CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 204 of 2005

Friday, this the 12th day of January, 2007

C O R A M :
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Sibi Sonny,
W/o. P.J. Sonny,
Woman Security Guard (removed from service),
Cochin Special Economic Zone,
Kakkanad, Kochi -37,
Residing at Pulikkakunnel House,
Pazhamthottam P.O., Kumarapuram,
Ernakulam : 683 565. ... Applicant.

(By Advocate Mr. P.A. Kumaran)

versus

1. Union of India represented by its
Secretary, Ministry of Commerce and Industry,
New Delhi.

2. The Joint Secretary,
Ministry of Commerce & Industry,
Department of Commerce, Government of
India, Udyog Bhavan, New Delhi : 110 001

3. The Development Commissioner,
Cochin Special Economic Zone,
Ministry of Commerce and Industry,
Kakkanad, Cochi - 682 037.

4. The Deputy Development Commissioner
Office of the Development Commissioner,
Cochin Special Economic Zone, Ministry of
Commerce and Industry, Kakkand,
Cochin : 682 037 ... Respondents

(By Advocate Mr. T P M Ibrahim Khan, SCGSC)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant was issued with a Rule 14 Memorandum of Charges dated 17-03-2004 (Annexure A-2) stating that while she was on duty on 30.01.2004 and assigned the duty of supervising removal of auctioned goods from Plot No. 16/A-1, at about 5.40 p.m. On receiving information from one of the security guards that she was carrying a plastic bag from the said plot and she was summoned by the Security Officer and on inspection, one synthetic overall (pant and shirt stitched together) was found in it. She had no written authorization/permission to remove the item. The material was confiscated. Thus, she has violated Rule 3(1) (i), (ii) and (iii) of CCS (Conduct) Rules. The applicant denied the charges, and while so denying, by Annexure A-4 letter, the applicant had also requested for copies of the listed documents Inquiry proceedings. Inquiry officer was appointed and the applicant had requested for certain other documents as defence documents vide Annexure A 8 letter dated 25-5-2004. Initially one Shri T.V. Chandran was appointed as Inquiry Officer. However, on his having ceased to exercise jurisdiction, Shri N. Wilson, Assistant Development Commissioner was appointed as I.O. This new I.O. was none other than the one who had functioned as Inquiry Officer in yet another case involving the same incident, against one Shri T. Ramakrishnan. In that case, the said I.O. had cross examined the applicant when the applicant was one of the defence witnesses

in that case. In the said inquiry against Shri Ramakrishnan, Shri N. Wilson, the I.O. had held, vide Inquiry Report dated 26-07-2004, "The charge against Shri T. Ramakrishnan, Assistant Security Officer that he failed to prevent the unauthorized removal of auctioned goods from Plot No. 16, by Smt. Siby Sony, WSG on 30-01-2005 and that he failed to make an entry about the said incident in the ASO diary on the same day and latter he inserted the same incident in the ASO diary is "PROVED". Hence, the applicant had, on the basis of Rule 11 of the CCS (CC&A) Rules, 1965 requested for change of inquiry officer, vide Annexure A-11 letter dated 02.08.2004. However, this request of the applicant was turned down by Annexure A-12 order dated 05-08-2004 stating, "the competent authority has not acceded to the request for change of inquiry officer". The fact of rejection of the request of the applicant for change of inquiry authority was recorded in the Annexure A-13 record of inquiry proceedings dated 06.08.2004 stating, "*However, pursuant to issue of the above order dated 27-07-2004, the Defence has requested the Disciplinary Authority to change Shri N. Wilson, ADC as Inquiry Authority and appoint another officer as inquiry Authority vide their letter dated 2-8-2004. The same has not been acceded to by the Disciplinary Authority as intimated vide their letter dated 5-8-2004.* The applicant having observed that the Inquiry Authority performed dual functions, both as I.O. and P.O. pointed out the legal lacuna in the proceedings and submitted that she may be permitted to file written brief under the provisions of Rule 14(19) of the CCS (CC&A) Rules,1965, vide

Annexure A-18 letter dated 19-08-2004. The Inquiry Authority, after closing the prosecution evidence, vide order sheet dated 24-08-2004 stating *"the Defence has not made it clear as to what the Defence Witnesses have to say on the alleged incident"* and *"Further the Defence has not made clear as to the relation between the alleged incident and the additional documents mentioned by the Defence in their letter dated 25-05-2004", "the inquiry officer finds no justification on the request made by the Defence. Hence, the request for production of witness and inspection of additional document made by the Defence is rejected."* Annexure A-19 refers. After the submission of written brief dated 3-9-2004 (Annexure A-20), the inquiry officer had, vide Annexure A-21 report dated 13-09-2004 held the charge to have been proved. Copy of the said report was supplied to the applicant and the applicant filed her representation against the same, vide Annexure A-22 representation dated 11-10-2004. The Disciplinary authority had, by the impugned Annexure A1 order dated 16-11-2004 accepted the version of the Inquiry officer and imposed the penalty of removal from service. Against the said penalty order, the applicant had filed her appeal dated 01-12-2004 vide Annexure A-23 and by Annexure A-24 order dated 14th February, 2005, the appellate authority had dismissed the same. Hence, this O.A.

2. The legal grounds raised by the applicant in the OA are as under:-

(a) The case is one of no evidence and hence, the decision is contrary to the law laid down by the Apex Court in the case of Union of India H.C. Goel (AIR 1964 SC 364.)

(b) The findings of the I.O. and D.A are perverse.

(c) Principles of Natural Justice have been violated inasmuch as the documents called for by the applicant were not provided.

(d) The I.O. acted both as inquiry officer and presenting officer which is impermissible.

(e) The I.O. was totally biased and request for change of I.O. has been illegally rejected.

(f) Provisions of Rule 27(2) of the Rules have not been complied with. The appellate order was passed without considering the appeal preferred by the applicant and confirms total non application of mind by the appellate authority.

3. Respondents have contested the OA. According to them, the proceedings were conducted in accordance with the provisions of the Rules. They have asserted that the Disciplinary Authority and the Appellate Authority considered all the matter on record in detail and thus prayed for dismissal of the O.A.

4. The counsel for the applicant, in addition to the written submissions, submitted that right from the inquiry stage upto appellate stage, there has been violation of rules in this case. He had reiterated all the grounds as levelled in the O.A. and submitted that the decisions of the Apex Court and various other decisions of the Tribunal would support the case of the applicant. In particular, the counsel referred to the following decisions:-

(a) ***Ram Chander v. Union of India, (1986) 3 SCC 103,***
(b) ***R.P. Bhatt v. Union of India (1986) 2 SCC 651***
(c) ***State Bank of Patiala vs S.K. Sharma ((1996) 3 SCC 364***

(d) Narinder Mohan Arya v. United India Insurance Co. Ltd.,(2006) 4 SCC 713,
(e) Prem Babu vs Union of India (1987) 4 ATC 727

5. Counsel for the respondents submitted that the disciplinary authority's order being comprehensive and speaking one, the appellate authority need not have to furnish a speaking order when he endorses the decision of the disciplinary authority.

6. Arguments were heard and documents perused. The following legal issues are raised by the applicant in the OA and through arguments:-

(a) Whether the inquiry authority could function as Presenting officer also and cross examine the witnesses?

(b) When the inquiry authority had as such functioned as Inquiry Officer in another case involving the same incident can he act as inquiry authority in this case as well?

(c) Whether rejection of the applicant's request for change of I.O. on the ground apprehension by the applicant of bias on the basis that the I.O. had predetermined the issue as he had conducted the inquiry in another case involving the same incident, is as per the rules?

(d) Whether non supply of defence documents and non summoning of defence witnesses vitiated the proceedings?

(e) Whether the provisions of Rule 27(2) of the CCS (CC&A)Rules 1965 were scrupulously followed in this case?

7. To substantiate the first legal issue, counsel for the applicant relied upon the decision of Prem Baboo vs Union of India and Ors., (1987) 4 ATC 727. The Principal Bench in that case held as under:-

"7. The second point that was urged by the counsel for the applicant was that as the inquiring authority himself has cross-examined the delinquent, there is violation of the principles of natural justice. He invited our attention to sub-rule (18) of Rule 14 of the Rules, wherein the inquiring authority is enabled only to generally question the delinquent on the circumstances appearing against him in the evidence, in a case where the delinquent has not examined himself. (This is a case where the delinquent did not choose to examine himself). It is clear from the sub-rule that the purpose is to enable the delinquent to explain any circumstances appearing in the evidence against him. It is settled that if in the guise of exercise of power under sub-rule (18), the inquiring authority proceeds to make a cross examination of the delinquent, there is clear violation not only of sub rule (18) but of the role of the prosecutor. A Bench of this Tribunal has held in Babu Singh vs. Union of India, ATR 1986 CAT 195, that where the inquiry officer had subjected the delinquent employee to cross-examination and had thus assumed the role of a Judge as well as the prosecutor, then the factum of the inquiry officer assuming the role of the prosecutor vitiates the entire proceedings."

Again, in para 9 of the judgment in the case of Brahm Singh vs Union of India and Others, (1990) 13 ATC 447, the Principal bench relied on the judgment in the case of Babu Singh (as also relied on in the above judgment of Prem Baboo) and held as under:-

"9. Coming to the enquiry proper, we notice several irregularities which vitiate the entire proceedings. It is clear from the record that after the charge was framed and he was asked to adduce his defence evidence, the plaintiff examined himself and curiously enough, the Enquiry Officer cross-examined him which is not permitted under the rules governing the disciplinary proceedings. Any such examination of the charged officer vitiates the proceedings. In Babu Singh vs. Union of India, (1986) 1 ATR 195, a Bench of this Tribunal held that where the Enquiry Officer had subjected the delinquent

> employee to cross-examination and had thus assumed the role of both a Judge and a Prosecutor, the entire proceedings are vitiated. That the plaintiff was cross-examined is borne out by the record and the material was used to hold the plaintiff guilty of the charge. We, therefore, hold that the departmental enquiry was vitiated on this ground also."

8. The respondents have stated in the counter and during the course of arguments, that appointment of Presenting Officer is discretionary and when there is no Presenting Officer, the I.O. could well perform the dual role. It is exactly this proposition that had been held illegal in the aforesaid decision. Hence, in view of the above decision, the inquiry officer's functioning in a dual capacity both as Inquiry Authority as well as Presenting Officer is held to be illegal.

9. As regards (b) above, the Inquiry Officer had rendered its findings in the case of T. Ramakrishnan holding him guilty of the misconduct and that findings indirectly holds the applicant in this OA as guilty of misconduct. It is the case of the applicant that since the Inquiry Officer in this case is the very same who had rendered his findings in the case of T.Ramakrishnan, who even before conducting the inquiry had indirectly came to the conclusion that the applicant was guilty of misconduct as per the charge, there is an element of bias in his mind and it was for this reason that the applicant insisted upon the change of the I.O. whereas her request had been rejected. As bias dominates in the act of the I.O. the counsel for the

applicant argued that the inquiry is vitiated. In the case of Rakhal Chandra Dey vs Unon of India, (1991) 18 ATC 556, the Guwahati Bench of the Tribunal had held as under:-

> "Law is well settled in a plethora of judicial pronouncements that the person aggrieved is not required to prove actual bias, but the only thing which is required of the delinquent officer to prove is 'likelihood of bias'. In a bedroll of judgements pronounced by the Apex Court of India, it has been consistently laid down that ' justice shall not only be done, but there must be a manifestation of justice been done'. Furthermore, it has also been held that a person cannot be a judge of his own cause/or a person cannot be a judge of a particular matter, evidence of which is within his personal knowledge. Here is a case where admittedly, Mr. Agarwal had estimated the speed at 50 to 55 kilometers per hour as would be evident from the averments made paragraph 16 of the written statement. We cannot conceive for a moment that while acting as a quasi judicial authority, the Enquiry officer had divested himself of his opinion already expressed that the delinquent officer was deriving the engine at a speed of 50 to 55 kms per hour. Therefore, the concerned authority should have followed the cardinal principle that 'Justice shall not only be done, but there must be a manifestation of justice being done' and on that account the concerned authority would have been well advised to change the Enquiry Officer. In the circumstances stated above, we are not in a position to totally overrule the contention of Mr. Das that there is ample chance and scope or likelihood of a reasonable apprehension in the mind of the petitioner that there was a likelihood of bias working in the mind of Mr. Agarwal for which a serious prejudice has been caused to the petitioner and for which the order of punishment cannot be sustained."

10. The above decision fully supports the case of the applicant. Of course, if the I.O. had recorded common evidence with opportunity to cross examine by the applicant, and arrived at a finding, there would not have been a bias

nor would such a procedure be taken as illegal. When in the case of T. Ramkrishnan evidence was recorded, there is no role of the applicant to play and there was no possibility of cross examination in that case. The I.O. in that case had arrived at the finding, "***The charge against Shri T. Ramakrishnan, Assistant Security Officer that he failed to prevent the unauthorized removal of auctioned goods from Plot No. 16 by Smt. Siby Sony, WSG on 30-01-2004 and that he failed to make an entry about the said incident in the ASO diary on the same day and later he inserted some mention in the ASO diary is "PROVED".*** Thus, the above finding which recorded 'unauthorized removal of auctioned goods from Plot No. 16 by Smt. Siby Sony, WSG on 30-01-2004" was made much prior to the conclusion of the inquiry in the case of the applicant. Thus, once the Inquiry officer has come to that conclusion the same had persisted in his mind to hold the same view in the inquiry against the applicant. The inquiry becomes, then, farce.

11. As regards (c) above, rejection of the request of the applicant for change of inquiry officer was passed by the Disciplinary authority, as has been so stated by the I.O. himself in his report and also by the respondent. Rules relating to consideration of the request for change of inquiry officer stipulate that such a consideration and decision thereof should be taken by the Reviewing authority. Order dated 9th November, 1972 published as GOI Instruction No. 17 under Rule 14 (Swamy's compilation, 30th Edition)

stipulates, *"It has accordingly been decided that wherever an application is moved by a Government servant against whom disciplinary proceedings are initiated under CCS (CCA) Rules, against the Inquiry Officer on grounds of bias, the proceedings should be stayed and the application referred, along with the relevant material, to the appropriate Reviewing Authority for considering the application and passing appropriate orders thereon."* Since in this case, the rejection order though stated as by 'the competent authority,' was actually and admittedly passed by the Disciplinary authority and the same is illegal.

12. As regards (d) above, i.e. whether non supply of documents is fatal to inquiry proceedings and vitiates as such the proceedings, it is appropriate to refer to the judgment of the Cuttack Bench of the Tribunal in the case of Patitpaban Ray vs Union of India and others, (1987) 2 ATC 205 wherein it has been observed as under:-

> ***"In this connection, we would say that in a judgment of the Supreme Court State of Punjab v. Bhagat Ram, (1975) 1 SCC 155,*** the Hon'ble Chief Justice of India speaking for the Court was pleased to observe as follows:
>
> The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer

to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.

The very same view was taken by Their Lordships of the Supreme Court in a case of State of Uttar Pradesh vs Mohd. Sharif. At paragraph 3 of the judgment, their Lordships were pleased to observe as follows:

Secondly, it was not disputed before us that a preliminary enquiry had preceded the disciplinary enquiry and during the preliminary enquiry statements of witnesses were recorded but copies of these statements were not furnished to him at the time of the disciplinary enquiry. Even the request of the plaintiff to inspect the file pertaining to preliminary enquiry was also rejected. In the face of these facts which are not disputed it seems to us very clear that both the first appeal court and the High Court were right in coming to the conclusion that the plaintiff was denied reasonable opportunity to defend himself at the disciplinary enquiry; it cannot be gainsaid that in the absence of necessary particulars and statements of witnesses he was prejudiced in the matter of his defence.

6. Keeping in view the observations made by Their Lordships in the judgements laying down that non-supply of the copies of the documents to the petitioner deprives him to properly and adequately defend himself and therefore principles of natural justice have been violated and these judgements made law having come into the field in the year 1974, we are at a loss to find the reason as to how the Department could say that it was within the discretion of the inquiring authority or the disciplinary authority to take decision as to the documents which would be relevant for the purpose of giving opportunity to the petitioner to properly defend himself. We hope, hereafter, the concerned department would seriously take note of the observations of Their Lordships in the above mentioned cases. Taking into account, the submission made by the learned counsel for the petitioner

> and the strenuous opposition advanced by Mr. A.B. Misra, learned Standing Counsel (Central), we are of the opinion that non-supply of the documents to the petitioner is violative of the principles of natural justice thereby prejudicing the interest of the petitioner to properly defend himself. The other matters contended by the learned counsel for the petitioner need not be discussed as this illegality committed by the authority cuts at the root of the case. Therefore, we do not think it necessary to discuss other matters urged on behalf of the petitioner."

Thus, the above argument of the learned counsel for the applicant as to the non supply of document also has substance and makes the inquiry vitiated.

13. And lastly, the question relating to the manner in which the appeal should have been dealt with by the Appellate authority. In the case of ***Ram Chander v. Union of India, (1986) 3 SCC 103,*** the Apex Court has held as under:-

> "the majority in *Tulsiram Patel case* unequivocally lays down that the only stage at which a government servant gets a reasonable opportunity of showing cause against the action proposed to be taken in regard to him i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is net worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-second Amendment as interpreted by the majority in *Tulsiram Patel case* that the appellate authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize 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."

14. In a latest case of ***Narinder Mohan Arya v. United India Insurance Co. Ltd.,(2006) 4 SCC 713,*** the Apex Court has held as under:-

> **33.** An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.
>
> **34.** In *Apparel Export Promotion Council* v. *A.K. Chopra*13 which has heavily been relied upon by Mr Gupta, this Court stated: (SCC p. 770, para 16)
>
> *16.* The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and *in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities.* (emphasis supplied)
>
> ....
>
> **36.** The order of the Appellate Authority demonstrates total non-application of mind. The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression consider is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether (*i*) the procedure laid down in the Rules was complied with; (*ii*) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (*iii*) whether penalty imposed by the disciplinary authority was excessive.
>
> **37.** In *R.P. Bhatt* v. *Union of India*14 this Court opined: (SCC p. 654, paras 4-5)
>
> *4.* The word consider in Rule 27(2) implies due application of mind. It is clear upon the terms of Rule 27(2) that the

Appellate Authority is required to consider (*1*) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (*2*) whether the findings of the disciplinary authority are warranted by the evidence on record; and (*3*) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing, etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27 (2) casts a duty on the Appellate Authority to consider the relevant factors set forth in clauses (*a*), (*b*) and (*c*) thereof.

5. There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (*c*) of Rule 27(2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside.

15. The above decision of the Apex Court when telescoped upon the facts of the instant case would go to show that the appellate authority has not at all applied his mind in upholding the decision of the disciplinary authority.

16. In view of the above, it is on more than one ground that the entire disciplinary proceedings get vitiated and the O.A. deserves to be fully allowed.

17. Accordingly, the OA is allowed. The impugned orders dated 16.11.04 (Annexure A/1) whereby the applicant was removed from service and order dated 14.2.05 (Annexure A/24) whereby the appellate authority has confirmed the penalty order of removal from service, are hereby quashed and set aside. The applicant shall be reinstated in service and shall be paid pay and allowances for the period from the date of removal from service till the date of reinstatement. The period of absence shall be treated as duty for all purposes including for the purpose of grant of increment. Arrears in regard to the same shall be paid within three months from the date the applicant is reinstated in service. Necessary order for reinstatement shall, however, be passed within six weeks from the date of communication of this order. The applicant's seniority shall also be kept intact as if no penalty order was passed. Other consequential benefits, if any, shall also flow.

18. Under the above circumstances, there shall be no order as to costs.

(Dated, the 12th January, 2007)

N.RAMAKRISHNAN
ADM. MEMBER

Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.