an appeal filed under the provisions of the Civil Procedure Code, before the appellate court strict enforcement of pleadings cannot be insisted in a departmental appeal to be filed under Rule 27 of CCS (CCA) Rules. When an appeal is properly filed invoking the appellate jurisdiction notwithstanding the specific grounds raised in the appeal memo, the appellate authority has to follow the statutory proceedure prescribed in Rule 27. It dictates as to how the appeal is to be considered an disposed of by the appellate authority. The consideration of the entire evidence produced before the disciplinary authority is part of the duty of the appellate authority to fulfil the statutory obligation and arrive at the decision that the findings of the disciplinary authority are warranted by the evidence on record.

29. In the instant case as indicated above, the appellate authority has failed to consider independently whether the findings of the disciplinary authority are warranted by the evidence and whether the available evidence is worthy enough to come to the finding that the applicant is guilty of the charges levelled against him. The failure to deal with the evidence in detail appears to be a default on the part of the appellate

authority on the facts and circumstances of the case. The appellate authority ought to have further examined whether on the available materials, a person can be penalised in a more severe manner by imposing a higher punishment than the one which was imposed on identical circumstances by a disciplinary authority at an earlier occasion against the same delinquent based on identical charge. The courts are taking the view that when an appellate authority or revisional authority decides to enhance the punishment in a disciplinary proceedings, such authority is obliged to give valid reasons for enhancing the punishment. There is nothing wrong in applying the same reasoning in a case in which the disciplinary authority is taking a view to give an enhanced punishment to a delinquent employee after remand of the case to the disciplinary authority for a de novo consideration when the original punishment order is set aside on technical considerations as happened in the instant case. Stating reasons for every action and orders to be passed by an administrative or quasi-judicial authority is a 'sina-qua-non' for sustaining such action or order by a judicial forum. The Full Bench of the Central Administrative Tribunal, Ahamedabad Bench in Suresh B. Dave V. The Post Master General and others, (1992)19 ATC 374(FB) held as follows:

> "... The Tribunal's power to do substantial justice to the party has not been taken away by the Supreme Court. The Court held "if the penalty impugned is apparently unreasonable and uncalled for, having regard to the nature of the criminal charge, the Tribunal may step into render substantial justice. The Tribunal may remit the matter to the competent authority for consideration (emphasis supplied). In this case the appellate authority did not say any valid reason for enhancement of punishment except observing as follows:

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"...) "Considering the seriousness of the malpractice, which is of the nature of moral turpitude."

There is no discussion or finding giving any legal and valid reason for enhancing the punishment. This is very unsatisfactory approach and dealing of the issue. The appellate authority is bound to give reasons to enhance the punishment. It is true that the appellate authority has written a lengthy order discussing about the allegations and the evidence for sustaining the order passed by the disciplinary authority..."

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"...The Supreme Court in State of Orissa V. Bidyabhusan Mahapatra held that the Court has jurisdiction to direct the authorities to reconsider the order when the findings of the Enquiry Officer or Disciplinary authority are against the procedure and violative of the principles of natural justice, but on the other hand, a prima facie case of misdemeanour is made out the Court would be reluctant to interfere. In the instant case the case of violation of principles of natural justice has been raised by giving facts and figures, but the appellate authority had not even adverted to the same. It also failed to give convincing reasons for the enhancement of the punishment. The flaws thus committed by the appellate authority warrant interference by this Tribunal. So there is considerable force in the second ground also.

X X X

...Thus the appellate order though, it runs in a number of pages does not show any application of mind and in this connection I agree with the finding arrived at by the Hon'ble Judicial Member Shri Dharmadan. The appellate authority has not at all observed the mandate given by Rule 27(2) of the Rules. Thus, it was necessary in this case to give reasons for enhancing the punishment which are totally lacking from the appellate order."

30. The failure of both the disciplinary authority and appellate authority to state convincing reasons for enhancing the punishment in this case, particularly when records are available in the files indicating the earlier lesser punishment imposed on the applicant on the same set of facts, is a serious lacuna and it can be termed as an illegal action. However, under these circumstances, it is incumbent on the part of the disciplinary authority

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and appellate authority to give valid and convincing reasons for the enhancement of punishment which really causes serious prejudice and injustice to the applicant.

31. Even assuming for argument's sake that the applicant has not specifically raised in the appeal memo Annexure-VII that there is no evidence to sustain the punishment, the learned counsel for the applicant vehemently contended at the time of final hearing referring to the pleadings that this is a case of no evidence and the punishment cannot be sustained. This Tribunal has all the powers to accept the plea and direct the appellate authority to consider the evidence also when it takes a decision to remit the matter for rendering justice to the parties. A more or less similar issue came up for consideration before this Tribunal in O.A.K. 629/88 and 200/89. While resolving the difference of opinion between the members who heard these cases originally a third member, who considered the issue as to whether the plea of failure to serve a copy of the enquiry report on the delinquent employee before the punishment order, which such plea was not raised before the appellate authority could be raised before the Tribunal. The learned judicial member accepted the plea and set aside the punishment order and remanded the case. After quoting the provisions of Rule 27(2) the learned member held as follows:

> "From the sub-rule it is manifest that the objection if any with respect to the procedure followed by the disciplinary authority can be related only to compliance of the procedure laid down in the rules."

..

It was indicated therein that even if the question was not raised by the delinquent before the appellate authority the objection can be relatable to the compliance of procedure prescribed in Rule 27(2) and can be examined by this Tribunal for issuing appropriate directions. The reasoning in that case applies to the facts of this case also.

32. Under these circumstances, the applicant's contentions that the available evidence do not substantiate the charge and the punishment imposed in this case is disproportionately high when compared with the gravity of the offence even if the same is proved are matters to be examined by the appellate authority in the light of the observations in this judgment.

33. In the result, in the light of the foregoing, I quash Annexure_VIII order of the appellate authority and remit the case to the same authority for a fresh consideration and disposal of the appeal filed by the applicant against Annexure-VI punishment order in accordance with law.

34. The application is accordingly allowed.

35. There will be no order as to costs.

(N. Dharmadan)
Judicial Member

kmn

N.V.Krishnan, AM

36. I have seen the judgement of my learned brother. I agree with him only to the remand of the case to the appellate authority to reconsider the quantum of penalty, for the reasons already stated by him.

37. I regret that I am unable to agree with his further finding that the case has to be remanded to the appellate authority to also consider independently whether the findings of the disciplinary authority are warranted by the evidence and whether the evidence available is worthy enough to come to the finding that the applicant is guilty of the charges levelled against him. In para 28 of his judgment, my learned brother has stated that when an appeal is properly filed invoking the appellate jurisdiction, notwithstanding the specific grounds raised in the appeal memorandum, the appellate authority has to follow the statutory procedure prescribed in Rule 27 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965--Rules, for short. I regret, I have to express my dissent from this view.

38. My main reason for this conclusion is that this is not one of the specific grounds raised by the applicant in the appeal filed by him. This is not in dispute,for, the grounds raised in appeal have been summarised in para 22 of my learned brother's judgment and evidently, the ground regarding absence of evidence has not been raised. When such a ground has not been raised, the appellate authority is not obliged to consider this matter.

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39. The authorities cited by my learned brother in his judgment do not lay down a law that, even if an appellant does not raise a particular ground in the appeal memorandum, the appellate authority has necessarily to consider it suo motu. No doubt, a statutory duty is cast on the appellate authority under Rule 27 of the Rules, but that will come into play only to the extent the appellant himself discharges the obligation cast on him under Rule 26, particularly sub rule (2) thereof, which requires that the "appeal shall contain all material statements and arguments on which the applicant relies". Otherwise,; it can as well be contended that, even if an aggrieved employee merely presents an appeal to the appellate authority, merely stating that he is aggrieved by the penalty imposed on him by the disciplinary authority, without giving any more details or grounds, the appellate authority shall, nevertheless, be bound to consider--

(a) whether the procedure laid down in the Rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass appropriate order, after himself wading through the original records, to see if the original order is in accordance with law. This, certainly, is not the intention of Rule 27 ibid.

40. Order XLI, Rule (2) of the Code of Civil Procedure, referred to by my learned brother, provides

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that "the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objections set forth in the memorandum of appeal or taken by leave of the Court under this rule: Provided that the Court shall not rest its decision on any other ground, unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground". This provision only empowers the appellate authority to look into any aspect of a case before him. That is purely a discretionary power of the appellate authority. The applicant, admittedly, did not raise the issue regarding lack of evidence as one of the grounds. He has also no case that, later, he wrote to the appellate authority to look into this matter and exercise ~~examine~~ his discretionary power. Such being the case, I am unable to find fault with the appellate authority and in my view, in the circumstances of the case, it would be improper to issue a mandamus to him to look into the sufficiency of evidence.

41. My learned brother has then stated in para 31 of the judgment that, even if the applicant has not specifically raised the question about the lack of evidence in the appeal memorandum (Ann.7), this issue was vehemently raised during the hearing of the application, when the learned counsel contended that this is a case where there was no evidence to support the charge. He finds that this Tribunal has the powers to accept this plea and direct the appellate authority to consider the evidence also when he takes a decision to remit the matter for rendering justice to the parties. He also refers to the judgment rendered in a reference under section 26 of the Administrative Tribunals Act in OAK 629/88 and OA 200/89, a copy of which is kept on

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record, in support of his proposition.

42. With great respect, I am unable to agree with these observations. In so far as the judgment rendered on reference in OAK 629/88 and OA 200/89 is concerned, the question was whether a delinquent government servant can raise, for the first time, before this Tribunal, his grievance that, in the departmental enquiry proceedings, the disciplinary authority concluded that he was guilty of the charges, even before giving him a copy of the Enquiry Officer's report, though he did not raise this ground in the appeal filed by him before the disciplinary authority. In the aforesaid judgment, it is held that this is a question of law and, therefore, it could be raised before the Tribunal for the first time. That judgment does not apply to the facts of the present case.

43. In the present case, the question whether the finding of the disciplinary authority about the applicant's guilt has been rendered without any evidence, is only a question of fact. If the applicant did not have this grievance before the appellate authority, he cannot be heard on that issue by the Tribunal because, this is the basic scheme provided in the Administrative Tribunals Act, 1985. For, section 20 specifically provides that the Tribunal shall not admit an application unless it is satisfied that the applicant has availed himself of all the remedies available to him under the Service Rules as to the redressal of the grievances. Provision of appeal is a statutory alternative remedy. The object of this section is that no grievance shall be brought before the Tribunal unless it is first brought to the notice

...contd.

of the departmental authority who can grant relief. That relief can, obviously, be considered by the departmental authority if it is specifically prayed for with all relevant grounds. Therefore, a relief not asked for in the course of prosecuting an alternative remedy or a ground not raised for or raised before the Tribunal. Secondly, granting, for arguments sake, that the Tribunal may find it expedient to consider that question, it should first examine the record to find out whether the allegation contained in the pleadings or arguments that this is a case without evidence is substantiated. If it is found that the allegation is correct, the Tribunal itself could quash the proceedings or it could remand the case to the appellate authority for a more detailed examination. That allegation has not been examined on merits in my learned brother's judgment. There is a reference to the disciplinary proceedings in para 20 of the judgment, but no finding has been rendered that the finding of guilt by the disciplinary authority is devoid of any evidence in support thereof. In any case, having gone through the records, I state it as my view that the Enquiry Officer has taken considerable pains and has sifted the evidence properly and submitted a detailed report and found the applicant guilty of the charges. In my view, the allegation of the applicant's counsel in this regard is not well founded and is belied by the records.

44. For these reasons, I find that the appellate authority has not committed any default in the performance of his statutory duties while disposing of

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the applicant's appeal, in so far as it concerns the sufficiency of evidence to justify the conclusion of guilt reached by the disciplinary authority and hence no interference in the appellate order is called for on this ground.

30/4/92

(N.V.Krishnan)
Administrative Member

ORDER OF THE BENCH

In view of the difference of opinion between us we refer the following question for decision to the Hon'ble Chairman under the provisions of Section 26 of the Administrative Tribunals Act 1985. The Registry may place the files before the Hon'ble Chairman for appropriate orders.

"Having regard to the facts and circumstances of this case whether the matter should be remitted to the appellate authority after quashing Annexure-II only for the limited purpose of examining the question of enhancement of the punishment or for consideration of the entire issue involved in the disciplinary proceedings and punishment thereof?"

30.4.92

(N. Dharmadan)
Member (Judicial)

30/4/92

(N.V. Krishnan)
Member (Administrative)

30-4-92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 107/91 199

DATE OF DECISION 07-08-1992.

M.Abdul Karim
Applicant (s)

Mr. Sasidharan Chempazhanthiyil
Advocate for the Applicant (s)

Versus

Dy.Director General, N.C.C. (K&L) Trivandrum-695010 and three others.
Respondent (s)

Mr. N.N.Sugunapalan, SCGSC
Advocate for the Respondent (s)

CORAM :

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

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? No
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

In view of the difference of opinion between Hon'ble Shri N.Dharmadan, Judicial Member and Hon'ble Shri N.V.Krishnan Administrative Member, the aforesaid application was referred to the Hon'ble Chairman by the order dated 30.4.92 . Hon'ble Chairman under Section 26 of the Administrative Tribunals Act has ordered that the matter may be placed before me to resolve the difference of opinion as the third Member. The brief facts of the case are as follows.

2. The applicant in this application while working as U.D.C in the NCC Directorate of Kerala and Lakshadweep was awarded the punishment of withholding of two annual increments with cumulative effect vide the order dated 8.6.1987. The order

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was upheld by the appellate authority. The applicant moved this Tribunal in OAK 322/87 and the Tribunal vide the judgment at Annexure-I dated 9.6.1989, to which I was a party, set aside both the punishment order and the appellate order and directed that "de novo disciplinary proceedings should be taken against the applicant in accordance with law from the stage of framing and serving of the chargesheet... ". In pursuance of this order denovo disciplinary proceedings were held and the disciplinary authority accepting the fresh enquiry report dated 19.3.90 (Annexure-4) passed the impugned order dated 16.7.90 (Annexure-VI) reducing the pay of the applicant by four stages "for a period of four years with effect from 1.8.90. It wasfurther directed that "Shri M.A.Karim will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay". The applicant filed an appeal at Annexure-VII dated 27.8.90 and the appellate authority confirmed the punishment vide the appellate order dated 23.11.90 (Annexure-VIII). The Judicial Member Hon'ble Shri Dharmadan came to the conclusion that non-supply of the copy of the enquiry report to the applicant before the punishment order was issued cannot by itself vitiate the disciplinary proceedings as the punishment in this case is not covered by the punishments referred to in Article 311(2) of the Constitution and the issue will depend upon the facts of each case, and that the ruling of the Hon'ble Supreme Court in Mohd. Ramzan Khan's case (AIR 1991 SC 471) cannot be applied

uniformly to all cases without any restrictions or limitations. The Hon'ble Member, however, rejected the contention that protection of Article 311(2) is not available to the applicant who even as a civil employee is being paid out of the estimates of the Defence Ministry. He, however, observed that reduction of increments by four stages was a punishment harsher than the one imposed on the applicant in the first disciplinary proceedings and no reason has been given by the disciplinary authority in the impugned order in the second disciplinary proceedings"for imposing such an enhanced punishment on the same set of facts".
The Hon'ble Member also found that the statutory obligation imposed on the appellate authority under Rule 27(2) of the CCS(CCA) Rules has not been properly discharged inasmuch as the appellate authority has not on his own exercised his mind on, (a) the question of the prescribed procedure having been followed or not followed resulting in violation of the Constitution or failure of justice, (b) whether the findings of the disciplinary authority are warranted by the evidence on record, and (c) whether the penalty or the enhanced penalty is adequate, inadequate or severe. Relying upon a number of rulings of the Hon'ble Supreme Court and this Tribunal, the learned Hon'ble Judicial Member observed that once "an appeal is properly filed invoking the appellate jurisdiction notwithstanding the specific grounds raised in the appeal memo, the appellate authority has to follow the statutory procedure prescribed in Rule 27".

The Hon'ble Judicial Member found that the appellate authority failed to consider independently whether the findings of the disciplinary authority are warranted by the evidence and whether on the basis of available material, the applicant could have been penalised by a more severe punishment than the one which had been found adequate on an earlier occasion. The Hon'ble Member thought that when an appellate authority or revisional authority enhances the punishment in disciplinary proceedings, he is obliged to give valid reasons for enhancing the punishment. On the same analogy when the earlier punishment order which had been set aside gets enhanced in de novo proceedings, there is all the more reason that the appellate authority in discharge of the statutory obligation under Rule 27(2) ibid should indicate reasons on the quantum of punishment.

3. The learned Hon'ble Administrative Member while agreeing with the Hon'ble Judicial Member that the case can be remanded to the appellate authority to reconsider the quantum of penalty, thought that the appellate authority need not be directed to consider independently whether the findings of the disciplinary authority are warranted by the evidence. His main reason was that such a ground had not been taken by the appellant in the appeal before the appellate authority and "when such a ground has not been raised, the appellate authority is not obliged to consider this matter". According to the learned Hon'ble Administrative Member the appellate authority cannot consider a matter suo motu and it is the obligation on the appellant under Rule 26 of the CCS(CCA)Rules to fortify his appeal with all material statements and arguments.

The learned Hon'ble Administrative Member observed that the question whether the finding of the disciplinary authority about the applicant's guilt is based on no evidence is a question of fact and cannot be entertained through oral arguments of the learned counsel when it had not been raised before the appellate authority. He further thought that without raising that point before the appellate authority, he cannot raise it before the Tribunal under Section 20 of the Administrative Tribunals Act. The Hon'ble Administrative Member having gone through the records felt that even otherwise the contention of the applicant's counsel that the finding of the Enquiry Officer about the guilt of the applicant is based on no evidence is not well-founded.

4. The Division Bench formulated the point of difference to be resolved as follows:-

> "Having regard to the facts and circumstances of this case whether the matter should be remitted to the appellate authority after quashing Annexure-II only for the limited purpose of examining the question of enhancement of the punishment or for consideration of the entire issue involved in the disciplinary proceedings and punishment thereof?"

5. I have heard the learned counsel for both the parties and gone through the documents carefully. Since my jurisdiction is restricted only to the points of difference, it will be useful to identify them at the outset.

6. There is no difference of opinion regarding remanding the case to the appellate authority. The

difference of opinion lies in the scope of the reconsideration of the appeal. The scope of consideration of an appeal is delineated in sub-rule 2 of Rule 27 of the CCS(CCA) Rules, the relevant part of which reads as follows:-

> "(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
>
> (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
>
> (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;"

As regards (c) above there is no difference of opinion either. The difference of opinion lies mainly on (b) above and by implication on (a) above also, because whereas the Hon'ble Judicial Member has been of the opinion that reconsideration should be on all the three points at (a), (b) and (c) above, the Hon'ble Administrative Member is of the opinion that reconsideration by the appellate authority should be only on the question of enhanced punishment.

7. After carefully considering the views expressed by my learned Brothers, arguments of the learned counsel and perusing the records, I am of the opinion that in the interest of justice, the views expressed by the Hon'ble Judicial Member must be accepted. Once the case is remanded to the appellate authority even on the isolated question of quantum of punishment, it would be necessary for that authority to take a holistic view of the same matter by taking into account the entire corpus of evidence, facts, law and procedure involved in the case.

It would not be fair to expect the appellate authority to bestow a fractured consideration on the case only on the question of punishment ignoring the totality of facts, law and procedure involved in the matter.

8. I agree with the Hon'ble Judicial Member that Rule 27 of the CCS(CCA)Rules makes it obligatory on the part of the appellate authority to consider the appeal on all the three counts (a), (b) and (c) quoted above irrespective of whether these points have been raised in the appeal or not. In this regard the appellate authority in the CCS (CCA) Rules is not merely a quasi-judicial body but also a superior administrative authority supervising the quality of the performance of the disciplinary authority and his perception of the impugned order of the disciplinary authority cannot be blinkered or cribbed by the points raised or omitted in the appeal. For instance under Rule 27 of the CCS(CCA) Rules, the appellate authority can enhance the punishment also on points which cannot possibly be raised by the appellant. Because no appellant would file an appeal for enhancing the punishment awarded by the disciplinary authority. Thus in exercise of its power to enhance the punishment, the appellate authority cannot but go much beyond the limits of the contents of the appeal. The appellate authority under Rule 29(1)(v) is empowered on its own to call for the records of an enquiry and confirm, reduce or enhance or set aside the punishment even though the delinquent offical has not filed an appeal. In the same light, the appellate authority under sub-rule 2 of Rule 27 of the CCS(CCA)Rules is obliged when an appeal is filed before him to consider

whether the procedure laid down in the rules has been complied with, whether the finding of the disciplinary authority are warranted by evidence on record and whether the penalty imposed is appropriate. These obligations flow not from the contents of the appeal but from the mandate of the statutory rules and the quasi-judicial cum supervisory power which the appellate authority is expected to exercise in the maintenance of proper discipline and compliance of the statutory rules in his Organisation. The requirement of Rule 27 is self-contained and cannot be linked with the form and content of appeal prescribed in Rule 26 thereof.

9. To my mind it will be hypertechnical in this case to invoke the provision of Section 20 of the Administrative Tribunals Act for barricading the infirmities of law and facts from being considered by the Tribunal merely on the ground that the departmental appeal before the appellate authority did not cover those points. The departmental appeal cannot be expected to attain the perfection of presentation of law and facts in its content as an application before the Tribunal drafted by a professional Advocate would be. The scope of delivery of justice by the Tribunal cannot be circumscribed by overstretching Section 20 of the Administrative Tribunals Act from the limit of entertaining an application to legitimately restricting the grounds on which the application can be based.

10. Before parting with the case I must point out that the question of 'enhanced' punishment in this case does not arise. The reference to "enhancing any penalty" or 'enhanced penalty' in Rule 27(2) is in regard to the same disciplinary proceedings where the disciplinary authority has imposed one punishment and the appellate

authority has imposed in the same proceedings an enhanced penalty and an appeal has been filed against the enhanced penalty in the same proceedings as contemplated under Rule 23(3) read with Rule 24 of the CCS(CCA)Rules. The opening sentence of sub-rule (2) of Rule 27 of the CCS(CCA)Rules reads as follows:-

> "(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider -..."

It is thus clear that where the order appealed against either imposes the penalty or enhances the penalty, the appellate authority is to consider whether the penalty or the enhanced penalty is adequate, inadequate, severe or not. Since in the case before us the penalty originally imposed in the first round of disciplinary proceedings had already been set aside by the Tribunal's order dated 9th June 1989 (Annexure-I) in OAK 322/87, that penalty is non est in the eye of law and the appellate authority in the second round of de novo disciplinary proceedings is under no obligation to justify why the penalty under appeal in the second round of disciplinary proceedings should be or should not be enhanced over the penalty in the first round of disciplinary proceedings which have been set aside. My learned Brother the Hon'ble Judicial Member has rightly distinguished between enhanced punishment in the same disciplinary proceedings imposed by the appellate authority or revisional authority on one hand and enhanced punishment after remand in the second round of de novo disciplinary proceedings. I agree with him that in the second type of cases, on the analogy of the first type there is an additional ground for the appellate authority to deliberate upon the quantum

of the punishment appealed against. He has very correctly in the last sentence of referal order in his own hand added the words "and punishment thereof" instead of the words "and enhanced punishment thereof". Since the first punishment does not exist, the question of that punishment having been 'enhanced' in the second round of disciplinary proceedings may not be entirely a correct forensic description of the facts.

11. In the light of what has been discussed above, I, agreeing with my learned Brother Hon'ble Shri N.Dharmadan, am of the opinion that the matter should be remitted to the appellate authority after quashing Annexure-II for reconsideration of the appeal in all respects including quantum of punishment in accordance with law with special reference to sub-rule 2 of Rule 27 of the CCS(CCA)Rules.

12. Registry is directed to place my opinion before the appropriate Division Bench for pronouncement of final orders.

7.8.92

(S.P.MUKERJI)
VICE CHAIRMAN

7.8.92

n.j.j.

ORDER OF THE BENCH

In the light of the decision of Hon'ble Vice Chairman, the 3rd Member, we quash Annexure-VIII order and remit the case back to the appellate authority for fresh consideration and disposal of the appeal filed by the applicant against Annexure-VI punishment order, in all aspects including quantum of punishment in accordance with law with special reference to Sub-rule (2) of Rule 27 of CCS (CCA) Rules 1965.

25.10.94

(N.DHARMADAN)
JUDICIAL MEMBER

(N.V.KRISHNAN)
VICE CHAIRMAN

26.4.91

(8)

SPM & AVH

Mr Sasidharan Chempazhanthiyil for the applicant by proxy.
Sr CGSC for the respondents by proxy.

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At the request of the learned counsel of both the parties, list for further directions on 30.4.91.

SPM
26.4.91

30.4.91
(32)

SPM & AVH

Mr. Sasidharan for petitioner
Mr. Unni Krishnan for respondents (proxy)

The learned counsel for the respondents is directed to file reply to the CCP within 2 weeks with a copy to the other side.

List for further directions on

27.5.91

SPM
30.4.91

(27)

SPM & ND

Mr Sasidharan Chempazhanthiyil for applicant.
Mr NN Sugunapalan senior for respondents.

On request list for further directions on 30.5.91.

SPM
27.5.91

30-5-91
(18)

SPM & AVH

Mr G Sasidharan for petitioner
Mr NN Sugunapalan for respondents

We have heard the learned counsel for the parties on the CCP. The direction of this Tribunal dated 20.2.1991 was that the impugned order dated 16.7.1990 should be kept in abeyance. By the impugned order, the petitioner's pay was reduced by 4 stages which meant that by the impugned order, his pay got every month reduced. The impugned order being of recurring nature, by giving pay to the petitioner at the reduced level every month, the respondents have been showing ~~disobedience~~ disobedience of the order of the Tribunal dated 20.2.1991.

Accordingly, we direct the respondents to provisionally restore the pay of the petitioner w.e.f. 20.2.1991, as if the impugned order had not been passed and pay the arrears within 14 days from today, failing which ~~contempt~~ contempt proceedings will continue.

List for further directions on the CCP on 14.6.91

30-5-91

20.6.91

SPM&ND

Mr.Sasidharan -through proxy counsel.
Mr.Sugunapalan-SCGSC.

The learned counsel for the respondents has produced before us the order issued by the respondents restoring the pay of the petitioner with effect from 20.2.1991 as directed by the Tribunal on 30.5.1991. Accordingly there is no point in pursuing the C.C.P. any more, which is closed and the notice of contempt discharged.

20.6.91

(N.Dharmadan)
Member (Judicial)

(S.P.Mukerji)
Vice Chairman

20.6.91