CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 20 of 2012

CORAM Wednesday this the 5th day of August, 2015

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs.P. Gopinath, Administrative Member

M.C.John, aged 64 years, S/o Chandy
Khalasi (Dismissed from service)
Central Water Commission, Upper Krishna Division,
Khadakwasala, Pune, residing at Moothedath House,
Melood PO, Thenginthara,Adoor.

...Applicant

[By Advocate Mr. T.A.Rajan)

Versus

1 Union of India represented by the Secretary
to Government of India, Ministry of Water Resources,
Shram Shakti Bhawan, Rafi Marg
New Delhi-110 001.

2 The Chairman,
Central Water Commission, Sewa Bhawan,
R.K.Puram, New Delhi-110 066.

3 The Executive Engineer,
Central Water Commission,
Upper Krishna Division,
National Water Academy Complex,
Khadakwasla RS.Pune.411024.

4 K.Narayana Reddy, Section Officer (Inquiring Authority)
Central Water Commission,
Krishna and Godavari Basin,
Hyderabad-533001,.

7 The Director (Vig), Government of India
Ministry of Water Resources , Shram Shakthi Bhavan,
Rafi Marg, New Delhi-1100001.

...Respondents

(By Advocate Mr. N.Anil Kumar, Sr.P.C.G.C)

This application having been finally heard on 21.07.2015, the Tribunal on 05.08.2015 delivered the following

ORDER

Per: Justice N.K.Balakrishnan, Judicial Member

The applicant was dismissed from service based on the inquiry report in a disciplinary inquiry which was confirmed in appeal and in the revision filed by the applicant.

2. The applicant was initially appointed as Assistant Concrete Mixture Operator as per order dated 17.10.1974 issued by the Executive Engineer. Later he was promoted to the post of Concrete Mixture Operator on 28.9.1979. Subsequently he was retrenched and later he was again appointed as Khalasi by the Executive Engineer as per order dated 14.12.1984. An office memorandum dated 3.7.1998 was issued to the applicant which stated that the third respondent was proposing to hold an inquiry against him under Rule 14 of CCS (CCA) Rules. The charge contained three articles of charges, the first one was that while the applicant was functioning as work charged khalasi during 1991 he committed an act of falsification of records, as he signed his attendance in advance in the attendance register of Anjanari Site No.II Goa for the period 6.2.1991 to 15.2.1991. The second charge was that during the same period the applicant committed act of tampering of records by interpolating his initials on different dates by defacing/tampering the initials of two other officials, who recorded the Gauge Readings in the concerned register of Anjanari Site No.II, Goa. The third charge against him was that

he absented himself from duty willfully and unauthorizedly during the period from 11.2.1993 to 21.10.1999. The inquiry officer found that the applicant is not guilty of falsification of records but he is guilty only of minor misconduct of signing in pencil in advance in the attendance register from 16.1.1991 to 15.2.1991. Charge No.2 could not be proved against the applicant, but it was found that the applicant is guilty of unauthorized and willful absence from duty from 11.2.1993 to 21.10.1999 and thereby he neglected his duties. Based on the inquiry report the disciplinary authority dismissed the applicant from service. That was challenged by him filing appeal. The appellate authority confirmed that order vide Annexure. A.5. As against which the applicant filed the revision petition. The revision petition was allowed setting aside order passed by the disciplinary authority which was confirmed by the appellate authority and directed to reinstate the applicant from the date of dismissal from service and also to place him under deemed suspension from the date of dismissal from service. Further the disciplinary authority was also directed to conduct de novo proceedings under Rule 14 of CCS (CCA) Rules, 1965 from the date of issue of fresh charge sheet and to dispose of the same strictly in accordance with rules vide Annexure.A.6. Pursuant to the direction in Annexure. A.6 the applicant was reinstated in service with effect from 21.10.1999 as evidenced by Annexure. A7. As per Annexure A8 the applicant was kept under deemed suspension w.e.f. 21.10.1999. Thereafter charge sheet dated 26.10.2002 was issued in respect of the three charges referred to earlier.

3. Explanation was submitted by the applicant denying the charges

levelled against him. As his explanation was found unsatisfactory the 4th respondent appointed an inquiry officer to inquire into the charges levelled against the applicant. As per the order passed by this Tribunal in OA 297/2003 the inquiry was ordered to be conducted at Kochi as evidenced by Annexure.A.12 .

4. To sustain the charge levelled against the applicant eight witnesses were examined on the side of prosecution and five documents were also marked. On the side of the applicant two witnesses were examined and six documents were marked. The applicant contends that the inquiry was not properly conducted as required under Rule 14 of CCS (CCA) Rules, 1965. The 4th respondent has not questioned the applicant on the circumstances appearing against him in the evidence and his explanation in this regard was also not obtained by the 4th respondent. The 4th respondent later submitted a report finding that the applicant is guilty of the third charge and also partly guilty of the first charge but found not guilty of the second charge. Annexure. A13 is the report. The third respondent asked the applicant to submit his representation, if any, against the inquiry report as per Annexure. A14. Pursuant thereto the applicant submitted Annexure. A15 representation. Without properly considering Annexure. A15 the inquiry report was accepted by the 3rd respondent. Accepting the inquiry report the applicant was dismissed from service as per Annexure. A.16 order. Though the applicant filed appeal it was dismissed. Hence he filed a revision petition which was not considered. Since it was not considered by the revisional authority the applicant moved this Tribunal

filing OA 747/2009. This Tribunal directed the first respondent to consider and dispose of Annexure. A18 revision fixing a time frame. Thereafter the revision petition was dismissed as per Annexure. A.22 order.

5. The applicant contends that there was gross violation of Rule 14 (18) of the CCS (CCA) Rules, 1965 since the applicant was not examined himself as a witness and the inquiry officer did not question the applicant in general on the circumstances appearing against him in the evidence. Since the 4th respondent has not followed the mandatory requirement the inquiry report is to be set aside and so the action taken pursuant thereto also must be quashed. The period of absence from duty from 11.1.1993 to 20.10.1999 was treated by the respondents as dies non and so it is not open to the respondents thereafter to find the applicant guilty of unauthorized absence. The applicant was dismissed from service by an authority lower in rank to the appointing authority. The applicant was promoted to the post of Concrete Mixture Operator by the Superintending Engineer and though later, on becoming surplus the applicant was appointed as Khalasi by the Executive Engineer. The Superintending Engineer who had promoted the applicant alone was competent to pass an order of dismissal and so the Executive Engineer who is a lower authority had no jurisdiction to pass such an order. The disciplinary authority, the appellate authority and also the revisional authority did not properly appreciate the case of the applicant. The applicant did not absent himself from duty willfully and deliberately but absented from duty due to the threat to his life created by the then Executive Engineer. The appeal and the

revision petition were not properly considered by the authority concerned and as such the whole proceedings by which the applicant was dismissed from service should be quashed and the respondents should be directed to treat the entire period the applicant was kept out of duty as duty and he should be given all consequential benefits as well.

6. The respondents resisted the application contending as follows:

6.1 The allegation that the inquiry was not conducted as per rules is absolutely false. The inquiry was conducted following the prescribed procedure and no prejudice whatsoever was caused to the applicant. The applicant was working as Khalasi under the Executive Engineer and so the order of dismissal passed by the Executive Engineer is perfectly valid. The contention that the applicant was absent from service because of the threat posed by the then Executive Engineer in absolutely false. No complaint whatsoever was given by the applicant to any police or any other officer. It could not be proved by the applicant in the inquiry that the then Executive Engineer R.K.Suryavanshi had ill-treated or harassed the applicant. The further plea raised by the applicant that the inquiry was conducted without notice to the applicant or without hearing him is also absolutely false. In fact there was evidence of tampering of the attendance register as can be seen from the evidence given by PW1 and PW2. Though the applicant had earlier applied for one month EOL w.e.f. 11.1.1993 after the expiry of that leave, he did not apply for extension of leave with effect from 11.2.1993 onwards. The evidence given by PW 6 and PW7 would see that the applicant did not report for duty during the relevant time. The very

fact that witnesses were examined on the side of the applicant would clearly show that due opportunity was given to the applicant to place all his defence. All the contentions raised by the applicant were properly considered by the inquiry officer and also by the disciplinary authority, appellate authority and by the revisional authority., Therefore, all the charges levelled against the applicant could be duly proved and as such the order of dismissal passed by the disciplinary authority, confirmed in appeal and revision does not require any interference at the hands of this Tribunal.

7. The points for consideration are (i) whether the Executive Engineer was competent to pas the order of dismissal of the applicant (ii) whether the finding regarding willful and unauthorized absence recorded by the disciplinary authority, confirmed in appeal and revision is liable to be set aside on the ground that the relevant period was treated as dies non by the respondents and (iii) whether there was violation of the mandatory procedure which would vitiate the order passed by the disciplinary authority, which was confirmed in appeal and revision.

8. We have heard the learned counsel appearing for the parties and also gone through the pleadings and documents/annexures produced by the parties. The first ground of attack made by the applicant is that the applicant was originally posted as Assistant Concrete Mixture by the Executive Engineer. Later he was promoted to the post of Concrete Mixture Operator by the Superintending Engineer who is the superior officer and as such the Executive Engineer who is lower in rank/subordinate officer to the

Superintending Engineer is incompetent to be the disciplinary authority nor is he competent to pass an order of dismissal from service of the applicant. This argument proceeded on the footing that though originally the applicant was appointed as Assistant Concrete Mixture as per order dated 17.10.1974 later he was promoted as Concrete Mixture Operator as per Annexure.A.2. That was done by the Superintending Engineer. It is also the admitted fact that the applicant was retrenched from that post and only later as per order dated 14.12.1984 he was appointed as Khalasi. It was a totally new appointment. That appointment was done by the Executive Engineer. It is vehemently argued by the learned counsel for the applicant that the applicant had offered to return the retrenchment compensation and so he must be deemed to have been in service. But it is important to note that the applicant was subsequently appointed only as a Khalasi (a Group D employee) and it was done by the Executive Engineer. The applicant was not posted as Concrete Mixture Operator and as such the theory that since once upon a time he was working as Concrete Mixture Operator and that was a promotion post given by the Superintending Engineer, the Superintending Engineer alone was competent to initiate disciplinary proceedings and to pass the order of dismissal from service is totally misplaced and unacceptable. It is clear from the records that the applicant was appointed as a kahalsi and he continued to be khalasi when he became unauthorizedly absent as alleged by the respondents. That was a separate appointment done by the Executive Engineer. That has nothing to do with his previous service/appointment as Concrete Mixture

Operator. As such we find that there is absolutely no merit in the plea so raised by the applicant .

9. The second point which has been pressed into service by the applicant is that the respondents themselves have treated the period from 11.2.1993 to 21.10.1999 as dies non and so later turned round and state that the applicant was unauthorizedly absent during that period. Admittedly the applicant was not granted leave. He did not apply for leave nor was he granted leave during the relevant period mentioned above. The word dies non would only indicate that he was not actually on duty. After the initial round of inquiry, though he was found guilty of the charge of willful and unauthorized absence from duty during the period from 11.2.1993 to 21.10.1999 and he was dismissed from service, and though that order was confirmed in appeal, it was reversed by the revisional authority holding that there was procedural violation and so a de-novo inquiry was directed to be conducted. It was further made specific in the order passed by the revisionary authority that the applicant should be kept under deemed suspension. Therefore it is the admitted case that the applicant was kept under suspension during the relevant period. Therefore, in order to avoid counting of that period as service, it was categorized as dies non. That does not mean that he was granted leave or that he was treated to be on duty during the relevant period.

10. The learned counsel for the applicant has relied upon the decision of Hon'ble Supreme Court in **State of Punjab and others Vs. Bakshi Singh, 1998(8) SCC 222**. That was a case where a police

constable was held to be absent from duty unauthorizedly. That order was challenged by him in a suit filed before the trial court. The trial court declared the suit setting the order of dismissal passed against him. It was found by the trial court that the defence themselves had regularized and treated the period of the respondent's (the police constable there) absence from duty as period of leave without pay, and so the court cannot not legally say that he was guilty of misconduct for unauthorized absence from duty. That finding was affirmed by the appellate court. Therefore, it was found that the charge of absence from duty did not survive but the lower appellate court proceeded to consider the question whether the absence from duty was a misconduct from the gravest kind so as to warrant the maximum penalty of dismissal from service or it was a mere misconduct for which lesser punishment would be appropriate and hence the lower appellate court remanded the case back to the punishing authority for passing a fresh order of punishment. That was challenged before the High Court. The Second Appeal was dismissed summarily. The Hon'ble Supreme Court in the background of that case held that it was a case where the trial Court recorded a finding that unauthorized absence from duty having been regularized by treating the period of absence as leave without pay, the charge of misconduct did not survive. It was with that finding the suit was decreed. That finding was affirmed by the lower appellate court a well since the period of unauthorized absence from duty was regularized the charge would into survive. But here the facts are entirely different. The period of unauthorized absence was not regularized by the respondents treating the

period of absence as leave without pay. It was treated as dies non to mean that it is not leave at all. Admittedly no leave was applied for or granted by the respondents. Therefore, the question of period of absence getting regularized did not arise at all. Therefore, the second contention raised by the applicant must also fall to the ground.

11. The learned counsel for the applicant has very much relied upon the decision of the Hon'ble Supreme Court in **Regional Manager Central Bank of India Vs. Vijay Krishna Neema and others 2009(5) SCC 567.** There also the charge was of unauthorized absence. The respondent/incumbent therein was in the employment of the appellant bank. He had taken 4 days leave upto 25.7.1986 and the leave was extended from 26.7.1986 to 1.8.1986. Thereafter he did not join his service nor filed the further applicatio for extension of leave. Memos were issued and thereafter a letter was also issued but those memos and letters were returned to the bank with the endorsement refused. But in the inquiry it was found that the factual position was clear that the incumbent had 236 days leave in the credit. He had submitted an explanation about his absence on account of his illness supported by the medical certificate. There Clause 16 of Shastri Award was under consideration. It was also noticed by the High Court that the respondent/bank employee had changed his address and that was made known to the officers of the bank. In spite of the fact shifting of the residence by the employee had been intimated the notices were stated to have been sent in the original address. There was also evidence to show that the bank had filed a suit for recovering the

amount in which the notice/summons was sent to the address to which the respondent had shifted. Therefore, it was found that there was clear denial of opportunity. It was held that in the face of an absent employee notice was required to be served by Regd. Post with ack due and it is not imperative that there should be a personal service of notice. The absence was properly explained by the respondent/employee. Further he had to his credit 236 days leave. Therefore, considering all the circumstances it was found that it cannot be said that the respondent had abandoned the service voluntarily. The facts dealt with therein are entirely different with the case on hand. In this case the applicant absented himself from duty from 11.2.1993 to 21.10.1999 ie., for nearly more than six and half years The evidence would show that he did not send any application after the leave originally granted expired. His only explanation was that he had threat to his life at the hands of the Executive Engineer. That was found to be totally bereft of any merit. He did not file any complaint to the police or to any other authority concerned. He did not sent any letter intimating that fact to the superior officers of the Executive Engineer or his own superior. He did not even send an application for leave. He did not have in his credit any leave to be adjusted towards the period of absence. As noted above his period of absence was more than six years and eight months.

12. It is also pointed out by the learned counsel for respondents that the case of the applicant that his absence was due to threat to his life is totally false. Had there been any such threat he would have certainly lodged a police complaint with the local police station near to the site office

against the person from whom he had such threat. There is absolutely no case for the applicant that he had ever lodged any complaint to police or his superior officer. Documents were produced to show that the applicant had been warned several times for his indiscipline etc. Be that as it may, those are not matters germane for consideration now. The disciplinary authority and the appellate authority could find that there is absolutely no merit in the contention advanced by the applicant that his absence was due to threat of life and that he did complaint to any body else and he did not sent a leave letter to the officer concerned would speak volume as to to the total lack of bonafides in the plea so raised by him. Since the period of his absence for nearly six years and eight months and when the applicant had no reasonable or plausible explanation for his absence reasonable inference to be drawn was that his absence was willful. In other words the fact that he was unauthorizedly absent and his absence is willful does not require any interference. It is a concurrent finding of fact entered by the two authorities below.

13. In the rejoinder filed by the applicant it was contended by him when Annexure. A.13 inquiry report and Annexure .A.14 show cause were given to him for submitting his representation against the inquiry report, he had submitted Annexure. A15 representation but the third respondent did not consider Annexure. A15 but accepted the inquiry report and dismissed the applicant from service as per Annexure.A.16 order (Annexure.R.1).

14. It was stated that while he was working under the Executive Engineer, he was declared surplus and was thus given retrenchment

benefits but later he was appointed as Khalasi after getting Annexure.R.3 undertaking and he was directed to refund the retrenchment compensation received by him and accordingly he has refunded the retrenchment compensation. Thus he has been projected to contend that his position should be reverted back to the original appointment and later promotion by the Superintending Engineer so as to contend that the disciplinary authority is not the Executive Engineer but it should be Superintending Engineer. It was in fact a new and different appointment that was given to him as Khalasi and that appointment was given by the Executive Engineer. Had the applicant been in service he could have at the most claim the past service for the purpose of pension but that does not mean that his appointment was by Superintending Engineer. He was only a Khalasi after he was appointed by the Executive Engineer and he continued to be so till he absent himself from duty and later thereafter also.

15. The respondents would contend that in fact there were complaints against the applicant from the Junior Engineers, Assistant Engineers etc. under whom the applicant had worked and several times he had warned for the misbehaviour, misconduct, indiscipline etc. In support of which the respondents have produced documents. This has been produced by the respondents to counter the contention raised by the applicant that he was scared of the Executive Engineer and which according to the applicant was the reason for unauthorized absence. The inquiry officer has gone into all those aspects and found that the explanation so offered is totally unacceptable. It was accepted by the

disciplinary authority. The appellate authority also after marshalling of the entire evidence found that the case put forward by the applicant is totally baseless.

16. The main thrust of the argument advanced by the learned counsel for the applicant is that there was gross violation of Sub Rule 18 of Rule 14 and so Annexure. A.13 has to be quashed. For a better understanding Sub Rule 16 to 18 of Rule 14 of CCS (CCA) Rules are extracted as under:

> **(16) When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.**
>
> **(17) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.**
>
> **(18) The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.**

It is vehemently argued by the learned counsel for the applicant that it is not discernible from the inquiry report that after the evidence on the side of the applicant was closed the inquiry officer has questioned the applicant generally on the circumstances in the evidence for the purpose of applicant to explain the circumstances appearing in the evidence against him as given under Rule 14 (18). The infraction of the rule would certainly vitiate the entire proceedings, the learned counsel further submits. Even if the inquiry officer had set the applicant exparte while recording the prosecution

witnesses after the evidence is over it was incumbent on the inquiry officer on the evidence and circumstances which were produced the applicant just like the requirement under Section 313 of Cr.PC after the closure of the prosecution evidence. Therefore, according to the learned counsel for the applicant since the evidence appearing against the applicant was not specifically put to him and his explanation was obtained there was denial of the mandatory procedure prescribed under Sub Rule 18 of Rule 14. In support of his submission learned counsel relied upon the decision of Hon'ble Supreme Court in **Ministry of Finance Vs. Ramesh 1998 (3) SCC 227** and submits that the omission to question the applicant under Sub Rule 18 of Rule 14 is a serious error. The Supreme Court decision ins **Mani Sanker's case 2008 (3) SCC 484** has also been relied upon by the learned counsel for applicant in support of his submission that Rule 14(18) is mandatory in nature. A reading of Sub Rule 18 of Rule 14 would show that the inquiry officer had to ask the mandatory question with regard to the circumstances appearing against the applicant in order to seek his explanation regarding the same. Though order passed by this Tribunal in OA. 861/2011 dated 15.2.2013 has been produced by the learned counsel for applicant, that decision has no application to the facts of this case. It was found therein the inquiry officer has closed the case after the prosecution producing the documentary evidence. But in the case on hand the position is different, the learned counsel for the respondents points out. It is also pointed out by the learned counsel for the applicant that the decision in Mani Sanker cited supra (2008(3) SCC 484) was again

followed by the Hon'ble Supreme Court in **Roopsingh Negi Vs. Punjab National Bank 2009(2) SCC 570.** The counsel for respondents would submit that the facts dealt with all the aforesaid decisions cited supra have absolutely no bearing to the facts of this case as far as the case on hand is concerned. It is a proved case that the applicant was unauthorizedly absent from 11.2.1993 to 21.10.1999. The applicant could not offer any acceptable explanation for his absence. He did not submit any leave application nor was there any leave at his credit. Since his absence was for 6 years and 8 months and that the only explanation offered that he had threat to his life and since that plea stood improbabilised there was nothing more to be questioned so as to get explanation from the applicant. Moreover according to the respondents the procedure has been duly complied with as can be seen from Annexure. A3, the inquiry report itself. On going through the report it is clear that on earlier occasions the applicant was absent. Later he appeared along with his defence assistant and the inquiry was conducted in his presence. During the regular hearing the evidence of prosecution witness was recorded and the documents were also brought on record. Thereafter the presenting officer stated that the evidence to the prosecution is closed. Thereafter the charged officer (applicant herein) was asked to submit his defence statement. He opted to give his defence statement orally. The same was recorded. Copes of the same were given to both charged officer as well as to the presenting officer. Therefore, it is argued by the learned counsel for the respondents that there was substantial compliance as the accused, the applicant himself

gave oral statement which was adduced to writing, which would mean that the applicant was questioned as to the circumstances against him and it was with respect to the same he gave his statement. It is also stated that on the next hearing the evidence of the defence witnesses were brought on record but thereafter the charged officer (applicant) did not opt to get himself examined as a witness. It is clearly mentioned in para 11 of Annexure.A13 that the applicant was generally examined by the inquiry officer and his replies were bought on record. It was done after the defence witnesses were examined. That will show that the inquiry officer had complied with the procedure prescribed under Sub Rule 18 of Rule 14. It was stated that the copies of the same were given to the presenting officer and the charged officer(applicant). Thereafter as stated by the presenting officer and the charged officer the evidence were treated as closed and it was posted for argument. Therefore, it is clear that the applicant/delinquent was examined by the inquiry officer after the evidence on the side of the prosecution was closed. That statement given by the applicant was reduced to writing by the inquiry officer and thereafter the witnesses on the side of defence/applicant was examined. After closure of that evidence, the applicant was again asked about the evidence generally. Since paragraph 10 and 11 of Annexure. A.13 would show that the procedure as required under Sub Rules 16 to 18 of Rule 14 were duly complied with the contention to the contrary advanced by the learned counsel for the applicant cannot be sustained at all.

17. The learned counsel for applicant relied upon the decision of the

Kerala High Court in **Dena Bank and others vs. Shakunthala Madhavan, 1999(1) ILR (Kerala) 396.** In that case the learned Single Judge of the High Court had noticed that the mandatory regulation of Regulation 6(17) of the Dena Bank Officer Employees (Disciplinary and Appeal) Regulations, 1976 was violated. That regulation says that if the officer was not examined himself, the inquiry officer may question him on the circumstances appearing against him in the evidence for the purpose of enabling the officer employee to explain circumstances appearing in the evidence against him. That was a case where admittedly the employee was not questioned and he was not given opportunity as required under Regulation 6(17) of the Regulation mentioned above. It was held that the provision therein is akin to Section 313 Cr.PC and it is a mandatory requirement and that violation of the same would render the impugned punishment invalid. Decision of the Hon'ble Supreme Court in **Ministry of Finance and another Vs. S.B. Ramesh, AIR 1998 SC 853** was relied upon by the Hon'ble High Court in the case cited supra. It was held therein that Regulation 6 (17) mentioned earlier is akin to Sub Rule 18 of Rule 14 of CCS (CCA) Rules which required the inquiry authority to question the officer facing the charge broadly on the circumstances appearing against him in the evidence for the purpose of enabling him to explain any circumstances appearing in the evidence against him. It is stated that it is required when the charged officer does not offer himself for examination as a witness and so it was held to be a mandatory provision and that omission to give such hearing was held to be a serious error committed.

As has been said earlier in this case it is clear form Annexure A.13 that the applicant was questioned as per Sub Rule 18 of Rule 14 though the rule as such was not quoted.

18. The respondents would rely on the decision of a Division Bench of the Hon'ble High Court of Kerala in **Babu Vs. Union of India reported in 2006 (4) KLT 793.** Relying on the aforesaid decision it is submitted by the learned counsel for the respondents that if at all the violation would only be of a facet of the rules of natural justice and in such a case sustainability of the impugned order has to be tested on the touch stone of prejudice. It was held by the Division Bench:

> "13: Viewed in that angel, it cannot be said that violation of a rule insisting for a facet of natural justice will result in declaring the order void. The approach and test adopted by the Constitution Bench of the Apex Court in *B.Karunakar (1993) 4 SCC 727)* should govern such cases. Where the complaint is not that there was 'no opportunity 'no hearing', but one of 'not affording a proper hearing' or 'violation of a facet of natural justice', the person complaining must show causation of a prejudice as against him by reason of such violation. In such situation, the extent of prejudice suffered shall be the basis for the decision of the Court."

19. Following the earlier decision in **KG Tripathi Vs. State Bank of India (1984) 1 SCC 43** and following the Constitution Bench decision in **B.Karunakar 1993(4) SCC 727** it was held by the Supreme Court in State Ban k of Patiala Vs. R.K.Sharma, [1996(3) SCC 364]:

> "In respect of procedural provisions, other than of a fundamental nature, the theory of substantial compliance would be available. In such cases, complaint/objection on this score have to be judged on the touchstone of prejudice, as explained later in this judgment, In other words, the test is "all things taken together whether the delinquent officer/employee had or did not have a fair hearing"

It was also held therein:

> "It would not be correct in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further inquiry. In our opinion, the approach and test adopted in B.Karunakar (1993) 4 SCC 727 should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (ie., adequate or a full hearing) or of violation of a procedural rule or requirement governing the inquiry. The complaint should be examined on the touchstone of prejudice as aforesaid."

20. It was also also held by the Supreme Court in **Alighar Muslim Unviersity Vs. Mansoor Ali Khan – (2000) 7 SCC 529:**

> *"In addition to breach of natural justice, prejudice must also be proved has been developed in several cases."*

Therefore, according to the learned counsel for the respondents the Hon'ble Supreme Court has been consistently applying the principles of prejudice.

21. It is not a case where the inquiry officer and the disciplinary authority acted mechanically and without applying their own mind. There was a fair and independent consideration and it was only thereafter they reached the conclusion. Every miniscule violation, even if there is any does not spell illegality. The totality of the circumstances satisfies the Tribunal that the applicant who was visited with adverse order has not suffered from denial of reasonable opportunity and as such this Tribunal should decline to be persuaded by the contention raised by the applicant. We are reminded of the classical words/expressions of Justice Krishna Iyer in **Chairman, Board of Mining examination Vs. Ramji 1977 (2) SCC 256**

that natural justice is not an unruly horse, no lurking land mine, nor a judicial cure-all.Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case can be exasperating. It was held that if fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of.

22. It is not a case where no opportunity was given to the applicant. He had adequate opportunity. He was assisted by a defence Assistant. The evidence was recorded in his presence. On behalf of the applicant defence witnesses were examined. The applicant (delinquent) was examined orally and it was recorded in writing before the defence evidence was recorded. Thereafter, after his witnesses were examined, his statement was also recorded as can be seen from para 11 of Annexure.A13 referred to above. As has been held by the Division Bench in Babu's case (supra) the approach and test adopted by the Constitution Bench of the Supreme Court in B.Karunakar, (1993) 4 SCC 727 should govern such cases. It is not a case where the applicant was not given opportunity or that he was not heard. At every stage he was heard and statements were recorded. There was no violation of rules or natural justice, learned counsel for the respondents submits. It is not shown what was the prejudice caused to him, even if it is assumed for the worst position, that he was not generally questioned as required under Rule 14

(18) of CCS (CCA) Rules. In fact that question does arise since we are of the considered view that the applicant was actually questioned with regard to the evidence appearing against him as per Rule 14(18). No case of prejudice at all was raised or attempted to be proved or probabilised. It is not a case where any specific explanation can be given by the delinquent employee with regard to any document or anything of that sort. Here, it is a case of unauthorized absence for a period of 6 years and 8 months. What can be the explanation the applicant can give when his only defence is that he was afraid or there was threat to his life which is seen to be only a figment of the imagination and nothing more. The plea of prejudice or non compliance of Sub Rule 18 of Rule 14 is found to be bereft of any merit. Therefore, we find no legal infirmity nor any violation of natural justice or flagrant violation of any mandatory provision in the conduct of the inquiry or in the proceedings subsequently taken by the disciplinary authority. As such we find no merit in this application.

23. In the result this O.A is dismissed. No order as to costs.

(P.Gopinath)
Administrative Member

(N.K.Balakrishnan)
Judicial Member

kapps