

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.No.1342/95.

Dated this the 13th day of June, 2002.

Coram : Hon'ble Shri S.L. Jain, Member (Judicial)
Hon'ble Shri M.P. Singh, Member (Admin.).

R.M.P. Verma,
earlier working as
Scientific Officer (SE),
Radiometallurgy Division,
Bhabha Atomic Research Centre,
Trombay, Bombay-400085. Applicant.

(By Advocate Shri G.S. Walia).

Versus

1. Union of India, through
Secretary to the
Government of India,
Department of Atomic Energy,
Anushakti Bhavan,
C.S.M. Marg,
Bombay - 400 039.
2. The Secretary to
Minister-in-charge,
Ministry of Atomic Energy,
South Block,
New Delhi - 110 011.
3. The Commissioner for
Departmental Enquiries,
Central Vigilance Commission,
Jamnagar House Hutmants,
Akbar Road, New Delhi.
4. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi - 110 011. Respondents

(By Advocate Shri R.R. Shetty)

ORDER

Shri M.P.Singh, Member(A)

This is an application under Section 19 of the AT
Act, 1985 to quash and set aside the charge sheet dated
29.6.1988, dismissal order and revisional order dated
7.3.1994 and 31.8.1995 respectively with all
consequential benefits.

2. The applicant joined Bhabha Atomic Research

....2.

Centre through a selection process in 1971 as Scientific Officer (SC Group A). The applicant was promoted on the basis of selection to the Grade of Scientific Officer (SE) in 1983. A Memorandum No.15/9/87 BARC Vigilance R/929 dated 29th June, 1988 signed by Shri M.R. Srinivasan, Secretary to the Govt. of India was issued to the applicant in respect of the following charges:-

ARTICLE I

Shri R.M.P. Verma, Scientific Officer (SE), Reactor Operations Division (Dhruba Project), BARC, Trombay during the year 1981-1982 on his own and without consulting and/or obtaining the approval of his superiors asked the Directorate of Purchase & Stores, Bombay, to retender the indent for Procurement of Thermocouple Simulator/calibrator with changed specifications from local firms.

By his aforesaid conduct, the said Shri Verma exhibited lack of integrity and acted in a manner unbecoming of a Government servant thereby contravening the provisions of sub-rule (1)(i) and 1(iii) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

ARTICLE II

The said Shri Verma, during the period 1982-1983 as the Indenting Officer accepted the sub-standard Thermo-couple simulator/calibrator costing Rs.32,000/- supplied by M/s. Industrial Controls and Electronics, Badlapur, who are not reputed and/or recognised suppliers for the item. As a result the Government (BARC) was put to loss of Rs.32,000/- which consequently resulted in wrongful gain to M/s. Industrial Controls & Electronics Co., Badlapur.

By his aforesaid conduct, the said Shri Verma exhibited lack of integrity, devotion to duty and acted in a manner unbecoming of a Government servant thereby contravening the provisions of sub-rule (I)(i), (I)(ii) and (I)(iii) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

The charge-sheet was based on the charges relating to the

events occurred prior to his promotion. The documents mentioned in the charge-sheet were not supplied to the applicant. Inspite of a telegram dated 18.8.1988 and reminder vide letter dated 2.1.1989, no documents were given to the applicant. Even no reply to the representation was given. The said documents were required to enable him to submit his written statement of defence and seeking permission to be heard in person.

3. Shri A.R. Malhotra was appointed as Enquiry Officer by an order dated 22.11.1988. Thereafter, Shri C.N. Raman was appointed as Enquiry Officer vide order dated 2.6.1989. Shri G. Gopikumar, Asstt. Personnel Officer and a Law Graduate, Reactor Services and Maintenance Division, BARC was appointed as Presenting Officer by an order dated 22.11.1988. The applicant represented to the Disciplinary Authority vide his representations dated 17.1.1989, 24.1.1989 and 18/25.7.1989 to allow the assistance of an Advocate. However, the applicant was denied the services of an Advocate to defend his case vide memo dated 31.1.1989 and 10.8.1989.

4. Regarding defence documents and witnesses Enquiry Officer Shri A.R. Malhotra has passed the orders dated 20.3.1984 and 27.4.1989 which were reviewed by Shri C.N. Raman vide his order dated 18.7.1989. The enquiry officer disallowed material defence witnesses Shri R. Laxmi Narsayya and Shri V.P.K. Nambiar, Purchase

Officer. Even amongst above documents (i) a copy of statement of witnesses recorded during the preliminary enquiry other than Annexure IV, (ii) Log Book of Dhruv Cirrus Instruments Shops, (iii) File No.DPS/R/5/IEE/150, (iv) Date and time of complaint, (v) Copy of complaint, (vi) procedure for attending complaint, (vii) information regarding life of complaint, (viii) duties and responsibilities of each officer in maintenance were not supplied. The applicant questioned the authenticity of two documents i.e. file DPS/R-5-MIA/260 and Shipping release dated 30.10.1983. Despite this, these documents were taken on record. The said documents were taken into consideration while finding the applicant guilty. Defence documents were also taken as exhibits without seeking explanation from defence witnesses.

5. The applicant nominated one Shri U.C. Vidyarthi, a co-worker, as his defence assistant, when he was denied the assistance of an Advocate. The consent letter dated 4.12.1989 of the said Shri U.C. Vidyarthi for the purpose of defending the applicant in the departmental enquiry was submitted on 5.12.1989. The applicant addressed a letter to the enquiry officer (Respondent No.3) informing him that he has personally delivered the letter regarding permission to be given by the controlling authority of Shri U.C. Vidyarthi for defending his case. He requested that till Shri U.C. Vidyarthi was not available, the enquiry should be adjourned. The enquiry officer did not bother to arrange

the services of the defence assistant. In fact he has taken no initiative and interest in this respect.

6. On 5.12.1989, the Enquiry Officer wanted to examine Shri T.V. Rajan, who was neither a listed witness nor any of his earlier statement has been supplied to the applicant. The applicant objected vide his application dated 5.12.1989 on the ground that the Enquiry Officer had earlier disallowed calling of Shri T.V. Rajan as defence witness. As such, under Rule 14 of CCS(CCA) Rules, Shri Rajan cannot be allowed to examine him as a departmental witness. The applicant vide his application dated 5.12.1989 stated that he wanted to represent to the disciplinary authority against the manner in which the inquiry officer was conducting the inquiry and also request the Disciplinary Authority to change ^{the} ~~of~~ inquiry officer being bias (Exhibit Q-1). On 6.12.1989, 8.12.1989 and 29.12.1989 the applicant wrote to the disciplinary authority against the conduct of the inquiry officer, with a request to change him. On 8.12.1989 a letter and a copy of the representation given to the disciplinary authority were handed over to the enquiry officer with a request to proceed as per rule and wait till representation is finalised but the inquiry officer continued with ex parte inquiry.

7. The Under Secretary to the Government of India stayed the proceedings vide his letter dated 3.1.1990 in pursuance of the representation of the applicant dated



6.12.1989 and 29.12.1989. By a letter dated 12.4.1990, a memorandum was issued signed by the Director stating that the disciplinary authority had decided that the inquiry officer would proceed with the case and submit his report. The inquiry officer submitted his report to the Disciplinary authority on 31.1.1990 holding both the charges as proved. On 20.4.1990, another memorandum was issued forwarding a copy of inquiry report dated 31.1.1990 to the applicant asking him to submit his representation against the said report.

8. The applicant filed O.A.406/90 against the decision of the disciplinary authority dated 12.4.1990. Vide order dated 23.8.1990, the Tribunal directed the disciplinary authority to place the matter before the reviewing authority for appropriate orders and that the reviewing authority might consider the question of bias according to rules within a period of 3 months, as the order dated 12.4.1990 passed by the disciplinary authority was not correct.

9. The representation against the inquiry officer was arbitrarily rejected by the reviewing authority by letter dated 25.1.1991 without giving any reason.

10. The disciplinary authority insisted upon the representation on the inquiry report to be submitted by the applicant. The applicant submitted another representation vide letter dated 1.5.1991. The applicant

requested for oral hearing vide his letter dated 9.7.1991 to the disciplinary authority upon which he was asked to see the Additional Secretary/Chief Vigilance Officer. Accordingly, applicant met the AS/CVO on 13.9.1991, who advised the applicant not to submit the representation on the inquiry report which was communicated to him vide letter dated 29.11.1991.

11. The applicant kept the disciplinary authority informed about his meeting with Additional Secretary by letter dated 29.11.1991 and requested him to atleast give one opportunity for oral defence of his case before submission of the representation on the inquiry report. At various times the applicant submitted the representations against the inquiry report. When no reply was received, the applicant submitted representation against the inquiry report vide covering letter dated 20.4.1992 alongwith the documents mentioned therein. Another representation dated 15.5.1992 was further submitted by him with a request for an oral hearing to give his defence in person, to quash and set aside the findings of ex parte hearing and to drop disciplinary proceedings as the inquiry officer has already reached the stage of submission of inquiry report.

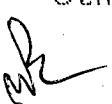
12. Applicant filed O.A.419/92 which was decided by this Tribunal vide order dated 1.9.1992 with a direction to the respondents to examine the various points raised

by the applicant. Applicant requested vide his letters dated 15.5.1992, 16.10.1992 and 20.11.1992 for oral hearing on various points raised by him and to give defence in person. The disciplinary authority informed the applicant by letter dated 17.12.1992 that his prayer dated 15.5.1992 for oral hearing has been rejected. Thereafter, the Disciplinary authority sought the advice of Union Public Service Commission vide its letter dated 18.3.1993. The Union Public Service Commission vide its letter dated 13.1.94 advised the Disciplinary authority that ends of justice would be met in this case if penalty of dismissal from service is imposed upon the applicant.

13. Applicant filed O.A.394/94 before this Tribunal. When the matter came for hearing on 4.4.1994, the department submitted its reply alongwith copy of the order dated 7.3.1994 imposing the penalty of dismissal from service upon the applicant.

14. The applicant preferred a Review Petition to the President of India against the order dated 7.3.94 passed by the Disciplinary authority imposing the penalty of dismissal from service upon him. The said review petition was rejected and the penalty of dismissal from service was confirmed upon the applicant vide letter dated 31.8.1995.

15. The learned counsel for the applicant relied on 1990 (2) ATJ 369, Gurubachan Singh Vs. Commandant and Others which lay down the preposition extracted below:-



"10. In addition to the foregoing procedural lapses in conducting the departmental proceedings, we have also to take note of the fact that right from the beginning the petitioners have been protesting against appointment of Respondent No.3 as Enquiry Officer on the grounds of personal prejudice and malafides. In *Bridaban v. The State of U.P.* 1973(1)SLR 111, it has been held by the Allahabad High Court that in a departmental enquiry if the delinquent officer reasonably apprehends that the Enquiry Officer is biased against him the entire enquiry proceedings stand vitiated. Further, in a similar case of *Shri Balwant Rai Mahajan v. Shri V.P. Khosla, Deputy Controller and Ors.* 1979(1)SLR 391, the Himachal Pradesh High Court observed as follows:-

"When the petitioner had been right from the start making a grievance about the appointment of the enquiry officer, it was not fair to turn down his request, nor it was fair on the part of Enquiry Officer to proceed with the enquiry when he had been told explicitly by the petitioner that he did not repose any confidence in him because he was biased and his appointment as an Enquiry Officer was not acceptable. Therefore, if he did not participate in the enquiry, he was justified to stay away and any such enquiry conducted would definitely be vitiated."

16. The learned counsel also relied on 1994 SCC (L&S) 981, *Smt. Indrani Bai Vs. Union of India and others*, particularly to para 5, which is extracted below:-

"5. While issuing notice to the respondents, we had directed the respondents to place before us the entire record. A counter-affidavit has been filed and record also has been placed before us. In fairness, Shri Kailash Yasdev, learned counsel for the Union of India, having gone through the entire record, has placed necessary material before us. As seen from the narration of the facts, that after the direction was issued by the Director General in his letter dated 26.9.1981, the enquiry officer had not recalled the ex parte order dated 14.12.1980 nor did he recall the witnesses already examined on 20.9.1981, 24.9.1981 and 30.9.1981 for cross-examination nor had given him an opportunity to adduce his evidence in rebuttal. On the other hand, it is clear from the letter extracted

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hereinabove that despite the direction issued by the higher authorities, the enquiry officer directed the delinquent to submit written brief, in other words, he proceeded from the stage where he last closed the proceedings. That was not the spirit of the order of the Director General. Thus, it is a clear case of the violation of principles of natural justice. It is seen that right through, the delinquent officer had entertained a doubt about the impartiality of the enquiry to be conducted by the enquiry officer. When he made a representation at the earliest, requesting to change the enquiry officer, the authorities should have acceded to the request and appointed another enquiry officer, other than the one whose objectivity was doubted. Unfortunately, that was not done. Even after the Director General had given an opportunity to the delinquent to participate in the enquiry, the enquiry officer obviously was expected to recall the ex parte order and give the delinquent an opportunity to cross-examine the witnesses already examined and to adduce his evidence in rebuttal. However, the enquiry officer did not adopt the said procedure which would have been just, fair and reasonable."

17. The learned counsel for applicant also relied on the instructions received from time to time in respect of inquiry officers appointment. Rule 14(12) of CCS(CCA) Rules of Swamy's Manual on Disciplinary Proceedings provides as under:-

✓ "(12) Power of Inquiring Authority (Explanation below Rule 23(i)) - The position, as it emerges, is that an inquiring authority is not competent to issue a formal charge-sheet to the charged officer, but is only competent to record its findings on any article of the charge different from the original articles of the charge, if the proceedings of the inquiry establish the same, provided that the findings on such article of charge are recorded by the inquiring authority only if the Government servant has either admitted the facts on which such articles of charges is based or has had a reasonable opportunity of defending himself against such articles of charge."

18. The learned counsel for the applicant further relied on (1990) 12 ATC 108, P. Parmeswaran Nair Vs. Senior Superintendent of Post Offices, Trivendrum and

others decided by Central Administrative Tribunal, Ernakulam Bench which is extracted below:-

"5. The enquiry authority has examined a witness whose name was not furnished in the list of witnesses and also marked a document which was not shown in the list of documents relied on by the presenting officer to establish the charge.

The learned counsel for the applicant argued that this action of the enquiry authority is ultra vires of his powers and for that reason, the enquiry is vitiated. This action has been sought to be justified by the enquiry authority in his report at pages 9 and 10. He has stated as follows:

PW 2, Shri T. Namdev was not included in the list of witnesses and Ext.P.8 was not included in the list of documents given to the DGS by the disciplinary authority. PW 2 was ordered to be examined in this case and Exh.P-8 was allowed to be presented by PW 2 as new evidences by I.A. itself on the authority, vested on it under sub-rule 15 of the rules in the circumstances narrated below. PW 2 appeared before the I.A. in response to the notice issued by the I.A. to Shri Rajaram Sait, Shri Sidhanath, Silver Refinery Works TC.39/785, Aryasehalai, Trivandrum-36, Item 2 of the list of witnesses on behalf of the disciplinary authority. He showed the notice and stated that the notice was delivered to him. He used to get the tapals addressed to Shri R.Rajaram Sait, who was his brother-in-law residing at Ghampur in Maharashtra. PW 2 had affirmed that he knew the case well, he was the complainant who has signed Ext.P-7 and he was the person who has signed Ext.P-3, Ext.P-4, Ext.P-5 and Ext.P-6. He had with him Ext.P-8 wrapper. It was therefore evident that he was the proper person to be examined in this case as the complainant and there has been 'mistake of facts' while issuing the charge-sheet in mentioning Sr.Rajaram Sait as the complainant and in giving the correct address on the VPL as addressed to Sr.Raja Ram Sai etc. whereas it was really addressed to M/s.Rajaram Sait as seen from Ext.P-8. There was therefore sufficient reason to examine PW 2 as a witness in the interest of justice and it was felt justified in using the powers vested on the I.A. under sub-rule (15) of the rules to call and examine the new pieces of evidence.

Sub-rule (15) of Rule 14 gives discretion to the enquiry authority to allow the presenting officer to produce evidence not included in the list given to the government servant or to call for new evidence or to recall and re-examine any

witness but Note to this sub-rule reads as follows:

Note.-New evidence shall not be permitted or called for or any witness shall not to be recalled to fill up any gap in the evidence, such evidence may be called for only when there is an inherent lacunae or defect in the evidence which has been produced originally.

In this case one Rajaram Sait, Sree Sidhanath, Silver Refinery Works, TC.36/785, Chalai, Trivandrum-36 was cited as a witness on the side of the disciplinary authority. The charges were framed after a preliminary enquiry. On receipt of the notice, one Shri T.Namdev appeared and claimed that he was the person who used to receive letters addressed to R. Rajaram Sait, who was his brother-in-law and that he was conversant with the facts of the case. The Enquiry Officer presumably at the request of the presenting officer dispensed with the examination of Rajaram Sait and instead examined T. Namdev whose name was not there in the list of witnesses as PW 2. On document exhibited as Exh.P-8 was also proved through this witness. To justify this action, the enquiry authority has stated in his report that the proper person who should be allowed to give evidence in this case was Mr.Namdev, the PW 2 and that there has been mistake of fact while issuing the charge-sheet in mentioning Mr.Rajaram Sait, as the complainant and in giving the correct address on the VPL as addressed to Mr.Rajaram Sait etc. This ground to justify the examination of PW 2 instead of Mr.Rajaram Sait appears to be made out by the enquiry authority on the basis of what Mr.T. Namdev told him. But the examination of Mr.T. Namdev as a witness is intended to fill up a gap in the evidence which is prohibited by Note to sub-rule (15) of Rule 14. Further, such evidence as mentioned in sub-rule (15) of Rule 14 can be allowed to be adduced only when it is found out that there was inherent lacunae or defect in the evidence, a new witness probably could have been examined. Therefore, the argument of the learned counsel for the applicant that the action of the enquiry authority in permitting examination of witness whose name was not there in the list of witnesses supplied to him is in violation of principles of natural justice and against the provisions, contained in sub-rule (15) of Rule 14 is correct. Therefore, in this regard also the enquiry is vitiated.

19. The learned counsel for applicant relied on (1990)14 ATC 99, V.D. Joseph Vs. Union of India and

others which lays down the preposition that the effect of denial of opportunity for cross-examination of witnesses amounted to denial of reasonable opportunity to defend and is violation of principles of natural justice.

20. The learned counsel also argued, on the basis of instructions issued by the Government of India which inter-alia provides that whenever an application is moved by the Government servant against whom disciplinary proceedings are initiated against the inquiry officer on the grounds of bias, the proceedings should be stayed and the application referred alongwith the relevant material to the appropriate reviewing authority for considering the application and passing appropriate orders thereon.

21. A perusal of the pleadings makes it clear that the applicant has engaged the defence assistant Shri U.C. Vidyarthi whose services could not be availed by the applicant on account of the fact that he was not present when the evidence of the witnesses were recorded. We have to examine this question in the light of the fact that when the applicant informed the inquiry officer regarding engagement of Shri U.C. Vidyarthi and in his absence, the inquiry officer failed to take any steps to secure the attendance of the defence assistant. It is the duty of the inquiry officer, in such a case, to intimate the controlling authority of the defence assistant to make available the services of the said

person on the date fixed for departmental inquiry. The inquiry officer failed to provide such assistance to the charged officer even when the applicant sought an adjournment. There was no option for the inquiry officer except to adjourn the case. Failure to adjourn the case certainly amounts to denial of an opportunity of being heard which violates the principles of natural justice.

22. Learned Counsel for applicant relied on AIR 1972 Supreme Court 2178, C.L. Subramaniam Vs. The Collector of Customs, Cochin, which lays down the preposition that in appropriate cases the charged official should be allowed to be defended by a legal practitioner.

23. The learned counsel for the applicant relied on 1991 SC Cases (L&S) 483, J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and Others wherein the preposition is that Rule vesting discretion on inquiry authority - discretion should be exercised where delinquent, a non-legal person, is pitted against the presenting officer being a person of legal mind and experience in such case refusal of service of a lawyer to the delinquent amounts to denial of natural justice. Any person assisting or advising on facts and in law must be deemed to be a legal advisor or lawyer.

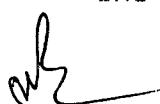
24. The learned counsel for the applicant relied on (1999) SC Cases(L&S) 847, Cipla Ltd. and others Vs.

Ripu Daman Bhanot and another, which lays down the preposition that rules relating to enquiry provide that the charged employee be permitted to be defended a co-representative of his choice.

25. The learned counsel for the respondents relied on 2000 (2) SCSLJ, U.P.S.R.T.C. and others Vs. Ram Chandra Yadav which lays down the preposition that the witnesses who were not to be scheduled for examination on a particular date - names of such witnesses already given to the delinquent is not violative of principles of natural justice. In our considered view, the said authority does not assist the respondents for the reason that the names of the witnesses concerned were not given to the applicant for any date of examination.

26. On the other hand, the learned counsel for the applicant relied on 2001 LLJ 1589, Deekinandan Sharma Vs. Union of India and Others, which lays down the preposition that failure of the appellate authority to record the reason and consider submissions of the charged officer is held to be not sustainable.

27. To sum up, for the detailed discussions/ observations made by us in various paragraphs above and having regard to the judgements of the Apex Court as well as this Tribunal relied upon by the applicant cited supra, we find the following irregularities committed by the respondents in following the prescribed procedure in



conducting the enquiry and passing the penalty order/rejection order in pursuance thereof:

(i) The applicant was denied the services of an advocate to defend his case when the presenting officer appointed by respondents was himself a law graduate;

(ii) The Inquiry Officer disallowed material defence witnesses to be cross examined by the applicant;

(iii) Relied upon listed documents were not supplied to the applicant during the course of inquiry when the same were requisitioned by the applicant and the same ought to have been supplied to him;

(iv) The applicant was denied the services of defence assistant and the Inquiry Officer did not care to adjourn the inquiry till the defence assistant was provided to the applicant but he proceeded with ex-parte enquiry;

(v) Applicant made a request for change of Inquiry Officer on the ground of bias but that was not allowed;

(vi) Applicant's appeal requesting for an oral hearing was rejected without assigning any reason;

(vii) Applicant was denied the opportunity of cross-examination of witnesses which amounts to denial of reasonable opportunity to defend his case, thus violating the principles of natural justice.

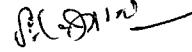
28. In view of the above position, we have no hesitation to hold that the applicant has been denied the opportunity of hearing ^{and} by not supplying the relied upon documents ^{and} he has also been denied the opportunity of preparing his defence effectively. The entire inquiry

proceedings are vitiated and thus the principles of natural justice have been violated.

29. Therefore, for the reasons recorded above, the present OA is allowed and the impugned orders dated 7.3.1994 and 31.8.1995 are quashed and set aside. The applicant shall be reinstated in service immediately. He shall be entitled to all consequential benefits in accordance with law, rules and instructions on the subject.

There shall be no order as to costs.


(M.P. Singh)
Member(A)


(S.L. Jain)
Member(J)

H.


d. BIC(2)
Order/Judgement despatched
to Applicant, respondent(s)
on 24/6/92