

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 09 of 2010

This the 13th day of May, 2011

Hon'ble Mr. Justice Alok K Singh, Member-J
Hon'ble Mr. S.P. Singh, Member-A

Suresh Chandra Saxena, Aged about 62 years, S/o late Sri Brij Behari Lal, R/o 4/20 Kuncha Bhawani Das, Farrukhabad

.....Applicant

By Advocate : Sri R.C. Saxena

Versus.

1. Union of India through Secretary to the Government of India Ministry of Communication & Information Technology, Department of Telecommunication, Sanchar Bhawan, 20 Ashoka Road, New Delhi.
2. Member (Services), Telecommunications Commission, Department of Telecom, Sanchar Bhawan, New Delhi.
3. Chief General Manager Telecom (BSNL), Telecom Circle, Uttranchal, Dehradun.
4. Chief General Manager Telecom (BSNL) U.P. (East) Telecom Circle, Hazratganj, Lucknow.

.....Respondents.

By Advocate : S/Sri S.P. Singh, K.K. Shukla and G.S. Sikarwar

O R D E R

By S.P. Singh, Member-A

This O.A. has been instituted seeking following relief(s):

"The Hon'ble Tribunal may graciously be pleased to quash the impugned Memorandum of charges dated 27.10.2004, appointment of Inquiry Officer vide letter dated 26.10.2006

and the letter of show cause dated 11.6.2009 issued by respondent no.4 contained in Annexure no. 1, 2 & 3 respectively and direct the disciplinary authority of the applicant i.e. respondent no.1 to pass appropriate orders regarding payment of all retiral dues to the applicant within a reasonable period alongwith interest @ 10% per annum and also award heavy cost and litigation expenses in favour of the applicant or pass any other order or direction in favour of the applicant."

2. The case of the applicant as born out from the pleadings is that he joined as Mechanic (Technician) on 17.5.1966 in Posts & Telegraphs Department. He was promoted to the post of ES/JE/JTO w.e.f. 16.7.1974. He was further promoted to Telecommunication Engineering Services Group 'B' w.e.f. 6.5.1991 and was posted as A.E. Thereafter, he was promoted to Senior Time Scale of Indian Telecommunication Service Group 'A' and he joined at Haldwani as Divisional Engineer under GMTD, Nainital w.e.f. 7.3.2003. After formation of BSNL vide order dated 9.8.2004 he was permanently absorbed in BSNL where he worked till his date of retirement on 31.12.2007. The applicant vide his application dated 19.4.2011 has also brought on record a copy of letter dated 2.9.2003 indicating the terms & conditions of his absorption.

3. In the matter of purchase of PCO sign boards relating to the period for the year 1993-94, a preliminary enquiry was conducted in 2000 in pursuance of audit para and according to the applicant though the audit para was in the process of investigation, without waiting ultimate decision, the respondent no.3 issued Memorandum of Charges dated 27.10.2004 under his signature (Annexure-1), which has been impugned in this O.A. Audit para was ultimately dropped vide letter dated 22.2.2005 issued by Senior Audit Officer, Lucknow (Annexure-4). The case of the applicant is that in the

purchase of PCO sign boards as many as 09 officers were concerned, whose disciplinary authorities were different. The highest authority is Member, Telecommunication Commission i.e. Member (Service) Telecommunication Service Commission (respondent no.2) and he was the competent disciplinary authority of the applicant also for imposition of penalty of dismissal. In view of Rule 18 of CCS (CCA) Rules, 1965, the respondent no.2 was the only competent authority to make an order against all of the concerned in a common proceedings, but respondent no.3 in violation of Rule 18 issued Memorandum of Charges, which is without jurisdiction. The applicant has also denied the allegations of charges levelled against him and pleaded not guilty vide his letter dated 6.11.2004. Meanwhile the applicant was transferred from Uttranchal Circle to U.P. (East) Circle and finally the respondent no.4 appointed Sri Lallan Babu, Deputy G.M., Kanpur vide letter dated 26.10.2006 as Inquiry Officer. This order was again without jurisdiction for the reasons aforesaid. The Inquiry Officer conducted departmental enquiry under Rule 14 of the Rules of 1965, but he could not conclude the enquiry before applicant's retirement on 31.12.2007. The applicant submitted his written brief of defence on 12.11.2007 saying that no loss was found to have been caused to the department and audit para has been dropped, which was basis for initiation of departmental proceedings. Inquiry Officer ultimately submitted his report on 19.6.2008 to respondent no.4 holding that the charges could not be established (Annexure-6). After about an year, the respondent no.4 issued Memorandum dated 11.6.2009 disagreeing with the findings of Inquiry report, but he did not mention any reason for

disagreement, which resulted in total denying a reasonable opportunity of making effective representation. However, the applicant submitted a representation dated 6.7.2009 with reference to Memorandum dated 11.6.2009 to respondent no. 4 (Annexure-7). But no order taking final decision of the disciplinary authority has been communicated to the applicant. Further, the case of the applicant is that one Sri Omkar Nath the then AE (Estimate) Etawah and Sri D.S. Bajpai, the then AO of the same office were also subjected to the similar allegations of misconduct in the same case pertaining to purchase of PCO sign boards, but the charges against Sri Bajpai have been dropped vide order dated 18.7.2005. Similarly, misconduct levelled against Sri Omkar Nath has also not been found to be established as would be evident from order dated 16.1.2008 (Annexure 9 & 10).

4. The respondent nos. 1 & 2 in their Counter Affidavit have said that firstly the applicant is not a Government servant and secondly as admitted by applicant himself, he has been absorbed in BSNL on permanent basis w.e.f. 1.10.2000 vide Presidential order dated 9.8.2004. He was issued chargesheet by BSNL authorities on 27.10.2004 i.e. after the aforesaid merger order dated 9.8.2004. The Rule 18 of Rules of 1965 does provide that where two or more Government servants (applicant is not a government servant) are concerned, in any case, President or any other competent authority may make an order directing that disciplinary action against all of them may be taken in common proceedings. Thus, firstly, it is discretion of the President or competent authority and secondly as the applicant

was not a Government servant, this rule was not applicable in his case. The period of issuing chargesheet was transit period i.e. just after formation of BSNL who had framed its own Rules by then. In 4th Executive Committee held on 20.5.2004, the proposal of adhoc disciplinary/appointing/appellate/reviewing authorities with respect to absorbed Group 'B' officers in BSNL was examined and approved. It was conveyed vide letter dated 28.5.2004. The chargesheet was issued to the applicant under CCS (CCA) Rules, 1965 by the competent authority of BSNL. The BSNL framed its own CDA Rules of 2006. According to repeal and saving clause, the proceedings pending at the commencement of Rules have to be continued and disposed of in accordance with the provisions of these Rules as if such proceedings are under these Rules. The proceedings in respect of the applicant are pending in accordance with clause (3) of Rule 58 of BSNL CDA Rules, 2006. It has been denied that the competent disciplinary authority in the case of the applicant is Member (S) Telecommunication Commission (respondent no.2) as claimed by the applicant because the applicant is not a Government servant. He is an employee of BSNL and, therefore, he is governed by the Rules & Regulations of BSNL. In respect of payment of retiral benefits, it has been said that as disciplinary case has not been finalised, the applicant is being paid provisional pension regularly as per rules and other retiral benefits will be considered on finalization of disciplinary case by BSNL. In respect of S/Sri D.S. Bajpai and Omkar Nath, it has been said that they were Government servants and competent disciplinary authority was President of India, which is different then that of the applicant being

absorbed BSNL employee w.e.f. 1.10.2000 and was in service at the time of issuance of chargehseet, in question.

5. The respondent nos. 3 & 4 have separately filed their Counter Affidavit saying that the disciplinary proceedings were initiated in compliance of RDA-2-94/2002-VM dated 5.6.2003 from DOT, New Delhi and CVC advice dated 19.5.2003 (Annexure R-1 and R02). It has further been said that the representation dated 6.7.2009 of the applicant given against disagreement memo/show cause notice has been sent to BSNL headquartrs, New Delhi and his case is under consideration (Annexure R-3). The other pleadings of the applicant have been vehemently denied.

6. The applicant has also filed Rejoinder Affidavit against both Counter Affidavits of the respondents denying their contentions.

7. We have heard the learned counsel for the parties and perused the material on record to assess their rival contentions.

8. Before we proceed further, it is appropriate at this stage to record the state of progress of disciplinary proceedings against the applicant as is obvious from the perusal of pleadings of the parties as recorded above.

- (i) Issue of Memorandum of charges to the applicant (Annexure-1).
- (ii) Appointment of Enquiry Officer (Annexure-2).
- (iii) Written brief of defence dated 12.11.2007 filed by the applicant and addressed to Enquiry Officer (Annexure-5).
- (iv) Enquiry report submitted by Enquiry Officer (Annexure-6).

- (v) Disciplinary authority forwarded copy of enquiry report with note of disagreement to the applicant giving him an opportunity to represent (Annexure-3).
- (vi) Representation of the applicant addressed to disciplinary authority in response to his letter forwarding a copy of enquiry report alongwith note of disagreement to the applicant (Annexure-7).
- (vii) Disciplinary authority has not yet passed any order as per rules. However, it has been submitted that the case of the applicant is under consideration.

9. Learned counsel for the applicant has raised following issues:

- (a) Memo of charges (Annexure-1) not issued by competent authority;
- (b) Appointment of Enquiry Officer was not made by competent authority.
- (c) Violation of rule 18 of CCS (CCA) Rules, 1965;
- (d) Reasons of disagreement have not been recorded by the disciplinary authority while forwarding his note of disagreement to the applicant.
- (e) Draft audit para has been dropped.

(a) **Memo of charges not issued by competent authority:** The applicant stood absorbed with BSNL after its constitution as Government Company under Section 619 of Companies Act effective w.e.f. 1.10.2000 after duly ascertaining his option accepting a general terms and conditions of such absorption. Applicant was issued memo of charges on 27.10.2004.

49/

It is found from perusal of pleadings that the applicant never raised this issue at ample opportunities given to him either before Enquiry Officer, Disciplinary Authority or Appellate Authority for last five years after issue of Memo of Charges to him on 27.10.2004. BSNL had earlier on 28.5.2004 notified adhoc Disciplinary/Appointment/Appellate/Reviewing Authorities in the case of absorbed Group 'B' officers like the applicant for exercising full powers in matters connected with CCS (Conduct) Rules 1964 and CCS (Discipline & Appeal) Rules, 1964 till Conduct, Discipline and Appeal Rules of BSNL are finalized. **It was also noted in circular dated 28.5.2004 that officers recently absorbed in BSNL, there is no provision of Ist and IIInd stage advice of CVC.**

In view of the facts & circumstances brought out above, we do not find that there is any illegality in issue of Memo of Charges dated 27.10.2004 as it is issued by BSNL authorities who have been notified as competent in their circular dated 28.5.2004 for employees of BSNL who stood absorbed in BSNL w.e.f. 1.10.2000.

(b) Appointment of Enquiry Officer was not made by Competent authority: In the present case, the appointment of Enquiry Officer was made vide letter dated 26.10.2006. The applicant never raised this plea either before Enquiry Officer or before disciplinary authority or before Appellate Authority and for the first time he took plea regarding appointment of Enquiry Officer not appointed by a competent authority in this O.A. It is noteworthy that in para 4.11 of O.A. while

applicant has averred earlier that the Enquiry Officer acted impartially and held the enquiry proceedings fairly and ultimately submitted the enquiry report dated 19.6.2008 to respondent no.4 holding that charges mentioned in Annexure no.1 and II of Memorandum of charge dated 27.10.2004 could not be established, hence not proved. Now after nearly four years, the applicant cannot be allowed to raise this issue before this Tribunal particularly when the disciplinary proceeding is still pending before the disciplinary authority in BSNL. We have already explained importance of circular dated 28.5.2004 issued by BSNL notifying adhoc Disciplinary Authority, Appellate Authority and Reviewing Authority in BSNL for exercising full powers in matters connected with CCS (Conduct) Rules, 1964 and CCS (CCA) Rules 1965 in respect of BSNL employees.

(c) Violation of Rule 18 of CCS (CCA) Rules, 1965:-

The applicant was issued Memorandum of charges dated 27.10.2004. The applicant has also never raised the plea for violation of Rule 18 of CCS (CCA) Rules, 1965 either before disciplinary authority or appellate authority till 5.1.2010 when he filed the instant O.A. In this context, it can be seen that he had already submitted his written brief of defence addressed to Enquiry Officer (Annexure-5) wherein the applicant has no-where raised the plea for violation of Rule 18 of CCS (CCA) Rules, 1965. He had also submitted a latest representation dated 6.7.2009 wherein also he did not raise this plea. The relevant prayer as contained Para 8 and 9 of Written brief of Defence (Annexure-5) are quoted below:

47

“8. In the instant chargesheet, the alleged act of misconduct does not attract the violation of provisions of any specific rule. The charged officer has been charged for violation of Rule 3(1) (i), 3(1)(ii) and 3 (1)(iii) of CCS Conduct Rules, 1964. Since the alleged misconduct under the said Conduct Rules 1964 is not comprehended in any of the enumerated misconduct, hence the chargesheet is served to be dropped.

9. That Sri D.S. Bajpai the then AO (IFA) was issued a chargesheet under rule 14 of CCS (CCA) Rules 1965 almost on the same charges into the instant case. The charges levelled against him have been dropped.”

The prayer made in representation dated 6.7.2009 is as under :

“19. It would essentially be in the interest of justice and to facilitate process of law to cite the views taken by the disciplinary authority in the disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 conducted against similarly placed two other officers viz Sri D.S. Bajpai, Accounts Officer (cash) and Sri Omkar Nath, SDE with identical article of charges in this case.

20. Sri D.S. Bajpai, Accounts Officer (Cash) was accused for non-performance of those duties, which according to disagreement of disciplinary authority, were the expected duties of the charged officer in this case, as discussed in para 2 & 3 above.

21. Although according to Rule 17 (c), Rule 18 and Rule 20 those were the statutory duty of Sri D.S. Bajpai, Accounts Officer (Cash), yet a lenient view was taken by the disciplinary authority in his case and the charges were dropped, vide its order no. 8-260/2003-Vig. II dated 18.7.2005, since the misconduct was not grave enough to conclude proceeding under Rule 9 of CCS (Pension) Rules, 1972 as the individual officer had superannuated much before the date of order of the Disciplinary authority.

22. In other similarly situated disciplinary proceeding under Rule 14 of CCS (CCA) Rules, 1965 against Sri Omkar Nath, SDE with identical article of

charge, the disciplinary authority vide its Order no. 8-240/03 Vig II dated 16.1.2008 exonerated charged officer, since the misconduct was not grave enough to conclude proceeding under Rule 9 of CCS (Pension) Rules, 1972 as the individual had superannuated.

23. The charged officer (undersigned) has unblemished 41 years service record and he had acted in absolute good faith with best of his wisdom and in the interest of Department, while subscribing his comments on proposal initiated by the Dealing Officer, en-route to TDE. Since he had doubt on the proposal from financial angle, he had diverted it to Accounts Officer for his expert advice under Rule 17 (c), Rule 18 and Rule 20 of P&T Financial Hand Book Volume III Part I.

24. Therefore, keeping in view following facts, it is requested that the undersigned may kindly be bestowed equality before law and equal protection of law in accordance with the provisions of Article 14 and 16 of Constitution of India by granting exoneration as is done in case of Sri D.S. Bajpai, Accounts Officer and Sri Omkar Nath, SDE.

(a) The duties expected by the disciplinary authority in his disagreement from the charged officer are statutory duties of Sri D.S. Bajpai, Accounts Officer (cash) who had been exonerated since the charges were found as not grave.

(b) That charged officer had not initiated proposal.

(c) That proposal was not placement of order but for taking order from TDE regarding further course of action on the proposal of vendor.

(d) That the charged officer is from Engineering System and is not supposed to be well verse with the Financial statutes as is expected from an Accounts Officer with particular reference to Rule 17 (c), 18 and 20, therefore, the charged officer had taken due care by soliciting expert opinion of Accounts officer in order to ensure that proposal do not suffer any procedural error.

(e) That the charged officer has unblemished 41 years of service record.

(f) That in similarly situated cases with identical article of charge, the disciplinary authority had taken a lenient view in case of two charged Officers related to same cause of action and charges in their cases were dropped since the misconduct was not grave enough to conclude proceeding under Rule 9 of CCS (Pension) Rule, 1972 as the individual officer had superannuated. Both the charged officers exonerated.

25. *In view of the above, it is earnestly prayed that I may kindly be exonerated from the charges so that my pension and retirement benefits and dignity are released atleast after 2 years of my retirement."*

From above, it is now established that the applicant never raised the plea of violation of Rule 18 of CCS (CCA) Rules, 1965 during various stages of disciplinary proceedings as stated above.

Government of India decision under Rule 18 is relevant here and the same is reproduced below:

"Procedure of enquiry when two Government servants accuse each other: In a recent case, two Government employees working in the same office made complaints against each other. The Disciplinary Authority initiated departmental proceedings against both the employees under Rule 17 of the CCS (CCA) Rules. The question whether it is legally permissible to enquire into the conduct of the accused and the accuser in one joint proceeding was examined in consultation with the Ministry of Law, Cross complaints arising out of the same or connected incident or transaction are not uncommon and occur frequently in criminal case. The Code of Criminal Procedure is silent with regard to the procedure to be adopted in such cases. The general principle as laid down by the Courts is that, the accused in cross cases should be tried separately and that both the trials should be held simultaneously or in quick succession so as to avoid conflicting findings and different appraisal of the same evidence. On the analogy

of the criminal law practice and procedure, a joint proceeding against the accused and accuser is an irregularity which should be avoided. This should be noted for future guidance.

xx
 A joint proceeding against Government servants working in the same office who made complaint against each other should be avoided."

10. Learned counsel for the applicant has relied upon the following case laws in support of his contention regarding violation of Rules 18 of CCS (CCA) Rules 1965:

- (i) **Shyam Kant Tiwari Vs. State of M.P. & Others 1986 (II) LLJ 404. M.P.**
- (ii) **Arun Kumar Alva Vs. The Vijaya Bank 2006 (3) KAR LJ 610.**
- (iii) **Balbir Chand Vs. FCI & Another (SLP No. 23981 of 1986 decided on 16.12.1996.**
- (iv) **R.K. Sharma Vs. Union of India & Others 114 (2004) DLT 556.**

11. The case of **Shyam Kant Tiwari** (supra) is not much helpful to the applicant as he has never raised the issue of violation of Rule 18 of CCS (CCA) Rules, 1965 either in his written brief of defence (Annexure-5) or in his representation addressed to disciplinary authority (Annexure-7). Further the facts of the present case are totally different from the cited case. In the cited case by learned counsel for the applicant, it was not in dispute, that at the relevant time, the petitioner who was holding the post of Constable alongwith others was indulging into activities like shouting of slogans against his senior and no order of common proceedings against the petitioner and his code delinquents was passed in that case. Sri Ashok Patel, the then Superintendent of Police, Indore, himself initiated the Departmental enquiry and it

was rightly observed by the Hon'ble High Court that the role of accuser or the witness and of the Judge cannot be played by one and the same person and it is futile to expect when those rules are combined that the judge can hold the scales of justice. Accordingly, it was found that the principles of natural justice stand violated. On the other hand, in the instant case, the applicant has been given ample opportunities to put his case across before the Enquiry officer as well as disciplinary authority. Further, in this case, in financial transactions each and every official is expected to perform his functions as per rules and will be accountable for his own faults, deficiencies and shortcomings which can only be established on conclusion of each enquiry. Here, there is no common criminal objective like shouting of slogans by constables in the case cited above.

12. In this regard, it is relevant to mention here the decision rendered in the case of **Union of India Vs. Upendra Singh (JT 1994 (1) SC 658)**, relied upon by Respondents. In this case, the Hon'ble Supreme Court has laid down that the Tribunal ought not to interfere at an interlocutory stage – Tribunal has no jurisdiction to go into the correctness or truth of the charges. It is not understood as to how at this belated stage after a lapse of more than six years, the Tribunal can interfere at the interlocutory stage. The relevant para is quoted below:

"It may be recalled that the jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution, therefore, the principles norms and constraints which apply of the said jurisdiction apply equally to the Tribunal. If the original application of the respondent were to be filed in the High Court it would have been termed, properly speaking as a writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court

acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view... If we do not kept to the broad fundamental principles and regulate the exercise of jurisdiction in the matter of granting such writs in English law, the exercise of jurisdiction becomes rudderless and unguided; it tends to become arbitrary and capricious.

"The Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the function of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed even after the conclusion of the disciplinary proceedings, if the matters come to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the Court/Tribunal is one of the judicial review. Judicial review cannot extend to the examination of the correctness of charges or reasonableness of a decision – it is not a review of the matter in which the decision is made."

13. Similarly in the case of **Arun Kumar Alva** (supra) Karnataka High Court the facts are totally different as would be apparent from the perusal of issues which were framed by the Court contained in para 5 of the cited case and as such the cited case does not have direct bearing of this case because the applicant in his representation had never taken a plea for violation of Rule 18 of CCS (CCA) Rules, 1965 in his representation to Enquiry Officer/Disciplinary Authority/Appellate Authority.

It is not clear from reading of aforesaid judgment of Arun Kumar Alva (supra)

6/1

whether similar provisions existed in Vijaya Bank under Regulation 10 of Vijaya Bank officer employees (Conduct) Regulations, 1981. As explained earlier, in case of present applicant Rule 18 and Government of India decision there-under contained in CCS (CCA) Rules, 1964 have not been touched anywhere in judgment of Karnataka High Court

14. In the case of **Balbir Chand** (supra), the Hon'ble Supreme Court in para 5 of its judgment has observed that this was of splitting of cases where common proceedings have been launched. It was found by the Apex Court that the need to split up the cases is obviously redundant, time consuming and dilatory and it should not be encouraged. Further, in cited case, the petitioner based his case before Hon'ble Supreme Court on the interpretation of one circular dated 13.5.1980 issued by FCI (Food Corporation of India) which is not the case in present O.A .

15. In the case of **R.K. Sharma** (supra), the relevant paragraph nos. 16, 17 and 18 are extracted below:

“16. If argument of learned counsel for the petitioner is to be accepted, each case of conspiracy would require separate trials. Whenever persons act in league or in concert, overlapping evidence is bound to surface. It is for this reason that law requires evidence to be segregated in relation to each accused and evaluated separately.

17. To our mind, what is relevant for adjudication of the present dispute is whether facts on record attract Rule 18 of the CCS (CCA) Rules, 1965.

18. Rule 18 is attracted where 2 or more Government servants are connected in any case. Two or more government servants would be concerned with a case where the relevant facts in one case are inter-linked to each other. This inter-linkage need not be like a web extending to all the charges. Even if one or two Articles of charges are common, it would be

Sp

enough to fall within the expression "are concerned in any case" to attract Rule 18.

On the other hand, in the present case, the applicant has never raised the plea regarding violation of Rule 18 of CCS (CCA) Rules, 1965 either before Enquiry Officer or before disciplinary authority while making in his representations at various stages of disciplinary proceedings as stated para 8 above. More-over in financial transaction each and every officer is accountable for his own fault, deficiencies and shortcomings as per rules. This is no common criminal conspiracy involved in present case for which FIR was registered as in the cited case, referred to.

(d) **Reasons of disagreement has not been recorded**

by the disciplinary authority: The dis-agreement order dated 11.6.2009 passed by Chief General Manager, Telecom, U.P. (East) Circle Lucknow is extracted herein below:-

"A copy of inquiry report dated 19.6.08 submitted by Sri Lallan Babu, DGM (W), Kanpur who was appointed the Inquiry authority to inquire into the charges framed vide memo no. VID-UAL/M-9/14/2003 dt. 27.10.04 against Sri S.C. Saxena, DE (Retd.) is forwarded to the following extent -

The conclusion of IO that TDE was responsible to assess the total requirement and AO (IFA) was responsible for indicating the financial limit of the TDE for purchase is not correct.

It was pertinent on the part of charged officer that he should have estimated the total requirement of PCO signboard & the expenditure involved before submitting the proposal to the next higher authority. The charged officer should have specified clearly that the invitation of open tender is necessary in the said purchase work wherein he failed and deliberately avoided to indicate that the proposal was not fair as per rule to get the work done on the

5/1

approved rate of other SSA and beyond the financial power of TDE:

Hence the charge is proved to this extent.

Sri S.C. Saxena is hereby given an opportunity to make representation, if any. The representation should be submitted in writing within fifteen days of the receipt of this memorandum failing which it will be presumed that he has no representation to make and further action will be taken by the competent disciplinary authority as per rule.

The receipt of this memorandum shall be acknowledged by Sri S.C. Saxena."

From the perusal of above order, *prima-facie* it appears that the reasons of disagreement had been recorded. Moreover the applicant has already submitted his representation dated 6.7.2009 before the disciplinary authority under Rule 14 of CCS (CCA) Rules, 1965, which is reported to be pending with the disciplinary authority. In view of law laid down by Apex Court in **Upendra Singh** (supra) the Tribunal has no jurisdiction to go into the correctness or truth of the charges levelled against the delinquent employee till matter is finalized.

(e) **Draft audit para has been dropped:** It is pertinent to mention here that on perusal of Article I of Annexure-1 of O.A., it would be obvious from the reading that the memo of charge was issued based on some audit objection and not any audit para as said by the applicant. The Article 1 reads as under:-

"Article-1 That the said Sri S.C. Saxena was posted and functioning as A.E. (Estimates) in Etawah SSA during the period Feb. 1992 to Aug. 1995. On 27.2.1993, Pig. Section put up a proposal for purchase of PCO sign boards on the terms, conditions and approved rates of Faizabad SSA. The related file passed through him but he, deliberately, avoided to object that proposal was not fair and as per rule TDE, Etawah was not empowered to purchase PCO sign boards on the approved rate of other

SSA, it was incumbent upon him to give his suggestion that TDE, Etawah was not empowered to purchase the material on the approved rates of other SSA without approval from appropriate authority. More-over, violating the rules of the Deptt. On 05 occasion he processed purchase of PCO sign boards on a single offer for which his TDE was not empowered & approval of DT (CA), Lucknow was necessary. He also failed to access total requirement of PCO sign boards in Etawah SSA and accordingly calculate the expenditure involved and suggest his TDE that the case falls under works and processing of tender in the instant case was necessary. During his tenure, he arranged to place 6 orders for purchase of 320 PCO sign boards from different firms amounting to Rs. 7,30,600/- which justifies invitation of open tender. More-over on each occasion purchase order exceeding Rs. 25000/- was placed on the firm whereas as per schedule of financial powers TDE was empowered to purchase non stocked items amounting to Rs. 25000/-only (on each occasion) which is a serious lapse on the part of Sri S.C. Saxena. Apart from above, he failed to take any action regarding signing of Agreement Deed and realization of security money from the contractor which is an essential part of the contract. Due to his aforesaid lapse, PCO sign boards were purchased on higher rates, which resulted in wrongful loss to the Department and invited serious Audit objection.

Thus, by his aforesaid act the said Sri S.C. Saxena, formerly AE (Estimates) Etawah and now AGM under GMTD, Nainital committed grave misconduct, failed to maintain absolute integrity, displayed slackness in devotion to duty and acted in a manner unbecoming of a Govt. servant thereby contravening the provisions of Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964."

Audit file marked Report II/1839/181 dated 12.6.1996 regarding incurring of extra expenditure of Rs. 3.20 lacs in respect of Etawah unit, comment of the department was furnished to audit on 3.11.99 which has been filed by the applicant with M.P. no. 1867 of 2010 to this O.A. It further states that matter was referred to Vigilance cell of investigation and dropping of audit para was requested. No-where the present status of vigilance case is indicated in that letter.



Some more documents were filed by the applicant with M.P. no. 1981 of 2010 (i) letter dated 26.7.1999 addressed to Director (Vig.), Chief General Manager, U.P. (East), Lucknow; (ii) copy of draft audit para where extra expenditure of Rs. 17.90 lacs in purchase of PCO sign boards. It's perusal shows that TDE, Etawah incurred extra expenditure of Rs. 4,85,640/-

But, it is not clear which of audit para is claimed by the applicant to have been dropped and what happened to report of Vigilance where the matter was referred. It is also not clear whether at the time of absorption in BSNL while exercising his option the applicant disclosed the factum of pendency of a Vigilance case pending against him, if any.

16. Learned counsel for the respondents has relied upon the following cases :

- (i) **Union of India & Others Vs. Upendra Singh (1994 3 SCC 357).**
- (ii) **Steel Authority of India & Others Vs. R.K. Diwakar (1998 SC 2210).**
- (iii) **N.K. Jain Vs. Union of India & Others (OA no. 141 of 2000 decided on 14.8.2003 CAT LKO)**

17. The case of Upendra Singh has already been dealt with hereinabove, hence nothing remains to deal with.

18. In the case of Steel Authority of India (supra), the Apex Court has held as under:

"In the case on hand, it is not in dispute that the authority who issued the charge-sheet was the controlling authority. That being the position, the judgment of the High Court cannot be sustained and

SP

19. In the case of **N.K. Jain** (supra) the Division Bench of CAT Lucknow Bench has observed as follows:

"8. In view of the foregoing discussion, we are of the opinion that no interference is called for in so far as the chargesheet issued to the applicant is concerned and in so far as the appointment of enquiry officer is concerned. In this regard, reference may also be made to the decision of Hon'ble Supreme Court in the case of Union of India & Others Vs. Upendra Singh 1994 3 SCC 357. The apex court held in this case that the Tribunal has no jurisdiction at this stage of issue of chargesheet to enquire into the correctness of chargesheet which is a matter to be finally considered by the disciplinary authority. For this reason, we do not think that any interference in the chargesheet or in the appointment of enquiry officer is called for at this stage.

20. In the case of **State Bank of Patialia & Others Vs. S.K. Sharma (1996 (2) SLR 631)** it was observed that Procedural provisions laid down under CCS (CCA) Rules, 1965 were strictly followed at all stages and adequate opportunity was given to the delinquent official. Procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent employee. They are generally speaking conceived in his interest. Violation of any of or every procedural provision cannot be said to be automatically vitiate the enquiry held and order passed. If no prejudice is established to have resulted therefrom, no interference is called for. The ratio laid down by the Apex Court in the above case is valid in the present case.

21. Similarly, the Apex Court in **Bank of India & Others Vs T. Jogram (AIR 2007 SC 2793)** has held:

"6. We may at this stage quote the reasoning of the learned Single Judge while dismissing the Writ petition. The learned Single Judge held:

"As long as the order passed is not in violation of rules/regulations/statutory provisions, the enquiry cannot be set-aside in a casual manner. The judicial review under Article 226 of the Constitution of India is open only on grounds of malafide, arbitrariness and perversity. The Writ petition except stating that he is the founder of SCs STs and OBCs Association protecting the interest of downtrodden and that the Respondent-Bank management is biased against him has failed to place any relevant material to substantiate the case. The administrative and disciplinary action of the respondent-bank cannot be the subject matter of review, once they followed the due process of law. In the present case, order of compulsory retirement has been passed on the material available on record and on the charges levelled and proved against the petitioner and order impugned has been passed in the public interest, retiring him compulsorily. The order impugned is subjective satisfaction of the respondent-Bank based on the report made available on record. The petitioner is an office of the respondent-Bank and it goes without saying that the bank business, absolute devotion, diligence, integrity and honesty needs to be preserved by every Bank employee and in particular the bank officer. If this not observed, the confidence of the public/depositors would be impaired."

7. *We entirely agree with the reasons recorded by the Learned Single Judge. The reasoning of the Learned Single Judge is in consonance with the well-settled principles of law enunciated by this Court in a catena of decisions.*

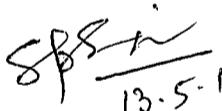
15. *By now it is well settled principle of law that judicial review is not against the decision. It is against the decision making process. In the instant case, there are no allegations of procedural irregularities/illegality and also there is no allegation of violation of principles of natural justice. Counsel for respondent filed a case against the Chief Manager of Secunderabad Branch in 1996 and the inquiry initiated against the respondent is the fall out of malafide. We are unable to accept the bald*

SP

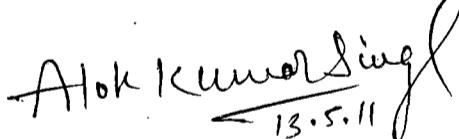
allegations. The allegation of malafide was not substantiated. It is well settled law that the allegation of malafide cannot be based on surmises and conjectures. It should be based on factual matrix. Counsel also tried to assert the violation of principles of natural justice on the ground that the documents required by the respondent were not supplied to him. From the averment, it is seen that the documents which were sought to be required by the respondent, were all those bills submitted by the respondent himself before the authority. In these circumstances, no prejudice whatsoever was caused to the respondent."

22. In view of various proposition of law laid down by the Apex Court and the discussion made above, we do not find any illegality or irregularity in any of the impugned orders passed by Disciplinary Authority. The O.A. has, therefore, no merit and is liable to be dismissed.

23. The O.A. is accordingly dismissed. No order as to costs.


13.5.11

(S.P. Singh)
Member-A


13.5.11

(Justice Alok K Singh)
Member-J

Girish/-