CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 995/94

Date of Decision : 22-6-2004

M.G.Wagh — Applicant

Shri M.S.Ramamurthy — 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 ? Y

(iii) Library

(S.G.DESHMUKH)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

O.A.No.995/1994

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

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

Shri Madhukar G. Wagh
Pushkraj
10, Saras Baug, Deonar
Bombay 400 080. ... Applicant

(Applicant by Shri M.S. Ramamurthy, Advocate)

vs.

1. Union of India,
(Notice to be served through)
The Secretary
Department of Atomic Energy,
Anushakti Bhavan
C.S.M. Marg
Bombay 400 039.

2. Union Public Service Commission
Dholapur House
Shajan Road,
North Block,
New Delhi 110 001. .... 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 dated 31.5.1993 dismissing the applicant from service and also quashing and setting aside order dated 9.3.1997 passed in revision petition confirming the dismissal of the applicant and directing the respondents to reinstate the applicant in service with full backwages, continuity of service including seniority, promotion, arrears of pay, allowances etc. and give all other incidental benefits as if he had been in active service all through out uptill the date of his superannuation on June 30, 1994 and as if he had retired on that date and also to direct the respondents to regularise the suspension period from 1.7.1987 till 15.6.1993 by treating the same as period on duty and

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appropriate direction for payment of T.A. Allowance and other emoluments for the said period.

2. The applicant was appointed as a Senior Scientific Assistant (Engg) in the Civil Engineering unit of the Bhabha Atomic Research Centre w.e.f. 15.5.1958. He was promoted to various grades under the merit cum promotion scheme of the department and was appointed as a Scientific Officer SG. w.e.f. 2.7.1986. While working in Nuclear Power Board on 1.7.1987 the applicant was placed under suspension vide order dated 24/26th June 1987. Thereafter he was chargesheeted with the Memorandum dated 3.8.1988 for 4 Articles of Charges.

Article No.I: The applicant while working as a Scientific Officer/Engineer Grade (SG) was appointed as Engineer-in-charge and was delegated the powers of Executive Engineer. During the period from 1984-85 1985-86 and 1986-87 in connivance with subordinate officers Shri K.N. Sabhnani, R.P.Sahni and a private contractor Shri P.G.Mistry cheated the Govt. to the tune of about Rs.1,58,801.40 by committing fraud viz a) by technically sanctioned the estimate of non-existent works b) he issued tender notice calling for sealed tenders for the said non-existent works (c) got comparative statements based on the quotations received in respect of the said non-existent works; (d) for issuing work orders for the said non-existent works; (e) for recording false inspection reports and gave false certificates regarding completion of the said non-existent works; and (f) for passing the first and final bills in respect of the said non-existent works in favour of Shri B.G.Mistry, Contractor, in respect of 8 works. In fact those 8 works were not actually carried out at all and which were not in existence at site.

Article II: The applicant while functioning as Scientific Officer/ Engineer Grade (SG), Civil Engineering Division, Bhabha

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Atomic Research Centre during the period from 1984-85, 1985-86 and 1986-87 grossly misused the powers delegated to him and in connivance with the Contractor Shri B.G. Mistry and his subordinates S/Shri K.N. Sabhnani, Scientific Officer/Engineer/Engineer Grade (SE) and V.L.Jadhav, Scientific Officer/Engineer Grade (SD) cheated the Govt. to the tune of about Rs.2.60,667/- by committing the following frauds, viz;- a) by technically sanctioning the estimates of nonexistent works, (b) by issuing tender notices calling for sealed tenders for the said works (c) by getting prepared the comparative statements based on the quotations received in respect of the said non-existent works; (d) by issuing work orders for the said non-existent works and (e) by recording false inspection reports and gave false certificates regarding completion of the said non-existent works and (f) by passing the first and final bills in respect of the said non-existent works in favour of Shri B.G.Mistry, Contractor, in respect of 13 works when in fact those works were not actually carried out at all by the said Mistry and which were not at all in existence.

Article III: The applicant while functioning as Scientific Officer/Engineer Grade (SG) and Engineer-in-Charge, Civil engineering Division, BARC during the period from 1986-87 misused the financial powers delegated to him and in connivance with the private Contractor Shri B.G. Mistry and his subordinate Officers S/Shri K.N. Sabhnani, Scientific Officer/Engineer Grade (SD) cheated the Govt. to the tune of about Rs.34,114/- and in that he fraudulently passed the first and final bills of the said Shri B.G.Mistry for the following two works for the total quantity of providing and fixing 167 Godrej Make Mortice locks on the basis of false measurements which were got recorded with the connivance

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of the aforesaid two engineers and by recording false certificates as regards completion of the said works in full and final as per drawings and as directed by the Engineer-in-Charge, when in fact the said Mistry had fixed only 64 locks out of which he actually procured and fixed 20 locks and balance of 44 locks were supplied to him departmentally free of charge and thus was entitled for payment towards providing and fixing of 20 locks only and labour charges for the fixation of the balance of 44 locks. The applicant showed 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 (1) (i), (1) (ii) and (1) (iii) of Rule 3 of the Central Civil services (Conduct) Rules, 1964.

Article IV: The Head, Civil Engineering Division, Bhabha Atomic Research Centre, vide his letter No. CE/Conf1/22 dated June 12, 1987 followed by another letter No.CE/Conf-1/8/38 dated June 16, 1987 brought to the notice of the applicant the discrepancies in the total quantity of steel viz. 942-57 M.T. issued to M/s Oricon Pvt.Ltd.during the period Feburary 1983 to October 1986 for their eight completed works and the total quantity of 80.965 M.T. allowed to be removed by the said contractor out of Bhabha Atomic Research Centre as scrap on the basis of gate passes issued by the applicant in favour of the said contractor during the period between 29.3.1984 and 7.2.1987 for reconsilation/clarification positively by June 25, 1987. The applicant failed to do the needful. By the aforesaid conduct, the applicant exhibited lack of devotion to duty and acted in a manner unbecoming of a Govt. Servant, thereby contravening the provisions of sub-rule (1) (ii) and (1) (iii) of Rule 3 of the central Civil services (Conduct) Rules, 1964.

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3. It is the contention of the applicant that all the above works being in the range of Rs.20,000/- to Rs.23,000/- were initiated by the proposal of the junior officers of the applicant viz. Executive Engineer Mr. Sabhnani. The technical sanction is accorded by the applicant in all the above cases. No physical verification of the work or the genesis of the works is required. After technical sanction is accorded the other steps like calling for tenders, preparation of comparative statements issuing of works orders, entering into the contract and placing the required funds at the disposal of the Executive Engineer, automatically follow without their being any necessity to visit these sites. For all these steps the Assistant Accounts Officer is also associated. The Chief Engineer also approves all work orders by slips. The only check of the physical acceptance of the works exists at the time of the inspection report. The applicant was not responsible for the quality of work nor was he required to check any measurement. He had checked the physical existence of the works and the quality of the works and found them to be existing as per the expected quality. It is his contention that at no stage of the proceedings was he in a position to know who had carried out the works. All these 23 works were initiated by the Executive Engineer Shri K.N. Sabhnani, who is nominated as Engineer-in-charge in each and every work order. The legal contract documents for all these works also define the designation 'Executive Engineer' and 'Engineer-in-charge' and nominated engineer-in-charge viz. Shri K.N. Sabhnani was also an Executive engineer for all these works. The applicant was in a supervisory capacity for all such petty works initiated and executed by his subordinate executive engineer.

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4. On receipt of the chargesheet the applicant sent the reply dated 22nd August, 1988 and categorically denied all the charges against him and asked for an inspection of all the records as well as time to file a detailed reply. He was denied both time for filing the detailed reply as well as inspection of documents by reply dated 1.9.1988 issued by the Under Secretary to the Govt. of India. Again he wrote a letter dated ;24.9.1988 for inspection of the documents. The Inquiry Officer and Presenting Officer were appointed vide orders dated 18.10.1988. The preliminary hearing was fixed at Delhi on 20.12.1988 for which he had received the intimation of 15.12.1988 on 25.12.1988, he again wrote a letter to the respondents that he must be given opportunity of inspecting the documents before proceedings with the enquiry as grave prejudice is likely to be caused.The preliminary hearing was fixed at KVIC at Bombay where the applicant reached on time but since neither the enquiry officer nor the Presenting Officer were present he had to return after waiting for some time. However, the Enquiry Officer came to the venue later and proceeded with the enquiry, ex-parte, subsequently. He wrote a letter dated 29.12.1988 for inspecting the documents. The brief hearing was fixed at New Delhi on 17.4.1989. He wrote a letter dated 4.4.1989 requesting that he is undergoing postoperative problems after removal of a slipped disc. The enquiry officer sent a telegram on 10.4.1989 that the hearing cannot be postponed no inspection will be given. The applicant again requested on 11.4.1989 to hold the enquiry after he is medically fit and he has been given the inspection. He received a bundle of about 245 documents on or about 25.7.1989 when he was bed ridden. He had accepted the documents subject to tallying with the list of documents as given in the charge-sheet.

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On 30.7.1989 the applicant wrote to the Enquiry Officer that he was still not well and enclosed a medical certificate of the BARC Hospital. On 8.8.1989 he received a telegram from the Enquiry Officer that he would proceed ex-parte. The Enquiry Officer proceeded with the enquiry despite the medical certificate.

5. The applicant had given the list of documents which though listed as included in the 245 documents by the State as prosecution documents were not received by him. On 22.10.1989 he gave a list of defence documents with its relevancy. The Enquiry Officer refused the inspection of documents by his daily order sheet remark dated 25.10.1989. He was denied the opportunity to rely upon the slips whereby the applicant had approved all the relevant works orders. He against sought inspection of documents and production of additional defence documents by his letter dated 9.11.1989. The enquiry officer allowed only 13 out of 67 defence documents by the daily order sheet dated 31.1.1990. The applicant gave detailed relevancy of each and every document and relevancy of witnesses on 22.2.1990. Some of the documents for which inspection was allowed were shown and same were not available.

5. It is contended that the Enquiry Officer was totally biased and thus the applicant made a representation to the President of India for change of Enquiry officer on 10.7.1990. His representation was rejected. The applicant was informed about the date of Enquiry. Service of the summons was left to the applicant. The applicant had asked for services of lawyer to assist him in his enquiry. However, the request was turned down by the Disciplinary Authority.

6. The actual hearing of the enquiry was taken place from 18.2.1991 till 22.2.1991 and about 22 witnesses (20 on behalf of

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prosecution and 2 on behalf of defence) were examined. The Enquiry Officer conducted the joint enquiry. The applicant protested against such a procedure as he pointed out that the disciplinary authority had not chosen to hold the enquiry as a joint enquiry under Rule 18 of CCS (CCA)Rules 1965. However, the Enquiry Officer over ruled the objection stating that the enquiry was not a joint enquiry but was a simultaneous enquiry against all the accused. It is contended that the statements of all 19 witnesses produced by the prosecution were recorded in the same faulty manner. The questions put during the cross examinations were not segregated to show whether these questions were put by the applicant or by some other accused. The whole of the reply of the witnesses in cross examination was put under the general heading of the cross examination. It is also contended that witnesses were produced by the applicant were questioned by the Enquiry Officer so that they will confuse and unsettle the applicant. The applicant submitted his defence brief on 7.3.1991 after the Presenting Officer submitted his brief on 28.2.1991. On 12th November, 1991 the Enquiry Officer's report was conveyed to the applicant holding that the charges at Article 1, 2 and 3 were proved whereas the charge of article 4 was not proved. The applicant filed his representation on 14.12.1991. The applicant was informed by the order of the President of India dated 31.5.1993 that he was dismissed from the service on the finding of guilt recorded by the Enquiry Officer. A copy of the order of dismissal dated 31.5.1993 was annexed with the advice of the UPSC dated 29.3.1993. It is contended that six documents which were shown to the UPSC were not part of the record before the Enquiry Officer. The applicant filed the revision under rule 29 of the CCS (CCA) Rules 1965 to the President of India on 11.8.1993.

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7. It is contended that the practice adopted of holding simultaneous enquiry was grossly irregular and unjust and against the principles of natural justice. The applicant was denied the chance to cross examine other charged officers as defence witnesses. The witnesses were proposed to be examined in the presence of the other accused though the enquiry was not a joint enquiry and due to this fact the applicant was denied a chance to call the other accused persons as witnesses and cross-examine them to depose in his enquiry. The questions which were not put to the witness by the applicant but were put by the other accused were brought into evidence in the applicant's enquiry. It is contended that this procedure was only held to cut down the time required for the enquiry and to exhibit the efficiency of the enquiry officer to rush through all the enquiry proceedings in a period of 5 days. The applicant further contended that the enquiry was conducted with undue haste without regard to the principles of natural justice. The documents called for by the applicant were wrongly denied to him. The documents which were held to be relevant and were directed to be produced were not at all produced by the Disciplinary Authority. The inspection of the prosecution documents which were received was denied. The summonses were not delivered to the witnesses by the enquiry officer. The service of summons were left to the applicant due to which many witnesses did not turn up.

8. The Enquiry Officer's report is in violation of principles of natural justice as the Enquiry Officer has relied upon the statements made behind the back of the applicant. Statement of one Mr. Sabhnani which was recorded in the general examination of the said Mr. Sabhnani who was another accused in simultaneous enquiry was used. The Enquiry Officer relied upon

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some extraneous materials such as Chief Security Officer's letter, personal entry register of Training School Hostel in support of his findings which documents were never produced in the enquiry. The Enquiry Officer has not discussed all the defence of the applicant and has not considered the nature of the applicant's work. The Enquiry Officer relied upon the evidence of tutored witnesses. The advice of the UPSC is perverse and against the principles of natural justice. The UPSC has reached the conclusion in around four places that the enquiry officer was mistaken and that the applicant's objections were justified. However, the UPSC has not given any relief to the applicant on the basis of these objections.

9. It is also contended that the order dated 9.3.1997 passed in the name of President of India on the revision is mechanical and routine order without application of mind and with the sole object of confirming the earlier order of Dismissal dated 31.5.1993. Several important contentions put forth in the Revision Petition (Review) dated 11.8.1993 have not been considered in the order dated 9.3.1997. The order dated 9.3.1997 is vitiated on account of breach of the principles of natural justice and for denying reasonable opportunity to the applicant to defend himself. The applicant was entitled to personal hearing from the Reviewing Authority. No such personal hearing was being extended to the applicant.

10. The respondents filed their counter affidavit. It is contended that since the Disciplinary Proceedings was contemplated against the applicant he was placed under suspension vide order dated 26.6.1987. The applicant has accorded the technical sanction in exercise of powers of Executive Engineer delegated to him. It is contended that the contention that no

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physical verification of the works or the genesis of the works is required as well as naming the Assistant Accounts Officer and the Chief Engineer as associates is an attempt to absolve himself of any responsibility as an Engineer-in-Chief. The applicant tried to evade from his moral responsibilities stating that it was not necessary to have physical verification of the works carried out. He should have ensured the quality and quantity of the work before authorising payment for the same. The applicant has committed frauds by misusing the powers delegated to him, cheating the Govt. in connivance with his subordinates and a private contractor. The nomination of an Engineer-in-charge for any specific work does not mean that the supervisory officers are let off from the moral responsibilities entrusted and expected from them.

11. The applicant while denying the charges framed against him, asked for inspection of documents and also extension of time to file his explanation. Since the applicant has denied the charges levelled against him, it was decided to proceed with the disciplinary proceedings and it was not necessary to permit inspection of documents as requested by the applicant as full opportunity will be available to the delinquent to inspect the document during the course of the Inquiry. It is further contended that the applicant was directed to specifically admit or deny the charges and directed to submit statement of defence instead of submitting his written statement of defence the applicant was insisting for inspection of documents which, in the normal course is not considered necessary for submitting the defence. The applicant instead of co-operating with the Inquiry Officer continued to send representations requesting for inspection of documents to submit his defence. It is clear from

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the Daily Order Sheet that the applicant remained absent from the inquiry proceedings without any intimation which necessitated holding the preliminary hearing ex parte on 26.12.1988. This was the second time the preliminary hearing was held, as the applicant failed to attend the earlier one held on 20.12.1988 at New Delhi. The applicant was repeatedly directed to inspect the documents, but the said directions were not complied with by the applicant. It was intimated that any authorised Defence Assistant can be deputed for attending the brief hearing. While the regular hearing cannot be postponed. The applicant was delaying the Enquiry Proceedings. The order sheet of the brief hearing dated 17.4.1989 was sent to the applicant. The applicant was directed to complete inspection of documents and was intimated about the hearing on 10.8.1989. As the applicant did not complete the inspection of the said documents the Presenting Officer has forwarded the xerox copies of one set of all the listed documents to him.

12. The enquiry officer allowed 13 out of 67 documents asked for by the applicant which were relevant in the case. The respondent denied that the applicant was denied opportunity to inspect the documents. He was provided with ample opportunities to inspect the documents which were relevant to the case. Copies of summons to the defence witnesses were sent to the applicant so as to give him an opportunity to ensure their attendance in the inquiry proceedings. The Presenting Officer was not a legal practitioner and the disciplinary authority was not considered necessary that the case of the applicant need to be represented by legal practitioner, hence the request of the applicant to permit him to defend the case by a legal practitioner was not

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acceded to. The charges against all the delinquents were similar in nature. In order to avoid duplication and also to get their wider participation, the Inquiry Authority might have conducted a simultaneous hearing, wherever feasible, in order to avoid delay. It doe not cause any prejudice to the applicant. The UPSC being an Advisory Body has to be consulted under the provisions of Article 320 (3) (c) of the Constitution read with Regulations 5(1) (a) of the UPSC (Exemption from consultation) Regulation, 1958 and Rule 15 (3), provision of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 before imposing any of the penalties. For the said purpose, apart from the records of enquiry, such other relevant records as is necessary will have to be made available to UPSC in order to examine the case thoroughly before tendering their advice for an impartial action.

13. The defence documents which the Inquiry Officer considered necessary were permitted to be inspected by the applicant. There is no violation of the principles of natural justice. The conclusion of the Enquiry Officer was not solely dependent on the statements of Shri Sabhnani. It is also contended that CSO's letter mentioned by the applicant has been marked as document Exh. No.S-71 by the Inquiry Officer. The Inquiry Officer arrived at the conclusion after considering the records of the case and all circumstantial evidences including the defence brief. The applicant was expected to satisfy himself that the works required to be completed have been actually carried out in accordance with the specifications set out therein. The UPSC after having analysed the case, tendered their advice that the charges levelled against the applicant stood proved. It is also contended that the provisions of Rule 29-A of

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CCS (CCA) Rules 1965 stipulates that consultation with UPSC is mandatory only when an order imposing or enhancing the penalty is issued. The applicant had adequate opportunity to defend his case during the course of inquiry to make representation against inquiry report, to make a Revision/Review petition against the order imposing the penalty of dismissal from service. The review petition was considered by the President of India and confirmed the imposition of penalty of dismissal with due application of mind.

14. The applicant also filed rejoinder reiterating the submissions earlier made.

15. Heard Shri M.S. Ramamurthy, learned counsel for the applicant.

16. The learned counsel in his oral arguments submitted that the report of the Enquiry Officer is perverse that the evidence against the applicant is not sufficient to sustain the charges. The learned counsel submitted that no documentary evidence such as work orders, measurements etc. are produced. The Enquiry Officer had ignored the nature of the work of the applicant. He has not considered the arguments putforth by the applicant and violated Rule 14 (23) of CCS (CCA) Rules. According to the learned counsel for the applicant it is a case of no evidence. He further submitted that the disciplinary action of all 3 charged officers was taken in common proceedings without the order of the competent authority as required under Rule 18 of CCS (CCA) Rules 1965. Because of common proceedings prejudice has been caused to the applicant and thus the entire proceedings is vitiated. The learned counsel relied on the judgement in the case of *Tripura Charan Chatterjee vs. State of West Bengal 1979*

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*(1) SLR 878.* The learned counsel submitted that the applicant could not examine three other charged officers as his defence witnesses.

17. He further submitted that the Enquiry Officer erred in refusing the applicant to engage a legal practitioner to defend his case. He submitted that copy of the 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 (i) *Amar Nath Batabyal vs. UOI And Ors (1996) 34 ATC 466 (ii) Charanjit Singh Khurana vs. UOI (1994) 27 ATC 378 (iii) Judgement in Order in O.A.No.457/2001 dated 6.12.2001 in the case of Smt. R. Girdhar vs. UOI (iv) Nagaraj Shivarao Karjagi vs. Syndicate Bank Head Office AIR 1991 SC 1507* (v), the learned counsel also relied on the case of *State Bank of India vs. D.C. Aggarwal AIR 1993 SC 1197* in which it is held that non supply of CVC recommendation which prepared behind the back of the respondent without his participation and taken decision against him relying on it is a violation of principles of natural justice. The learned counsel also submitted that the Inquiry is vitiated due to non supply of vital, essential and material documents to the applicant. The Inquiry Officer did not examine the material witnesses cited in the chargesheet which caused a prejudice to the applicant. The learned counsel also submitted that Inquiry Officer was biased thus the inquiry vitiates on that ground also.

18. On the other hand, the learned counsel for the respondents Shri R.R.Shetty submitted that reappreciation 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 chargesheet. 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 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.*

19. 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.*

20. The learned counsel further submitted that non supply of advice at a predecisional 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 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.

21. The learned counsel further submitted that the delinquent seeking the order of his dismissal to be quashed on the ground of

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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 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.*

22. 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

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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.

23. 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 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. All 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.

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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. It is the contention of the applicant that because of simultaneous inquiry he could not examine the other charged officer as a defence witnesses. It is not that the Inquiry Officer who refused to summon the other charged officers. But other charged officers denied to give evidence to substantiate the defence of the applicant. As the other charged officers denied to to come for evidence it cannot be said to be a fault of the Inquiry Officer. The applicant could have examined those delinquent as his defence witnesses.

24. The applicant has asked for services of a lawyer to assist him in his inquiry. Rule 14 (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 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 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 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.

25. The charged officer had filed a list of 67 documents out of which the inquiry officer allowed 13 documents. 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's case (supra)* the

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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 documents which were ordered to be produced are not produced on the record. It is apparent from the record that the applicant had cross examined the witnesses, though the documents were not produced. No grievance was made at the time of cross-examination, on the score of non production of documents 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 documents though production of those documents 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.

26. 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

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to the applicant in accordance with the Rule 17 of CCS (CCA) Rules. Rule 17 of CCS (CCA) Rules reads as under:

> *"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*

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*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 thenthe 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 s 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."*

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*

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*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 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.*"

27. 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.

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28. The ratio in *Nagaraj Shivarao Karjagi*'s case is not helpful to the applicant as the facts of the said case differs from the facts in the instance case. In the said case I.O. has finally concluded that the transaction connected with the unpaid instrument was of an accommodative nature with a view to assist A. Chandrashekar by using another perosn as benami and it was in clear violation of the rules of the Bank. The findings recorded by the Inquiry Officer on the alleged misdemeanour does not warrant any major penalty like the compulsory retirement. Reference wa also made to certain representations said to have been made by theBank to the Central Vigilance Commission for approval to impose a lesser punishment. It is said that the Bank pleaded in the representations that the punishment of compulsory retirement advised by the Commissioner was too harsh. On reference CVC had recommended that the petitioner should be compulsorily retired from service by wasy of punishment. Further there was a direction issued by the Ministry of Finance that the punishment advised by the CVC in in every case of disciplinary proceedings should be strictly adhered to and not to be altered without prior concurrence of the Central Vigilance Commission and the Ministry of Finance.

29. The contention of the learned counsel for the applicant that the Inquiry Officer has not tackled the arguments putforward 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

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prejudice is caused to the person proceeded against, no inference of the court is called for. in the instance 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 Manons 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.

30. 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 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 13 out of 16

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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 a grudge against the applicant and he had prejudged the issue. He is independent and impartial.

31. Let us consider whether it is a case of no evidence. 20 prosecution witnesses and 2 defence witnesses have been examined in the case. On perusal of the evidence, it appears that the inquiry officer recorded the statement of S/Shri Ashnani, Head Personnel Division, K.G.R.Nair then Head of Accounts Division, M.N. Kasbekar, Head C.E.D. S.B. Thakkar, G.S. Rathod, S.A. Dalvi, S.Khattu, Chargeman Vashi Complex, T.V. Murli and others. The applicant is not on dispute that he accorded the technical sanction of the estimate prepared by Shri Sabhnani issued tender notices, issued the work orders and submitted inspection report and gave certificate regarding completion of the work and passed first and final bills all in the name of Mistry. The evidence brought before Inquiry Officer goes to show that work orders awarded to Mistry on the basis of tenders had actually not been caried out by Contractor Mistry. The evidence of members of the Inspection Team who had come to the above findings after visiting various sites is brought before the I.O. They have been cross examined by the charged Officer. Nothing has come out in their cross examination to come to the conclusion that the work had actually been carried out. It is apparent from the evidence that the applicant was responsible for sanctioning the estimates and approving the payments as an Executive Engineer on fictitious papers. The contractor Mistry was paid for the works which was either not done by him or not at all in existence, on the approval accorded by the applicant. The plea

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of the applicant that no physical verification is required as works were initiated by junior officer and he accorded technical sanction as a mere formality has been discarded by the I.O. The applicant accorded technical sanction to specific work in exercise of financial powers of Executive engineer delegated to him. The evidence of Inspecting Team and others before the I.O. shows that they found no such works in existence, no work as per work order appeared to have been carried out.

32. It is tried to contend that the I.O. has considered the general examination of Sabhnani, the another charged officer and the Chief Security Officer's letter dated 10.6.1987 to substantiate the charges against the applicant. No opportunity was given to cross examine the said Sabhnani to the applicant and the letter in question is not brought on record through the author or some witnesses. It is true that the applicant had no opportunity to cross-examine the another charged officer Sabhnani. Even if the statement of Sabhnani is excluded there is sufficient material on record to support the conclusion of the I.O.. The letter in question is an official record. Even if it is excluded from defence there is ample evidence to show that work orders awarded to the Contractor Mistry on the basis of tenders had actually not been carried out by the said Mistry. It is also tried to contend that the Contractor Mistry is not examined and even the parties who were said to have done the work were not examined. It is for the P.O. 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 Mistry, it was not necessary for the P.O. to examine to other witnesses through named in the chargesheet. A charged officer could have

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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.

33. 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.

34. 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.had considered all these factors and based its conclusion on the material available on the record after considering the defence putforth by the applicant and came to the conclusion in a reasonable manner and held that charges 1 to 3 are 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.

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

36. In view of the foregoing discussion and in the consepctus 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*

dtd 22/6/04

Order/Judgement despatched
to Applicant/Respondent (s)
on 01/7/04