

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 706/95

Date of Decision :

22-6-2003

V.L.Jadhav

Applicant

Shri G.S.Walia

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 ? ☐
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? ☐
- (iii) Library ☒

  
(S.G.DESHMUKH)  
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

O.A.No.706/1995

Dated this, *Tuesday* the *22<sup>nd</sup>* day of June, 2004.

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

Shri V.L.Jadhav,  
(ex-SO/SD, BARC, Bombay)  
residing at:

73/2461, Nehru Nagar

Kurla (East), Bombay 400 024.

(Applicant by Shri ~~M.G. Ramamurthy~~, Advocate) *WV* .... Applicant

*G.S. Walia*

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  
Shah Jehan Road,  
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 of dismissal passed by the President of India by order dated 31.5.1993 and for directing the respondents to reinstate the applicants in service with full backwages and all consequential benefits.

2. The applicant was originally appointed as Supervisor in the Civil Engineering Division of the Bhabha Atomic Research Centre (BARC in short) in or about 1965. He was working as a Scientific Officer/Engineer (SD) in the year 1987 under Shri K.N. Sabhnani, Scientific Officer/Engineer Grade S/E who in turn worked under Shri M.G. Wagh, Scientific Officer/Engineer Grade

S/G. One M.N. Kasbekar became the Head of Civil Engineering Division with powers of Chief Engineer in or about February 1987. In April 1987 one anonymous letter was received by Director of B.A.R.C. mentioning several irregularities committed in the works executed earlier. It is the contention of the applicant that Shri M.N. Kasbekar directed him to put up a letter of voluntary retirement otherwise he will take serious action against him. The applicant was not inclined to submit retirement application. As he was harassed, he submitted his request for voluntary retirement by letter dated 10.6.1987. In stead of accepting the voluntary retirement of the applicant he was placed under suspension by order dated 24th/26.6.1987. Later on the applicant was charge-sheeted vide Memorandum dated 3.8.1988. The charges were (1) that the applicant 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. Sabnani, Scientific Officer/Engineer grade (SE) and B.G. Mistry, Contractor, cheated the Government in that the applicant recorded in the measurement books the false measurements; false dates of commencement and dates of completion of works and prepared abstracts of the said false measurements of the said false work and prepared first and final bills on the basis of the said abstracts in respect of 13 works listed therein resulting in payment of Rs.2,34,167.45 being the net amounts of the first and final bills of the said 13 works and subsequent refund of security deposits amounting to R.14457/to the said Mistry, Contractor for the works which were not actually carried out by him and which were not at all in existence at all (2) The applicant during the period 1986-87 in connivance with S/Shri Wagh, Scientific Officer, SG and B.G. Mistry, Contractor cheated the Govt. in that the applicant while preparing the first and final bills for the two works mentioned

thereunder recorded false measurements of the said works in the measurement books indicating that the said Mistry carried out the two works to the total quantity of 167 Nos. Godrej make mortise locks, (b) prepared extracts of the said false measurements and Memo of payment resulting in payment of Rs.34,114/- for providing and fixing 167 locks as against 64 locks which Mistry fixe out of which Mistry procured 20 locks and balance 44 locks were supplied to him departmentally free of charge and he was thus entitled to payment towards providing and fixing 20 locks and labour charges for fixing 44 locks.

3. It is the contention of the applicant that neither the works are fictitious nor the measurement abstracts thereof are false nor the payment thereof are related to false and fictitious works. By two orders dated 18.11.1988 Shri R.S. Goel, Commissioner for Departmental Enquiries, Central Vigilance Commission, New Delhi was appointed as Inquiry Officer and Shri Janwadkhar, SO/SF, Civil Engineering Division, BARC was appointed ad the Presenting Officer. It is the contention of the applicant that he had requested for permitting him to take assistance of legal practitioner to present his case before the Inquiry Officer but the Inquiry Officer did not permit the applicant to engage a layer to present his case. The applicant appointed one V.G. Mhadeshwar, retired Head Clerk, Central Railway as his Defence Assistant. It is further contended that the applicant had submitted a list containing 111 documents in support of his defence case. The Inquiry Officer allowed the document at Sr.110 which was daily progress register and rejected the request in support of the remaining stating that those were not related to

the Article of Charge. It is also contended that even the solitary document was given inspection nor photo copy supplied to him.

4. The applicant made a representation on 30.5.1990 requesting to change the Inquiry Officer on the ground of bias. The disciplinary authority informed the applicant by letter dated 23.8.1990 that they did not find any objectionable act on the part of the Inquiring authority which warrants change of the incumbent. It is contended that the Inquiry Officer fixed the dates of hearing on 18.2.1991 to 21.2.1991 No orders of common proceedings were obtained as required under the rules. After completion of enquiry, the Presenting Officer submitted his written brief on 28.2.1991 and the applicant submitted his defence brief on 20.3.1991. The Inquiry Officer furnished the copy of the report of Inquiry dated 23.5.1991 holding articles of Charge as proved to the applicant for his representation by letter dated 22.11.1991. The applicant submitted his representation dated 13.1.1992, the President of India, passed the order dated 31.5.1993 imposing the penalty of dismissal from service with immediate effect, the order was received by the applicant on 5.6.1993. The copy of UPSC's advice was furnished with the order in question. It is also contended that the applicant filed a revision petition dated 30.8.1993 but no decision has so far been communicated to him.

5. The applicant contended that the Inquiry Officer was not impartial and he acted as a prosecutor. He was biased on many incidents. He sent a telegraphic intimation to the Head of Personnel Division, BARC for preliminary hearing at Delhi on 20.12.1988. The applicant was intimated late and could not

attend. It is also contended that on 26.12.11988 he along with other charged officers attended the place of enquiry at Khadi & Village Industries Office at Vile Parle. Neither the Inquiry Officer nor the Presenting Officer were available at the place. The Enquiry Officer recorded the order sheet saying that applicant did not turn up for the enquiry. It is also contended that he had filed application for calling 111 documents which were relevant for the enquiry. But the enquiry officer had rejected all the document except one and rudely remarked in the Daily Order sheet. It is also contended that several questions asked by him during the cross examination of witnesses were disallowed by the I.O. It is contended that no documents whatsoever were produced during the enquiry even though the Enquiry Officer in his report mentioned that the registers concerning the three sites were shown to the C.O. It was contended that the department has not produced any documentary evidence to show there was any connivance with the Contractor, Mistry. The contractor was not called as a witness in support of the charge. The witnesses viz. Chellappa, K.S. Chavan, B.K. Apte and C.S. Rao who were included in the list of witnesses were not produced during the enquiry. The report of the investigating team was also not listed documents and were not part of the record.

6. It is also contended that there was no charge as regards the method recording the measurements. In spite of this the Enquiry Officer chose to comment on it stating that it was not in accordance with the printed instructions in the measurement book. It is also contended that these measurements which underwent pre-audit and post audit were not adversely commented upon by the Audit Department. The opinion of the person who inspected the

work after several months is treated as evidence by the Inquiry Officer. The site records were not produced during the enquiry. The enquiry officer did not consider the contradictions in the deposition of the witnesses. The Inquiry Officer placed reliance of witness K.G.R. Nair who was a Supervisor (Cosmetic Maintenance) and not in charge of entire upkeep of the hostel as stated by the Inquiry Officer. The Inquiry Officer relied on the deposition of Shri S.V. Thakkar who was not in charge of the maintenance of the training school hostel and who deposed that no personal knowledge of any of the works and its execution. They also contended that statements of the witnesses were recorded by bringing pressure by Shri Kasbekar. Also contended that only evidence that which could have been proved the existence of completion of work in question that is the site register were stated to be not discovered. It was not brought on record. UPSC and Disciplinary authority considered the Enquiry Report without giving a copy of the same to the applicant. The UPSC irregularly and unauthorisedly considered a file containing 190 pages and 52 pages of noting while arriving at its recommendations. The documents were not part of the records and proceedings of the enquiry. It is the contention of the applicant the entire case was cooked up by vested interest for personal career development. It is contended that the order of review dated 22.11.1996 was furnished to the applicant on 11.2.1997 which duly confirmed original order dated 31.5.1993. The order in review had not dealt with the points raised in the review petition. The order neither highlights the evidence based on which the said order in revision was passed nor does it list the nature of documentary evidence on which the order in original was passed. The applicant also prays for the setting aside and quashing of the order in review.

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7. The respondents filed their counter affidavit and contended that in the year 1987 certain irregularities committed by few engineers of the Civil Engineering Division of B.A.R.C. came to the notice of the Department. The applicant was one among the persons involved in committing those irregularities who were placed under suspension as there existed a prima facie case and disciplinary action was contemplated. The respondents denied that applicant was compelled to take voluntary retirement instead had submitted the voluntary retirement letter on his own on account of self and mother's sickness. The application for voluntary retirement was not accepted by the Department and disciplinary action was contemplated against the applicant. The applicant had recorded in the measurement books false Measurements, recorded false dates of commencement and completion of fictitious works and prepared abstracts of the false measurements and prepared first and final bills on the basis of such abstracts so as to benefit the contractor. The applicant is trying to fix the responsibilities on his superiors and other authorities who made the contracts to the contractors. The payments were made based on the measurements and abstracts recorded by the applicant which were false and fictitious with the connivance and collusion of other co-accused.

8. It is also contended that the Presenting Officer was not a legal practitioner nor the facts and circumstances of the case warranted the engagement of a Legal Practitioner as Defence Assistant and hence the applicant was not permitted to engage a Legal Practitioner as his Defence Assistant. The Inquiry Officer after considering the relevancy of the documents for the charges in the enquiry decided the application filed by the applicant.



It is for the Inquiry Officer to decide the relevant of the same. The Inquiry Officer has pointed out his view of the matter in view of the applicant's continued insistence for additional documents which were considered irrelevant to the charges. He cannot be said to be biased. This fact of change of I.O. was considered by the Disciplinary Authority and as the Disciplinary Authority did not find any objectionable acts on the part of the Inquiry Authority warranting a change. The points brought out by the applicant were carefully considered by the Disciplinary Authority while deciding the representation of the applicant.

9. It is also contended that the enquiry held was not common, but only wherever simultaneous proceedings were feasible, the same was resorted to. The charges against the applicant were similar in nature to that of the other three delinquent officers and wherever common issues involved in the cases were to be analysed, a simultaneous inquiry was held. This cannot be equated to common proceedings as alleged by the applicant. It is also contended that copy of the UPSC advice was provided to the applicant along with the penalty order in accordance with the extant Rules. The intimation regarding the hearing was telegraphically sent through the Department. The applicant cannot take the plea that his failure to attend the preliminary hearing has vitiated the inquiry proceedings. He was however, given another opportunity to appear for the next preliminary hearing fixed at Mumbai, information regarding which was given well in advance. The respondents denied that neither the Inquiry Officer nor the Presenting Officer was present at the Khadi and Village Industries Office at Vile Parle, Mumbai during the course of inquiry. It is also contended that the method adopted by

various other Engineers was not the issue in the present case. The Inquiry Officer had to inquire into the charges levelled against the applicant. The I.O. had analysed the methods adopted by the applicant. The case has been analysed in detail based on the circumstantial evidence. The applicant could have asked the I.O. to call for the Security Register maintained in the said hostel and examine the same to his satisfaction. The UPSC's observation in this regard is not based on the Security Register as presumed by the applicant. The documentary and other evidence on record were adequate enough to prove this fact and as such it was not required that the contractor should have been proceeded against. The Presenting Officer has dropped the remaining prosecution witnesses and closed the prosecution case. This would not have caused serious prejudice to the applicants. UPSC's observation was not solely based on the depositions of the witnesses. The Commission's finding with regard to Article-I of the charges was based on evidence taken on record and all other relevant aspects of the case. The UPSC's advice is based on the report of the investigating team is baseless as their advice is not based on the investigation report along, but ~~on~~ evidence led in the inquiry. It is also contended that the inspection report was not a listed document and hence was not made available to the applicant. The inspection of the site was done at the primary stage of investigation so as to establish as to whether a prima facie case existed nonproduction of this report did not in any way hamper the cross examination of the witness.

10. It is also contended that the Accounts Division does not on its own check the method by which measurements are recorded or the actual measurements of the works before releasing payments.

The payments are made based on the abstracts and final bill prepared and authorised for payment. The applicant recorded in the measurement books false measurements, recorded false date of commencement and completion of works, prepared abstracts of the said false measurement and prepared first and final bills. It is contended that the evidence of the witnesses shows that contractor Mistry has not carried out the work for which he was paid. The Inquiry Report is based on evidence on record which proved the charges against the applicant. The disciplinary authority arrived at its conclusion based on the records of the case. It is contended that the procedure provided in the rules have been followed in the case and the applicant was given adequate opportunity to defend the case. The advice of the UPSC which is an advisory body under the statutory provisions has been sought as a requirement of consultation with them in disciplinary cases as laid down in Article 320 (3) (e) of the Constitution r/w Regulation 5 (1) (9) of the UPSC (Exemption from consultation) Regulations 1958. The President after taking into consideration the facts of the case and Inquiry Report and advice tendered by UPSC and all other relevant records. arrived at the conclusion and passed the order.

11. The learned counsel for the applicant Shri G.S. Walia submitted that the applicant ought to have been permitted to engage a Legal Practitioner to defend his case. The learned counsel submitted that the Inquiry Officer was not appointed to conduct the joint enquiry. The Inquiry is jointly held against the applicant and some other charged officers in the absence of any order. According to him the I.O. acted without jurisdiction and prejudice is caused to the applicant. The learned counsel relied on the case of *Shri Ashok Y. Naik vs. the Administrator of Goa, Daman and Diu and ors.* 1978 (2) SLR 675. He also relied

on the judgements in O.A. No.840/98 dated 20.1.2004 of this Tribunal in the case of N.K. Gupta vs. UOI and Ors. and UOI and Ors vs. Harish Chandra Goswami 1999 4 SCC 575, J.N. Ganatra vs. Morvi Municipality 1996 (9) SCC 495. He submitted that the power under statute is to be exercised in accordance with the provisions of the statute and in no other manner. The learned counsel also submitted that by ~~estoppel~~ estoppel cannot be used against or in favour of the Administration so as to give defacto validity of ultra vires administrative act. He relied on the judgement of C. Krishnankutty vs. UOI 2001 (3) ATJ 447 . He also submitted that the copy of the advice of UPSC was not given to the applicant before passing the impugned order of dismissal which resulted in violation of principles of natural justice. According to him the non supply of CVC report is violative of procedural safeguards and contrary to fair and just enquiry.

12. He relied on the judgement of State of Bank of India vs. D.C. Aggarwal AIR1993 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 a decision against him relying on it is a violation of principles of natural justice. The learned counsel also submitted that the Inquiry Officer did not examine the material witnesses cited in the charge-sheet which caused prejudice to the applicant. He also mentioned that Inquiry Officer was biased and the inquiry vitiates on that count also. He also submitted that the Inquiry is vitiated due to non supply of vital and essential material documents to the applicant. The learned counsel submitted that a refusal to allow the petitioner and inspection of relevant

documents for preparing the defence vitiates the inquiry. He relied on *Surat Singh and Ors. vs. S.R. Bakshi and Ors. AIR 1971 Delhi 133*. The learned counsel submitted that the Inquiry Officer marked the documents without examining the author, mere production of the documents should not have been accepted. The learned counsel relied on the judgement of *P.S. Gopal Pillai vs. UOI and two Ors. 1993 (1) AISLJ 171* and *V.S. Jospeh vs. UOI 1990 (14) ATC 99*. According to him the I.O. considered the evidence which was not recorded during the enquiry proceedings. The learned counsel submitted that the statements of witnesses recorded during the preliminary enquiry could not be read in evidence. The learned counsel relied on *S.D. Bhardwaj vs. UOI 1982 (2) AISLJ 515*. The learned counsel submitted that the statements of the witnesses are required to be supplied to the delinquent for effective cross-examination. The learned counsel relied on *State of Punjab vs. Bhagat Ram 1975 SCC (L&S) ;18*. The learned counsel submitted that the order sheet are not properly maintained by the Inquiry Officer and thus it is difficult to know the various states in the inquiry followed or not. The learned counsel relied on *Anil Kumar Das vs. S.S. of Post Office, AIR 1969 ASSAM AND NAGALAND 99*. He submitted that the report of the I.O. is perverse as the evidence against the applicant is not sufficient to sustain the charges. According to him it is a case of no evidence. The learned counsel submitted that mere suspicion cannot take place on inquiry. He relied on *UOI vs. HC. Goel AIR 1964 SC 364*. He also relied on *Sawai Singh vs. State of Rajasthan 1986 SCC (L&S)*

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13. 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. Nagamalleswar 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.

14. 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) *Rajmihal 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*.

15. 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 *Chiranjil 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.

16. 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 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.



17. 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.

18. 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.

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 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 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.

*mw* 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.

19. 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 inter alia 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 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 assistance 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.

20. 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's 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 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.

21. 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:

"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 has 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

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disciplinary authority or it may differ with it. If UPSC concurs with the 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 for, or when the UPSC recommends enhancement of the penalty proposed by the disciplinary authority, the situation becomes different as then the difference 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 a 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 the 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 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."

22. In D.C. Aggarwal's case (supra), out of 13 charges framed against the respondents the Inquiry Officer found Charges I(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 flaw that will vitiate the entire proceedings.



23. The contention of the learned counsel for the applicant that the Inquiry Officer has not tackled the arguments put forth 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.

24. 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 1 out of 111 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.

25. Let us consider whether it is a case of no evidence. 16 Prosecution Witnesses have been examined in the case. The charged officer did not examine any defence witness neither he himself got examined as witnesses. It is apparent from the evidence before the I.O. that the work orders are based on the estimate prepared by Shri Sabhnani Executive Engineer accompanied by relevant estimates in respect of each work approved and sanctioned by Shri Wagh as Engineer in Charge. The applicant recorded the measurements of the works in measurement books abstract of measurement as well as memo of payment of first and final bills were prepared by the applicant. The evidence of team members who visited the site and on physical verification noticed that the works had not been done by the

contractor Shri Mistry is on record. The evidence of Nair , Thakkar, Katu, Ashnani and others is on record. They have given the statement to the effect that the payments have been made to the contractor for the work which have not been carried out by the Contractor Mistry. The role of the applicant is recording false measurements in measure books, false date of commencement and completion, preparation of abstract etc. for the work which was not carried out. The evidence brought before the I.O. goes to show that work orders awarded to the contractor Mistry on the basis of tenders had actually been not carried out by the contractor Mistry. The contractor Mistry was paid for the work which was though not done by him nor the site in existence on the approval of Shri Wagh. It is also apparent that the when the documents were brought on record, the applicant had not raised any objection. It is also apparent from the record that the statement recorded during the preliminary enquiry of the witnesses were taken in evidence on their acceptance by witnesses there is a confirmation by them. The I.O. took those in evidence.

26. It is tried to contend that the contractor Mistry is not examined and even the parties who were said to have done the said work have not been examined. It is for the presenting officer to decide who are to be examined when the evidence brought on record on the P.O. was sufficient to prove that no work on the basis of tenders was actually been carried out. It is not necessary for the Presenting Officer to examine other witnesses named in the chargesheet. By examining those witnesses, charged officer could have established his case and shattered the evidence brought by the prosecution. He could have examined those witnesses in his defence. It is also evident from the perusal of the documents

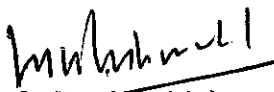
pertaining to the inquiry that that I.O. has maintained the order sheets properly disclosing the various stages of proceedings.


27. 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.

28. 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 put forth by the applicant and came to the conclusion in a reasonable manner and held that charges 1 and 2 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.

29. 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.

30. 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\*

to Applicant (s)  
on \_\_\_\_\_

Order/Judgement despatched  
to Applicant Respondent (s)  
on 22/6/04