ANNEXURE -A

CAT

...NISTRATIVE TRIBUNAL
Circuit Bench, Lucknow
Opp. Residency, Gandhi Bhawan, Lucknow

*****

INDEX SHEET

CAUSE TITLE O.A. 459 of 19 87

NAME OF THE PARTIES Kashi Prasad

______________________ Applicant

Versus

Union of India & ______ Respondent

Part A, B & C

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S.O.(J)

25/5

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No. 459 of 1987

APPLICANT (s) Kashi Prasad.

RESPONDENT(s) U.O.I. through Secretary Deptt. of Telecommunications Ministry of Communications New Delhi + 2 others

Particulars to be examined	Endorsement as to result of Examination
1. Is the appeal competent ?	Ys
2. (a) Is the application in the prescribed form ?	Ys
(b) Is the application in paper book form ?	Ys
(c) Have six complete sets of the application been filed ?	Ys, 5 Sets filed.
3. (a) Is the appeal in time ?	Ys
(b) If not, by how many days it is beyond time ?	—
(c) Has sufficient case for not making the application in time, been filed ?	—
4. Has the document of authorisation/Vakalat-nama been filed ?	Ys
5. Is the application accompanied by B. D./Postal-Order for Rs. 50/-	Ys
6. Has the certified copy/copies of the order (s) against which the application is made been filed ?	Ys
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?	Ys
(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numberd accordingly ?	Ys.

ORDER SHEET.

OANO 459-07

25/5/07 See order on the main petition -

22/6/07 OR.

In compliance of Hon. Tribunal's order dt. 25/5/07 notices were issued to the respondent to file reply by within a month.

No reply has been filed so far.

Submitted.

25/6/07 Deputy Registrar

Reply has not been filed so far. The same may be filed by 21/7/07.

25/6/07
DR(J)

21/7/07 Deputy Registrar

On the request of respdt, reply can be filed by 14/8/07.

21/7/07
DR(J)

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH ALLAHABAD

.....No. OA 459/87 of 198

.....Vs.....

Date	Note of progress of proceedings and routine orders	Date to which case is adjourned
1	2	3
20-10-87	DR Rejoinder filed today. List this case for hearing before concl- ~~for~~ on 24/12/87 as agreed by the parties.	
24-12-87	No sitting. Adj to 15.2.87 DR(J) requested by the Advt.	
15-2-88	No Sitting. Adj to 13.4.88. Supplementary affidavit filed on the record.	
7/4/88	DR Submitted for hearing.	
13/4/88	No sitting. Adj to 27.6.88.	
13/4/88	DR An application for transfer of this case to Lucknow Circuit bench has been filed and is submitted for orders. If approved the case may be fixed on 27th April and notice be issued.	

Order Sheet

OA. 459 of 1987

25.5.1988 Hon. Ajay Johri, AM
Hon. G.S. Sharma, JM

Sri A.K. Dixit to the applicant is present. Sri Ashok Mohiley to the respondents is not present. Sri V.K. Choudhary takes notice on behalf of the respondents.

Sri Dixit presses this application dated 2nd Dec. 1987 in regard to the production of the report of the CBI dated 31.8.1971 which has been referred in the enquiry report dated 15.4.1986 at page 56 of the Paper Book as well as in para 33(1) on page 19 of the written statement.

We direct that this report be made available at the time of hearing of this case. The case is listed to hearing on 21.7.1988.

AM

JM

25.5.88

21.7.88 Hon. A. Johri, A.M.

On the request of learned counsel for the parties list this case for final hearing on 26.8.88.

The report which was required to be produced by our order dated 25.5.88 must be produced at the time of final hearing.

A.M.

26.8.88 Fixed for hearing with Court's order dt: 21.7.88.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT LUCKNOW

****

O.A./T.A. No. 459 1987.

Kashi Pd Applicant(s)

Versus

U.O.I & ors Respondent(s)

Sr.No.	Date	Orders
	28/8/89.	Hon. D.S. Misra, A.M. Hon. G.S. Sharma, J.M. Shri A.K. Dixit for the applicant No body appears on behalf of respondents On the request of the learned Counsel Shri Ashok Mohiley the case is adjourned to 24-1-89. J.M. A.M.
	24-1-89.	Hon. D.S. Misra, A.M. Hon. G.S. Sharma, J.M. Shri A.K. Dixit for the applicant is present. On the request received from Shri Ashok Mohiley, the learned Counsel for the respondents the case is adjourned to 24-2-89. J.M. A.M.

11/4/89.

Hon. Justice K. Nath, V.C.
Hon. D.S. Misra, Am.

The case was called but none of the parties appeared. List for hearing on 21-4-89.

Am.

V.C.

Hon' Mr. Ajay Johri, A.M.
Hon' Mr. D.K. Agrawal, J.M.

11/4/89 At the request of the learned counsel for both the parties, We heard at length to Shri A.K. Dixit, learned counsel for the applicant and Shri A. Mohiley, learned counsel for the respondents. Judgment reserved.

J.M. A.M.

(sns)

6/3/90

Hon. J. P Sharma, J.M

Application for return of documents filed by the Learned Standing Counsel, Sri Ashok Mohiley. As the case has been decided on 30.6.89 by Hon'ble Mr. A. Johri, A.M & Hon. D. K. Agarwal. The documents filed by the Department is no more required as it may be returned.

J.M

Recd/Compl. Record
Examined
SS. (Legal Cell)
O/o C.G.M.T. U.P. Lw
6-3-90.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

A L L A H A B A D

***

Circuit Bench at Lucknow

O.A.No. 459 1987

~~T.A.No.~~

DATE OF DECISION_____

Kaishi Prasad Petitioner

Sri A.K.Dixit Advocate for the Petitioner(s)

Versus

U.O.I. & Others Respondent

Sri A. Mohiley Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Ajay Johri, ~~A.M.~~

The Hon'ble Mr. D.K. ~~Agrawal~~, J.M.

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

***

Dinesh/

CENTRAL ADMINISTRATIVE TRIBUNAL
Circuit Bench at LUCKNOW

....

Registration No.O.A. No. 459 of 1987

....

Kashi Prasad .... Applicant

Vs.

Union of India and ors .. Respondents

~~APRIL 12, 1989~~

Hon' Mr. Ajay Johri, A.M.
Hon' Mr. D.K. Agrawal, J.M.

(By Hon' Mr. Ajay Johri, A.M.)

This is an application filed under section 19 of the ~~Central~~ Administrative Tribunal Act. 1985. The applicant was working as Telephone Operator in the Telephone Exchange at Sitapur and was compulsorily retired from service by an order issued by the Divisional Engineer, Telegraphs, Sitapur (Respondent No. 2) on 30-5-1986. His appeal against the impugned order was rejected by the Director, Telecom. Lucknow on 4-5-1987. By this application, he is seeking relief that the impugned order of punishment, as well as the appellate order, be declared illegal, in operative, null and void, and he should be deemed to be in continuous employment of the respondents and entitled to all usual service benefits. He has also prayed for awarding of the cost of the application.

2. The applicant who had joined service in the Posts and Telegraphs Department as Telephone Operator on 1-3-1963, was issued a charge sheet on 8-11-1971 while he was working at Sultanpur, under Rule 14 of the Central Civil Services (C.C.& A.) Rules, 1965. The allegation

...2/-

against him was that while he was working at Allahabad, during December, 1967 to June, 1968, he had submitted 8 false medical bills in the office of D.E.T. Allahabad totalling to an amount of Rs.637/-. The charge against him was that by this action, he has acted in violation of Rule 3(i)(i) of Central Civil Services (Conduct Rules), 1964. He denied the allegations on 17-11-1971. According to the applicant, before the charges were framed against him, the matter was investigated by the Central Bureau of Investigation, who, recommended departmental action against him. During the period from 17-11-1971 to 3-1-1981, the case did not progress at all and no inquiry was initiated, and the applicant continued to perform his duties normally. On 3-1-1981 he was advised of the appointment of a Presenting Officer in his case. On 6-3-1981 he appeared before an Inquiry Officer at Lucknow, where he pleaded not guilty to the charge. Thereafter, the inquiry was held, witnesses were called and ultimately, he was served with an order on 31-5-1981, imposing the punishment of compulsory retirement from service.

3. The applicant has challenged the punishment and the appellate order on the grounds that the competent authority, while issuing charge sheet has acted on the recommendation of the Central Bureau of Investigation, and the charge sheet has not been issued after the free application of the mind. The essential ingredients in imparting misconduct against the individual, of any ill-motive, were not present in the allegations. The impugned punishment had been passed, disregarding the Principle of Natural Justice, in as much as, he was denied, the opportunity of production of his evidence, and help of a representative. The charge only related to

alleged submission of false bills and not any irresponsible attitute of the applicant, so as to make him unworthy of confidence of the employer. There was no evidence on record to show that the bills were ~~therever~~ submitted in the office, nor there was any proceeding or containing conduct of the applicant regarding presentation of the bills. The defence witnesses cited by him were not called. The disciplinary proceedings have been unduly prolonged for more than 15 years and he has already been punished with regard to his crossing of efficiency bar in the year, 1982 and denial of increments and promotions, as a result of the pendency of this proceeding. The punishment of compulsory retirement, over looks the provisions of Fundamental Rules 56(j), because, he has only completed 23 years of service and cannot be retired under Rule 11 of C.C.S.(C.C.A.) Rules or Fundamental Rules. The disciplinary proceedings were, as a result of malafide and prejudiced on the part of the Divisional Engineer, Shri P.N. Srivastava. Shri H.S. Tuteja had been mentioned as witness and copy of his report was not supplied to the applicant. Only attested copies of his statements were supplied lateron. The punishment order is a non speaking order. The appellate order is also not a speaking order, because, no reason has been recorded for not allowing the applicant for producing his defence witness, handwriting expert of his own choice. The copies of the inquiry proceedings were not supplied to him day by day.

.....4/-

4. In their reply to the application, the respondents have said that the submission of medical reimbursement claim supported by false cash memos implied that the applicant had attempted to get money deceitfully from the Department. According to the respondents, the matter was got investigated through the Central Bureau of Investigation, but they have rejected the contention of the applicant that the case was recommended for departmental action by the C.B.I. merely on account of lack of evidence. In regard to the Government Examiner of questioned document, whose name was not included in the list of witnesses, the respondents stated that the report(opinion) of the Examiner was relied on documents and it was amongst the list of documents which were relied on for the issue of the charge sheet. Subsequently, during the course of inquiry, the Inquiry Officer had felt it necessary to record the evidence of Shri H.S. Tuteja, the Examiner of the questioned documents, but no objection was raised by the applicant. The applicant had requested for inspection of the documents on 14-7-82 and had also submitted a list of documents and witnesses, which he wished to produce and he was allowed the same on 29.4.83. In March, 1985, the applicant submitted two names of Handwriting and finger print experts, whom, he wanted to produce, but his request for producing of his witnesses was not agreed to. In regard to delay in completion of disciplinary proceedings, the respondents stand is that though, there were some administrative delays, there was also delay on account of the applicant, who had requested for adjournment on six occasions. On account of the pendency of the disciplinary proceedings against him, the applicant was also not considered for any promotion.

...5/-

The respondents have also said that the applicant was subsequently asked, whether, he would like to cross examine any of the witnesses, but, he refused to examine any of them. Even his request to cross examine Shri Tuteja was also allowed, but, thereafter no specific request was received from him. According to the respondents, the report of Shri Tuteja was very clear and was not at all doubtful and therefore, there was no need of any second opinion and that was also one of the grounds that the applicant's request for producing a second handwriting expert of his own choice was rejected. It is also their case that in view of the applicant's statement on 29-1-1986, wherein, he had clearly mentioned that he did not wish to produce any document or witness in defence or to cross examine any witness (Annexure-CA-3 of the reply), It was not felt necessary to summon any other witnesses. It is also the respondents case that the charge sheet issued by the disciplinary authorities, after giving due consideration to the report submitted by the C.B.I., but the final decision was arrived at only after the inquiry was completed, and the contention of the applicant that the final decision was influenced by the recommendation of the C.B.I. is baseless. The allegation made by the applicant that there have been, illmotive is also not correct. The fact remains that the applicant submitted false medical bills totalling to an amount of Rs. 637/- with forged prescription and essentiality certificates and cash memos, which were 32 in number. According to the respondents, the applicant was given

...6/-

full opportunity and he was allowed assistance of defence counsel and the charge was proved against him. The respondents have further maintained that the order of the appellate authority has been given after due consideration. It is also the respondents case that the copies of daily proceedings were supplied to the applicant either on the same day or in some cases lateron, but, before the next date of hearing. According to them, the departmental inquiries are quasi-judicial in nature and the standard of proof of charges is only on preponderance of probability of guilt. Adequate opportunity was given to the applicant and his defence counsel and the type of punishment awarded, is the decision of the disciplinary authority which is based on the seriousness of the charge and the other relevant factors. The appellate authority has also agreed to the quantum of this punishment. Therefore, the applicant is not entitled to any relief.

5. We have heard the learned counsel for the parties and seen the records and the other documents. On behalf of the applicant the contentions raised before us were that the action was taken under the direction of the C.B.I. and, therefore, according to the learned counsel for the applicant, the entire inquiry proceedings were influenced by this report. It was also contended by the learned counsel that Shri Tuteja was not mentioned as a witness and a copy of the opinion given by him in regard to the signatures on the bills was not given to the applicant. He was also denied the right to examine Shri Tuteja, and he was denied production of the witnesses which he had named in regard to the question of his signatures. It was also one of the contentions that the applicant

...7/-

had been denied his access to the records and justice had already suffered because of the long prolongation of the inquiry proceedings, where the charge sheet was given in 1971 and the proceedings were completed in 1986. The learned counsel for the applicant has relied on a number of cases in this regard which we observed at the appropriate time. On the other hand the submissions made by the learned counsel for the respondents, were that there has been no denial of opportunity to the applicant and the malafide alleged by the applicant against Shri Srivastava, the Divisional Engineer, have not been proved, and that the entire proceedings are based on evidence which have been adduced during the course of inquiry and with the help of the relied on documents. It was further submitted that the Tribunal could only go into the illegality of the proceedings, but could not apraise evidence which was produced before the Inquiry Officer. According to the learned counsel for the respondents, no high degree of proof is required in a departmental inquiry and the degree of proof cannot be equated to the proof required in the criminal case. In view of the fact that adequate opportunity has been given to the applicant, there was nothing wrong in the orders. On behalf of the applicant a request was also made by the learned counsel, that the punishment imposed on the applicant was too excessive, specially in the backgrounds that he has been denied the fact that he ever submitted the bills and the fact of the submission of the bill has not been proved by any documentary evidence.

....8/-

6. Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules lays down the procedure for imposing major penalty. In para 14(3) it is said that "where it is proposed to hold an enquiry against a Government servant under this rule and Rule 15, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputations of misconduct or misbehaviour, a statement of the imputation of misconduct or misbehaviour in support of a charge/which shall contain a statement of relevant facts and a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained. The government servant is thereafter required to submit within such time, as may be specified, a written statement of defence. In this case we do not find that there has been any violation of these rules in the issue of the charge-sheet. The applicant was also allowed the assistance of his defence counsel. We also find that he was allowed inspection of the relied on documents and there is nothing indicated any where that this opportunity was denied to him. As far as the list of witnesses to be examined on behalf of the applicant is concerned, the applicant's case is that the Finger Print Experts, whom he wanted to bring as witnesses, were not allowed by the Enquiry Officer to be summoned. There is no povision in the rules by which the Enquiry Officer can deny the permission to the delinquent in regard to production of the witnesses that he may like to be heard on his behalf. In our opinion the advice tendered by the examiner of questioned documents, Sri Tuteja was in the nature of an expert advice because he belonged to the organisation which advises on the subject and such advice cannot be subjected to re-appraisal by another person belonging to some other organisation. It is not the applicant's case that in this case where an opinion was given by an expert, what he wanted was a review

of the opinion by a larger body of experts. The opinion expressed by one expert cannot be a subject of appeal to be decided by another expert. In this background the rejection of the request of the applicant to summon his witnesses, who were finger print experts cannot be said to be denial of an opportunity to the applicant. There would have been a case had the request been made for a review of the opinion by a larger body, but this he had evidently not done.

7. The contention raised before us by the learned counsel for the applicant is that the enquiry proceedings were influenced by the report of CBI, does also, in our opinion, not sustained. In matters in which a Department has no control and in which it cannot summon private witnesses the investigations are normally handed over to CBI and there are two courses open when such investigations are done by CBI, one is that they may prosecute the delinquent themselves and, the other that they may submit the report to the Department for taking action deprtmentally. It has been seen that generally cases prosecuted in courts take a longer time for settlement than cases which are dealt with departmentally and which can be decided in a shorter time, though in the applicant's case it was only after nearly 10 years after the issue of charge-sheet in 1971 that the enquiry actually started. In the enquiry proceedings witnesses were examined departmentally, though the presenting officer was from CBI and there was nothing wrong in this process.

8. We have also seen in the reply submitted by the respondents as well as in his own admission that the applicant was allowed to cross examine Sri Tuteja, but on the day Sri Tuteja's evidence was taken the applicant was represented by his defence counsel, who did not cross-examine Sri Tuteja andlater on when the applicant's request was allowed no further specific request was received. It

is evident that the applicant had after raising the issue of cross-examining Sri Tuteja not followed it up to its ligical conclusion. As a matter of fact on 29.4.1983 the Enquiry Officer had permitted the applicant the production of the additional witnesses and the request for inspection of certain documents listed in his letter of 14.7.1982. The applicant had also submitted his own documents on 25.7.1985 and he was permitted to submit the remaining defence documents by 9.8.1985.

9. We have also seen the order dated 30.5.1986 which is the punishment order as well as the findings of the Enquiry Officer dated 15.4.1986, though there is a reference to the fact that this case was handed over to CBI for investigation, which were completed on 31.8.1971 there is nothing to indicate that there was any influence in arriving at the findings on account of the report submitted by CBI. In the assessment of evidence, a reliance was placed on the report submitted by the Assistant Government Examiner of questioned documents, Calcutta. The enquiry officer had also considered the documents submitted by the applicant and the allegation made by the applicant against P.M. Srivastava in regard to manipulation of the case.

10. In the appeal filed by the applicant the main contention raised by him before the appellate authority were that the delay in holding of the enquiry, on the fact that he never submitted the bills to the office as it was not supported by any receipt, registers, etc. The applicant had also raised the issue that the date on the bills was 10.6.1968 while the case was handed over to CBI in April, 1970 after a lapse of about two years without making payment against the claims. By this the applicant tried to support his case that the bills were never submitted by

him. He had also raised the issue that even then DET, Sri Srivastava, could not prove how he came to possess these bills. He had also raised the issue of AGEQD, Calcutta, Sri Tuteja, and various other issues which have been now raised before us. The appeal was considered by the appellate authority and he has given his opinion on the various aspects raised in the appeal and thereafter he rejected the appeal. In our opinion it cannot be said that the punishment order or the appellate order are non-speaking orders as all the questions raised have been considered by the concerned authorities. In view of this we feel that the applicant has not been able to establish a case of denial or resonable opportunities to him in conducting his case.

12. Reliance has been placed by the learned counsel for the applicant on the following cases :

(a) Ananda Bazar Patrika (P) Ltd. v. Their Employees (AIR 1964 SC 339) in regard to the refusal to examine a witness and its effect. In this case the Hon'ble Supreme Court had observed that there was no doubt that at a domestic enquiry it is competent to the enquiry officer to refuse to examine a witness if he bona fide comes to the conclusion that the said witness would be irrelevant or immaterial. But if the refusal appears to be the result of the desire on the part of the enquiry officer to deprive the charged person of an opportunity to establish innocence that of course would be a serious matter. We have already said that one expert cannot be pitted against another and so the request of the applicant to call another finger print expert was illconceived. This ratio, therefore, does not help the applicant.

(b) Jagdish Prasad Saxena v. State of Madhya Bharat (AIR 1961 SC 1070) in regard to the importance

of a departmental enquiry. In this case the Hon'ble Supreme Court have observed that a departmental enquiry is not an empty formality. It is a serious proceeding intended to give the officer concerned a change to meet the charge. How these observations help the applicant is not clear to us ? In his case, there is no doubt that preliminary investigations were entrusted to CBI but thereafter a regular independent enquiry was held & he was given adequate opportunity to defend himself.

12. The learned counsel for the respondents has relied on a catena of judgments to support his points. They are on the points whether E.O. can refuse to call a particular witness, reappraisal of evidence by Tribunals, degree of proof required in a departmental enquiry, opportunity for examination given or not, powers of disciplinary authority, allegations of mala fides, etc., non-supply of copy of documents having no bearing on charges or which is not relied upon by the inquiry officer to support charges (AIR 1988 SC 117, C. Tewari v. Union of India); reasonable opportunity of showing cause against dismissal - Enquiry Officer, disciplinary authority, & appellate authority independently considering the material and holding a person guilty - No principle of natural justice violated (AIR 1970 SC 1255, State of Assam v. Mahendra Kumar); statement of Presiding Officer to be taken as correct and attempt of delinquent officer to frustrate enquiry by raising technical objections - documents summoned during the enquiry but not inspected - no denial of natural justice (1976 (1) SLR 143, Inspecting Assistant Commissioner of Income Tax and others v. Somendra Kumar Gupta); in a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The departmental authorities and administrataive tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not

relevant under the Evidence Act. The sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. (AIR 1977 SC 1512, State of Haryana & another v. Pattan Singh); The Enquiry Officer in a domestic enquiry can put questions to the witnesses for clarification wherever necessary and if he allows the witnesses to be cross-examined thereafter, the enquiry proceeding cannot be impeached as unfair. (AIR 1975 SC 2125, Mulchandani Electrical and Radio Industries Ltd. v. The Workmen); If the termination of an industrial employee's services has been preceded by a proper domestic enquiry which has been held in accordance with the rules of natural justice and the conclusions reached at the said enquiry are not perverse, the Tribunal is not entitled to consider the propriety or the correctness of the said conclusions. (AIR 1964 SC 339, Ananda Bazar Patrika (P) Ltd. v. Their Employees). We have considered these ratios and we do feel that they have relevance in the present case.

13. Having considered the above, the only question which now remains is in regard to the quantum of punishment. This question was not raised by the applicant in his appeal but has been raised before us by the learned counsel for the applicant. There is no doubt that in the reply filed by the respondents there is no indication that the applicant was involved in any similar misconduct at any stage earlier in his career and that the entire case of the prosecution is on the basis of the opinion of the finger print expert. However, the applicant has failed to prove that there was any mala fide in the punishment imposed on him by the respondents. In the absence of any mala fide, according to the dicta laid down by the Hon'ble Supreme Court in Union of India v. Parma Nand (1989 (10) ATC 30), this Tribunal cannot interfere with a penalty if the conclusion of the Enquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous

to the matter. The adequacy of penalty unless it is mala fide is also, as laid down by the Hon'ble Supreme Court, not a matter for the Tribunal to concern itself with. Under the circumstances, this application has to fail.

14. In the result we dismiss this application with costs on parties.

30.6.89

MEMBER (J).

MEMBER (A).

Dated: June 30th, 1989.

RG.

Form No. I

(See Rule 4)

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNAL'S ACT 1985.

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH

AT ALLAHABAD.

Kashi Prasad ..... Claimant

V e r s u s.

Union of India and others..... Opp.parties

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Dated

May 18, 1987

Signature of Applicant

(Kashi Prasad)

For use in Tribunal's office

Date of filing .....

Date of receipt by post.....

Registration number.....

Signature

For Registrar.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH

AT ALLAHABAD.

Reg no 459 of 1987
Central Administrative Tribunal
Additional Bench
ALLAHABAD/PATNA/JABALPUR
Date of Filing ... ...
Date of Receipt by Post 21-5-87
By Deputy Registrar.

BETWEEN.

Kashi Prasad ..... Applicant.

and

Union of India, through Secretary to Department of Post and Telegraphs and others.....Respondents.

DETAILS OF APPLICATION.

1.Particulars of applicant:-

(i) Name of applicant) (ii)Name of Father.)	Kashi Prasad aged about 44 years son of Sri Puran Das.
(iii)Age of the applicant.	- 44 years (16.7.1942)
(iv)Designation and particulars of office(Name and station) in which employed or was last employed before ceasing to be in service.	Telephone Operator, Telephone Exchange, Sitapur (U.P.).
(v) Office address.	Trunk Telephone Exchange, Sitapur.
(vi)Address for service of Notices	Kashi Prasad, Telephone Operator, near back gate of Eye Hospital, 498 Roti Godam, Sitapur (U.P.)

2. Particulars of the Respondents.

(i)Name of Respondents. (ii) Name of father (iii) Age of respondent (iv) Designation and particulars of office(name and station) in which employed. (v) Office address (vi) Address for service of notices.	As per details given below. (Since none of the Respondents has been impleaded by name there is no need to give fathers' name and age)

1. Union of India through Secretary to Department of ~~Post and Telegraphs~~ Telecommunications, Ministry of Communication New Delhi.

2. Divisional Engineer, Telegraphs, Sitapur.

3. Director, Telecom. Central Area, Lucknow.

3. Particulars of order against which application is made.

The application is against the following order :-

(i) Order No. Memo no.QF-65/KP/203 (with reference to Annexure No.1)

(ii) Date : 30.5.1986 (Received on 31.5.1986

(iii) Passed by : Divisional Engineer, Telegraphs, Sitapur (Respondent No.2) and Appellate Order No.ADM(S)/42-48/86/5 dated 4.5.1987, passed by Direcotr, Telecom.Lucknow, Respondent No.3-Annexure No.13.

(iv) Subject in brief: Applicant has been ordered to be compulsorily retired from Government Service with immediate effect.

4. Jurisdiction of Tribunal.

The applicant declares that the subject matter of the order against which he wants redressal is within jurisdiction of the Tribunal.

5. Limitation.

The applicant further declares that the application is within limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985.

6. Facts of the Case.

6 : 1 That applicant's date of birth as entered in the High School Certificate is 16.7.42.

He joined the services in Post and Telegraph Department as Telephone Operator at Allahabad City, Telephone Exchange on 1.3.63 and was confirmed as such on 1.3.1966. The name of the applicant finds place at serial number No. 109 of the Gradation List of the Telephone Operators as corrected upto 30.6.1969, which was issued by the Divisional Engineer, Telegraphs, Allahabad Division.

6 . 2 That on 8.11.1971 while applicant was posted at Sultanpur, Telephone Exchange, he received a charge-sheet issued by Divisional Engineer, Telegraphs, Allahabad Division under Rule 14 to Central Civil Services (C.C.& A) Rules 1965 alleging that while posted at Allahabad during December, 1967 to June 1968 he had submitted 8 false medical bills in the office of D.E.T. Allahabad amounting to Rs.637-00. The applicant was accordingly charged to have acted in violation of Rule 3(i) (i) to Central Civil Services (Conduct Rules), 1964. It is worthwhile to point out that there was no allegation

against applicant that he had drawn any amount on the basis of the alleged medical bills. No charge of any bad intention was levelled in the charge-sheet. The applicant on 17.11.1971 denied the allegations framed against him and submitted written statement of his denial.

6.3 That prior to framing of charge-sheet, the matter was handed over to the Central Bureau of Investigation for investigation. The Central Bureau of Investigation did not find it a fit case for criminal prosecution due to lack of evidence but recommended the Department to issue charge-sheet for imposing major penalty against the applicant. In pursuance of the recommendeation of the C.B.I. the charge-sheet was framed on the basis of the recommendation of the C.B.I.

A true copy of the charge-sheet dated 26.10.1971 along with its Annexures is attached herewith as ANNEXURE No.1 to this petition.

6.4 That from 17.11.1971 to 3.1.1981 no development was at all reported in the case nor any enquiry was

initiated by the Disciplinary authority and the applicant continued to performed his duties with full satisfaction. There has been nothing adverse in the service records of claimant during his 23 years of service, except the alleged affair giving rise to this claim.

6.5 That on 3.1.1981 applicant received an intination that one Sri S.D.Misra, Assistant Sub-Inspector of Police has been appointed as Presenting Officer (it was done so merely because charge-sheet was issued in compliance of orders of C.B.I. to the effect.)

6.6. That on 6.3.1981 applicant appeared before Enquiry Orficer Sri A.K.Gupta at Lucknow and on hearing charges pleaded not guilty. On the same day, i.e. on 6.3.1981 Enquiry Officer asked the claimant to furnish the list of defence witnesses and documents if any. For which claimant requested to submit it on next date after inspection of relevant documants etc.

6.7: That on 6.4.1981, the date fixed in Enquiry the claimant demanded copies of the documents as mentioned in Annexures 3 & 4 of charge-sheet. Enquiry Officer ordered that copies of the desired documents are not permissible to be supplied. However, copies of statements of witnesses as mentioned in Annexure 4 of charge-sheet were supplied to the claimant.

6.8 That as evident from a perusal of the charge-sheet, the name of Sri H.S.Tuteja, Asstt.Government Examiner of Questioned Documents Calcutta was not included in the list of witnesses of prosecution there arose no occasion to obtain copy of Sri Tuteja's report/opinion nor it was supplied to claimant on 6.4.1981 as name of Sri Tuteja was not proposed till then as prosecution witness. Even subsequently on 27.2.1984 when for the first time Enquiry Officer directed the Presenting Officer to produce Sri H.S.Tuteja, the copy of his opinion/report was not supplied to claimant nor it has ever been supplied to claimant.

6.9 That on 15/22.[illegible].1982 one Sri

Sri S.C.Awasthi was appointed as Enquiry Officer. It is noteworthy that from 17.11.1971 to 6.3.1981(for a period of about 10 years) no progress in the Enquiry was made and it waskept in abeyance on the part of the respondents without any sort of latches or negligence on behalf of applicant.

6.10 That after 6.4.1981 Enquiry was held on 14.7.1982, on that day claimant submitted list of witnesses and documents as he wished to produce in his defence. Claimant also requested to inspect these documents which he mentioned in the same application dated 14.7.1982. A reminder to the same effect was also given on 5.11.1982. True Copies of these are attached Herewith as Annexures 2 and 2 A to this petition.

6.11 That on 29.4.1983 the Enquiry Officer instead of passing any orders as regards to calling upon the documents mentioned in Annexure 2, directed the claimant that he may inspect the receipt/despatch registers and correspondence files of 1967-68 pertaining to DET Allahabad & A E (P) I/D Allahabad, provided they are made available to him.

True copy of Enquiry Officer's proceedings dated 29.4.1983 are attached herewith as ANNEXURE 2B to the petition.

6.12 That documents mentioned in applicant's application dated 14.7.1982 were neither summoned by Enquiry Officer in defence of claimant, nor any reasons were recorded for not summoning these documents nor these documents were made available to him even for inspection.

6.13 That on 7.10.1983 Enquiry Officer recorded the statement of Sri S.M. Tripathi at Sitapur. In his statement before Enquiry Officer dated 7.10.1983 Sri S.M.Tripathi affirmed his previous statement dated 16.4.1971 given to CBI/ SPE Sub-Inspector in which he stated that there is no mention of these bills in their registers. He also deposed before Enquiry Officer that he cannot havea definite opinion about making of signatures by claimant on the bills.

6.14 That on 17.2.1984 for the first time the Enquiry Officer on his own accord directed calling of 5 Additional witnesses, e.g. Sri H.S.Tuteja, L.R.Nigam, S.L.Richcharia, Dr. S.C.Kansal and Smt. Shirin Rodoney. These witnesses were not proposed in the charge-sheet, nor any additional charge-sheet having reference of these persons nor any list nor copies of the statements or reports of these persons were ever supplied/

apprised to the claimant. Names of these witnesses were for the first time given by the Enquiry Officer in his proceedings dated 17.2.1984 without any previous reference.

6.15 That on 11.4.1984 Sri S.C.Awasthi, Enquiry Officer recorded the statements of few witnesses and the matter was again kept in cold storage.

6;16 That on 31.3.1984 atleast five juniors to applicant namely Sarvasri Iliyas Ali, S.C. Misra, G.S.Shukla, V.L.Jatav and Jagdeshwar Prasad were granted grade promotion ignoring the applicant simply on the ground of pendency of disciplinary proceedings.

6.17 That when inspite of his representations dated 18.8.1984 and 11.9.1984 neither disciplinary proceedings could be finalised nor his Efficiency Bar was crossed from 1982 nor his increments were released simply on the pretext of pendency of disciplinary proceedings, the applicant was forced to move a Writ Petition No.5946 of 1985 before Lucknow Bench of the Hon'ble High Court in which he prayed for the following reliefs:-

(i) A writ direction or order in the nature of mandamus commanding the opposite parties to release the increments and efficiency Bar of the petitioner with its due date i.e. 1.3.1982 and to grant him usual

grade promotion with effect from 30.11.83 along with full benefits of arrears of salary, promotion etc.

(ii) A writ, direction or order in the nature of mandamus be also issued in favour of petitioner commanding the opposite-parties to place the petitioner at the proper place in the gradation list of grade promotion so as to keep his name above to his juniors.

(iii) Opposite-parties be also commanded to terminate the unreasonably prolonged disciplinary proceedings of the year 1971 against the petitioner.

(iv) Any other writ, direction or order as may be deemed fit in the circumstances of the case be also issued against opposite parties along with the costs of this petition.

6.18 That on the aforesaid Writ Petition the Hon'ble High Court was pleased to direct the opposite-parties to finalise the long pending disciplinary proceedings within a period of three months failing which the petitioner was to be considered for promotion and for crossing of Efficiency Bar as if no Enquiry is pending against

him. The aforesaid Writ petition is still pending and might have been transferred to this Hon'ble Tribunal upon enforcement of Administrative Tribunal Act 1985. A true photo stat copy of the Hon'ble High Court's interim order dated 10.4.85 is attached herewith as ANNEXURE NO.3 to this application.

6.19 That inspite of several applications, opposite-parties failed to grant grade promotion or increments or Efficiency bar inspite of interim order dated 10.4.1985 passed by the Hon'ble High Court.

6.20 That on 7.10.1983 Enquiry Officer recorded the statement of Sri S.M.Tripathi at Sitapur. On 11.4.1984 statement of Sri P.M.Srivastava, retired DET Allahabad was recorded by the Enquiry Officer at the residance of Sri P.M.Srivastava at Allahabad. Since applicant's defence Representative (Sri Bishnu Sahai, Office Assistant, D.E.Phones Bareilly) could not not attend enquiry, therefore, applicant moved an application to Enquiry Officer that his right of cross examination of all the witnesses be kept reserve. Enquiry Officer has not passed any order on this application nor the witnesses were ever re-called for purposes of cross-examination.

6.21 That in view of D.G.of ~~Post offices~~ P & T. New Delhi letter No.153/13/76-DISC dated 30.11.1978, a true copy of which is attached herewith as ANNEXURE NO.4 to this application and as well as with a view to have reasonable opportunity of hearing, the applicant on 25.3.1985 and 1.4.85 as required by the Enquiry Officer to furnish list of defence witnesses, submitted an application that he wants to produce Sri S.P.Gupta, one of the Hand Writing Expert from his side, so that he may after examining the disputed signature may give his second opinion, if any, on the point of hand writing of the alleged signature.

True copies of applications dated 25.3.1985 and 1.4.1985 making requests for examination and production of his Expert are attached herewith as ANNEXURES NOS. 5 and 6 to this application.

6.22 That on 25.7.1985, theEnquiry Officer, without assigning any reason thereof, passed an order to the effect that there is no justification to call upon another Hand-writing Expert of his own choice as defence witness. It may be submitted

~~submitted~~ here that the "mere" order of the Enquiry Officer for refusal to call the Handwriting Expert proposed to be produced by the applicant was ~~not~~ passed and no reasoning was recorded in the order. No order has at all been made or passed by the Enquiry Officer as to why the documents and witnesses proposed to be produced by the applicant as his defence are not to be called upon. No reason for calling or not calling upon the defence witnesses and documents have been assigned to the applicant by the Enquiry Officer.

6.23 That on 22.5.1985 Enquiry Officer recorded statement of Sri H.S.Tuteja, Asstt.Govt. Examiner of Questioned documents (Hand Writing Expert)Calcutta in absence of applicant as he was confined to bed due to fracture of his leg. Applicant had already submitted an application on 18.5.1985 well advance in time that on account of his fractured leg he is unable to attend the Enquiry. Applicant's Representatiive Sri Bishnu Sahai who was present on 22.5.1985 could not cross-examine Sri H .S.Tuteja in absence of lack of instructions and absence of applicant. Copy of examination-in-chief of Sri H.S.Tuteja was also not supplied to the defence Representative of the applicant nor Enquiry Officer entertained oral request of applicant's

Representative regarding fixing fresh date for cross-examination of Sri H.S.Tuteja nor he was called upon again for purpose of cross-examination in future.
True copy of the Enquiry proceedings dated 22.5.1985 is attached herewith as ANNEXURE NO.7 to this application.

6.24. That a perusal of the Enquiry proceedings dated 22.5.1985 contained in Annexure no.7 would go to prove that even Presenting Officer was not present on the date when statement of Sri H.S.Tuteja was recorded. Therefore, Enquiry Officer on that day also acted on behalf of the Presenting Officer which was an overact on his behalf.

6.25 That as desired by the Enquiry Officer on 25.7.1985, applicant on 5.8.1985 had already submitted list of his documents to be used in defence. These documents were not ordered to be summoned nor were refused to be summoned.
A true copy of the proceedings of the Enquiry dated 25.7.1985 in which production of applicant's Handwriting Expert has been refused is attached herewith as ANNEXURE No. 8 to this petition. It is submitted that in Annexure no.8, date of applicant's application is referred to as 25.7.1985 which is actually 25.3.1985 (Annexure no.6

Kathody

to this petition). Mention of date as 25.7.1985 in Enquiry proceedings appears to be a clerical error. On the same day applicant had submitted various documents in his defence.

6.26 That on 29.1.1986 applicant was ordered to get his statement recorded in absence of his defence Representative who was feeling unwell due to heart trouble and could not attend the proceedings on that day. Since Sri S.M.Triparthi and Sri P.M. Srivastava had deposed nothing against applicant, so there was no need to cross-examine them. A request for production of his own Handwriting Expert, which was highly relevant and most material defence evidence, was already denied by the Enquiry Officer on 25.7.1985 and because no orders refusing or calling upon defence documents were passed by the Enquiry Officer the applicant was confident that these documents will be naturally called upon, perused and considered by the Enquiry Officer, the applicant stated that he does not wish to produce any other defence etc.

6.27 That Enquiry Officer neither fix any date for summoning of the documents desired to be summoned by the applicant as submitted earlier. Applicant submitted his written defence brief on 24.2.1986.

A true copy of the same is attached herewith as ANNEXURE NO.9 to this petition.

6.28 That applicant on 31.5.1986 was served with an order dated 30.5.1986 passed by the Opposite-party no.2 thereby imposing upon him the punishment of compulsory retirement from service.
A true copy of the punishment order dated 30.5.1986 along with the report of the Enquiry Officer is attached herewith as ANNEXURE NO.10 to this petition. It is submitted that report of the Enquiry Officer was for the first time supplied to the applicant only with the punishment order and this report was earlier never supplied to the applicant.

6.29 That aggrieved from the punishment order dated 30.5.1986 contained in Annexure no.10, applicant preferred a Claim no.250 of 1986 before this Hon'ble Tribunal on 3[illegible].6.1986 which was heard and rejected on the ground of existence of alternate remedy to which applicant was advised to avail and opposite-parties were directed to dispose of the appeal, if so filed by the applicant, within a period of six months without fail.
A true copy of the Hon'ble Tribunal order dated 3.6.1986 is attached herewith as ANNEXURE NO.11 to this application.

6.30 That applicant accordingly submitted an appeal on 30.6.1986 to the Director Telecom, Central Area, Lucknow (Appellate Authority) respondent no.3. Applicant also submitted additional pleas in appeal on 19.8.1986. A true copy of appeal dated 30.6.1986 along with additional pleas is attached herewith as ANNEXURE NO.12 to this petition. Annexures attached with the appeal are not enclosed.

6.31 That after repeated reminders the opposite-party no.3 decided the appeal on 4.5.1987 in rejection, It was received by the petitioner on 8.5.1987. A true copy of Appellate Order is attached herewith as ANNEXURE NO.13 to this petition.

6.32. That aggrieved from the Punishment order dated 30.5.1986(contained in Annexure no.1) which has merged in Appellate Order dated 4.5.1987 (Annexure no.13) claimant begs to challenge the legality of the disciplinary proceedings and both the orders on and amongst other the following-

Grounds.

Grounds.

(a) Because Competent Authority while issuing charge-sheet has acted upon the recommendation of the Central Bureau of Investigation . The charge-sheet has not been issued after a free application of mind by the Competent Authority. It is human nature that such recommendations may affect the final decision that may be t taken and in this case it has actually affected the final decision. Such a procedure has resulted in causing prejudice to the case of the applicant.

(b) Because in the present case there has been no allegation or proof of ill-motive which is an essential ingredient in imparting misconduct against individual. At the most the alleged misconduct may be a mere negligent way of dealing the matter which itself cannot be termed as misconduct.

(c) Because the impugned punishment order has been passed in utter dis-regard of principles of Natural Justice and in complete violation of Article 311 of the Condition of India in as much as the applicant has been denied with the opportunity

of production of his material defence evidence and help of his Representative on respective dates.

(d) Because only charge which was framed against the applicant related to alleged submission of false bills and not the irresponsible attitude of the applicant so as to make him unworthy or loss of confidence with the employer. Since there is no evidence at all ~~regard~~ on record that the bills were ever submitted in the office nor there is any preceding or attending conduct of the applicant regarding presentation of the bills, therefore, it is a case of no evidence on the charges framed as such.

(e) Because applicant's applications contained in Annexures 6 and 7 have not at all been considered and no reason whatsoever has been assigned for refusal to call upon the defence documents or witnesses.

(f) Because due to unreasonably prolonged disciplinary proceedings for more than 15 years, applicant stands already punished with regard to his due efficiency bar in the year 1982.

increments and denial of promotion as compared to his juniors. Therefore, the order of punishment of compulsory retirement amounts to double punishment offending principles of Equity, natural justice and fair play .

(g) Because while imposing punishment of compulsory retirement, the provisions of Fundamental Rules 56 J or L cannot be overlooked.

(h) Because applicant, having completed only 23 years of service, cannot be compulsorily retired either in exercise of powers conferred under Rule 11 of the Central Civil Services (C.C.& A) Rules 1965 or Fundamental Rule 56.

(i) That while ordering compulsory retirement in any manner, the prerequisite of Fundamental Rules 56 J or L have to be complied with. In the instant case neither applicant has completed 30 years qualifying service nor given three months pay in lieu of notice, the ultimate effect of which will be that his post retirement benefits may be adversely affected.

(j) Because disciplinary proceedings are by way of result of malafides and prejudices of Sri P.M.Srivastava the then DET Allahabad.
Such plea having been taken by the applicant in his written defence brief (Annexure no.9) it was incumbent upon the Enquiry Officer to make enquiries on the point.

(k) Because there is no existence of evidence in the case so as to make or establish the charge.

(l) Because Sri H.S.Tuteja was not mentioned as witness in the charge-sheet nor copy of his report or statement has been supplied to the applicant during the enquiry. However, it is worthwhile to mention here that only attested copy of Sri Tuteja's statement was supplied to the applicant only along with the proceedings dated 3.2.1986 which is not the substantial compliance of mandatory Rules.

(m) Because statement of Sri Tuteja has been recorded in contravention of Paras 92 and 93 of P.& T.Manual Volume III and instructions of DG PT No.6/66/60 DISC dated 14.4.61

and letter no.2/26/25-Disc dated 17.9.1966.

(n) Because order of Punishing Authority is non speaking one.

(o) Because circumstances of the case themselves speak about the falsification of the alleged charge in as much as these alleged bills were kept pending for a period of about two years.

(p) Because order of the Appellate Authority is neither proper nor justified because no explanation or reason of whatsoever nature has been recorded by the Appellate Authority for not allowing the applicant for production of his defence witness, i.e. Handwriting Expert of his own choice.

(q) Because mere report of Expert without any corroboration cannot be termed to be a substantive piece of evidence.

(r) Because the material irregularities and illegalities committed during the disciplinary proceedings have

have prejudiced the case of the applicant.

(s) Because in no case the intergrity of the applicant can be challenged as according to the admitted position of the case there has been no step or effort for payment of the amount of the alleged bills and actually it is not the case of any party that the payment has been made against the aforesaid bills.

(t) Because copies of enquiry proceedings were not supplied day by day by the Enquiry Officer to the applicant during the enquiry.

(u) Because departmental enquiries are quasi judicial and as such preponderence of probability should not be the standard of proof of the charge and the charge must also be proved beyond any doubt in departmental enquiries for punishment. As such any punishment should not be imposed merely on suspicion/ doubt or presumption. mearly on basis of uncrossed testimony of Sri Tuteja whose reasonings and opinion are not correct.

(v) Because signature or presence of defence representative on 22.5.88 (the date on which Sri Tuteja was examined) cannot be substituted to presence of

charged official who was confined to bed due to fracture of his leg.

(W) Because punishment imposed is too severe and harsh, in any event,

7. Details of Remedies exhausted.

The applicant declares that he has availed of all the remedies available to him under the relevant Service Rules etc. Appellate Order no.ADM(S)42-48/86-5 dated 4.5.1987 passed by the Director, Telecom (CA) Lucknow, which is attached herewith as Annexure no.13.

8. Matter not previously filed or pending with any other Court.

Applicant filed claim No.250 of 1986 which was decided on 3.6.1986 with the direction to file departmental appeal. Order of Hon'ble Tribunal is attached as Annexure no.11 to this application. Departmental appeal has also been decided now on 4.5.1987 vide Annexure No.13.

9. Reliefs sought

(i) A declaration or order in favour of the applicant against respondents be issued to the effect that order of the compulsory retirement dated 30.5.1986 along with the Enquiry Officer's report contained in Annexure no.8 which has merged in Appellate order dated 4.5.1987 passed by the Director

Telecom(Central Area) Lucknow, contained in Annexure 13 are illegal, inoperative, null and void, as a result of which the applicant shall be deemed to be in continuous employment of the respondents and entitled to all usual service benefits of salary, efficiency bar, increments, promotion, seniority and other usual consequential benefits, and order of compulsory retirement shall have no past or future effect on his service career.

(ii) Application also prays for awarding costs of this application.

(iii) Any other relief as may be deemed fit and proper in the circumstances of the case may also be granted in favour of the applicant against respondents.

10. Interim order, if any prayed for.

--N i l --

11. Application is presented through counsel Sri A.K. Dixit, Advocate, by post with a sepparate request by the counsel that case may be fixed for admission, hearing on 25.5.1987. Self addressed registered envelop is also enclosed.

12. Particulars of Bank draft/postal order in respect of application fee.

(1) Name of Bank of which drawn X

(2) Demand Draft No. X

or

(1) Number of Indian Postal order (5)
W/54 911837, 38, 39, 40 and 41
(5 Postal orders each of Rs. 10/=)

(2) Name of issuing Post Office
Head Post office, Sitapur

(3) Date of issue of Postal order
16 May 1987

(4) Post office at which payable
Allahabad.

13. List of enclosures.

(i) Demand draft/Postal order (5)
each of Rs. 10/=

(ii) Index of documents.

(iii) Paper book having details of of Annexures as mentioned in the Index along with the impugned order dated 30.5.1986.

(iv) Vakalatnama

(v) Three file size envelopes having postage of Rs.8-50 P. each.

Verification.

I Kashi Prasad son of Sri Puran Das,

aged 44 years, resident of Rotigodam, near backgate of the Eye Hospital, Sitapur, do hereby verify that the contents of Paras 1 to 8 are true to my personal knowledge and those of Paras 9 to 13 are believed to be true on legal advise and that I have not suppressed any material facts.

(Kashi Prasad)

Place :

Dated May 18, 1987.

Abhaya Kumar Dixit
Advocate

To

The Registrar,
Central Administrative Tribunal
Additional Bench, Allahabad.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH AT ALLAHABAD.

Kashi Prasad .... Applicant

Versus

Union of India & others .... Respondents

ANNEXURE No.1

INDIAN POST AND TELEGRAPHS DEPARTMENT

Office of the D.E.Telegraphs, Allahabad Division, Allahabad.

Memo No.Y-5/K.P/3 Dated at AD 26.10.1971

The undersigned proposes to hold an inquiry against Shri Kashi Prasad, T.O. under Rule 14 of the Central Civil Services (Classification Control and Appeal) Rules 1965. The substance of imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge(Annex.I). A statement of imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annex.II). A list of documents by which, and a list of witnesses by whom, the articles of charges are proposed to be sustained are also enclosed (Annex. III & IV).

Attested To be True Copy.
Abhaya Kumar Dixit
Advocate

2. Shri Kashi Prasad, T.O. is directed to submit within 10 days (Ten days) of the receipt of this Memorandum a written statement of his defence and also to state whether he desired to be heard in person.

3. He is also informed that an inquiry will be held only in respect of those articles of charges as are not admitted. He should therefore specifically admit or deny each article of charge.

4. Shri Kashi Prasad is further informed that if he does not submit his written statement of defence on or before the date specified in Para 2 above, or does not appear in person before the Inquiryng authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the C.C.S.(C.C.& A) Rules, 1965, or the orders/ directions issued in persuance of the said Rule the inquiring authority may held the inquiry against him ex-parte.

5. Attention of Shri Kashi Prasad is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in

Attested True Copy

Abhaya Kumar Dixit
Advocate

 Annexure 1 continued

respect of any matter dealt within these proceedings it will be presumed that Shri Kashi Prasad is aware of such a representation and that it has been made at the instance and action will be taken against him for violation of Rule 20 of the C.C. S.(Conduct) Rules, 1964.

6. The receipt of h this Memorandum may be acknowledged.

Sd.Illegible
Divisional Engineer Telegraphs
Allahabad.

To

Shri Kashi Prasad, T.O.,
Telephone Exchange,
SITAPUR

Attested True Copy
Abhay

Abhaya Kumar Dixit
Advocate

ANNEXURE-1

STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI KASHI PRASAD, TELEPHONE OPERATOR.

.....

That Shri Kashi Prasad, while functioning as Telephone Operator, Allahabad, during December, 67 to June, 68 failed to maintain absolute integrity and committed misconduct in as much as he submitted in the DET office, Allahabad 8 false medical reimbursement claim applications amounting to Rs.637.00 supported with forged prescription, essentially certificates and cash memos in respect of the treatment of himself, father and son, purported to have been issued by Dr.M.C.Gupta Incharge OPD, SRN Hospital, Allahabad and thereby contravened Rule 3(1)(i) of the Central Civil Services (Conduct) Rules, 1964.

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Attested True Copy

Abhaya Kumar Dixit
Advocate

ANNEXURE -II

STATEMENT OF IMPUTATIONS OF MISCONDUCT IN SUPPORT OF THE ARTICLES OF CHARGES FRAMED AGAINST SHRI KASHI PRASAD, TELEPHONE OPERATOR.

.....

Sri Kashi Prasad was posted as Telephone Operator at Allahabad, during the period December 1967 to June, 1968.

He submitted three medical reimbursement claim applications in respect of his own treatment for the period 3.12.67 to 12.12.67, 14.12.67 to 23.12.67 and 8.2.68 to 17.2.68 for Rs.78-20, 79-55 and 79-30 respectively, supported with cash memos of Uttam & Co., prescription and essentiality certificates purported to have been issued by Dr. M.C.Gupta.

He also submitted three medical reimbursement claim applications in respect of the treatment of his father Sri Puran Das for the periods 2-12-67 to 11. 12.67, 12.12.67 to 21.12.67 and 8.2.68 to 17.2.68 for Rs.81-50, 81-33 and 84-00 respectively, supported with cashmemos of Uttam & Co., prescriptions and essentiality certificates purported to have been issued by Dr.M.C.Gupta.

Attested True Copy

Abhaya Kumar Advocate

He also submitted two medical reimbursement claim applications in respect of the treatment of his son Sri Satya Deo Prakash for the periods 5.12.67 to 14.12.67 and 8.2.68 to 17.2.68 for Rs.76.00 and 77-12 respectively, supported with cashmemos of Uttam & Co, prescriptions and essentiality certificates purported to have been

 Annexure II continued

issued by Dr.M.C.Gupta. No doctor by the name of Dr. M.C.Gupta Incharge OPD SRN Hospital Allahabad was posted at the SRN Hospital, Allahabad during the above mentioned period. The prescriptions and essentiality certificates attached with the medical reimbursement claim applications purported to have been issued by Dr.M.C.Gupta, are false.

The above facts show that Shri Kashi Prasad has acted in violation of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

Attested True Copy
Alg787
Abhaya Kumar Dixit
Advocate

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ANNEXURE-III

LIST OF DOCUMENTS BY WHICH THE ARTICLES OF CHARGES FRAMED AGAINST SHRI KASHI PRASAD ARE PROPOSED TO BE SUSTAINED.

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1. Medical reimbursement claim applications dated 10.6.68 for Rs.78.20, 79.55 and 79.30 in respect of Sri Kashi Prasad.

2. Medical reimbursement claim applications dated 10.6.68 for Rs.81-50, 81.33 and 84.00 in respect of Sri Puran Das.

3. Medical reimbursement claim applications dated 10.6.68 for Rs.76.00 & 77.12 in respect of Sri Satya Deo Prakash.

4. Handing over memo dated 4.4.70 by Shri P.M. Srivastava to Sri H.L.Ahuja.

5. OPD Registration register of SRN Hospital Allahabad for the period Novr. 67 to Feb.68.

6. Opinion No.DXC 340/71 dated 11.6.71 of GEQD Calcutta.

7. Specimen and admitted writings of Shri Kashi Prasad, Dr.M.C.Gupta.

Attested True Copy

Abhaya Kumar Dixit
Advocate

****

ANNEXURE-IV

LIST OF WITNESSES BY WHICH THE ARTICLES OF CHARGE FRAMED AGAINST SHRI KASHI PRASAD ARE PROPOSED TO BE SUSTAINED.

(1) Sri P.M.Srivastava, Retd., DET Allahabad r/o 18-Balrampur House, Allahabad.

Stated that the medical reimbursement claim applications of Shri Kashi Prasad were brought before him for his notice which he kept with him and afterwards handed over to Sri H.L.Ahuja, Dy.S.P., C.B.I., S.P.E., Lucknow.

(2) Sri Surendra Mohan Tripathi, Clerk DET office, Allahabad.

(3) Sri S.K.Chopra, Telephone Operator, Allahabad.

Identified the signatures and writings of Sri Kashi Prasad on the documents and gave out the procedure for reimbursement of medical expenses.

(4) Sri B.D.Upadhya, Dy.Supdt. SRN Hospital, Allahabad

Stated that no doctor by the name of Dr.M.C.Gupta incharge OPD SRN Hospital was posted in the hospital. The prescriptions and essentiality certificates submitted by Shri Kashi Prasad in support of his claim applications did not bear seal of SRN Hospital.

Attested True Copy
Abhaya Kumar Dixit
Adv.

(5) Sri Lal Ra, Telephone attendant of SRN Hospital, Allahabad.

(6) Sri Raja Ram.....do.....

(7) Sri Rajjab Shah, Telephone attendant of SRN Hospital, Allahabad.

Stated that these prescriptions were not issued by the SRN Hospital and did not bear the Hospital seal.

(8) Dr.Mahesh Chandra Tupta s/o Mata Din Gupta r/o Jalaun, U.P.

Stated that he remained posted as an enternee at SRN Hospital Allahabad but the prescriptions and essentiality certificates did not bear his writings.

Attested True Copy
Abhaya Kumar Dixit
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH AT ALLAHABAD.

Kashi Prasad ... ... - Applicant.

Versus

Union of India & others .... -Respondents

ANNEXURE 2.

To

Shri S.C.Awasthi E.O.

Sir,

I beg to submit the list of defence witnesses and additional documents that I wish to produce and inspect. This list is inexhaustive and only cover the stage of the case that exists today.

Particulars of DW's Addl.Documents	Relevancy
S/Shri	
1.R.S.Sharma, the then Sr.Divl.Account/ O/ODET Alld.	
2. J.P.Srivastava the then Clerk "	"
Specimen hand writing was taken in their presence.	
1. Receipt & despatch register of E. S.P.Auto II MDFC Tx Alld.maintained by TOC for the period 1/12/67 to 7/68	Relevancy apparent with charges.
2.Receipt & despatch register of A.E.Phones I/D Alld 1/12/67 to 7/68	--do--
3. Receipt & despatch Register of DRT Alld. 1/12/67 to 7/68	" "

Attested True Copy
Abhaya Kumar
Advocate

Annexure 2 continued.

3. Receipt and Despatch register of DRT Alld. 1/12/67 to 7/68 — Relevancy apparent with charges

4. DET Alld files No.A-29/ Medical A 29/ Con/Medical A-29/Oty/Medical A-29 Exp, A29/cot case/Medical for the period 1/12/67 to 12/70. — " "

5. A.E.P I/D Alld.file No.A-7 for 1/12/67 to 12/70

14.7.82

Yours faithfully,

Sd.Kashi Prasad

(Kashi Prasad) T.O.

Sitapur.

Attested True Copy
Alg 82
Abhaya Kumar Dixit
Advocate

40

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH AT ALLAHABAD.

Kashi Prasad .... Applicant

versus

Union of India & others .... Respondents

ANNEXURE -2 A.

Sir,

I beg to state that in reference to my application dated 14.7.82 in which I have demanded to inspect and produce some more additional documents which are very necessary to prove the submission of the desputed MIR claims.

Therefore, it is requested to you that those additional documents(list given in application dated 14.7.82) may kindly be provided as early as possible on the next date. So that the case may be expedited early.

Dated 5.11.82

Yours faithfully,

Sd.Kashi Prasad
5.11.82

Telephone Exchange
Sitapur.

Attested True Copy
Abhaya Kumar Dixit
Adv.

In the Central Administrative Tribunal, Additional Bench Allahabad. 41

Kashi Prasad Vs Union of India

Anx No. 26

ENQUIRY PROCEEDINGS AGAINST SHRI KASHI PRASAD, T.O. SITAPUR UNDER CCS (CCA) RULES, 1965.

Dated at Lakhimpur the 29.4.83.

Enquiry proceedings against Shri Kashi Prasad T.O. Sitapur under CCS (CCA) Rules, 1965 held on 29.4.83. at 11.00 hrs in the office of the S.D.O.Telegraphs Lakhimpur. The following were present:-

1. Shri Kashi Prasad .... Charged Official
2. Shri S.D. Misra .... Presenting Officer.

Proceedings could not be held as neither defence council not the witness are present.

The charged official Shri Kashi Prasad desired to produced additional witnesses & wanted to inspect certain documents enlisted in his letter dt. 14.4.82.

His request to produce defence witnesses is hereby allowed. As records Receipts /Despatch Registers of 67-68 and correspondence files of D.E.T. Allahabad & A.E.(P) I/C Allahabad, Shri Kashi Prasad will be allowed to inspect correspondence files (Provided they are made available by D.E.T. / A.E.(P) I/C Allahabad).

The proceedings will be held at 11.00 Hrs on 17th and 18th May 1983. The venue of the proceedings will be office of the D.E.T. Sitapur.

29/4/83
(S.D. Misra)
PRESENTING OFFICER

(S.C. AWASTHI)
ENQUIRY OFFICER

Kashi Prasad 29/4/83
(Kashi Prasad)
Charged Official

Copy for information to:-

1. Vigilance Officer, Circle Office, Lucknow.
2. D.E.T. Sitapur for information.
3. Shri S.D. Mishra Inspector C.B.I. Lucknow.
4. Shri Kashi Prasad T.O. Sitapur.

Attested True Copy.
Abhaya Kumar Dixit
Advocate

Kashi Prasad

In The Central Administrative Tribunal
Additional Bench at Allahabad. 42

Kashi Prasad Vs Union of India & Others

Anx No. 3

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH LUCKNOW

C.M. APPLICATION NO. 3357 (W) of 1985

In-Re

WRIT PETITION NO. 5946 of 1985.

Kashi Prasad. .....Petitioner

Vs.

1. Union of India throught Secretary to Department of Post and Telegraphs, Ministry of Communication New Delhi.
2. General Manager Telecom Circle U.P. Lucknow.
3. Divisional Engineer, Telegraphs, Allahabad division Allahabad.
4. Divisional engineer, Telegraph, Sitapur.

.....Opp-Parties.

APPLICATION FOR DISPOSAL OF INTERIM RELIEF.

Lucknow dt. 10.4.1985

Hon'ble K.N. Goyal, J.

In this case the enquiry has already been continuing for over 15 years. This is stocking to the judicial conscience. It is accordingly ordered that the enquiry shall be finished within three months failing which the petitioner shall be considered for promotion and for crossing of efficiency bar as if no enquiry is pending against him. Such promotion will of course be subject to the final result of the enquiry.

Sd. K.N. Goyal
10.4.1985

THE SEAL OF THE HIGH COURT AT ALLAHABAD

*YOGESH"

TRUE COPY
Section Officer 23/6/85
Copying Department.
High Court, Lucknow Bench,
LUCKNOW

Attested True Copy
Abhaya Kumar Dixit
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH AT ALLAHABAD.

Kashi Prasad .... Applicant

v e r s u s.

Union of India and others ..... Respondents

ANNEXURE- 4

Copy of DG letter no.153/13/76-DISC dated 30.11.78 from DG to Sri S.P.Purwar VD U.P.

Kindly refer to your D.O. No.VID/M-19-27/78/2 dated 22.11.78 regarding defence assitant. delinquent official can take the assitance of a Govt. servant to defend the case on his behalf and a legal practioner under certain circumstances. There is no provision in the CCA Rules for engaging a handwriting expert as his second defence assitant. At the most he can have a handwriting expert of his choice to be examined as a defence witness who cannot, however, cross examine any of the witness examined in support of the charges.

****

No.VID/B-1/Ch.IV/4/Loose dated 4.1.1970

Attested True Copy

Abhaya Kumar Dixit
Advocate

Sd.

Seal in Hindi

Adhihshak Dak Vibhag

Sitapur Prakhand 261001.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH AT ALLAHABAD.

Kashi Prasad .... Applicant

v e r s u s.

Union of India and others ..... Respondents

ANNEXURE No. 5

To

The Enquiry Officer
A.D.T.(Commercial)
C/O G.M.T.U.P.,Circle
Lucknow at Sitapur.

Sir,

I want to submit some documents in my defence which are available with me on the next date and as it relates with dispute of signature and handwriting as per report of D/ witness Shri H.S.Tuteja A.E.G.E.Q Calcutta involved in this case, I may kindly be permitted to produce another Hand writing expert of the following to know the facts.

1. Shri Shiv Pratap Trivedi(Hand writing/Finger print Expert) 86-Saket Palli Banarsi Bagh,Lucknow
or
2.Shri N.Y.Khan,(Hand writing /Finger print expert) 1 Prayag Narain Road Lucknow.

Attested True Copy
Abhaya Kumar Dixit
Advocate

Therefore, it is requested to you that I may kindly be allowed to submit the D/documents and to call one of the above experts on next date of enquiring a defence witness.

At sitapur
25.3.85

Yours faithfully,
SD.Kashi Prasad
T.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH AT ALLAHABAD.

Kashi Prasad ..... Applicant.

versus

Union of India and others ..... Respondents

ANNEXURE 6

By Hand on
1.4.85

To

Shri S.C.Awasthi
A.D.T.(commercial)
Enquiry Officer
O/O G.M.T.,U.P.,Circle,
Lucknow.

Subject:-Regarding permission for taking photographs etc.by the Expert.

Sir,

Kindly refer to my application dated 25.8.85 through which I named Shri S.P.Trivedi& or Shri M.Y.Khan expert as my defence witness. On contact both these exprts expressed their inability to undertake any fresh work for the next three months. In order to coperate expediously in the enquiry now I propose the name of following Hand writing expert as my defence witness who is ready to examine the disputed documents and complete his report upto next

Attested True Copy
Abhaya Kumar Dixit
Advocate

next date of enquiry i.e. on 22.4.85 at LW after taking obtaining photographs of disputed signature ow writings etc.

It is therefore prayed that under-mentioned expert may kindly be permitted to have the relevant photographs from the file so that he may also cross examine the prosecution expert Shri H.S.Tuteja as well as he may prove his own report early in time.

The date for the purpose may kindly be fixed and a memo be issued in the name of following Hand writing and finger print expert.

Yours faithfully,

Dated 1.4.85

Sd. Kashi Prasad,
T.O.
Telephone Exchange,
Sitapur.

Name and address of expert.

Shri S.P.Gupta
Hand writing and Finger Print Expert
Civil Court compound, Lucknow.

Attested True Copy
Abhaya Kumar Dixit
Advocate

In The Central Administration Tribunal 47
Additional Bench at Allahabad

Kashi Prasad Vs - Union of India & others

(A/10)

Regd

Copy No. 7

DEPARTMENT OF TELECOMMUNICATIONS
Office of The General Manager Telecom. U.P. Circle,
LUCKNOW

No.Con./Kashi Prasad/ dated:- 22/5/85

Enquiry proceedings against Shri Kashi Prasad T.O. Sitapur under CCS(CCA) Rules 1965, held on 22/5/85 at 11.00 hrs. in the office of ~~XXXXXXXXXXXXXXXXXX~~ General Manager Telecommunications, U.P. Circle, Lucknow.

The following were present:-

1. Shri Vishnu Sahai, O/A, O/O DE Phones, Bareilly. - Defence Council
2. Shri H.S. Tuteja, A.G.E.Q.D. O/O Govt. Examiner of Q.D. Calcutta. - Prosecution Witness

The charged Official Shri Kashi Prasad T.O. Sitapur has intimated vide this letter dated 18/5/85 (Received today) that he has met with an accident by Motor Cycle he will not be able to move and to attend the enquiry. Shri S.D. Mishra, Inspector C.B.I./S.P.E. - Presenting Officer did not turn up.

However, the statement of Shri H.S. Tuteja, A.G.E.Q.D. has been recorded.

The next date and venue for the enquiry in this case will be intimated shortly.

(S.C. AWASTHI)
Enquiry Officer
A.D.T.(COMMERCIAL)
O/O G.M. Telecom. U.P. Circle
Lucknow.

Copy for information to:

1. Shri Kashi Prasad, T.O. Sitapur.
2. Shri Vishnu Sahai, O.A.O/O D.E. Phones, Bareilly.
3. Shri S.D. Mishra, C.B.I./SPE, 7, Naval Kishore Road Lucknow
4. S.P.C.B.I./SPE, 7, Naval Kishore Road, Lucknow.
5. Vigilance Officer, O/O G.M.T. U.P. Circle, Lucknow, w.e.f. his no.VIG/M-10/68/1
6. Shri H.S. Tuteja, AGE&D, O/O Govt. Examiner of Questioned Documents, 30, Gorachand Road, Calcutta-700014.
7. Director Telecom.(CA) Lucknow behind Leela Cinema, Hazrat Ganj, Lucknow.
8. The D.E. Telegraphs Sitapur for n/a.
9. D.E.Phones Bareilly for n/a pl.
10. Dy.G.M.(Admn) O/O G.M. Telecom. U.P. Circle, Lucknow.

Attested True Copy
Abhaya Kumar
Advocate

In The Central Administrative Tribunal
Additional Bench at Allahabad. 48
Kashi Prasad Vs Union of India & Others

Anx No.8

DEPARTMENT OF TELECOMMUNICATIONS.
OFFICE OF THE DIVISIONAL ENGINEER TELEGRAPHS SITAPUR.

NO;Con./Kashi Prasad/ dated 25.7.85 .

Enquiry proocedings against Shri Kashi Prasad T.O.Sitapur under CCS(CCA) Rules 1965,held on 25.7.85 at 11.00 hrs.in the Office of Divisional Enginoer Telegraphs Sitapur.

The following were present:-

1.. Shri S.D.Mishra,CBI/SPE- Presenting Officer.
2.. Shri Kashi Prasad,TO- Charged Official.

The defence council Shri Vishnu Sahai did not turn up. Shri Kashi Prasad has submitted the following defence documents:-

1.. Photo State Copy -Paper No.1(Copy of Suita No.814/69 H.C Allahabad).
2.. Photo State Copy-Paper No.2(Copy of Suit No.470/70 against Shri P.N.Srivastava, the then DET Allahabad.
3..Photo State -Paper No.3(Copy of Application dt.13.1.70 to DET Allahabad)
4..Photo Statecopy-Paper No.4(oopy of Application dt.25.11.6
5.Photo State Copy -Paper No.5(Copy of F.I.R,against DET Allahabad dated 29.11.69)
6.Photo State Copy-Paper No.6(Copy of Application dt. 10.12.69 to SSP Allahabad and oopy to PMG LW against Shri PN Srivastava DET Allahabad.

He has stated in his application submitted to the U/S that besides above,he wish to submit certain othor documents in his defence and has indicated that the same will be submitted soon.

As requested by Shri Kashi Prasad he is hereby directed to submit the remaining defence documents(if any) to the undersigned positively by 9.8.85. He will also intimate the names of defence witnesses if any,by this date.

Shri Kashi Prasad has indicated in his applicatio dated 25.7.85 that he wish to produce to Shri S.P.Gupta, Hand Writting Expert in his defence.

As,I,dont feel enough justification for the same the request can not be exceeded to.However,he is permitted to cross examine the hand writting Expert Shri H.S.Tuteja whose statement has already been recorded in the proceedings held on 22.5.85.

It may please be noted by Shri Kashi Prasad that no further date for hearing will be allowed and the next date fixed(to be intimated by the U/S) will be final.

(S.C. ASTHI)
INQUIRY OFFICER
ADT(CP) O/O GMT UP Circle
LUCKNOW.

Attested True Copy
Abhaya Kumar Dixit
Advocate

Copy for information to:

1. Shri Kashi Prasad,T.O.Sitapur.
2. Shri Vishnu Sahai,OA O/O The Phones Bareilly.
3. Shri S.D.Mishra,C.B.I./SPE,7,Naval Kishore Road,LW.
4. S.P.C.B.I./SPE,7,Naval Kishore Road,Lucknow.
5. Vigilance Office O/O GMT UP Circle Lucknow w.r.to his No.VID/A-10/68/1.
6. Shri H.S.Tuteja,GE GD,O/O Govt.Examiner of Questioned documents,30,Gorachand Road,Calcutta-700014.
7. Director Telecom(CA) Lucknow.N.K.Road Lucknow.
8. The D.E.Telegraphs Sitapur.for n/a pl.
9. DEP Bareilly for n/a pl.
10. Dy.GM(Admn.) O/O GMT UP Circle Lucknow.

Kashi Prasad

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH AT ALLAHABAD.

Kashi Prasad .... Applicant

versus.

Union of India and others .... Respondents

ANNEXURE No. 9

written defence brief in case no.r.c. 68/70 C.B.I. Lucknow against Shri Kashi Prasad Telephone Operator, Sitapur.

Enquiry proceedings against the charged official, Kashi Prasad T.C.Sitapur were initiated against him under Rule 14 of C.C.S (C.C.A) Rules 1965 by the D.E.T.Allahabad vide his memo No.Y-5/KP/3 dated 16.10.71. The following were the articles of charge(Annexure-I to the chargesheet). That Shri Kashi Prasad while functioning as Telephone Operator Allahabad, during December 1967 to June 1968 failed to maintain absolute integrity and committed misconduct in as much as he submitted in the DET office Allahabad 8 false medical reimbursement claim applications amounting to Rs.637-00 supported with forged prescriptions, essentiality certificates and cash memos in respect of the treatment of himself, father and son purported to have been issued by Dr. M.C.Gupta Incharge OPD SRN Hospital Allahabad and thereby contravened Rule 3(1)(I) of the Central Civil services (Conduct)Rules, 1964.

Attested by me Com
Abhaya Kumar Dixit
Advocate

In support of the above charge seven documents and eight witnesses were required to be produced by the prosecution as mentioned in the Annexures III and IV to the charge sheet under reference.

The prosecution totally failed to produce all the witnesses as mentioned because they did not want to produce all the witnesses in view of the three witnesses produced and having failed to prove what they wanted to.

All the three witnesses viz.Shri P.M. Srivastava, Shri S.M.Tripathi and Shri H.S.Tuteja totally failed to prove any thing against the charged official in any respect what so ever, out of the three witnesses produced two of them when, went back on their original statements (which was probably taken under pressure or because of their own involment in the case). Here the charged official specifically wishes to state that Shri P.M.Srivastava had a personal axe to grind against the charged official and the next was his immediate subordinate.
And out of the third witness, the hand writing Finger print expert Shri H.S.Tuteja AEG EQD Calcutta, the less said in better. He is no doubt, expert in his failed but he too is prone to commit mistake because he is supposed to compare certain characteristics of hand writing by way of slants, pressures, distances and other sort

Attested True Copy
Abhaya Kumar Dixit
Advocate

of the things from the specimen taken under fecade of CBI. In other words, if the charged official is allowed and permitted to state, that the hand writing expert is also supposed to be influenced by presenting officer, CBI Lucknow, because they did not give him ample opportunity to compare the other hand writings in the bills. They also did not supply him enough material to prove whether bills were genuinely signed and written by Dr.M.C.Gupta or not. This fact is specifically brought out for the fact, that the charged official was denied the facility of producing an expert on the subject who is also supposed to be technically qualified for the job, scientifically also which would have strengthened his defence. It has got no value of the expert(Shri H.S.Tuteja) without any surrounding or eye witne-ss about the signature of the C.O.

Attested True Copy
Abhaya Kumar Dixit
Advocate

For the reasons mentioned above it was considered not proper by the presenting Officer to produce the remaining witnesses. It does not stand to reason that an organisation like CBI 'CANNOT' trace out its own witnesses only b because of the facts as the case has become too old.

.....

The articles of charge as mentioned in Annexure 1 to the charge sheet states that the charged official submitted to the DET Allahaba

false medical claim supported with forged prescriptions and essentiality certificates etc.in respect of the treatment of, for himself, father and son, purported to have been issued by Dr.M.C. Gupta, Incharge OPD SRN Hospital Allahabad, thereby contavening Rule 3(1)(1) of the (Conduct) Rules, 1964.

During the course of enquiry the presenting Officer not only failed in producing an evidence of prefering/submitting false claim for payment but also influenced the enquiry against the charged official by not producing enough evidnece.

DISCUSSION ON EVIDENCE.

1. Statement of Shri S.N.Tripathi Clerk office of the DET Allahabad dt.16.4.71 and 7.10.1983 was vary to a great extent. Rather Mr.Tripathi has ga gone back on his statement of verification by saying that ,'' I have no definite opinion whether Shri Kashi Prasad has actually signed these bills.....", Prosecution statement that this witness has verified the signatures of charged official is wrong. Shri S.M.Tripathi fur stated in his statement, that "There are no mention of these bills in the register.....". This fact also shows that these bills were nev submitted in the DET office nor these bills we dealt with by Shri S.M.Tripathi who was the dealing clerk in the office of the DET Allaha

Attested True Copy
Abhaya Kumar Dixit
Advocate

at that time as per record available.

2. Statement of Sri P.M.Srivastava Retd. DET Allahabad while very well remembering all the things on 17.4.71, he very conveniently forgot everything in 1984, because it suited him the reasons have already been mention-ed above. To be precise the charged official would like to mention that :-

Shri P.M.Srivastava unlawfully entered the house of the charged official in his absence during Nov.1969 and thereafter his wife made an FIR against him and filed a case against him in the court. This was the cause of enmity with the charged official and Shri P.M.Srivastava which documentary evidence has already been produced in the case. It is well known to the Enquiry Officer that after a quite a number of attempts , this witness could not be produced and ultimately the presenting Officer proposed a date at Allahabad, when this witness was contacted through CBI at his residence. After all these efforts by the prosecution, "I do not remember nor I can make any ~~attempt~~ statement after so many years of the case" was the only statement of this witness in contravention of his original statement dated 17.4.1971. However he totally failed to explain about the submission and receipts of the bills, where and from whom he received the bills he is totally failed and forgotten. He also failed to prove about the submission of these bills to him by the charged official. There is no any documentary proof or evidence is available on record which proves the submission of the bills by the charged

Attested True Copy
Abhaya Kumar Dixit
Advocate

official.

Under the above circumstances it was very evident for the charged official that the enquiry being held under the influence of CBI and the proper opportunity demanded by the charged official was denied, simply for the convenience of the Administration, despite appeals that the defence counsel of the charged official was suffering from Heart trouble, the enquiries were proceeded.

Arguments

The mere similarity of signatures of the charged official on M.R. claims does not conclude that the charged official submitted the bills through proper channel(So required under the departmental rules and procedures). Hence the charge is not proved and the prosecution has totally failed to prove that the charged official either submitted the bills for claim or had anything to do with them. It may have been the manupulation of Shri P.M.Srivastava the then DET Allahabad when he entered the house of the charged official without authorised permission.

Attested True Copy

Abhaya Kumar Dixit
Advocate

Dated 24.2.1986

(Kashi Prasad)
Telephone Operator
Sitapur
(Charged official)

In the Central Administrative Tribunal
Additional Bench at Allahabad.
Kashi Prasad Vs - Union of India & others

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Ann No. 10

DEPARTMENT OF TELECOMMUNICATIONS.
OFFICE OF THE DIVISIONAL ENGINEER TELEGRAPHS SITAPUR.

Memo No.QF-6/K.R./203 dt.at Sitapur the 30.5.86

...

Shri Kashi Prasad,Telephone Operator presently working at Telephone Exchange Sitapur was served with a chargesheet under Rule 14 of CCS(CCA) 1965 by Divisional Engineer Telegraphs,Allahabad vide his memo no.Y-6/K.P./3 dated 26.1.0.71. The charge against Shri Kashi Prasad,TO while working as Telephone Operator Allahabad was as under:

" That Shri Kashi Prasad,Telephone Opearator while functioning as TO Allahabad during December 1967 to June 1968 failed to maintain absolute integrity and committed misconduct in as much as he submitted in the D.E.T. Office Allahabad 8 forms of Medical Reimbursement claim applications amounting to Rs.637.00 supported with forged prescriptions essentiality certificate and cash memos in respect of treatment of himself,father and son purported to have been issued by Shri M.C.Gupta,Incharge OPD SRN Hospital Allahabad and thereby contravened Rule 3(1)(i) of CCS(Conduct Rules)1964.

Shri A.K.Gupta,Accounts Officer O/O DET Allahabad was appointed as inquiry Officer by D.E.T.Allahabad. Thereafter Shri S.C.Awasthi,ADT(OP) O/O GMT UP Circle Lucknow, the then S.D.O.(T) Lakhimpur was appointed as inquiry Officer by D.E.T.Sitapur. Shri S.C.Awasthi,has submitted his inquiry report,on 15.4.86.

I,K.K.Rastogi,D.E.T.Sitapur in exercise of powers vested in me,have ~~been~~ carefully examined the inquiry report of the inquiry officer,records of the inquiry,evidence adduced during the inquiry and facts and circumstances of the case together with the defence of the official,Shri Kashi Prasad,have come to the conclusion that the charge against Shri Kashi Prasad,Telephone Operator has been fully proved and has been found to have contravened rule 3(1)(i) of CCS(Conduct Rules) 1964. I have,therefore,come to the conclusion that Shri Kashi Prasad,Telephone Operator is not a fit person to be retained in Government service.

O R D E R

I,K.K.Rastogi,Divisional Engineer Telegraphs, Sitapur,accordingly hereby order that Shri Kashi Prasad Telephone Operator Sitapur may be compulsorily retired from Government Service with immediate effect. A copy of the inquiry report is enclosed herewith.

30/5/86

(K.K.RASTOGI)
DIVISIONAL ENGINEER TELEGRAPHS
SITAPUR.

Shri Kashi Prasad,
Telephone Operator,
Telephone Exchange,
Sitapur.

Attested True Copy
Abhaya Kumar Dixit
Advocate

...

Copy to:

1.. The GMT UP Circle Lucknow.

2.. The Director Telecom(CA) Lucknow.

3.. SDOT Sitapur alongwith 2 spare copies. One to be delivered to Shri Kashi Prasad and the other for its acknowlegment by the official and returning the same to this office for record.

4.. AO,O/O D.E.T.Sitapur.

5.. Spare.

Kashi Prasad

In The Central Administrative Tribunal
Additional Bench at Allahabad.
Kashi Prasad Vs- Union of India & Others

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CONFIDENTIAL

DEPARTMENT OF TELECOMMUNICATIONS.
OFFICE OF THE GENERAL MANAGER TELECOM UP CIRCLE LUCKNOW.

NO.Com/K.Pd. : Dated at Lucknow 10/15.4.86

SUB: Departmental enquiry against Sri Kashi Prasad TO Allahabad now working as T.O. Sitapur under rule 14 of CCS (CCA) Rules 1965.

REPORT

In this case which was handed over to Dy. SP CBI/SPE Lucknow on 4.4.70 by DET Allahabad, the investivations by CBI/SPE were completed on 31.8.1971 and official Sri Kashi Prasad T.O. were chargesheeted by DET Allahabad on 26.10.71. First Shri A.K.Gupta AO O/O DET Allahabad was appointed Enquiry Officer. Thereafter vide order no.QF-65/Kashi Pd.dt.15/22.1.82 from DET Sitapur, U/S was appointed as Enquiry Officer to enquire into the charges framed against Shri Kashi Prasad T.O. The case file alongwith documents were received by the U/S from Sri R.R.Trivedi A.O. on 21.5.82 On the basis of the documentary and oral evidences adduced before me, this enquiry report has been prepared by me.

2.0 To assist the charged official first Shri J.N.Srivastava, Post master Sitapur then Sri K.S.Saxena U.D.C.(Estt) O/O PMG UP Lucknow was nominated as defence counsel and thereafter as requested by charged official Sri Vishnu Sahai TOA O/O DE Phones Bareilly assisted Sri Kashi Prasad as Defence councel.

3.0 Article of Charge: The following article of charge was framed against Sri Kashi Prasad T.O.

Sri Kashi Prasad, while functioning as T.O. Allahabad during December 1967 to June 1968 failed to maintain absolute integrity and comitted misconduct in as such as he submitted in the DET Office Allahabad 8 false medical reimbursement claim applications amounting to Rs.637/- supported with forged prescriptions & essentiality certificate and cash memos in respect of the treatment of himself father and son supported to have been issued by Dr.M.C.Gupta Incharge OPD SBN Hospital Allahabad and thereby contravened rule 3(1)(i) of the CCS(conduct) Rules 1964.

Attested T.C. Advocate

3.1 Statement of imputations of misconduct in support of the article of charge framed against Shri Kashi Prasad was as under:-

Abhaya Kumar Dixit Advocate

Shri Kashi Prasad was posted as T.O. at Allahabad during the period December 1967 to June 1968. He submitted three medical reimbursemtnt claim applications in respect of his own treatment for the period from 3.12.67 to 12.12.67, 14.12.67 to 23.12.67 and 8.2.68 to 17.2.68 for Rs.73,20,79.55 and 79.30 respectively supported with cash memos of Uttam and co. Prescriptions and essentiality certificates supported to have been issued by Dr.M.C.Gupta.

He also submitted three medical reimbursement claim applications in respect of the treatment of his father Shri Puran Das for the periods 2.12.67 to 11.2.67 12.12.67 to 21.12.67 and 8.2.68 to 17.2.68 for Rs.81.50, 81.33 and 84.00 respectively supported with cash memos of Uttam and Co. prescriptions and essentiality certificate supported to have been issued by Dr.M.C.Gupta.

...2/- Kashi Prasad

4.0 Case of Prosecution:

In support of the charge during the course of enquiry seven prosecution documents Q1 to Q7 were taken on record.

1.. Medical reinbursemtnt claim applications dated 10.6.68 for Rs.78.20,79.55 and 79.30 in respect of Shri Kashi Prasad.

2.. Medical reinbursemtnt claim applications dated 10.6.68 for Rs.81.50,81.33 and 84.00 in respect of Shri Puran Das.

3.. Medical reinbursement claim applications dated 10.6.68 for 76/- and 77.12 in respect of Sri Satya Deo Prakash.

4.. Handing over memos dated 4.4.70 by Sri P.M.Srivastava to Sri H.L.Ahja Dy.SP CBI Lucknow.

5.. OPD Registration register of SRN Hospital Allahabad for the period nov. 67 to Feb.68(two).

6.. Opinion no.DXC-340/71 dated 11.6.71 of AGE QD Calcutta.

7.. Specimen and admitted writings of S/Sri Kashi Prasad and Dr.M.C.Gupta.
(Flagged Q1 to Q-7)

4.1 The statements of the following three prosecution witnesses (as against a list of 8 witnesses originally submitted) were recorded.

Sri Surendra Mohan Tripathi,Clerk O/O.DET Allahabad- recorded on 7.10.83 at Sitapur.

2. Sri P.M.Srivastava retired DET Allahabad recorded on 11.4.84 at Allahabad.

4.2 3. Sri H.S.Tuteja AGE QD Calcutta (recorded on 22.5.85 at Lucknow)

Copies of the statements are placed at 42/C,74/C and 97/C repectively.

5.0 Case of Defendent:- The charged official submitted in his defence Six documents as indicated below in the proceedings:-

1. Copy of Suit no.814/69 in the court of Munsif West Allahabad.
2. Copy of Suit no. 470/70---do---
3. Application to DET Allahabad dt.13.1.70- Copy
4. Copy of application to Thana Incharge Cantt.AD dt. 25.11.69
5. Copy of FIR against DET Allahabad dt.29.11.69.
6. Copy of application to SSP Allahabad with copy to DMG Lw and others dated 10.12.1969.

These are placed at 101-1/c to 101-6/C.

Attested True Copy
Abhaya Kumar Dixit
Advocate

5.1 These documents have no relevency with this case. The charged official has only tried to prove with the help of these documents that the disciplinary authority Sri P.M.Srivastava had a personal axe against him as his wife had lodged an FIR and filed a case in the court against Sri P.M.Srivastava.

5.2 No defence witness were produced by the charged official/defence counsel. The charged official requested that his own statement be recorded. The same was recorded by the undersigned and is placed at 119/c. In his statement he has denied to have submitted any such medical reinbursement claim as mentioned in the charge sheet. He denied his hand writings and signatures on the medical reimbursement bills

...3/-

..3..

(questioned documents) shown to him before the enquiry. On enquiry he stated that he never went to SRN Hospital Allahabad for treatmeni of himself or of any of his family member.

6.0 Assessment of evidence:

In his statement given before U/S on 22.5.85 placed at 97/c Sri H.S.Tuteja AGEQD Calcutta has stated that on the basis of individual clracteristic features of the writings viz. the significant similarities in still movement,speed slant,size,alignment,pen pressure manner of writing of curves joining the letters,making of loop,pattern of writing habits,he had compared the signatures on the questioned documents Q-1 to Q...c with the specimen (S9 to S20) and admitting writings (A-25 to A46) and found that all the questioned writings, specimen writings and admitted writings bear the signatures/handwritings of Sri Kashi Prasad T.O. He has further stated that cumulative considerations of many significant similarities in the two sets of writings leads to the conclusion that the questioned signatures and specimen writings were all written by Sri Kashi Prasad.

6.1 Sri PM Srivastava,Retired DET Allahabad in his statement dt.11.4.84,placed at 71/c hasstated that he was not able to say anything beyond whatever is available on record. He indentified his signatures on the documents (handing over memo dt.4.4.70).

6.2 In his defence, the charged official/defence has neither produced any witness nor any documents relevant with this case. With the help of documents as at 101-1/c to 101-6/c produced by him in his defence the charged official has tried to prove that as Shri PM Srivastava, the Disy.authority was involved in a court case filed by his wife,Sri PM Srivastava has manipulated the case against him as the bills in question were not submitted by him through proper channel. The charged official/defence has stated at 'A' on page 5 of his written defence brief(at 125/c) that the proper opportunity demanded by the charged official was denied as despite appeals that the defence counsel was suffering from heart trouble the enquiry was proceeded. This is not correct as the defence was allowed several dates to present his case. On most of the dates fixed for hearing,the defence consel was not present.

7.0 FINDIGNS

From the assessment of evidence(para 6.0 to 6.2) it has been established that Sri Kashi Prasad T.O.Sitapur, while posted and functioning as T.O. Allahabad during Dec. 67 to June 68 had submitted medical reimbursement claim. applications in the O/O DET Allahabad supported with forged prescri tions,essentiality certificates and cash memos and thus failed to maintain absolute integrity and committed misconduct thereby contravened rule 3(1) (1) of the CCS Conduct Rules 1964.

The charge is proved.

sd/- 15.4.86

(S.C.AWASTHI)
Enquiry Officer.
ADT(OP) O/O CIT UP Circle,
Lucknow.

Attested T.C Alys81

Abhaya Kumar Dixit
Advocate

True Copy
Attested
31/5/87

In The Central Administrative Tribunal
Additional Bench at Allahabad.

Kashi Prasad Vs - Union of India & Others 59

Ann No. 11

Central Administrative Tribunal
ADDITIONAL BENCH,
23-A, Thornhill Road, Allahabad 211001

16 JUL 1986

No. CAT / ALLD/ 4123 Dated Allahabad, the 14-7-86

OFFICE MEMO

Registration No. 250 of 1986

Kashi Prasad ..... APPLICANT.

Versus

Union of India & Ors. ..... RESPONDENTS.

A Copy of the Tribunal's Order dated 3.6.86 in the abovenoted case is forwarded for necessary action.

for Deputy Registrar
Maharudra Singh

Enclosure : Copy of order dated 3.6.86

To,

~~Union of India through~~
~~Secretary to Department of Post and Telecommunication, New Delhi~~

(3) Divisional Engineer,
Telegraphs, Sitapur.

Attested TC
Abhaya Kumar
Advocate

60

53

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

23-A, THORNHILL ROAD, ALLAHABAD.

REGISTRATION NO. [illegible]..........87 19[illegible].

KAILASH PRASAD......... VS.......U.O.I Through SECRETARY & GEN.
[illegible] Post [illegible] Ministry of Communication New Delhi

PRESENT:

Hon'ble D.S. MISRA, Member (A).

Hon'ble G.S. Sharma, Member (J).

O R D E R

In this petition under section 19 of the Administrative Tribunals Act, 19[illegible] against the order dt. [illegible] retiring the petitioner compulsorily by way of punishment after holding a disciplinary proceeding against him, he seeks leave to admit the petition without preferring a departmental appeal on two grounds firstly, the order retiring the petitioner compulsorily is against law as he has not attained the requisite age required by rule 56(j) of the Fundamental Rules, and secondly he was not given full opportunity to prove his defence case by the inquiring officer in the disciplinary proceeding as the inquiring officer refused to permit him to examine a hand-writing expert.

After a careful consideration of the whole matter, we find ourselves unable to accept the first contention of the petitioner. When a person is retired compulsorily by way of punishment under rule 23 of the C.C.S. and C.C.A. Rules, the age of the delinquent is not to be considered. The second point can also be looked into by the appellate authority and that being done, there may not be any need to come to the Tribunal at all.

Attested T.C

Abhaya Kumar Dixit
Advocate

X/19

We, therefore, refuse to admit the petition and without the petitioner having exhausted the departmental remedies for redressal and reject the case, summarily. It is, however, ordered that in case an appeal is filed by the petitioner, the respondents shall dispose of the case within six months without fail.

Date: 3-6-93. Sd/- Sd/-

MEMBER(A). MEMBER(J).

Attested

Advocate

Mukherjee
13/1/86

Attested to be Copy
Alam
Abhaya Kumar Dixit
Advocate

IN THE CENTRAL ADMINISTRATIVE SERVICES TRIBUNAL

ADDITIONAL BENCH AT ALLAHABAD.

Kashi Prasad ..... Applicant.

V e r s u s.

Union of India and others..... Respondents

ANNEXURE -12

To

The Director Telecom,
(Central Area),
Behind Leela Cinema,
Lucknow.

Through

D.E.T.Sitapur.

SUBJECT: Appeal against the orders of compulsory retirement contained in D.E.T.Sitapur Memo No.QF-65/K.P /203 dated 30.5.86 (Received on 31.5.86).

Attested True copy
Advocate

Advocate

Respected Sir,

The appellant most humbly and respectfully begs to lay as follows for favour of your kind perusal and favourable orders:-

Facts of the case:-

1. That the appellant joined the service in the Department as a Telephone Operator on 1.3.63 at Allahabad and was confirmed as such on 1.3.66. On 81 11.71 while he was posted at Sultanpur, he

Kashi Prasad

received a charge sheet under Rule 14 of C.C.S. (CCA) Rules 1965 issued by D.E.T.Alahabad vide his Memo No.Y-5/KP/3 dated 26.10.71 on the following allegations:-

> " That Shri Kashi Prasad, while functioning as Telephone Operator, Allahabad, during December,67 to June 68 failed to maintain absolute integrity and committed misconduct in as much as he submitted in the DET office,Allahabad 8 false medical reimbursement claim applications amounting to Rs.637-00 supported with forged prescriptions, essentiality certificates and cash memos in respect of the treatment of himself, father and son, purported to have been issued by Dr.M.C.Gupta, Incharge OPD, SRN Hospital,Allahabad and thereby contravened Rule 3(1) (1) of the Central Civil Services (Conduct) Rules, 1964."
> (Copy enclosed as Annexure-1)

Attested True Copy
Alok
Abhaya Kumar Dixit
Advocate

2. That the appellant was totally unaware of the progress of the disciplinary proceedings upto 10 years. On 3.1.81 Shri A.K.Gupta, A.O.office of D.E.T., Lucknow was appointed as an Enquiry Officer who could not complete the enquiries due to reasons best known to the administration. Thereafter Shri S.C.Awasthi, A.D.T.(O.P.) office of G.M.T., Lucknow was appointed as an E.O. on 15/22.1.82. He finalised the case in four years and submitted his report vide his No.Con/KP/ dated 10/15.4.86. The Punishment was imposed by the

Kashi Pd

D.E.T.Sitapur vide his Memo No.QF-65/KP/203 dated 30.5.86 making the appellant compulsorily retired w.e.f 31.5.86(Copy enclosed as Annexure -II).

2. (a) The appellant begs to prefer this appeal against these orders of the D.E.T., Sitapur.

GROUNDS OF APPEAL.

1. That the case relates to the period from Dec.1967 to June 1968 (Six months) during which the a-ppellant ~~was-alleged-to-ha~~ worked as a T.O.Allahabad. The appellant was alleged to have submitted 8 false medical reimbursement bills with forged prescriptions, essentiality certificates and cash memos, amounting to Rs.637-00.

2. That the charges levelled against the appellant are quite far from truth and facts as is evidence from succeeding paras. During the whole enquiry the factual evidence have been ignored violating the instructions contained in CCS (CCA) Rules 1965 on the subject.

Attested True Copy
Abhaya Kumar Dixit
Advocate

3. That the charge is only that the appellant submitted 8 false M.R.Bills but no record oral or documentary evidence has been produced to show that the M.R.Bills were actually submitted by the appellant. In case any claim is submitted, the same is received and entered in the receipt registers before final process of the claim. But only this the dealing Clerk has also

deposed non receipt of these bills. This clearly proves that these bills were never submitted by the appellant in the office of the D.E.T.., Allahabad for payment.

4. That the date on application forms of these bills is mentioned as 10.6.68, but the case was given to C.B.I. on 4.4.70 after a lapse of two years without taking any action on the claims. No evidence has been adduced to account for the delay of about these two years. This goes to show that these bills were not actually received by the D.E.T., Allahabad either direct in his office nor through proper channel.

5. That prior to 4.4.70 the date shown on above referred M.R.Bills is 10.6.68 and submission of M.R.Bills after 10.9.68 i.e. after 3 months makes it time barred. The non-action of D.E.T., Allahabad from 10.9.68 to 4.4.70 apparently shows that there was no such M.R.Bill with him submitted by the appellant and later on forged bills have been shown in the name of the appellant to counter-act the court case filed by the wife of appellant against the then D.E.T.,, Allahabad. These facts clearly prove that these bills were not submitted by the appellant.

Attested T.C.
Advocate

Abhaya Kumar
Advocate

6. That over all 8 listed and additional 5 others (Total 13 P.Ws) were to be produced in the process of enquiry. 5 P.Ws of these could

not be produced stating that they are not available Out of 8 only 3 witnesses could be produced during the long period of enquiry who did not depose anything which might cause any disfavour to the appellant.

7. That further-more the 1st.P.W. Shri S.M. Tripathi the then dealing clerk of M.R.bills in office of D.E.T.,Allahabad has clearly deposed in his statement that the receipt of these bills does not find place in any registers or office records and he cannot confirm or recognize the signatures of the appellant on these bills.

8. Then the second P.W.Shri P.M.Srivastava the then D.E.T.,Allahabad stated in his statement on 11.4.84(which was recorded by the E.O.at Allahabad at his residence) that beyond whatever is available in records and files he showed his inability to say anything after so many years of the case. When no such record or file is available to prove that the appellant has submitted these bills and the then D.E.T.Allahabad Shri P.M. Srivastava refuses to say anything about the source of receipt of these bills how did the Disciplinary Authority concluded that the submission of the bills stands proved. This also proves that these bills were not submitted by the appellant. In his original statement given to C.B.I. on 17.4.71, the said Shri P.M.Srivastava clearly stated that M.R.Bills ~~wh~~ of the appellant were brought to his notice which he

Attested T.C
Advocate

Abhaya Kumar Dixit
Advocate

kept with him and afterwards handed over to Shri H.L.Ahuja Dy.S.P., C.B.I. Lucknow on 4.4.70. Further he stated that he does not know as to who had brought these bills to his notice. This further proves that actually the bills were not submitted by the appellant and have not been processed by the office of D.E.T. Allahabad but someone brought them to Shri P.M.Srivastava for implicating the appellant in this false and fabricated case.

9. That Shri P.M.Srivastava the then D.E.T. Allahabad also could not say any thing about the circumstances in possession of these bills with him nor he could clearly say that these bills were submitted by the appellant. It may be possible that Shri P.M.Srivastava the then D.E.T.Allahabad got prepared these bills himself through some one and gave them to C.B.I. to counter act against the appellant whose wife filed a suit against Sri P.M.Srivastava D.E.T.in Courts of law,, and lodged an F.I.R. on 25.11.69 and complained on 10.12.69 (as per list of defence documents submitted by the appellant in his defence in the enquiry) (copy enclosed as Annexure III and IV).

Attested T.C
Abhaya Kumar Dixit
Advocate

10. That neither the presenting Officer nor the C.B.I. cared to prove that these bills are forged. During the course of enquiry they could not produce Dr.M.C.Gupta Incharge O.P.D.

S.R.N.Hospital Allahabad and Chemist to establish that the prescriptions and essentiality certificates were not issued or written or signed by the doctor and cash memos were not issued from the Chemist's shop. They also failed to produce Hand writing expert's opinion in this regard. Thus they could not establish by whom the E.C. and Cash memos were actually written down. The prosecution has therefore miserably failed to prove any charge against the appellant. Sri B.D.Upadhya Dy.Supdt.S.R.N.Hospital, Allahabad S.K.Chopra T.O.Allahabad did not appear in the enquiry. I.O.(Investigating Inspector) of the case was also not produced to establish the facts of the case. Thus neither submission of these bills by the appellant could be proved nor any evidence was adduced to prove it to be forged ones beyond any doubt.

Attested T.C
Advocate

Abhay Kumar Dixit
Advocate

11. That the third P.W. Shri H.S.Tuteja A.G.E. Q.D. Calcutta(Hand Writing Expert) has given his opinion on the signatures of the claim forms but it does not contain that these bills appear to be in the handwriting of the appellant. It is simply an opinion and as such it cannot be taken as the final proof to prove the charges againstthe appellant. Secondly the appellant has been denied the opportunity by the E.O.to produce anz other expert in rebuttal of this opinion as defence witness inspite of his application dated 25.3.85 and 1.4.85 in utter

violation of instructions contained in D.G.P. & T New Delhi No.153/13/76 DISC dated 30.11.78 (Copy enclosed as Annexure V). Thirdly the statement of Mr.Tuteja was recorded by the E.O. on 22.5.85 in the absence of the appellant (Accused officer) and P.O.inspite of his application dated 18.5.85 i.e. well in adgvance to the effect that he cannot attend the enquiry on 22.5.85 due to his leg fracture in an accident by Motor cycle. Therefore the statement of this P.W. should not be taken into account as his statement went without cross examination. No other date was given to the appellant to cross examine this witness which was sheer denial of reasonable opportunity of which the appellant was entitled. The statement of Mr. Tuteja is not authenticated as it does not bear the appellant's signature as required in D.G. P & T New Delhi No.6/66/60 Disc.dated 14.4.1961 and also in Rule 92 of P & T Manual Vol.III (Copy enclosed as Annexure VI 7 VII). In this way the solitary evidence on upon the learned E.O. relied on is of Mr.Tuteja's Hand writing Expert's opinion but in the light of above facts it is totally null and void in the situation mentioned above.

Attested T.C

Abhaya [illegible]
Advocate

12. That the order of the disciplinary authority stipulates as follows:-

" I K.K.Rastogi, D.E.T.Sitapur in exercise of powers vested in me, have carefully

examined the inquiry report of the inquiry officer, records of the inquiry, evidence adduced during the inquiry and facts and circumstances of the case together with the defence of the official, Shri Kashi Prasad, have come to the conclusion that the charge against Shri Kashi Prasad, Telephone Operator has been fully proved and has been found to have contraavened Rule 3(1)(I) of CCS (Conduct Rules) 1964. I have, therefore, come to the conclusion that Shri Kashi Prasad, Telephone Operator is not a fit person to be retained in Government service.".

In these orders no reasons have been recorded as to how the disciplinary authority came to a conclusion that the charge stands fully proved. In the case R.Abdul Wahab Vs. Union of India (1976) 2MLJ 92 it has been held by their Lordship that recording of reasons in support of a decision is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim & fancy or reached on ground of policy or expediency. The order given by the D.E:T.Sitapur is therefore not a speaking orders as it does not contain the grounds on which the D.E.T.Sitapur arrived at the conclusion that the charges stand proved and ends of justice were met byawarding such a dire punishment of compulsory retirement from service ignoring weightage to other service situations and is therefore liable to be set aside.

Attested T.C
AC/9/82
Abhaya Kumar Dixit
Advocate

13. That during the course of enquiry the E.O.

Annexure 12 continu-ed

and also the Disciplinary authority while determining judgment did not care to find out to whom these bills were presented, who was receipient of these bills and how were these bills further processed i.e. whether it was entered in any register and if not what process did the bills pass and since it non receipt how did it find place in the Almirah of the then D.E.T.Allahabad Shri P.M.Srivastava. No evidence has been adduced to prove that the appellant filled in the M.R.forms and signed over it.Its submission in office also could not be proved in absence of any entry in receipt register as also in absence of deposition of any Govt.servant to have received. The whole evidence of submission of bills and its being forged is based on the opinion of P.W. Shri H.S.Tuteja (Hand writing Expert) to whom the appellant was not allowed to cross examine. Opinion is always an opinion and unless it is corroborated and proved by oral or documentary evidence, it cannot be taken as a final evidence of any fact to be proved on the basis of which it hangs the fate of any person. The appellant had applied for taking an other opinion and named the other hand writing expert on whom the appellant had full faith that he will not extend favour to any body but that request was turned downby E.O. on the fear that the alone evidence on the basis of which the appellant may get punishment will be die away and the whole drama of disciplinary case will prove to be a farce. It appears that the P.O.,

Attested T.C
Advocate

Abhaya Kumar Dixit
Advocate

E.O. & D.A. were all bent upon obliging Shri P.M.Srivastava, under what consideration the appellant cannot say and appellant was destined to get punishment from the hands of the reverened authorities whether the appellant had committed any crime or not or whether charge against him were proved or not but while doing so they have forgotten, that higher officers are sitting on the higher chairs for redressal of justice denied and can recall the unjustified orders of which the appellant has presently been a victim.

14. That the appellant in his defence statement during the course of enquiry was cross examined by the P.O. while as a matter of rules do not permit to cross examines the accused by the P.O. It was done in utter disregard of the rules. For this appellant was pressurised by the E.O. and P.O. in lonliness making him puzzelled and confused mentally. He has always denied the charges levelled against him.

Abhaya Kumar Dixit
Advocate

15. That the appellant had nominated a defence assistant and on some dates the Controlling Authority or the defence assistant had informed the E.O. about his non-availability on valid grounds will in time as for example D.E. Phones Bareilly vide his letter No.E-8/

General/110 dated 30.10.85 and 24.1.86 informed the E.O. that he was suffering from heart trouble but inspite of that the E.O. proceeded with the the enquiries ~~the~~ in absence of the defence counsel and finalised the case in his own way. Thus the E.O. did not offer the appellant reasonable opportunity. Further inspite of application in defending himself made by the appellant on 11.4.84 for cross examination of the P.Ws by his defence assistant the E.O. did not give any opportunity of cross examination and all the P.Ws went out without cross examination during the course of enquiry.

16. That the learned E.O. also did not summon the defence witnesses and defence documents of the appellant inspite of his applications dated 14.7.82, 5.11.82 and 5.8.85. It is also in utter violation of mandatory provisions of Rules 14 (12) of CCS (CCA) Rules 1965.

Attested I.C

Abhaya Kumar Dixit
Advocate

17. That the appellant has already received unimpeached punishment due to the long time trial of more than 15 years being a victim of sufferage of manifold physical and mental tortures & monitary/precariousness due to the pendency of this case. He has also been suffered a lot of financial loss as his E.B. was not allowed to be crossed since 1982. All the increments due after EB were not given, time

bound up graded promotion due on 30.11.83 was also not given to the appellant due to pendency of this case for 15 years. The disciplinary authority without having gone through personally into the facts and circumstances of the case on the basis of the records and evidence adduced imposed a severe and harsh penalty of compulsory retirement to the appellant on his fault without considering his age and service period and records. The punishment of compulsory retirement is, therefore, too harsh to meet the ends of any Justice.

18. That inspite of all instructions and directions from the Government that unduly delayed cases and prolonged nature disciplinary proceedings of major penalty, under Rule 14 of CCS (CCA) Rules 1965, may be converted into minor penalties under Rule 16 of CCS (CC A) Rules 1965 in respect of cases pending for more than 6 years. But in this case it has not been done although the proceedings remained pending for more than 15 years, with no fault of the appellant.

Attested T.C
Advocate

Abhaya Kumar Dixit
Advocate

19. That the daughters of the appellant are at marriageable ages and grown up enough. They require more monetary help from their father and head of family, but the father (appellant) has been brought in such a helpless position by the authorities of the department for no fault of his, that he has to see before him his children dying of hunger and remaining shelterless.

A/60

Prayer.

In view of the facts and circumstances as mentioned above, the appellant most respectfully prays that his appeal may kindly be allowed and the orders of punishment for compulsory retirement from service passed by the D.E.T., Sitapur may very kindly be set aside and appellant be allowed all service benefits accured to him according to the length of his service.

Thanking you.

Yours faithfully,

Dated 30th.June 1986

Encls. as above (10)

Sd. Kashi Prasad

Appellant

T.O.(Retd.)
Trunk Telephone Exchange
Sitapur

R/o 498 Roti Godam, Sitapur.

Copy to D.E.T.Sitapur for necessary action.

Attested to
Abhaya Kumar
Advocate

Sd. Kashi Prasad

Appellant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH AT ALLAHABAD.

Kashi Prasad ..... Appellant

Versus.

Union of India and others..... Respondents

Part of Annexure- 12

To

The Director Telecom.
(Central Area)
Behind Leela Cinema
Lucknow.

Subject & Reference: Appeal of Shri Kashi Prasad T.O. Sitapur dated 30.6.86 against the orders of compulsory retirement contained in the D.E.T.Sitapur Memo No.Q.F.-65/K.P./203 Dated 30.5.86 (Received on 31.5.86)

Respected Sir,

It is most respectfully submitted that applicant was tried departmentally the disciplinary proceedings which were concluded after a lapse of 15 years on 31.5.86 imposing a punishment of compulsory retirement against which the applicant preferred an appeal to your honour on dated-30.6.86 which is pending with your honour for consideration and favourable orders and yet the same has not been disposed of finally.

Attested T.C
Advocate

In his appeal though he has taken the grounds that the learned enquiry officer based his findings and judgment solely on the basis of hand writing expert(Shri H.S.Tuteja, A.G.E. Q.D. Calcutta) evidence (which stands even without cross examination with him and also without substantial corroboration by any other witness or evidence). In this connection the humble applicant requests your honour pleasure that the following case law may kindly be considered at the time of disposal and final orders on his appeal.

1977 Supreme Court cases (Criminal) at page 313 (Para 7) Criminal Appeal No.22 of 1976 decided on Fe.15,1977 by Hon'ble Shri P.N. Bhagwati and Hon'ble Shri Murtaza Fazal Ali (JJ) in the bench of Hon'ble Supreme Court of India in the case of Shri Magan Behari Lal versus the State of Punjab.

In this case Hon'ble Lordships pleased to hold. " Experts opinion must always be received with great caution and perhaps non so with more caution than the opinion of a handwriting expert. There is profusion to precedential authority which holds that it is unsafe to base a conviction solely on the basis of expert's opinion without its substantial corroboration. This has been unversally acted upon and it has almost become a rule of law. This type of evidence being opinion evidence in its very nature weak and infirm and cannot of

Attested T.C.

Abhay Kumar Dixit
Advocate

itself form the basis for a conviction" (Para 7).

Further the applicant also wants to draw your honour's attention towards an othercase of Shri Ayodhya Prasad Mishra versus State of Orissa, reported in 1985 in Criminal Law Journal at page 14 01, decided by Hon'ble Lordship (JJ) of the Hon'ble Supreme Court of India. In this case the above noted contention also finds support. It was held again by their Hon'ble Lordship (JJ) of Hon'ble Supreme Court of India, " Conviction on the basis of hand writing experts opinion is unsafe until supported by other items of internal and external evidence. The conclusion based upon more comparison of hand writing must atleast be indessive and yield to the positive evidence. It cannot take place of substantial evidence and as such grave failure of justice occurs".

In this way in the light of above mentioned Rulings and case law the evidence of Shri H.S. Tuteja AGE QD Calcutta, Hand writing experts opinion in the applicant's case being an opinion without its substantial corroboration and also having without cross examination with the expert, it has got no value, therefore, it may kindly be treated as null and void.

Advocate

Further it is worth mention to draw your kind attention towards the case reported in 1985(1) Crime (M.P) at page 227 in the case of Shri Kamar Oberai versus The State of Madhya

A/101

 Part of Ann.12

In this case the Hon'ble Lordship (JJ) of Hon'ble Supreme Court of India held, " Opportunity to cross examination the witness is not provided by producing the witness who prepares the documents brought on record." In the applicant's case during the course of Enquiry the Medical offifer and the Chemist concerned and Shri S.K.Chopra, T.O. Allahabad who are alleged to prepare the documents have not been produced nor any reason have been assigned for their non production nor any report regarding their hand writings and signatures is given by Shri H.S.Tuteja, the Hand writing expert examined in this case at the time of his evidence. Though specimen signatures and Hand writings of above noted persons were sent to him for comparison and his opinion. Inspite of these facts the documents prepared by them were used as substantial evidence against the applicant without observing the proper procedure to prove them and providing opportunity the truth fullness of such evidence beyond any shadow of doubt.

Attested T.C
Advocate

Bhagwan Shankar Dixit
Advocate

In this way it is a case of no evidence and the whole enquiry report and its findings ~~proc~~ prepared by the E.O. are based on the grounds of presumptions and under the influence of C.B.I. and P.O. The applicant in his appeal dated 30.6.86 it is clearly mentioned that he has never submitted any such M.R.Bills for payment nor any attempt was made by him to get the payment of these bills. Even then it is mentioned again that it is a case

Part of Ann.12

of 1968 and it was brought in the light in 1970 after a p lapse of two yaars without takingany action in the office and also without making any entry in the office records of controlling authority, During the period of these two years no reminder was issued by the applicant for its payment nor any explanation, clarification, objection or any correspondence was mde by the D.E.T.officeAllahabad. As per departmental Rules and for procedure for submitting the M.R.bills and general practice adopted in the department these bills have got no office dated stamp/seal to show the name of office and the date on which they were submitted nor they have got any entry in any register of receipt and despatch section or in dealing clerks receipt register. These bills have got no remark or any entry on them of the D.E.T/A.O/J.A.O (Accountant)Head Clerk/Dealing Clerk or Receipt and Despatch Clerk nor they have been dealt with in any file or register of the D.E.T.office Allahabad. They have also not been supported with any forwarding memo or covering letter of A.E.Phones I/D Allahabad or J.E .(E.S.P Auto II) N.D.F.Exchange Allahabad in the cases of through paper channel. There is no such oral or documentary evidence is available on record of the enquiry proceedings to prove the submission of these bills by the applicant neither direct in D.E.T.office nor through proper channel. The bills in question, when, where to whom and by whom and how they were

Attested
Advocate

submitted is not proved. It may be a manipulation of Shri P.M.Srivastava the then D.E.T. Allahabad and Shri S.K.Chopra T.O.Allahabad to take revenge and to harass the applicant due to the enmity the reasons mentioned in his appeal. The departmental procedure for submission of the M.R.bills have not been followed as discovered from a plain reading the evidence and material on record. The necessary entries in the departmental records does not find any place nor prosecution led any evidence to this effect that how these bills came to their hands and any action for payment of these bills and how they were kept with authorities for two years without any action or explanation. It proves that the bills were not submitted by the applicant for payment.

Wherefore it is respectfully prayed your honour that this application may kindly be treated as a part of applicant's appeal dated 30.6.86 in addition and continuation for considering as grounds of appeal. It is also prayed that your honour may kindly be pleased to decide the same at the earliest possible in the favour of the applicant by setting aside the punishment order of compulsory retirement passed by the D.E.T.Sitapur on dated 30.5.86.

Attested T.C.

Abhaya Kumar Dixit
Advocate

Dated 19.8.1986

Yours faithfully,

Sd.Kashi Prasad,T.O.
Sitapur Retd

Copy to D.E.T.Sitapur for inromation and N.A. 498 Rotigodam

Kashi Prasad

In The Central Administrative Tribunal
Additional Bench at Allahabad.

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Kashi Prasad Vs. Union of India & others

Annx No. 13

DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE DIRECTOR TELECOMMUNICATIONS(CA) LUCKNOW.

MEMO. NO. ADM(S)/42-48/86/5 Dated at LW the, 4-5-87

Sri Kashi Prasad, erstwhile T.O. Sultanpur was chargesheeted under Rule-14 of CCS(CCA) Rules vide D.E.T. Allahabad memo. no. Y-6/KP/3 dated 26.10.71 for alleged submission of eight (8) false medical reimbursement claims amounting to Rs. 637.00 supported with forged prescriptions, essentiality certificates and Cash memos in the office of D.E.T. Allahabad.

The enquiry in this case was conducted by Sri S.C. Awasthi, A.D.T.(OP) Office of G.M.T. U.P. Circle Lucknow who submitted his report to D.E.T. Sitapur vide his letter no. CON/K.Pd. dated 10/15-4-86.

The Inquiry Officer in his report referred to above gave his findings as under:-

" From the assessment of evidence it has been established that Sri Kashi Rrasad, T.O. Sitapur while working as T.O. Allahabad during December_67 to June'68 had submitted medical reimbursement claims applications in the O/O D.E.T. Allahabad supported with forged prescriptions, essentiality certificates & cash memos and thus failed to maintain absolute integrity and committed misconduct thereby contravened Rule-3(1)(i) of C S(Conduct) Rules 1964. The Charge is proved."

The Inquiry Report was examined by the D.E.T. Sitapur (Disciplinary Authority) alongwith the relevant records. The D.E.T. Sitapur held that the charge against Sri Kashi Prasad, T.O. was fully proved and he was found to have contravened Rule-3(1)(i) of CCS(Conduct) Rules 1964.

The D.E.T. Sitapur further concluded that he said Sri Kashi Prasad, T.O. was not a fit person to be retained in Govt. service and ordered that Sri Kashi Prasad, T.O. Sitapur be compulsorily retired from Govt. service with immediate effect vide his memo. no. QF-65/K.P./203 dt. 30.5.86.

Sri Kashi Prasad, Retired T.O. Sitapur submitted an appeal dated 30.6.86 to the undersigned against the punishment of Compulsory Retirement from service as imposed upon him vide D.E.T. Sitapur memo. no. QF-65/K.P./203 dt. 30.5.86

Attested True Copy

Contd....2/-

Kashi Prasad

Advocate

His appeal as mentioned above was received in this office with D.E.T. Sitapur letter no. QF-65/K.P./210 dt. 31.7.86, alongwith parawise comments of disciplinary authority and the relevant original records.

Shri Kashi Prasad, Retired T.O. Sitapur further submitted another application dated 19.8.86 directly to the undersigned giving some additional pleas in continuation of his appeal dated 30.6.86.

I have gone through the entire case including para-wise comments of the Disc. authority, original Disc. case file, Inquiry Report, record of enquiry proceedings, record of preliminary enquiry conducted by C.B.I.(SPE) Lucknow and the original documents as listed in AnnexureIII to the chargesheet dated 26.10.71.

I have very carefully considered the appeal dated 30.6.86 of Sri Kashi Prasad, Retired T.O. Sitapur as well as his subsequent application dated 19.8.86 in the light of records as mentioned in the preceding para and have come to the following conclusions:

(i) The contention of the appellant that the factual evidences hav been ignored is not correct.

(ii) The appellant is making dispute over submission of 8 M.R. claim applications by him in the office of D.E.T. Allahabad or the ground that the source/ mode of receipt of these bills could not be confirmed. His denial about submission of the M.R. claims in question is immaterial when it is established that the M.R. claim applications and their enclosures had been signed by the appellant as per report of A.G.E.Q.D. Calcutta.

(iii) In paras-4, 5, 6, 7 & 8 of his appeal on pages 3 to 5 the appellant has not been able to put forth anyplausible reason [illegible] or [illegible] plea to substantiate that the M.R. bills in question were actually not submitted/got [illegible] by him.

(iv) Whatever has been [illegible] by the appellant in para-[illegible] is merely presumption [illegible] has got no relevance with this [illegible]

Attested T.C
[signature]

Akshaya Kumar Dixit
Advocate

[signature]

(v) The contention of the appellant as expressed in Para-10 of his appeal is not correct as it is the prefogative of the presenting officer to produce only those witnesses by which the charge can be proved and there is no compulsion to produce all the witnesses listed in the chargesheet. From the report of Handwriting Expert dated 11.6.71 and his statement recorded during the course of enquiry it is established beyond shadow of any doubt that M.R. claim applications in question and their enclosures had been signed by the appellant and that no evidence was found by him suggesting that the questioned writings and signatures were produced by somebody else by copying the writing habits of the appellant. Thus I feel that there is no room for doubt about signatures of the appellant on the documents in question.

(vi) As mentioned by the appellant in Para-11, the claim forms are no doubt not in the handwriting of the appellant, but when he has signed on these claims as well as on the duplicate copies of the Cash Memos in the capacity of claiment, his plea that the claims did not belong to him or were not submitted by him stands nowhere.

The contention of the appellant is not correct because the opinion of Asstt. Govt. Examiner of Questioned Documents, Calcutta has got ample weight.

Although the Inquiry Officer has not agreed for the examination of Questioned Documents by another handwriting expert of the choice of the accused for second opinion. The decision of the Inquiry Officer in this regard is correct. However he was permitted to cross-examine Sri H.S. Tuteja, A.G.E.Q.D. Calcutta on 25.7.85 by the I.O. vide his letter No. CON/Vashi Prasad/ dated 25.7.85. Thus the statement of the appellant that he was not allowed to cross examine this Prosecution Witness is quite incorrect. Further it is not correct on the part of the appellant to challenge the validity of the statement of Sri Tuteja recorded on 24.5.85, because his Defence Asstt. was very well present on that day as confirmed from his signatures on the statement of Sri Tuteja dt. 22.5.85.

Attested True Copy

Maya Kumar Dixit
Advocate

His request that this solitary evidence (Statement of Sri Tuteja dt. 22.5.85) ~~should~~ should not be taken into account is not acceptable in view of the fact that it was recorded in presence of his Defence Asstt. and that the appellant who was permitted to cross-examine Sri Tuteja failed to avail of the opportunity afforded to him by the I.O.

(vii) The contention of the appellant in Para-12 of the appeal is not correct, because a copy of the Inquiry Report was also given to him alongwith the Punishment order dated. 30.5.86, therefore the Disc. Authority did not feel it appropriate to reiterate each and every detail in the punishment order too.

(viii) The contention as expressed in Para-13 is not accpptable in view of the findings recorded in Paras (V) & (vi) above.

(ix) It is not possible to consider it as this stage. The appellant was free to refrain from giving any statement and to report the matter to the Disc. authority which was not done by him.

(x) Whatever has been stated by the appellant in Para-15 & 16 has got no significance, because finally on 29.1.86 when he was asked by the I.O. whether he further wished to produce any document or witness or to cross-examine any witness, the appellant stated that he did not wish to do so and would only file his 'Written Brief' through his Defence Counsel'.

(xi) The appellant could not be allowed to cross the E.B. as mentioned by him in Para-17 due to pendency of disciplinary case against him as per rules on the subject.

(xii) The contention of the appellant as expressed in Para-18 is neither correct nor acceptable.

After going through the whole case and considering the points raised by the appellant in his appeal dt. 30.6.86 I find that the appellant had signed on M.R. claim applications and duplicate copies of Cash Memos which is very large i.e. thirty two in number, as confirmed by the A.G.E.Q.D. Calcutta vide his report dt. 11.6.71 wherein these documents signed by the appellant have been termed as Q1, Q1A, Q6, Q7, Q11, Q12, Q17, Q18, Q21, Q22, Q27, Q28, Q31, Q32, Q36, Q37, Q40, Q41, Q46, Q47, Q50 Q51, Q55, Q56, Q59, Q60, Q64, Q65, Q68, Q69, Q74 and Q75.

...5/-5

Attested TC
Advocate

Surya Kumar
Advocate

The report of A.G.E.Q.D. Calcutta and his statement dt. 22.5.85 are very clear and specific because he has given his report with due care after comparison of the questioned signatures of the appellant with his admitted specimen signatures & writings and did not express the least doubt about even a single signature out of the questioned thirty two signatures.

From the record of investigations made by the C.B.I. it is also established beyond doubt that there was no post of Incharge O.P.D. in the said Hospital and no seal(rubberstamp) of "Incharge, O.P.D., S.R.N. Hospital, Allahabad" was in use in that Hospital. It therefore amply proves that the signatures of the doctor and seals of Incharge, O.P.D. S.R.N. Hospital, Allahabad on the Essentiality Certificates and Cash Memos were forged.

The main issue raised by the appellant in his appeal dt. 30.6.86 and subsequent application dt. 19.8.86 is that the prosecution could not establish as to how did the M.R. claims in question reach D.E.T. Allahabad or were received in his office. This point is of no material significance when it is established beyond doubt that the claims and duplicate Cash Memos (not one or two but thirty two in number) bear the signatures of the appellant. As the signatures are on the M.R. claim applications and on the reverse side of duplicate copies of the Cash Memos. it is also out of question to think that his signatures were deceitfully obtained by somebody for their misuse. Thus when the M.R. claims bear his signatures the question of their submission by anybody else does not arise and the appellant can not severe his connection with them merely by denying their submission.

The court's verdicts quoted by the appellant in his application dated 19.8.86, relate to criminal/judicial proceedings where it is essential to assess the evidence as per norms laid down in Evidence Act whereas in the departmental disciplinary proceedings the standard of proof required is that of preponderance of probability.

Contd...6/-

Attested to
Advocate

Abhaya Kumar
Advocate

87

8/89

I therefore agree with the decision of the Disciplinary Authority that the appellant is guilty of the charge in contravention of Rule-3(1)(i) of CCS(Conduct) Rules and does not deserve to be retained in Govt. service. I feel that due consideration has been given by the Disciplinary authority while determining the quantum of punishment which is quite adequate and deserves to be maintained.

O R D E R

I, S.P. Kalsi, Director Telecom.(CA) Lucknow hereby reject the appeal dt. 30.6.86 of Sri Kashi Prasad T.O. Sitapur including his application dt. 19.8.86(which forms a part of the appeal dt. 30.6.86) and confirm the punishment of "Compulsory Retirement from service" as imposed by the D.E.T. Sitapur vide his memo. no. QF-65/K.P./203 dt. 30.5.86.

S Kalsi

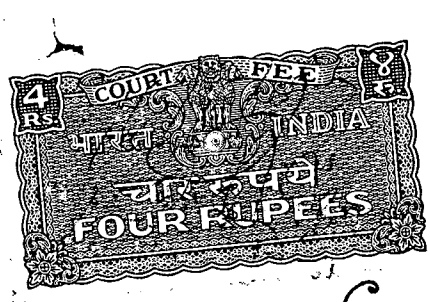
(S.P. KALSI) 4/5/87
DIRECTOR TELECOM. (CENTRAL AREA)
LUCKNOW.

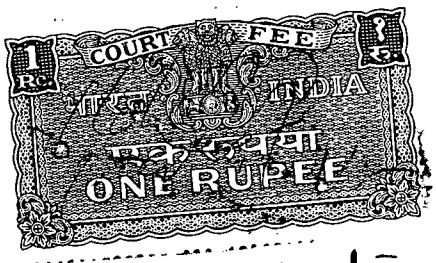
Copy to:

1. Sri K.K. Rastogi, Telecom. Divl. Engineer, Sitapur for information and necessary action w/r to his letter no. QF/65/KP/210 dt. 31.7.86.
2. Sri Kashi Prasad, Retired T.O., H. NO. 498, RotiGodam Sitapur(Through D.E.T. Sitapur) (To be delivered under receipt and the receipt should be sent to this office for record).
3&4. S/Book & Personal file of Sri Kashi Prasad, Retired T.O. Sitapur.
5. Disc. Case file of Sri Kashi Prasad, Retired, T.O. Sitapur.
6. Spare.

Attested T.C
Abhaya Kumar Dixit
Advocate

वकालत नामा





न्यायालय श्रीमान Central Administrative Tribunal Additional Bench at Allahabad वादी

KASHI PRASAD
नाम

Union of India & Ors प्रतिवादी

स्मृति Kashi Prasad ... claimant

श्रीमान ABHAYA KUMAR DIXIT एडवोकेट
Advocate
509/28 Ka, Old Heydarabad साहब
Lucknow.
वकील

नाम अदालत .....
नम्बर मुकदमा .....
फरीकैन .....

को व जिन वकील साहब को श्रीमान वकील साहब अपनी ओर से भेजे उनको अपना वकील नियत करके बयन देता हूं और प्रतिज्ञा करता हूं कि उल्लिखित वकील साहब उपरोक्त मुकदमें ब अपील व निगरानी में कुछ पैरवी या उत्तर प्रयुत्तर करे या दावा ब अपील निगरानी ब बयान तहरीरी दाखिल करे या कोई कागजात सनद इत्यादि पेश करे या वापस करे या हमारी ओर से इजराय डिगरी करके वह रुपया जो हमें मिलने को है वसूल करे या राजीनामा इकबाल दावा हमारी ओर करे या दाखिल करे या प्रतिवादी द्वारा दाखिल किया हुआ रुपाय स्वय अपने हस्ताक्षरों से या हमारी दस्तखत को हुई रसीद लेवे या जिम्मेदारी मुआवजा बांड या पुर्नवास भत्ता एग्योटी अर्धवासी या बुद्ध जोतकर एक्ट आदि के बांड लेवे तथा किसी मुकदमे में पञ्च आदि नियत करे या सब मय हानि लाभ के जो मिसिल में कार्यवाही करेगे हमें स्वीकार होगा और नियत मेहनताना न मिलने पर वकील साहब को अधिकार होगा कि वह उपरोक्त मुकदमें में अपील या निगरानी पैरवी न करे इसलिए वह वकालत नामा लिख दिया कि सनद रहे और आवश्यक समय पर काम आवे ।

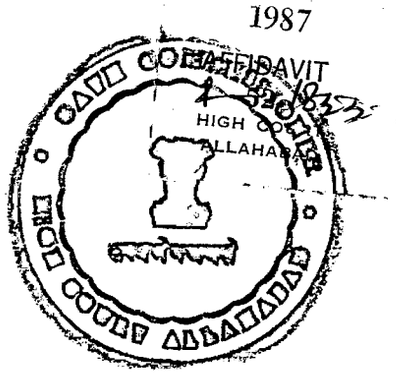
Accepted.
Abhay

Abhaya Kumar Dixit
Advocate
5/7/8

गवाह ... हस्ताक्षर ...

गवाह ... तारीख ...

1987



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH

ALLAHABAD

—

COUNTER AFFIDAVIT

IN

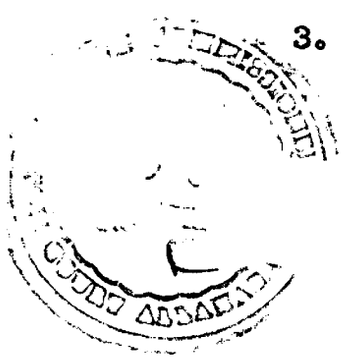
REGISTRATION NO. 459 OF 1987

Kashi Prasad .. .. Applicant

V_o_r_s_u s

1. Union of India,
   through the Secretary,
   ~~Ministry~~ Department of Tele-Communication,
   Ministry of Communication,
   New Delhi.
2. The Divisional Engineer,
   Telegraph,
   Sitapur,
3. The Director,
   Tele-Com., Central Area,
   Lucknow

.. .. Respondents.



A_f_f_i_d_a_v_i_t_ of

Sri Ram Lal

aged about 56 years,

son of ~~Shri Gaya~~ Shri Dinga Prasad

~~Personnel officer, office of~~ the General Manager, Telecommunication, U.P. Circle Lucknow

- : DEPONENT : -

I, the deponent named above, do hereby solemnly affirm and state as follows :

1. That the deponent is working as Personnel officer office of the General Manager, Telecommunication U.P. Circle Lucknow and has been authorised to look after the case and to file the present counter affidavit on behalf of the respondents in the above mentioned case . He is, as such, fully acquainted with the facts of the case deposed to below :

2. That the deponent has read

the contents of the above noted application filed by the applicant before this Hon'ble Tribunal and has fully understood their contents .

3. That the contents of paragraph 1 to 5 of the application require no reply by means of this affidavit as the same are matters of record .

4. That in reply to the contents of paragraph 6 (1) of the application it is submitted that the same are matters of record and require no reply by means of this affidavit .

5. That the contents of paragraph 6 (2) of the application are admitted except that the contention of the applicant that no charge of any bad intention was levelled against him is not correct because in the chargesheet it was alleged that he had submitted eight

false medical reimbursement claim applications supported with forged prescriptions, essentia - lity certificates and case memos in contravention of Rule 3 (1) (i) of C.C.S. (Conduct) Rules, 1964 which requires that every Government servant shall maintain absolute integrity at all times..

It is stated that the submission of medical reimbursement claim applications supported by false cash memos etc. itself implied that he had attempted to get the money deceitfully from the department .

6. That in reply to the contents of paragraph 6 (iii) of the application it is statee that it is true that the matter was got investigated by the Central Bureau of Investigation but the contention of the applicant that the case was recommended for departmental action by the Central Bureau of Investigation merely due to lack of evidence is only his

presumption, not supported by facts and are not admitted .

7. That the contents of paragraph 6 (iv) of the application are not admitted. It is stated that the applicant was issued a chargesheet vide D.E.T. Allahabad memo No. Y-6/K.P./3 dated 26th of October, 1971 and the Inquiry Officer was appointed, but not much progress could take place .

8. That the contents of paragraph 6 (v) of the application are not admitted. It is stated that the contention of the applicant that Sri S.D.Misra, Assistant Sub-Inspector of Police was appointed as Presenting Officer merely because the chargesheet was issued in compliance with the orders of C.B.I. is not correct. As the case was investigated by the C B.I. the Presenting Officer was from C.B.I. who was well acquainted with the facts of the case.

That the contents of

paragraph 6 (vi) of the application are matters of record and as such are not admitted.

10. That the contents of paragraph 6 (vii) of the application are matters of record and as such require no reply by means of this affidavit .

11. That in reply to the contents of paragraph 6 (viii) of the application it is submitted that no doubt the name of Sri H.S.Tuteja, Assistant Government Examiner of Questioned Document, Calcutta was not included in the witnesses named in Annexure IV to the chargesheet but his report (opinion) dated 11th of June, 1981 was included in the list of documents (Annexure 'III) onthe basis of which the charges were proposed to be sustained.

It is submitted that recording of statement of Sri Tuteja was considered

necessary by the Inquiry Officer for corroboration of his report dated 11th of June, 1971 which is a material evidence in support of charges. Inclusion of Sri Tuteja's name along with others was requested vide Presenting Officer's application dated 29th of April, 1983 and the same was allowed by the Inquiry Officer and no objection was raised by the applicant .

12. That in reply to the contents of paragraph 6 (ix) of the application it is submitted that the contentions raised by the applicant are not correct. He was issued a chargesheet on the 26th of October, 1971 and the Inquiry Officer was appointed ~~in~~ ~~~~ but due to various reasons no much progress could take place in the case. The department itself is not to be balmed alone.

13. That in reply to the

contents of paragraph 6 (x) of the application it is submitted that it is correct that on the 14th of July, 1982 the applicant requested for inspection of the documents and submitted the list of documents and witnesses which he wished to produce in defence, the same was allowed by the Inquiry Officer on the 29th of April, 1983 in the proceedings dated 29th of April, 1983, a true copy of which is being filed herewith and is marked as Annexure C.A.-1 to this counter affidavit.

Annexure-1.

14. That in reply to the contents of paragraphs 6 (xi) & (xii) of the application it is submitted that the request of the applicant for inspection of additional documents was allowed by the Inquiry Officer as indicated in reply to the contents of paragraph 6 (x) in the proceeding paragraphs of this affidavit.

He was further directed to intimate the list of defence witnesses

etc. vide Inquiry Officer's letter dated 22nd of February, 1985. In response to this the applicant vide his application dated 25th of February, 1985 expressed his inability to produce the evidence in support of his defence at this stage. He also expressed his inability to produce certain documents in his defence as they will take some time to procure from the Court.

Again the applicant vide his letter dated 25th of March, 1985 wanted to produce some documents (details of the documents not given) in his defence and submitted two names of handwriting finger print experts to know the facts. The applicant vide his application dated 25th of July, 1985 produced photostat copies of six documents stating that further documents will be submitted by him later on .

15. That in reply to the

contents of paragraph 6 (xiv) of the application it is submitted that the reasons for recording the statement of Sri H.S.Tuteja, Assistant ~~Government~~ Government Examiner of Questioned Document, Calcutta have already been mentioned in reply to the contents of paragraph 6 (viii) of the application .

S/Shri L.R.Nigam, S.L.Richharia, Dr. S.C.Kansal and Smt.Shirin Rodoney were summoned as additional procedution witnesses as requested by the Presenting Officer's application on the 29th of April, 1983.

16. That the contents of paragraph 6 (xv) of the application are not admitted. It is stated that the available witnesses were examined and next date of 18th ~~of~~ and 19th of May, 1984 was fixed .

17. That in reply to the contents of paragraph 6 (xvi) of the

application it is stated that the departmental rules do not permit the promotion of a Government servant during the pendency of any disciplinary case against him.

18. That in reply to the contents of paragraph 6 (xvii) of the application it is submitted that it is true that the disciplinary proceedings were prolonged but the case was also delayed because the applicant himself requested for adjournment of dates fixed by the Inquiry Officer on six occasions . Rests of the averments made in the paragraph under reply are not admitted . They are matters of record and require no reply by means of this affidavit.

19. That the contents of paragraph 6 (xviii) of the application are the matters of record and as such require no reply by means of this affidavit .

20. That in reply to the

contents of paragraph 6 (xix) of the application it is stated that the applicant could not be given promotion or allowed to cross the efficiency bar due to pendency of disciplinary proceedings against him.

21. That the contents of paragraph 6 (xx) of the application are not admitted. It is stated that as late as on 29th of January, 1986 when the applicant was specifically asked by the Inquiry Officer whether he wished to cross examine any of the witnesses he told that he neither wished to cross examine any witness nor he wanted to produce any document or witness in his defence.

22. That the contents of paragraphs 6 (xxi) and 6 (xxii) of the application it is submitted that the request

for taking the photographs of disputed documents by the handwriting expert of applicant's choice as well as the cross-examination of the prosecution expert Sri H.S. Tuteja by the handwriting expert of applicant's choice vide application dated 1.4.1985 (Annexure -6) were not permissible as per rules in accordance with the Director General, Post and Telegraph, New Delhi letter No. 153/13/76-Disc. dated 30th of November, 1978 enclosed by the applicant as Annexure '4'.

The applicant himself was of course permitted to cross-examine Sri H.S.Tuteja, A.G.E.Q.D. Calcutta by t he Inquiry Officer on the 25th of July, 1985.

23. That it is further submitted that the report of Sri H.S. Tuteja was very clear and was not at all doubtful and as such there was no need for second opinion of any handwriting expert, which was the sole purpose of the

applicant of producing a second handwriting expert of his own choice .

24. That the contents of paragraph 6 (xxiii) of the application are not admitted. It is submitted that on the 25th of July, 1985 the applicant was permitted to cross-examine Sri H.S. Tuteja, A.G.E.Q.D. Calcutta but the applicant himself failed to avail of the opportunity given to him.

25. That in reply to the contents of paragraph 6 (xxiv) of the application it is stated that it is true that the Presenting Officer was not present on the 22nd of May, 1985 whereas the handwriting expert i.e. Sri H.S.Tuteja, Assistant Government Examiner of Questioned Document, Calcutta attended the hearing after a number of adjournments in the

past and as such his statement which is in the form of opinion of a handwriting expert was taken. The Defence Assistant of the applicant was present who preferred not to cross-e examine Sri Tuteja. The contention of the applicant is not correct that the Inquiry Officer has worked as the Presenting Officer .

26. That the contents of paragraph 6 (xxv) of the application are not admitted. It is stated that the presumption of the applicant in the paragraph under reply is quite incorrect. The date of application has been correctly mentioned as 25th of July, 1985 in Annexure-8. A true copy of the application dated 25th of July, 1985 is being filed herewith and is marked as Annexure C.A.-2 to this counter affidavit.

Annexure-2

27. That in reply to the

contents of paragraph 6 (xxvi) of the application it is submitted that the contention and presumption of the applicant as expressed in the paragraph under reply are not correct because he catogorically stated that he did not want any document and witnesses for production in his defendant when specifically asked for by the Inquiry Officer and specially when he apprehended that the required documents had not been called for by the Inquiry Officer as mentioned by him in the preceeding paragraphs of this affidavit.

28. That the contents of paragraph 6 (xxvii) of the application are not admitted. It is submitted that it was not felt necessary by the Inquiry Officer inview of the applicants statement dated 29th of January, 1986 wherein the applicant's had clearly mentioned that he did not wish to produce any document or witness in defence or to cross-examine any witness . A true

Annexure-3

copy of the same is being filed herewith and is marked as Annexure C.A.-3 to this counter affidavit.

29. That in reply to the contents of paragraph 6 (xxviii) of the application it is stated that as per rules on the subject the copy of Inquiry Officer's report should be furnished to the official along with the final orders of the disciplinary authority and no provisions for supplying the copy of the Inquiry Report earlier exists in the C.C.S. (C.C.A.)Rules , 1966 and as such it was not supplied earlier .

30. That the contents of paragraph 6 (xxix) of the application are matter s of record and as such require no reply by means of this affidavit.

31. That the contents of paragraph 6 (xxx) of the application are matters of record and as such are admitted.

32. That in reply to the contents of paragraph 6 (xxxi) of the application it is stated that the appeal dated 30th of June, 1986 of the applicant (including his application dated 19th of August, 1986) was rejected vide Memo No. ADM(S)/42-48/ 86/5 dated 4th of May, 1987

33. That the contents of paragraph 6 (xxxii) and the grounds mentioned therein are not tenable.

(1) That in reply to ground no. 'A' it is stated that the presumption of the applicant is

totally incorrect. The chargesheet has been issued by the Disciplinary Authority after giving due consideration to the investigation report of the C.B.I. The final decision in the case was taken after conducting the departmental enquiry and as such the contention of the applicant that the final decision taken by the Disciplinary Authority was affected by the recommendations of the C.B.I. is baseless.

35 (D) That in reply to the contents of Ground 'B' of the application it is submitted that the contention of the application that there has been no allegation or proof of ill motive is totally incorrect. The submission of forged claims for defrauding the Government definitely indicates the ill motive of the applicant

By doing so the applicant failed to maintain absolute integrity and committed misconduct. Eight false medical bills claiming an amount of Rs.637.00 with forged prescriptions, essentiality certificates and cash memos in all 32 in numbers duly signed by the applicant cannot be treated a mere negligence action of the applicant .

36. That in reply to the contents of Ground 'C' of the application it is submitted that in the preceeding paragraphs the applicant has not been able to indicate as to where the principles of natural justice has not been followed violating Article 311 of the Constitution of India .

It is incorrect to say that he has been denied opportunity of production of his material defence evidence or his Defence Assistant has not been allowed to assist the applicant . It would be more correct

to say that the applicant had no evidence to produce in his defence .

37. That in reply to the contents of Ground 'D' of the application it is submitted that it is totally incorrect to say that the charge framed against the applicant was of submission of false bills. The statement of articles of charge framed against Sri Kashi Prasad, Telephone Operator which is a part of the chargesheet issued vide Divisional Engineer, Telephone, Allahabad memo No. Y-6/KP/3 dated 24th of October, 1971 clearly indicates that the applicant failed to maintain absolute integrity and committed misconduct by submitting the false medical bills.

It is submitted that through these false medical bills the applicant attempted to defraud the department and thereby he failed to maintain

absolute integtity and contravened Rule 3 (1) (i) of the C.C.S. (Conduct) Rules, 1964. It is submitted that all the medical reimbursement claims and duplicate and cash memos bear the applicant's siggatures and as such the question of their submission by anybody else does not arise and the applicant can not severe his connection with this act simply by denying their submission .

38. That in reply to the contents of Ground 'E' of the application it is stated that it is incorrect to say that the applicant's request dated 1st of April, 1985 for allowing his nominated handwriting expert for second opinion and also for cross-examination of Sri H.S.Tuteja , A.G.E.Q.D. Calcutta by another handwriting expert was not considered .

The same was considered but not allowed by the Inquiry Officer

vide his memo No. Con/KPrasad dated 25th of July, 1985. In this connection the submissions given in reply to the contents of paragraph 6 and 21 of the application is reiterated. A true copy of the letter No. CON/K.Prasad dated 25th of July, 1985 onthis subject is being filed herewith and is marked as Annexure C.A. 4 to this counter affidavit.

Annexure 4

39. That in reply to the contents of Ground 'D' of the application it is submitted that undue prolongation of disciplinary proceedings was due to certain administrative reasons and a number of adjournments due to non appearance of witnesses and also due to applicant's request for postponements due to one of or the other reasons (i.e. frequent change of defenco Assistant and applicant's own inability to attend the proceedings).

It is stated that the benefit of increments, Efficiency Bar

and promotion etc. could not be given due to pendency of disciplinary proceedings as per departmental rules.

40. That in reply to the contents of Ground 'G' of the application it is submitted that the applicant has been compulsorily retired from Government service as a punishment (which is one of the major penalities as specified in Rule-11 of the C.C.S. (C.C.A.) Rules, 1965 after holding the disciplinary proceedings under Rule 14 of the said rules.

The question of application of F.R.-56 (i) or (l) does not arise as these are not applicable in the present context .

41. That in reply to the contents of Ground 'H' and 'I' of the application it is stated that the contention of the

applicant is totally incorrect. There is no bar that if a Government servant has completed only 23 years or even less service, he cannot be given any of the major penalties as provided in the C.C.S. (C.C.A.)Rules, 1965

42. That in reply to the contents of Grounds 'J' & 'K' of the application it is stated that the apprehension of the applicant is not correct. The preparation and submission of false medical reimbursement bills duly signed by the applicant at thirty two places is in no way be the result of mala-fide and prejudice of Sri P.M.Srivastava, the then Divisional Engineer, Telegraphs, Allahabad .

As such this plea taken the applicant in his defence brief

has not been accepted by the Inquiry Officer.

43. That in reply to the contents of Ground 'L' of the application it is submitted that it is correct that the name of Sri H.S.Tuteja, A.G.E.Q.D. Calcutta was not mentioned as a witness in the chargesheet but his report was listed at serial no. 6 of Annexure '3' (list of documents by which the charges were proposed to be sustained) later onwhen the statement of Sri H.S.Tuteja was recorded in the presence of the Defence Assistant of the applicant on the 22nd of May, 1985. A duly attested copy of the same was given to the applicant on the 3rd of February, 1986 before filing of his written defence brief as required under the mandatory rules .

44. That in reply to the

contents of Ground 'M' of the application it is submitted that it is correct to say that the applicant was not present on 25.5.85 when the statement of Sri H.S.Tuteja was recorded but the Defence Assistant of the Applicant was present and the statement was signed by the witness who gave the statement as well as by the Inquiry Officer and the Defence Assistant.

Thus the contention of the applicant regarding violation of Rule 92 of the P & T Manual Vol. III does not arise. The question of violation of Rule 93 of P & T. Manual Vol. 3 also does not arise because no request was made by the applicant to this effect .

45. That in reply to the contents of ground 'N' of the application it is stated that the contention is not correct as the Disciplinary Authority

in this case has stated that the Inquiry Report was carefully examined by him along with the record of enquiry and evidence adduced during the enquiry and thereafter he came to the conclusion that the charges have been proved .

46. That in reply to the contentsof ground 'O' of the application it is submitted that no doubt the bills remained pending with the D.E.T., Allahabad for about two years but this does not change the factual position of the claims in any way.

47. That in reply to the contents of Ground 'P'of the application it is stated that the appellate authority in paragraph 6 of his decision (Memo No.ADM(S)/42-48 86/5 dated 4.5.87) has indicated that the decision of the Inquiry Officer

was correct in not accepting the second handwriting expert of applicant's choice as requested vide his application dated 1st of April, 1985 for getting second opinion and doing cross-examintion of Sri H.S.Tuteja, A.G.E.Q.D., Calcutta .

48. That in reply to the contents of Ground 'Q' of the application it is stated that the report of Sri H.S.Tuteja, A.G.Q.D. Calcutta was conclusive and as such it was accepted as a substantial piece of evidence.

49. That in reply to the contents of Ground 'R' of the application it is stated that the applicant has not been able to indicate any irregularity and or irregularities committed during the course of disciplinary proceedings and as such the prejudicing of his case does not arise .

50. That in reply to

the contents of Ground 'S' of the application it is stated that the question of payment was not considered as the bills were suspected by the then D.E.T., Allahabad and that is why he made over the bills to C.B.I. for preliminary enquiry .

It is submitted that the contention of the applicant that his integrity was not challanged is totally incorrect and untenable.

51. That in reply to the contents of Ground 'T' of the application it is stated that the copies of daily proceedings were used to be supplied to the applicant either on the same day or in some cases later on but before the nextdate of hearing.

However, this is not an adequate ground which may deserve any consideration .

52. That in reply to the contents of Ground 'U' of the application it is stated that the departmental enquiries being of quasi-judicial nature and that is ~~my~~ why the standard of proof of charge is only of preponderance of probability of quilt and not the proof beyond reasonable doubt. As far as uncrossed statement of Sri H.S.Tuteja is concerned the ~~applicant cross-examined Sri H.S.Tuteja~~ applicant as well as his Defence Assistant were given sufficient chance to cross-examine Sri H.S.Tuteja even as late as during the recording of applicant's statement but he has not availed the opportunity and specifically ~~stated~~ stated that he did not want to cross-examine or to produce any witness/evidence probably because he had nothing in his favour.

53. That in reply to the contents of Ground 'V' of the application it is stated that the Defence Assistant

is primarily provided to defend the applicant. Here in this case the Defence Assistant, who was present on the date when Sri Tuteja gave his statement, did not cross examine Sri H.S.Tuteja. Later onthe applicant also expressed that he does not want to cross examine any witness as per his statement dated 29.1.86 .

54. That in reply to the contents of Ground 'W' it is stated that the type of punishment to be awarded is the prerogative of the Disciplinary Authority which is decided giving due weightage to the charge vis-a-vis the service of Government servant etc. The appellate Authority has also agreed with the quantum of punishment which in his opinion is quite adequate after finding that the applicant is guilty of charge and is not fit to be retained in Govt. service .

55. That the contents of paragraphs 7 & 8 of the application are matters of record and as such require no reply by means of this affidavit.

56. That in reply to the contents of paragraph 9 of the application under the heading 'Relief sought' and particularly reliefs 1 to 13, it is submitted that the applicant is not entitled to any relief and the order of compulsory retirement has been passed in public interest. The public interest required that an officer who is of doubtful integrity should be compulsorily retired and the Government is well within its act to consider the overall performance of the petitioner by abusing the order of retirement.

It is submitted that the order of compulsory retirement of the petitioner in public interest cannot be said to be illegal.

57. That the contents of paragraphs 11 to 13 of the application are matters of record and as such require no reply by means of this affidavit.

58. That in view of the facts and circumstances disclosed in the preceeding paragraphs of this affidavit, it is submitted that no case for interference by this Hon'ble Tribunal under Sec. 19 of the Central Administrative Tribunal Act is made out and the present application is liable to be rejected .

I, the deponent named above do hereby solemnly affirm and swear that the contents of paragraphs

1 & 2

are true to my personal knowledge and belief and that no part of it is false and nothing material has been concealed therefrom.

Deponent

of this affidavit are true to my personal knowledge, that the contents of paragraphs 1 3 to 8 5 8 of this affidavit are based on perusal of the relevant records ; and that the contents of paragraphs 3 5 of this affidavit are based on legal advice which all I believe to be true ; that nothing material has been concealed and no part of it is false.

So help me God.

Ram Lal

DEPONENT.

I, R.C. Yadav Clerk to Sri Ashok Mohiley, Advocate, High Court, Allahabad declare that the person making this affidavit and alleging himself to be Sri Ram Lal is the same person and is personally known to me.

R.C. Yadav Clerk

Advocate

SOLEMNLY affirmed before me on this 18th day of August, 1987 at 1.15 ~~A.M.~~/P.M. by the deponent who has been identified as above.

I have satisfied myself by examining the deponent that he has fully understood the contents of this affidavit.

OATH COMMISSIONER.

OATH COMMISSIONER
High Court, Allahabad
Sl. No. 52/8[illegible]
Date 18-8-87

BEFORE THE CENTRAL ADMINSTRATIVE TRIBINAL

ADDITIONAL BENCH.

ALLAHABAD.

ANNEXURE C.A.2

IN

REGISTRATION NO. 4,5,9 OF 1987

Kashi Prasad .. .. Applicant.

V___e___r___s___u__s

Union of India and others .. ..Respondent.

To,

Shri S.C.Awasthi
E.O

A.D.T.(Comercial)
O/oG.M.T.U.P. circle, Lucknow
at Sitapur.

Subject:- List of D/witnesses in addition and produetion of D/Docoments in my defence.

~~Sir,~~ .2.

Sir,

Kindly refer to my application dated 1.4.85 wherein I requested your goodself to send the disputed documents to Sri S.P.Gupta, Handwriting Expert, Civil Courts Compound Lucknow for his opinion. I again request you to kindly do the needful for the same.

Regarding submission of D/documents, I beg to produce the following documents which are available with me and D/Documents in my defence. Other some D/Documents are available in Civil Courts and High Courts of Allahabad will be sumitted soon when they are (certified copies) available from there if you permit me.

In this regard my application dated 14.7.82 may kindly be also referred for some D/Documents from DET AD.

(1) Photostat copy paper No.1 Copy of Suit 814/69 M.W. Allahabad.

(2) " Paper No.2 Copy of Suit No.470/70 against Shri P.M. Srivastava the then D.E.T. Alld.

3. Paper No. 3 Copy of application dated 13/1/70 to DET Alld.

4. " Paper No.4 Copy of Application dt. 25/11/69

5. " Paper No.5 Copy of FIR against DET Alld. Dt.19/1/69

6. " Paper No.6 Copy of Application dated 10.12.69 to SSP Alld. and copy to PMG, Lucknow against Sri P.M.Srivastava DET Allahabad.

Thus now
~~Therefore~~, it is clear that these documents shows the enmity of Sri P.M.Srivastava, the then DET, Allahabad who had falsely tried to take revenge with my services with the prejudiced of mind by means of this forged case. Kindly accept these documentsin my defence.

Dt/-
25.7.85

Yours faithfully,
(Kashi Pd.) TO
Telephone Exchange,
Sitapur.

OATH COMMISSIONER
High Court, Allahabad
52/85
18.8.87

बीफोर द सेन्ट्रल एडमिनिस्ट्रेटिव ट्रिबनल

एडिसनल बेंच

इलाहाबाद

एनेक्जर सी॰ए॰-3

इन

रजिस्ट्रेशन नं0-4,5,9 आफ 1987

काशी प्रसाद ----------अपलीकेंट

बनाम

यूनियन आफ इन्डिया एण्ड अदर्स ---------रिसपान्डेन्ट

स्टेटमेन्ट आफ श्री काशी प्रसाद, चार्ज आफिसर आफिसर
गिवेन टू ~~/~~ u/s इन पेरेसेन्स आफ प्रसेन्टिंग अफसर आन 29॰1॰86

जैसा चार्ट शीट में दिया गया है कि मैने 8 मेडिकल बिल सबमिट किया थे यह गलत है । यह बिल मैने कभी सबमिट नही किये अत: जो कि चार्ज लगाए गये है वह गलत है । मैने किसी भी बिल पर हस्ताक्षर नहीकिये है ।

डी॰ई॰टी॰ श्री पी0एम0 श्रीवास्तव से मेरा

कोर्ट में केस चल रहा था उसी समय और इसीलिए डी॰ एच॰ टी॰ साहब ने मुझे नुकसान पहुँचाने के लिए यह सब किया। इस केस के जजमेन्ट की कापी मैं दे रहा हूँ ।

क्रास इक्समनेशन बाई पी० ओ०

क्यू०-1- क्या यह सच है कि आप 68-69 में टी० ओ० की हैसियत से इलाहाबाद में पोस्टेड थे ।

उत्तर-जी हाँ ।

क्यू० 2-क्या यह भी सच है कि आप अपने और अपने परिवार के सदस्यों का मेडिकल रियमबर्समेन्ट क्लेम अपने डेबिट से लेते थे ।

उत्तर- लेते थे लेकिन एसआरएन • हास्पिटल एण्ड टी० का कोई भी बिल मैंने सबमिट नही किया ।

क्यू० 3- क्या आपके लड़के के नाम सत्यदेव प्रकाश और पिता का नाम पूरनदास है ।

उत्तर- जी हाँ ।

क्यू० 4-क्या आप इलाहाबाद में मकान नं० 375 सदर बाजार में रहते थे ।

उत्तर- जी हा ।

क्यू05- और किस हास्पिटल से अपना और परिवार का
का इलाज कराते थे ।

उत्तर-हमारे मकान के करीब में कैंट जनरल हास्पिटल था
ज्यादातर मै इलाज वही कराता था ।

क्यू06- आप अपने मेडिकल बिल किसके माध्यम से डी॰ई॰टी॰
को भेजते थे । और क्या कोई रिसीप्ट लेते थे ।

उत्तर- श्री टी0ओ0सी0 ज्यादातर ~~रसीद~~ ack के ले लेते थे ।

क्यू07- आपसे कभी डी0ई0टी0 ने इन बिलो के बारे में
में कोई पूछताछ की ।

उत्तर- कभी नही ।

क्यू08- बिलों पर क्या आपकी हैंडराइटिंग है ।

उत्तर- नही ।

क्यू0 नं09- कृप्या आप डाक्यूमेन्टस ए0-28 से ए035
तथा 59 से 520 को देखकर बताऐ कि आप द्वारा
लिखे गये है और इस पर आपके हस्ताक्षर है ।

उत्तर- जी हां ए 28 से ए35 और 59 से 520 मेरे
द्वारा लिखे गये है । और मेरे हस्ताक्षर है ।

मेरे द्वारा क्यूश्चन किये जाने पर कि आप और कोई डाक्यूमेन्टस या विटनेस अपने डिफेंस में देना चाहेगें श्री काशी प्रसाद ने कहा कि वह और कोई डाक्यूमेन्ट या विटनेस नही प्रडयूस करेगें । ना ही मैं अब किसी को क्रास-इक्समिन ही करना चाहता हूँ । अब केवल रिटेन ब्रीफ मेरे डिफेंस काउन्सिल देगें ।

ह0अपठित ह0अपठित ह0 अपठित

{एस0सी0 अवस्थी {{एस0डी0मिश्रा} {काशी प्रसाद}

---------सत्य प्रतिलिप ---------

OATH COMMISSIONER
High Court, Allahabad
Sl. No. 47/823
Date 18.8.23

BEFORE THE CENTRAL ADMINISTRATIVE TRIBINAL

ADDITIONAL BENCH

ALLAHABAD.

—

ANNEXURE C.A.4

IN

REGISTRATION NO. 4,5,9,OF 1987

Kashi Prasad .. .. Applicant

V e r s u s

Union of India and others .. .. ..Respondents.

—

DEPARTMENT OF TELECOMMUNICATIONS

OFFICE OF THE DIVISIONAL ENGINEER TELEGRAPHS

SITAPUR.

NO; Con/ Kashi Prasad/ dated 25.7.85

Enguiry proceedings against

Shri Kashi Prasad T.O. Sitapur under CCS

(CCA) Rules 1965, held on 25.7.85 at 11.00 hrs.

in the office of Divisional Engineer Telegraphs

Sitapur.

The following were present:-

1. Shri S.D.Mishra, CBI/SPE- Presenting Officer.

2. Shri Kashi Prasad, TO. Charged Official.

The defence council Shri Vishnu Sahai did not turn up. Shri Kashi Prasad has submitted the following defence documents:-

1. Photo State Copy- Paper No.1(Copy of Suit No. 814/69 M.W.Allahabad).

2. Photo State Copy -Paper No. 2(Copy of Suit No. 470/70 against Shri P.M.Srivastava) the then DET Allahabad.

3. Photo State Paper No. 3(Copy of Application dt. 13.1.70 to DET Allahabad)

4. Photo State Copy- Paper No. 4 (Copy of Application dt. 25.11.69

5. Photo State Copy Paper No. 5(Copy of F.I.R. against DET Allahabad dated 29.11.69)

6. Phot State Copy -Paper No.6(Copy of Application dt. 10.12.69 to SSP Allahabad and copy to PMG LW against Shri PM Srivastava DET Allahabad.

He has stated in his application submitted to the U/S that besides above, he wish to submit certain other documents in his defence and has indicated that the same will be submitted soon.

A-S requested by Shri Kashi Prasad he is hereby directed to submit the remaining defence documents (if any) to the undersigned positively by 9.8.85 . He will also intimate

xxx

the name of defence witnesses if any, by this date.

Shri Kashi Prasad has indicated in his application dated 25.7.85 that he wish to produce to Shri S.P.Gupta, Hand Writting Expert in his defence.

As, I, dont feel enough justification for the same the request can not be exceeded to. However, he is permitted to cross examine the hand writting Expert Shri H.S. Tuteja whose statement has already been recorded in the proceedings held on 22.5.85.

It may plese be noted by Shri Kashi Prasad that no further date for hearing will be allowed and the next date fixed (to be

intimated by the U/S) will be final.

Sd/-Illigable
(S.C. Awasthi)
ENQUIRY OFFICER
ADT(OP) O/O GMT UP Circle
LUCKNOW.

Copy for information to:

1. Shri Kashi Prasad ,T.O. Sitapur
2. Shri Vishnu Sahai, OA O/O De Phones Bareilly
3. ~~xSxRxxxxxxIxx/SPExxxxNavalxKishorexRoad,~~ C.B
3. Shri S.D.Mishra, C.B.I.7, Naval Kishore Road, LW.
4. S.P.C.B.I./SPE,7,Naval Kishore Road, Lucknow.
5. Vigilance Office C/O GMT UP Circle Lucknow W.E.fo his No. VID/II -10/68/1
6. Shri H.S.Tute,AGE QO/O Govt. Examiner of Quectioned documents, 30, Gorachand Road, Calcutta- 700014.
7. Director Telecom (CA) Lucknow. N.K.Road Lucknow.
8. The D.E.Telegraphs Sitapur .for n/a pl.
9. DEP Bareilly for n/a pl.
10. Dy. GM(Admn.) C/O GMT UP Circle Lucknow.

I Copy

In The Central Administrative Tribunal
Additional Bench
at
ALLAHABAD

54/161

Claim No. 459 of 1987
Fixed on 20.10.87 for RA.

Kashi Prasad -- Claimant

Vs

Union of India & ors ... Opp. Parties.

Rejoinder Affidavit

Allahabad
Dt- 20.10.87

Briefly
A. K. Dixit
Petroochi
Lucknow
for Claimant

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH AT ALLAHABAD.

Claim Registration no.459 of 1987

Fixed for 20.10.1987

1987

AFFIDAVIT

458/1454

HIGH COURT ALLAHABAD

Kashi Prasad ..... Applicant.

V e r s u s.

Union of India ..... Opp.parties.

Rejoinder affidavit on behalf of claimant in response to the counter-affidavit of Sri Ram Lal filed on behalf of all the opposite-parties.

I, Kashi Prasad aged about 45 years son of Sri Pooran Das, resident of 498 Rotigodam, Sitapur, do hereby solemnly affirm and state on oath as under:-

Recd copy R.C. Yadav clerk Sri HS not working Advocate 20/10/87

1. That deponent being claimant in the aforesaid claim petition is fully conversant with the facts of the case. He has read and understood ~~counter-affidavit~~ the counter-affidavit filed by Sri Ram Lal on behalf of all the opposite-parties.

2. That the contents of Paras 1 and 2 to the

counter affidavit need no reply.

3. That the contents of Para 3 to the counter affidavit need no reply.

4. That contents of Para 4 to the counter-affidavit need no reply, however, it is submitted that since all the dates have been given in the counter claim petition which are not disputed, therefore, it is not proper to assert on behalf of the opposite-parties that the same are matters of records.

5. That contents of Para 5 to the counter-affidavit are not admitted. The charges must be clear specific and unambigious. It is submitted that neither the service Rules nor the principles of natural justice provide that there can be anything as "implied" in the charge-sheet. Non-mention of bad intention in the charge-sheet leads to vagueness of the charges and even if such an objection regarding vagueness of of charges is not raised by the delinquent during the disciplinary proceedings, the department is not exenorated from establishing charges beyond vagueness. Mentioning of bad motive in the charge-sheet is must, in absence of which the delinquent cannot have an opportunity to meet the charges and the real motive which is prevailing in the mind of the disciplinary authority. In this connection reference may be made to 1985 L.I.C. 729 S.C., 1986 L.I.C.855 S.C. and 1986 L.I.C. 1961.

6. That contents of para 6 to the counter-affidavit are not admitted as written. The facts as stated in the claim petition are reiterated to be correct. The contents of Annexures 10 and 13 at pages 56, 83 and 86 of the B Paper-book of the claim petition strongly prove that the charge-sheet has been issued after considering the report of the C.B.I. which fact has also been admitted by the opposite-parties in para 33(1) page 19 of the counter-affidavit. It is necessary to point out at this stage that this report of the C.B.I. was basis of framing charges against the deponent and admittedly it was never supplied to the deponent. This report of C.B.I. was never made available to the deponent while on the other hand the authorities right from the disciplinary authority to appellate authority, all of them gave undue weightage to this report which was never made available or even disclosed to the deponent. In view of the entirety of the circumstances it is almost admitted that the authorities acted on the recommendation of the Inteliigence/C.B.I. The Judgment and decision of the authorities have been affected by the recommendation of the C.B.I. who recommended for imposing punishment upon the deponent as he was told by the Enquiry Officer as well as by the Appellate authority during the course of disciplinary proceedings and pendency of the appeal. It is the human nature that such recommendations affect the final decision and recommendations of C.B.I. have actually affected the decision of the parties

authorities. in the present case. This procedure has prejudiced the case of the delinquent. In this connection reference may be made to 1981 L.I.C.1546 and 1985 L.I.C. 45 N.O.C. Since report of the C.B.I. recommending for action has been admitted to have weighed the minds of the authorities, the same may be ordered to be produced before this Hon'ble Tribunal by the opposite-parties which is highly relevant for the disposal of the present claim for which deponent has also moved separate application.

7. That contents of para 7 to the counter affidavit are not admitted. The opposite-parties are morally bound to place the circumstances before this Hon'ble Tribunal to show what they have done from 17.11.1971 to 3.1.1981 and during this period what progress has been done by the opposite-parties. In this connection it is also submitted that the opposite-parties have also violated specific instructions of the General Manager, Telecom. as contained in his letter no.VIII/Misc-1-86/1 dated 16.4.1986. In the aforesaid direction, five months time have been allowed for holding enquiries, for taking of decision and on Enquiry report and for taking final decision. It is said to point out that inspite of orders dated 10.4.1985 passed by the Hon'ble High Court in Annexure 3 of the application, the opposite-parties have not even cared to consider and give due respect to the observations of the Hon'ble High Court. During this period of 10 years there was not even appointment of Enquiry Officer.

8. That contents of Para 8 to the counter-affidavit are denied. Sri S.D.Misra was a stranger to the department. Actually it was the pressure of the C.B.I. report that an Inspector of C.B.I. was appointed Presenting Officer. To elucidate this point, it is further necessary to call for the report of the C.B.I. over which everything has been relied upon but it is denied by the opposite-parties that this report has not influenced the Enquiry.

9. That contents of Para 9 to the counter affidavit are vague. In absence of specific reply to contents of Para 6.6 of the claim application, the same are to be deemed as correct. The respondents were duty bound to furnishspecific reply rather to avoid their responsibility by saying that these are matters of records, as such are not admitted.

10. That contents of Para 10 to the counter-affidavit are ux vague. In absence of specific reply to contents of Para 6.7 to the claim, the same are deemed to be correct. Respondents should have submitted specific reply after perusal of the records, rather to say that these are matters of records and as such require no reply.

11. That contents of Para 11 to the counter affidavit are not admitted. A copy of the report was specifically asked for on 9.3.1981 as well as on 6.4.1981. By these two applications deponent specifically asked for copy of report of Sri H.S. Tuteja but the same was refused on 6.4.1981.

12. True copies of deponent's application dated 9.3.1981 in which he specifically demanded copies of Sri Tuteja's report and other documents and their refusal on 6.4.1981 are attached herewith as ANNEXURES RA1 and RA2 to the affidavit.

It is specifically denied that Presenting Officer moved any application on 29.4.1983 for the inclusion of Sri Tuteja's name along with others. There is no such application moved by Presenting Officer to the notice of the deponent. Since no application to the notice of the deponent was moved, therefore, there arose no occasion for the deponent to raise any objection. Even Enquiry proceedings dated 29.4.1983 contained in Annexure CA I there is no such mention of any application to have been moved by the Presenting Officer on 29.4.1983. If the intention of the respondents to the effect that inclusion of Sri Tuteja's name along with others was requested vide Presenting Officer's application dated 29.4.1983, then there was no reason as to why this fact was not mentioned in the enquiry proceedings dated 29.4.1983 and as to why its copy was not supplied to the deponent and in the circumstances when deponent was present in person on 29.4.1983, the date fixed for the hearing of the enquiry.

12. That contents of Para 12 to the counter affidavit are denied in view of the reply already submitted in Para 7 of this affidavit. So far as the question of abnormal delay in the disciplinary

proceedings, the Hon'ble High Court has already observed that it is stocking to the judicial conscience. Respondents cannot be permitted to say anything after the observation of the Hon'ble High Court dated 10.4.1985 contained in Annexure no.3 at page 42 of the paper book of claim petition.

13. That contents of para 13 to the counter affidavit are denied. It is specifically stated that Annexures 2 and 2 A of the claim petition remained undisposed till 29.4.1983. Mere empty formality of granting the permission to inspect the records in the office which is not controlled by the Enquiry Officer is not sufficient. It is specifically submitted that no requisition memo as mandatory under Rule 14(12)(13) of the Central Civil Services (CCA) Rules was issued by the Enquiry Officer to the D.E.T. Allahabad. Even the copy of proceedings dated 29.4.1983 were not sent to the D.E.T.Allahabad. Deponent was not allowed access to the records by the D.E.T. and Enquiry Officer failed to issue any requisition slip or notice to the D.E.T.Allahabad for the purpose. In this way the deponent was denied with the reasonable opportunity of his defence which includes an opportunity of inspection or access to the records which are proposed to be used against him or which delinquent wants to use in his defence.

14. That contents of para 14 to the counter affidavit are specifically denied. ~~The inspection~~

The inspection of documents was not allowed in accordance with mandatory procedure laid down in Rule 14 (11), (12) and (13) C.C.A.Rules, 1965. The copy of Sri Tuteja's report was not supplied to the deponent inspite of his specific demand. It is not only necessary but interesting to point out that though the report of Sri Tuteja, Hand Writing Expert was proposed to be relied upon to prove the charges, yet it was not supplied to the deponent rather specifically refused on 6.4.1981 by means of Annexure RA 2. Sri Tutaja's statement was recorded on 22.5.1985, even on that date neither the report nor the copy of the statement was supplied to the deponent. When evidence was closed, the copy of Sri Tuteja's statement was supplied on 10.2.1986 which are proceedings of 29.1.1986. The entire case is based on the report of Sri Tuteja which has not been even today supplied to the deponent.

So far as Enquiry Officer's letter dated 22.2.1985 is concerned it is submitted that there was no occasion for the Enquiry Officer to say that deponent should produce list of defence witnesses because by 22.2.1985 proseuction evidence was not closed. Therefore, there was no question to give details of defence witnesses. Proceedings dated 22.2.1985 will indicate that the prosecution evidence was not over, therefore, on 25.2.1985 the deponent moved an application that he is unable to produce evidence in support of his defence at this stage.

True copy of deponent's letter dated 25.2.1985 is attached herewith as Annexure RA3 to this affidavit.

Under Rule 14(16) & (17) (C.C.A) Rules 1965 defence evidence is to be called upon and produced only when evidence of disciplinary authority is closed and over. There is no provision in the Rules which permit the Enquiry Officer to call upon the evidence of both the sides. Such a procedure and practice amounts to flagrant disregards of Rules. So to presume that deponent vide his application dated 25.2.1985 will not produce his evidence, is totally perverse and imaginary on the part of the respondents.

It is also submitted that in Annexure 5 to the claim petition which is page 44 of the paperbook in the last line after the word " Enquiry " As" has been omitted to be typed, therefore, the last line of Annexure 5 which is page 44 of the paperbook may be read "As a defence witness".

Deponent is attaching herewith the true copy of his application dated 25.7.85 as ANNEXURE RA4 to this affidaivt.

It is submitted that application dated 1.4.1985 contained in Annexure 6 to the claim petition is to be read along with the application dated 25.7.85 which is Annexure RA 4 to the rejounder affidavit.

Since contents of para 6.13 to the claim petition have not been replied by the respondents, therefore, it is to be presumed that respondents have

nothing to say with regard to Para 6.13 of the claim petition which stands unrebutted and are therefore, conclusive.

15. That in view of the facts stated in Para 14 above with regard to the report of Sri Tuteja contents of Para 15 to the counter-affidavit are denied.

16. That with regards to contents of Para 16 to the counter-affidavit, it is submitted that there should have been earlier and expeditious disposal of the disciplinary proceedings.

17. That in view of settled legal position reported in 1982 L.I.C.21 and 1982 L.I.C.1920 as well as in view of the order dated 10.4.1985 mere pendency of disciplinary proceedings cannot be the ground withholding the promotion and efficiency Bar of an employee. It is clear that at this stage the respondents have again expressed no respect to even towards the Interim order dated 10..4.1985 passed by the Hon'ble High Court and Rules in this regard though not cited by the respondents or notrelevant to be taken into consideration at all.

Continued from page 11

18. That contents of Para 18 to counter affidavit are denied and those stated in the claim are reitrated to be correct. It is again repeated that from 26.10.71 the date of issue of Charge Sheet and its denial by deponent on 17.11.71 for a petty long period of 10 years i.e. upto 3.1.81 respondents have done nothing in the disciplinary proceedings for which they have no explanations to submit before this Hon'ble Coudt.Filing of Writ Petition No.5946 of 1985 and interim orders passed therein can not be denied. Deponent for the first time applied for adjournment on disciplinary proceedings on 5.11.82 only due to his Defence Representative and Thereafter under the extreem compelling circumstances when he has remained bed ridden due to fracture in his left knee which prolonged for a period of about 6 months and the respondents have been so discurtious and unhuman that they conducted the disciplinary proceedings .

19. That contents of Para 19 to counter affidavit need no reply.

20. That in support of contents of Para 21 to counter affidavit it is submitted that the respondents were bound to obey the interim orders dated 10.4.85 passed in Writ Petition No.5945 of 1985 which they knowingly and intentionally flouted to harass and victimise the deponent.

21. That contents of para 21 to the counter affidavit are not admitted . Deponent had already moved an application dated 11.4.84 that since his defence representative has not come, therefore his right of cross examination may be kept reserved. No order of any nature was passed on this application.True copy of application dated 11.4.86 is attached herewith as ANNEXURE RA-5 to this affidavit. So far as deponent's statement dated 29.1.86 to the effect that he neither wished to cross examine any witness nor he wanted to produce any document in his defence, it is submitted that on that day Deponent had left nothing with him in view of the earlier orders passed by the Enquiry Officer. As submitted earlier deponent was denied to have the copies of the statements proposed to be relied on in support of charges on 6.4.81 as is evident from perusal of Annexure RA-2 to this affidavit. On 14.7.82 doponent again submitted a list of documents and defence witnesses by means of Annexure-2 to claim petition at Page 38 of the paper book of the claim. This application was again reminded on 5.11.82 by means of Annexure 2-A to the Claim Petition . No orders were passed on this application upto 29-4-83 on which date it was orderod that if documents are made available by D.E.T.Allahabad, then

the same may be inspected but no requisition slip as is mendatory is to be issued under Central Civil Services(C.C.A.)Rules 1965,Rule 14(11),(12) and (13).There was no necessity to cross examine Sri S.M.Tripathi and Sri P.M. Srivastava who have not deposed not even a single word against deponent. Similarily the statements of Lala Ram,Rajjan Shah,Smt. S.Radnoy were not at all required to be cross examined because their statements have not even been referred by the Enquiry Officer in support of the charge. On 18.5.85 when doponent was suffering with fracture and was bed ridden and he applied for adjournment of date 22.5.85 by means of a registered letter despatched under Postal Receipt No.3086 , the statement of Hand Writing Expert was recorded by the Enquiry Officer, Even in the absence of Presenting officer. Thus at this stage again Enquiry Officer acted on behalf of Presenting Officer in violation Rule 14(14) to C.C.S.(C.C.A)Rules 1965.Apart from the fact that copy of Sri Tuteja's report and opinion with regard to alleged signatures was never supplied to the deponent, even the copy of his statement dated 22.5.85 was supplied to the deponent on 10.2.86 when every thing was done as evident from perusal of Annexure RA-6 to this affidavit. In these compelling, biased and peculier circumstances when on

29.1.86 neither the report of Sri Tuteja nor his copy of statement dated 22.5.86 was with him, how he could have taken decision to cross examine him.Deponent's request for production of expert of his own choice was already refused on 25.7.85 by means of Annexure 8 to the claim petition at page 48 of the paper book of claim. Thus prior to 29.1.86 when request for supply of d documents including alleged report of Hand Writing Expert Sri Tuteja ,even the statement of Sri Tuteja dated 22.5.85 was not supplied to him nor to his defence representative and his request for production of experts of his choice as D.Ws.was already refused referrod what was left there to whom deponent could have cross examined. Therefore under these compelling and exceptional circumstance deponent refused to this empty formality of cross examination and defence. When every thing was refused in advance what was left there except the empty formality which respondents were observing on paper. Hand Writing Expert was never called for cross examination for which opportunity should have been given.There can not be any justification for refusal of production of Experts as proposed by deponent.

22. That contents of Para 22 to the Counter Affidavit are denied. Perusal of Annexure 4 to claim petition itself goes to show that Hand Writing Expert of his choice may be examined by the charged official as deponent made a proposal by means of Annexure 5 & 6 to the claim petition to which Enquiry Officer refused by means of an arbitraty and unreasoned and non-speaking order contained in Annexure 8 to the claim petition.Even on 25.7.85 at the defence stage deponent requested to produce the expert of his own choice e.g. Sri S.P.Gupta for whom also the request was refused by means of Annexure 8 to claim petition.

23. That contents of Para 23 to the counter affidavit are denied. The Enquiry Officer has no authority to treat the report of Sri Tuteja at the cost of refusal of opportunity of its rebuttal to the Deponent. Deponent's request for production of expert of his choice amounts to denial of opportunity of defence.

24. The contents of Para 24 to the counter affidavit are denied . On 25.7.85 Sri Tuteja was not at all present. Neither copy of his report or earlier statement dated 22.5.85 was with the deponent on this day.

Therefore, it is only to misguide the Hon'bl e Tribunal that on 25.7.85 deponent was given opportunity to cross examine to Sri Tuteja.

25. That contents of Para 25 to the counter affidavit are denied as written. Sri Tuteja for the first,last and only one time appeared before Enquiry Officer on 22.5.85 . On this date his statement was recorded in such a haste that Enquiry Officer choosed to voilate Rule 14 (14) C.C.S. (C.C.A)Rules,1965 The statement of Sri Tuteja can not be treated by way of simple opinion because entire proceedings are based on it. Statement of Sri Tuteja has been given in such a ~~hurry~~ heavy weight that Enquiry Officer was afraid to give an opportunity to the deponent even to rebut it. In these circumstances the evidencce of Tuteja can not be deemed to be the legal evidence and in view of Principal of law laid down by various courts followed by ~~that~~ Hon'ble Tribunal in 1987 L.B. and E.C.41 & 74. Such type of evidonce as is on existence in this case can not be deemed to be a legal evidenco so as to support the charge and entire action based on such short of evidencesso is nulty and not sustainablo.

26. The contents of Para 26 to the counter affidavit are not admitted. However the fact that documents mentioned in Annexure CA-2 were not at all ordered to be

summoned nor were specifically refused to be summoned.True copy of application dated 25.7.85 is attached herewith as Annexure RA-4 to this affidavit.Annexure CA-2 are identical applications except that in CA-2 date mentioned as 5.7.85 is incorrect.The correct date which is 25.7.85 has been mentioned in Annexure RA-4.

27. That in view of the submission mado in para 21 of the Rejoinder Affidavit, contents of Para 27 of the counter affidavit are denied and those stated in Paras 21 and 24 to this affidavit are reterated in this connection.

28. That in view of the submission made in para 21 of the Rejoinder Affidavit,contents of Para 28 of the counter affidavit are denied and those stated in Paras 21 and 24 to this affidavit are reterated in this connection.

29. That contents of para 29 to Counter Affidavit need no reply except that the copy of Enquiry Officer's report should have been supplied earlier so that deponent would also have been in a position to have his say in this matter.

30. That contents of para 30 to Counter Affidavit need no reply.

31. That contents of para 31 to Counter Affidavit need not reply.

32. That in reply to para 32 of Counter Affidavit it is submitted that inspite of clear orders passed by this Hon'ble Tribunal, respondents shown their disrespect by flouting it in persuance of their arbitrariness and malafidies.

33. That contents of para 33 are not admitted to be correct. Reply of each and every ground as tendered by respondents in para 33 (1), 35(as there is no mention of para 34 in counter affidavit) to 56 are denied and those stated in claim petition are re-itrated to be correct. Grounds raised in the claim petition are matterss of arguments. However it is again submitted that from the contentions raised in claim petition , counter affidavit and in this rejoinder affidavit this much is quite clear that (i)enquiry proceedings were abnormally delayed for a period of more than 10 years , (ii) enquiry is based and initiated after considering the recommendation of investigation report of C.B.I. and not on account of free exercise of mind by the disciplinary authority, (iii) there has been complete denial of opportunity of defence to the deponent in as much as he has not been allowed (a) access to records which is further evidenced by perusal of Annexure RA-7 on which no orders of whatsoever nature have been passed.(b) donial of adjournment when deponent was unable to move due to fracture in his leg and even is absence

of his defence representative as also evident from perusal of Annexure RA-8-9(c) Non supply of copy of report of Hand Writing Expert (d) non suppl of copy of statement of Hand Writing Experttill the final stage of proceedings and (e) refusal to produce defence witnesses i.e. Hand Writing Export of his own choice. Apart from it there has been flagrent disregard of compliance of mandatory procedural rules causing material prejudice to the deponent. The cumulative effect of all these illegalities, non compliance of statutary rules and principles of natural justice and fair play has resulted in passing of impugne d illegal order which is based on no evidence and particularly there is lack of legal evidence.

34. That contents of para 57 to counter affidavit need no reply.

35. That contents of para 58 to counter affidavit are not admitted. Deponent is entitled to the relief prayed for in the claim petition .

DEPONENT.

Dated October 19 ,1987. (KASHI PRASAD)

VERIFICATION.

I, deponent named above do hereby solemnly affirm and swear that the contents of paras 1 to 32 of this affidavit are true to my personal knowledge and those of paras 33 to 35 are

Continued.....

believed to be true by me. Nothing material has been concealed and no part of it is false, so help me God.

20/10/87 DEPONENT.

Dated October 19 ,1987. (KASHI PRASAD)

I,A.K.Dixit, Advocate High Court, Lucknow Bench,Lucknow declare that person making the affidavit and alleging himself to be Sri Kashi Prasad is the same person and is known to me.

(A.K.DIXIT)
ADVOCATE,
HIGH COURT ,LUCKNOW.

Solemnly affirmed before on this 19th. day of October,1987 at 12.15 A.M./P.M. by the deponent Sri Kashi Prasad who has been identified by Sri A.K.Dixit,Advocate, as above.

I have satisfied myself by examining the deponent that he fully understands the contents of this affidavit which have also been read out and explained by me to him.

OATH COMMISSIONER.

SB/1454/87
19/10/87

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH AT ALLAHABAD.

Claim petition no.459 of 1987.

Kashi Prasad ....Applicant

V e r s u s.

Union or India and others .....Respondents.

ANNEXURE NO. RA 1

Registered A.D.

From

Kashi Prasad T.O.
Sitapur.

To

Shri A.K.Gupta E.O.
Accounts Officer
Office of the D.E.Tepegrahs
Lucknow. U.P.

Sir,

Kindly refer to procedings dated 6.3.81 at your office at Lucknow regarding Rule 14 case against me.

My defence nominee will be Shri J.N.Srivastava Post Master Sitapur. His consent is given and he has only one case as defence nominee. In this regpect kindly intimate the next date of hearing i.e. 6.4.81 to my defence nominee and arrange his relief through the

A/194

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH AT ALLAHABAD.

Claim petition No.459 of 1987.

Kashi Prasad.....Applicant.

Versus.

Union of India and others.....Respondents.

ANNEXURE NO. RA- 2.

ENQUIRY PROCEEDINGS AGAINST SHRI KASHI PRASAD,T.O. SITAPUR UNDER CCS(CCA)RULES,1965.

Dated Lucknow the 6-4-1981.

Enquiry proceedings against the above official was held today the 6th.April,1981 at 12.00 hrs. in the office of the D.E.T.Lucknow. The following were present:-

1. Shri A.K.Gupta .... Enquiry Officer.
2. Shri S.D.Misra .... Presenting Officer.
3. Shri Kashi Prasad .... Charged official.

The defence counsel Shri J.N.Srivastava, Post Master ,Sitapur did not turn up due to sickness and some unavoidable circumstances as mentioned by Shri Kashi Prasad, T.O. charged official in his application dated 6.4.81 . Due to these reasons the inspection of documents could not be done by the charged official.

Annexure- RA-2.

The presenting officer was asked to supply the copies of the statements of the witnesses mentioned in the Annexure 4 of the chargesheet. The copies were made over to the charged official under proper receipt. The presenting officer also presented the documents to the Enquiry Officer as per Annexure 3 of the chargesheet alongwith other documents as per list attached.

The charged official demanded copies of the documents which is not permissble under the rules. Charged official was asked to inspect the listed documents and may take the extracts thereof, if desired.The charged official was again requested to supply the list of witnesses he proposes to examine on his behalf. He informed that the list of witnesses shall be furnished after the inspection of documents with the help of defence counsel.

Next date of enquiry is fixed for 6th.May, 1981 in the office of the D.E.T.Sitapur at 11.00 hours.

Sd/A.K.Gupta. 6/4/81
(A.K.Gupta)
ENQUIRY OFFICER.
Accounts Officer
Engineering Division,
Lucknow 226001 Phone-47196

Sd/S.D.Misra.
6.4.81
Presenting Offioer.

Sd/Kashi Prasad Telegraph
Charged Official.

Copy to D.E.T. Sitapur for information.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL

BENCH AT ALLAHABAD.

Claim Petition No.459 of 1987.

Kashi Prasad .....Applicant.

VERSUS.

Union of India and others.....Respondents.

ANNEXURE NO.RA-3.

Regd.

To

Shri S.C.Awasthi,
(Enquiry Officer)
A.D.T.(Commercial)
Office of the G.M.T. ,
U.P.Circle, Lucknow.

Sir,

In response to the enquiry proceedings on date 22.2.85 I beg to state that prosecution witnesses on behalf ot the Desceplinary authority have not veen examined upto the date. Therefore I am unable to produce the evidence in support of my defence at this stage. I will do so after all the prosecution witnesses on behalf of the desciplinary authority have been examined and the evidence from prosecution side will be closed totally.

ANNEXURE RA-3.

Further I have to say that the documents which are to be produced in my defence, some of them are available in the Civil Court and High Court of Allahabad and it will take some time to bring the certified copies of the same from there I will p produce all the documents as soon as I am able to collect them alongwith with the list of defence witnesses if necessary.

Yours faithfully,
Sd/ Kashi Prasad, T.O.
Telephone Exchange,
Sitapur.

Dated 25.2.85.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH AT ALLAHABAD.

Claim Petition No.459 of 1987.

Kashi Prasad .....Applicant.

V E R S U S.

Union of India and others.....Respondents.

ANNEXURE RA-4.

To

Shri S.C.Awasthi,
(E.O.)
A.D.T.(Commercial)
O/O G.M.T.U.P.Circle, Lucknow.
at Sitapur.

Subject:- List of D/withesses in addition and production of D/Documents in my defence.

Sir,

Kindly refer to my application dated 1.4.85 whereas I requested your goodself to send the disputed documents to Shri S.P.Gupta,Hand Writing Expert, Civil Courts compount,Lucknow for his opinion. I again request you to kindly do the needful for the same.

Regarding submission of D/Documents I beg to produce following documents which are available with me as D/Documents in my defence .Other some D/Documentsare available in Civil Courts and High Court of Allahabad will be submitted soon

ANNEXURE RA- 4.

when they are (certified copies) are available from there if you permit me .

In this regard my application dated 14.7.82 may kindly be also referred for some D/Documents from D.E.T. A.D.

1.(Photo state)copy paper No.1 Copy of Suit No.814/6

2. " " paper No.2 Copy of suit No.470 of 70 against Sri P.M.Srivastava the then D.E.T.Allahabad.

3. " " Paper No.3 Copy of application dated 13.1.70 tp D.E.T.Alld.

4. " " paper No.4 Copy of application dated 25.11.69.

5. " " Paper No.5 Copy of F.I.R. against D.E.T. Alld.dated 29.11.69.

6. " " paper No. 6. Copy of application dated 10.12.69 to S.S.P.Alld . and copy to P.M.G.Luckbow against Sri P.M.Srivastava, D.E.T.Alld.

Thus now it is clear that these documents show enemity of Sri P.M.Srivastava the then D.E.T. who had (falsly tried to ~~with~~ my services with the pre judiced of mind by mean of this forged case. Kindly accept these documents in my defence.

Yours faithfully,

Sd/ Kashi Prasad.

T.O.

Telephone Exchange,

Sitapur.

Dated at STP
25.7.85.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL

BENCH AT ALLAHABAD.

Claim Petition No.459 of 1987.

Kashi Prasad .....Applicant

V E R S U S.

Union of India and others.....Respondents.

ANNEXURE RA-5

By hand at Allahabad.

To

The Enquiry Officer,
(S.D.O.T. Lmp.Kheri at Allahabad.)

Sir,

Due to sickness of his wife my defence counsel Shri Vishnu Sahai O/A of A.E.T./K/Bareilly has not come to attend the enquiry date on 11.4.84 at Allahabad.

Therefore, it is requested to you that my right of cross examination to P.Ws. may kindly be kept reserved and another date may kindly be fixed to cross examination P.Ws. in the presence of my defence counsel as I am unable to cross them in his absence.

Yours faithfully,

Sd/ Kashi Prasad.

Telephone Exchange,

Sitapur.

Dated,

11.4.84.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONA L

BENCH AT ALLAHABAD.

Claim Petition No.459 of 1987.

Kashi Prasad .....Applicant.

V E R S U S.

Union of India and others.....Respondents.

ANNEXURE RA-6.

DEPARTMENT OF TELECOMMUNICATIONS

OFFICE OF THE GENERAL MANAGER TEDECOM,U.P.CIRCLE

LUCKBOW.

No.Con/Kashi Prasad/ Dated Feb.3,1986.

Enquiry proceedings against Shri Kashi Praoad T.O.Sitapur under CCS(CCS)Rules 1965 held on 29.1.86 at 11.00 hrs. in the office of Divisional Engineer Telegraphs Sitapur.

The following were present:-

1. Sri S.D.Misra, CBI/SPE Presenting Officer.
2. Sri Kashi Prasad,T.O.charged official.

The defence counsel Sri Vishnu Sahai did bot turb up .

On the enquiry by the undersigned Sri Kashi Prasad informed that he does bot wish to submit any defence documents other than those already submitted by him during proceedings held on 25th.July,1985. He also expressed that he will not produce any witness in his defence. He indicated that he wished to give a statement and requested that the same be recorded.

The statement given by the charged official Sri Kashi Prasad was recorded by the undersigned in presence of the presenting Officer who cross examined Sri Kashi Prasad . A Copy of the same was handed over to Sri Kashi Pradad.

ANNEXURE RA-6.

and to Sri S.D.Misra, Inspector C.B.I.(Presenting Officer).

As no further defence witnesdes are to be produced by the charged official the enquiry proceedings in the case are hereby closed.

Copies of the statement by Sri H.S.Tuteja AGE QD Calcutta dated 22.5.85 are being sent to the presending officer and to the charged official alongwith this memo as requested by them.

The presenting ~~oggaunt~~ officer will ~~xxx~~ now submit his written brief latest by 14th. Feb.86 to the undersigned.Thereafter submit his written brief by 25th. Feb'86.

Sd/ S.C.Awasthi.
ADT(OF) % GMT U.P.Circle,
Lucknow.

Copy forwarded for information to:-

1. Sri Kashi Prasad,T.O.Sitapur.
2. Sri Vishnu Sahai GA % DEPhones Bareilly .
3. Sri S.D.Misra, G.M.T-/GPE 7 Nawal Kishore Road, Lucknow.
4. Sri S.P.C.B.I. 7 Nawal Kishore Road,Lucknow.
5. Vigilance Officer % GMT U.P.Circle,Luckbow. w.r.to his file No.VID/M 10/68/1
6. Director Telecom (AA) Luckbow.N.K.Road,Lucknow.
7. DY.G.M.(admn) % GMT,U.P.Circle,Luckbow.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH AT ALLAHABAD.

Claim petition no.459 of 1987

Kashi Prasad..... Applicant

Versus

Union of India..... Respondents

Annexure No. A-7

Regd

To

Shri S.C.Awathi,
(Enquiry Officer)
A.D. T.O/P(Commercial)
O/o G.M.T.U.P.Circle,
Lucknow.

Subject: Reg. Submission of defence witnesses or documents etc.

Ref. Eqniry proceedings and my application dated 25.7.85.

Respected Sir,

With reference to above I beg to state that the following documents which are available in the Civil Court Allahabad in Suit no.814/1969 (decided in the court of Munsif West Allahabad in 1977), may kindly be ordered to be requisitioned to help my defence. These documents are very much essentaial and relevant in this case.

No further defence witness/defence document will be produced or asked as per list to be submitted to you except the following documents.

1. Exhibit no.29 to Ex.34 six medical bills submitted by the D.E.T.Allahabad in 1970 in the court ~~x~~ in rebuttal period of the bills Dec.67 to Feb.68 of Dr.M.C.Gupta Incharge, O.P.D. S.R.N. Hospital, Allahabad

2. Hand wiring experts opinion (Govt.expert S.P. C.I.D.Scientific Brnach, Lucknow) on the above disputed bills in the court.

3. Copy of judgment of the above case(Court held it to be ~~x~~ forged and did not bear my signatures and hand writing the matter ~~cost~~ dropped.

Yours faithfully,

Sd. Kashi Prasad

Dated 5.8.85.

T.O.
Telephone Exchange,
Sitapur.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH AT ALLAHABAD.

Claim Petition No.459 of 1987.

Kashi Prasad .....Applicant.

Versus.

Union of India and others.....Respondents.

ANNEXURE RA- 8.

INDIAN P. & T. DEPARTMENT.

Office of tho Mandliya Abhiyanta,

Bareilly Phones Abhiyantrik Mandal,

Rampur Bagh, Bareilly.

To

Sri S.C.Awasthi,
Enquiry Officer
(ADT O.P.)
O/O G.M.T.U.P.Lucknow.

Regd. Dated at 24.1.86

No.E.8/GEN/110

Sub:- Enquiry under rule 14 C.C.S.(ccA)Rules,1965 against Sri Kashi Prasad T.O.STP

---x---

Ref. Your no.Conf/K.Prasad dated 16.1.86.

---x---

Sri Vishnu Sahai, O.O.A of this office ha s intimated that he is unable to proceed due to illness. Some other date may be fixed at Bareilly as he has not been advised travelling by his doctor.

Sd/ Mandliya Abhiyanta.

Bareilly Phones Abhiyantric Mandal .
Rampur Bagh,Bareilly.

Copy to Sri Kashi Prasad T.O.Sitapur.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL

BENCH AT ALLAHABAD.

Claim Petition No.459 of 1987.

Kashi Prasad.....Applicant.

V E R S U S.

Union of India and others,,..... Respondents .

ANNEXURE RA-9.

Regd.

To

Shri S.C.Awasthi,
(Enquiry Officer)
A.D.T.(Commercial)
O/o G.M.T. U.P.Circle,
Hazaratganj, Lucknow.

Sir,

With reference to your letter No.Con/K.Pd. dated 16-04-85 due to an accident by motor cycle I have got leg fractured again and am unable to mov e and to attend enquiry date fixed on 22.05-85 at your office at Lucknow.

Therefore, it is requested to you that very kindly postpone the date of enquiry and other date may kindly be fixed at Sitapur to enable me to attend the ~~same~~ same.

I shall be greatful to you.

Yours faithfully,

Sd/ Kashi Prasad
18.5.85
T.O.
Telephone Exchange,
Sitqpur.

Dated 18.5.85.

Copy to D.E.T.Sitapur for information and n/a Pl.

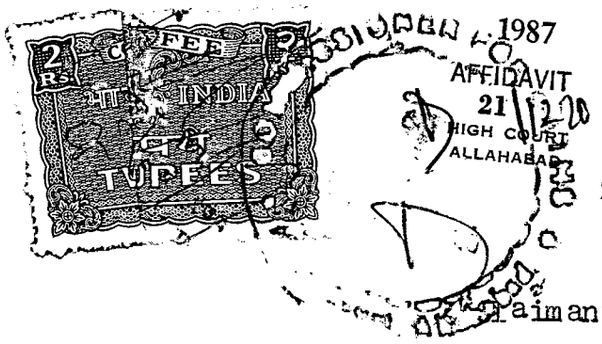
In The Central Administrative Tribunal, Additional Bench,

at

Allahabad.

Claim No. 459 of 1987

Fixed on 24.12.1987.



Kashi Prasad.. ..Claimant.

Vs.

Union of India and others.. ..Opp.Parties.

Supplementary Affidavit on behalf of Claimant in support of Claim petition.

I, Kashi Prasad aged about 45 years s/o Sri Puran Das resident of 498, Roti Godam, Sitapur do hereby solemnly affirm and state on oath as under:-

1. That deponent being claimant in the aforesaid claim petition is fully conversant with the facts of the case.

2. That contention of opposite parties to the effect that statement of H.S. Tuleja, Asstt. Govt. Examiner of questioned documents, Calcutta was recorded on 22.5.1985 is not cofrect as stated by opposite parties.

3. That correct & actual positiion is that Sri Tuteja submitted his written statement in his own hand writing on 22.5.1985 in the chamber of Sri S.C. Awasthi enquiry officer. The relevent portion evidencing such fact, as given in attested copy of Sri Tuteja's

Statement (as supplied to the deponent vide Enquiry Officer's ~~re~~ letter Dt. 3.2.86) is reproduced below in verbatim:-

"This statement in 5 pages was recorded in my own handwriting on 22.5.1985."

Sd/-
(H.S. Tuteja)
Asstt. Govt. Examiner of
Qd. Documents, Calcutta."

"Above statement (written) was submitted to the U/S by Shri H.S. Tuteja, A.G.E.Q.D. Calcutta on 22.5.85 in my chamber in the O/O G.M.T.U.P. Circle Lucknow."

Sd/-
(S.C. Awasthi)
E.O.

4. That this fact was left to be brought to the notice of Hon'ble Tribunal at earlier stage.

5. That in case opposite parties refuse to accept contents of paras 3 of this affidavit, deponent shall produce the attested copy of Sri Tuteja's Statement Dt. 22.5.1985 (as supplied to the deponent by Enquiry Officer vide his letter Dt. 3.2.86) before the Hon'ble Tribunal at the time of Final Hearing of the claim.

Deponent,

Kashi Prasad.

Dec. 24, 1987.

Verification

I, above named deponent do hereby verify that the contents of paragraph 1 to 5 of this affidavit are true to my own knowledge, and these of para 5 are believed to be true by me, that no part of it is false, and that nothing material has been concealed; So help me God.

Deponent,

Dec. 24, 1987. Kashi Prasad

(Kashi Prasad

I know and identify the deponent who has signed on this affidavit in my presence.

(A. K. Dixit)
Advocate,
High Court, Lucknow.

Solemnly affirmed before me on 24 day of Dec. 1987 at 12.20 a.m./p.m. by Sri Kashi Prasad the deponent who is identified by Sri A. K. Dixit Advocate High Court Lucknow.

I have satisfied my self by examining the deponent that he understands the contents of this affidavit which have been read out & explained by me to him.

Oath Commissioner,

OATH COMMISSIONER
HIGH COURT ALLAHABAD
Dt. 24/12/87

Government servant was punished on any ground personal to the servant concerned. This decision would have relevance only if a Government servant was dealt with in a legally permissible manner by the Government without any reference to his misconduct. Indeed, on the facts of that case the High Court proceeded on the basis that refixation of seniority was legally permissible. The decisions referred to in that judgment were also related to valid orders made by the Government dehors misconduct of the Government servants concerned. In all those decisions no punishment was inflicted upon the Government servant, for he did not satisfy either of the two tests laid down in Parshotam Lal Dhingra's case, 1958 SCR 828, (AIR 1958 SC 36). But, in the present case I have held that the Government has no power to "de-confirm" the respondents who were lawfully appointed as permanent Tahsildars. If that be so, their reduction in rank was punishment inflicted on them. They were punished though they were not guilty of any misconduct. The said judgment and the decisions referred to therein have, therefore, no application to the present case.

(24) I, therefore, hold that the respondents had a right to occupy a substantive rank in the posts of Tahsildars and their reduction as officiating Tahsildars was certainly reduction in rank as punishment.

(25) In this view, it is not necessary to express my view whether, if the reduction in rank of the respondents was not punishment, the High Court could have interfered under Art. 226 of the Constitution on the ground that the Government acted in derogation of the statutory rules.

(26) In the result, the appeals fail and are dismissed with costs.

ORDER

(27) In view of the opinion of the majority, the appeals are allowed. Costs throughout will be borne as incurred.

AH/V.B.B. Appeals allowed.

AIR 1964 Supreme Court 529 (V 51 C 67)

(From Calcutta : AIR 1958 Cal 264)

13th September, 1963

P. B. GAJENDRAGADKAR, K. SUBBA RAO, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR AND J. R. MUDHOLKAR, JJ.

Shashi Kumar Banerjee and others, Appellants v. Subodh Kumar Banerjee since deceased and after him his legal representatives and others, Respondents.

Civil Appeal No. 295 of 1960.

(a) **Succession Act (1925), Ss. 63 and 289 — Will — Mode of proof — Onus — Principles indicated — When court would grant probate — AIR 1958 Cal 264, Reversed.**

The mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by S. 63, Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the will being unnatural improbable or unfair in the light of relevant circumstances or there might be other indications in the will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last will of the testator. If the propounder himself takes part in the execution of the will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the will might be unnatural and might cut off wholly or in part near relations. AIR 1959 SC 443 and AIR 1962 SC 567, Foll. (Para 4)

The fact that the will in dispute is a holograph will and admittedly in the hand of the testator and in the last paragraph of the will the testator had stated that he had signed the will in the presence of the witnesses and the witnesses had signed it in his presence and in the presence of each other raise strong presumption of its regularity and of its being duly executed and attested. If there is hardly any suspicious circumstance attached to the will it will require very little evidence to prove due execution and attestation of the will. (Para 5)

Held on a review of the entire evidence in the case that due execution and attestation of the will in dispute had been proved as alleged by the propounders and they were entitled to the grant of probate. The High Court was not right in first considering the evidence of the ex-

pert and holding on its basis that the will could not have been signed in 1943, when there were practically no suspicious circumstances and all the circumstances pointed to the due execution and attestation of the will. The High Court was also not right in discarding the testimony of the attesting witnesses as false when all the probabilities of the case were against the expert's opinion and the direct testimony of the attesting witnesses was wholly inconsistent with it. AIR 1958 Cal 264, Reversed. (Paras 15, 21, 24)

(b) Evidence Act (1872), S. 45 — Evidence of Handwriting expert — Evidential value.

The expert's evidence as to handwriting is opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence. (Para 21)

Where the question is whether the will was executed on the date on which it purports to have been executed and there are no suspicious circumstances attached to the will, the mere opinion of the handwriting expert that it was executed much later cannot override the positive evidence of the attesting witnesses especially when he has not applied any chemical tests which according to his own opinion are essential. (Para 23)

(c) Evidence Act (1872), S. 3 — Appreciation of evidence — Evidence of attesting witnesses to a will — Slight discrepancy as to time of execution.

Where the evidence of both the attesting witnesses to the will is that the will was executed in the after-noon on the date on which it purported to have been executed, a slight discrepancy in the evidence of these witnesses as to the time when the will was executed is not so serious as to destroy the value of their evidence especially when the witnesses were giving evidence after 8 or 9 years after the execution of the will. (Para 17)

(d) Evidence Act (1872), S. 3 — Appreciation of evidence — Chance witness.

The mere fact that the attesting witnesses to a will happen to be chance witnesses is no ground for disbelieving their evidence. It may be that it is more usual for witnesses to be called when a person is intending to execute a will; even so there is nothing impossible in advantage being taken of the accidental presence of witnesses in this connection. (Para 16)

Cases Referred: Courtwise Chronological Paras

(59) AIR 1959 SC 443 (V 46): 1959 Supp (1) SCR 426, H. Venkatachala Iyengar v. B. N. Thimmajamma 4

('62) AIR 1962 SC 567 (V 49): (1962) 3 SCR 195, Rani Purnima Devi v. Khagendra Narayan Dev 4

Mr. N. C. Chatterjee, Senior Advocate, (Mr. D. N. Mukherjee, Advocate, with him), for Appellants; Mr. H. N. Sanyal, Solicitor-General of India, (Mr. P. K. Chatterjee, Advocate, with him), for Respondents Nos. 1, 2 (ii) to (viii) and 3 to 8.

The following Judgment of the Court was delivered by

WANCHOO, J.:

This is an appeal on a certificate granted by the Calcutta High Court. The appellants are the sons of Ramtaran Banerjee deceased (hereinafter referred to as the testator). They had been appointed executors under a will purported to have been executed by the testator on August 29, 1943. The testator was about 97 years old when he died on April 1, 1947. The appellants applied for probate of the will in the court of the District Judge in June 1947. Their case was that the will in dispute was the last will and testament of the testator and had been duly executed. The petition was opposed by Subodh Kumar Banerjee and Sukumar Banerjee who are also sons of the testator as well as by the decendants of Sushil Kumar Banerjee and Sanat Kumar Banerjee, two other sons of the testator who had predeceased him. The main ground of opposition was that the will had not been properly executed and attested, though it was also contended that it was not genuine, and the testator did not have testamentary capacity at the time of signing the alleged will and that the execution of the will had been obtained by undue influence, fraudulent misrepresentation and coercion.

(2) Four main issues arose on these pleadings, namely,—

(1) Is the will genuine?

(2) Has the will been properly executed and attested?

(3) Had the testator testamentary capacity at the time of the signing of the alleged will?

(4) Was the execution of the will obtained by undue influence, fraudulent representation and coercion, as alleged?

The District Judge held on the evidence that though the testator might have been enfeebled in body, he retained a sound and disposing mind almost upto the last moment of his life, and one of the last documents executed by the testator which was attested by one of the caveators himself, was dated March 3, 1947. The issue as to undue influence, fraudulent misrepresentation and coercion was abandoned and was thus answered in favour of the appellants. The Dis-

trict Judge also held that due execution and attestation of the will had been proved and that the will was genuine. In consequence he granted probate with a copy of the will attached to the appellants.

(3) The present respondents then went in appeal to the High Court, and the only issue that was urged before the High Court was with respect to the due execution and attestation of the will. The main contention in that behalf was that though the will appeared to be dated August 29, 1943, the signature of the testator appearing at the bottom of the will could not have been made in 1943, and reliance in this connection was placed on the evidence of a handwriting expert. The High Court first examined the evidence of the handwriting expert as to the date on which the signature appearing at the bottom of the will could have been made. The High Court differed from the trial court which had also considered the evidence of the expert and had refused to rely upon it in preference to the evidence of the attesting witnesses and came to the conclusion, relying on the evidence of the expert, that the signature could not have been put at the foot of the will in the year 1943 and similarly the names on the plan attached to the will could not have been written in 1943. Therefore having come to this conclusion, the High Court held that that was the end of the case of the propounders and the attesting witnesses must also be held to have deposed falsely. Having reached this conclusion, the High Court then went on to consider the evidence of the attesting witnesses and said that independently however of the view expressed by it as to the evidence of the expert it was not possible to rely on the evidence of the two attesting witnesses and consequently found that due execution and attestation of the will had not been proved. On this finding, the High Court reversed the judgment of the District Judge and rejected the petition for probate. As the High Court's judgment was one of reversal and the amount involved was over rupees twenty thousand, the High Court granted a certificate of fitness to enable the appellants to appeal to this Court; and that is how the matter has come up before us.

(4) The principles which govern the proving of a will are well settled; (see H. Venkatachala Iyengar v. B. N. Thimmajamma, 1959 Supp (1) SCR 426 : (AIR 1959 SC 443) and Rani Purnima Devi v. Khagendra Narayan Dev, (1962) 3 SCR 195 : (AIR 1962 SC 567). The mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by S. 63 of the Indian Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the will being unnatural improbable or unfair in the light of relevant circumstances or there might be other indications in the will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last will of the testator. If the propounder himself takes part in the execution of the will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the will might be unnatural and might cut off wholly or in part near relations. It is in the light of these settled principles that we have to consider whether the appellants have succeeded in establishing that the will was duly executed and attested.

(5) Before we consider the evidence as to attestation, there are certain preliminary facts which are not in dispute and which may be set out. The testator was a man of great wealth and a well known lawyer of Calcutta. Though he retired from the Bar in 1935, he continued to be the elected President of the Alipore Bar Association till the end of 1946. He died at the very advanced age of 97 and was about 93 years old when the will in dispute is said to have been executed. He was the head of a large family, having seven sons, five daughters and numerous grand-children. His wife died on July 2, 1945. Two of his sons, Sushil and Sanat had predeceased him. Before his death the testator had already made provision for his heirs by executing a number of documents. The scheme he used was to grant a perpetual lease of the property in favour of the person whom he wanted to benefit; ultimately the reversionary interest in the leased property which the testator had was also conveyed to the same child. In this manner he had disposed of property worth about rupees sixty lacs, half to the pro-

propounders, (namely, the appellants) and half to the caveators (namely, the respondents). The will in dispute refers to the remaining property which is said to be valued at rupees three lacs only. It is witnessed by two persons, namely, Manmathanath Mookerjee and Sambhunath Munshi. The entire will is in the handwriting of the testator and has been corrected in various places and the corrections have been initialled by the testator. It is not in dispute that the body of the will was written out by the testator between January and March 1943, leaving some blanks here and there, particularly in relation to the numbers of immovable properties disposed of and also in some cases the name of the particular legatee to whom the properties were to go. It also appears that the testator suffered from a severe illness in July 1943 and at one time his life was despaired of. It was after recovery from this serious illness that the will in dispute is alleged to have been signed by him on August 29, 1943. It is also not in dispute that the signature at the bottom of the will is the signature of the testator. Further though at one time there was dispute whether the date under the signature was written by the testator, the respondents have failed to prove that the date "29-8-1943" is not in the handwriting of the testator. The dispositions in the will are in favour of the various sons and grandsons of the testator and also of his wife, and wherever the testator had deprived any of his descendants of benefit under the will he has given reasons for the same. Further the will recites at the end that the testator had signed it in the presence of the attesting witnesses and that the attesting witnesses had seen the testator signing it and that the attesting witnesses had attested it in the presence of the testator and of each other. In view of these facts the High Court had also to recognize that the will could by no means be said to be an unnatural document. There is no evidence to show that the propounders (namely, the appellants) had taken any part in the execution of the will. We shall later refer to the evidence of the attesting witnesses which shows that the testator had cautioned them not to speak of the will and to keep the fact of their having attested it secret. The issue as to undue influence, fraudulent misrepresentation and coercion was, according to the District Judge, "clearly, categorically and unconditionally abandoned" by the respondents. There can also be no doubt that on the evidence, the testator was in a sound and disposing state of mind and had full testamentary capacity not only on August 29, 1943 when the will purports to have been executed but even almost upto the last day of his life, for he had executed many documents in 1944, 1945 and 1946 and the last of such documents was executed on March 3, 1947 to which one of the caveators was an attesting witness. In the High Court no argument appears to have been addressed against the finding of the District Judge that the testator had full testamentary capacity almost upto the last day of his death. Further the fact that the will is a holograph will and admittedly in the hand of the testator and in the last paragraph of the will the testator had stated that he had signed the will in the presence of the witnesses and the witnesses had signed it in his presence and in the presence of each other raise strong presumption of its regularity and of its being duly executed and attested. On these facts there is hardly any suspicious circumstance attached to this will and it will in our opinion require very little evidence to prove due execution and attestation of the will. There is no doubt about the genuineness of the signature of the testator, for it is admitted that the signature at the foot of the will is his. The condition of the testator's mind is also not in doubt and he apparently had full testamentary capacity right upto March 1947, even though he was an oldman of about 97 when he died on April 1, 1947. The dispositions made in the will are by no means unnatural and where the testator has deprived any of his descendants of any share of his remaining property he has given reasons for it. Besides he had already disposed of the large bulk of his property worth about rupees sixty lacs and the will only deals with a small residue worth about rupees three lacs. There is nothing to show that the dispositions were not the result of the free will and mind of the testator. Further, the propounders (namely, the appellants) had nothing to do with the execution of the will and thus there are really no suspicious circumstances at all in this case. All that was required was to formally prove it, though the signature of the testator was admitted and it was also admitted that the whole will was in his handwriting. It is in the background of these circumstances that we have to consider the evidence of the two attesting witnesses and of the handwriting expert on whose opinion alone practically the High Court has held that the will was not duly executed and attested.

(6) Before we come to the evidence of these three witnesses mentioned above we should like to refer to one other circumstance, which appears in this case. The evidence is that some time after the will had been executed it was handed over by the testator to his son Soshi. The will was in a closed envelope and on the top of that the testator had written "Soshi preserve this my will" and had signed that. It is not in dispute that the writing and the signature on this envelope are also in the hand of the testator. Soshi kept this envelope with him and after the death of the testator, he

and his brother Sunil went with it to Birendra Nath Lahiri, an advocate. When the advocate saw the envelope it was closed. He did not open it. He advised them to give notice to all the heirs of the testator and fix a date and place for the opening of the envelope. They therefore asked him to issue the notice and gave him the names of all the heirs. He then issued a notice to all the heirs including the caveators-respondents telling them that the last will and testament of the testator had been handed over to him, that he would open it on May 8, 1947 between 7 p.m. and 7-30 p.m. and requested them to be present at his place either in person or through some agent in order to witness the opening of the envelope. In reply to this notice, two of the heirs, namely, Sukumar Banerjee and Provat Kumar sent replies; but they did not attend at the time and place fixed by Lahiri. The only persons to attend were the three appellants and one Kartick Mukherjee, who is a son-in-law of the testator and husband of one of the daughters named Nihar Bala. Thereafter the envelope was opened and it is no one's case that at that time the will was not in the same condition in which it was when it was filed in court along with the probate application. Therefore when the will was opened on May 8, 1947, it bore the signature of the testator as well as the attestation of the attesting witnesses. This again is a very important circumstance in favour of the genuineness and due execution and attestation of the will and is perhaps the reason why the respondents did not come forward with a positive case as to the will having been attested after the death of the testator.

(7) This brings us to the main question which has been debated before us, namely, the due execution and attestation of the will. The respondents' case in this connection appears to be that the date which appears on the will as the date of execution thereof is not the date on which the will was executed by the testator but that it was executed at a much later date and was thus not duly executed and attested. We have therefore to examine the evidence of the attesting witnesses in this connection and what the learned counsel for the appellants calls intrinsic evidence in the will itself to show that it must have been executed and attested on August 29, 1943 as it purports to be, for the fact that the will is in the handwriting of the testator and bears his signature is not in dispute. The respondents mainly relied on the evidence of the handwriting expert and their case as based on that evidence was that in 1943, 1944 and 1945 there was no tremor in the handwriting of the testator and that tremor appeared in his handwriting from 1946 and went on increasing till his death in 1947. The expert's evidence further is that the writing in the body of the will is without tremor while the signature at the bottom of it and initials in the margin on the corrections showed tremor and therefore the will must have been signed after 1945 and not in August 1943, as it purports to be. We shall deal with the evidence of the expert later; but it is pertinent to point out here that we cannot understand when the testator admittedly signed the will even according to the respondents, though sometime in 1946 why he should have antedated it to August 1943. It is in this connection that the finding of the District Judge that the testator was possessed of full testamentary capacity almost upto the moment of his death, certainly upto March 1947, which does not appear to have been challenged before the High Court, assumes great importance. If the testator had not signed this will in 1943 as it purports to be and if he was possessed of full testamentary capacity in 1946 as he must in our opinion be held to be and was in fact signing this will in 1946, we fail to see why he should not put on it the date in 1946 on which according to the respondents he actually signed the will and get it attested on that date. The whole argument therefore based on the theory of tremor put forward by the handwriting expert appears to us to be of no help to the respondents; for the testator having retained full mental capacity and power of judgment till almost the last moment of his life, it does not stand to reason that he would antedate the will if he really signed it late in 1946. Once therefore it is admitted that the signature on the will is that of the testator, the theory that it is antedated by him can be accepted only if the expert's evidence is so convincing that the extreme improbability attaching to the said theory can be safely rejected.

(8) Turning now to the intrinsic evidence in the will itself, to which reference has been made on behalf of the appellants, we find that there are as many as six circumstances which go to show that the date on which the will purports to have been executed, namely, August 29, 1943, must be the correct date and that a will containing the provisions which this will contains could not have been executed late in 1946. The first circumstance to which reference may be made is that it makes provision for the wife of the testator and provides for consultation with her in case there is any dispute between the three executors. Now it is not in dispute that the wife of the testator died in 1945; as such it would certainly be strange—if not impossible—to find a provision in the will for the wife and also a provision to the effect that the wife should be consulted whenever there was a dispute between the executors appointed under the will.

(9) The next circumstance is that while providing for a monthly allowance for his daughter Sushila, the testator says that she was living with her sons in her house. It is admitted that Sushila came to live with her father in 1945, shortly before the death of her mother and stayed on till the testator died. In such circumstances it is extremely unlikely that the testator who had made corrections in the will before he signed it would not correct this part of it.

(10) The third circumstance which is relied on is with respect to Nihar Bala, a daughter of the testator, to whom a bequest was made in the will and who is the wife of Kartick Mukherjee. The testator said in the will that her husband was a Senior Stock Varifier on a monthly pay of Rs. 300/-. Now it is in evidence that Kartick retired early in 1946 and his wife Nihar Bala asked in January 1947 for a monthly allowance which the testator provided for her. It is said that if this will was signed by the testator late in 1946 he would not say therein that his son-in-law was getting Rs. 300/- per mensem when in fact he had retired.

(11) The fourth circumstance which is relied on is that the will says that Shivendra, a son of another daughter Rani Devi alias Renuke is preparing for his B.A. examination. Now it is not disputed that Shivendra had passed his B.A. Examination in 1944. Therefore it is said that if this will was signed in 1946 it could not have contained this recital about Shivendra and in consequence it must have been signed in 1943, which it purports to be.

(12) The fifth circumstance which is relied on is that the will mentions that Sukumar's wife was alive for the testator when depriving Sukumar of any share in the property has said that he and his wife have no children and Sukumar's income is more than sufficient to maintain him and his wife in ease and comfort. Now there is no dispute that Sukumar's wife died in October 1943. It is therefore said that if this will was being signed in 1946, the testator could not have used words in it to indicate that Sukumar's wife was alive; this could only happen if the will was really signed in August 1943.

(13) Lastly, the will devised premises No. 76 Hazara Road in favour of Sashi, but on January 26, 1946, the testator had given away this property to Bimal. Consequently it is said that if the will was really signed in late 1946, such a bequest could not possibly appear therein.

(14) These circumstances afford in our opinion intrinsic evidence of the fact that the will must have been signed in August 1943. On that basis all these recitals in the will would be correct and appropriate. In reply however it is urged on behalf of the respondents that most of these circumstances do not go to the root of the matter inasmuch as they do not affect the dispositions made by the will. It is said that the will was undoubtedly written out between January and March 1943 at which time these recitals would be correct and that it may be that the testator did not worry to make any correction therein when he actually signed the will late in 1946. These explanations though technically possible are hardly satisfactory. We are of opinion that it is most unlikely that the testator would not correct these recitals in the will if he was really signing it in 1946 as he did make some corrections and the probabilities therefore indicate that the will was signed in 1943 as it purports to be. Further it was admitted in the High Court that it was not possible for the respondents to explain how all these recitals came to be in the will; if that is so and if the respondents are unable to explain how all these recitals came to be in the will, they in our opinion clearly support the case of the appellants that the will was written out between January to March 1943 and signed in August 1943. In any case though some of the recitals are of a minor nature, there are two matters which in our opinion could not have appeared in a will signed late in 1946. These two matters are, namely, (1) provision for the wife when she undoubtedly died in 1945, and (2) the disposition of property No. 76 Hazara Road. We cannot accept the argument that these matters might have escaped the attention of the testator when he signed the will late in 1946 for there was nothing wrong with him till late 1946 which would allow such defects to creep into this will. We therefore agree with the contention on behalf of the appellants that these circumstances tend to show that the will must have been signed in August 1943 as it purports to be.

(15) This brings us to the oral evidence of two attesting witnesses and the handwriting expert. We must, with respect, say that the High Court was not right in first considering the evidence of the expert and holding on its basis that the will could not have been signed in 1943, in a case of this kind where there were practically no suspicious circumstances and where all the circumstances point to the due execution and attestation of the will. It is true that after having considered the evidence of the expert and having said that there was an end of the case of the propounders and the attesting witnesses must also be held to be untruthful once the evidence of the expert was believed, the High Court has gone on to consider the evidence of the attesting witnesses and has said that it was doing so independently of the view expressed by it as to the evidence of the expert. We propose therefore to take the evidence of

the two attesting witnesses first to see whether in the circumstances of this case when we are dealing with a holograph will and when there are practically no suspicious circumstances and the intrinsic evidence in the will itself points to its execution when it purports to have been executed we can rely on that evidence. The two attesting witnesses are Manmathanath Mookerjee and Sambhunath Munshi. Manmathanath Mookerjee is the father-in-law of Sunil, one of the propounders and to that extent he is certainly interested in supporting the propounders' case. It may also be conceded that in certain respects he has not been as straight forward as he should have been, particularly with respect to his dealings with his son-in-law. But he is a respectable man and his son-in-law was not in any way concerned with the execution of this will and did not get any great advantage out of it except that one of the sons Sukumar was disinherited by this will and this had increased his share a little; but that was also the case with the shares of the other descendants of the testator. Manmathanath Mookerjee was examined on commission and was cross-examined at inordinate length, sometimes on matters which were not very relevant to the point on which he was giving evidence, namely, the attestation of the will in dispute. But in spite of the interest he has in his son-in-law, Sunil and in spite of his unsatisfactory replies with respect to his dealings with Sunil, it seems to us that there is really no sufficient reason to disbelieve him when he says that he attested this will at the instance and in the presence of the testator and that the testator signed it in his presence and that of Sambhunath Munshi and that they signed it in his presence and in each other's presence.

(16) Let us therefore examine the reasons which led the High Court to place no reliance on the evidence of Manmathanath Mookerjee and Sambhunath Munshi. Manmathanath's statement is that he happened to go that day to inspect a house belonging to his father's debutter estate at Rustomjee Street which is near where the testator used to live. Therefore he went to see the testator because his usual practice was that whenever he was in the locality in which the testator lived and he had time at his disposal he always went round to see him. Similarly the evidence of Shambhunath Munshi was that he went to see the testator in order to hand over Glucose and Horlicks which he was asked to procure for the testator as in those days Glucose and Horlicks were difficult to get. Thus it was by chance that the two attesting witnesses happened to be there when the testator asked them to attest the will. The argument on behalf of the respondents is that if the testator wanted to execute the will he would have sent for these witnesses and it is too much to believe that they happened to be there and the testator took advantage of their presence. It may be that it is more usual for witnesses to be called when a person is intending to execute a will; even so there is nothing impossible in advantage being taken of the accidental presence of witnesses in this connection. Further if these two witnesses were not witnesses of truth they could easily have stated that they were called by the testator and in the circumstances of this case nobody would have been able to disprove that statement. It seems to us clear therefore that the testator took advantage of the accidental presence of these two witnesses whom he knew well from before and asked them to attest the will. Nor do we think there was any such relationship between Shambunath Munshi and Manmathanath Mookerjee or between Shambhunath Munshi and Sunil and Sashi as to impel Shambunath to give false evidence as an attesting witness.

(17) Stress however has been laid on a slight discrepancy in the evidence of the two attesting witnesses as to the time of the execution of the will. According to Sambhunath the will is said to have been executed at about 3-0 p.m. and it took about 45 minutes for the testator to complete the will by filling up the blank spaces therein and correcting it here and there. Sambhunath's statement also is that he arrived about noon at the house of the testator and shortly thereafter Manmathanath Mookerjee arrived. On the other hand, the evidence of Manmathanath is that he arrived at about 3-30 p.m. and thereafter the testator brought the will, filled up the blanks and made corrections in it and then the execution and attestation took place. So according to this statement the will must have been executed and attested at about 4-30 p. m. Further, according to Sambhunath Munshi, he stayed at the place for 2½ hours and Manmathanath Mookerjee came only a short time after he arrived. There is no doubt that there are these discrepancies as to time. But we are of opinion that the discrepancies are not so serious as to make us distrust the evidence of the two attesting witnesses. That evidence in substance shows that the will was executed and attested sometime in the afternoon of August 29, 1943. Sambhunath would place it somewhere between 1 p.m. and 3-30 p. m. while Manmathanath places it somewhere between 3 p.m. and 5 p.m. Considering that these witnesses were giving evidence almost 5 or 9 years after the execution of the will, this discrepancy in time is not so serious as to destroy the value of their evidence. In substance, it shows that the execution of the will took place in the afternoon according to both the witnesses; this is not a case where one witness says that execution took place in the morning while the

other ways that it took place in the evening, which of course may introduce some infirmity in the evidence.

(18) It was also urged that it was most unlikely that Manmathanath Mookerjee would go to inspect his house in Rustomjee Street on an afternoon in the month of August, as it would be a most inconvenient time for a person of his status. But if the time would be inconvenient to a person of status, we fail to see why we should not believe such a person when he says that he actually did go for a particular purpose to a particular place at a particular time. Some criticism was also made about Manmathanath's statement that he did not know in which room his daughter used to live in the testator's house. We fail to see how this statement affects the credibility of the witness, for it is not disputed that the witness being the father-in-law of the testator's son used to go to the testator's house as and when occasions arose. Some criticism was also made as to whether Manmathanath wrote the word "witness" on the plan attached to the will. When asked about it he stated that he did not remember, which seems to us to be a perfectly understandable answer in connection with a matter about which evidence was being given after 8 or 9 years. Stress was also laid on some discrepancies between the evidence of Manmathanath and Sambhunath Munshi as to whether some children had come during the time they were there and if so when. These are however matters of such minor detail that they cannot affect the main evidence of these two witnesses.

(19) Further so far as Sambhunath Munshi is concerned, he was obviously on good terms with the testator whom he had known for some years. All that has been said against him is that he was a tenant of Manmathanath. But he was a tax collector of the Calcutta Corporation and as such we do not think that he would be under the thumb of Manmathanath or his son-in-law simply because he was a tenant in Manmathanath's house. Otherwise there is no reason except for the discrepancies to which we have already referred and which in our opinion do not detract from the substantial truth of his statement, why his evidence should be disregarded. Taking therefore a broad view of the evidence of these two witnesses in the circumstances of this case to which we have already referred, we are of opinion that the evidence is reliable and does prove execution and attestation of the will in dispute.

(20) This brings us to the evidence of the handwriting expert. In his report, the expert said that the testator's pen control in spite of his advanced years was well maintained in 1943 and the specimens of the testator's writing in that year showed strength and ease and perfect control over the pen which was scarcely seen in the hand of an oldman of about 92 years. Further the report said that the change in the testator's pen control between the years 1943 and 1945 was so slight as to be scarcely noticeable. But in 1946 all of a sudden the pen control gave way and the hand shook and this resulted in deviations in the natural path of the strokes. The report further said that the main body of the will which is said to have been written in 1943 showed strength in pen control and pressure which is found in the specimens of 1943 but the additions and the signature at the bottom of the will as well as in the margin showed that they must have been written late in 1946 after the testator had lost pen control. In his evidence the expert made some changes in his opinion. He said that deterioration in the signature of the testator began from March 1946 and this he said because he had to admit that many signatures of January 1946 did not disclose any tremor. Further though in the report he had said that tremors began suddenly in 1946, in his evidence he admitted that in oldage tremors appeared gradually and increased with passage of time. Further he was cross-examined with respect to certain signatures of the testator of the period before 1946 which showed tremors and also with respect to certain signatures after 1946 which did not show tremors. He had to admit that some of these signatures shown to him did not conform to the pattern, namely, that there was pen control upto March 1946 and thereafter pen control was lost. He however explained these deviations from the pattern by reference to what he called "pen pressure" and "angularities" which according to him were different from loss of pen control. There is however no doubt that there are some signatures of the period upto March 1946 which show tremors and there are some signatures of the period after March 1946 which do not show much tremor. We may in this connection refer to Ex. E-36 and Ex. 23/1 of 1943, Ex. C/21 and Ex. E.53 of 1944 and Ex.E-75 of 1945 which clearly show tremors. Further Ex.C-38 of January 30, 1946 also clearly shows tremor and these are all before March 1946 from which time according to the expert tremor started. On the other hand Ex.E-100 of June 1946 is admitted by the expert himself as showing not much tremor. We must not also forget that the testator was an oldman of about 93 even in 1943 and therefore if sometimes his signatures were not as set as usual, that may be explained partly by his extreme oldage. We agree with the District Judge that no two signatures written by a person in the ordinary course of writing are precisely alike and differences may arise from various factors such as diversity in the makes of the pen, the level of the signatures the space it occupies etc. and

therefore it is difficult to generalise and it will indeed be dangerous to base a decision upon such inconclusive data. All that can be said after a review of all the signatures from 1943 is that as the testator's age increased his writing became more shaky, though as we have said before, there are examples of shaky signatures before 1946 and also examples of not so shaky signatures after 1945.

(21) This conclusion is in our opinion borne out by the various signatures on the will and the various writings therein which were made to fill in the blanks after the main body of the will had been written in January to March 1943. The full signature at the foot of the will does show some tremor but there are a number of signatures on the margin of the will which are not full and some of them do not show much tremor though some do. Further according to the evidence of the attesting witnesses, the plan attached to the will was also signed at the same time as the will and the expert admitted in his evidence that the signature of the testator on the plan showed superior control and was not like the signature at the bottom of the will which according to the expert showed failing pen control. If both these signatures were made on the same day—and there is no reason why they should not have been, whether in 1943 or late in 1946—, it is remarkable that the one on the will, according to the expert, shows failing pen control while the one on the plan does not disclose any tremor. The evidence of the expert therefore in these circumstances is not conclusive and cannot prove that the signature at the bottom of the will could not possibly have been made on August 29, 1943 on which date it purports to have been made. Besides it must not be forgotten that the will was executed in August 1943 soon after the testator had recovered from a serious illness and if there is some tremor here and there in his writing on that day, his illness may partly explain it. In this connection however our attention was drawn to some signatures made on September 1, 1943 only three days later which do not show much tremor: (see Ex. C/15). As we see the signature of September 1, 1943, we find that it is not quite so firm as some other signatures made later in the month of September. On the whole therefore we are not prepared to accept that the signature at the bottom of the will could not possibly have been made in August 1943 and must have been made late in 1946. We do not consider in the circumstances of this case that the evidence of the expert is conclusive and can falsify the evidence of the attesting witnesses and also the circumstances which go to show that this will must have been signed in 1943 as it purports to be. Besides it is necessary to observe that expert's evidence as to handwriting is opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence. In the present case all the probabilities are against the expert's opinion and the direct testimony of the two attesting witnesses which we accept is wholly inconsistent with it.

(22) Again it is not in dispute that the envelope containing the will bears the signature of the testator and the endorsement on it to the effect "Soshi, preserve this my will." According to Soshi, this closed envelope was given to him towards the end of December 1945 or beginning of January 1946. It would be safe to presume that both the signature and the endorsement on it were made at the same time. But if one looks at the endorsement one finds some tremor or deviation in the words "Soshi" and "preserve" while there is very little tremor or deviation in the signature of the testator. This shows that sometime even in the writing written at the same time tremor appeared in some words, even though other words did not have tremor. It may be that towards the latter part of 1946 and in 1947 the tremor became rather pronounced and was usually present all the time.

(23) Finally we may point out that the expert admitted in his evidence that it was only by a chemical test that it could be definitely stated whether a particular writing was of a particular year or period. He also admitted that he applied no chemical tests in this case. So his opinion cannot on his own showing have that value which it might have had if he had applied a chemical test. Besides we may add that Osborn on "Questioned Documents" at p. 464 says even with respect to chemical tests that "the chemical tests to determine age also, as a rule, are a mere excuse to make a guess and furnish no reliable data upon which a definite opinion can be based". In these circumstances the mere opinion of the expert cannot override the positive evidence of the attesting witnesses in a case like this where there are no suspicious circumstances.

(24) On the whole therefore it seems to us that it has not been established by the evidence of the expert that the signature at the bottom of the will could not be made on August 29, 1943 as deposed to by the attesting witnesses. In the circumstances of this case, the view taken by the District Judge of the evidence of the expert, namely, "it would be indeed dangerous to base a decision upon such inconclusive data" appears to us to be correct. We hold therefore on a review of the entire evidence that due execution and attestation of the will in dispute has been proved as alleged

By the propounders and so the appellants are entitled to probate with a copy of the will attached. We therefore allow the appeal, set aside the order of the High Court and restore that of the District Judge. The appellants will get their costs throughout.

AH/K.S.B. Appeal allowed.

AIR 1964 Supreme Court 538 (V 51 C 68)

(From Bombay: AIR 1959 Bom 414)

10th May, 1963

K. SUBBA RAO, RAGHUBAR DAYAL AND J. R. MUDHOLKAR, JJ.

Badat and Co., Bombay, Appellant v. East India Trading Co., Respondent.

Civil Appeal No. 39 of 1961.

(a) Conflict of Laws — Foreign judgments — Enforcement of foreign awards or foreign judgment based upon those awards — Principles — Doctrine of merger of original cause of action — Applicability to foreign judgments — Arbitration agreement entered into in Bombay — Award made in New York and confirmed by New York Supreme Court — Suit to enforce award or judgment in Bombay High Court — Held not maintainable — Civil P. C. (1908), S. 13 — Letters Patent (Bom), Cl. 12 — AIR 1959 Bom 414, Reversed.

Per Majority:

Apart from the provisions of the Arbitration, Protocol and Convention Act, 1937, foreign awards and foreign judgments based upon those awards are enforceable in India on the same grounds and in the same circumstances in which they are enforceable in England under the common law on grounds of justice, equity and good conscience. Further, by virtue of Cl. 19 of the Letters Patent (Bombay) read with Cl. 41 of the Charter of the Bombay High Court, in cases arising on the original side of the High Court of Bombay, English common law is applicable "as nearly as the circumstances of the place and the inhabitants admit." (Para 28)

There is a conflict of opinion on a number of points concerning the enforcement of foreign awards or judgments, based upon foreign awards. However, certain propositions appear to be clear. One is that where the award is followed by a judgment in a proceeding which is not merely formal but which permits of objections being taken to the validity of the award by the party against whom judgment is sought, the judgment will be enforceable in England. Even in that case, however, the plaintiff will have the right to sue on the original cause of action. The second principle is that even a foreign award will be enforced in England provided it satisfies mutatis mutandis the tests applicable for the enforcement of foreign judgments on the ground that it creates a contractual obligation arising out of submission to arbitration. Thus the foreign arbitration tribunal must have acted upon a valid submission within the limits of jurisdiction conferred by the submission and the award must be valid and final. On two matters connected with this there is difference of opinion. One is whether an award which is followed by a judgment can be enforced as an award in England or whether the judgment alone can be enforced. The other is whether an award which is not enforceable in the country in which it was made without obtaining an enforcement order or a judgment can be enforced in England or whether in such a case the only remedy is to sue on the original cause of action. The third principle is that a foreign judgment or a foreign award may be sued upon in England as giving good cause of action provided certain conditions are fulfilled one of which is that it has become final. (Paras 29, 31)

When a suit is brought by a plaintiff on the basis of an award it is not necessary for him to prove that the amount claimed was actually payable to him in respect of the dispute nor it is open to the defendants to challenge the validity of such an award on grounds like those which are available in India under S. 30 of the Arbitration Act. A very limited challenge to the claim based on the award is permissible to the defendants and that is one of the reasons why it is important to ascertain whether the award has in fact attained finality in the country in which it was made. (Para 39)

The judgment of a foreign sovereign is a command of that sovereign which has to be obeyed within the territorial limits of that sovereign's jurisdiction. On the principles of comity of nations it is, therefore, accorded international recognition provided it fulfils certain basic requirements. A foreign award, on the other hand, which is founded on a contract cannot claim the same international status. But even though it is so the award could be enforced in another country if it possesses an essential attribute of a judgment, viz., finality: (1959) 2 Q.B. 44, Ref. (Para 42)

Per Subba Rao, J.:

A foreign judgment constitutes a simple contract debt only and does not occasion a merger of original cause of action. Hence, by parity of reasoning, when a foreign judgment is obtained on the basis of a foreign arbitration award the award cannot merge in the judgment and a suit can be brought on the award provided it is completed in the manner prescribed by the law of that country. (Para 7)

For the purpose of enforcing an award there can be no distinction between an award

H/W evidence is not conclusive.

meaning which it has come to acquire in that Court over a number of years. No such technical meaning has been acquired by that word in this Court. It is therefore clear that the Bombay decision must be held confined to cases arising in that Court and has no application to the present case. I am therefore satisfied that the order relied upon by the petitioner only contains a 'solemn promise' to vacate the premises in question within five months and does not contain any undertaking by him to that effect to the Court. The result, therefore, is that this petition fails and is dismissed and the notice issued to opposite-party No. 1 is discharged, but in all the circumstances of the case I make no order as to costs. Petition dismissed.

K/JC

1967 AWR 422 (SC)

(SUPREME COURT)
V. RAMASWAMI, V. BHARGAVA AND RAGHUBAR DAYAL, JJ.
Criminal Appeal No. 43 of 1964.
Decided on September 2, 1966.

THE STATE OF GUJARAT (Appellant)

v.

VINAYA CHANDRA CHHOTA LAL PATHI (Respondent)

EVIDENCE ACT, 1872, S. 45—Expert opinion about handwriting of a particular person is relevant in view of Sec. 45 but is not conclusive—Evidence of complainant about handwriting of accused sufficient to establish offence—Examination of handwriting expert in support of complainant's evidence not necessary.

A Court is competent to compare the disputed writing of a person with others which are admitted or proved to be his writings. It may not be safe for a Court to record a finding about a person's writing in a certain document merely on the basis of comparison, but a Court can itself compare the writings in order to appreciate properly the other evidence produced before it in that regard. The opinion of a handwriting expert is also relevant in view of S. 45 of the Evidence Act, but that too is not conclusive. The sole evidence of an handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not. It follows that it is not essential that the handwriting expert must be examined in a case to prove or disprove the disputed writing.

It is not necessary to examine handwriting expert in support of complainant's evidence where the complainant's evidence about handwriting of accused is sufficient to establish offence against accused. (Para 10)

A. S. R. Chari, Senior Advocate, (M. V. Goswami and B. R. G. K. Achar, Advocates, with him), for Appellant.
V. S. Nayyar and H. M. Chenoy, Advocates, for Respondent.

RAGHUBAR DAYAL, J.—This appeal, by special leave, is by the State of Gujarat against the order of the Gujarat High Court acquitting the respondent of the offence u/S. 408 IPC.

2. The respondent was an employee of Nalinkant, PW 1, the sole proprietor of Arora Trading Company, in 1959. He was in service from 1954. It was his duty to withdraw moneys from the Union Bank of India Ltd., with which Nalinkant had an account. Nalinkant used to leave his cheque book with a few blank signed cheques with the respondent when he had to go out of Ahmedabad, the place of business. The prosecution case is that the respondent took advantage of such blank cheques, filled them up and cashed them from the Bank and misappropriated the amounts so received. He made no entries about such receipts in the petty cash book maintained by the firm.

3. Nalinkant was the only witness to prove that the relevant entries in the cheques and the signatures at the back of the cheques in token of having received the amounts from the Bank were of the respondent. Corroboration of his statement was sought from four documents two of which were documents said to have been handed over to Nalinkant by the respondent when the respondent's conduct of committing breach of trust with respect to certain items was found out on 14—12—1959. The other two documents were the respondent's statement as an accused in a criminal case and an application given by the respondent in another criminal case.

4. The respondent admitted his being the employee of Nalinkant and his duty to withdraw moneys from the Bank, but denied the other relevant allegations to the effect that it was he who filled in the cheques, withdrew the moneys from the bank and misappropriat-

ed the amounts so received.

5. The trial Court accepted the testimony of Nalinkant and convicted the respondent of the offence u/S. 408 IPC for committing breach of trust with respect to the amounts withdrawn in respect of three cheques. On appeal, the High Court acquitted the respondent. The learned Judge considered it unsafe to rely on the evidence of the complainant alone and held the various documents to be inadmissible in evidence.

6. Before dealing with the contentions for the parties in this Court, we may mention that the State of Gujarat has instituted five other criminal appeals Nos. 44 to 48 of 1964 against this very respondent against his acquittal by the High Court in five other cases in regard to his committing breach of trust with respect to various other amounts withdrawn by him from the Bank by filling in blank cheques which had been left duly signed with him by Nalinkant. The High Court's order of acquittal in those cases is based on the same grounds on which the order of acquittal under appeal is based. Consequently, learned counsel for the State and the respondent made their submissions with reference to the judgment of the High Court in this appeal.

7. Mr. Chari, for the State, has argued that the High Court was in error in holding the four documents to be inadmissible in evidence and in expressing the view that it was for the prosecution to rely upon the evidence of an handwriting expert on the question of the hand-writing of a person, as the hand writing of a person could be proved by other means.

8. In the present case it was proved by the complainant that the various entries in the cheques and the signatures on the reverse of the various cheques were in the hand-writing of the respondent. The complainant was competent to speak about them as the respondent had been his employee for a number of years. The complainant had many an occassion to see him write and sign.

9. No reason has been given by the learned Judge for differing with the view of the trial Court that the complainant was a reliable witness. The mere expression "it is not safe to rely upon the evidence of the complainant alone in a case like this" is not a sufficient ground for differing from the trial Court in its opinion about the credibility of the witness who had deposed before it.

10. This statement is not factually correct also as the trial Court had itself compared these writings and signatures with certain other writings which had been proved to be of the respondent. A Court is competent to compare the disputed writing of a person with others which are admitted or proved to be his writings. It may not be safe for a Court to record a finding about a person's writing in a certain document merely on the basis of comparison, but a Court can itself compare the writings in order to appreciate properly the other evidence produced before it in that regard. The opinion of a handwriting expert is also relevant in view of S. 45 of the Evidence Act, but that too is not conclusive. It has also been held that the sole evidence of an handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not. It follows that it is not essential that the handwriting expert must be examined in a case to prove or disprove the disputed writing. It was therefore not right for the learned Judge to consider it unsafe to rely upon the evidence of the complainant in a case like this, i.e., in a case in which no handwriting expert had been examined in support of his statement.

11. This is sufficient to set aside the order of the High Court acquitting the respondent, as the evidence of the complainant, when believed, is sufficient to establish the offence against the respondent. However, we shall discuss the admissibility of the four documents as we understand that it is really for a decision on that point that the State preferred this appeal.

12. One of the documents is a slip on which, according to the complainant, the respondent noted down the various amounts which he had misappropriated, after he had perused the counterfoils of the cheques. The respondent did this on 14—12—1959, when the complainant, on checking accounts with the statement of account received from the Bank, found that the two did not tally and, when, on questioning, the respondent admitted having misappro-

priated some amounts. This slip of paper mentions a number of cheques besides certain amounts received from certain persons. With respect to the cheques, their number, the date of the cheque or of withdrawal and the amounts, presumably the amounts withdrawn, are noted. The three cheques in the present case are mentioned in this list. It may be mentioned that most of the other cheques were the subject matter of the proceedings in the other cases which have given rise to the other five appeals.

13. The learned Judge rejected this document as inadmissible as, according to him, it did not convey any meaning and the document could not be read along with the explanation given by the complainant. In this, we are of opinion that the learned Judge was in error. A statement of the complainant about the circumstances in which this document was written and what it purported to indicate, is admissible. What is relevant for the case is what is ultimately proved and what is proved would depend on the statement of the complainant. His statement, if believed, establishes that the particulars noted on this slip relate to sums which were admitted by the respondent to have been misappropriated by him. The very fact that the details of the three cheques, the amounts drawn on which are said to have been misappropriated in this case, find a place in this list, bears out the statement of the complainant. The entries in this list, together with the statement of the complainant, make out a confession of the respondent to the effect that he had withdrawn the amounts of the cheques mentioned in the list and that he misappropriated them. This document therefore was admissible in evidence. In fact, the learned Judge himself, after observing that the document could not be admitted in evidence even if it be in the handwriting of the respondent,observed:

"that document can however be admitted as part of the extra-judicial confession said to have been made to the complainant".

14. The other document consists of a statement written by the respondent on December 14, 1959, subsequent to his writing out the first document, viz., the list of the various items misappropriated. The complainant has stated that the respondent wrote it on being asked by the complainant to give him a statement in writing so that he may be able to present the same before the income-tax authorities. He has further deposed that it was a voluntary statement of the respondent and that no threat or promise had been held out to him for making that writing. The learned Judge observed, with respect to this document, that there was nothing in that statement to show that it amounted to an admission, that there was no reference to the cheques which were the subject matter of the charge in the case and that a general statement that he had committed breach of trust by withdrawing the amount of the cheques did not amount to an admission. Curiously enough, the learned Judge observed a little later:

"Further, it amounts to an extra judicial confession, and in a case like this it is not safe to base a conviction on extra judicial confession."

It is true that there is no specification of the cheques which were cashed by the respondent and the amounts received and misappropriated. This vagueness of a sort is explained by the statement of the complainant and by the proof of the first document which gave the various amounts misappropriated. Apart from this, the statement makes reference to certain other facts which had a bearing on the question in issue in the present case. In this statement the respondent admits being entrusted from time to time with blank cheques bearing the complainant's signatures, his committing breach of trust by withdrawing big amounts from the bank by exchanging those cheques, especially during the ten months prior to December 14, 1959 and his not crediting the amounts of those cheques, presumably, in the accounts. It further mentions that the respondent had passed the writing out of his own sweet will and not on account of any improper pressure brought upon him. He further states that he had given this writing willingly on his being suspected and on one or two such cheques having been found out. In our opinion this document is clearly an admission of the circumst-

nces which have a bearing on the accusation brought against the respondent nd is thus admissible in evidence. In act, the admission in the document ogether with the statement of the complainant can also be treated as a confesion of the respondent's cashing the hree cheques, the subject matter of the harge in this case.

15. The learned Judge is not right n observing that it was not safe to base conviction on an extra-judicial conession. The conviction in this case was ot based merely on the extra-judicial onfession. There was the evidence of the omplainant against the respondent. he extra-judicial confession strongly orroborated that statement. This docuent too, therefore, was admissible in vidence and had been wrongly ignored y the learned Judge.

16. The other two documents were onsidered irrelevant and therefore indmissible in evidence. One of them is he statement of the respondent made nder S. 342 CrPC on September 3, 960, in a criminal case against him. he statements about the respondent's eing a clerk of the complainant and he admissions of the respondent in this tatement about the complainant's giving him cheques signed by him so that e could, whenever necessary, draw the mounts and about his maintaining he petty cash book and the circumstnces in which the defalcations were ound out and about the respondent's iving the writing dated December 14, 959 admitting the defalcations, are adissions for the purposes of the present se and as such this document was dmissible in evidence to prove the respndent's admissions with respect to ese facts.

17. The fourth document was an plication given by the respondent on tober 27, 1960 in another criminal se against him. The document, as a hole, is not of much use to the proution, but at the same time it cannot held to be inadmissible as it consists certain statements which could be d as admissions in his case even thoh the respondent had given such exnations with respect to his admisns as might have reduced their evidiary value.

18. We are of opinion that the documents handed over by the respondent to the complainant on December 14, 1959 and the statement of the respondent dated September 3, 1960 provide strong corroboration to the statement of the complainant.

19. The result is that this appeal must succeed. We accordingly allow the appeal, set aside the order of the High Court & restore that of the trial Court.
K/JC ——Appeal allowed.

B. R. JAMES, J.
Cr. Misc. No. 214 of 1956.
Distt. Aligarh.
Decided on July 27, 1956.
STATE (Applicant)
v.
JIWA RAM (Opp. party)

O CRIMINAL TRIAL—Bail—Accused committing non-bailable offence—Enlarged on bail—While on bail he commits another non-bailable offence—Abuses privilege of bail and does not deserve to remain on bail any longer—CrPC, 1898, S. 497. (Para 1)

ORDER—This application by the State seeks the cancellation of bail granted to one Jiwa Ram who had been arrested on a charge u/S. 457 IPC. Notice of the application has been served on Jiwa Ram but he has not entered appearance. The affidavit filed in support of the application shows that prior to the S. 457 case Jiwa Ram had been arrested in a case u/S. 454 IPC and enlarged on bail, and further that he was on bail for the first offence when he allegedly committed the second offence. This fact was apparently not brought to the notice of the learned Sessions Judge who granted him bail in the S. 457 case. An accused person who has abused the privilege of bail does not deserve to remain on bail any longer. Jiwa Ram's bail is therefore cancelled and he is directed to be taken into custody forthwith. He shall remain in custody for the pendency of his trial.
K/ML Application allowed.

It would thus be seen that the scheme framed by the Railways has now the stamp of approval of the Hon'ble Supreme Court and the Railways have to implement it in accordance with the directions given by the Supreme Court. We therefore see no reason why the case of the petitioners will not be covered by the scheme and they will get the benefit as envisaged in the scheme.

14. In view of the observations made above, we find no force in these petitions and they are not accordingly dismissed. Parties shall bear their own costs.

Petition dismissed.

[1987 UPLBEC (Tri) 41]

S. ZAHEER HASAN (V. C.) AND AJAY JOHRI (A.M.)

Regn. No. 13 of 1985, decided on July 14, 1986.

Ram Chandra Sharma **Applicant**

Versus

Director of Postal Services and another **Respondents**

Service—Removal from post of postman—Charge against applicant (postmen) that he has given wrong address of his residence—In disciplinery proceedings several infirmities and violating of natural justice found—Removal quashed.

In disciplinary proceedings a high degree of proof is not required as in criminal prosecution. The tribunal cannot re-examine and reassess the evidence produced in a departmental inquiry. A disciplinary proceeding does not stand on the same footing as criminal prosecution in which a high degree of proof is required. The departmental authorities are the sole judge of fact and if there be some legal evidence on which their finding is based, the adequacy of that evidence should not be permitted to be canvassed. It may be that in departmental proceedings technicalities of criminal law cannot be evoked and the strict mode of proof prescribed by the Evidence Act may not be applied with equal rigour, but even in desciplinary proceedings the charge framed against the public servant must be held to be proved before any punishment can be imposed and for proving a charge there should be legal evidence. In *S. D. Bhardwaj* v. *Union of India and others*, 1982 (II) All India Service Law Journal Page 515, it was held that statements of witnesses recorded during the preliminary inquiry at the back of the appellant could not be read by the Inquiry Officer. It was further observed that certain witnesses examined were not in a position to give direct evidence as they had no personal knowledge and their statements were based on information gathered in the course of preliminary inquiry. So, the court held that there was no evidence before the inquiry Officer on which he could come to the conclusion that the charge was proved. The statement of Robert Peters who is said to be residing in the adjoining quarters purports to have been recorded on 25-6-1980 during preliminary inquiry behind the back of the applicant. Robert Peters was never produced during the preliminary inquiry. So, his statement recorded during the inquiry behind the back of the applicant could not be read in evidence by the inquiry officer, and in this way, the inquiry was vitiated by the violation of rules of natural justice. After ignoring the statement of Robert Peters, are left with the statements of Mahadev Prasad. T. P. Pathak and K. C. Srivastava. Mahadav Prasad has not stated anything to show that the applicant was not residing in the aforesaid house. Similarly the statement of T. P. Pathak also does not suggest that the applicant was not residing in the aforesaid house during the relevant

period. Sri K. C. Srivastava belongs to Lucknow and he had come to Allahabad for holding inquiry. He had no personal knowledge. He made inquiries from certain persons. He has given two contradictory statements. However, he has no direct knowledge and with the help of his statement it cannot be legally proved that the applicant was not residing in the aforesaid house. There was no legal evidence on the file to prove that the applicant was not residing in that house. [Para 3]

In this view of the matter, the order of removal of the applicant from service is quashed. [Para 4]

Case-law.—(1982) II All India Service Law Journel 515—**Relied on.**

Counsel—G. S. Bhatt for applicant.

JUDGMENT

S. Zaheer Hasan, V. C.—This is an application under Section 19 of the Administrative Tribunals Act, 1985 for quashing the order of removal from service.

2. The applicant was postman as Post Man. He was Organising Secretary of the Union and used to highlight various irregularities thus incurring displeasure of the officers concerned. While he was posted as Postman at Kutchery Post Office at Allahabad, in a suit filed against Sri R. C. Misra, Dak Pal, he gave evidence against him. He highlighted certain irregularities of Sri R. K. Rai (the then respondent No. VI). The applicant was residing in House No. 410, Hanuman Nagar, Naini, Allahabad since 1-8-1978. He informed the Senior Superintendent of Post Offices, Allahabad on 21-8-1978 about the aforesaid facts (vide Annexure-'1' to the application,) during June, 1979 the applicant submitted following three medical bills for payment.

(i) MR. Bill relating to Sheo Babu aged about 3 years, 2-6-79 amounting to Rs. 286.70.

(ii) MR. Bill relating to Malti aged about 6 years 15.6.79 to 24.6.79 amounting to Rs. 277.80.

(iii) MR. Bill relating to Km. Veena Devi aged about 12 years, 2-6-79 to 15-6-79 amounting to Rs. 355.40.

In all these bills the applicant had shown his residence at 410, Hanuman Nagar, Naini, Allahabad. After due verification of the address and checking of the bills payments were made to the applicant. On 14-7-1979 the applicant informed the Senior Superintendent of Post Offices that he had left his aforesaid residence since 25-6-1979 (vide Annexure-'2' to the application). Sri Raghav Lal, Vigilance Officer made inquiry and reported that the address given by the applicant in those bills was incorrect. Later on an inquiry was set up by the Senior Superintendent of Post Offices, Allahabad against the applicant. The Inquiry Officer started departmental inquiry. The charge against the applicant was that he wrongly mentioned that he was residing at 410, Hanuman Nagar, Naini, Allahabad and he took undue advantage by making false assertion in those bills, Mahadev Prasad, T. P. Pathak and K. C. Srivastava were examined to prove this fact, and reliance was placed on the statement in writing alleged to have been given by Robert Peterson 25-6-1980 during preliminary inquiry behind the back of the applicant. The applicant denied the charge and examined himself as a witness. He produced R. P. Singh and Gaya Prased in his defence. It was held that the charge was proved and the applicant was ordered to be removed from service on 29-12-1984. Aggrieved by that order he preferred an appeal which was dismissed by respondent No. 1 on 29-10-1985. Now the applicant has challengad the order of removal before this Tribunal

24. In the result the petition is allowed. The Rule is made absolute. Under the circumstances there will be no order as to costs.

Petition allowed.

1981 LAB. I. C. 1546

(GUJARAT HIGH COURT)*

N. H. BHATT, J.

A. K. Roy Choudhury, Petitioner v. The Union of India, New Delhi and others, Respondents.

Special Civil Appln. No. 128 of 1979, D/-21-1-1981.

Constitution of India, Art. 311(2) — Compulsory retirement of Central Govt. employee by way of penalty — Comments and opinion of Central Vigilance Commission taken into account by disciplinary authority — Delinquent not given benefit of what was stated by Chief Vigilance Commissioner to disciplinary authority — Retirement order is invalid.

Where a Govt. servant was compulsorily retired from service by way of penalty for various charges alleged against him the order of retirement could be said to be bad at law when in the enquiry held, the comments and opinion of the Central Vigilance Commission which as per the Govt. practice was required to tender confidential comments and recommendations for the purpose of giving impartial, independent and technical advice to the disciplinary authority in disciplinary cases relating to gazetted work and for advising that penalty should be imposed were taken into account by the disciplinary authority passing the retirement order, without affording an opportunity to the delinquent employee to have the benefit of what the Chief Vigilance Commissioner stated to the disciplinary authority. (Para 5)

In judicial or quasi-judicial enquiries, there is nothing that can be said to be confidential. Any material that is employed against a delinquent to his prejudice has to be brought to his notice so that he may have his own say in that regard. It would not do for the department to say that as the comments and opinion and recommendations are confidential in character, they are not to be brought to the notice of the delinquent concerned. It is well-nigh possible that the Central Vigilance Commission might give its own reasons and express strong opinion against the delinquent employee. It is equally well-nigh possible that some other record also might have been made available to the Central Vigilance Commission in the form of earlier confidential records of the employee concerned. The opinion of an august body like the Central Vigilance Commission would obviously carry great weight with the disciplinary authority in reaching a final conclusion. At any rate, the possibility of such an influence cannot be negatived. (Para 5)

J. D. Ajmera, for Petitioner; A. P. Ravani for Respondent No. 3.

ORDER :— 1 to 4 x x x x x

5. From what has been quoted above, it is clear that the comments and opinion of the Central Vigilance Commission were taken into account by the disciplinary authority. It cannot do for the department to say that as these comments and opinion and recommendations are confidential in character, they are not to be brought to the notice of the delinquent concerned. In judicial or quasi-judicial enquiries, there is nothing that can be said to be confidential. Any material that is employed against a delinquent to his prejudice has to be brought to his notice so that he may have his own say in that regard. It is well-nigh possible that the Central Vigilance Commission might have given its own reasons and expressed strong opinion against the petitioner. It is equally well-nigh possible that some other record also might have been made available to the Central Vigilance Commission in the form of earlier confidential records of the employee concerned. The opinion of an august body like the Central Vigilance Commission would obviously carry great weight with the disciplinary authority in reaching a final conclusion. At any rate, the possibility of such an influence cannot be negatived.

6. x x x x x

Order according.

*Only portions approved for reporting by High Court are reported here.

S[illegible]ion of Mr. Majumdar cannot be upheld because if the Board had come to a firm finding that this conduct and acts on the part of the petitioner was a misconduct, the Board under any circumstances would not have extended the service of the petitioner from time to time till September 30, 1975. I am unable in consideration of the facts and circumstances of this case to accept the argument advanced by Mr. Majumdar on behalf of the petitioner on this score. On the other hand, Mr. Sircar has placed before me the records relating to this case and I find that there are materials which were before the Board and the Board on a consideration of those materials passed the impugned resolution. Whether those materials are sufficient or not it is not for the court to scrutinise. In such a case where a discretionary order passed by an authority is challenged on the ground that it is arbitrary, the only question which requires to be considered is whether there are materials before the authority concerned in reaching its decision or in making the impugned order. If there is some materials germane the court will at once uphold the order. It is not for the court to decide whether those materials are sufficient or not. Mr. Majumdar strenuously tried to contend that the averments made in para 8 of the affidavit-in-opposition cast a stigma on the service career of the petitioner. This argument is not available in this case for the simple reason that this is not a disciplinary proceeding and secondly the petitioner had already attained the age of superannuation and as such he has no right to remain in service unless and until the Board after considering the materials germane finds him otherwise suitable for extension of his service. It is needless to enter into a discussion on the decision cited by Mr. Majumdar in this connection. Of course where an order is subject to challenge in appeal or in revision under Art. 227 of the Constitution, the order ought to be a speaking order giving some reasons in its support as observed in AIR 1971 S C 862, Travancore Rayons v. Union of India. The executive or administrative authority in the fitness of things ought to have recorded reasons in making the order. But non-recording of reasons does not vitiate the order, as I have already held, the order was made on consideration of relevant materials on record.

7. On a consideration of the facts and circumstances of the case, I do not find that the order has been passed arbitrarily or on a total non-application of mind or there has been any non-observance of Regulation [illegible] of the Regulations in passing the said order. I have already held that the allegation of mala fide cannot be sustained, inasmuch as there is no specific pleading with particulars of mala fide in the writ petition. I may point out in this connection that the petitioner has attained 65 years of age some time in January 1979.

8. For all these reasons stated hereinbefore, I do not find any substance in this writ petition. The Rule is accordingly discharged.

9. There will be no order as to costs.

Petition dismissed.

1981 LAB. I. C. 1202

(DELHI HIGH COURT)

S. B. WAD. J.

O. P. Gupta, Petitioner v. Union of India and another, Respondents.

Civil Writ No. 638 of 1972. D/- 5-1-1981.

(A) Central Civil Services (Classification, Control and Appeal) Rules (1965), R. 11 — Fundamental Rules, R. 56 (j) — Compulsory retirement — No adverse remarks communicated to the delinquent from the date he was reinstated till he retired — General confidential reports of this period of two years immediately preceding retirement also not showing anything blameworthy against delinquent — Order of compulsory retirement cannot be sustained. 1980 Lab I C 1184 (S C) Foll. (Constitution of India, Art. 311).

(B) Fundamental Rules, R. 54 — Suspension — Suspension periods prolonged due to Government's ineptness and dilatoriness — Government cannot explain suspension orders found unjustified — Delinquent not delayed the proceedings — He would be entitled to full pay, allowances and increments for the suspension period — Suspension periods to be treated as period spent on duty.

There is no justification either in law or in equity to deny the petitioner his dues for a long period of 13 years. Under F. R. 54 Government is supposed to act bona fide and within a reasonable time. Inactivity or [illegible]

GY/GY/D197/81/LGC

part of the Government for such an ...onable period amounts to breach of ... (Paras 9, 10, 11)

Central Civil Services (Classification, ...trol and Appeal) Rules (1965) Rr. 14, 16 ... Departmental proceedings — Cannot be ...tinued after compulsory retirement of ...quent — (Constitution of India, ...311) — (Central Civil Services (Pesnion) ... (1972), R. 9 (2)).

There is no provision in the Rules either to ...ate or to continue the departmental ...ceedings against an erstwhile ...vernment servant who is retired or has ...n retired. (Para 12)

Where a person is dismissed or removed ...m Government service it can affect his ...ture employment or retiral benefits such as ...nsion but where a person has been ...mpulsorily retired, it does not amount to ...nishment, and no such consequences ...llow. (Para 15)

A Government servant can be ...mpulsorily retired on the overall ...essment of his work throughout his period ...f service and for removing the 'dead wood' ...public interest. The object is not to punish ...Government servant but to see that the ...lic service is protected from the servants ...o cannot positively contribute to it. In the ...ture nature of things, therefore, two ...ntradictory actions cannot be pursued by ...Government; (i) where no punishment is ...ended and (ii) where punishment is the ...ain object. The Government has purported ...continue the disciplinary proceedings ...inst the delinquent for major penalties. (Para 15)

The authorities failed to appreciate that a ...tion of compulsory retirement was taken ...n the departmental proceedings were ...ady pending for 13 years and had not ...minated. Perhaps the Government wanted ...close the chapter by this action. So long as ...Government does not cancel the order ...mpulsorily retiring the petitioner the ...ntinuation of the disciplinary proceedings ...annot be sustained in law. (Para 15)

...Quick conclusion of the disciplinary ...ceedings is both in the interest of the ...rnment and a Government servant. A ...rnment servant who is charged of ...practions should be got rid off from the ...service as early as possible. If it is ...ept on for years together the exchequer is burdened with suspension allowance which is required to be paid to a Government servant. A Government servant should also get a chance to establish his innocence as early as possible so as to remove a dark cloud on his career. Number of service benefits and promotions are denied or delayed when he is under a cloud. He is deprived of half of his salary for the period of suspension. Even otherwise departmental proceedings continued for more than twenty years may not yield any results. The original documents may not be available. Witnesses might have been transferred, retired or have died. In any case to expect that the witnesses would remember the events that had taken place more than twenty years ago is most unrealistic. The continuation of the departmental proceedings is, therefore, a futile exercise. (Para 16)

Power to continue or to start a disciplinary proceeding after retirement may be necessary in certain cases. By itself the power is not arbitrary. It has a rational basis. But the power must be exercised within a reasonable period and consistent with justice and public interest. (Paras 17-18)

In case of an event more than four years old on the date of retirement, a departmental proceedings cannot be continued after retirement under R. 9 (2) of the Pension Rules, 1972. It is well settled that requirement of natural justice can be read in a Rule even if the Rules is silent about it, particularly, in a Rule concerning quasi judicial proceeding. Therefore the departmental proceeding, if any, pending against the petitioner after 30-3-1975, the normal date of retirement, is bad in law. (Paras 17-18)

Cases Referred : Chronological Paras

1980 Lab I C 1184 : AIR 1981 S C 70 5
1980 Lab I C 89 : (1980) 1 Serv L R 324 (Guj) 17
1973 Lab I C 1545 : (1973) 1 Serv L R 649 (Ori) 9
1972 Serv L R 382 (Delhi) 11

G. D. Gupta with Miss Anita, for Petitioner; S. N. Sapra, for Respondents.

ORDER :— In this writ petition the petitioner has prayed for quashing the order of his compulsory retirement passed on 25th April, 1972. He claims that he should be treated as if he had retired on March 30, 1975 which was his normal date of retirement. He has further claimed the consequential reliefs of the service benefits such as pay, allowances,

and increments up to his normal date of retirement. He has then claimed that his period of suspension should be directed to be treated as period spent on duty and full pay, allowances and increments due during the said period of suspension be given to him under F. R. 54. He has also prayed that the departmental proceeding pending against him should be ordered to be quashed.

2. Petitioner holds a diploma in civil engineering. In 1942 he was appointed as an overseer/section officer/junior engineer in Central Public Works Department. An adverse remark about his work was communicated to him in 1951 but thereafter on 17th December, 1951 he was confirmed as an overseer with effect from 25th May, 1951. On 30th June, 1956 he was promoted as an assistant engineer. On 2nd February, 1959 he was declared as quasi-permanent in the post of junior engineer. On 3rd September, 1959 he was suspended under R. 12 (1) of the C. C. S. (CCA) Rules, 1957, pending a departmental action against him. During the period of suspension adverse remarks were communicated to him regarding his work. They were for the period between 1-4-1957 to 31-8-1957. Another adverse remark for the period between 1-4-1958 and 31-3-1959 was communicated to him on 16-12-1959. Although the petitioner was suspended in anticipation of a departmental proceeding, no charge-sheet was served on the petitioner for 2½ years. The petitioner, therefore, filed a writ petition in this Court being 94-D/1962 for quashing his suspension order. The petition was filed on 5-3-1962 and was admitted by this court on 6-3-1962. Thereafter on 12-3-62 a charge-sheet was issued to the petitioner. The charges were attempting to give pecuniary advantage to a contractor by falsification of records and disobedience. The petitioner asked for the inspection of the files and documents relied upon by the department. He was not furnished with any copies. On 12-3-1964 the charges were held to be proved and the petitioner was dismissed from service. On 11-6-1964 the petitioner preferred an appeal to the President of India against his order of dismissal. As the writ petition filed in this Court against the order of suspension had become infructuous the said petition was withdrawn. On the appeal made to the President of India no decision was taken for about eighteen months. The petitioner, therefore, filed the second writ petition in this Court against the order of dismissal. That petition was admitted by this Court on 15-12-1965. Ten months thereafter the President of India accepted the petitioner's appeal and order of dismissal was set aside. This order was passed on 4-10-1971. Although the President set aside the dismissal order, he directed that the petitioner should be deemed to be continuing under suspension with effect from 12-3-1964, that is, the date of his dismissal. A fresh enquiry was also ordered. In the fresh enquiry no fresh charge-sheet was issued. Only list of documents and list of witnesses were supplied to the petitioner. The enquiry officer and presenting officer were also appointed. The petitioner raised the objection alleging that it was only chief engineer (the appointing authority) that could appoint an enquiry officer and a presenting officer. The representation was made by him on 8-6-1970. Three years thereafter, that is, on 8-5-1973 the suspension order passed against the petitioner was revoked unconditionally but the departmental proceeding was kept alive. The petitioner on reinstatement joined his duties on 25-5-1970. On 1-6-1970, 5-10-1970 and 12-1-1970 (sic) the petitioner represented to the department to pass an order under F. R. 54 for payment of full pay and allowances for the period of suspension, that is, period between 27-8-1959 to 25-5-1970. The representation for pay and allowances for the period of suspension was turned down by the department, on the ground that the departmental enquiry was still pending against the petitioner. The second writ petition filed against the order of dismissal became infructuous because the dismissal order itself was set aside. On 21-3-1972 therefore, this court dismissed the writ petition as being infructuous. In the said writ petition the petitioner had moved an application for a direction for payment of the arrears of pay and allowances etc. for the period of suspension but this court dismissed that application as it did not directly arise out of the writ petition. On 26-4-1972 petitioner made another representation to the department for payment of arrears under F. R. 54. Although the department was asserting that the disciplinary proceedings were pending against the petitioner, an order for his comulsory retirement was passed on 25-4-1972. The petitioner received this order on 29-4-1972. The petitioner challenged the order of compulsory retirement through a representation to the department. He made a second representation against his compulsory retirement on 23-5-1972 urging that he was not being compulsorily retired as a short cut to the disciplinary proceedings. He pointed out in the said representation that a Minister had made a statement in the Parliament that premature retirement should not be done

short cut for avoiding disciplinary proceedings. The representations were rejected on 3-7-1972. He again made a representation for payment of arrears of the suspension period in July, 1972. The petitioner again complained about the illegality in the appointment of enquiry officer and the presenting officer in July, 1972. Still the department, it is alleged, continued with the proceeding and he was informed that he would be proceeded against ex parte. The petitioner filed his reply to the charges on 11-6-1973. The proceedings continued further for another four years. On 1-1-1977 the President of India accepted the petitioner's contentions raised by him in July, 1972 ordered fresh enquiry on the original charge dated 12-3-1962 with a direction to appoint new enquiry & presenting officers. This order was passed by the President under Art. 311(2)(c) of the C.C.S. (C.C.A.) Rules, 1965. Again two years passed without any action and in July, 1979, new enquiry officer and presenting officer were appointed. On 24th August, 1979, the petitioner informed the enquiry officer that he had since retired and the enquiry being held against him was contrary to rules particularly the pension rules. The counsel for the petitioner contended at the time of the hearing that no reply was received by him from the enquiry officer or from the department. Nor any order about the conclusion of the departmental proceedings was communicated to him. The counsel for the respondents also could not enlighten me on the question as to whether the departmental proceedings were finally terminated or not and what final order was passed in the said departmental proceeding.

1. The first question for consideration is whether the order of compulsory retirement passed against the petitioner on April 25, 1972 is legal or not. The petitioner submits that this order is contrary to F. R. 56 (j), the administrative instructions in this regard and the decisions of High Court and Supreme Court. The department justifies the action of compulsory retirement and has submitted in the counter-affidavit that "the conclusion of the competent authority that the petitioner should be compulsorily retired was based on an overall assessment of petitioner's service record." The counter-affidavit further states that the adverse reports communicated to the petitioner in 1950-51 and 1959 were taken into consideration in assessing the overall performance of the petitioner.

At the time of the hearing the confidential reports of the petitioner were produced. There was nothing in the confidential reports which would show that the petitioner's performance or conduct was blameworthy. In fact, there are some positive good remarks about the petitioner. 1950-51 adverse remarks were passed against the petitioner when he was working as an overseer but within a few months thereafter he was confirmed as an overseer. Six months thereafter he was promoted as an assistant engineer. He was also declred quasi permanent in the post of junior engineer. The conduct of the department shows that the department did not really treat adverse remarks as of any value because in spite of the remarks he was confirmed as an overseer and was, in fact, promoted to higher post. The next adverse remark communicated to the petitioner was on 22-9-1959 when he was under suspension. This was for the period between 1-4-1957 to 31-8-1957. It is not explained why the adverse remarks were communicated two years late. The administrative directions on the communication of adverse remarks clearly indicate that the adverse remarks are meant for the guidance of the officer and for his improvement in future. The remarks communicated to him are as follows :

"He did one important work during this period viz. "Construction of 20 K.W. Transmission Station at Cuttack" which was not satisfactory. He should devote more time and energy in his work."

The second adverse report was communicated to the petitioner on 16-12-1959 that was for a period between 1-4-1958 to 31-3-1959. There are two confidential reports of the executive engineer under whom he was working for the said period. One report is positively in good terms. The other report is rather neutral. The adverse remark communicated to him is "he should devote more energy to work to improve control and efficiency." On reading these two adverse remarks it is difficult to understand whether any one of them has any serious import so as to cut short the career of the petitioner. The second report is also communicated late. Although nothing can be said positively about the petitioner's charge that they were motivated as they were communicated after his suspension, the fact that the delay in their communication has not been explained cannot be altogether ignored. The counsel for the department could not show any other material used against the petitioner by the authorities when they took the decision to retire the petitioner compulsorily. The decision to retire the petitioner was taken in 1972. The material

used against him is 13 years old and 22 years old. The staleness of the material stinks. On 23rd June, 1969 the Ministry of Home Affairs, Government of India has issued elaborate instructions to Government departments in arriving at a decision under F. R. 56 (j). In the said circular the background of F. R. 56 (j) has been described. The background is the Paper on "Measures for strengthening of Administration" placed on the table of both the Houses of Parliament in 1961. The said circular states that the procedures and guidelines were being laid down in that circular "in order to ensure that the powers vested in the appropriate authority are exercised fairly and impartially." The circular directs that the cases of Class I and Class II employees should be reviewed six months before they attain the age of 50 years and for Class III employees six months before they complete 30 years of service. The petitioner completed his 50th year/30 years of service on 1-4-1970. Admittedly, no review as required by the said circular was done prior to his attaining the age of 50 years. He was allowed to continue for two years thereafter. Naturally the presumption is that the department did not think his performance as bad enough to retire the petitioner before his normal date of superannuation. Almost at the time when the petitioner had completed 50 years the suspension order against him was revoked and he was allowed to join on 25-5-1970. Why the department did not take the decision of his compulsory retirement before he was permitted to join his duty? This is not explained in the counter-affidavit. So also why the review was made two years late is also not explained by the department. The petitioner submits that because of the two writ petitions filed by him his original dismissal order was set aside and he was allowed to be reinstated. He alleges that the setting aside of the dismissal order and his successive applications for payment of arrears of pay and allowances for the period of suspension resulted in his compulsory retirement on 29-4-1972. One need not go into the motive of the department. However, the fact remains that by that time the petitioner had already made four or five representations for the payment of arrears. On 25th August, 1971 the Department of Personnel, Cabinet Secretariat issued further instructions regarding compulsory retirement. The instructions clearly pointed out that F. R. 56 (j) should not be used "to retire a Government servant on grounds of specific acts of misconduct, as a short cut to initiating formal disciplinary proceedings on the ground that the Government may not be suitable to continue in officiating post or for promotion to higher posts for which he might be eligible on attaining the age of 50/55 years or completing 30 years service as the case may be." A second circular issued on October 21, 1972 Department of Personnel modified partly the earlier Memorandum of 1969. The modified instructions are as follows :

"In locating others who are ineffective and who should be retired at that stage the basic consideration should be whether the fitness/competence of the employee to continue in the post which he is holding. If he is not found fit to continue in his officiating post, his fitness/competence to continue in the lower post which he may be holding substantively should also be considered."

The departmental proceedings were started against the petitioner in 1959. Although the dismissal order was set aside in 1966, fresh proceedings were started against the petitioner. The facts and circumstances narrated above gives an impression that the decision to retire the petitioner compulsorily was taken as a short cut to the conclusion of the departmental proceedings started against the petitioner. This was clearly in breach of the said administrative instructions. Not reviewing the petitioner's performance at the age of 50 was contrary to those instructions. Admittedly the department did not consider whether if the petitioner was not fit to be continued as an assistant engineer he could continue as a junior engineer. This was also in violation of the said administrative instructions.

5. The law on the point is laid down in several decisions of this court and Supreme Court. The latest decision of the Supreme Court on this point is in Baldev Raj Chadha v. Union of India (Civil Appeal No. 1390 of 1978) decided on 18-8-1980 : (1980 Lab IC 1184). In that case appellant was compulsorily retired on August 27, 1975. The Government relied upon the confidential reports of the appellant for the year 1961-62, 1964-65 and 1969-70. The Supreme Court quashed the order of compulsory retirement. The court observed : "One wonders how an officer whose continuous service for 14 years crossing the efficiency bar and reaching the maximum salary in the scale and with no adverse entries at least for five years immediately before the compulsory retirement, could be cashiered on the ...

directed against some other Government servants in connection with the commission of certain offence. In fact, the result of that enquiry was that the appellant was absolved from any complicity in the commission of the offence. Later, he was removed from service on the strength of the alleged admissions without holding a formal enquiry as required by the Service Rules:

Held that, as the statements made by the appellant did not amount to a clear or unambiguous admission of his guilt, failure to hold a formal enquiry constituted a serious infirmity in the order of dismissal passed against him, as the appellant had no opportunity at all of showing cause against the charge framed against him and so the requirement of Art. 311(2) was not satisfied.

(Para 11)

Even if the appellant had made some statements which amounted to admission, it was open to doubt whether he could be removed from service on the strength of the said alleged admissions without holding a formal enquiry as required by the rules.

(Para 11)

It is of the utmost importance that in taking disciplinary action against a public servant a proper departmental enquiry must be held against him after supplying him with a chargesheet, and he must be allowed a reasonable opportunity to meet the allegations contained in the charge-sheet.

(Para 13)

The departmental enquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against the appellant and to hold that in view of the admissions made by him the enquiry would have served no useful purpose. That is a matter of speculation which is wholly out of place in dealing with cases of orders passed against public servants terminating their services. AIR 1957 Madh. B. 15, Reversed. (Para 13)

M/s. S. N. Andley, J. B. Dadachanji and P. L. Vohra, Advocates of M/s. Rajinder Narain and Co., for Appellant; Mr. H. L. Khaskalam, Govt. Advocate, for the State of Madhya Pradesh, (M/s. B. K. B. Naidu and I. N. Shroff, Advocates, with him), for Respondent.

The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.:

This appeal by special leave arises out of a petition filed by the appellant Jagdish Prasad Saxena against the respondent, the State of Madhya Pradesh, in the High Court of Madhya Bharat, in which he prayed that a writ of certiorari or mandamus or any other appropriate writ or direction should be issued against the respondent quashing the order passed by it on December 3, 1953, terminating the services of the appellant as from October 2, 1951, when he had been suspended. A chargesheet in regard to the proceedings taken against the appellant was furnished to him on October 17, 1951; but it is common ground that no fresh enquiry had been subsequently held before the impugned order was passed against him. The High Court has, however, held that in the enquiry which had been held before the appellant was furnished with the chargesheet he had substantially admitted the material facts on which the chargesheet was framed, and so failure to hold a formal enquiry after giving him the chargesheet had not caused any prejudice to him; that is why the High Court refused to issue a writ as claimed by the appellant and dismissed his petition. In his present appeal by special leave the appellant challenges the correctness and propriety of the said decision.

(2) The appellant was permanently employed in the department of Customs and Excise by the respondent as a distillery inspector, and at the material time he was posted at Barwaha in the district of Khargone. It is admitted that he was governed by the rules and regulations of the State Civil Service. At Barwaha there is a distillery as well as a warehouse in a separate building within the same premises. Kethulekar was a warehouse clerk in charge of the warehouse and Narona was the distiller. On July 12, 1951, at about 5 P. M., when the appellant was about to leave the distillery Narona asked for the key of the receiver for taking flow readings, and the appellant gave the key with instructions to Kethulekar to supervise the distillation. It appears that Kethulekar, who was then on duty, issued liquor to Nathu, Contractor of Piplia, to whom a permit had been issued in respect of one gallon of Narangi (of strength 25 U. P.), 20 gallons of Rasi (of strength 60 U. P.) and two gallons of Dubara (of strength 25 U. P.) for which the contractor had deposited in the treasury Rs. 180-6-0. At the time of the said issue of liquor, however, the contractor was given one gallon of Narangi and 32 gallons of Dubara, that is to say, an excess quantity of 30 gallons of Dubara was illegally given to him thereby causing a loss of Rs. 305-10-0 to the government. According to the appellant, Kethulekar acting in concert with Narona transferred some liquor from the receiver to the warehouse Vat in order to make up the deficiency

consequent upon the illegal issue of liquor to the contractor. Some informer reported this matter to the Superintendent of Customs and Excise who immediately rushed to the place and seized the entire stock of liquor from Nathu contractor.

(3) On July 13, 1951, the Superintendent along with the appellant held a preliminary enquiry in the case; at this enquiry all the three persons admitted their guilt, and the Superintendent eventually recovered Rs. 305-6-0 from Kethulekar to compensate the department for the loss caused by the illegal delivery of 30 gallons of Dubara, and he was suspended from July 17, 1951.

(4) As directed by the Superintendent the appellant submitted his detailed report about this incident. Five days thereafter the Deputy Commissioner of Customs and Excise held a second enquiry along with the Superintendent. At this enquiry Kethulekar and Narona implicated the appellant for complicity in the illegal transaction. The appellant also made a statement in this enquiry though no chargesheet had been given to him. As a result of this enquiry the Superintendent submitted his report on the same day, that is to say, July 21, 1951. On the same day the Deputy Commissioner also made his report, and by his finding he absolved the appellant from the charge that he had any complicity in the offence. He, however, held that the appellant was guilty of slackness of supervision and control and recommended his transfer to some other place and the withholding of his grade increment for six months; accordingly the appellant was transferred to Indore on September 6, 1951.

(5) On October 1, 1951, the Deputy Commissioner suspended the appellant with effect from October 2, 1951, under instructions from the Secretary, Finance, Department of Excise and Customs; and he was also required to be present at Barwaha on October 8, 1951.

(6) On October 8/9, 1951, the Deputy Commissioner reopened the enquiry against the appellant because three complaints had been made against him by Kethulekar. In this enquiry the appellant filed his written statement on October 16, 1951, though he had not been furnished copies of the reports made under the previous two enquiries. On October 17, 1951, the Deputy Commissioner gave the appellant the chargesheet in regard to his alleged complicity in the illegal issue of liquor. On October 21, 1951, the Deputy Commissioner submitted his report, and again absolved the appellant from having had any hand in the commission of the offence.

(7) After more than a year had elapsed the appellant received on November 25, 1952, a notice calling upon him to show cause within fifteen days as to why he should not be removed from service as penalty for the offence committed by him in allowing the transfer of illegal liquor to the contractor in his presence. On December 8, 1952, the appellant requested that he should be allowed an inspection of the record to enable him to make a proper and adequate reply to the notice, but his application was ignored. On December 11, 1952, the appellant gave a reply to the show-cause notice and asked for a personal hearing. This request was rejected, and on December 3, 1953, an order was passed terminating his services as from October 2, 1951, when he had been suspended. It is on these facts that the appellant challenged the validity of the impugned order of dismissal, and contended that since no enquiry was held against him he has not had a reasonable opportunity to meet the charge in question. As we have already indicated the High Court has rejected this argument, and so the short question which arises for our decision is: Was the High Court right in holding that in substance the appellant has had a reasonable opportunity to meet the charge levelled against him under Art. 311(2) of the Constitution?

(8) In order to decide the merits of this controversy it is necessary to refer to some more material facts. The chargesheet supplied to the appellant on October 17, 1951, sets out elaborately several facts against him. It is specifically averred in the charge-sheet that the appellant was present at the time when liquor was illegally given to the contractor, and that there was in fact a conspiracy between the appellant and Kethulekar. Thus his presence at the time when the offence was committed and his conspiracy with Kethulekar constitute the first charge against him. It is also alleged that subsequent to the commission of the offence the appellant fraudulently made interpolations in the relevant note books which were required to be kept by him in the discharge of his official duties. The details of these interpolations have been set forth in the chargesheet. The third allegation against the appellant is that after liquor had been seized from the contractor his co-conspirators went to see the appellant at 7 A. M. on July 13, 1951, for seeking advice from him. There are some other details also set forth in the charge-sheet but it is unnecessary to refer to them. After this charge-sheet was served on

the appellant he was required to submit his explanation that very day.

(9) On November 25, 1952, the Under Secretary to the respondent issued a notice against the appellant calling upon him to show cause why he should not be removed from service as penalty for the offence which he had committed. This notice recited that "the issuing of liquor against the entries in the pass to the contractor Nathu and the making up of stock by transferring liquor illegally from the distillery had been fully established". Since the appellant was in charge of the distillery, and the transfer of distillery liquor had taken place in his presence he was guilty of a serious offence. It would thus be seen that the only charge on which this notice was issued was that the appellant was present at the time when the illegal transfer of liquor took place. This notice called upon the appellant to furnish his reply within fifteen days.

(10) On December 8, 1952, the appellant wrote to the Under Secretary that since the case had become more than a year old it was difficult for him to file a reply unless he was allowed to inspect the file containing the papers of all the relevant enquiries held in that matter; but apparently no action was taken on this request, and so the appellant trusted his memory and proceeded to file an elaborate reply on December 11, 1952. For nearly a year thereafter nothing seems to have happened in this matter. On November 25, 1953, however, the Finance Minister to whom the papers had presumably been submitted for orders held that the appellant had a hand in the commission of the offence and that as a punishment for the same he should be removed from service from the date of his suspension. The order passed by the Minister shows that he relied on three facts against the appellant, (1) that he had given the key of the distillery to the distiller Narona, (2) that after the seizure of the liquor from the contractor Kethulekar and the contractor had gone to see the appellant next morning for taking advice, and (3) that the entries in the relevant books had been tampered with. The Minister thought that the explanation offered by the appellant in his written statement on all these matters was not satisfactory. Pursuant to this order the Under Secretary communicated to the appellant on December 3, 1953, the decision of the respondent to remove the appellant from service as from the date of his suspension. The appellant then moved the respondent for a review of the said order but on December 1, 1954, his application for review was dismissed on the ground that the respondent saw no reason to revise, modify or amend its decision of November 25, 1953; that is how the impugned order came to be passed.

(11) It is true that the appellant specifically admitted during the course of the previous enquiry that illegal liquor had been delivered to the contractor, and that he had given the key of the receiver to Narona. It is on the strength of those admissions that the High Court took the view that the appellant had substantially admitted his guilt and so there was really no need for holding a formal enquiry against him after the chargesheet was supplied to him. In this connection it is necessary to remember that the previous enquiry was not directed against the appellant as such, and he was certainly not in the position of an accused in the said enquiry. In fact, as we have already indicated, the result of the said enquiry was that the appellant was absolved from any complicity in the commission of the offence, and the only criticism made against him was that he was slack in his supervision, that is why he was transferred. In such a case, even if the appellant had made some statements which amounted to admission it is open to doubt whether he could be removed from service on the strength of the said alleged admissions without holding a formal enquiry as required by the rules. But apart from this consideration, if the statements made by the appellant do not amount to a clear or unambiguous admission of his guilt, failure to hold a formal enquiry would certainly constitute a serious infirmity in the order of dismissal passed against him. Under Art. 311(2) he was entitled to have a reasonable opportunity of meeting the charge framed against him, and in the present case, before the show-cause notice was served on him he has had no opportunity at all to meet the charge. After the chargesheet was supplied to him he did not get an opportunity to cross-examine Kethulekar and others. He was not given a copy of the report made by the enquiry officers in the said enquiries. He could not offer his explanation as to any of the points made against him; and it appears that from the evidence recorded in the previous enquiries as a result of which Kethulekar was suspended an inference was drawn against the appellant and show-cause notice was served on him. In our opinion, the appellant is justified in contending that in the circumstances of this case he has had no opportunity of showing cause at all, and so the requirement of Art. 311(2) is not satisfied.

(12) The two facts admitted by the appellant do not necessarily or inevitably lead to the conclusion that he was guilty of

the offence with which he was charged; besides, if his statements are used against him all his statements must be considered as a whole; and thus considered there is no admission of guilt at all. The essential part of the finding against him is that he was present at the time when liquor was transferred to the contractor; and his presence cannot be reasonably inferred from the facts admitted by him. Even as to the delivery of the key to Narona no rule has been produced in this case which positively prohibited the delivery of such a key even in an emergency. Indeed the report made by the Superintendent on July 13, 1951, shows that as a prudent man the appellant should not have given the key to Narona. The appellant was told that in future "the key should be given only to reliable persons in case of need". This admonition would show that in case of need it was open to the appellant to give the key to a reliable person, and that must necessarily mean that there was no rule which absolutely prohibited the delivery of the key to any person even in case of need. Therefore, the admission made by the appellant that he gave the key to Narona cannot necessarily lead to the conclusion that he was in league with Narona or Kethulekar.

(13) The order passed by the Minister shows that he took into account the alleged interpolations in the books kept by the appellant as well as the fact that Kethulekar and the contractor saw the appellant the next morning. Now it is clear that so far as these two facts are concerned the appellant was given no opportunity to cross-examine Kethulekar and the contractor and to show that their story was untrue; nor was he given an opportunity to substantiate his explanation about the alleged interpolations in the books. The Minister may have thought that the facts to which his attention was invited indicated that the appellant must have been present at the warehouse when the offence took place; but it is of the utmost importance that in taking disciplinary action against a public servant a proper departmental enquiry must be held against him after supplying him with a chargesheet, and he must be allowed a reasonable opportunity to meet the allegations contained in the chargesheet. In the present case preliminary enquiries of a general type were held and they ended in a finding against Kethulekar. The reports did not show that the appellant was guilty of the offence for which he was ultimately dismissed from service. The delay made in giving the appellant the chargesheet as well as in communicating to him the final order of dismissal shows that the authorities did not think that time was the essence of the matter, and so there was hardly any justification for not holding a formal and proper enquiry after the appellant was given a chargesheet on October 17, 1951. In our opinion, therefore, the High Court was in error in coming to the conclusion that no prejudice had been caused to the appellant as a result of the respondent's failure to hold an enquiry against him after supplying him with a chargesheet. The departmental enquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against the appellant and to hold that in view of the admissions made by him the enquiry would have served no useful purpose. That is a matter of speculation which is wholly out of place in dealing with cases of orders passed against public servants terminating their services.

(14) The result is the appeal is allowed, the decision of the High Court is set aside and the order of dismissal passed against the appellant is quashed. The appellant will be entitled to his costs in this Court.

EE/B Appeal allowed.

AIR 1961 Supreme Court 1074 (V 48 C 181)
(From Allahabad : (S) AIR 1955 All 186)
20th February, 1961
P. B. GAJENDRAGADKAR AND K. C. DAS GUPTA, JJ.

Sarda Prasad and others, Appellants v. Lala Jumna Prasad and others, Respondents.
Civil Appeal No. 276 of 1956.

(a) **Limitation Act (1908), S. 7 — "Discharge" refers also to decree for possession of property and is not confined to monetary claims.**

The provisions of S. 7 are not limited to suits or decrees on monetary claims only. Nor is there any reason to think that the word "discharge" can refer only to debts. Discharge means to free from liability. The liability may be in respect of monetary claims, like debts; it may be in respect of possession of property; it may be in respect of taking some order as regards property; it may be in respect of many other matters. Except in the case of declaratory decrees or decrees of a similar nature, the decree in favour of one person against another requires the person against whom the decree is made liable to do something or to refrain from doing something. This liability is in a sense a debt which the party is in law bound to discharge. (Paras 6, 7)

Denial of Copies of Documents

eat, the petitioners are liable to pay sales

(19) In my view, the learned Chief Justice was right in so approaching the question. The sales tax authorities have made no assessment; they merely issued a notice purporting to do so under S. 13(5) of the Act and required the appellants to produce their books of account and records for ascertaining whether the transaction or any part thereof was in the nature of sale of goods. The sales tax authorities had jurisdiction to do so and by merely looking at the terms of the written contract and without any investigation as to the true nature of the transaction the High Court could not decide whether the contract performed was a pure works or construction contract or was a composite contract. It was urged that in the petition filed by the appellants before the High Court, an affidavit in rejoinder challenging the correctness of the averment made in the petition that it was a pure works contract was not filed by the taxing authorities and therefore the High Court was bound to decide the dispute on the footing set up by the appellants. But the taxing authorities could not be expected without investigation to assert a state of facts which was not and could not be within their knowledge, and their statutory authority could not, because of their failure to so assert, be nullified.

(20) As I have already observed, the investigation of facts on the question of the liability to pay tax has to be made by the taxing authorities in whom that jurisdiction is vested. Before the facts on which the liability to tax depends are ascertained, the High Court could not be asked to assume that the transaction was in the nature of a pure works contract and to decide the question as to the liability of the appellants on that footing. There is no ground for assuming that the taxing authorities will not give effect to the decision of this court in Cannon Dunkerley's case, 1959 SCR 379 : (AIR 1958 SC 560) after the true nature of the transaction is ascertained.

(21) In my view, the High Court was right in declining to issue the writ prayed for.

ORDER

(22) By the Court: In accordance with the opinion of the majority, the appeals are allowed and it is directed that appropriate writs as prayed be issued. The appellants are also entitled to their costs throughout.

Appeals allowed.

AIR 1961 Supreme Court 1623 (V 48 C 308)

(From Nagpur)*

1st November, 1960

P. B. GAJENDRAGADKAR, A. K. SARKAR, K. SUBBA RAO, K. N. WANCHOO, AND J. R. MUDHOLKAR JJ.

State of Madhya Pradesh, Appellant v. Chintaman Sadashiva Waishampayan, Respondent.

Civil Appeal No. 630 of 1957.

Constitution of India, Arts. 311(2), 226 — Reasonable opportunity to defend at the stage of departmental enquiry — Principles of natural justice — Violation of — Denial of opportunity to public servant to cross-examine witnesses who give evidence against him — Copies of documents to which public servant was entitled not supplied — Enquiry not in accordance with principles of natural justice and Art. 311(2) violated — High Court if can consider under Art. 226 propriety or validity of decision of enquiry officer.

Under Art. 311(2), a public servant is entitled to have a reasonable opportunity to meet the charges framed against him. A proper opportunity must be afforded to him at the stage of the enquiry after the charge is supplied to him as well as at the second stage when punishment is about to be imposed on him. If the first enquiry was materially defective and denied the public servant an opportunity to prove his case it is impossible to hold that a reasonable opportunity guaranteed to a public servant by Art. 311(2) had been afforded to him. (Para 9)

When an order of dismissal passed against a public servant is challenged by him by a petition filed in the High Court under Art. 226 it is for the High Court to consider whether the constitutional requirements of Art. 311(2) have been satisfied or not. In such a case it cannot be contended that the infirmities on which the public officer relies flow from the exercise of discretion vested in the enquiry officer. The enquiry officer may have acted bona fide but that does not mean that the discretionary orders passed by him are final and conclusive. Whenever it is urged before the High Court that as a result of such orders the public officer has been deprived of a reasonable opportunity it would be open to the High Court to examine the matter and decide whether the requirements of Art. 311(2) have been satisfied or not. In such matters it is difficult and in-

*(Misc. Petn. No. 285 of 1953, D/- 8-3-1955—Nag.)

expedient to lay down any general rules; whether or not the officer in question has had a reasonable opportunity must always depend on the facts in each case. The only general statement that can be safely made in this connection is that the departmental enquiries should observe rules of natural justice, and that if they are fairly and properly conducted the decisions reached by the enquiry officers on the merits are not open to be challenged on the ground that the procedure followed was not exactly in accordance with that which is observed in Courts of Law. (Para 10)

Stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. The right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would mean that the enquiry had not been held in accordance with rules of natural justice. (S) AIR 1957 SC 882 (885) & AIR 1958 SC 300 (307), Foll.; AIR 1960 Pat 116, Disting. (Para 10)

Cases Referred : Courtwise Chronological Paras

('57) (S) AIR 1957 SC 882 (V 44): 1958 SCR 499, Union of India v. T. R. Varma 10

('58) AIR 1958 SC 300 (V 45): 1958 SCR 1080, Khem Chand v. Union of India 10

('55) AIR 1955 Nag 160 (V 42): ILR (1955) Nag 93: 1955 Cri LJ 974, Jageram Malik v. State of Madhya Pradesh 3, 4

('60) AIR 1960 Pat 116 (V 47), Dr. Tribhuwan Nath v. State of Bihar 10

Mr. H. L. Khaskalam, Govt. Advocate, for State of Madhya Pradesh (M/s. B. K. B. Naidu and I. N. Shroff, Advocates with him), for Appellant; Mr. R. V. S. Mani, Advocate, for Respondent.

The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.:

This appeal by special leave is directed against the order passed by the High Court of Judicature at Nagpur quashing the order of dismissal passed by the appellant, the State of Madhya Pradesh, against the respondent Waishampayan on June 1, 1952. The respondent was appointed as a Sub-Inspector of Police, by the Inspector-General of Police, Central Provinces and Berar on January 1, 1943. Subsequently in January 1945, he was confirmed in that post. In September 1948, he was sent on deputation to Hyderabad State where he served as a Sub-Inspector of Police at Adilabad, Nirmal, Bhainsa and Nanded. He was working at Adilabad from September, 1948 till June, 1950. On May 13, 1951, he was served with an order of suspension issued on May 3, 1951, by the Deputy Inspector-General of Police, Eastern Range, Hyderabad Division. This order of suspension was issued because complaints had been received against him and a departmental enquiry was proposed to be held in that behalf. Accordingly on May 21, 1951, a chargesheet was framed against him and the same was delivered to him on June 13, 1951. This chargesheet included eight charges. In the enquiry which followed six witnesses were examined before Mr. Shamaldas, Sub-Divisional Officer (Police). On November 7, 1951, the District Superintendent of Police himself took up the enquiry under the orders of the Inspector-General of Police. He framed fresh charges because he thought that the charges previously framed were not clear. On this occasion five charges were framed against the respondent; however, charges four and five out of these were dropped, and the enquiry was confined to only three. Witnesses were examined during the course of this enquiry and were cross-examined by the respondent. On November 9, 1951, the respondent requested by an application that certain documents may be supplied to him to enable him to make his defence. His request was granted in respect of some documents but not with regard to all. After evidence had been led against the respondent he was directed to produce his witnesses on November 13, 1951, and he was warned that if he did not lead evidence on that date the enquiry would be closed. Meanwhile, on November 11, 1951, the respondent submitted an application to the Deputy Inspector-General of Police, through the District Superintendent, repeating his request for the documents which he wanted to inspect before leading evidence in defence and giving his own statement: that application was however rejected. On November 28, 1951, the Distdct

Superintendent of Police made his report in which he found that the respondent was guilty of all the three charges mentioned in the chargesheet, and he recommended that he should be dismissed from service. On receipt of this report, the Deputy Inspector-General of Police made his own endorsement on it and supported the recommendation for the dismissal of the respondent. The Inspector-General of Police, Hyderabad, then forwarded the papers to the Inspector-General of Police, Madhya Pradesh. On January 8, 1952, a notice was issued to the respondent by the Inspector-General of Police, Madhya Pradesh, to show cause why he should not be dismissed. The respondent duly submitted his reply on February 10, 1952. Thereafter on June 14, 1952, the Inspector-General of Police passed an order dismissing the respondent from service which the respondent received on June 17, 1952. The respondent then preferred an appeal against the said order but his appeal failed and was dismissed. It is under these circumstances that the respondent filed his petition in the High Court under Art. 226 of the Constitution and challenged the validity of the order of dismissal on several grounds. This petition was resisted by the appellant; but by the majority decision of the Special Bench of the High Court which heard this petition the pleas raised by the respondent were upheld and the impugned order of dismissal has been set aside. The appellant applied for a certificate but its application was rejected by the High Court; and so it moved this Court and obtained special leave; that is how this appeal has come to this Court at the instance of the appellant.

(2) Broadly stated the respondent challenged the validity of the impugned order on three grounds. He urged that the said order was invalid as it was passed on the basis of an enquiry made by the police officers of the Hyderabad State who were not subordinate to the Inspector-General of Police, Madhya Pradesh; according to him it was essential that an enquiry should have been held against him under the Police Act or Regulations of Madhya Pradesh after the show-cause notice was served on him; and as no such enquiry was held the whole proceedings are void and the impugned order is ultra vires. He also urged that the impugned order was not in accordance with Regulation No. 273 of Police Regulations of Madhya Pradesh, and the contravention of the said Regulation made the order invalid. Finally it was argued that the enquiry held by the Hyderabad authorities was contrary to all principles of natural justice, and as the said enquiry the respondent had not been given a reasonable opportunity to meet the charges framed against him.

(3) It appears that a previous decision of the Division Bench of the High Court in Jageram Malik v. State of Madhya Pradesh, ILR (1955) Nag 93: (AIR 1955 Nag 160), has held that a police officer deputed on duty at Hyderabad was governed by the Police Act, the Police Regulations and the General Book Circulars prevailing in Nagpur, and that an enquiry must be held by an officer exercising jurisdiction under the said Police Act and the Police Regulations. According to the said decision the proper thing to do in holding an enquiry against a police officer deputed to Hyderabad was to retransfer him to Madhya Pradesh and then hold enquiry as required by the Madhya Pradesh Police Act and Regulations. In the case of Jageram Malik, ILR (1955) Nag 93: (AIR 1955 Nag 160), the Court ultimately held that the enquiry made by an officer exercising jurisdiction in Hyderabad State could not form the basis of any action on the part of the Inspector-General of Police, Madhya Pradesh, and so the order of dismissal based on such an enquiry was set aside. It was on the strength of this decision that the respondent challenged the validity of the impugned order passed against him. On this question there was a difference of opinion among the judges who constituted the Special Bench which heard the respondent's petition. Mr. Justice Sen, who was a party to the decision in Jageram Malik's case, ILR (1955) Nag 93: (AIR 1955 Nag 160), was inclined to uphold the respondent's contention, whereas Rao, J. rejected the said contention and Bhutt, J. was presumably inclined to agree with Rao, J. Similarly there was a difference of opinion among the judges on the question as to whether a breach of Police Rules and Regulations was justiciable. Sen and Bhutt, JJ. were inclined to uphold the respondent's plea, whereas Rao, J. rejected it. On the question as to whether the enquiry actually held by the appellant in Hyderabad suffered from the infirmities alleged by the respondent the learned judges were similarly divided. Sen and Bhutt, JJ. held that the enquiry in question was contrary to the principles of natural justice while Rao, J. took a contrary view.

(4) On the first point the appellant contended that the previous decision of the High Court in Jageram Malik's case, ILR (1955) Nag 93: (AIR 1955 Nag 160) should be reconsidered, and it was pointed out that

on the earlier occasion the attention of the learned judges was not drawn to the Union Police Force Regulation 1358F (No. 25 of 1358F) which had been promulgated by the Military Governor. The argument was that the Firman issued by the Nizam on August 7, 1949, conferred appropriate powers on the Military Governor, and by virtue of these powers the Military Governor had issued the said Police Force Regulation. The relevant provisions of the said Regulations are as follows:—

"2. With effect from the date he assumed duty or assumes duty in the Hyderabad State every member of the Indian Union Police Force shall be deemed to have been enrolled under the provisions of the Hyderabad District Police Act and shall have the powers and duties appertaining to his rank under the Hyderabad District Police Act.

3. If a member of the Indian Union Police Force was also subject to any other Act before he assumed or assumes duty in the Hyderabad State, he shall continue to be subject to that Act as if that Act had been extended 'mutatis mutandis' to the Hyderabad State.

4. If any question of law arises out of this Regulation, it shall be referred to the Military Governor whose opinion shall be conclusive."

The previous judgment in Jageram Malik's case, ILR (1955) Nag 93: (AIR 1955 Nag 160) shows that no provision had been brought to the notice of the Court

"whereunder the services of a Madhya Pradesh Police Officer could be loaned to a Part B State, nor any which permit an enquiry to be made against such officer by an authority exercising jurisdiction in a Part B State";

that is why the learned judges held that the public officer in question, despite the temporary transfer of his services to the Hyderabad State, must be deemed to be still on the Madhya Pradesh Police establishment. For the appellant, Mr. Khaskalam contends that if the relevant provisions of the Police Regulation had been cited before the Court on that occasion the Court might have come to a different conclusion. In this connection it is urged by him that the authority of the Nizam to issue the Firman cannot be disputed, and if the Firman conferred on the Military Governor appropriate powers, he would be competent to issue the Police Force Regulation on which the appellant relied; and having regard to the provisions of the said Regulation there would be no infirmity in the enquiry held against the respondent. We do not think it necessary to decide this point in the present case because as we shall presently point out we are satisfied that Sen and Bhandari were right in holding that the enquiry against the respondent did not satisfy the requirements of natural justice. In view of this conclusion it is also unnecessary to consider the other point of law on which the learned judges differed, namely, whether the contravention of the Police Rules and Regulations was justiciable, and if such contravention is proved whether it would make the order of dismissal invalid.

(5) Let us, therefore, consider whether the appellant is justified in contending that the High Court was in error in holding that the enquiry in question suffered from a serious infirmity, since in substance it denied the respondent reasonable opportunity of meeting the charge framed against him under Art. 311(2) of the Constitution. In order to decide this point it is necessary to refer to the material facts in regard to the said enquiry. We have already pointed out that though originally eight charges were framed against the respondent and some witnesses were examined at the initial stage of the enquiry, later on the said enquiry was dropped and the chargesheet was amended. The second chargesheet included five charges three of which were held to be substantiated at the second enquiry. These charges were (1) that in October 1948 the respondent took a bribe of Rs. 5,000/- from Nooruddin for releasing Gulam Ali from arrest; (2) about the same time he took Rs. 5,000/- from Noor Mohd. for releasing his brother Ali Bhai; (3) at the same time he took Rs. 5,000/- from Noor Bhai for the release of his father Kasim Bhai. Thus all the three charges showed that for releasing certain persons arrested as Razakars the respondent extorted a bribe of Rs. 5,000/- in three cases from the relatives of the arrested persons. When the second enquiry began the respondent requested the enquiry officer on November 9, 1951, to supply him with certain documents. These documents were specified in five different paragraphs amongst them were

"the file of Razakars in which there were recommendations of the District Superintendent of Police to the Civil Administrator Adilabad, for the release of some Razakars detenus and for the orders of the Civil Administrator for the release of those detenus, copy of the application on the strength of which a preliminary enquiry was started, statements of Rajab Ali and Noor Bhai re-

corded by Mr. Ghatwal in his preliminary enquiry.

He had also asked for two other documents which were supplied to him, and so it is unnecessary to refer to them. Now, in regard to the file of the Razakars, the officer made an endorsement that the file was searched in his office sometime back and was not found. He, however, directed that another search would be made and the report when received should be showed to the respondent. If the report was not forthcoming, the enquiry officer promised to write to the Collector and request him to show the papers to the respondent if they were in his office. In regard to the copy of the application on which the enquiry commenced as well as the statements of Rajab Ali and Noor Bhai the order was that the said documents were secret papers and were not admissible for the purpose of the enquiry. On November 11, 1951, the respondent repeated his request for the supply of the said documents but this request was rejected. The enquiry then proceeded, witnesses were examined and the enquiry officer made the report that all the three charges had been proved against the respondent. He recommended that the charges were serious and that the respondent should be dismissed forthwith. Thereafter a notice to show cause was served on the respondent. The respondent gave his explanation but the explanation was rejected and the impugned order of dismissal was passed against him.

(3) It has been urged before us by Mr. Sikalam that in dealing with the respondent's contention that the enquiry was defective Mr. Justice Sen has scrutinised the evidence of the findings made against the respondent in the enquiry as though he was hearing an appeal against the said order, and that, it is urged, is outside the jurisdiction of the High Court in entertaining a petition under Art. 226 of the Constitution. It may be conceded that some of the observations made by the learned judge support this argument. The learned judge for instance, commented on the fact that the charge supplied to the respondent did not give sufficient particulars; and has also expressed his disapproval of the conclusion recorded in the report that there was overwhelming evidence on the record against the respondent; and that may seem like examining the correctness of the findings of fact recorded in the enquiry; but even if these observations made by the learned judge are ignored in consideration on the ground that the learned judge was not entitled to consider the merits of the findings made against the respondent, there are two points on which the learned judge has substantially based his conclusion, and it is on those two points that it is necessary to concentrate in dealing with the present appeal. The first point is that the respondent should have been given a copy of the application on the strength of which the preliminary enquiry was started against him; and the second that the statements of Rajab Ali and Noor Bhai recorded by Mr. Ghatwal should have been supplied to him. In appreciating the significance of these points, it is necessary to recall the broad features of the evidence adduced against the respondent. In respect of each charge evidence was given by the person who paid the money to Rajab Ali and Noor Bhai or one of them in order that it should be paid in turn to the respondent. Nooruddin, s/o Saoji Veerani, Noor Mohd., s/o Hasham, and Kasim Bhai are the three witnesses who gave evidence in support of the three charges respectively. The first witness said that he had given in all Rs. 12,000/- to Rajab Ali and Noor Bhai in three instalments of Rs. 3,000/-, Rs. 3,000/- and Rs. 6,000/-. Similarly the second witness said that he had paid Rs. 11,000/- to Rajab Ali and Noor Bhai by two instalments of Rs. 6,000/- and Rs. 5,000/- respectively, and the third witness stated that he was arrested after the police action, and he was told that if he paid the respondent Rs. 5,000/- he would be released, and so the money was paid. It is obvious that Rajab Ali and Noor Bhai are the principal witnesses against the respondent. It is equally clear from the findings recorded in the report itself that they collected far more than they are alleged to have paid to the respondent in two cases. In fact the report says that the excess amount collected by these two witnesses had been quietly pocketed by them. Thus it was of very great importance for the defence to cross-examine these two witnesses, and for that purpose the respondent wanted copies of their prior statements recorded by Mr. Ghatwal in his preliminary enquiry. It is difficult to understand how these statements could be regarded as secret papers, for that alone is the reason given for not supplying their copies to the respondent. Failure to supply the said copies to the respondent made it almost impossible for the respondent to submit the said two witnesses to an effective cross-examination; and that in substance deprived the respondent of a reasonable opportunity to meet the charge. That is the view taken by Sen and Bhutt, JJ. and we see no reason to interfere with it.

(7) Similarly, in regard to Kasim, it appears that when his statement was recorded by the Sub-Divisional Officer he had denied having paid any amount to the respondent. It is rather surprising that though this witness made this categorical statement in the first enquiry he was examined again in the second enquiry and he came forward with the story that he had paid the amount of Rs. 5,000/-. It is because of his prior statement to the contrary that the respondent insisted that the witness should not be examined over again just because a new chargesheet was framed against him and that a fresh enquiry had commenced against him. This request was rejected and Kasim Bhai was examined again. This fact incidentally brings out very clearly the nature of the evidence which was adduced against the respondent in the enquiry.

(8) Then as to the application on the strength of which the preliminary enquiry was commenced against the respondent, we agree with the High Court in holding that there was no justification for keeping back this document. Like the prior statements of Rajab Ali and Noor Bhai this document also has been improperly characterised as secret and withheld from the respondent. If he had been given the documents which he had called for, the respondent would have been able to cross-examine the witnesses adequately, and in their absence he suffered from a handicap which in the result denied him a reasonable opportunity which is guaranteed to him under Art. 311 (2).

(9) Then as to the file of the Razakars it is really surprising that this file should be reported to have been lost. The respondent's case was that the Razakars in question for whose release he is alleged to have accepted the bribe were released on the recommendation of the District Superintendent of Police and under the orders of the Civil Administrator of Adilabad. The file was therefore relevant and, according to the respondent, the suggestion that the file had been lost was untrue and it was not produced because it was apprehended that, if produced, it would support his defence. It is true that the enquiry officer stated that he had made a search in his office but it could not be traced and that he was enquiring from the Collector and trying to find out whether the file could be found in the Collector's office. Apparently the respondent was given a letter addressed to the Collector wherein he was requested to show the file to the respondent if available. He was, however, told that the file was not traceable. It is in connection with the alleged loss of this file that the criticism made by Mr. Justice Sen about the indecent haste made in the enquiry becomes relevant. If only more diligent efforts had been made to discover the file the enquiry officer would have been able to see whether the plea made by the respondent on the strength of the said file was genuine or not. It is in the light of these facts that the High Court has held that the enquiry was not satisfactory, and that in substance the respondent had been denied a reasonable opportunity to meet the charges framed against him. There is no dispute that under Art. 311(2) the respondent is entitled to have such a reasonable opportunity. A proper opportunity must be afforded to him at the stage of the enquiry after the charge is supplied to him as well as at the second stage when punishment is about to be imposed on him. If the first enquiry was materially defective and denied the respondent an opportunity to prove his case it is impossible to hold that a reasonable opportunity guaranteed to a public servant by Art. 311(2) had been afforded to the respondent in the present case.

(10) Mr. Khaskalam has strenuously contended before us that in not supplying the copies of the documents asked for by the respondent the enquiry officer was merely exercising his discretion, and as such it was not open to the High Court to consider the propriety or the validity of his decision. In support of this argument he has referred us to the decision of the Patna High Court in Dr. Tribhuwan Nath v. State of Bihar, AIR 1960 Pat 116. In that case the public officer wanted to have a copy of the report made by the anti-corruption department as a result of a confidential enquiry made by it against the said officer; and the enquiry officer had rejected his prayer. When it was urged before the High Court that the failure to supply the copy of the said report constituted a serious infirmity in the enquiry and amounted thereby to a denial of a reasonable opportunity to the public officer, the High Court repelled the argument, and held that the officer was not entitled to a copy of the report unless that report formed part of the evidence before the Enquiry Commissioner and was relied upon by him "When, however, the report was not at all exhibited in the case, nor was it referred to, nor relied upon by the Commissioner", said the High Court, "there was no meaning in contesting it, and consequently absence of opportu-

nity to meet its contents involved no violation of constitutional provisions". In our opinion, this decision cannot assist the appellant's case because, as we have already pointed out, the documents which the respondent wanted in the present case were relevant and would have been of invaluable assistance to him in making his defence and cross-examining the witnesses who gave evidence against him. It cannot be denied that when an order of dismissal passed against a public servant is challenged by him by a petition filed in the High Court under Art. 226 it is for the High Court to consider whether the constitutional requirements of Art. 311(2) have been satisfied or not. In such a case it would be idle to contend that the infirmities on which the public officer relies flow from the exercise of discretion vested in the enquiry officer. The enquiry officer may have acted bona fide but that does not mean that the discretionary orders passed by him are final and conclusive. Whenever it is urged before the High Court that as a result of such orders the public officer has been deprived of a reasonable opportunity it would be open to the High Court to examine the matter and decide whether the requirements of Art. 311(2) have been satisfied or not. In such matters it is difficult and inexpedient to lay down any general rules; whether or not the officer in question has had a reasonable opportunity must always depend on the facts in each case. The only general statement that can be safely made in this connection is that the departmental enquiries should observe rules of natural justice and that if they are fairly and properly conducted the decisions reached by the enquiry officers on the merits are not open to be challenged on the ground that the procedure followed was not exactly in accordance with that which is observed in Courts of Law. As Venkatarama Aiyar, J. has observed in Union of India v. T. R. Varma, 1958 SCR 499 at p. 507 : ((S) AIR 1957 SC 882 at p. 885) "stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no material should be relied on against him without his being given an opportunity of explaining them". It is hardly necessary to emphasise that the right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with rules of natural justice. That is the view taken by the High Court, and in the present appeal which has been brought to this Court under Art. 136, we see no justification for interfering with it. In this connection it would be relevant to refer to the decision of this Court in Khem Chand v. Union of India, 1958 SCR 1080 at p. 1096 : (AIR 1958 SC 300 at p. 307) where this Court has emphasised the importance of giving an opportunity to the public officer to defend himself by cross-examining the witnesses produced against him.

(11) The result is the appeal fails and is dismissed with costs.

HE/B. Appeal dismissed.

AIR 1961 Supreme Court 1629 (V 48 C 309)

(From Patna)*

18th April, 1961

K. SUBBA RAO AND RAGHUBAR DAYAL, JJ.

Ram Chandra Prasad, Appellant v. State of Bihar, Respondent.

Criminal Appeal No. 188 of 1959.

(a) Constitution of India, Art. 21 — "Law" — Meaning — Principles of natural justice not covered — Prevention of Corruption Act (1947), S. 4 — Not unconstitutional as S. 4 lays down "procedure established by law" within Art. 21.

The word "law" in Art. 21 refers to law made by the State and not to positive law or law in the abstract sense embodying the principles of natural justice, and 'procedure established by law' means procedure established by law made by the State, that is to say, by the Union Parliament or the Legislatures of the States. Section 4 of the Prevention of Corruption Act, 1947, has been enacted by Parliament and, therefore, it must be held that what it lays down is a procedure established by law. The constitutionality of S. 4, therefore, cannot be questioned on the ground that it went against the provisions of Art. 21 of the Constitution. AIR 1950 SC 27, Rel. on.

(Para 5)

*(See Criminal Appeal No. 580 of 1953 D/- 10-9-1958—Pat.)

AIR 1964 SC 719 Evidence Must be led in presence of Charged official

the appellant that though cl. (9) envisaged inquiry and disciplinary proceedings against the suspended workmen it also provided that the management would try to reach an amicable settlement with the union, failing which there would be a reference to adjudication. It is said that in view of this the appellant held no inquiry. Particularly, the factory manager stated that he had discussions with the secretary of the union over the matter of these workmen and no settlement could be reached. He also stated that the management wanted to hold inquiries but the Secretary of the union stated that no useful purpose would be served by holding inquiries because before final action was taken by the management, it had to consult the union. This statement was made by the factory manager who appeared as the last witness in the case. The secretary of the union appeared long before as the first witness in the case and he was not questioned on this matter at all. No such case was made out even in the application for permission to dismiss which was filed on June 29, 1959, to the effect that the inquiries were not held because the secretary of the union suggested that it would be useless to do so; nor was any such allegation made in the written-statement of the appellant. In the circumstances it would be difficult to hold that the reason why no inquiry was held was that the respondents did not want the inquiry. In the circumstances therefore this is a case where the management wanted to dismiss the workmen without having held an inquiry and the decision in Sasamusa case, (1959) Supp (2) SCR 836 : (AIR 1959 SC 923) would be fully applicable to these nine workmen who have been permitted to be dismissed and they would be entitled to full wages from December 23, 1957 till the date the tribunal's award permitting dismissal becomes enforceable.

(30) Lastly we come to the case of the four workmen whose services have been allowed to be terminated. Nothing was urged before us with respect to the order permitting termination of service. Nor do we think that the order of the tribunal in this behalf is wrong. In their case the tribunal has said that if the inquiry proceedings had not been defective, these four persons would be liable to dismissal as ordered by the appellant. It is only because there was defect in the inquiry proceedings as stated above that it was held that the dismissal was unjustified. The tribunal therefore went on to permit the termination of service of these four workmen under one of the standing orders and finally ordered payment of wages for a period of one month along with compensation at the rate of 15 days average wages for every completed year of service or any part thereof in excess of six months. The circumstances of this case are not exactly similar to those in the Sasamusa case, (1959) Supp (2) SCR 836 : (AIR 1959 SC 923) and therefore the principle of that case would not necessarily apply. In the circumstances we do not think that we should interfere with the order of the tribunal.

(31) In the result, the award of the tribunal is affirmed in the light of and subject to the above modifications; and consequently the appeal by the management is dismissed and by the workmen allowed only with respect to the grant of wages in the manner indicated above. In the circumstances parties will bear their own costs in both appeals.

IG/D.H.Z. Order accordingly.

AIR 1964 Supreme Court 719 (V 51 C 87)

(From Fourth Industrial Tribunal; W. B.)*

2nd May, 1963

P. B. GAJENDRAGADKAR, K. N. WANCHOO AND K. C. DAS GUPTA, JJ.

M/s. Khardah and Co. Ltd., Appellant v. The Workmen, Respondents.

Civil Appeal No. 705 of 1962.

(a) Industrial Dispute — Industrial tribunal — Powers of, to interfere with action taken by management — Charges against workmen — Evidence must be led in presence of workman — Manager should record a finding on the evidence — Dismissal of workman held to be not in good faith by tribunal — Supreme Court will not interfere with finding of fact.

An Industrial Tribunal will not interfere with the action of the management in dismissing its employee after holding an enquiry into his alleged misconduct unless it is shown that the management has not acted in good faith, or that the dismissal amounts to victimisation or unfair labour practice, or the management has been guilty of a basic error, or violation of a principle of natural justice, or when on the materials, the finding is completely baseless or perverse. If the enquiry is fairly held and leads to the conclusion that the charge framed against the employee is proved, the Industrial Tribunal should not sit in appeal over the finding recorded at the said enquiry and should not interfere with the management's right to dismiss a workman who is found guilty of misconduct. The essential basis on which this view is founded is that the enquiry conducted by the management before domestic tribunal must be a fair and just enquiry and in bringing home to the workman the charge framed against him, principles of natural justice must be observed. Normally, evidence on which the charges are sought to be proved must be led at such an enquiry in the

*(See Case No. VIII-42 of 1961, D/- 29-9-1961 — Fourth Industrial Tribunal — W. B.)

presence of the workman himself. Recording evidence in the presence of the workman concerned serves a very important purpose. The witness knows that he is giving evidence against a particular individual who is present before him, and therefore, he is cautious in making his statement. Besides, when evidence is recorded in the presence of the accused person, there is no room for persuading the witness to make convenient statements, and it is always easier for an accused person to cross-examine the witness if his evidence is recorded in his presence. Therefore the Court would discourage the idea of recording statements of witnesses ex parte and then producing the witnesses before the employee concerned for cross-examination after serving him with such previously recorded statements even though the witnesses concerned make a general statement on the latter occasion that their statements already recorded correctly represent what they stated. Unless there are compelling reasons to do so, the normal procedure should be followed and all evidence should be recorded in the presence of the workman who stands charged with the commission of acts constituting misconduct. In this connection, it is necessary to point out that unlike domestic enquiries against public servants to which Art. 311 of the Constitution applies, in industrial enquiries, the question of the bona fides or mala fides of the employer is often at issue. If it is shown that the employer was actuated by a desire to victimise a workman for his trade union activities, that itself may, in some cases, introduce an infirmity in the order of dismissal passed against such a workman. The question of motive is hardly relevant in enquiries held against public servants. That is another reason why domestic enquiries in industrial matters should be held with scrupulous regard for the requirements of natural justice. Care must always be taken to see that these enquiries are not reduced to an empty formality.

The failure of the Manager to record any findings after holding the enquiry constitutes a serious infirmity in the enquiry itself. The Supreme Court will not consider the evidence itself and decide whether the dismissal of workman is justified or not. If industrial adjudication attaches importance to domestic enquiries and the conclusions reached at the end of such enquiries, that necessarily postulates that the enquiry would be followed by a statement containing the conclusions of the enquiry officer. It may be that the enquiry officer need not write a very long or elaborate report; but since his findings are likely to lead to the dismissal of the employee, it is his duty to record clearly and precisely his conclusions and to indicate briefly his reasons for reaching the said conclusions. Unless such a course is adopted, it would be difficult for the Industrial Tribunal to decide whether the approach adopted by the enquiry officer was basically erroneous or whether his conclusions were perverse.

It is well settled that if the enquiry is held to be unfair, the employer can lead evidence before the Tribunal and justify his action, but in such a case, the question as to whether the dismissal of the employee is justified or not would be open before the Tribunal and the Tribunal will consider the merits of the dispute and come to its own conclusion without having any regard for the view taken by the management in dismissing the employee. If the enquiry is good and the conduct of the management is not mala fide or vindictive, then, of course, the Tribunal would not try to examine the merits of the findings as though it was sitting in appeal over the conclusions of the enquiry officer. Where the Tribunal has come to the conclusion that the dismissal of workman was not effected in good faith and has been actuated by a desire to victimise him for his trade union activities, that is a conclusion of fact which cannot be said to be perverse, and so, it is not open to the management to challenge its correctness on the merits before the Supreme Court. AIR 1958 SC 130 and AIR 1964 SC 708 and AIR 1963 SC 601, Rel. on. AIR 1963 SC 375, Distinguished. (Paras 7, 8, 9, 10, 11)

(b) **Industrial Dispute — Industrial Tribunal, powers of — Power to admit evidence after arguments.**

It is perfectly true that in dealing with industrial matters, the Tribunal cannot allow evidence to be led by one party in the absence of the other, and should not accept the request of either party to admit evidence after the case has been fully argued unless both the parties agree. Where, however, what the Tribunal had done was merely to send for the authenticated record of the register of trade unions to see whether the dismissed workman was the organising secretary of the Union which fact was denied by the management it could not be said that it was improper on the part of the Tribunal to have allowed additional evidence to be called for after the arguments were over. (Para 14)

Cases Referred : Courtwise Chronological Paras

('58) AIR 1958 SC 130 (V 45) : 1958-1 Lab LJ 260, Indian Iron and Steel Co. Ltd. v. Their Workmen 7

('63) AIR 1963 SC 375 (V 50) : 1963-2 SCR 943, State of Mysore v. Shivabasappa Shivappa 8

('63) AIR 1963 SC 601 (V 50) : 1963 (1) Cri LJ 491, Union Territory of Tripura v. Copal Chandra 9

('64) AIR 1964 SC 708 (V 51) : Civil Appeals Nos. 425 and 426 of 1962 D/- 4-4-1963, Kesoram Cotton Mills Ltd. v. Gangadhar 8

Mr. H. N. Sanyal, Solicitor-General of India (Mr. P. K. Chatterjee, Advocate, with him), for Appellant; M/s. D. L. Sen Gupta and Janardhan Sharma, Advocates, for Respondents.

The following Judgment of the Court was delivered by:

GAJENDRAGADKAR, J.:

This appeal arises out of an industrial dispute between the appellant, Khardah Co. Ltd., and the respondents, its workmen. The dispute was in regard to the dismissal of the appellant's employee, Samiran Jadav. The respondents alleged that the said dismissal was unjustified, whereas, according to the appellant, the said employee had been properly and validly dismissed. The dispute which was referred to the 4th Industrial Tribunal, West Bengal, for its adjudication was whether the said dismissal was justified, and to what relief, if any, was the workman entitled? The Tribunal has held that the dismissal was unjustified and so, it has directed the appellant to reinstate the said employee to his old post within a month from the date of the publication of the award. It has also ordered that the period starting from the date of the dismissal till the date of reinstatement should be treated as leave without pay and as such, should be counted towards the length of service. It is against this award that the appellant has come to this Court by special leave.

(2) The respondent's case was that Jadav had been dismissed by the appellant mala fide with the motive of victimising him for his trade union activities. Jadav was the Organising Secretary of the Union and since he supported the Union's demands very strongly, the appellant wanted to get rid of him. It appears that Jadav had been working as a Weaver for some years past. He was confirmed in service with effect from April 12, 1954. On September 19, 1960, he went on a week's leave. When he returned on September 26, 1960, he was asked to work on the machine producing twill, though, normally, he was assigned work on a plain machine. Jadav was not accustomed to work on the complicated machine which produces twill and so, he requested the management that he should be asked to do his usual work on a plain machine. This request was, however, turned down. Being unaccustomed to work on the machine producing twill, Jadav met with an accident on September 27, 1960, and was granted medical leave for a week ending on Saturday, October 1, 1960. On October 3, 1960, when he resumed duty, he again requested the management that he should be permitted to work on the plain machine, but when his request was turned down, he told the management that he would work on the twill machine in the second shift which starts from 1 P.M. On that day, another employee Mahboob, who was ailing and had been on leave, asked for further leave which was refused and he fell unconscious while he was going to operate his machine. As a result, 700 weavers of the appellant stopped work and the weaving section could not resume work at 1 P.M. The management then declared a lock-out on October 5, 1960 which continued until October 29, 1960.

(3) On October 3, 1960, the management served a charge-sheet on Jadav in which it was alleged that Jadav had wilfully disobeyed the lawful and reasonable order of his superior and had acted in a manner subversive of discipline. The case against him was that he had moved from one place to another in the Weaving Department and incited workers of the said department to go on strike. The management alleged that by his conduct, Jadav had committed misconduct under R. 14(c) (i) and (viii) of the Standing Orders. Jadav was called upon to offer his explanation within 24 hours after receipt of the charge-sheet.

(4) After Jadav gave his explanation, an enquiry was heard. At the intial stages of the enquiry, Jadav appeared, but, later, he did not take part in the proceedings. The appellant contends that Jadav deliberately refrained from taking part in the proceedings, whereas according to the respondents, the enquiry was conducted unfairly, and so, it became impossible for Jadav to participate in it. This enquiry was conducted by the Manager himself. After the enquiry was over, the Manager decided that Jadav was guilty of the charge, and so, dismissed him on November 21, 1960. The respondents' case was that the dismissal was purely vindictive and was not justified at all.

(5) On other hand, the appellant's case was that Jadav had been working in the weaving department both on plain looms and on looms that produce twill. When he returned to duty on October 3, 1960, the departmental Overseer, Mr. Jha asked Jadav to go to his loom, but he refused to obey his orders. The appellant further alleged that Jadav moved inside the weaving department and incited the workers to stop work. The appellant also pleaded that a proper enquiry had been held against Jadav and it was as a result of the said enquiry that he was dismissed for misconduct under R. 14 (c)(i) and (viii) of the Company's Standing Orders. Regarding the incident of Mahboob, the appellant alleged that Mahboob was absent on October 3, 1960 and, therefore, no question of his working on any machine arose on that day. In other words, the appellant's contention was that the Union's version that the

strike was spontaneous because Mahboob fainted, was untrue and the strike was, in substance, the result of the instigation of Jadav.

(6) Before the Tribunal, some oral evidence was led by the parties and reliance was placed by the appellant on the proceedings of the enquiry itself. The Tribunal held that the management had deliberately suppressed the fact that Mahboob had gone to the mill on October 3, and prayed for extension of leave which was refused, and so, the Tribunal came to the conclusion that the strike could not have been instigated by Jadav. The Tribunal further commented on the fact that after the enquiry was held, no finding was recorded by the Manager who held the enquiry, and it appeared to the Tribunal that the conclusions on which the management presumably acted in dismissing Jadav were of such a character that "no person acting fairly and honestly could have reached them". The Tribunal also held that Jadav was not used to work on a twill loom, and so, his request that he should be allowed to work on a plain loom was not unjustified. Its conclusion, therefore, was that a grave charge had been unjustly framed against Jadav and that showed want of good faith and vindictiveness. On these findings, the Tribunal answered the question in favour of the respondents and directed reinstatement of Jadav.

(7) On behalf of the appellant, the learned Solicitor-General has strenuously urged before us that the appellant has held a proper domestic enquiry and has dismissed Jadav because the management thought that the enquiry disclosed the fact that the charges framed against Jadav had been established. He contends that it is firmly established by decisions of this Court that an Industrial Tribunal will not interfere with the action of the management in dismissing its employee after holding an enquiry into his alleged misconduct unless it is shown that the management has not acted in good faith, or that the dismissal amounts to victimisation or unfair labour practice, or where the management has been guilty of a basic error, or violation of a principle of natural justice, or when on the materials, the finding is completely baseless or perverse, vide Indian Iron and Steel Company Ltd. v. Their Workmen, 1958-1 Lab LJ 260 : (AIR 1958 SC 130). There is no doubt that this Court has consistently refrained from interfering with the conclusions reached by the enquiry officer who conducts domestic enquiries against industrial employees unless one of the four tests laid down in the case of Indian Iron and Steel Co. Ltd. 1957-1 Lab LJ 260 : (AIR 1958 SC 130) is satisfied, because we have generally accepted the view that if the enquiry is fairly held and leads to the conclusion that the charge framed against the employee is proved, the Industrial Tribunal should not sit in appeal over the finding recorded at the said enquiry and should not interfere with the management's right to dismiss a workman who is found guilty of misconduct.

(8) It would be noticed that the essential basis on which this view is founded is that the enquiry conducted by the management before a domestic tribunal must be a fair and just enquiry and in bringing home to the workman the charge framed against him, principles of natural justice must be observed. Normally, evidence on which the charges are sought to be proved must be led at such an enquiry in the presence of the workman himself. It is true that in the case of departmental enquiries held against public servants, this Court has observed in the State of Mysore v. Shivabasappa Shivappa, AIR 1963 SC 375 that if the deposition of a witness has been recorded by the enquiry officer in the absence of the public servant and a copy thereof is given to him, and an opportunity is given to him to cross-examine the witness after he affirms in a general way the truth of his statement already recorded, that would conform to the requirements of natural justice; but as has been emphasised by this Court in Kesoram Cotton Mills Ltd. v. Gangadhar, Civil Appeals Nos. 425 and 426 of 1962, D/- 4-4-1963 : (AIR 1964 SC 708) these observations must be applied with caution to enquiries held by domestic Tribunals against the industrial employees. In such enquiries, it is desirable that all witnesses on whose testimony the management relies in support of its charge against the workman should be examined in his presence. Recording evidence in the presence of the workman concerned serves a very important purpose. The witness knows that he is giving evidence against a particular individual who is present before him, and therefore, he is cautious in making his statement. Besides, when evidence is recorded in the presence of the accused person, there is no room for persuading the witness to make convenient statements, and it is always easier for an accused person to cross-examine the witness if his evidence is recorded in his presence. Therefore, we would discourage the idea of recording statements of witnesses ex parte and then producing the witnesses before the employee concerned for cross-examination after serving him with such previously recorded statements even though the witnesses concerned make a general statement on the latter occasion that their statements already recorded correctly represent what they stated. In our opinion, unless there are compelling reasons to do so, the normal procedure should be followed and all evidence should be recorded in the presence of the workman who stands charged with the commission of acts constituting misconduct.

(9) In this connection, it is necessary to point out that unlike domestic enquiries against public servants to which Art. 311 of the Constitution applies, in industrial enquiries, the question of the bona fides or mala fides of the employer is often at issue. If it is shown that the employer was actuated by a desire to victimise a workman for his trade union activities, that itself may, in some cases, introduce an infirmity in the order of dismissal passed against such a workman. The question of motive is hardly relevant in enquiries held against public servants, vide Union Territory of Tripura v. Gopal Chandra, AIR 1963 SC 601. That is another reason why domestic enquiries in industrial matters should be held with scrupulous regard for the requirements of natural justice. Care must always be taken to see that these enquiries are not reduced to an empty formality.

(10) Take the present case where, after the enquiry was held, the Manager who held the enquiry has not recorded any findings, and so, we do not know what reasons weighed in his mind and how he appreciated the evidence led before him. The learned Solicitor-General contends that there was hardly any need to record any findings or to make a formal report in the present case, because the Manager who held the enquiry was himself competent to dismiss the employee. We are not impressed by this argument. The whole object of holding an enquiry is to enable the enquiry officer to decide upon the merits of dispute before him, and so, it would be idle to contend that once evidence is recorded, all that the employer is expected to do is to pass an order of dismissal which impliedly indicates that the employer accepted the view that the charges framed against the employee had been proved. One of the tests which the Industrial Tribunal is entitled to apply in dealing with industrial disputes of this character is whether the conclusion of the enquiry officer was perverse or whether there was any basic error in the approach adopted by him. Now, such an enquiry would be impossible in the present case because we do not know how the enquiry officer approached the question and what conclusions he reached before he decided to dismiss Jadav. In our opinion, therefore, the failure of the Manager to record any findings after holding the enquiry constitutes a serious infirmity in the enquiry itself. The learned Solicitor-General suggested that we might consider the evidence ourselves and decide whether the dismissal of Jadav is justified or not. We are not prepared to adopt such a course. If industrial adjudication attaches importance to domestic enquiries and the conclusions reached at the end of such enquiries, that necessarily postulates that the enquiry would be followed by a statement containing the conclusions of the enquiry officer. It may be that the enquiry officer need not write a very long or elaborate report; but since his findings are likely to lead to the dismissal of the employee, it is his duty to record clearly and precisely his conclusions and to indicate briefly his reasons for reaching the said conclusions. Unless such a course is adopted, it would be difficult for the Industrial Tribunal to decide whether the approach adopted by the enquiry officer was basically erroneous or whether his conclusions were perverse. Indeed, if the argument urged before us by the learned Solicitor-General is accepted, it is likely to impair substantially the value of such domestic enquiries. As we have already observed, we must insist on a proper enquiry being held, and that means that nothing should happen in the enquiry either when it is held or after it is concluded and before the order of dismissal is passed, which would expose the enquiry to the criticism that it was undertaken as an empty formality. Therefore, we are satisfied that the Industrial Tribunal was right in not attaching any importance to the enquiry held by the Manager in dealing with the merits of the dispute itself on the evidence adduced before it.

(11) It is well settled that if the enquiry is held to be unfair, the employer can lead evidence before the Tribunal and justify his action, but in such a case, the question as to whether the dismissal of the employee is justified or not, would be open before the Tribunal and the Tribunal will consider the merits of the dispute and come to its own conclusion without having any regard for the view taken by the management in dismissing the employee. If the enquiry is good and the conduct of the management is not mala fide or vindictive, then, of course, the Tribunal would not try to examine the merits of the findings as though it was sitting in appeal over the conclusions of the enquiry officer. In the present case, the Tribunal has come to the conclusion that the dismissal of Jadav was not effected in good faith and has been actuated by a desire to victimise him for his trade union activities. That is a conclusion of fact which cannot be said to be perverse, and so, it is not open to the appellant to challenge its correctness on the merits before us.

(12) There is one point to which we ought to refer before we part with this appeal. It appears that the main dispute between the parties was whether the strike on October 3, 1960 was spontaneous, or had been instigated by Jadav. The respondents contended that the treatment given by the management to Mahboob caused this strike and 700 weavers struck work spontaneously, whereas the appellant urged that Mahboob was not present on the said date, and so, the story that his request

for leave was not acceded to and he had to work is altogether false and the strike had really been instigated by Jadav. On this point, the Tribunal has made a categorical finding against the appellant and in doing so, it has relied upon the minutes of the Emergency Works Committee meeting held on October 3, 1960 at 3 P. M. with the Manager himself in the chair. These minutes show that when an enquiry was made as to why the strike had commenced, it was definitely reported to the Committee that Mahboob, who had gone on leave, had extended his leave and after the expiry of the extended leave, he reported on October 3 and pleaded that he was still unwell and should be given still further leave, but "nobody paid any heed to his prayer", and so presumably he had to resume duty. The minutes further show that the Labour Officer informed the members of the Committee that Mahboob had produced a certificate of fitness on September 22, 1960 and after discussion, it was unanimously decided to refer his case to the Mills Medical Officer on whose recommendation the leave should be considered. These minutes, therefore, clearly prove that Mahbood had gone to the Mill on October 3, had asked for further leave, and his request for further leave was not granted. We ought to add that these minutes have been signed by the Joint Secretary on the employer's side and the Joint Secretary on the employees' side, and their correctness cannot be impeached. It is in the light of these statements that the plea made by the appellant before the Tribunal had to be considered by it.

(13) The plea specifically made was that Mahboob was absent on October 3, and, therefore, there was no question of his working on any machine. This plea would seem to suggest that Mahboob was absent from the Mill and that undoubtedly is not true. The learned Solicitor-General invited us to consider this plea in the light of the statement made by one of the witnesses in the domestic enquiry. This statement was that Mahboob and the witness had gone to the Labour Officer for extension of leave to Mahboob and the Labour Officer had granted leave. This statement would show that leave had been granted to Mahboob in the morning of 3rd October, but as we have already seen, the Labour Officer himself told the members of the Works Committee at 3 P. M. on the same day that leave had not been granted to Mahboob because he had produced a certificate of fitness dated September 22, and the Works Committee had resolved that Mahboob's case should be referred to the Mill's Medical Officer on whose recommendation action should be taken. Thus, there can be no doubt that even if the plea made by the appellant is liberally construed and is read in the light of the statement made by one of the witnesses at the domestic enquiry, the Industrial Tribunal was right in holding that the stand taken by the appellant was wholly untrue and that Mahboob had not been given leave on 3rd October. That being so, if the Industrial Tribunal took the view that the refusal of the management to give leave to Mahboob exasperated the workmen, we cannot hold that its conclusion is erroneous or that its propriety can be successfully challenged before us. The incident in regard to Mahboob forms the main background of the strike and the anxiety of the appellant was to show that Mahboob was not present on that date. Therefore, once the Industrial Tribunal came to the conclusion that the version given by the appellat was untrue, it naturally changed the complexion of the whole of the charge-sheet framed by the appellant against Jadav. That is why the Industrial Tribunal came to the conclusion that the conduct of the appellant in dismissing Jadav showed lack of good faith and appeared to have been inspired by the desire to victimise Jadav for his trade union activities.

(14) The learned Solicitor-General commented on the fact that the Tribunal had allowed the respondents to call for the register of trade unions after the arguments had been heard before it. It appears that both the parties appeared before the Tribunal on January 19, 1961 when arguments were heard and the award was reserved. The Union then filed an application praying that the trade union record may be called for, and the Tribunal ordered that the record be called for. The grievance made by the learned Solicitor-General is that it is improper to have allowed additional evidence to be called for after the arguments had been heard. We do not think there is any force in this argument, because the only purpose for which the record was called for by the Union was to show that Jadav was the Organising Secretary of the Union. Since that fact was presumably disputed by the appellant in arguing the case before the Tribunal, the Union urged that the record kept by the Registrar of Trade Unions would show that the appellant's plea was not well founded. If, in such circumstances, the Tribunal sent for the record to satisfy itself that the record showed that Jadav was the Organising Secretary of the Union, we do not think any serious grievance can be made by the appellant about the conduct of the Tribunal. It is perfectly true that in dealing with industrial matters, the Tribunal cannot allow evidence to be led by one party in the absence of the other, and should not accept the request of either party to admit evidence after the case has been fully argued unless both the parties agree. In the present case, however, what the Tribunal

has done, is merely to send for authenticated record to see whether Jadav was the Organising Secretary of the Union or not.

(15) The result is the appeal fails and is dismissed with costs.

IG/D.H.Z. Appeal dismissed.

AIR 1964 Supreme Court 725 (V 51 C 88)

(From : Allahabad)*

18th September, 1963

P. B. GAJENDRAGADKAR, K. SUBBA RAO, K. N. WANCHOO, J. C. SHAH AND RAGHUBAR DAYAL, JJ.

Babu Lal, Appellant v. State of Uttar Pradesh and others, Respondents.

Civil Appeal No. 708 of 1962.

Criminal P. C. (1898), Ss. 479A, 476 — Scope — S. 479A may be resorted to in case falling within first paragraph of S. 193 Penal Code and Ss. 194 and 195 — Offence under S. 471, Penal Code — S. 479A(1) not applicable — Resort to S. 476 proper.

It is clear from the terms of sub-s. (6) of S. 479A that the procedure prescribed thereby alone applies if the case falls within sub-sec. (1) of that section. But sub-s. (1) has a limited operation; it applies only to the prosecution of a witness appearing before the Court, who has intentionally given false evidence in any stage of the judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding. The sub-section may therefore be resorted to only in a case which falls within the first paragraph of S. 193 of the Indian Penal Code and allied Ss. 194 and 195 when it is committed by a witness appearing before the Court. The phraseology used in S. 479A is plain and unambiguous; it excludes the jurisdiction of the Court to proceed under Ss. 476 to 479, in respect of offences specified in S. 195(1) (b) and (c) of the Code of Criminal Procedure only where a person appearing before the Court as a witness has intentionally given false evidence in any stage of the judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding. An offence punishable under S. 471 Indian Penal Code being one of fraudulently or dishonestly using as genuine any document which the accused knows or has reason to believe to be a forged document, does not fall within the category contemplated by S. 479A(1) of the Code of Criminal Procedure and therefore the authority of the Court to act under S. 476 of the Code is not impaired by sub-sec. (6) of S. 479A. It is true that some of the ingredients of the act of fabricating false evidence which is penalised under S. 193, Indian Penal Code and of making a false document and thereby committing forgery within the meaning of Ss. 463 and 464, Indian Penal Code are common. A person by making a false entry in any book or record or by making any document containing a false statement may, if the prescribed conditions of S. 463 are fulfilled, commit an offence of forgery. But the important ingredient which constitutes fabrication of false evidence within the meaning of S. 192, Indian Penal Code beside causing a circumstance to exist or making a false document—to use a compendious expression—is the intention that the circumstance so caused to exist or the false document made may appear in evidence in a judicial proceeding, or before a public servant or before an arbitrator, and lead to the forming of an erroneous opinion touching any point material to the result of the proceeding. The offences of forgery and of fabricating false evidence for the purpose of using it in a judicial proceeding are therefore distinct, and within the description of fabricating false evidence for the purpose specified in S. 479-A, Criminal Procedure Code, the offence of forgery is not included. In any event the offence penalised under S. 471 Indian Penal Code can never be covered by sub-sec. (1) of S. 479A. Therefore for taking proceeding against a person who is found to have used a false document dishonestly or fraudulently in any judicial proceeding, resort may only be had to S. 476 Code of Criminal Procedure. 1964 (1) Cri LJ 489 (SC), Rel. on. AIR 1963 SC 816, Explained. (Paras 5, 7, 8)

Cases Referred : Courtwise Chronological Paras

('64) 1964 (1) Cri LJ 489 (SC), Cri Appeal No. 44 of 1961 D/- 10-5-1963, Raghubir Prasad Dudhwalla v. Chamanlal Mehra 7

('63) AIR 1963 SC 816 (V 50) : 1963 (1) Cri LJ 803, Shabir Hussain Bholu v. State of Maharashtra 9

Mr. C. B. Agarwala, Senior Advocate (Mr. K. P. Gupta, Advocate for Mr. K. R. Krishnaswamy, Advocate with him), for Appellant; Mr. C. P. Lal, Advocate, for Respondent No. 1; Mr. S. P. Sinha, Senior Advocate (Mr. M. I. Khowaja, Advocate with him), for Respondents Nos. 2 to 5.

The following Judgment of the Court was delivered by

SHAH, J. :

Jairam and three others—hereafter collectively called "the plaintiffs"—sued Babu Lal—

*(See Civil Revn. No. 60 of 1960, D/- 31-1-1962—All.)

that his experience of criminal trials gave him an occasion to compare the records of crime of various lawless groups in the State vis-a-vis the Police Force. To characterise the whole Police Force of the State as a lawless group is bad enough; to say that its record of crime is the highest in the State is worse and coming as it does from a Judge of the High Court, is sure to bring the whole administration of law and order into disrepute. For a sweeping generalisation of such a nature, there must be a sure foundation and the necessity of the case must demand it. We can find neither in the present case. We think that the State Government was justifiably aggrieved by such a sweeping remark. Similar in nature is the remark about the stinking of "every fish in the police force barring, perhaps, a few". The word "perhaps" seems to indicate that even about the few, the learned Judge had some doubt. We consider that these sweeping generalisations defeat their own purpose. They were not necessary for the disposal of the case against Mohammad Naim. It would have been enough for the learned Judge to say that when a large number of police officers were resorting to an objectionable method of investigation, it was unnecessary to pick out one petty officer and prosecute him for doing what several others had done with impugnity. It was wholly unnecessary for the learned Judge to condemn the entire police force and say that their record of crime was the highest in the country. Such a remark instead of serving the purpose of reforming the police force, which is the object the learned Judge says he had in mind, is likely to undermine the efficiency of the entire police force. We think that in his zeal and solicitude for the reform of the police force, the learned Judge allowed himself to make these very unfortunate remarks which defeated the very purpose he had in mind. Having said all this, we must add, lest we be misunderstood, that the conduct of Mohammad Naim and officers like him deserves the severest condemnation and the learned Judge rightly observed that such conduct required very serious notice by superior officers of the Police. It is difficult to avoid the reflection that unless an example is made of such officers by taking the most stringent action against them, no improvement in police administration is possible.

(12) For the reasons given above, we have come to the conclusion, a conclusion which justice demands, that the present case is one of those exceptional cases where the inherent jurisdiction of the court should have been exercised and the remarks earlier referred to as (a), (b) and (c) should have been expunged. We accordingly allow the appeal and direct that the aforesaid remarks do stand expunged from the order of the learned Judge dated August 4, 1961.

IG/D.R.R. Appeal allowed.

AIR 1964 Supreme Court 708 (V 51 C 86)

(From First Industrial Tribunal, W. B.)*

4th April 1963

K. N. WANCHOO AND K. C. DAS GUPTA, JJ.

M/s. Kesoram Cotton Mills Ltd., Appellant v. Gangadhar and others, Respondents and vice versa.

Civil Appeals Nos. 425 and 426 of 1962.

(a) **Industrial Dispute — Suspension of workmen — Workmen fully exonerated — Are entitled to full wages for period of suspension — Exoneration not complete — Lesser punishment than dismissal may be inflicted.**

Ordinarily, the law is that a workman may be suspended pending enquiry and disciplinary action. If after the inquiry the misconduct is proved the workman is dismissed and is not entitled to any wages for the suspension period; but if the inquiry results in the reinstatement of the workmen he is entitled to full wages for the suspension period also along with reinstatement, unless the employer instead of dismissing the employee can give him a lesser punishment by way of withholding of part of the wages for the suspension period. Therefore when the agreement between the employer and the workmen envisaged suspension pending inquiry and disciplinary action it also envisaged the consequence, namely, that if the inquiry results in dismissal, the workmen would get no wages for the suspension period while if the enquiry results in the reinstatement of the workman he would be entitled to full wages for the suspension period, if he is fully exonerated or to such less wages as the employer may give in case the exoneration is not complete and some punishment less than dismissal can be inflicted. The provision in the agreement that the suspended workmen shall not raise any dispute or make any claim with regard to the suspension period or lay-off period in any shape or form could only refer to suspension or lay off in the past and it could not be the intention of the agreement, for example, that if any lay-off took place in future it would apply to it. If the intention was that the workmen who remained suspended would get no wages for the future, even if they were fully exonerated after an inquiry one should have found a specific provision to that effect in the agreement. AIR 1962 SC 1500, Rel. on. (Para 12)

(b) **Industrial Dispute — Inquiry against workmen — Rules of natural justice to be follow-**

*(See Award D/- 30-12-1960, First Industrial Tribunal—W.B.)

ed — Previously prepared signed statement of witness read over to workmen and latter asked to cross-examine witness then and there — Rules of natural justice not complied with.

It may be accepted that rules of natural justice do not change from tribunal to tribunal. Even so the purpose of rules of natural justice is to safeguard the position of the person against whom an inquiry is being conducted so that he is able to meet the charge laid against him properly. Therefore the nature of the inquiry and status of the person against whom the inquiry is being held will have some bearing on what should be the minimum requirements of the rules of natural justice. Where, for example, lawyers are permitted before a tribunal holding an inquiry and the party against whom the inquiry is being held is represented by a lawyer it may be possible to say that a mere reading of the material to be used in the inquiry may sometime be sufficient. But where in a domestic inquiry in an industrial matter lawyers are not permitted, something more than a mere reading of statements to be used will have to be required in order to safeguard the interest of the industrial worker. Further, the Court can take judicial notice of the fact that many of the industrial workers are illiterate and sometimes even the representatives of labour union may not be present to defend them. In such a case to read over a prepared statement of a witness in a few minutes and then ask the workmen to cross-examine would make a mockery of the opportunity that the rules of natural justice require that the workmen should have to defend themselves. Therefore when one is dealing with domestic inquiries in industrial matters, the proper course for the management is to examine the witnesses from the beginning to the end in the presence of the workman at the inquiry itself. Oral examination always takes much longer than a mere reading of a prepared statement of the same length and brings home the evidence more clearly to the person against whom the inquiry is being held. Generally speaking therefore the Court should expect a domestic inquiry by the management to be of this kind. Even so, the main principles of natural justice cannot change from tribunal to tribunal and therefore it may be possible to have another method of conducting a domestic inquiry (though this should not be the rule but the exception). The minimum that the Court shall expect where witnesses are not examined from the very beginning at the inquiry in the presence of the person charged is that the person charged should be given a copy of the statements made by the witnesses which are to be used at the inquiry well in advance before the inquiry begins and it should be given at least two days before the inquiry is to begin. If this is not done and yet the witnesses are not examined in chief fully at the inquiry, it cannot be said that principles of natural justice which provide that the person charged should have an adequate opportunity of defending himself are complied with in the case of a domestic inquiry in an industrial matter.

Where all that had happened was that the prepared statements were read over to the workmen charged and they were asked then and there to cross examine the witness the inquiry did not comply with the principles of natural justice. The inquiries were vitiated by disregard of rules of natural justice is correct. (S) AIR 1957 SC 882 and AIR 1963 SC 375 and (S) AIR 1957 SC 232, Rel. on. (Para 15

(c) Industrial Dispute — Workman of Kesoram Cotton Mills found guilty of inciting other workers to slow down work — This would be misconduct under Standing Order No. 22 (k) for which a workman could be dismissed. (Para 17,

(d) Industrial Disputes Act (1947) S. 33 — Employer not entitled to dismiss workman except with permission of Industrial Tribunal — He can suspend workman pending inquiry and permission of Tribunal — Permission refused by Tribunal — Workman is entitled to wages from date of suspension — Award D/- 30-12 1960, First Industrial Tribunal, West Bengal varied.

Under the ordinary law of master and servant the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant but must arise either from an express term in the contract itself or a statutory provision governing such contract. But where under S. 33 of the Act the right of the employer to dismiss an employee except with the permission of the industrial tribunal was taken away, it would be open to the employer to suspend the workmen pending inquiry and permission of the tribunal. In such circumstances such a term in the contract of employment would be implied and the result would be that if the tribunal granted the permission, the suspended contract would come to an end and there would be no further obligation on the part of the employer to pay any wages after the date of suspension. If on the other hand, the permission was refused, the workmen would be entitled to all their wages from the date of suspension. It follows therefore that in the case of those workmen who have been ordered to be reinstated there can be no justification for depriving them of their wages from the date of the suspension. AIR 1959 SC 1342, Rel. on. Award D/- 30-12-1960 of First Industrial Tribunal, West Bengal, varied. (Para 26)

(e) Industrial Dispute — Agreement between employer and workmen providing for enquiry before dismissal of suspended workmen — Employer holding no enquiry — Industrial Tribunal ultimately permitting dismissal—Workmen held entitled to full wages from date of agreement till date when award became enforceable — Award D/- 30-12-1960, First Industrial Tribunal, West Bengal, varied.

The management suspended some of the workmen on the charges of slow-down and other charges. Thereafter negotiations were started between the Union of the workmen and the management and an agreement was arrived at. One of the clauses of the agreement was as follows. "The workers shall remain suspended pending enquiry and disciplinary action by the management. The management will try to reach an amicable settlement with the Union regarding disciplinary action taken or may be taken by them against the said workmen. If the parties fail to reach settlement, the matter will be referred to the tribunal for settlement of the dispute in this behalf". The management held no enquiry. The workmen were allowed to be dismissed by the Industrial Tribunal.

Held that this was a case where the management wanted to dismiss the workmen without being held an enquiry and the decision in AIR 1959 SC 923 applied. The workmen would be entitled to full wages from the date of the agreement till the date the tribunal's award permitting dismissal became enforceable. AIR 1959 SC 923, Relied on. Award D/- 30-12-1960, First Industrial Tribunal, West Bengal, varied. (Para 29)

(f) Industrial Dispute — Agreement between employer and workmen providing for enquiry before dismissal of suspended workmen — Enquiry defective — Services of workmen allowed to be terminated with payment of compensation and wages.

The management suspended some of the workmen on charges of slow-down and other charges. Thereafter negotiations were started between the Union of the workmen and the management and an agreement was arrived at. One of the clauses of the agreement was as follows: "The workers shall remain suspended pending enquiry and disciplinary action by the management. The management will try to reach an amicable settlement with the Union regarding disciplinary action taken or may be taken by them against the said workmen. If the parties fail to reach settlement, the matter will be referred to the Tribunal for settlement of the dispute in this behalf." The Tribunal held that if the inquiry proceedings had not been defective these workmen would be liable to dismissal as ordered by the management. It was only because there was defect in the inquiry proceedings that it was held that the dismissal was unjustified. The tribunal therefore went on to permit the termination of service of these workmen under one of the Standing Orders and finally ordered payment of wages for a period of one month along with compensation at the rate of 15 days average wages for every completed year of service or any part thereof in excess of six months.

Held that the circumstances of this case were not exactly similar to those in AIR 1959 SC 923 and therefore the principle of that case would not necessarily apply. In the circumstances the Supreme Court should not interfere with the order of the tribunal. AIR 1959 SC 923, Distinguished. (Para 30)

Cases Referred: Courtwise Chronological Paras

('57) (S) AIR 1957 SC 232 (V 44): 1957 SCR 98, New Prakash Transport Co., Ltd. v. New Suwarna Transport Co., Ltd. 15
('57) (S) AIR 1957 SC 882 (V 44): 1958 SCR 499, Union of India v. T. R. Varma 13
('59) AIR 1959 SC 923 (V 46): (1959) Supp (2) SCR 836, Sasamusa Sugar Works (P.) Ltd. v. Sobrathi Khan 29, 30
('59) AIR 1959 SC 1342 (V 46): 1960-1 SCR 476, Management Hotel Imperial New Delhi v. Hotel Worker's Union 26
('62) AIR 1962 SC 1500 (V 49): 1962-1 Lab LJ 420, Straw Board Mfg. Co., Saharanpur v. Govind 12
('63) AIR 1963 SC 375 (V 50): 1963-2 SCR 943, State of Mysore v. Shivabasappa Shivappa 14, 15

Mr. M. C. Setalvad, Senior Advocate, (Mr. B. P. Maheshwari, Advocate, with him), for Appellant (In C. A. No. 425 of 1962) and Respondents (in C. A. 426 of 1962); Mr. Y. Kumar Advocate, for Respondents (In C. A. No. 425 of 1962) and Appellant (In C. A. No. 426 of 1962).

The following Judgment of the Court was delivered by

WANCHOO, J.:

These are two appeals by special leave against the same award of the First Industrial Tribunal, West Bengal and will be dealt with together. Appeal No. 425 of 1962 is by the employers and appeal No. 426 of 1962 is by the workmen. The employers will be referred to as the appellant throughout this judgment while the workmen will be referred to as the respondents. There was a dispute between the appellant and the respondents with respect to two matters, which were referred to the tribunal for adjudication by the Government of West Bengal in the following terms:—

(1) To what relief the suspended workmen whose names are mentioned in list 'A' are entitled?

(2) Whether the termination of employment of the workmen whose names are mentioned in list 'B' was justified ? Are they entitled to reinstatement and/or compensation ? List 'A' consisted of 29 workmen while list 'B consisted of 12 workmen.

(2) The genesis of the dispute as to the suspended workmen was this according to the case of the appellant. The workmen of the weaving department of the appellant commenced slow down from October 28, 1957, in spite of the warning given by the appellant. On November 3, 1957, doffers of carding refused to work on new machines. The workmen of loose godown and folding section started slow down from October 27, 1957 and November 4, 1957 respectively. On November 23, 1957, the workmen of the spinning department adopted slow down tactics and indulged in other subversive activities and left their respective machines in groups rendering the work in backward and forward processes idle. As a result of this conduct of the workmen for a period of about four weeks, the appellant had to lay-off a large number of workmen without compensation. Then on December 3, 1957, the workmen of dye house and printing department went on an illegal stay-in-strike. In the first week of December, 1957, the workmen of blow room and carding went on strike. On December 9, the strike was commenced in the engineering department, cotton godown, bale godown, canteen, high speed winding and old stores department. In the circumstances the appellant had to suspend 1600 workmen on charges of slow-down and various other charges. Thereafter negotiations were started between the union of the workmen and the management and an agreement was arrived at on December 23, 1957. The interpretation of some of the terms of the agreement is in dispute and we shall refer to them in due course. Suffice it to say here that by this agreement the workmen resumed work and undertook not to take recourse to go-slow activities either individually or jointly and not to take recourse to illegal methods and means for the achievement of their demands or for getting their grievances redressed. It was also agreed that maintenance of discipline was of paramount importance and the workmen as also the union at all times would co-operate with management in taking appropriate disciplinary action against the workmen for the maintenance of discipline in the factory. The agreement however provided that thirty workmen named in annexure 'A' thereof would remain suspended pending inquiry and disciplinary action by the appellant. The first term of reference with respect to suspended workmen is about the thirty workmen who were to remain suspended under the terms of the agreement of December 23, 1957.

(3) The twelve workmen with which the second term of reference is concerned, were claimed by the appellant to have been guilty of various acts of misconduct for which they were liable to dismissal under the standing orders. They were duly charge-sheeted and inquiries were held against them and thereafter they were dismissed according to the provisions of law. As however the dismissals had taken place during the pendency of a dispute before the first industrial tribunal in which the appellant was a party, applications were made under S. 33 (2) (b) of the Industrial Disputes Act, No. 14 of 1947, (hereinafter referred to as the Act) for approval of the action taken by the appellant in regard to these twelve workmen. It seems, however, that before these applications could be disposed of, the dispute before the tribunal was decided, with the result that no orders were passed by the tribunals on these applications. The appellant, however, claimed that the dismissal of these workmen was justified and therefore no case for reinstatement or compensation arose. This claim of the appellant was disputed by the respondents and therefore we find this dispute being referred for adjudication in the second term of reference.

(4) We shall first deal with the matter relating to suspension of the twenty-nine workmen in list 'A' to the order of reference. It may be mentioned that though in annexure 'A' to the agreement there were thirty workmen, the reference was made only with respect to twenty-nine, as it is said that one of the workmen out of 30 had died by the time the reference came to be made. Further out of the 29 workmen with which the first term of reference was concerned, the respondents gave up the case of five of the workmen. The tribunal therefore dealt with the case of the remaining 24. These 24 workmen were divided by the tribunal into five groups. The first group consisted of two workmen, the second group of five workmen, the third group of 13 workmen, the fourth group of two workmen and the fifth group of two workmen. Learned counsel for the appellant has not pressed the appeal with respect to six workmen in groups I, IV and V, and we need not therefore consider the order of the Tribunal with respect to these workmen, who are Govindo (No. 1), Bholanath (No. 8), Khaseswar (No. 7), Ramjatan (No. 27), Rampujan (No. 26) and Khetrabasi (No. 28) of list 'A' attached to the order of reference.

(5) As to the five workmen in group II, namely, Gangadhar (No. 2), Ramchandra (No. 3), Babaji Nayak (No. 4), Pahraj (No. 5) and Shankdardas (No. 6) of list 'A' attached to the order of reference, the tribunal ordered that they should be reinstated in their jobs with effect from the date the award came into force

and should be paid compensation amounting to fifteen months' wages in all for the period during which they remained suspended. The appellant has challenged this order of the tribunal.

(6) As to group III, the tribunal decided that nine of the thirteen workmen should be dismissed. As to the remaining four the tribunal held that they should be reinstated. It may be mentioned that the reason why the tribunal proceeded to consider whether any of the workmen in list 'A' to the order of reference should be dismissed was on account of the appellant's filing an application under S. 33(1)(b) of the Act before the tribunal for permission to dismiss the twenty-nine workmen. The order of the tribunal with respect to the reinstatement of four workmen, namely, Gulzarali (No. 18), Farid (No. 16), Din Mohd. (No. 17) and Mohd. Islam (No. 24) of list 'A' attached to the order of reference is being challenged by the appellant on the ground that there was no reason for the tribunal to treat these four workmen out of this group of 13 differently from the other nine as the evidence was the same in all these cases. Finally, the tribunal also ordered with respect to all the 24 workmen on an interpretation of the agreement of December 23, 1957, that they should be paid 12 months' wages for the period of their suspension irrespective of whether it was permitting them to be dismissed or not. This order of the tribunal is also being attacked by the appellant.

(7) We shall first take the case of the five workmen in group II. The contention of the appellant in that behalf is two-fold. In the first place it is urged that these workmen were charged with adopting go-slow tactics by causing spindle stoppage unnecessarily and there was clear documentary evidence to support this charge and the tribunal's decision that there was no proof of go-slow tactics in the circumstances was perverse. In the second place, it is urged that all these five workmen were charged with other misconduct also and the tribunal did not consider the evidence with respect to other misconduct at all and gave no finding thereon and so the case of these five workmen at any rate should be remanded to the tribunal for considering the evidence on the other charges against them.

(8) Now the appellant relied on an extract from two registers, Exs. AA and AA-1, which had been produced before the tribunal in this connection and this extract was set out in the special leave petition. The respondents, however, contended that what was set out in the special leave petition was not an extract at all from Exs. AA and AA-1. On the other hand it was said to be a spurious document prepared to mislead this Court at the time of the admission of the appeal and so it was urged that the leave should be revoked. This extract related to four workmen, namely, Paharaj Shankdardas, Gangadhar and Babaji, and was with respect to spindle stoppage from November 10 to 23, 1957. In view of the charge made by the respondents, the original registers were sent for and have been examined by us and we have come to the conclusion that the extract given in the special leave petition was not a true copy of Exs. AA and AA-1 as it should have been, if it was merely an extract from those registers. The figures of spindle stoppage given in the extract certainly tally with the figures in the two registers but the registers do not show the names of the persons who were manning the four machines, the spindle stoppage of which was given in this extract. It is however urged that the names of the four workmen were given in the extract though they were not to be found in the registers because these workmen actually manned the machines on the dates mentioned in the extract and reference was made to some evidence in that connection. Even assuming that these workmen manned these machines we find another serious misrepresentation in this extract. Paharaj was charge-sheeted on November 17 and was suspended forthwith. Therefore he could not have worked after November 17, but this extract shows as if he continued working even after November 17 upto November 23. It is remarkable that serious spindle stoppage occurred on the machine which Paharaj was said to be manning mainly after November 17, when it must have been manned by somebody else. Similarly Shankdardas was charge-sheeted on November 17 and suspended forthwith and could not have worked thereafter. But in his case also the extract shows as if he continued to work thereafter from 18th to 23rd November and the more serious spindle stoppage is during this period when he obviously could not have manned this machine. Babaji was charge-sheeted on November 18 and suspended forthwith. He could not have therefore worked on the machine on which his name is shown in the extract between November 19 and 23 and the more serious spindle stoppage occurred after November 18 when somebody else must have been manning this machine. Gangadhar was charge-sheeted on November, 22 and was suspended forthwith. In his case also the extract shows as if he had worked on November, 23. We strongly deprecate the manner in which the extract was used in the special leave petition to convey a wrong impression to this Court. But we do not think that we should revoke the special leave granted in this case on this ground alone. However our examination of the extract which we have set out above clearly shows that the contention of the appellant that the tribunal had patently misunderstood Exs. AA and

AA-1 cannot be made out. It seems to us that the reasons given by the tribunal for holding that go-slow by these five workmen had not been proved cannot be said to be inadequate for the purpose of coming to the conclusion which it did. We may only note one reason which is given by the tribunal and which shows that everything was not alright in the appellant company in this matter. Though the charge-sheets to these workmen of the spinning department were given on November 17, 18 and 22, it is remarkable that in the written-statement of the appellant before the tribunal the case made out was that the workmen of the spinning department adopted slow down tactics and indulged in other subversive activities from November 23, 1957. This seems to be a surprising statement to make in the face of the charges given to these five workmen and can only show that the appellant did not really know what the correct facts were. It is further remarkable that in the application under S. 33(1)(b) which was made four months after the written-statement of the appellant had been filed, the same thing was repeated and it was said that the workers of the spinning department adopted go slow tactics on November 23 and indulged in other subversive activities. It is true that in the evidence the appellant tried to prove that slow down tactics had started earlier; but if in the circumstances the tribunal refused to believe the evidence it cannot be said that it went wrong. The contention of the appellant therefore that the view taken by the tribunal was perverse and clearly against the two registers to which we have referred above must fail.

(9) This brings us to the other contention of the appellant with respect to this group of workmen, namely that the tribunal did not consider the evidence with respect to other charges. It is true that in the last paragraph of the award dealing with these five workmen, the tribunal said that the appellant had failed to prove that these five workmen had adopted go-slow tactics and did not say anything about the other charges. But a perusal of the entire discussion by the tribunal with respect to this group of workmen shows that it considered the oral evidence of all the witnesses with respect to other charges and held that their evidence was not worthy of acceptance, though it did not say so in so many words that evidence was insufficient to prove the other charges also. On the whole however a reading of the discussion of the tribunal with respect to this group of workmen convinces us that the tribunal had considered the entire evidence including the evidence with respect to other charges and did not consider that evidence worthy of acceptance. The mistake that the tribunal made was that when it recorded its conclusion in the final paragraph dealing with this group of workmen it confined itself only to say that go-slow tactics had not been proved and did not say anything about other charges. Even so we are of opinion that the consideration of the entire award of the tribunal with respect to this group of workmen leaves no doubt that the evidence on the other charges was also considered and was found unworthy of acceptance. We may add that the reason why the tribunal seems to have confined itself only to go-slow in the final paragraph is that everybody before the tribunal was concentrating on go-slow and did not worry to see what the other charges were. This will be clear when we consider the case of some other workmen in group III which will show that though there was no charge against those workmen of go-slow, the evidence was given about go-slow and the tribunal also came to the conclusion that those workmen were guilty of go slow. It seems therefore that nobody worried about any other charges before the tribunal and that is how the tribunal seems to have confined its conclusion only to the charge of go-slow, even where no such charge-sheet was given to the workmen. On the whole, however, we do not think that any case is made out for remand for consideration of other charges against these five workmen, for the tribunal seems to have considered all the evidence and did not think it worthy of acceptance. In the circumstances the appeal with respect to these five workmen in group II must fail.

(10) Then we come to the four workmen in group III whose names we have already mentioned. These workmen were charged with having incited on and from various dates in October 1957 their co-workers to slow down work. The entire evidence against these workmen was considered by the tribunal and it did not place any reliance on it for one main reason. In the case of Gulzari the tribunal found that there was no written report against him as was the case with respect to others, and in the case of the other three the tribunal found that the written report which had been produced very late before it did not bear the endorsement of the weaving master as it should have done, as in the case of other such reports made by the Assistant weaving master. In the circumstances when the evidence was considered by the tribunal and for reasons given by it no reliance was placed upon it, we cannot say that it went wrong in not relying on that evidence. The appeal of the appellant with respect to these four workmen of group III must also fail.

(11) We now come to the general attack on the order of the tribunal awarding 12 months wages to all the 24 suspended workmen whose cases were pressed before it by the respondents. We have in this connection to consider four clauses of the agreement dated December 23, 1957, which are as below :—

1 (b)—It is agreed between the parties that the charge-sheets against such workmen who are allowed to resume duty in terms of para (1) herein, however, shall not be withdrawn. It is further agreed that the suspension of workmen whose names are contained in the annexure A herein shall continue and their respective order of suspension shall remain operative pending enquiry as laid down hereinafter.

7. The suspended workmen shall not be entitled to any wages or compensation for the suspension period. The workmen shall not raise any dispute or make any claim with regard to the suspension period or lay-off period in any shape or form.

8. Without prejudice to the other provisions of this agreement or (sic) claims relating to the suspension order served on the workmen respectively and the lay off order by the company and/or all claims or issues for the period connected with slowing down of production and disciplinary action taken thereon by the company are hereby finally settled and all workmen are bound by this agreement and no worker shall be entitled to make any demand or claim in this behalf.

9. The workers in annexure 'A' shall remain suspended pending enquiry and disciplinary action by the management. The management will try to reach an amicable settlement with the Union regarding disciplinary action taken or may be taken by them against the said workmen. If the parties fail to reach settlement, the matter will be referred to the tribunal for settlement of the dispute in this behalf.

(12) The tribunal has held that cl. (7) which lays down that the suspended workmen shall not be entitled to any wages or compensation for the suspension period does not apply to workmen who remained suspended under cl. (9), and the reason given by the tribunal for this view is that cl. (7) only applied to those workmen who were allowed to resume duty in the first clause of the agreement. This view of the tribunal has been challenged by the appellant and it is contended that the seventh clause applies even to workmen who remained suspended under cl. (9) and therefore in view of cl. (7) such workmen were not entitled to any compensation whatsoever for the entire period of their suspension whether before December 23, 1957 or thereafter. We agree with the contention of the appellant that cl. (7) applies to all suspended workmen whether they went back to work according to the first clause of the agreement or remained suspended according to cl. (1) (b) set out above. But as we read this agreement we are of opinion that cl. (7) read along with cl. (8) refers only to suspension upto the date of the agreement and not to suspension thereafter. Clause (7) says that the suspended workmen shall not raise any dispute or make any claim with regard to the suspension period or lay-off period in any shape or form. This provision could only refer to suspension or lay-off in the past; it could not be the intention of the agreement, for example, that if any lay-off took place in future cl. (7) would apply to it. Further though under cl. (9) suspension of 30 workmen continued, that suspension was pending enquiry and disciplinary action. We cannot read cl. (7) and cl. (9) together for the future also unless there are clear terms to that effect. Ordinarily, the law is that a workman may be suspended pending enquiry and disciplinary action. If after the inquiry the misconduct is proved the workman is dismissed and is not entitled to any wages for the suspension period; but if the inquiry results in the reinstatement of the workmen he is entitled to full wages for the suspension period also along with reinstatement, unless the employer instead of dismissing the employee can give him a lesser punishment by way of withholding of part of the wages for the suspension period. In Straw Board Mfg. Co., Saharanpur v. Govind, AIR 1962 SC 1500 : 1962-1 Lab LJ 420, this Court was considering what would happen where approval was granted or withheld on an application under S. 33(2) (b) of the Act, and it was pointed out that "if the tribunal does not approve of the action taken by the employer, the result would be that the action taken by him would fall and thereupon the workmen would be deemed never to have been dismissed or discharged and would remain in the service of the employer." It follows therefore that if a workman is fully exonerated after the inquiry, he would remain in the service of the employer and would be entitled to his full wages during the period of his suspension also. Therefore when cl. (9) envisages suspension pending inquiry and disciplinary action it also envisaged the consequence, namely, that if the inquiry results in dismissal, the workmen would get no wages for the suspension period while if the inquiry results in the reinstatement of the workman he would be entitled to full wages for the suspension period, if he is fully exonerated or to such less wages as the employer may give in case the exoneration is not complete and some punishment less than dismissal can be inflicted. We see nothing in cl. (7) which clearly takes away this legal consequence following an inquiry and disciplinary action, and it seems to us that cl. (7) must be confined to the period of supension upto the date of agreement and there is nothing in it which would induce us to hold that it must apply to the future also. So far as the future is concerned it is cl. (9) which must wholly apply and that clause envisaged inquiry and disciplinary action and the consequence thereof depending upon the inquiry going one way or the other must also

be envisaged by it in the absence of any provision about the future in this agreement. If the intention was that the workmen who remained suspended under cl. (9) would get no wages for the future, even if they were fully exonerated after an inquiry under that clause we should have found a specific provision to that effect in cl. (9) itself. We are therefore of opinion that cl. (7) refers to the period upto the date of the agreement including the period of grace given to the workmen in cl. (1) in order to join their duties and not to the future. In this view of the matter the tribunal was not unjustified in granting wages for the suspension period after the date of this agreement to those whom it reinstated. The contention of the appellant in this behalf must fail with respect to those reinstated. We shall consider the case of nine workmen permitted to be dismissed when considering the appeal of the workmen.

(13) Coming now to the second term of reference, we find that inquiries were held in the case of the five workmen with whom we are concerned. The respondents however contended that the inquiries were not in accordance with the principles of natural justice inasmuch as the witnesses were not examined-in-chief before the inquiry officer. What actually happened at the inquiries was that when the witnesses were produced, previously prepared signed statements of the witnesses were read over to them and they were asked whether the statements were correct, and they had signed them. Statements were also read over and explained to the workmen charged and they were then asked to cross-examine the witnesses. No copies of statements of witnesses were supplied to the workmen at any time. The tribunal has held that this procedure followed by the inquiry officer was open to objection and was against the principles of natural justice and that the witnesses should have been examined-in-chief in the presence of the workmen against whom the inquiries were going on. The requirements of principles of natural justice were laid down by this court in Union of India v. T. R. Varma, 1958 SCR 499 : ((S) AIR 1957 SC 882) where it was observed —

"Rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied upon against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act was not strictly followed".

(14) This matter was further considered in State of Mysore v. Shivbasappa Shivappa, AIR 1963 SC 375 where the following observations were made:

"When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him; and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word, and sentence by sentence, is to insist on bare technicalities, and rules of natural justice are matters not of form but of substance. In our opinion they are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them".

(15) It is urged on behalf of the appellant that rules of natural justice are the same whether they apply to inquiries under Art. 311 or to domestic inquiries by managements relating to misconduct by workmen. It may be accepted that rules of natural justice do not change from tribunal to tribunal. Even so the purpose of rules of natural justice is to safeguard the position of the person against whom an inquiry is being conducted so that he is able to meet the charge laid against him properly. Therefore the nature of the inquiry and status of the person against whom the inquiry is being held will have some bearing on what should be the minimum requirements of the rules of natural justice. Where, for example, lawyers are permitted before a tribunal holding an inquiry and the party against whom the inquiry is being held is represented by a lawyer it may be possible to say that a mere reading of the material to be used in the inquiry may sometimes be sufficient: (see New Prakash Transport Co. Ltd. v. New Suwarna Transport Co. Ltd. 1957 SCR 98 : ((S) AIR 1957 SC 232), but where in a domestic inquiry in an industrial matter lawyers are not permitted, something more than a mere reading of statements to be used will have to be required in order to safeguard the interest of the industrial worker. Further we can take judicial notice of the fact that many of our industrial workers are illiterate and sometimes even the representatives of labour union may not be present to defend them. In such a case to read over a prepared statement, in a few minutes and then ask the workmen to cross-examine would make a mockery of the opportunity that the rules of natural justice require

that the workmen should have to defend themselves. It seems to us therefore that when one is dealing with domestic inquiries in industrial matters, the proper course for the management is to examine the witnesses from the beginning to the end in the presence of the workman at the inquiry itself. Oral examination always takes much longer than a mere reading of a prepared statement of the same length and brings home the evidence more clearly to the person against whom the inquiry is being held. Generally speaking therefore we should expect a domestic inquiry by the management to be of this kind. Even so, we recognise the force of the argument on behalf of the appellant that the main principles of natural justice cannot change from tribunal to tribunal and therefore it may be possible to have another method of conducting a domestic inquiry (though we again repeat that this should not be the rule but the exception) and that is in the manner laid down in Shivabasappa's case, AIR 1963 SC 375. The minimum that we shall expect where witnesses are not examined from the very beginning at the inquiry in the presence of the person charged is that the person charged should be given a copy of the statements made by the witnesses which are to be used at the inquiry well in advance before the inquiry begins and when we say that the copy of the statements should be given well in advance we mean that it should be given at least two days before the inquiry is to begin. If this is not done and yet the witnesses are not examined-in-chief fully at the inquiry, we do not think that it can be said that principles of natural justice which provide that the person charged should have an adequate opportunity of defending himself are complied with in the case of a domestic inquiry in an industrial matter. In the present case all that had happened was that the prepared statements were read over to the workmen charged and they were asked then and there to cross-examine the witnesses. They were naturally unable to do so and in the circumstances we agree with the tribunal—though for different reasons—that the inquiry did not comply with the principles of natural justice. The order of the tribunal therefore holding that the inquiries were vitiated by disregard of rules of natural justice is correct. We may add however that in spite of the above finding the tribunal permitted termination of the service of four of these five workmen and reinstated only one. We shall deal with this aspect of the matter further when considering the appeal of the workmen.

(16) Turning now to the appeal by the workmen-respondents, the first contention raised on their behalf is that the tribunal went completely wrong in permitting the dismissal of nine workmen in list 'A' to the order of reference namely, Hanif (No. 10), Narayan (No. 11), Khalil (No. 12), Abdul Subhan (No. 13), Bhagwan Singh (No. 15), Ram Ekbal (No. 19), Mangroo (No. 20), Satish (No. 21), and Raja Ram (No. 22). The contention in this behalf is that these nine workmen in group III were charged with inciting other workers to slow down work and that was the only charge given to them; there was no charge of go-slow by these nine workmen themselves. But the tribunal allowed evidence to be led to the effect that these nine workmen were actually guilty of go-slow themselves and gave a finding to that effect and therefore permitted them to be dismissed. It was also urged that there was no finding by the tribunal and no evidence to the effect that these workmen had incited other workmen to slow down work and therefore there was no proof of the charge given to these workmen. Consequently they could not be dismissed on a charge which was never made against them completely ignoring the charge which was in fact made against them and which had not been proved. We have therefore to see in the case of each workman whether this contention of the respondents is correct.

(17) Hanif is the first workman in this group of nine. It appears from discussion in the award with respect to Hanif that though in the finding part there is a suggestion as if this workman was guilty of go-slow himself, it appears that the tribunal knew that the charge against Hanif was for inciting co-workers to slow down work. There was evidence before the tribunal to the effect that Hanif roamed about in the department and incited workers to slow down work and that evidence was considered by the tribunal. It also appears that the tribunal accepted that evidence and the final conclusion at which the tribunal arrived was that Hanif was rightly charge-sheeted by the appellant and the appellant should be permitted to dismiss him. In the circumstances it cannot be said so far as this workman is concerned that there was no evidence to support the charge actually framed against him. It would also be wrong to say that the tribunal did not find that the charge actually framed against him had been proved, though it may be admitted that there is an undercurrent in the discussion as if Hanif was guilty of go-slow himself. Even so the tribunal appears to have found him guilty of inciting other workers and this would clearly be misconduct under standing order No. 22(k), for which a workman could be dismissed. In the circumstances we are of opinion that there is no reason for our interference with the order of the tribunal in the case of Hanif.

(18) The next workman is Narayan. He was also charged with having incited other workers to slow down work. In his case also the tri-

bunal apparently came to the conclusion that he took part in deliberate slow-down, but during the discussion in the award, the tribunal started by saying that he was charged with inciting other workers to slow-down work and referred to the evidence which showed that Narayan had gone round in the department and asked the workmen to work two looms instead of four and to give low production. This evidence was apparently accepted by the tribunal, though at the end of the discussion the tribunal did say that Narayan took part in deliberate go-slow tactics. Though therefore the conclusion of the tribunal with respect to Narayan seems to suggest as if he was dismissed for taking part in go-slow himself, the discussion in the award with respect to him shows that the tribunal was apparently satisfied that he had also incited other workers to slow down. In the circumstances we do not think that a case has been made out for interference with the order of the tribunal in the case of Narayan.

(19) Then we come to the case of Khalil. He was also charged with having incited other workers to slow down. In his case also there was evidence that he had incited other workers to slow down which was apparently accepted by the tribunal. Though therefore the discussion in the award was with respect to incitement by this workman, at the end however the tribunal came to the conclusion that the appellant had succeeded in proving that Khalil was indulging in go-slow tactics, causing fall in production and therefore the tribunal permitted the dismissal of Khalil for the misconduct of slowing-down as shown in the charge sheet. It seems that the tribunal has not expressed its conclusion in this and other cases in proper words and has perhaps taken the incitement of other workmen to slow down work as amounting to the misconduct of go-slow by the workman himself. But the entire discussion in the award shows that the tribunal had accepted the evidence to the effect that Khalil was inciting his co-workers to slow down. In this view of the matter we are of opinion that there is no reason to interfere with the order passed by the tribunal simply because its conclusion was not expressed in appropriate words.

(20) Next we come to the case of Abdul Subhan. In his case also the charge was for inciting other workmen to slow-down work. The evidence was that he incited other workers to work two looms instead of four. This evidence was apparently accepted by the tribunal but in the end it said that the appellant had succeeded in proving that Abdul Subhan had indulged in go-slow tactics and therefore permitted his dismissal. Here again it seems to us that the conclusion of the tribunal has been expressed in inappropriate words, though the real finding is that Abdul Subhan had incited other workers and thus brought about go-slow. In his case also therefore we see no reason to interfere with the finding of the tribunal.

(21) Next we come to Bhagwan Singh. He was charged with incitement of other workers to slow down work and evidence was led before the tribunal that Bhagwan Singh went round instigating the weavers not to work more than two looms, though they were expected to work four looms. This evidence was apparently accepted by the tribunal, though it expressed its conclusion by saying that Bhagwan Singh had committed the misconduct of deliberate go-slow tactics. Here again, we are of opinion that the conclusion of the tribunal has been expressed in inappropriate words, though in fact it did find that Bhagwan Singh was guilty of inciting other workers to slow down. We therefore see no reason to interfere with the order of the tribunal with respect to Bhagwan Singh.

(22) Next we come to Ram Ekbal. His case is exactly similar to that of Bhagwan Singh and the evidence is also exactly the same. In the circumstances we see no reason to interfere with the order of the tribunal in his case either.

(23) Next we come to Mangroo. The charge against him was of incitement of other workers to slow down work. In his case also the evidence was that he went round in the weaving-shed asking the weavers to work two looms instead of four looms. This evidence was apparently accepted by the tribunal, though it expressed its conclusion inappropriately to the effect that Mangroo had adopted go-slow tactics as shown in the charge-sheet and therefore his dismissal was permitted. We are of opinion that the conclusion of the tribunal in this case also was expressed inappropriately but in fact the finding was that Mangroo had incited other workers to go-slow. As we have already said, the tribunal seems to think that this incitement of other workers to go-slow amounts to adoption of deliberate go-slow tactics by the person who is guilty of incitement and that is why the tribunal expressed its final conclusion in words which we consider inappropriate. But in substance the finding is that Mangroo was guilty of inciting other workers to go-slow. We therefore see no reason to interfere with the finding of the tribunal with respect to Mangroo.

(24) Next we come to Satish. He was also charged with inciting other workmen to go slow. There was evidence before the tribunal that Satish incited other weavers to slow down work and this evidence was apparently accepted by the tribunal. In his case also the tribunal expressed its conclusion in inappropriate words by saying that it held that Satish had indulged

in go-slow tactics as charged in the charge-sheet. It therefore permitted his dismissal. We are however of opinion that on a consideration of the discussion of the matter in the award the substance of the finding is that Satish was guilty of inciting other workers. In the circumstances we see no reason to interfere with the finding of the tribunal.

(25) Lastly we come to Raja Ram. His case is exactly similar to that of Satish and the evidence was also to the same effect viz., that they were going round together and inciting other workers to slow down work. In the circumstances we see no reason to interfere with the order of the tribunal.

(26) The next contention on behalf of the respondents is that the tribunal should have allowed full wages to the workmen in list 'A' in whose case it had ordered reinstatement, and not merely 15 months wages as it actually did. It is well settled that "under the ordinary law of master and servant the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and servant but must arise either from an express term in the contract itself or a statutory provision governing such contract: (see Management Hotel Imperial New Delhi v. Hotel Workers' Union, 1960-1 SCR 476: (AIR 1959 SC 1342)). No provision in the standing orders has been brought to our notice which entitles the appellant in this case to suspend the workman without payment of wages. But, as held in the Hotel Imperial's case, 1960-1 SCR 476: (AIR 1959 SC 1342) where under S. 33 of the Act the right of the employer to dismiss an employee except with the permission of the industrial tribunal was taken away, it would be open to the employer to suspend the workmen pending inquiry and permission of the tribunal. In such circumstances such a term in the contract of employment would be implied and the result would be that if the tribunal granted the permission, the suspended contract would come to an end and there would be no further obligation on the part of the employer to pay any wages after the date of suspension. If on the other hand, the permission was refused, the workmen would be entitled to all their wages from the date of suspension. It follows therefore that in the case of those workmen who have been ordered to be reinstated there can be no justification for depriving them of their wages from the date of the suspension which in the case of the workmen in list 'A' to the reference, in view of the agreement of December 23, 1957. must start from December 24, 1957. Therefore, so far as these 15 workmen, out of the 29 workmen, of list 'A' are concerned, who have been ordered to be reinstated, we see no reason for depriving them from their full wages for the entire period from December 24, 1957. The appeal of the respondents therefore with reference to these fifteen workmen in list 'A' must be allowed and the order of the tribunal is hereby varied to the effect that they will be paid full wages from December 24, 1957.

(27) As to the five workmen in list 'B' to the reference, one workman, namely, Hiralal Bhomick was ordered to be reinstated by the tribunal and he was allowed compensation equivalent to 15 months' wages. His case in our opinion is on a par with the case of the fifteen workmen in list 'A' which we have considered above and he will therefore be entitled to his full wages from the date of his suspension and not only 15 months' wages as ordered by the tribunal.

(28) Then we come to the case of nine workmen from list 'A' whose cases we have already considered and who were permitted to be dismissed. Further there are four workmen of list 'B' namely, Misri (No. 1), Abdullah (No. 2), Narain Tewari (No. 5.) and Din Mohd. (No. 6), whose services were allowed to be terminated with effect from the date of the enforcement of the award. The first nine workmen were allowed 12 months' wages while the other four workmen were paid wages for a period of one month along with compensation equivalent to 15 days' average pay for each completed year of service or any part thereof in excess of six months. It is contended on behalf of the respondents that these workmen should have been allowed full wages upto the date the award became enforceable, even though the tribunal had eventually permitted their dismissal or allowed their services to be terminated.

(29) So far as the nine workmen in list 'A' are concerned their case in our opinion is fully covered by the decision of this Court in Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan, (1959) Supp (2) SCR 836: (AIR 1959 SC 923). Clause (9) of the agreement which permitted the continuance of the suspension of these workmen, also provided that they shall remain suspended pending inquiry and disciplinary action by the management. The clause went on to say that the management would try to reach an amicable settlement with the union regarding disciplinary action taken or to be taken by it against the workmen and that if the parties failed to reach a settlement the matter would be referred for adjudication. The contention on behalf of the respondents is that this clause clearly contemplated inquiry by the management followed by disciplinary action and as the appellant held no inquiry whatsoever and straightway applied when the dispute was referred for adjudication, for permission to dismiss these workmen they would be entitled to full wages till the date of the enforcement of the award. On the other hand it is contended on behalf of

the appellant that though cl. (9) envisaged inquiry and disciplinary proceedings against the suspended workmen it also provided that the management would try to reach an amicable settlement with the union, failing which there would be a reference to adjudication. It is said that in view of this the appellant held no inquiry. Particularly, the factory manager stated that he had discussions with the secretary of the union over the matter of these workmen and no settlement could be reached. He also stated that the management wanted to hold inquiries but the Secretary of the union stated that no useful purpose would be served by holding inquiries because before final action was taken by the management it had to consult the union. This statement was made by the factory manager who appeared as the last witness in the case. The secretary of the union appeared long before as the first witness in the case and he was not questioned on this matter at all. No such case was made out even in the application for permission to dismiss which was filed on June 29, 1959, to the effect that the inquiries were not held because the secretary of the union suggested that it would be useless to do so; nor was any such allegation made in the written-statement of the appellant. In the circumstances it would be difficult to hold that the reason why no inquiry was held was that the respondents did not want the inquiry. In the circumstances therefore this is a case where the management wanted to dismiss the workmen without having held an inquiry and the decision in Sasamusa case, (1959) Supp (2) SCR 836 : (AIR 1959 SC 923) would be fully applicable to these nine workmen who have been permitted to be dismissed and they would be entitled to full wages from December 23, 1957 till the date the tribunal's award permitting dismissal becomes enforceable.

(30) Lastly we come to the case of the four workmen whose services have been allowed to be terminated. Nothing was urged before us with respect to the order permitting termination of service. Nor do we think that the order of the tribunal in this behalf is wrong. In their case the tribunal has said that if the inquiry proceedings had not been defective, these four persons would be liable to dismissal as ordered by the appellant. It is only because there was defect in the inquiry proceedings as stated above that it was held that the dismissal was unjustified. The tribunal therefore went on to permit the termination of service of these four workmen under one of the standing orders and finally ordered payment of wages for a period of one month along with compensation at the rate of 15 days average wages for every completed year of service or any part thereof in excess of six months. The circumstances of this case are not exactly similar to those in the Sasamusa case, (1959) Supp (2) SCR 836 : (AIR 1959 SC 923) and therefore the principle of that case would not necessarily apply. In the circumstances we do not think that we should interfere with the order of the tribunal.

(31) In the result, the award of the tribunal is affirmed in the light of and subject to the above modifications; and consequently the appeal by the management is dismissed and by the workmen allowed only with respect to the grant of wages in the manner indicated above. In the circumstances parties will bear their own costs in both appeals.

IG/D.H.Z. Order accordingly.

AIR 1964 Supreme Court 719 (V 51 C 87)

(From Fourth Industrial Tribunal; W. B.)*

2nd May, 1963

P. B. GAJENDRAGADKAR, K. N. WANCHOO AND K. C. DAS GUPTA, JJ.

M/s. Khardah and Co. Ltd., Appellant v. The Workmen, Respondents.

Civil Appeal No. 705 of 1962.

(a) Industrial Dispute — Industrial tribunal — Powers of, to interfere with action taken by management — Charges against workmen — Evidence must be led in presence of workman — Manager should record a finding on the evidence — Dismissal of workman held to be not in good faith by tribunal — Supreme Court will not interfere with finding of fact.

An Industrial Tribunal will not interfere with the action of the management in dismissing its employee after holding an enquiry into his alleged misconduct unless it is shown that the management has not acted in good faith, or that the dismissal amounts to victimisation or unfair labour practice, or the management has been guilty of a basic error, or violation of a principle of natural justice, or when on the materials, the finding is completely baseless or perverse. If the enquiry is fairly held and leads to the conclusion that the charge framed against the employee is proved, the Industrial Tribunal should not sit in appeal over the finding recorded at the said enquiry and should not interfere with the management's right to dismiss a workman who is found guilty of misconduct. The essential basis on which this view is founded is that the enquiry conducted by the management before domestic tribunal must be a fair and just enquiry and in bringing home to the workman the charge framed against him, principles of natural justice must be observed. Normally, evidence on which the charges are sought to be proved must be led at such an enquiry in the

* See Case No. VIII-42 of 1961, D/- 29-9-1961 — Fourth Industrial Tribunal — W. B.)

directly furthers the object of the Act, namely, the prevention of smuggling, and that being the position the impugned section is clearly within the principle enunciated above, not hit by Art. 14.

The impugned section cannot be struck down on the infirmity either of discrimination or illegal classification. Confining as it does to certain classes of goods seized by the customs authorities on the reasonable belief that they are smuggled goods, there is only a presumption which can be rebutted.

(18) In these circumstances, there can be no doubt whatever that S. 178-A, does not offend Art. 14 of the Constitution and this petition is, therefore, to be dismissed with costs.

K.S.B. *Petition dismissed.*

(S) A. I. R. 1957 S. C. 882 (V. 44 C. 129 Dec.)

18th September 1957

S. R. DAS C J., VENKATARAMA AIYAR, B. P. SINHA, KAPUR AND SARKAR JJ.

Civil Appeal NO. 118 of 1957.

Union of India, Appellant v. *T. R. Varma, Respondent.*

(From : Civil Writ NO. 248-D of 1954, D/- 31-1-1956—Punjab.)

(a) Constitution of India, Art. 226 — Other remedy open.

Under the law a person whose services have been wrongfully terminated, is entitled to institute an action to vindicate his rights, and in such an action, the Court will be competent to award all the reliefs to which he may be entitled, including some which would not be admissible in a writ petition. It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ ; but, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs. And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Art. 226, unless there are good grounds therefor : AIR 1950 S C 163 & A I R 1954 S C 207, Rel. on. (Para 6)

Anno : A I R Com. Const. of India, Art. 226, N. 19.

(b) Constitution of India, Art. 226 — Disputed questions.

Where there is a question on which there is a serious dispute, which cannot be satisfactorily decided without taking evidence, it is not the practice of Courts to decide it in a writ petition. (Para 6)

Anno : A I R Com. Const. of India, Art. 226, N. 42.

(c) Evidence Act (1872), S. 114 — Statement of presiding officer to be accepted.

When there is a dispute as to what happened before a Court or tribunal, the statement of the Presiding Officer in regard to it is generally taken to be correct. (Para 8)

Anno : C. J. I. Evidence Act, S. 114, N. 22.

(d) Evidence Act (1872), S. 137—Cross-examination — Absence of record that there was no cross-examination.

From the fact that there was no record made in the depositions of the witnesses that there was no cross-examination, it can be said that, in fact there was no cross-examination, and not that the request of the party to cross-examine was disallowed. (Para 8)

Anno : C. J. I. Evidence Act, S. 137, N. 11.

(e) Evidence Act (1872), S. 1 — Applicability of Act to tribunals—(Natural justice.)

The Evidence Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of Law. Stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed. (S) A I R 1957 S C 232, Rel. on. (Para 10)

Anno : C. J. I. Evidence Act, S. 1, N. 8.

CASES REFERRED :

	Paras
(A) AIR 1950 S C 163 (V 37) : 1950 S C R 566	6
(B) AIR 1954 S C 207 (V 41) : 1954 S C R 738	6
(C) (S) A I R 1957 S C 232 (V 44) : 1957 S C R 98	10

Mr. C. K. Daphtary, Solicitor-General of India, (M/s. R. Ganapathy Iyer and R. H. Dhebar, Advocates, with him), for Appellant.

Mr. Purshottam Tricumdas, Sr. Advocate, (M/s. T. S. Venkataraman and K. R. Chaudhury, Advocates, with him), for Respondent.

The Judgment of the Court was delivered by

Venkatarama Aiyar, J. — This is an appeal by special leave against the judgment and order of the High Court of Punjab in an application under Art. 226 of the Constitution setting aside an order dated September 16, 1954, dismissing the respondent herein, from Government service on the ground that it was in contravention of Art. 311 (2) of the Constitution.

(2) The respondent was, at the material dates, an Assistant Controller in the Commerce Department of the Union Government. Sometime in the middle of March, 1953, one Shri Bhan, a representative of a Calcutta firm styled Messrs. Gattulal Chhaganlal Joshi, came to Delhi with a view to get the name of the firm removed from black list in which it had been placed, and for that purpose, he was contacting the officers in the Department.

Information was given to Sri Tawakley an assistant in the Ministry of Commerce and Industry (Complaints Branch), that Sri Bhan was offering to give bribe for getting an order in his favour. He immediately reported the matter to the Special Police Establishment, and they decided to lay a trap for him. Sri Bhan, however, was willing to pay the bribe only after an order in his favour had been made and communicated, but he offered that he would get the respondent to stand as surety for payment by him.

The police thereafter decided to set a trap for the respondent, and it was accordingly arranged that Sri Tawakley should meet, by appointment, Sri Bhan and the respondent in the Kwality Restaurant in the evening on March 24, 1953. The meeting took place as arranged, and three members of the Special Police Establishment were present there *incognito*.

Then, there was a talk between Sri Tawakley, Sri Bhan and the respondent, and it is the case of the appellant that during that talk, an assurance was given by the respondent to Sri Tawakley that the amount would be paid by Sri Bhan. After the conversation was over, when the respondent was about to depart, one of the officers, the Superintendent of Police, disclosed his identity, got from the respondent his identity card and initialled it, and Sri Bhan also initialled it.

(3) On March 28, 1953 the respondent received a notice from the Secretary to the Ministry of Commerce and Industry charging him with aiding and abetting Sri Bhan in offering illegal gratification to Sri Tawakley, and attempting to induce Sri Tawakley to accept the gratification offered by Sri Bhan, and in support of the charges, there were detailed allegations relating to meetings between the respondent and Sri Tawakley on March 17, 1953, on March 21, 1953, a telephonic conversation with reference to the same matter later on that day, and the meeting in the Kwality Restaurant already mentioned.

The respondent was called upon to give his explanation to the charges, and he was directed to state whether he wished to lead oral or documentary evidence in defence. The enquiry was delegated to Mr. J. Byrne, Joint Chief Controller of Imports and Exports. On April 10, 1953, the respondent submitted a detailed explanation denying that he met Sri Tawakley either on the 17th or on the 21st March, or that there was any telephonic conversation that day with him, and stating that the conversation which he had in the Kwality Restaurant on the 21th related to an insurance policy of his and had nothing to do with any bribe proposed to be offered by Sri Bhan.

The respondent also asked for an oral enquiry and desired to examine Sri Bhan, Sri Fateh Singh and Sri Jai Narayan in support of his version. On April 17, 1953 Mr. Byrne gave notice to the respondent that there would be an oral enquiry, and pursuant thereto, witnesses were examined on April 20, 1953, and the following days, and the hearing was concluded on April 27, 1953.

(4) On July 28, 1953, Mr. Byrne submitted his report, and therein, he found that the charges against the respondent had been clearly established. On this, a communication was issued to the respondent on August 29, 1953, wherein he was informed that it was provisionally decided that he should be dismissed, and asked to show cause against the proposed action. Along with the notice the whole of the report or Mr. Byrne, omitting his recommendations, was sent.

On September 11, 1953 the respondent sent his explanation. Therein, he again discussed at great length the evidence that had been adduced, and submitted that the finding of guilt was not proper, and that no action should be taken against him. He also complained in this explanation that the enquiry was vitiated by the fact that he had not been permitted to cross-examine the witnesses, who gave evidence against him.

The papers were then submitted to the Union Public Service Commission in accordance with Art. 320, and it sent its report on September 6, 1954, that the charges were made out, that there was no substance in the complaint of the respondent that he was not allowed to cross-examine the witnesses, and that he should be dismissed. The President accepting the finding of the Enquiring Officer and the recommendation of the Union Public Service Commission made an order on September 16, 1954, that the respondent should be dismissed from Government service.

(5) The respondent then filed the application out of which the present appeal arises, in the High Court of Punjab for an appropriate writ to quash the order of dismissal dated September 16, 1954, for the reason that there was no proper enquiry. As many as seven grounds were set forth in support of the petition, and of these, the learned Judges held that three had been established.

They held that the respondent had been denied an opportunity to cross-examine witnesses, who gave evidence in support of the charge, that further he was not allowed to make his own statement, but was merely cross-examined by the Enquiring Officer, and that likewise, his witnesses were merely cross-examined by the Officer without the respondent himself being allowed to examine them.

These defects, they observed, amounted to a denial of reasonable opportunity to the respondent to show cause against his dismissal and that the order dated September 16, 1954, which followed on such enquiry, was bad as being in contravention of Art. 311 (2). In the result, the

set aside the order, and directed him to be reinstated. The correctness of this order is challenged by the Solicitor-General on two grounds:

(1) that the finding that the respondent had no reasonable opportunity afforded to him at the enquiry is not supported by the evidence; and (2) that even if there was a defect in the enquiry, that was a matter that could be set right in the stage following the show cause notice, and as the respondent did not ask for an opportunity to cross examine the witnesses, he could not be heard to urge that the order dated september 16, 1954, was bad as contravening ART. 311 (2).

(6) At the very outset, we have to observe that a writ petition under ART. 226 is not the appropriate proceeding for adjudication of disputes like the present. Under the law, a person whose services have been wrongfully terminated is entitled to institute an action to vindicate his rights, and in such an action, the Court will be competent to award all the reliefs to which he may be entitled, including some which would not be admissible in a writ petition.

It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, as observed by this Court in *Rashid Ahmed* v *Municipal Board, Kairana*, 1950 S C R 566: (AIR 1950 S C 163) (A) "the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs": Vide also *K. S. Rashid and Son* v. *The Income tax Investigation Commission*, 1954 S C R 738 at p. 747: (A I R 1954 S C 207 at p. 210) (B). And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under ART. 226, unless there are good grounds therefor. None such appears in the present case. On the other hand, the point for determination in this petition whether the respondent was denied a reasonable opportunity to present his case, turns mainly on the question whether he was prevented from cross examining the witnesses, who gave evidence in support of the charge.

That is a question on which there is a serious dispute, which cannot be satisfactorily decided without taking evidence. It is not the practice of Courts to decide questions of that character in a writ petition, and it would have been a proper exercise of discretion in the present case if the learned Judges had referred the respondent to a suit

In this appeal, we should have ourselves adopted that course, and passed the order which the learned Judges should have passed. But we feel pressed by the fact that the order dismissing the respondent having been made on september 16, 1954, an action to set it aside would now be time-barred. As the High Court has gone into the matter on the merits, we propose to dispose of this appeal on a consideration of the merits.

(7) The main ground on which the respondent attacked the order dated september 16, 1954, was that at the enquiry held by Mr. Byrne, he was not given an opportunity to cross-examine the witnesses, who deposed against him, and that the findings reached at such enquiry could not be accepted But the question is whether that allegation has been made out. In para 7 of his petition, the respondent stated:

"Despite repeated verbal requests of the petitioner, the Inquiry Officer did not permit him to cross-examine any witness, who deposed against him."

But this was contradicted by Mr. Byrne, who filed a counter affidavit, in which he stated:

"(4) That it is incorrect that no opportunity was given to the petitioner at the time of the oral enquiry to cross-examine the witnesses who had deposed against the petitioner.

(5) That all witnesses were examined in petitioner's presence and he was asked by me at the end of each examination whether he had any questions to put.

(6) That the petitioner only put questions to one witness Shri P. Govindan Nair, and to others he did not."

On this affidavit, Mr. Byrne was examined in Court, and he repeated these allegations and added:

"I have distinct re-collection that I asked Shri T. R. Varma to put questions in cross-examination to witnesses."

It was elicited in the course of his further examination that he did not make any note that he asked Shri T. R. Varma to put questions in cross-examination to witnesses, and that that might have been due to a slip on his part.

(8) We have thus before us two statements, one by Mr. Byrne and the other by the respondent, and they are in flat contradiction of each other. The question is which of them is to be accepted. When there is a dispute as to what happened before a court or tribunal, the statement of the Presiding Officer in regard to it is generally taken to be correct, and there is no reason why the statement of Mr. Byrne should not be accepted as true.

He was admittedly an officer holding a high position, and it is not suggested that there was any motive for him to give false evidence. There are moreover, features in the record, which clearly show that the statement of Mr. Byrne must be correct. The examination of witnesses began on APRIL 20, 1953, and four witnesses were examined on that date, among them being Sri C. B. Tawakley.

If, as stated by the respondent, he asked for permission to cross-examine witnesses, and that was refused, it is surprising that he should not

have put the complaint in writing on the subsequent dates on which the enquiry was continued. To one of the witnesses, Sri. P. Govindan Nair, he did actually put a question in cross-examination, and it is difficult to reconcile this with his statement that permission had been refused to cross examine the previous witnesses.

A reading of the deposition of the witnesses shows that the Enquiring Officer himself had put searching questions, and elicited all relevant facts. It is not suggested that there was any specific matter in respect of which cross-examination could have been but was not directed. We think it likely that the respondent did not cross-examine the witnesses because there was nothing left for him to cross-examine.

The learned Judges gave two reasons for accepting the statement of the respondent in preference to that of Mr. Byrne. One is that there was no record made in the depositions of the witnesses that there was no cross-examination. But what follows from this? That in fact, there was no cross-examination, which is a fact; not that the request of the respondent to cross-examine was disallowed.

Then again, the learned Judges say that the respondent was present at the hearing of the writ petition before them that they put questions to him, and formed the opinion that he was sufficiently intelligent, and that it was difficult to believe that he would not have cross-examined the witnesses. We are of opinion that this was a consideration which ought not to have been taken into account in a judicial determination of the question, and that it should have been wholly excluded.

On a consideration of the record and of the probabilities, we accept the statement of Mr. Byrne as true, and hold that the respondent was not refused permission to cross-examine the witnesses, and that the charge that the enquiry was defective for this reason cannot be sustained.

(9) The respondent attached the enquiry on two other grounds which were stated by him in his petition in the following terms:

"(C) That the petitioner was cross-examined and was not enabled to make an oral statement on his own behalf

(D) That the defence witnesses were not given an opportunity to tell their own version or to be examined by the petitioner as their depositions were confined to answers in reply to questions put by the Inquiry Officer."

In substance, the charge is that the respondent and his witnesses should have been allowed to give their evidence by way of examination-in-chief, and that only thereafter, the officer should have cross-examined them, but that he took upon himself to cross examine them from the very start and had thereby violated well-recognised rules of procedure. There is also a complaint that the respondent was not allowed to put questions

(10) Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of Law.

Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.

If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed. Vide the recent decision of this Court in *New Prakash Transport Co.* v. *New Suwarna Transport Co.*, 1957 S C R 98: (s) A I R 1957 S C 232) (c) where this question in discussed.

(11) We have examined the record in the light of the above principles and find that there has been no violation of the principles of natural justice. The witnesses have been examined at great length, and have spoken to all relevant facts bearing on the question, and it is not suggested that there is any other matter, on which they could have spoken. We do not accept the version of the respondent that he was not allowed to put any questions to the witnesses.

Indeed, the evidence of Sri Jai Narayan at p. 188 of the Paper Book shows that the only question on which the respondent wished this witness to testify was put to him by Mr. Byrne. The evidence of Sri Bhan and Sri Fatch Singh was, it should be noted, wholly in support of the respondent. The findings of Mr. Byrne are based entirely on an appreciation of the oral evidence taken in the presence of the respondent.

It should also be mentioned that the respondent did not put forward these grounds of complaint in his explanation dated september 11, 1953, and we are satisfied that they are wholly without substance, and are an afterthought. We accordingly hold, differing from the learned Judges of the Court below, that the enquiry before Mr. Byrne was not defective, that the respondent had full opportunity of placing his evidence before him, and that he did avail himself of the same. In this view, it becomes un-

necessary to express any opinion on the second question, which was raised by the learned Solicitor-General.

(12) In the result, we allow the appeal, set aside the order of the Court below, and dismiss the writ application. There will be no order as to costs.

D.H.Z. *Appeal allowed.*

(S) A. I. R. 1957 S. C. 886 (V 44, C 130, Dec.)

19th September 1957.

S. R. Das, C. J., Venkatarama Aiyar, Imam, Sarkar and Vivian Bose JJ.

Civil Appeal No. 100 of 1957.

Hartwell Prescott Singh, Appellant v. *The Uttar Pradesh Government and others, Respondents.*

(From : Civil Misc. Appln. O. J. No. 120 of 1954, D/- 21-10-1955—All.)

(a) Constitution of India, Art. 311 — Dismissal or removal — Termination according to conditions of service rules.

In the case of a person employed in a temporary capacity on probation and whose services could, according to the conditions of service contained in the service rules, be terminated by a month's notice if he failed to make sufficient use of his opportunities or to give satisfaction, the termination of his services according to the Rules does not amount to dismissal or removal from service within the meaning of the Article. In principle there can be no distinction between the termination of his services in accordance with the conditions of his services and the termination of the services of a person under the terms of a contract governing him : A I R 1953 S C 250 & A I R 1954 S C 369, Ref. to. (Para 5)

(b) Constitution of India, Art. 311 — Reduction in rank—Reversion from temporary post.

Reversion from a temporary post held by a person does not per se amount to reduction in rank because the temporary post held by him is not his substantive rank. It would be unnecessary to decide in his case in what circumstances a reversion would be regarded as reduction in rank when he has not established as a fact that the order of reversion passed against him was by way of a penalty. (Para 6)

CASES REFERRED: Paras

(A) A I R 1953 S C 250 (V 40) : 1953 S C R 655 5

(B) A I R 1954 S C 369 (V 41) : 1955-1 S C R 26 5

M/s. S. N. Andley, Rameshwar Nath and P. L. Vohra, Advocates of M/s. Rajinder Narain & Co., for Appellant; M/s. G. C. Mathur and C. P. Lal, Advocates, for Respondents.

The Judgment of the Court was delivered by

Imam, J.—This is an appeal by special leave against the decision of the Allahabad High Court dismissing the appellant's application under Art. 226 of the Constitution.

(2) From the affidavits filed in the High Court by the Personal Assistant to the Director of Agriculture of the Government of Uttar Pradesh and the appellant, it would appear that the appellant was appointed from time to time in a temporary capacity to the Subordinate Agricultural Service of the Uttar Pradesh Government by the Director of Agriculture. He served in that service during the periods detailed below :—

(a) *In Group II of the Subordinate Agricultural Service :*

(i) From 16th November 1936 to 18th March 1937.

(ii) From 1st April 1937 to 29th June 1937.

(iii) From 9th August 1937 to 31st December 1937.

(iv) From 6th January 1938 to 22th February 1943.

(b) *In Group I of the Subordinate Agricultural Service :*

From 23rd February 1943 to 24th April 1944.

While he was still in the Subordinate Agricultural Service he was appointed to officiate in the United Provinces Agricultural Service Class II as a Divisional Superintendent of Agriculture with effect from 25th April 1944, with the approval of the Public Service Commission of the United Provinces. He served in Class II of the United Provinces Agricultural Service in a temporary capacity for about ten years when he was reverted to his original appointment in the Subordinate Agricultural Service by an order of the Uttar Pradesh Government dated 3rd May 1954.

The appellant protested against his reversion and handed over charge on 16th May 1954 and went on leave until 2nd october 1954. In the meanwhile, a notice dated 13th september 1954, terminating the appellant's services in the Subordinate Agricultural Service was issued to him by the Director of Agriculture. The notice purported to be under R. 25, cl. (4) of the Subordinate Agriculture Service Rules. This notice stated that the appellant's services would not be required after the expiry of one month from the date of the issue of the order terminating his services.

The appellant challenged the validity of the aforesaid orders of reversion and termination of his services. The High Court in dismissing his application came to the conclusion that the appellant had not been dismissed or removed from service and that Art. 311 of the Constitution did not apply in the circumstances of the case. The High Court dismissed an application filed by the appellant for the issue of a certificate that the case was a fit one for appeal to this Court.

(3) It was conceded before us on behalf of the appellant that at no time was he confirmed in any post either in the Subordinate Agricultural Service or in the United Provinces Agricultural Service Class II. In our opinion, the finding of the High Court that the appellant had failed to establish that he was confirmed as a member of the Subordinate Agricultural Service, based upon the materials before it, was a correct finding.

The further finding of the High Court that the appellant's contention that he had been absorbed

circumstances we find no merit in the request of the plaintiff to quash the punishment order or the appellate order. The petition (Suit No. 593 of 1984) is accordingly dismissed. Parties will bear their own costs.

Petition dismissed.

[1987 UPLBEC (Tri) 74]

D. S. MISRA (AM) AND G. S. SHARMA, (J.M.)

Registration No. O. A. 186 of 1986, decided on November 12, 1986

Ashok Kumar — Applicant

Versus

State of U. P. and others — Respondents

(A) Adverse-remark—Justification of—Reporting authorities given good entries—Adverse remark by accepting authority self-contradictory and inconsistent—Adverse remark not justified. [Paras 36 and 37]

In our view, the adverse remark given to the applicant by the accepting authority is self-contradictory and inconsistent with the earlier statement that his judicial work is satisfactory and further his working capacity is good. The applicant that for his judicial work, he did not get any adverse comment from any higher Court or authority and as he was not called upon to do any administrative work in the year 1982-83, it is totally incorrect to say that he could not impress with his work and required to develop better judgment administrative ability. (Para 36)

We, therefore, find no good ground to justify the adverse remark given by the respondent No. 1 to the applicant in the year 1982-83 and it adverse to be expunged. (Para 37)

(B) Central Administrative Tribunal Act, 1985, Section 19—Application of Evidence—Scope of—Inquiry authority not give due consideration to evidence before him—Ignored material circumstances—No reasons given to discard evidence and accepting oral evidence of prosecution—Finding enquiry not based on legal evidence—Charge and Punishment set aside. All India Service (Discipline and Appeal) Rules, 1969, Rule 8, Cl. (c) (24). [Paras 28 to 33]

(C) Disciplinary Enquiry—Cross-examination of witness—Other party cannot be blamed for not cross-examining unless a witness is examined by a party [See All India Services (Discipline and Appeal) Rules, 1969, Rule 8 (4) and (15)]. [Paras 15 and 16]

Case-law.—1. AIR 1964 SC 364 ; 2. AIR 1964 SC 477 ; 3. AIR 1969 SC 966 ; 4. AIR 1978 SC 1277—Relied on.

(D) Disciplinary Enquiry—Evidence and proof—Fact finding report of District Magistrate—District Magistrate not examined—Report cannot be read as substantive evidence. [Paras 16, 17 and 18]

We fully agree with the view expressed by the Hon'ble Judges of the Allahabad High Court in that case and hold that as the report dated 13-1-1976 of the District Magistrate Agra was not a legal evidence, it could not be relied upon by the inquiring officer and thereafter by the respondents for holding the applicant guilty of charge No. 1. [Para 18]

Case-law.—1. AIR 1972 SC 330 ; 2. 1972 SLR 355 ; 3. 1980 LLT (Service) 162.

(E) Di ciplinary Enquiry—Misconduct—Evidence and proof—Disputed document—Report of District Magistrate—Applicant refuted facts—Examination of District Magistrate and opportunity to cross-examination must be afforded to rely upon—Duty of Presenting officer indicated. [Para 14]

The report of the District Magistrate thus became a disputed document. It could be read in evidence merely as a fact finding report without formal proof for initiating action against the applicant but in case the respondents wanted to rely on it as the statement of fact of the District Magistrate contained therein, it was the duty of the presenting officer to produce the District Magistrate as witness and in view of the clear denial of the disputed fact by the applicant in his explanation before the inquiring officer, the report of the District Magistrate could not be relied upon and accepted as a gospel truth and substantive evidence without examining the District Magistrate as a witness and affording an opportunity to the applicant to cross-examine him. [Para 14]

(F) Suitability for promotion to selection grade—Question left open. [Para 13]

Counsel.—S. C. Budhwar and Sudhir Agarwal for the applicant ; Chandar Prakash for the respondents.

JUDGMENT

G. S. Sharma, (J. M.)—This application under Section 19 of the Administrative Tribunals Act (XIII of 1985) has been moved by the applicant who is a member of Indian Administrative Service (in short IAS) in the cadre of Uttar Pradesh for 3 reliefs noted below—

(i) the respondent No. 1 be directed to promote the applicant to officiate in the selection grade of the Indian Administrative Service with effect from 1-1-1986 ;

(ii) the order of the State Government-respondent No. 1 dated 31-1-1985 withholding the increments of the applicant for two years without cumulative effect be quashed and the applicant be totally and completely exonerated of the charges ; and

(iii) the adverse remarks in the annual confidential report for the year 1982-83, as communicated to the applicant vide U. P. Government's order No. 4104 (I)/II-5-83-2(3)-83 dated 2-9-1983 be totally expunged.

2. The material facts of this case are that the applicant was selected in the IAS through respondent No. 3 and was appointed on probation on 7-7-1973. While posted as Joint Magistrate, Agra, the applicant was also the President of Uttar Pradesh Krishi Utpadan Mandi Samiti, Agra and one Km. Asha Mahajan was posted as a Clerk in the Mandi Samiti. The said Km. Mahajan is stated to be a lady of ill-repute and vide his D. O. letter dated 26-12-1965 (copy annexure 1), the Deputy Director, Mandi Parishad, U. P. Lucknow had asked the applicant to retrench 3 clerks and some other officials who were in excess of the sanctioned strength. Km. Asha Mahajan was the junior most and as such, she had to be retrenched by the applicant in view of the direction of the Deputy Director. On the termination of the services of Km. Asha Mahajan, without lodging any report with the Police, she made a complaint to the Chief Secretary and Governor Uttar Pradesh against the applicant alleging that the applicant

had committed rape on her on 23-12-1975 in the inspection house of Sikandara. The Secretary to the Governor sent the said complaint to the District Magistrate, Agra to enquire it personally and the Chief Secretary to the U. P. Government endorsed a copy of the complaint received by him to the Commissioner, Agra with the direction to enquire it personally. In this way, both the District Magistrate, Agra and the Commissioner Agra made inquiry into the allegation of rape made by Km. Asha Mahajan against the applicant. The District Magistrate submitted his report dated 13-1-1976 (copy annexure SCA I) and the Commissioner submitted his report dated 25-1-1976 (copy annexure SCA II) to the Chief Secretary. After a consideration of the said reports, the respondent No. 1 did not feel satisfied about the allegation of rape levelled by Km. Mahajan against the applicant but it decided to initiate disciplinary proceedings against the applicant in respect of certain other matters relating to the misconduct of the applicant coming to its notice through the reports of the District Magistrate and the Commissioner, Agra and suspended the applicant on 5-3-1976. He was served with a charge dated 5-3-1976 (copy annexure 2) by the Commissioner and Secretary Sri. Dharmendra Mohan Sinha containing 5 charges. In the disciplinary proceedings held by Sri S. B. Saran Commissioner, Lucknow the applicant was found guilty of charges 1 and 4 reproduced below for the sake of convenience :—

"Charge No. 1.

You, Sri Ashok Kumar Trivedi, IAS probationer are hereby charged as follows :—

That during December, 75/January 76 while posted as Joint Magistrate, Agra and also President Mandi Samiti, Agra, the enquiry made by the Commissioner Agra Division, Agra dated January 25, 1976 and the District Magistrate, Agra dated January 13, 1976 in connection with a complaint received against you about the alleged rape by you of one, Km. Asha Mahajan, a Clerk in the office of Mandi Samiti, Agra on December 23, 1975 it was found that :—

(1) You on January 7, 1976 surreptitiously removed the statement dated December, 26, 1975 of Sri Gaya Prasad Chaudhari, Naib Tahsildar, Barara Area, district Agra and the letter dated December 26, 1975 of the Deputy Director Mandis, U. P., from the file in the custody of the District Magistrate and despite being asked by the District Magistrate, Agra, you did not return those documents in original and later on you passed on photo-state copies of the statement of Sri Gaya Prasad Chaudhari Naib Tahsildar and letter of the Deputy Director, Mandis.

Thus, you are guilty of *misconduct which* was highly unbecoming of a member of the Service to which you belong and thus you have committed a breach of Rule 3 (1) of All India Services (Conduct) Rules, 1968.

some other papers were sent to your at you residence in two envelopes, several ,times and ultimately on Febuary 5, 1976 the said papers were received, by you, but you refused to sign in token of their receipt and get your peon, Sri Bengali Mal to sign for you, but you did not return the charge certificate of handing over duly signed and you have not yet taken over a Joint Magistrate at Unnao as directed by Government and thus you are guilty of disobeying the orders of Government and also of the Collector ;

Thus you are guilty of misconduct which is highly unbecoming of a member of the Service to which you belong and you have thus committed a breach of Rule 3 (1) of All India Services (Conduct) Rules, 1968."

3. The suspension of the applicant was revoked by the Respondent No. 1 on 1-3-1977 and he was reinstated with immediate effect and posted as Joint Magistrate, Gorakhpur. The Respondent No. 1 accepted the report of disciplin are inquiry and decided to impose minor punishment of censure upon the applicant and sent the record to the Respondent No. 3 for its advice under the provisions of All India Services (Discipline and Appeal) Rules, 1969 (hereinafter referred to as the D. A. Rules). The Respondent No. 3 took a more serious view of the matter and advised a punishment of withholding of 2 increments with cumulative effect. On account of this difference of opinion, the matter was referred by the Respondent No. 1 to Respondent No. 2, the Central Government for its decision. On the basis advice received, the Respondent No. 1 vide its order dated 31-1-1985 (copy annexure 9) awarded the punishment of withholding increments for 2 years without cumulative effect to the applicant and the period of suspension was treated as on duty with full salary. The applicant preferred an appeal on 12-3-1985 under rule 16 (2) of the D. A. Rules to the Respondent No. 2, which is still stated to be pending.

4. The applicant was confirmed in the IAS on 6-2-1981 with retrospective due date 7-7-1975. Though other batch-mates of the applicant were promoted in the senior time scale of IAS in July/August, 1977 and the applicant was superseded at that time, he was promoted in the senior time scale on 3-10-1979 and was confirmed in that scale on 20-7-1985 vide annexures 11 and 12. The applicant has made a representation against his supersession on 22-10-1979 to the Respondent No. 1, which is still stated to be pending.

5. In the years 1981-82 and 1982-83, the applicant was posted as Additional Commissioner, Agra. In the year 1981-82. two Commissioners had worked in Agra Division and both had given good entries to the applicant and the same were approved and accepted by the reviewing and accepting authorities. Even in the year 1982-83, the Commissioner, Agra gave a good entry to the applicant making a recommendation for giving him an opportunity to work against some senior field job and the reviewing authority had concurred with him. The accepting authority, however, made the following adverse entry in the character roll of the applicant :—

"He has not so far been able to impress with his work. He needs to develop better judgment and administrative ability.

The applicant made a representation to the respondent No. 1 against the said entry which too is still stated to be pending decision.

6. According to Rule 3, (2A) of the Indian Administrative Service (Pay) Rules, 1954 (hereinafter referred to as Pay Rules), the respondent No. 1 made

promotions of the IAS officers of 1973 batch in selection grade and a large number of officers junior to the applicant were given promotion in the selection grade w. e. f. 1-1-1986 but the applicant was superseded. The applicant made a representation against his supersession on 6-2-1986, copy annexure 15, but to no effect.

7. The facts stated above are almost admitted or undisputed. In his application, the applicant has alleged that the inquiring authority placed its reliance on inadmissible evidence, surmises and suspicions in holding the applicant guilty of the charge Nos. 1 and 4. The disciplinary inquiry was not held according to law and the report of the inquiring authority as well as the opinion and advise given by respondent Nos. 2 and 3 are against law and principles of natural justice. It is also his grievance that the evidence produced by him in his defence was not given due consideration and was brushed aside without giving any valid reason. According to him, the District Magistrate and the Commissioner, Agra, who had made the inquiry into the complaint of Km. Asha Mahajan were prejudiced against the applicant and the inquiry held by them was not fair and the findings given by the inquiring authority against the applicant in the disciplinary proceedings on the basis of the said reports are perverse in law. The Accepting Authority (Chief Secretary) had no occassion to see the work of the applicant as Additional Commissioner, Agra in the year 1982-83 and there was no basis for giving adverse entry by him to the applicant in that year despite good reports from the initiating and reviewing authorities. It is also alleged that the promotion and confirmation of the applicant in the selection grade in 1985 has the effect of washing off all the previous adverse material against the applicant and in view of the pendency of appeal and representation against the punishment, the applicant should not have been superseded in the selection grade.

8. The application has been contested on behalf of the respondents. In the reply/counter affidavit filed on behalf of respondent No. 1, it was stated that on account of the disciplinary proceedings pending against the applicant, his period of probation was extended from time to time and on the conclusion of the disciplinary proceedings, the respondent No. 3 recommended only the stoppage of 2 increments, which related to the period after the period of probation, the applicant was, therefore, confirmed w. e. f. 7-7-1975 vide order dated 6-2-1981. The applicant was given fully opportunity to defend himself in the disciplinary inquiry, which was held according to the rules and the report of the inquiring authority is based on evidence and it does not suffer from any defect. No representation dated 22-10-1979 of the applicant against his supersession in the senior time scale has been received by the State Government. The adverse entry given to the applicant is based on his work and conduct and his contention to the contrary is not correct. As his representation against the same is pending, his claim before the Tribunal is pro-mature and it is also barred by Section 20 of the Administrative Tribunals Act (XIII of 1985). The selection grade is given on the recommendation of the selection committee and as it did not find the applicant fit for promotion in the selection grade, he was rightly superseded and his claim petition is misconcieved. A similar reply/counter affidavit was filed on behalf of the respondent No. 2 and it was stated that the applicant has not made out any good case for the reliefs claimed by him. The respondent No. 3 did not file any reply in this case. The applicant filed 2 rejoinders reiterating the grounds taken by him in his application and denying the allegations made by the respondent Nos. 1 and 2 against him in their counter affidavits.

9. We have heard the learned counsel for the parties and have also carefully perused the record in the light of the submission made before us. The relief (i) regarding promotion to selection grade claimed by the applicant directly or indirectly depends upon the remaining two other reliefs and as such, we will first

like to examine the case of the applicant regarding relief, (ii) for quashing the punishment of withholding the increments. The punishment of withholding increments of the applicant for 2 years without cumulative effect is based on the report of the inquiry officer, who had found the applicant guilty of charge Nos. 1 and 4 quoted above in verbatim. It will be convenient to examine the case of the applicant regarding charge No. 1 first.

10. The applicant was charged of surreptitiously removing two documents, namely, D. O. letter dated 26-12-1975, copy annexure 1, addressed to the applicant by the Deputy Director, State Krishi Utpadan Mandi Parishad, U. P. regarding certain indiscipline in the office of the Mandi Samiti, Agra and the excess staff in that office. The applicant was the President of the Mandi Samiti, Agra at that time. This D. O. letter says that 3 clerks, 1 Amin and 1 Kamdar were in excess in the office and on the basis of seniority, Km. Asha Mahajan was the junior most among the clerks. This D. O. letter further mentions that Km. Asha Mahajan was reportedly having illegitimate intimacy with one other official Gupta Kamdar and the Deputy Director had asked the applicant to remove the services of said Gupta and retrench the extra staff in accordance with the rules. The other letter of the same date 26-12-1975 containing the statement of one Gaya Prasad Chaudhari, Naib Tahsildar, Barara area in district Agra is reported to have been removed by the applicant. Its copy is not on the record but it follows from the other material on record that when the applicant was faced with the charge of committing rape on Km. Asha Mahajan on 23-12-1975, he had collected some evidence to show that he had gone to other place on official work on that day and had not gone to Sikandara inspection house where the rape is alleged to have been committed by him on that day and in that connection, the Naib Tahsildar Choudhary had given him a letter containing his statement in support of applicant's contention of going on other official work. The inquiring officer and the respondents have interpreted these two documents very material for the defence of the applicant in connection with the charge of rape and as such, the finding of guilt against the applicant is very much based on this circumstance. This approach of the respondents has been criticised on behalf of the applicant and his contention is that the charge had to be proved against him on the basis of the evidence qouted in the charge sheet and produced before the inquiring officer and not on surmises or any wrong inferences.

11. The copy of Memo of Evidence, annexure 3, cites 3 documents (a) complaint of Km. Asha Mahajan addressed to the Governor, (b) D.O. letter dated 25-1-1976 of Commissioner, Agra to the Chief Secretary to the U. P. Government and (c) report dated 13-1-1976 of the District Magistrate, Agra to the Commissioner Agra. Neither any oral evidence in support of charge No. 1 has been cited in the Memo of Evidence nor was in fact produced before the inquiring officer. Regarding the nature of evidence, mentioned in the Memo of Evidence, it was explained that the report of Km. Asha Mahajan will show that she had made a complaint against the applicant and the letters of the District Magistrate and the Commissioner will show that the applicant surreptitiously removed the aforesaid two letters from the official file and on being asked by the Collector to return the same, the applicant had informed that the document were with him and he was getting their photostat copies.

12. Annexure 7 is the copy of the report dated 20-7-1978 of the inquiring officer (Commissioner Lucknow). Dealing with charge No. 1, the inquiring officer has mentioned in his report that "this charge really arose from the report sent to the Commissioner by the District Magistrate, Agra on 13-1-1976. On para 4 of this report the District Magistrate wrote that on his return from Sikandara Dak Bungalow he discovered that the files which he had taken from Sri Trivedi (applicant) in the afternoon were not at the place where he had kept them. As Sri Trivedi was still at his residence, he called him to his presence and recovered

the files from him. He did not immediately look inside the files but at 10.00 P.M. he found that the statement dated 26-12-1975 given by Naib Tahsildar Sri Chaudhary and the report of the Deputy Director, Mandis were missing from the file. This District Magistrate called Sri Trivedi on phone and Sri Trivedi accepted that he had removed these papers for getting their photossat copies. "Dealing with the explanation of the applicant, the report further says that" In his explanation Sri Trivedi has mentioned that Sri Chaudhari's statement dated 26-12-1975 had been given to him personally and was, therefore, a document which remained through out with him in his personal custody. It was not addressed to the District Magistrate nor did it bear any endorsement by the District Magistrate or the serial paper number of District Magistrate's file. Similarly letters dated 26-12-1975 sent by Deputy Director, Mandi Parishad was a confidential letter addressed to Sri Trivedi by name and not to the District Magistrate.....This letter was never kept on DM's file and there could be no motive for the removal of this document from DM's possession. Sri Trivedi has thus denied having removed these papers from the custody of the District Magistrate."

13. After considering these facts, the report of inquiry further says "As stated above, this charge is based exclusively on DM's report dated 13-1-1976. This statement has been mentioned in the memo of evidence of charge No. 1 given as annexure 2.... It was mentioned in para 7 of Government order No. 4094 dated July 19, 1976 that Sri Trivedi would have the right to cross examine witnesses mentioned in support of the charges and also to produce witnesses in his defence. Sri Trivedi did not cross examine the District Magistrate Sri J. N. Pradhan whose report dated 13-1-1976 formed the basis of this charge and on whose averment it was sought to be held that the papers were removed from the file which had been handed over to the District Magistrate. I have thus no reason to disbelieve the report of the District Magistrate about the removal of these papers .. . ...In the absence of any rebuttal even by way of cross-examination of the District Magistrate who has himself made this statement, this charge stands fully proved, (vide annexure-7). It is thus apparent that the inquiring officer in this case found the applicant guilty of charge No. 1 solely on the basis of the letter dated 13-1-1976 of the District Magistrate, copy annexure SCA I. He did not take into consideration even the report of the Commissioner in this connection and was of the view that in case the applicant wanted to dispute the truthfulness of the contents of the report of the District Magistrate, it was the duty of the applicant to cross-examine him. As the applicant neither cross-examined the District Magistrate nor produced any evidence in rebuttal, the charge No. 1 against the applicant was found established. The Union Public Service Commission-respondent No. 3 when moved for advise in the matter, took the similar view of the facts and evidence as appears from its letter dated 27-8-1980, copy annexure 8.

14. The report, annexure 7, clearly goes to show that the applicant refuted the facts stated in the report of the District Magistrate about his surreptitiously removing the 2 aforesaid documents from his file. The report of the District Magistrate thus became a disputed document. It could be read in evidence merely as a fact finding report without formal proof for initiating action against the applicant but in case the respondents wanted to rely on it as the statement of fact of the District Magistrate contained therein, it was the duty of the presenting officer to produce the District Magistrate as witness and in view of the clear denial of the disputed fact by the applicant in his explanation before the inquiring officer, the report of the District Magistrate could not be relied upon and accepted as a gospel truth and substantive evidence without examining the District Magistrate as a witness and affording an opportunity to the applicant to cross-examine him.

15. Our attention has been drawn on behalf of the applicant on the provisions of Rule 8 of D. A. Rules. According to clause (b) of sub-rule (4) of Rule 8, the disciplinary authority has to draw a list of documents by which and a list, of witnesses by whom the articles of charge are proposed to be sustained. It will be worthwhile to point out that only the report of the District Magistrate has been mentioned in the list of documents and the name of the District Magistrate has not been mentioned in the list of witnesses by whom the charge No. 1 was sought to be sustained. Sub-rule (15) of Rule 8 provides that on the date fixed for the inquiry, the oral and documentary evidence, by which articles of charge are proposed to be proved shall be produced by, or on behalf of, disciplinary authority. The witnesses shall be examined by, or on behalf of, the presenting officer and may be cross-examined by, or on behalf of, the member of the service. The contention of the applicant is that as the District Magistrate, Agra, on whose report the charge No. 1 has been found established against him, was neither cited as a witness nor otherwise produced, by or on behalf of the disciplinary authority, and as such, the applicant could have no occasion to cross-examine the District Magistrate and the inference drawn against him by the respondent Nos. 1 and 3 in this connection is not correct. We fully agree with this view and are of the opinion that unless a witness is examine by a party in support of his case, the other party cannot exercise the right of cross-examining him. The applicant, therefore, cannot be blamed for not cross-examining the District Magistrate, Agra. The view taken by the respondents to the contrary is not correct.

16. The fact finding report dated 13-1-1976 of the District Magistrate, Agra has been read in evidence in this case as a substantive evidence, which was not permissible under the law and rules of natural justice. We will like to quote below the observations of the Hon'ble Supreme Court in the case of *M/s. Bareilly Electricity Supply Co. Ltd.* v. *The Workmen and others*, AIR 1972 SC 330 in support of this view :—

> "But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to estaolish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used, when a document is produced in a Court or a Tribunal the question that naturally arises is, is it a genuine document, what are its contents and are the statements contained therein true. When the appellant produced the balance sheet and profit and loss account of the company, it does not by its mere production amount to a proof on is or of the truth of the entries therein. If these entries are challenged the appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order XIX, Civil Procedure Code and the Evidence Act both of which incorporate these general principles."

17. In the *Union of India* v. *Sardar Bahadur*, AIR 1972 SLR 355, the Hon'ble Supreme Court has held that even the statement recorded in Court proceedings under the Prevention of Corruption Act cannot be relied on in depart-

mental inquiry and the fact has to be proved by calling thesaid witness again the departmental inquiry.

18. In *G.S. Sial* v. *President of India*, 1980 LLT (service) 162, the Allahabad High Court while considering the powers and jurisdiction of the High Court in a writ petition challenging the findings and the correctness of the procedure adopted in disciplinary proceedings had held that the High Court while considering the findings recorded against a Government servant during disciplinary proceedings cannot reappraise the evidence and arrive at a different conclusion. The High Court does not exercise any appellate power. Since the High Court exercises supervisory jurisdiction, it has limited power to ascertain as to whether the findings are based on legal evidence on the basis of which a reasonable person could come to the conclusion to which the inquiring officer may have arrived. It was further held that the technical rules of evidence which regulate criminal trials do not apply to the disciplinary proceedings but nonetheless, the finding of the inquiring officer must be based on legal evidence and it should not be based on conjectures, surmises or on suspicion. Suspicion, however strong cannot take the place of proof. We fully agree with the view expressed by the Hon'ble Judges of the Allahabad High Court in that case and held that as the report dated 13-1-1976 of the District Magistrate, Agra was not a legal evidence, it could not be relied upon by the inquiring officer and thereafter by the respondents for holding the applicant guilty of charge No. 1.

19. In view of this clear legal position, it is unnecessary for us to examine the case of the applicant regarding charge No. 1 in any other manner and we hold that the finding on charge No. 1 against him is not based on any legal evidence and is liable to be set aside.

20. Coming to the charge No. 4 quoted above, radiogram dated 3-2-1986 of the Government to the District Magistrate, Agra containing the transfer order of the applicant from Agra to Unnao, radiogram dated 6-2-1976 of the District Magistrate, Agra to the Chief Secretary, U. P. Government stating that the applicant did not hand over the charge and was traceless and D. O. letter dated 8-2-1976 of District Magistrate, Agra with a report dated 7-2-1976 of the A.D.M. Sri Varshney to show that the applicant was absent from the office prior to the receipt of the transfer order and despite the information, rejecting his application for permission to leave the station sent to the applicant as well as the transfer orders served on him he neither came to the office nor returned the charge certificate of handing over charge and the oral statement of Shri Shanti Swaroop Peon were cited as evidence insupport of the charge. The defence of the applicant was that he had left for Aligarh in the early morning on 5-2-1976 after obtaining permission on telephone from the District Magistrate in the evening on 4-2-1976 in connection with the betrothal ceremony and on account of his falling sick there, he could return to Agra only on 8-2-1976 as a sick person and thereafter remained on medical leave duly recommended by the Divisional Medical Board and the transfer order was not served on him her he refused to sign in token of his having receive the transfer order on 5-2-1976 at his residence at Agra and the charge is incorrect. He had examine Shri R. K. Sharma Assistant Sales Tax Commissioner, Muzaffarnagar with whose daughter the applicant was married on 27-2-1978 in his defence.

21. The report of inquiry, copy Ex. 7, shows that the inquiring authority first considered the defence evidence and thereafter the statement of Shanti Swaroop, Peon and formulated a point saying 'here again the main issue is whether Trivedi obtained the District Magistrate's permission to leave station in the morning of February 5, 1976 or whether the District Magistrate had been trying to contact him for serving him with the orders of transfer from February 4

onwards'. After considering the fact finding reports of the District Magistrate dated 13-1-1976 and Commissioner dated 25-1-1976, the inquiring authority held that in view of the grave charges pending against the applicant, it was unthinkable that a District Magistrate in his senses would permit him to proceed on leave after orders of his transfer had already been received. The betrothal ceremony being arranged from before, the applicant could not take the leave from the District Magistrate in the early morning on 5-2-1976 for leaving the station. The sanction of leave from February 9 onwards on the recommendation of the Medical Board is not relevant to the issue and he saw no reason to disbelieve the version of the District Magistrate in this behalf.

22. The contention of the applicant is that the reports dated 13-1-1976 and 25-1-1976 of the District Magistrate and the Commissioner Agra respectively relied upon by the inquiring authority in his finding on charge No. 4 were not quoted as evidence for establishing this charge and the inquiring authority committed an error in placing his reliance on such evidence. It has been further contended that the inquiring authority did not write a single word for discarding the evidence of Sri R. K. Sharma, a respectable witness produced on behalf of the applicant in his defence and did not discuss the evidence of Sri Shanti Swaroop Peon which was self-contradictory oscillating and unreliable and in the end, he again wrongly placed his reliance on the version of the District Magistrate contained in some D. O. letter or radiogram without calling the District Magistrate in the witness box to afford the applicant an opportunity or cross-examining him.

23. As the applicant has placed the copies of the statements of Sri Shanti Swaroop Peon and Sri R. K. Sharma as annexures 4 and 5, we feel inclined to examine the same to see whether there was some evidence before the inquiring authority to accept the case of the prosecution and reject the defence of the applicant and not with a view to make out or reconstruct a new case. This approach to the matter was found within the jurisdiction of the High Court in a writ petition under Article 226 of the Constitution by the Hon'ble Supreme Court in a special appeal in *Nand Kishore Prasad* v. *The State of Bihar*, AIR 1978 SC 1277.

24. The Peon Shanti Swarup was first examined on 25-7-1977. He did not state a single word concerning this case on that day. Again, he was examined on 13-4-1978 and it was stated by him that he went with two envelopes to the bungalow of Sri Trivedi. He was not found there. He had handed over the envelopes to Bangali Peon. The said envelopes were given to him by A.D.M. Sri Varshney. Without explaining his this clear statement that the applicant was not found and he had handed over the envelopes to his Peon Bangali, this witness further stated that the applicant was not available on the first date of his going to his residence. He again went on the second day at 3 p.m. The applicant was not again present and on his arrival after 2-3 hours, he went upstairs and requested the applicant to receive 2 envelopes. The applicant refused to make signatures to acknowledge their receipt and on his insistence, he threw the envelopes on the ground. He the witness thereafter picked up the envelopes from the floor and went down stairs and found Bangali Peon there. On the request of Bangali, he waited therefor a while and in the meantime Bangali went upstairs and on his return, obtained the envelopes and signed the acknowledgement. On his return, he had stated about all this to the Office Superintendent. In his cross-examination, it was stated by him that formerly, whenever he had taken the dak to the applicant, only his Peon had given the acknowledgement. As on that day, he was asked by the A.D.M. and the Office Superintendent to give the dak to the applicant himself, he had waited till his return. He further stated that it was informed to him by Bangali that Sahab had gone to Delhi and would return in the evening. He could not deny the fact that to the Office Superintendent, he had stated that the applicant had gone to Aligarh. Accord-

ing to him, the applicant had returned to his residence at about 6.30 p.m. but could not deny the suggestion that he had earlier stated that the applicant had returned at 8 p.m. He had not given written report about the delivery of the above 2 envelopes in the manner stated by him. He neither stated any date on which he had taken the two envelopes in question to the applicant nor could say anything about the nature of the contents of the said envelopes. It is perhaps due to these various discrepancies in the statement of this witness, the inquiring authority though it better to skip over his statement in his report.

25. In case the statement as a whole of this witness is accepted, the both versions that on the first day, the applicant was not found and he had delivered the 2 envelopes to his Peon Bangali and on the second day, when he went, he served them in the manner stated, cannot be accepted. The fact that the applicant was not available atleast from 3 p.m. to 6.30 p.m. at his residence and was reported to have gone to Delbi or Aligarh, supports the case of both the parties as on the next day i.e., 6-2-1976, the District Magistrate, Agra had reported the applicant as traceless and the stand of the applicant was that he was at Aligarh.

26. Further, even if we accept the statement of Shanti Swarup so far as it goes in favour of the prosecution, ignoring the aforesaid discrepencies, it simply shows that the applicant threw away the envelopes and did not accept them. It furter says that on the ground floor, the envelopes were taken by the applicant's Peon Bangali. He did not say that the Peon Bangali had taken the same under the direction or in the presence of the applicant. In this way, the charge No. 4 that the applicant accepted the transfer order, if contained in the said two envelopes, and refused to give acknowledgement and asked his Peon to sign for him in that connection, has not been established. We are, therefore, of the view that there was no evidence before the inquiring authority to find even the charge No. 4 established against the applicant.

27. On the other hand, there was the consistent statement of Sri R. K. Sharma, though a near relation of the applicant to support his defence version. Sri Sharma had stated in cross-examination that the illness of the applicant related to his being upset and he used to get perspiration and had some plain in the abdomen, finds corroboration from the subsequent event that the applicant returned to Agra in the state of sickness and thereafter remained on medical leave approved by the Divisional Medical Board for a long period up to 19-4-1976. This important circumstance was ignored by the inquiring authority by saying that it is not relevant to the issue, which does not appear to be correct. The applicant was facing a serious situation on account of the allegation of rape by one of the women employees of the Mandi Samiti, Agra, of which the applicant was the President and as such, it could not be unusual for him to get upset. Not a single question was put by the presenting officer or the inquiring authority to Sri R. K. Sharma to suggest that he was not speaking the truth.

28. Clause (c) of Rule 8 (24)(i) of D.A. Rules provides that after the conclusion of the inquiry, a report shall be prepared and it shall contain an assessment of the evidence in respect of each article of charge and clause (d) further provides that the report shall also contain the findings on each article of charge and the reasons therefor. We feel that the inquiring authority has not given any reason whatsoever for accepting the solitary statement of Shanti Swarup Peon produced on behalf of the department and discarding the statement of the defence witness. The version of the District Magistrate on the basis ofwhich charge No. 4 was found established has also not been specified. The report so prepared is not in accordance with the Rule 8 (24) of the D. A. Rules. We further feel that despite his being conscious of the fact that the important ques-

tion arising for determination in this connection was whether the applicant obtained the District Magistrate's permission to leave the station in the morning of February 5, 1976, was decided by him merely on the basis of his own inferences without considering the application given by the applicant for leaving station and the order of its rejection. In case, the application was given on 4-2-1976 or in the morning of 5-2-1976 before going to Aligarh, it could throw a flood of light on the point. It is further noteworthy that the applicant has not been charged in this case for leaving the station without permission or for abandoning his post in any manner. These points could assume great importance in case the applicant was traceless as reported by the District Magistrate. The inquiring authority, however, did not apply its mind to this aspect of the case.

29. Before, we conclude our discussion on this point, it will be useful to consider some case law laying down the scope of the courts and Tribunals before whom the orders passed in the disciplinary proceedings are challenged. In the *Union of India* v. *H. C. Goel*, AIR 1964 SC 364, it was held that the High Court cannot consider the question about the sufficiency or adequacy of evidence and should only inquire whether there is any evidence in support of the impugned conclusion. It will take the evidence as it stands and only examine whether on that evidence the impugned conclusion follows or not. The Hon'ble Supreme Court further held that the principle that the innocents are not punished applies as much to regular criminal trials as to disciplinary inquiry held under the statutory rules.

30. In *Syed Yakub* v. *E. S. Radhakrishnan*, AIR 1964 SC 477, it was held that if it is shown that the domestic tribunal erroneously refused to admit admissible or material evidence, or erroneously admitted inadmissible evidence, which had influenced the findings, the High Court can interfere. It was further held that if a finding of fact is based on no evidence, that would be regarded as error of law which can be corrected by a writ of *certiorari*.

31. In *Railway Board, New Delhi* v. *Narayan Singh*, AIR 1969 SC 966 it was held that if the findings of the disciplinary proceedings are not supported by any evidence and it can be shown that no reasonable person could have reached such a finding, the High Court can interfere.

32. In *Nand Kishore Prasad* v. *State of Bihar*, AIR 1978 SC 1277, it was held that since disciplinary proceedings are of a *quasi*-judicial character, the minimum requirement of the rules of natural justice is that the domestic Tribunal should arrive at a conclusion on the basis of some evidence i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent. Suspicion cannot be allowed to take the place of proof even in domestic inquiries.

33. Having thus considered the case of the applicant regarding the finding on charge No. 4 against him, we feel that the inquiring authority did not give due consideration to the evidence before him. It ignored the material circumstance of applicant's subsequent long illness on medical leave as well as the message given by the District Magistrate to the Chief Secretary that the applicant was traceless. He did not give any reason for discarding the defence evidence and accepting the oral evidence of the Peon Shanti Swarup. The finding of the inquiring authority, is therefore, not based on legal evidence and on the basis of the material and the circumstances discussed above, no reasonable person could come to the conclusion to which the inquiring authority had arrived at. The finding on charge No. 4 thus also deserves to be set aside and with this conclusion the punishment awarded to the applicant will also have to be set aside.

34. The next point arising to determination in this case is whether the adverse remark given in the annual confidential report to the applicant for the year 1982-83 has been given without any basis or justification and deserves to be

expunged. In this connection, the case of the applicant is that in March 1980-81, he was posted as Additional Commissioner, Agra for doing judicial work only under the provisions of Land Revenue Act. His immediate officer and the Reporting Authority Commissioner, Agra gave a very good entry to him for the period 1-4-1981 to 14-8-1981, which was approved and accepted by the reviewing and accepting authorities respectively. On the transfer of the first Commissioner Agra, his successor again gave a commandable entry to the applicant for the period 25-8-1981 to 31-3-1982 and the said entry was again approved and accepted. In 1982-83, the reporting authority again gave a good entry to the applicant and strongly recommended to give him an opportunity to work against some senior field job. The reviewing authority expressed its concurrence but the accepting authority gave the adverse remark quoted in paragraph 5 above. The applicant contends that the accepting authority, the Chief Secretary, did not have any occasion to see his work as a Judicial Officer and he had not done any administrative work. The adverse entry aforesaid is, therefore, uncalled for and is not based on any material. The respondent No. 1 has tried to justify this entry with the allegation that it was actually based on the work and conduct of the applicant as assessed by the accepting authority and the representation of the applicant against the said entry is under consideration of the respondent No. 1 and his claim petition is premature.

35. The respondent No. 1 did not dispute the fact that both the reporting authorities had given good entries to the applicant for the year 1981-82 and even for the year 1982-83 the entries, as alleged by the applicant, were given and recommended by the reporting and reviewing authorities. In view of this, it is not shown how the accepting authority came to the conclusion that the applicant could not impress with his work and he required to develop better judgment and administrative ability. The whole entry for the year 1982-83 given to the applicant is not before us but the letter dated 2-9-1983 of the Appointment Secretary, who conveyed the aforesaid adverse remark given to the applicant runs as follows :—

> "In the annual confidential report of Sri Ashok Kumar I.A.S., Additional Commissioner, Agra for the year 1982-83, it has been stated that his judicial work and control over the Court staff are satisfactory. His Court inspections were of good standard. His working capacity is good but there were some set backs in the beginning of his service on account of which, he has developed a feeling of frustration. With this the following adverse remark has also been entered in his character roll :—
>
> 'He has not so far been able to impress with his work. He needs to develop better judgment and administrative ability.'

36. In our view, the adverse remark given to the applicant by the accepting authority is self-contradictory and inconsistent with the earlier statement that his judicial work is satisfactory and further his working capacity is good. The applicant has maintained that for his judicial work, he did not get any adverse comment from any higher Court or authority and as he was not called upon to do any administrative work in the year 1982-83, it is totally incorrect to say that he could not impress with his work and required to develop better judgment and administrative ability.

37. Admittedly, the applicant had made a representation against this adverse entry, copy annexure 14, in March, 1984 but the same has not been disposed of so far despite a subsequent reminder dated 12-1-1986 while under Rule 10 of the All India Services. (Confidential Rolls) Rules, 1970, the same has to be

disposed of as far as possible within 3 months of its submission. The undue time taken by the respondent No. 1 in disposing of this representation cannot be appreciated and it leads to the inference that respondent No. 1 has no ground to justify the adverse remark given to the applicant. It is further apparent that the respondent No. 1 has not come forward with any specific instances on which the adverse remark given to the applicant by the accepting authority is based. The bald allegation that this remark was based on the work and conduct of the applicant as assessed by the accepting Authority, cannot be accepted. We, therefore, find no good ground to justify the adverse remark given by the respondent No. 1 to the applicant in the year 1982-83 and it deserves to be expunged.

38. The next and last question for determination in this case is whether the applicant has been wrongly superseded by ignoring his claim on 1-1-1986 for his promotion in the selection grade when the officers of his batch junior to him were promoted in this grade. The respondent No. 1 has stated in paragraphs 30 to 3 of its reply that a Selection Committee was constituted by the respondent No. 1 for this purpose and after the consideration of the entire service record of the applicant, he was not found fit for promotion to the selection grade by the said committee and as such, the applicant was rightly superseded. In paragraph 20 of its reply, it has also been stated by the respondent No. 1 that the character roll of the applicant had an adverse entry and he was earlier suspended, he was, therefore, not approved for promotion to the senior scale of I.A.S.

39. The stand of the applicant in this connection is that after his suspension on 5-3-1976, he was given the senior grade of I.A.S. on 3-10-1979 and he was confirmed in this grade on 20-7-1985. He was confirmed on 6-2-1981 with retrospective effect. In view of his promotion to the senior scale of pay and confirmation in the I.A.S. subsequent to the events on which his promotion to the selection grade has been denied could not be taken into consideration for the purpose of his promotion and his confirmation in the senior grade on 20-7-1985 will have the effect of wiping off of the previous bad entries on the record, if any, of the applicant. In support of this contention, he has placed his reliance on *Mohd. Habibul Haque* v. *Union of India*, 1978 (1) SLR 637 ; *The Collector of Customs* v. *Rebti Mohan*, 1976 (2) SLR 897 and *Dr. Girish Behari* v. *State of U.P.*, 1983 U.P. Service Cases 34.

40. The applicant has further placed his reliance on *Gurdial Singh* v. *State of Punjab*, AIR 1979 SC 1622 ; *Jitendra Jayanti Lal Joshi* v. *State of Gujarat*, 1978 LIC 904 and *Union of India* v. *Mohd. Habibul Haque*, 1978 (1) SLR 748 for the contention that during the pendency of his representation against the adverse entry, the same could not be considered as an adverse circumstance against the applicant by the Selection Committee.

41. Without entering into an elaborate discussion on this point, we feel that it will be expedient on the part of respondent No. 1 to refer the matter of promotion of the applicant to selection grade to the proper selection committee again after the judgment of the Tribunal in this case and as the entire service record of the applicant is not before us, we will not like to express our opinion regarding his suitability for promotion to the selection grade.

42. In view of the above discussion, we set aside the report dated 20-7-1978 of the disciplinary proceedings and the order dated 31-1-1983 awarding the punishment to the applicant on its basis, direct the respondent No. 1 to expunge the confidential adverse remark given to the applicant for the year 1982-83 and further direct the respondent No. 1 to refer the matter of the promotion of applicant to selection grade to the competent Selection Committee and

communicate its result to him within 3 months. We leave the parties to bear their own costs.

Petition allowed.

[1987 UPLBEC 88 (Tri)]

(PRINCIPAL BENCH, DELHI)

KAUSHAL KUMAR (A. M.) AND G. SREEDHARAN NAIR (J.M.)

Regd. No. T-230 of 1985, decided on March 12, 1987

Net Ram **Petitioner**

Versus

Superintendent of Police Central District and others **Respondents**

(A) Appellate authority—Competency to order initiation of proceedings de-novo.

The appellate authority while quashing the first order of dismissal was competent to order initiation of proceedings *de-novo*. It is also not a case of no evidence. The disciplinary authority while passing the order of dismissal dated 3-6-1971 had carefully weighed the evidence against the delinquent official and also considered his reply to the show cause notice. [Para 9]

(B) Dismissal—Initiation of proceedings de-novo—First order of dismissal set aside on technical grounds and not on merit—Nothing wrong.

(C) Leave salary for period of suspension—Discipilinary authority passed no fresh order while passing second dismissal order [Para 7]

No fresh order for treating the period of suspension as required under F. R. 54-B was passed by the Disciplinary Authority while passing the order of dismissal on 3-6-1971, the petitioner would in any case be entitled to payment of leave salary in terms of the order dated 14-3-1969 passed by the D. I. G. [Para 10]

JUDGMENT

Kaushal Kumar (A. M.).—This application, which was filed in the Delhi High Court (Civil Writ No. 54 of 1976) has come before us on transfer under Section 29 of the Administrative Tribunals Act, 1985. The applicant, who was an Assistant Sub-Inspector in Delhi Police has questioned in this application the order of dismissal dated 3rd June, 1971. He has also prayed for payment of full salary and allowances for the period from 2-3-1966 to 3-1-1967 when he was under suspension.

2. The applicant was charged under Section 7 of the Police Act for gross misconduct and remissness in discharge of his duties while he was posted at Police Station Karol Bagh. On 13-12-1965 he sought two days' leave on medical ground. During the period of rest, he went to Hardwar without permission from the competent authority to leave the station and thereon 15-12-1965 stood surety for one Shrimati Bimal Bhalla w/o Shri Narain Singh Bhalla, a B. C. (Bad Character) of the Karol Bagh Police Station and a woman of bad repute, who was an accused in a case under Section 34 of the Police Act in the court of Resident Magistrate, Hardwar. On the basis of a departmental inquiry, the A. S. I. was dismissed vide order of the Superintendent of Police, Central District, Delhi dated 25-6-1968. On an appeal preferred by the applicant against the said order, the D. I. G. Police (Range), vide his order dated 14-3-1969 set aside the order of

कोर०-7 | Corr.-7

भारतीय डाक तार विभाग | INDIAN P. & T. DEPARTMENT

उत्तर प्रदेश दूर संचार कार्यालय | Office of the U. P. Telecom. Circle.

Dear Shri Shrivish Kumar

I am sending the bearer of this letter to you. Please help me in delivering the relevant which have been referred to you by Shri Ashok Mohily under his letter.

With best wishes.

Yours

Ram

PA

Sh. Shrivish Kumar
O/O LAT.
Lucknow

ASHOK MOHILEY
ADVOCATE HIGH COURT
ADDL. STANDING COUNSEL, CENTRAL GOVERNMENT. PRESENTING OFFICER, CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH. PRESIDENT, CENTRAL ADMINISTRATIVE TRIBUNAL BAR ASSOCIATION.

सत्यमेव जयते

FLAT NO. 3 BLOCK NO. 7 NAGAR MAHAPALIKA FLATS, HASTINGS ROAD (C. S. P. Singh Marg)
ALLAHABAD - 211 001
PHONE : 604295, 603571

Date 4-3-90

My dear Shirish,

In Registration no. 459/87, district-Sitapur, Kashi Pd. Vs. Union of India & others, at the time of final hearing the Court had asked me to submit three files for their perusal. I had submitted all those papers to the Tribunal. The judgment was reserved by Hon'ble Ajay Johri, A.M., & Hon'ble D. K. Agrawal, J.M. The judgment was delivered on 30-7-89 at Lucknow. I therefore kindly hand over the following file to the bearer of this letter and obtain receipt from him.

1. Shrivastava
श्री श्रीवास्तव
कृपया रसीद
देकर लेलीजिये
30/3

1- P.M.G, U.P. Lucknow Confidential endorsement No. VI.D/3-Eng/71/2 dt. 21-9-71 to DET, Allahabad.
2. Sup dt. of Police CBI (SPE) Lucknow Report No. 16770/3/60/70-GW III/Lko dt 31-8-71 in five (5) pages alongwith six (6) enclosures (12 sheets in all)
3- Inquiry officer file No. Con/K.M. containing 1 to 128 serials and 1 to 6 note and order sheets.

Yours Sincerly

Ashok Mohiley

Shri Shirish Kum. Srivastava
C/o C A T.
Circuit Bench
Lucknow.

Registered

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD
CIRCUIT BENCH, GANDHI BHAWAN
LUCKNOW

No.CAT/CB/LKO/ Dated : _____

OFFICE - MEMO

Registration No. O.A. _____ of 1987
T.A.

_____ Applicant's

Versus

_____ Respondent's

A copy of the Tribunal's Order/Judgement dated _____ in the abovenoted case is forwarded for necessary action.

For DEPUTY REGISTRAR (J)

Encl : Copy of Order/Judgement dated _____

To.

1. _____

2. _____

3. _____

dinesh/

Read Copy of Judgment 11/7/89

AJAY JOHRI
Member

Phone : { Office 3907
Resi 3087

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
23-A THORNHILL ROAD
ALLAHABAD-211 001

Dated: June 27, 1989.

My dear Agrawal,

I am sending herewith the judgement with revised last two pages of the judgment. If you think that even this needs a change I will suggest that you make out a draft and send it to me for signataures on the changed pages only at Delhi so that I receive it before I relinquish the charge on 4th July, 1989 (A/N).

With regards,

Yours sincerely,

(AJAY JOHRI)

Sri D.K. Agrawal,
Member (J).

391

Regd.A.D.

D.No. 3619/89/xi
SUPREME COURT OF INDIA
DATED: 26th April, 1990

Fr

The Assistant Regis ar
Supreme Court of Ind

To

The Deputy Registrar
Central Administrative Tribunal
Lucknow Bench, Lucknow, U.P.

~~The Registrar,~~
~~High Court of Judicature~~
~~Allahabad~~

CIVIL APPEAL NO. 2001 OF 19 90
(From ~~High Court~~ Judgment and Order/~~Decree~~ dt. 30.6.1989
in Registration O.A. No. 459 of 1987 of the Central Administrative Tribunal)

Kashi Prasad ... Appellant(s)

versus

Union of India & Ors. ... Respondent(s)

Sir,

In pursuance of Order XIII, Rule 6, S.C.R. 1966, I am directed by their Lordship of the Supreme Court to transmit herewith a certified copy of the ~~Judgment~~/Order dated the 20th April, 1990 in the appeal above mentioned.

The Certified copy of the decree made in the said appeal ~~and the Original records if any~~ will be sent later on.

Please acknowledge receipt.

Yours faithfully,

ASSISTANT REGISTRAR

Encl: as above

kc/xi

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2001 OF 1990
(Arising out of S.L.P. (C) NO. 15629 of 1989)

Kashi Parsad .... Appellant

Versus

Union of India & Ors. .... Respondents

O R D E R

Special leave granted.

We have looked into the records and have heard counsel on the basis of the material available before us. We are of the view that on the facts so appearing and taking into consideration the nature of the delinquency, the time of five years to frame the charges, the further time of two years to initiate the disciplinary action and the protraction of the proceeding for finalisation that interest of justice would be adequately served if the punishment of compulsory retirement is sustained, but the appellant if allowed to draw full pension on the footing that he became entitled to the annual increments until normal superannuation became due.

The appeal is disposed of. No costs.

Sd/- J.
(Ranganath Misra)

Sd/- J.
(Kuldip Singh.)

Sd/- J.
(R.M. Sahai)

New Delhi,
April 20, 1990.

affidavits in reply and the other evidence adduced by the parties. Costs of the appeal will be the costs in the petition.

1969(3) Supreme Court Cases 775

(From Allahabad)

[BEFORE J.C. SHAH AND K.S. HEGDE, JJ.]

STATE OF UTTAR PRADESH .. Appellant ;

Versus

OM PRAKASH GUPTA .. Respondent.

Constitution of India—Article 311—Reasonable opportunity—Meaning of—Provisions under Article 165(1) and (2)—If directory or mandatory—Nature of—Government of India Act, 1935—Section 240—Reasonable opportunity—Test of—Section 241—Rules of natural justice—Appointing authority—Determination of.

Civil Appeal No. 1731 of 1967, decided on Oct. 28, 1969

The respondent, a Sub-Divisional Officer, posted at Lakhimpur Kheri in August 1944, was suspended by the Government on the basis of a report submitted by the Deputy Commissioner. An enquiry was made against him by the Commissioners, Lucknow Division, and four charges were found proved against him. The Government accepting the findings dismissed the respondent. Whereupon the respondent filed a civil suit challenging the validity of the dismissal order on various grounds. The learned Judge trying the suit set aside the order of dismissal on the sole ground that a second show-cause notice as required under Section 240 of the Government of India Act, 1935, was not given to the plaintiff. That decision was upheld in appeal as well both by the High Court and the Supreme Court. Resultantly the Government set aside the order of dismissal but issued another notice to the respondent calling upon him to show cause why he should not be dismissed from service on the basis of the findings reached by the enquiry officer. The respondent however did not show any cause against the proposed punishment within the time allowed and rather challenged the Government's right to call upon him to show cause as he proposed to file an appeal against the order of the Trial Court in so far as that court did not uphold his contention that the enquiry held by the commissioner was wholly vitiated. The Government, thereafter proceeded *ex parte* and dismissed the respondent. The respondent then challenged the subsequent order of dismissal by a Civil Suit (No. 14 of 1953) which was dismissed but reversed by the High Court in appeal. The Government, feeling aggrieved by the order of the High Court came in appeal to the Supreme Court,

Held :

(i) The first charge-sheet against the respondent is conclusively established. The finding of the Trial Court is accepted. Any minor irregularity cannot vitiate this finding. The gravity of the offence merits the respondent's dismissal. (Para 8)

State of Orissa v. *Bidyabhushan Mohapatra*, (1963) Supp 1 SCR 648, *relied on.*

(ii) Reasonable opportunity contemplated by Section 240 of the Government of India Act, 1935 as under Article 311(2) of the Constitution consists of—

(a) opportunity to deny guilt and establish innocence,

(b) opportunity to cross-examine the witnesses produced and examine himself and the witnesses on his behalf,

(c) opportunity to show cause against proposed punishment,

All these requirements have been substaintially completed within the present case. (Paras 9 and 10)

Khemchand v. *Union of India*, 1958 SCR 1081, *referred to*.

(iii) It is true that an enquiry under Section 240 of Government of India Act must be conducted in accordance with the principle of natural justice, but the principles of natural justice not being embodied principles, what principles should be applied depend on the facts and circumstances of the case. All the courts have to see if the non-observance of any of those principles does not result in defecting the course of justice. (Para 10)

(iv) The High Court erred in holding that there was no proof to show that Mr. Bishop (the Commissioner) had been appointed to enquire into the allegation. No such plea was taken in the plaint and there is a presumption that official acts had been done according to law. (Para 10)

(v) The fact that statements of the witnesses taken at the preliminary stage of enquiry were used at the time of formal enquiry does not vitiate the enquiry if the statements were made available to the delinquent officer and he was given opportunity to cross-examine the witness. (Para 12)

State of Mysore v. *S. S. Makapur*, 1963(2) SCR 943, *relied on*.

(vi) The conclusion of the High Court that the respondent was appointed by the Governor and therefore he could not have been dismissed by the Chief Secretary, an authority lower in rank than the Governor, is based on no pleading nor was this contention urged before the Trial Court. The material on record does not afford any basis for the conclusion that the respondent was appointed by the Governor. (Para 15)

(vii) Provisions of Article 166(1) and (2)—smaller to sub-sections (1) and (2) of Section 59 of Government of India Act, 1935—are all directory and substantial compliance with those provisions is sufficient. (Para 17)

P. Joseph John v. *State of Travancore Cochin*, (1955) SCR 1011 ; *Chitralekha and Another* v. *State of Mysore and Others*, (1964) 6 SCR 368, *referred to*.

Appeal *allowed*.

The Judgment of the Court was delivered by

HIDAYATULLAH, J.—The respondent Om Prakash Gupta was successful in the U.P. Civil Service (Executive) competition held in 1940. He joined the service on June 20, 1940. Thereafter he was confirmed in due course. After serving in some district in U.P. he was posted to Lakhimpur Kheri in July, 1944. He joined there as S.D.O. on July 20, 1944. On the basis of a report submitted by his Deputy Commissioner on August 20, 1944, the Government placed him under suspension on August 23, 1944. Mr. Bishop, the Commissioner, Lucknow Division was appointed as the enquiry officer to enquire into the allegations made against the respondent. He framed the following four charges against him :

"(1) That on or about August 15, 1944, one Mst. Jamila was presented before you in Court by the police under a warrant under Section 100, Criminal Procedure Code. You did not decide the case on the 15th August but postponed it to the 19th August, 1944 making over the girl to the custody of one Hafiz Habib Beg. On 17th of August you sent for Mst. Jamila from the house of Hafiz Habib Beg at about 7 p.m.

through your orderly Jangu Khan and detained the girl at your house for immoral purposes. Next morning the girl expressed a desire to go with her father who came to receive her at your house but you did not allow her to do so and again sent back the girl to the house of Hafiz Habib Beg.

(2) That on or about August 10, 1944, the police, on the complaint of one Puttulal produced before you one Mst. Gunga Kurmin for whose arrest you had issued a warrant under Section 100, Criminal Procedure Code. You directed Mst. Gunga and Puttu Lal to be escorted to your house by your orderly Jangu Khan. You sent away Puttu Lal and detained Mst. Gunga alone at your house for about two hours evidently to use her for immoral purposes.

(3) That sometimes in the last week of July, 1944, a girl named Taqderan was produced before you under a warrant of arrest issued by you under Section 100, Criminal Procedure Code but you asked the parties to present the girl after court hours at your house. When the girl was brought to your house you asked the people accompanying her to stay outside and took the girl alone inside your house under the pretext of recording her statement and detained her there for two hours evidently to use her for immoral purposes.

(4) That in all these three cases you conducted yourself in a manner unbecoming of an officer of the U.P.C.S. and, therefore, you are asked to show cause why you should not be dismissed from service."

2. These charges were duly served on the respondent. Thereafter Mr. Bishop held an enquiry on the basis of those charges in the presence of the respondent. He came to the conclusion that the respondent was guilty of all the charges though he found that there is no positive evidence of any immoral act on his part. The Government accepted those findings and after obtaining the concurrence of P.S.C. dismissed the respondent.

3. The respondent thereupon filed a suit on December 4, 1948, challenging on various grounds, the validity of the order dismissing him. The learned Judge who tried the suit set aside the order of dismissal on the sole ground that a second show-cause notice was required by Section 240 of the Government of India Act, 1935 had not been given. This decision was upheld in appeal both by the High Court as well as by this Court. In its judgment, the Trial Court had observed that it was open to the Government to continue the second stage of the enquiry in accordance with law. On April 12, 1949, the Government set aside the order of dismissal made by it on November 25, 1944. At about the same time it issued a notice to the respondent calling upon him to show cause why he should not be dismissed from service on the basis of the findings reached by the enquiry officer. By that notice he was required to show cause against the proposed punishment by May 31, 1949. That notice was served on the appellant on April 30, 1949. On receipt of that notice, the respondent wrote to the Government requesting that he may be allowed time up to July 31, 1949 to show cause against the proposed punishment. But the Government granted him time only up to June 25, 1949. He was told that no further time will be given to him and if he failed to show cause by that time; it will be deemed that he has no cause to show. Despite this warning, the respondent did not show cause against the purposed punishment. On the other hand he challenged the Government's right to call upon him to show cause against the proposed punishment as he proposed to file an appeal against the order of the Trial

Court in so far as that court did not uphold his contention that the enquiry held by Mr. Bishop was wholly vitiated. Thereafter the Government proceeded ex parte. It accepted the report of the enquiry officer, came to a tentative conclusion that the respondent should be dismissed ; it consulted the Public Service Commission afresh and dismissed the appellant by its order, dated August 30, 1949. That order reads thus :

"Government of the United Provinces
Appointment (A) Department.
Notification
Dated Lucknow, August 30, 1949
No. 4795/IIA-125-1948

With effect from August 30, 1949, Shri Om Prakash Gupta, Deputy Collector, under suspension is dismissed from service.

Sd/-
Bhagwan Sahay
Chief Secretary."

As a result of the aforementioned order another round of litigation started which has culminated in this appeal. The respondent challenged the impugned order in Civil Suit No. 14 of 1953 in the Court of II Additional Civil Judge, Allahabad on various grounds. The plaint filed by him is prolific. That plaint as amended covers twenty closely printed pages. Most of the grounds taken in the plaint are irrelevant and have no bearing on the issues arising for decision. Several of the grounds alleged against the preliminary enquiry held by the Deputy Commissioners as well as the formal enquiry held by Mr. Bishop are petty and deserve no serious consideration.

4. It is unfortunate that the Trial Court did not bear in mind the scope of a suit challenging the validity of a departmental enquiry held against a government servant. That court does not appear to have borne in mind that a member of Civil Service in India prior to January 26, 1950 held office during the pleasure of the Crown and that the only safeguard he had was the procedural safeguards guaranteed under sub-section (2) of Section 240 of the Government of India Act, 1935. A perusal of the judgment of the Trial Court shows that that court constituted itself as an appellate court over the enquiry officer. It admitted evidence to show that the findings reached by the enquiry officer are incorrect. It took upon itself the responsibility of reassessing the evidence relating to those charges. On the basis of the evidence adduced before it, it came to the conclusion that the enquiry officer's findings as regards charges Nos. 2 and 3 are not sustainable but on charge No. 1, it accepted the finding of the enquiry officer. On that charge, it observed that "There is no doubt that this was a most improper conduct of the plaintiff and this was not the way how a Dy. Collector is expected to function". It found that the girl Jamila was sent for from the house of Hafiz Habib Beg by the respondent through his orderly Jangu Khan on the 17th of August, 1944 ; she came to his house at about 8-30 p.m., he asked the girl whether she had her menses and about the time when her hairs had begun to grow. It also found that the girl remained in the Magistrate's house for the whole of the night and that she slept in the night at a distance of two feet, from the cot in which the respondent slept that night. Admittedly there was no other female member in the house of the respondent that night. It may be noted that these findings were reached primarily on the basis of the admissions made by the respondent.

5. The Trial Court came to the conclusion that there were no serious irregularities in the conduct of the enquiry. It held that even though there were technical breaches of some of the rules, in its opinion, those breaches were not substantial. It further held that specific charges had been served on the respondent ; he had been given reasonable time to file his written statement ; the oral enquiry was held in his presence and that he was heard in person. It also held that the enquiry officer had given reasonable opportunity to the respondent to cross-examine the witnesses. In conclusion it observed, "my clear opinion, therefore, is that there has been no breach of Rule 55 as contended to by the plaintiff. The procedure laid down in Rule 55 has been substantially adhered to and Mr. Bishop was also conscious of this fact all the time".

6. The Trial Court rejected the contention of the respondent that he had not been given reasonable opportunity to show cause against the proposed punishment. Rejecting the contention of the respondent that the impugned order is not valid as the same was not made in the name of Governor, the Trial Court observed that the order was made in the name of the Government. It was made after obtaining the approval of the Premier and with the concurrence of Public Service Commission ; hence that order is substantially in accordance with law. In the result it dismissed the respondent's suit with costs.

7. The High Court reversed the decree of the Trial Court on the following grounds :

(1) The respondent was appointed by the Governor and therefore he could not have been dismissed by the Chief Secretary, an authority subordinate to the Governor.

(2) The order of dismissal did not conform to the requirements of law as the same was not made in the name of Governor as required by Section 59 of the Government of India Act, 1935.

(3) The Premier had not agreed to the dismissal of the respondent. He had only agreed to accept the findings of the enquiry officer and to refer the matter to the Public Service Commission. Dealing with that aspect of the case, this is what the Court observed :

"After perusal of the file pertaining to the dismissal of the plaintiff in the year 1949, we are satisfied that it does not contain any material to show that the order of dismissal of the year 1949 was passed by the Premier himself or that the Premier had applied his mind to the question, and had felt satisfied in the matter. The file contains an office report. It was pointed out in that report, that although notice to show cause against the proposed punishment had been issued to the plaintiff, he did not file any reply to the same. It was said that the plaintiff did not show cause against the aforesaid notice, because according to the plaintiff he had filed an appeal in this Court from the decision in suit No. 1 of 1948 and that no cause could be shown until that appeal has been decided. The office report also said that notice of the appeal had not been received by the State till then. The time even to the plaintiff to show cause had expired and as the plaintiff did not place any fresh material before the authorities, his case should be decided on the basis of the old enquiry and materials that were already before the State authorities, and that it was also said that on the basis

In the Central Administrative Tribunal, Additional Bench,

at

Allahabad.

Claim No. 459 of 87

Fixed on 24.12.87.

Kashi Prasad.. ..Claimant.

Vs.

Union of India & others.. ..Opp. Parties.

Application for requisition of records from Respondent No. 2 and 3

Sir,

In view of facts and circumstances stated in para 6.3 of claim petition, 6 and 33(1) page 19 of written statement as well as in para 6 of Rejoinder affidavit it is clear that charge sheet has been issued to applicant on instigation of C.B.I. In order to appreciate facts of the case properly, it is expedient and necessary in the interest of justice that report of C.B.I. Dt. 31.8.71 (as referred in enquiry report Dt. 10/15.4.86 at page 56 of the paper Book of Claim) be called upon for perusal of Hon'ble Tribunal.

Wherefore it is most respectfully prayed that recommendation and report of C.B.I, Dt. 31.8.71 as refferred in enquiry report Dt. 10/15.4.86 page 56 of the paper Book as well as in para 33(1, page 19 of written statement , may kindly be requisitioned from opposite party no. 2 Divisional Engineer Telegraphs Sitapur, and opposite party no. 3-Director Telecom Central Area, back to Leela Talkies Nawal Kishore Road, Lucknow.

Applicant

(Kashi Prasad)

through his counsel

Allahabad.

4 Dec. 1987.

Bench Copy

In the Central Administrative Tribunal, Additional Bench,

at

Allahabad

Claim No. 459 of 87

Fixed on 24.12.87.

Kashi Prasad.. ..Claimant.

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Union of India & others.. ..Opp. Parties.

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Applicant

(Kashi Prasad)

Through his counsel

2/12/87

Allahabad.
2 Dec. 1987.

To,

The Deputy Registrar (Judicial)
Central Administrative Tribunal
Allahabad.

Sir,

Subject: Transfer of Claim No. 459 of 87
Kashi Prasad Vs Union of India
fixed on 27.6.88, to the
Circuit Bench at Lucknow

It is submitted that above noted claim is today fixed for F.H. Matter pertains to Dist. SITAPUR and LUCKNOW. Counsel for the claimant also belongs to Lucknow.

It is therefore most respectfully prayed that aforesaid claim may kindly be transferred to Circuit Bench at LUCKNOW.

Counsel for claimant.

(A. K. Dixit)
Advocate
509/28 Ka, Old Hyderabad
Lucknow.

12.4.88

OA 459/88

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
~~Circuit~~ ALLAHABAD BENCH
~~23-A, Thornhill Road, Allahabad-211 001.~~
Gandhi Bhawan, Lucknow.

****

No. CAT/Alld/ UO 27/96(i) / OA 459/89 Dated the 11/5 1989

Kashe Parsad APPLICANT(s)

Versus

Union of India & Ors. RESPONDENT(s)

To Sri Ashok Mohiley, Advocate,
C A T.
Alld.

Please take notice that ~~the applicant above named has presented an application~~, a ~~copy whereof is~~ enclosed herewith which has been registered ~~in this Tribunal~~, and the Tribunal has fixed 25 day of 5 1989.

If no appearance is made on your behalf, ~~your pleader or by some one duly authorised to act and plead on your in the said application~~, it will be heard and decided in your absence.

Given under my hand and the seal of the Tribunal this 11 day of 5 1989.

11/5

For DEPUTY REGISTRAR (Jud)
Central Administrative Tribunal
Circuit Bench,
Lucknow

dk/

Send to them -
D.R. (J)
11/5/89

Dixit
Advocate
COURT

Ph. 72629
509/28 Ka Old Hyderabad.
LUCKNOW

Dated ....18.5.87....

To,

The Registrar
Central Administrative Tribunal
Additional Bench
Allahabad.

Central Administrative Tribunal
Additional Bench At Allahabad
Date.....
Date of Receipt 21/5/87
Date of Receipt by Post
Dy. Registrar.

Subject: Fixing of date of a Fresh claim

A fresh claim "Kashi Pd Vs Union of India & Oths" along with Postal order (5 = 50.00 Rs.), 3 Regd envelops (with Rs. 8.50 each) and a self addressed Postal Envelop is enclosed herewith.

Since I am appearing before Hon'ble Tribunal on 25.5.87 in connection with other cases, it shall be convinient for me if this claim is fixed for Admission hearing on 25.5.87.

Accordingly I pray that claim may be fixed for Admission hearing on 25.5.87.

Yours faithfully

Defects, if any, will be removed on 25.5.87.

Advocate
Abhaya Kumar Dixit
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH,

23-A Thornhill Road, Allahabad-211001

REGISTERED.

No. CAT / ALLD/ Dated : 2.6.07

C/132

In re

Registration No. 480 of 1987 of 198

[redacted] APPLICANT

Versus

[redacted] RESPONDENTS

1. Secretary to Department of Telecommunications, Ministry of Communications, [redacted]

2. Divisional Engineer, Telephones, [redacted]

3. Director, Telecom Control Area, [redacted]

Please take notice that the applicant abovenamed has presented an application, a copy whereof is enclosed herewith, which has been registered in this Tribunal and the Tribunal has fixed 2.6.07 day of.....198.... for the hearing of the said application

If no appearance is made on your behalf by yourself, your pleader or by someone duly authorised to act and plead on your behalf in the said application, it will be heard and decided in your absence.

Given under my hand and the seal of the Tribunal this 2.6.07 day of.....198. ..

Copy of above order dt. 25.5.07 is enclosed.

DEPUTY REGISTRAR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD

O.A.NO.— 459 of 1987

Kashi Prasad .... Applicant.

VERSUS

UNION OF INDIA ANDOTHERS ..... RESPONDENTS.

Present:-

Hon. D.S. Mishra - AM

Hon. G.S. Sharma - JM

ORDER

Heard. Admit. Issue notice reply be filed within a month.

Sd/-

A.M.

Sd/-

J.M.

Dated:- 25-5-1987