CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

OPEN COURT/PRE DELIVERY JUDGEMENT IN OA NO. 78 /1996

Hon'ble Vice Chairman/Member(J)/Member (A) may kindly see the above judgement for approval/signature.

(S.G. Deshmukh)
V.C./Member (J)/Member (A)

Hon'ble Vice Chairman

Hon'ble Member (A) — I agree. 21/6

Hon'ble Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 78/96

Date of Decision : 22/6/2003

R.P.Sahni — Applicant

Shri G.K.Masand — Advocate for the Applicant.

VERSUS

Union of India & Ors. — Respondents

Shri R.R.Shetty — Advocate for the Respondents

CORAM :

The Hon'ble Shri Anand Kumar Bhatt, Member (A)

The Hon'ble Shri S.G.Deshmukh, Member (J)

(i) To be referred to the reporter or not ? Y

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? N

(iii) Library

(S.G.DESHMUKH)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

Original Appliation No.78/1996

Dated this Tuesday, the 22nd day of June 2004.

CORAM: HON'BLE SHRI ANAND KUMAR BHATT, MEMBER (A)
HON'BLE SHRI S.G. DESHMUKH, MEMBER (J)

R.P.Sahni,
Ex. SO/SD, BARC,Bombay Group A
residing at
14-B, Almora
Anushaktinagar
Bombay 400 094 ... Applicant

(Applicant by Shri G.K.Masand, Advocate)

vs.

1. Union of India through
the Secretary
Department of Atomic Energy
Anushakti Bhavan
C.S.M. Marg, Bombay 400 039.

2. The Secretary
Union Public Service Commission
Dholpur House,
New Delhi 110 011. .. Respondents

(Respondents by Shri R.R.Shetty, advocate)

O R D E R

[Per: S.G.Deshmukh, Member (J)]:

The present O.A. is filed for quashing and setting aside the order imposing the penalty of dismissal of the applicant by order No.15/5/87/BARC/Vig.R/Part III/667 dated 31.5.1993 issued by the President and the order in Revision confirming the said order of dismissal imposed on the applicant under order dated 31.8.1995 and for reinstating the applicant in service with full back wages and all consequential benefits.

2. The applicant was appointed as a Supervisor in the Civil Engineering Division of the Bhabha Atomic Research Centre (BARC) in or about 1965. After due promotion he was working as Scientific Officer/Engineer (SD) in 1987 under Shri K.N.

..2/-

Sabhnani, Scientific Officer/Engineer S/E who in turn worked under M.G. Wagh, Scientific Officer/ Engineer Grade S/G. It is contended that one M.N. Kasbekar became Head, Civil Engineering Division with powers of a Chief Engineer in or about February 1987. In or about April 1987 one anonymous letter was received by the Director, BARC mentioning several irregularities committed in the work executed earlier under the supervision of Shri Kasbekar. It is the contention of the applicant that Shri Kasbekar directed him to submit application for voluntary retirement with a threat of severe action if not done. Accordingly, applicant submitted a request for voluntary retirement on 25.5.1987. The applicant was placed under suspension by order dated 24/26.6.1987. His request for voluntary retirement was rejected as a disciplinary action was contemplated. The applicant was chargesheeted vide Memorandum No.15/5/87/BARC/Vig/R/1068 dated 3.8.1988. The charge against the applicant was that while working as a Scientific Officer/Engineer/ Grade (SD), Civil Engineering Division, BARC, Trombay during the period 1984-85, 1985-86 and 1986-87 in connivance with S/Shri M.G. Wagh, Scientific Officer/Engineer Grade (SG), K.N.Sabhnani, Scientific officer/Engineer Grade (SE) and B.G.Mistry, Contractor cheated the Govt. in that the applicant recorded in the measurement books the false measurements recorded false dates of commencement and dates of completion of works and prepared abstracts of the said false measurements of the said false works and prepared first and final bills on the basis of the said abstracts of the said false measurements and certificates to the effect that the works were completed as per specification etc. in respect of 8 fictitious

..3/-

works thereby resulting in the payment of Rs.1,41,381.05 being the net amount of the said first and final bills of the said 8 works and subsequent refund of the security deposits amounting to Rs.8,933/- of works at Sr. 1 to 8 listed therein to 'Shri B.G. Mistry, Contractor for the works which were not actually carried out by him and which were not at all in existence at the site. By his aforesaid conduct the applicant exhibited lack of integrity and lack of devotion to duty and acted in a manner unbecoming of a Govt. servant thereby contravening the provisions of Sub rule 3 (1) (i) (ii) & (iii) of the CCS (CCA) Rules 1964.

3. Shri R.S. Goel, Commissioner of Departmental Enquiries, CVC was appointed as Inquiry Officer and Shri S.S.Janwarkar, SO (SF)/BARC was appointed as Presenting Officer. The applicant had requested for assistant of a legal practitioner on 12.12.1988. the preliminary hearing was fixed at Delhi on 20.12.1988 and the applicant was informed telegraphically on 16.12.1988. The applicant could not attend. Thereafter preliminary hearing was fixed on 26.12.1988 at Bombay. The applicant had attended the premises in time but neither the Inquiry Officer nor the Presenting Officer had come there. The request of the applicant for legal practitioner for allowing him to defend his case by a legal practitioner had been refused by letter dated 29.12.1988. He made a representation against the refusal of assistance by legal practitioner. The same was also refused. The applicant appointed Shri Mhadeshwar as his defence Assistant (DA). The applicant submitted a statement containing 113 documents indicating the particulars, custodian and relevancy for production by the respondents on 31.8.1989. The I.O. rejected all the documents for production except 2 without any objection

..4/-

from the Presenting Officer (PO). The applicant requested for reconsideration of the rejection of documents requested for on 25.10.1989 and 22.2.1990. The applicant filed the report to the I.O. that he had given inspection of one document and the P.O. failed to give inspection of the solitary document allowed by I.O. The applicant made a request for change of I.O. on the ground of bias on 31.5.1990. The request was rejected on 23.8.1990. The hearing fixed from 18.12.1991 to 21.12.1991. The Inquiry Officer proceeded with the common enquiry though no order for common proceedings were issued under rule 18 of the C.C.S. (CCA) Rules. The Presenting Officer submitted his written brief on 28.2.1991 and the applicant submitted his defence brief on 2w0.3.1991. The Inquiry Officer submitted his report holding the charge as proved on 23.5.1991. The applicant represented against the report on 6.1.1992. He received the order of dismissal dated 31.5.1993 on 14.6.1993. He preferred a Revision Petition on 9.8.1993. Thereafter the applicant filed O.A. bearing No.1320/1994. The O.A. wasdisposed of on 17.2.1995 with direction that Revision Petition be disposed of within four months. The penalty of dismissal was confirmed in revision by order dated 31.8.1995.

4. It is the contention of the applicant that the order of dismissal as confirmed in revision is bad in law. The initiation of the proceedings is unauthorised and contrary to the law. The applicant was holding a Group A post at the time of issue of the said Memorandum of charges. The Govt. of India O.M. dated 16.4.1969 and 7.9.1979 stipulates that having regard to the transaction of Business Rules, it is necessary that in cases where the disciplinary authority is the President, the initiation of the disciplinary proceedings should be approved by the

...5/-

Minister. The requirement of the Transaction of Business Rules had to be complied with and the initiation of the proceedings without the Minister's sanction would be illegal. It is contended that the applicant was denied natural justice by refusing to accede to the request of the applicant to engage a legal practitioner. It is contended that on account of lack of assistance of a legally trained person, the applicant was at a disadvantageous position, since the I.O. was biased from the start of the Inquiry. Refusal of permission to engage a legal practitioner is a denial of natural justice. Thus, the Inquiry conducted and the penalty imposed as a result of said Inquiry is liable to be quashed. It is further contended that the Inquiry Officer was biased against the applicant. He had informed the date of preliminary hearing on 20.12.1988 telegraphically which he received on 16.12.1988 with insufficient time. He made a remark in the order sheet that applicant will; not be entitled to engage a legal practitioner in the Inquiry. He did not arrive at the site of the inquiry on 26.12.1988 and chose to conduct the inquiry ex parte. He rejected all except two of 113 documents requested for production without any objection from the Presenting Officer.

5. It is also contended that inquiry was not conducted properly in terms of the rules in consonance with the principles of natural justice. The preliminary enquiry was conducted exparte event though the applicant was present in time. The preliminary hearing was held at the time when applicant's request to engage a legal practitioner to assist him was pending before the disciplinary authority. No cognizance was taken by the I.O. on the complaint by the applicant that inspection of the lone

..6/-

document allowed by the I.O. was not given. None of the listed documents were proved and taken on record and marked Exhibits as required under the rules. I.O. illegally and without justification rejected all but three of the 113 documents requested by the applicant. The I.O. conducted a common enquiry without any sanction for it being available under rule 18 of the CCS (CCA) Rules. The questions asked by the chargesheeted officers were unilaterally disallowed and such questions and their rejection was not recorded. The I.O. disallowed all question which could embarrass the witness or contradict their evidence. The recording of evidence was made in a most callous manner. The I.O. violated the norms laid down in the rules by questioning the applicant by a single question running to two pages. Without following the provisions in Rule 14 (18) of the CCS (CCA) Conduct Rules. It is also contended that the report of the I.O. contained the material facts and contrary to the evidence on record relied on documents not brought on record , relied on documents not proved during the Inquiry and as such was liable to be rejected by the Disciplinary authority. No evidence whatsoever was led to establish any connivance. The evidence of Contractor Mistry was not brought on record in respect of the charges and was also not proceeded against and no time it was arranged to recover the irregular payment. Though the names of S.Chellappa, M.N.Sheth and B.K.Apte were cited as witnesses they were not produced during the enquiry. This has caused serious prejudice to the defence. It is also contended that in spite of Sheth, Chellappa, Apte and C.S.Rao having not been brought as witnesses, the UPSC had no hesitation to record that the investigating team came to the conclusion unanimously that no such work has been carried out. Copies of the inspection reports

..7/-

were not furnished to the applicant during the inquiry. The I.O.had a copy of the printed instructions, allegedly printed in the measurement Book of CPWD, which was not at all produced or adduced during the enquiry. The I.O. relied on the documents not on record of the enquiry.

6. The witnesses Kasbekar, G.S. Rao, M.R.Murthy, S.V.Thakkar, K.G.R. Nair, T.J. Asnani were persons who had no knowledge of the work that was executed at the Vashi Site. They had all acceptably relied on the verbal statement of S/Shri Khatu and Dalvi. The statements of Dalvi and P.S.Khatu were dictated to them which invalidate the evidence as being not of their own accord. It is also contended that their evidence could not be believed as they were working under the applicant and the applicant had supervised their work. It is also contended that the UPSC had erroneously stated that the case is proved both on the basis of documentary evidence and on the basis of oral evidence by the witnesses and the defence case is unproved either by the document or witnesses. The applicant had received a copy of the advice tendered by the UPSC with the penalty order of dismissal from service dated 31.5.1993. It is also contended that the UPSC irregularly and unauthorisedly considered a file containing 173 pages and 46 pages of notings while arriving at its recommendations. These documents were not part of the records and proceedings of the enquiry and ought not to have been considered by the UPSC as long as access to this file was not granted to the applicant. It is contended that the comments/recommendation of the Chief Vigilance Commissioner on the report of the IO was not furnished to the applicant but was considered and acted upon by the UPSC. It is also contended that it was irregular on the part of the authority to arrive at

..8/-

tentative conclusion. The charges proved tentatively decided to impose major penalty on the applicant before the case was referred to UPSC's advice. It is also contended that the order in the revision application dated 31.8.1995 do not contain any material would indicate the non application of mind. The order in revision is on the basis of evasion of judicial appreciation of facts and law. It is also contended that imposition of harsh penalty of dismissal from service is unjustified.

7. The respondents filed their counter reply and denied that the orders are bad in law because of initiation of disciplinary proceedings against the applicant who is a group A Officer by the Secretary to the Department under the powers delegated to him vide order of the President dated 29.9.1983 r/w Rule 13 (2) of the CCS (CCA) Rules 1965 does not go beyond the issue of Memorandum of Charges. It is also contended that permission to engage a legal practitioner to defend the case is granted under Rule 14 (8) (a) of the CCS (CCA) Rules only on two occasions) when the Presenting Officer is a Legal Practitioner; (ii) the Disciplinary Authority having regard to the circumstances of the case, so permits. In the present case, the P.O. was not a Legal Practitioner nor the Disciplinary Authority was convinced that the circumstances of the case deserved granting of permission to engage a Legal Practitioner as defence assistant. It is contended that intimation for the preliminary hearing to be held on 20.12.1988 was telegraphically sent to the applicant on 8.12.1988. As the applicant failed to attend the preliminary hearing, another opportunity was afforded to him to attend the preliminary hearing on 26.12.1988 which was held at Mumbai. Even then the applicant did not attend. The relevancy of the documents will be decided by the Inquiring Authority. The

9/-

Presenting Officer's role in this aspect is negligible. Considering the relevancy of the documents he passed the order. The applicant just chose to send reminders repeatedly, which necessitated the Inquiring Authority to record his observation in the Daily Order Sheet dated 9.10.1989. The decision arrived at by the I.O. is based on exact position of the case. The representation of the applicant alleging bias against the I.O. was considered by the disciplinary authority and the disciplinary authority turned down the request for change of I.O. The applicant was accorded opportunity to inspect the register but he himself was not sure about the register which he desired to inspect. The documents were taken on record as per the procedures laid down in the relevant Rules. The inquiry conducted was not common enquiry. There is no instance where questions were not allowed by the I.O. The witness Dalvi has confirmed the statements prerecorded at the time of preliminary investigation. It is contended that there is no violation of norms. By putting the questions on the circumstances appearing against the charged official and there was no violation of any norms laid down in the Rules. The questions put were based on the evidence adduced during the inquiry only. The enquiry report was based on evidence adduced and based on the documents brought on record during the enquiry. The Disciplinary Authority accepted the Inquiry Report after considering the applicant's representation. UPSC's observation is based on the totality of evidence led during the inquiry proceedings and the overall analysis of the facts and circumstances of the case. The investigating team's were confined to assess the facts whether the works were carried out or not. The proceedings of the inquiry was not based on the investigating team's report. The

...10/-

investigation was done at the preliminary stage to investigate as to whether a prima facie case existed against the applicant. The non production of the report did not in nay way hamper the applicant's right to cross examine the witnesses. It is contended that the Accounts Division makes the payment on the bills submitted to them duly recommended and approved for payment by the authorised persons. The copy of the UPSC's advice was made available to the applicant in accordance with Rule 32 of the CCS (CCA) Rules 1965. It is contended that revision petition was disposed of by proper application of mind and all aspects of record and order passed by the competent authority is therefore in order. The procedures laid down in the rules which have been been scrupulously followed and the penalty of dismissal from service was imposed after taking into consideration of the totality of the case and the grace misconduct committed by the applicant. The grievance relating to alleged bias on the part of the I.O. was examined and found to be baseless. The applicant was afforded full opportunity to defend his case. The allegation regarding the denial of natural justice is baseless.

8. Heard the learned counsel for the applicant Shri G.K.Masand and Shri R.R.Shetty for the respondents.

9. Learned counselShri G.K.Masand for the applicant submitted that the disciplinary action against four charged officers was taken in common proceedings though separate charge-sheet was issued to them. He submitted that separate enquiry was mandatory in each case. The common enquiry was conducted without the order of competent authority as required under Rule 18 of CCS (CCA) Rules. The learned counsel further

.../11

submitted that the applicant had submitted the lit of 113 documents whereas the Inquiry Officer has allowed only one documents and the document which was allowed was also not made available for inspection of the applicant. He submitted that the documents asked for by the defence ought to have been produced for the defence purpose. He also submitted that the documents brought on record by the Presenting Officer were not got proved through the witnesses before taking on record. The learned counsel also submitted that the Inquiry Officer followed the norms laid down under rules by questioning the applicant by a single question running into two pages. He submitted that the Inquiry Officer was biased against the applicant. The inquiry is not conducted properly in terms of rules in consonance with the principles of natural justice. The questions asked by the applicants were disallowed and the rejection was not recorded. He also submitted that of copy of advice of the UPSC was not given to the applicant before passing the impugned order of dismissal which resulted in violation of principle of natural justice. He also submitted that non supply of copy of C.V.C. report which is prepared behind his back is a violation of procedural safeguard and contrary to fair and just enquiry. The learned counsel relied on the judgement in this context in the case of *State Bank of India vs. D.C. Aggarwal AIR 1993 SC 1197.* According to the learned counsel no evidence whatsoever was has brought on record to prove the charges. Evidence of Contractor Mistry was not brought on record. The witnesses, whose names were cited in the charge-sheet were not examined which caused prejudice to the defence. According to him the report of I.O. is perverse as the evidence is not sufficient to substantiate the charges. The learned counsel cited the judgement in the case of

..12/-

Kashinath Dikshita vs.UOI & ors (SC ATR 1986 (S) SC 186. The learned counsel submitted that the applicant was refused to engage a lawyer to defend his case which caused prejudice to the applicant.

10. On the other hand, the learned counsel for the respondents Shri R.R.Shetty submitted that re-appreciation of the evidence is not permissible in judicial review. The learned counsel further submitted that in a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. He relied on the judgement in the case of *State of Haryana and Anr. vs. Rattan Singh AIR 1977 SC 1512.* The learned counsel relied on *UOI vs. A. Nagamalleshwar Rao 1998 SCC (L&S) 363 and (b) Dr Anil Kapoor vs. UOI And Anr 1998 SCC (L&S) 1109* He further submitted that a judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. In support of this contention the learned counsel relied on the judgement in the case of *State of Punjab vs. Karnail Singh 2003 (5) Supreme today 508.* The learned counsel further submitted that the preliminary enquiry has nothing to do with the inquiry conducted after issue of charge-sheet. The preliminary enquiry would be to find out whether disciplinary enquiry should be initiated. After full-fledged enquiry the preliminary enquiry loses its importance. The learned counsel relied on the judgement in the case of *Narayan Dattatraya*

..13/-

Ramteerthakha vs. State of Maharashtra & Ors 1998 (III) LLJ (Supp.) SC 168. He further submitted that statement recorded during investigation or preliminary enquiry can be read in evidence on acceptance i.e. confirmation by the witness and giving opportunity to cross examine the witness. He relied on the case of *State of Mysore vs. Shivabasappa Shivappa Makapur AIR 1963 SC 375.*

11. The learned counsel for the respondents further submitted that the Inquiry Officer has not conducted a joint enquiry against the applicant and other charged officers. Recording of common evidence is not illegal. The learned counsel relied on the judgement of (a) *Rajmilal Dhuriram vs. UOI 1987 (3) (CAT) AISLJ 623; (b) Dr. D.B. Rathod vs. UOI and Ors. 1990 (3) (CAT) AISLJ 291; and (c) Balbir Chand vs. FCI & Ors III-1997 (1) AISLJ 156;* He further submitted that authorities are bound to supply only relevant documents and not each and every documents asked by charged officers. He relied on the case of *State of Tamil Nadu vs. Thiru K.V. Perumal & Ors. 1996 (2) SCSLJ 113.* The learned counsel submitted that unless it is shown that the delinquent officer was prejudiced by non supply of so called documents it cannot be said that reasonable opportunity to defend the case was denied. He relied on the case of *Syed Rahimuddin vs. Director General, C.S.I.R. & Ors. 2001 (2) SCLJ 132.*

12. The learned counsel further submitted that non supply of advice at a pre-decisional stage to the charged officer is not a denial of fair hearing to the applicant as the applicant has already exercised his right to fair hearing as he had made representation on the same material information before UPSC. The

...14/-

learned counsel relied on the judgment in the case of *Chiranji Lal vs. UOI 1997-2001 AT FBJ 52.* The learned counsel cited the judgement in the case of *Sunil Kumar Banerjee vs. State of West Bengal AIR 1980 SC 1170* in which the three Judges Bench of the Apex Court held that the disciplinary proceedings -- disciplinary authority arriving at its own conclusion on material available to it. Its finding and decision cannot be said to be tainted with any illegality merely because it consulted vigilance Commissioner and obtained his views on the very same material.

13. The learned counsel further submitted that the delinquent seeking the order of his dismissal to be quashed on the ground of non-compliance with the provision, must show that he was prejudiced thereby otherwise the said omission would not be fatal to the impugned order -- The learned counsel relied on the judgement of *State of U.P. vs. Harendra Arora and Anr. 2001 SCC (L&S) 959* in which it is held as under:

> *"Moreover, every infraction of statutory provisions would not make the consequent action void and/or invalid. The statute may contain certain substantive provisions. e.g.. who is the competent authority to impose a particular punishment on a particular employee. Such provision must be strictly complied with as in such case the theory of substantial compliance may not be available. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touchstone of prejudice. The test would be whether the delinquent officer had or did not have a fair hearing."*

He also cited the judgements in the case of *Managing Director, ECIL, Hyderabad and B. Karunakar 1994 ILLJ SC 162* and the case

..15/-

of *UOI vs. Vishwa Mohan 1998 ILLJ SC 1217.* The learned counsel also submitted that there is no obligation on the disciplinary authority to write an order like judicial tribunal. The learned counsel cited the judgements in *UOI vs. K. Rajappa Menon AIR 1970 Sc 748 and Tara Chand Khatri vs. Municipal Corpn. of Delhi AIR 1977 SC 567.*

14. It is settled law that in case of departmental enquiries and the findings recorded therein, the Tribunal does not exercise the powers of an appellate authority. The jurisdiction of the Tribunal in such cases is very limited for instance where it is found that domestic enquiry is vitiated for non observance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence or the punishment is totally disproportionate to the proved misconduct of an employee. In the limited scope of judicial review sufficiency or otherwise of the evidence cannot be looked into by the Tribunal. It is also well settled that substantive provisions in the departmental proceedings normally to be complied with and in case of procedural provisions which is not substantial or mandatory character if no prejudice is caused to the person proceeded against no interference of the court is called for.

15. It is true that there is no order for taking disciplinary action against all the charged officer in common proceedings as per Rule 18 of CCS (Pension) Rules. It is the contention of the learned counsel for the applicant that the Inquiry Officer acted without jurisdiction. He was not appointed to conduct joint

..16/-

enquiry. It is apparent from the record that the separate charges were framed against all charged officers and separate memo of charges were issued against all of them. It is also apparent that the charges against all of them were similar in nature. It appears that the Inquiry Officer with a view to avoid multiplicity of recording of evidence, needless delay resulting from recording separate evidence have conducted simultaneous hearing as most of the witnesses were common. All the charged officers were allowed to cross examine the witnesses. This does not deny any opportunity to the applicant to defend his case effectively and does not cause any prejudice to the applicant. It also to be mentioned here that the Defence Assistant of all the three charged officers was the same person. Separate enquiry reports were made against all the delinquents by Inquiry Officer. Recording of common evidence of some of the witnesses cannot be said to be illegal so long as separate charges are framed and separate Inquiry Reports are made and opportunity to cross is given to all charged officers. Procedural provisions are meant for affording reasonable and adequate opportunity to the delinquent which have been substantially complied. No prejudice can be said to have been caused by recording the evidence of some of the witnesses simultaneously. When simultaneous recording of the evidence was done by the I.O.it cannot be said that he acted without jurisdiction. The Inquiry is not common one rather it is a simultaneous inquiry. It cannot be given the colour of a common inquiry. As the enquiry is not a common enquiry the ratio in the case of *Ashok Naik's* case (supra) is not helpful to the applicant. So also the facts in *N.K. Gupta's* case in O.A. 840/98 are different from the facts of the instant case. In the instant case evidence of some of the witnesses is recorded

...17/-

common. The enquiry is not a joint enquiry. Separate report has been submitted by the I.O. Joint enquiry and the recording of evidence of some of the witnesses simultaneously are different things. As the enquiry was not a joint enquiry it cannot be said that the enquiry officer did not exercise powers in accordance with the provisions of statute. The ratio in *Harish Chandra Goswami's* case (supra) and in *G. Krishankutty's* case (supra) is not helpful to the applicant. The ratio in *Morvi Municipality's* case is also not helpful to the applicant. In Morvi Municipality's case the Municipal Board had no jurisdiction or authority to dismiss the appellant without following the mandatory procedure. In view of the categorical finding given by the High Court to the effect that the order of dismissal was on the face of it illegal and High Court to the effect that the order of dismissal was on the face of it illegal and void, it must be held that the dismissal of the appellant was not an act done in pursuance or execution or intended execution of the Act. The order of dismissal being patently and grossly in violation of the plain provisions of the Rules, it cannot be treated to have been passed under the Act. In the instant case the I.O conducted the enquiry as per rules and the provisions and not contrary to the provisions. The enquiry in question is not joint enquiry which requires sanction under rule 18 of CCS (CCA) Rules.

16. After going through the statements of the delinquents recorded by the I.O. under rule 14 it appears that the I.O.has put questions in general nature on the circumstances appearing against the Charged Officer. The questions were required to put to enable the charged officer to explain the circumstances appearing against him. In *Sunil Kumar's* case (supra) their

...18/-

Lordships of the Apex Court held that "*failure to comply with the requirements of Rule 8 (19) does not vitiate the enquiry unless delinquent officer is able to establish the prejudice.*" The applicant has cross examined the witnesses, submitted his defence and argued his case at all stages. The applicant was fully alive to the allegations against him and dealt with all aspects of allegation. The provision under 8 (19) a similar to Sec. 313 of Cr.PC Their Lordships has observed that it is now well established that mere non examination or defective examination under Sec.. 313 of the Cr. PC. is not a ground for inference unless prejudice is established. In the instant case the applicant was not prejudiced by putting the questions by the I.O. They were in general nature of his case and he was aware abut the evidence adduced by the Presenting Officer. Thus the enquiry cannot be said to be vitiated as no prejudice has been caused to the applicant.

17. The applicant has asked for services of a lawyer to assist him in his inquiry. Rule 14 (8) (a) of the CCS (CCA) Rules provides *interalia* that delinquent government servant against whom disciplinary proceedings have been instituted as for imposition of major penalty may not engage a legal practitioner to present a case on his behalf before inquiry authority, unless presenting officer appointed by disciplinary authority is a legal practitioner or disciplinary authority having regard to the facts and circumstances of the case so permits. Thus, the rule vests the discretion in disciplinary authority to permit the assistance of a legal practitioner having regard to the circumstances that such assistance is justified. It appears that disciplinary authority considered the status of the presenting officer, his

..19/

experience in this context and nature of the documentary evidence in the case and other circumstances in the case and felt that it is not necessary that the case of the applicant need to be presented by a legal practitioner and thus turned down the request. It cannot be said that the question involved in Departmental Enquiry could not be tackled by applicant as he is not a layman. The apex court in the case of *CIPLA Ltd. and Ors vs. Ripu Daman Bhanot and Anr. 1999 SCC (L&S) 847* held that assistnat of an Advocate could not be claimed as of right. Respondent was a medical officer. Respondent's plea not accepted that he should have been allowed an advocate's assistance as questions involved were complicated which could not be tackled by him since he was a layman to the enquiry procedure. The refusal to engage a legal practitioner to defend the applicant cannot be said as illegal in the circumstances of the case.

18. The applicant had filed a list of 111 documents out of which the Inquiry Officer allowed only one document for inspection. The relevancy of the documents is to be decided by the Inquiry Officer on the basis of the reasons cited by the defence in his submission seeking the additional documents. The Inquiry Officer examined the relevancy and concluded that some of the documents are not relevant and hence not allowed to be brought on record. Even the applicant had raised this issued of rejection of documents by inquiry officer before the superior authorities who after examining the record of proceedings concluded that inquiry officer had rightly and properly held that these documents are irrelevant. As per *Thiru K.V. Perumal & ORs case (supra)* the authorities are bound to supply only relevant documents and not each and every documents asked by the delinquent officer. The documents rejected to be brought on

record by the inquiry officer do not pertain to the works undertaken. The decision on the question whether documents are material or not will depend upon the facts and circumstances of each case. Applicant's contention was examined by the inquiry officer and he decided that most of the documents which were demanded by the applicant had no relevance to the present case. No material has been brought out to enable us to determine whether the background on which the applicant had demanded the documents were relevant in the present case. We are unable to agree with the contention of the learned counsel for the applicant that the decision of the inquiry officer in denying to supply the documents can be termed as denial of reasonable opportunity. It also appears that some of the document which was ordered to be produced is not produced on the record. It is apparent from the record that the applicant had cross examined the witnesses, though the document was not produced. No grievance was made at the time of cross-examination, on the score of non production of document which according to the applicant could have established the defence case. we do not find any substance in the contention of the applicant that he was prejudiced by non supply of the document though production of the document was ordered by the inquiry officer. In the circumstances as per ratio of *Syed Rahimuddin's case (supra)* the alleged non production cannot be said to be denial of reasonable opportunity to the delinquent in making his defence.

19. It is true that the copy of the advice of the UPSC was given to the applicant with the dismissal order dated 31.5.1993 of the disciplinary authority. The UPSC's advice had been given to the applicant in accordance with the Rule 17 of CCS (CCA) Rules. Rule 17 of CCS (CCA) Rules reads as under:

..21/

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

It is apparent from Rule 17 that there is no infirmity in the supply of UPSC's advice along with the order of disciplinary authority which has been done by the respondents. In *Chiranji Lal's case (supra)* the Full Bench of the Tribunal ha held that non supply of advice at the pre decision stage to the charge officer cannot be said to be a denial of fair hearing of the applicant as he has already exercised his right to fair hearing when he has made representation with some material before the UPSC. [Because of difference of opinion in Charajit Singh Khurana's case and in *Chiranji Lal's* case the matter was referred to the Full Bench.] In para 17 of the judgement the Full Bench has observed as under:

> *"17. The Government instructions reproduced in Swamy's Compilation of CCS (CCA) Rules, 1965 under Rule 14 of the said Rule, prescribe that in cases when a reference is made to UPSC for advice the disciplinary authority will also state the provisional conclusion whether a major penalty was called for or not. In the former case, penalty proposed to be imposed is also to be mentioned. We may note that the UPSC does not thereafter proceed to conduct a fresh enquiry but only gives its opinion on the basis of the material sent by the disciplinary authority including the reply of the charged officer in respect of the report of the enquiry officer. Now two things may happen i.e. the UPSC may concur with the provisional conclusion of the disciplinary authority or it may differ with it. If UPSC concurs with he provisional conclusion of the disciplinary authority both in regard to the imposition*

of penalty and the nature of such penalty there would be no problem. however, where the UPSC advises imposition of a penalty when the disciplinary authority has given a provisional conclusion that no penalty is called or, or when the UPSC recommends enhancement of the penalty proposed by the disciplinary authority, the situation becomes different as then the different in the advice of the UPSC could then be construed as an additional material before the disciplinary authority, on which it might also be said that a charged officer had no opportunity to put his case forward. The basic principle of natural justice in application to a disciplinary case is that the charged officer should have a fair hearing. He has an opportunity to accept or deny the charge. In case he denies the charge, in major penalty proceeding, he has a right to oral enquiry in which he can put forward his case and explain and answer the evidence adduced against him. He has also the right and opportunity to state his defence before the enquiry officer. He has now also an opportunity to make a representation on the enquiry officer's report before the disciplinary authority reaches his final decision. It is in his interest that the President is required to consult the UPSC under Article 320 (3) (c) of the Constitution and Rule 9(1) of the said Pension Rules. This is done after the disciplinary authority has already come to a provisional conclusion on the basis of the material before it. Seen in this perspective we find no good reason for a second show cause on the advice of the U.P.S.C."

20. In *Sunil Kumar Banerjee's* case (supra) it has been held that "*the Disciplinary Authority arriving at its own conclusion on material available to it. - Its finding and decision cannot be said to be tainted with any illegality merely because it consulted vigilance Commissioner and obtained his views on the very same material.*" It is observed that "*the conclusion of the Disciplinary Authority was not based on the advice tendered by the Vigilance Commissioner but was arrived at independently on the basis of charges, the relevant material placed before the Inquiry Officer in respect of the charges and the defence of the delinquent Officer. In fact, the final conclusion of the Disciplinary Authority on the several charges are so much at variance with the opinion of the Vigilance Commissioner that it is impossible to say that Disciplinary Authority's mind was in any*

..23/-

manner influenced by the advice tendered by the Vigilance Commissioner. In Sunil Kumar's case one of the submissions of the applicant before the Apex Court was that copy of the advice of Vigilance Commissioner should have been made available to him when he was called upon to show cause. Their Lordships of the Apex Court observed that "*we do not see any justification for insistent request made by the appellant to the Disciplinary Authority that the report of Vigilance Commissioner should be made available to him.*"

21. In *D.C. Aggarwal's case (supra)*, out of 13 charges framed against the respondents the Inquiry Officer found Charges 1(1) & II (1) only to have been proved. Remaining were found not to have been proved. Consequently the Inquiry Officer had recommended for exonerating the respondent as the charges found to be proved were minor and of procedural nature. The CVC examined the Inquiry Report and recorded its own finding on each of the charges. The CVC not only disagreed with the Inquiry Officer's report and found charges 1, 2, 3, 4, 8, 11 to 12 to have been proved but it advised imposition of major penalty not less than removal from service. The Disciplinary Authority recording the findings against the respondents agreeing on each charge on which CVC had found against him but disagreeing on quantum of punishment and passed the order. In the instant case there is no disagreement in the finding of the Disciplinary Authority and CVC even on the quantum of the punishment. In view of the 3 Judges'Bench decision in Sunil Kumar Banerjee's case we do not consider that the non supply of advice of CVC is a serious flow that will vitiate the entire proceedings.

..24/

22. The contention of the learned counsel for the applicant that the Inquiry Officer has not tackled the arguments put forward by the applicant and violated the Rule 23 (i) of the CCS (CCA) cannot be accepted. The rules do not lay down any particular form or manner in which the Inquiry Officer/Disciplinary Authority should record its finding on each charge. As per *Harendra Arora's* case (supra) substantive provisions in departmental proceedings have normally to be complied with and in case of procedural provision which is not substantial or mandatory character, if no prejudice is caused to the person proceeded against, no inference of the court is called for. In the instant case applicant was given fair hearing by the Inquiry Officer/Disciplinary Authority and Revisionary Authority, considered all the record, details and then gave findings on each charge with reasons. As per the ratio of K. Rajappa Minions case (supra) it is not obligatory on the disciplinary authority to discuss the evidence and the facts and circumstances established at the departmental enquiry in details and write as if it were an order or a judgement of a judicial tribunal the order of I.O./DA/RA complies all these requirements.

23. The contention of the learned counsel for the applicant that the Inquiry Officer was biased cannot be accepted. There is no reasonable ground for assuming the possibility of bias. The mere fact that the Inquiry Officer did not allow the entire list of documents/witnesses of charged officer cannot be said to be the bias. It is not that Inquiry Officer acted as a party in the Inquiry and also as the Inquiry Officer in the same case. The Inquiry Officer himself is not concerned with the matter. There is nothing to show that I.O. acted with a view to satisfy some private or personal grudge against the charged officer. The record does not show that the Inquiry Officer had prejudged the issue had

..25/

expressed his opinion beforehand. It is not the case that the Inquiry Officer relied on his personal knowledge of the matter than on objective and impartial assessment. The charged officer's representation for change of Inquiry Officer was not entertained by the disciplinary authority on the grounds stated were not found to be satisfactory. As the applicant did not attend the primary hearing at Delhi and Mumbai, the Inquiry Officer was forced to conduct preliminary Inquiry exparte. The Inquiry Officer after considering the relevancy of the documents allowed 1 out of 113 documents . The documents which were not found to be relevant listed by the defence were not allowed to be inspected by the Inquiry Officer. The order passed by the Inquiry Officer is a judicial order. There appears nothing to show that the Inquiry Officer had an approach against the applicant and he had prejudged the issue. He is independent and impartial.

24. Let us consider whether it is a case of no evidence. The 10 prosecution witnesses have been examined in the present case. The applicant did not examine himself as a defence witness. Even he did not examine any defence witness. On perusal of evidence it reveals that the applicant does not deny about his recording the measurements making the abstracts and preparing first and final bills for the 3 works at Vashi complex all in the name of contractor B.G. Mistry. T.J. Asnani, then Head Personnel Division, BARC,, deposed that it was clear by physical inspection as well as checking with the staff posted at Vashi Complex that no such works were in existence. . Even the evidence of K.G.R. Nair also shows that none of the work against these work orders were carried out and the payments were made for the non-existent works,

..26/-

it was based on questioning of the site staff as well as the physical inspection. Evidence of G.S.Rao, shows that they tried to find out the location where the said item of works were done at Vashi Complex but could not find the existence of such works and then questioned the site staff while recording their statements. It is also in his evidence that the work of rain water down take pipe was carried out at the time of completing the original construction by Shri R. Bhatt,Contractor and the work of laying the pipeline was done by M/s Ajantha Builders, the main contractor for the common facilities, Phase II. The evidence of S.V. Thakkar, SO (SF) shows that the works at Vashi Complex were earlier carried out by other contractors rather than B.J.Mistry and the existence of the works at site could not be found according to the work orders. The witnesses P.S. Khatu and S.A. Dalvi have confirmed their prerecorded statements about non-existence of the works in the name of Shri B.G.Mistry, contractor, at Vashi Complex. Shri Khatu and Dalvi have given their statements on their own volition. During cross-examination it was stated by the witness Khatu that statements were dictated during preliminary enquiry. In the re-examination the witness has stated that whatever was written was with the understanding and the knowledge of what was written. Thus the statement recorded cannot be said to be dictated by the I.O. The statement in English was dictated. Evidence brought before the I.O. goes to show that work orders awarded to Mistry have actually not been carried out by the Contractor Mistry. The witnesses have been cross examined by the charged officer nothing has come out in the cross examination to come to the conclusion that the work had actually been carried out. It appears that Contractor Mistry was paid for the work which was not done by him

..27/-

or not at all in existence. The evidence of Inspecting Team and other before the I.O. shows that they found no such work in existence no work as per work orders appeared tohave been carried out. It is also tried to conted that Contractor Mistry is not examined and the parties who were said to have done the work were not examined. It is for the Presenting Officer to decide who are to be examined. When evidence brought on record by the P.O. was sufficient to prove that no work on the basis of tenders had been actually carried out by the Contractor Ministry, it was not necessary for the P.O. to examine other witnesses though named in the charge-sheet. A charged officer could have shattered the evidence brought on record by the prosecution by examining those witnesses to show that Contractor Mistry actually had carried out the work as per tenders.

25. It is further tried to contend that the Inspection Team's report was not brought on record. the Inspection Team's work was confined to assess the work whether the work were carried out or not. The proceedings of the inquiry was not based on the investigating teams's report. The investigation was done at the preliminary stage to investigate as to whether a prima facie case existed against the applicant. The non-production of their report did not in any way hamper the applicant's right to cross-examine the witnesses. In *Narayan Dattatraya Ramteerthakha's case (supra)* the Apex Court has observed that the preliminary enquiry has nothing to do with the enquiry conducted after issue of the charge-sheet. The preliminary enquiry would be to find out whether disciplinary action should be initiated against the delinquent. After the full-fledged enquiry was held the preliminary enquiry lost its importance. Thus the non production of the report of the Inspecting Team does not prejudice the applicant.

..28/-

25. The review petition filed by the applicant have been considered by the President and disposed of by confirming the penalty of dismissal from service after due application of mind and dealing with the points brought out by the applicant in detailed manner.

26. It is well settled that the domestic enquiry need not be conducted in accordance with technical requirements of criminal trial. The standard of proof required for departmental proceedings is that of preponderance of probabilities and not a proof beyond reasonable doubt. Inference can be drawn from the proved facts of the case. The I.O.has considered all these factors and based its conclusion on the material available on the record after considering the defence put forth by the applicant and came to the conclusion in a reasonable manner and held that charge No.1 is proved. The conclusion arrived at by the I.O. cannot be termed as perverse and not based on any material as there is evidence to support the conclusion of I.O. we are not supposed to review the evidence arrived at our own independent findings. I.O. is the sole judge of the fact as there is evidence to substantiate his findings. The adequacy or reliability in the matter is not supposed to be considered by the Tribunal. Technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. We do not consider it to be a case of no evidence the benefit of which can be given to the applicant.

27. To sum up, for the above reasons, we find that Inquiry is in consistent with the rules and in accordance with the principles

..29/

of natural justice. The conclusion of the I.O. is based on evidence. The disciplinary authority after considering the evidence, report of the I.O. representation of the applicant against it and following the principles established by law and rules of natural justice arrived at its own conclusion and then came to conclusion with regard to the guilt and review has been disposed of by confirming the imposition of penalty of dismissal from service on applying he mind by the competent authority.

28. In view of the foregoing discussion and in the conspectus of the facts and circumstances of the case, we do not find any reason to interfere with the orders of the disciplinary authority passed against the applicant. The O.A. is accordingly dismissed. No order as to costs.

(S.G.Deshmukh)
Member (J)

(Anand Kumar Bhatt)
Member (A)

sj*