

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL,
HYDERABAD BENCH: HYDERABAD

C.A. NO. 1444/96 CF

DATE OF DECISION: 2-4-97

K. INBASAGARAN

PETITIONER(S)

V. VENKATESWARA RAO

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Secretary, Dept. of Personnel, New Delhi
& another

RESPONDENT(S)

N.R. DEVARAJ

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE SRI R. RANGARAJAN, MEMBER (A)

THE HON'BLE SRI B.S. JAI PARAMESHWAR, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the judgment? ys
2. To be referred to the Reporter or not? ys
3. Whether their Lordships wish to see the fair copy of the judgement? —
4. Whether the judgement ~~xxx~~ is to be circulated to the other Benches? —

JUDGEMENT DELIVERED BY HON'BLE SRI R. RANGARAJAN, MEMBER (A)

for
HBSUP
M(J)

one
HRRN
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL-APPLICATION-NO.1444-OF-1996

DATE-OF-ORDER: 2-4-97

BETWEEN:

K.INBASAGARAN

.. APPLICANT

AND

1. Govt. of India, represented by
Department of Personnel,
Ministry of Home Affairs,
represented by the Secretary,
Home Affairs, North Block,
New Delhi,
2. Government of Tamil Nadu,
Through the Chief Secretary,
Fort St. George,
Chennai 600 009.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: ^{Mr} V.VENKATESWARA RAO

COUNSEL FOR THE RESPONDENTS: Mr.N.R.DEVARAJ, Sr.CGSC
Mr.C.P.Sarathy for R-2 (Senior Counsel).

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

ORDER

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.Manohar, assisted by Mr.V.Venkateswara Rao, learned counsel for the applicant and Mr.C.P.Sarathy, assisted by Smt. C.Jayasree Sarathy for R-2.

2. This OA was earlier filed on the file of the Principal Bench of this Tribunal which was registered as OA 2320/96 on the file of the Principal Bench. It was

R

D

transferred to this Tribunal pursuant to the order dated 29.11.96 passed by the Hon'ble Chairman. This OA on transfer to this Bench was renumbered as OA 1444/96 dated 12.12.96.

3. The facts of this case, which are not in dispute, are as follows:-

The applicant earlier was working as Secretary, Health and Family Welfare Department of Government of Tamil Nadu. He was issued with a charge sheet under All India Services (Discipline & Appeal) Rules, 1969 (hereinafter called ^{the} Rule 1969) by letter No.5282/93-12 dated 22.2.94 (Annexure A-1 at Page 30-A of the OA). That letter was amended by the letter No.5282/93-20 dated 9.11.94 (Annexure A1 at Page 80 of the OA). A statement of imputations of misconduct in support of the charges with a list of documents and witnesses were furnished ^{along with} the said letters. There are five charges in the memo issued on 22.2.94. Charge No.1 was further amended by the memo dated 9.11.94. The charges read as follows:-

"Charge I:

That you, Thiru K.Inbasagaran, IAS, during the check period 1-4-1978 to 14-9-1993, are found to have acquired and in possession of pecuniary resources and properties held in your name and in the names of others, which are disproportionate to your known sources of income to the extent of Rs.50,00,186.82, for which you could not account

R

2

satisfactorily, and thereby failed to maintain absolute integrity and conducted yourself in a manner unbecoming of a member of the Service and thereby you contravened rule 3(1) of the All India Services (Conduct) Rules, 1968;

Charge II:

That you, thiru K.Inbasakaran, IAS, failed to maintain absolute integrity and exhibited unbecoming conduct by entertaining at your residence in Anna Nagar, Madras-40, on 13.9.93, with corrupt motive, Tvl. Garish A.Davey of Hemant Surgical Company and Hiran Pharma and Surgicals, Madras, Ashok K.Kotadia of Jayant Pharma Agencies, Madras and S.J.Natarajan of Balaji Agencies, Madras, who were having official dealings with you in their capacities as dealers / suppliers of medicines and drugs to Government Medical Institutions and thereby you contravened rule 3 (1) of the All India Services (Conduct) Rules, 1968.

Charge III:

That you, Thiru K.Inbasakaran, IAS, while submitting your property statements in proforma I to VX for the period ending 31.12.89, failed to furnish a full and complete statment of your properties by omitting to disclose particulars regarding the Savings Bank Accounts maintained by you at (i) Syndicate Bank Extension counter, Madras9; (ii) Canara Bank, Kilpauk Branch and (iii) Punjab National Bank,

R

D

(6)

Purasavalkam. By the aforesaid acts, you failed to maintain devotion to duty and acted in a manner unbecoming of a member of the Service and thereby you contravened rule 16(5) of the All India Services (Conduct) Rules, 1968.

Charge IV:

That you, Thiru K.Inbasakaran, IAS, failed to report to Government the following transactions in movable properties within one month of entering into them:-

(i) Loans of Rs.10,000/- during 1980-81 and Rs.20,000/- during 1985-86 to Thiru G.Thangarajan and their repayment.

(ii) Loan of Rs.5,000/- during 1981-82 to Smt.J.Lalitha and its repayment.

(iii) Loans of Rs.40,000/- during 1982-83 and Rs.40,000/- during 1984-85 to Thiru K.Kannan and their repayment.

(iv) Loan of Rs.10,000/- during 1982-83 to Thiru K.Sanmughakani and its repayment.

(v) Loan of Rs.10,000/- during 1985-86 to Thiru K.Janarthanan and its repayment.

(vi) Financial assistance of Rs.1,08,764/- during 1988-89 and Rs.1,05,338/- during 1989-90 to your wife Smt.Vijaya Inbasakaran.

and thereby you contravened rule 16(4) of the All India Services (Conduct)

R

Rules, 1968.

Charge V:

That you, Thiru K.Inbasakaran, IAS, failed to submit your Annual Property Returns in the prescribed proforma for the years ending 31.12.1991 and 31.12.92. By these acts you failed to maintain devotion to duty and acted in a manner unbecoming of a member of the service and you thereby contravened Rule 16(2) of All India Services (Conduct) Rules, 1968."

4. The charges mainly relate to ^{acquisition of} assets disproportionate to his known sources of income, failed to maintain absolute integrity and exhibited unbecoming conduct, failed to furnish full and complete statement of his property, failed to report to the Government certain transactions of immovable property within one month of entering into such transaction and failure to submit annual property returns in the prescribed proforma for the years ending 31.12.1991 and 31.12.1992. The applicant submitted explanation for the above said charges. An inquiry was conducted into these charges by nominating Shri C. Ramachandran as ^{the} Inquiry Officer. After perusal of the reports of the Inquiry Officer, the Government had decided to drop further action with a warning to the applicant to be more careful in his cash transactions and to be prompt in filing proper return as well as his financial transactions to the appropriate authority under the relevant rules vide memo No.5282/93-27 dated 4.9.1995 (Annexure 2 at page 85 of the OA). The above said memo

dated 4.9.95 reads as below:-

"Sub: All India Services (discipline & Appeal) rules 1969 - Thiru K.Inbasagaran, IAS - Disciplinary action against him while he was Secretary to Government, Health and Family Welfare Department - Further action dropped - Regarding.

Ref: 1. Government letter No.5282/93-12, Public (Special A), dated 22.2.1994.

2. Governemnt letter No.5282/93-20 Public (Special.A) dated 9.11.1994,

3. Your explanation dated 23.3.94,

4. G.O.Ms.No.740, Public (Special.A), dated 18.8.94,

5. From the Inquiring Authority Report dated 9.8.95.

.....

The Government have received the report of the Inquiring Authority fifth cited. They have decided to accept the report of the Inquiring Authority and drop further action. However, the Government have also decided to warn you to be more careful in your cash transactions and to be prompt in filing property returns as well as your financial transactions to the appropriate authority under the relevant rules. You should be strict in observing the rules relating to All India Services (Conduct) Rules in all cases.

Yours faithfully,

Sd/-

for Chief Secretary to Government."

9

5. Thereafter the Government of India, R-1, issued certain instructions through letter D.O. No.129/19/94-AVD-I dated 23.4.96 (Annexure-IV to the reply) in response to the State Government's (R-2) letter No.E2/21-8/96 dated 29.2.96 on the subject of final orders passed in the disciplinary actions initiated against the applicant. It is stated that R-2 under the residuary powers vested in him under Rule 24(1)(d) of the All India Services (Discipline & Appeal) Rules, 1969 issued G.O.Ms.No.836 dated 29.7.96 (Annexure A at page 29 of the OA) whereby the earlier order dated 4.9.95 was cancelled and further it was ordered that the said charges referred to above against the applicant be inquired into afresh by appointing an Inquiring authority for the purpose. By the same order, Shri A.S.Padmanaban was appointed as ^{the} Inquiry Officer to inquire into the charges levelled against the applicant.

6. To understand the case easily, Rule 24(1) is reproduced below:-

"24. Revision: (1) Notwithstanding anything contained in these rules, the Central Government or the State Government concerned as the case may be, may at any time not exceeding 6 months from the date of the order passed in appeal, if an appeal has been preferred, and where no such appeal had been preferred, within one year of the original order which gives the cause of

R

1

action, either on its own motion or otherwise call for the records of any order relating to suspension or any inquiry and revise any order made under these rules or under the rules repealed by rule 30 from which an appeal is allowed. But from which no appeal has been preferred or from which no appeal is allowed, and may:

24(1)(a) confirm, modify or set aside the order; or

24(1)(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed, or

24(1)(c) remit the case to the authority which made the order directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

24(1)(d) pass such orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made unless the member of the service concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of rule 6 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in these clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in rule 8 and except

~

✓

after consultation with the Commission:

Provided further that where the original order was passed by the Central Government or the State Government concerned as the case may be, after consultation with the Commission, it shall not be revised except after consultation with the Commission."

7. The applicant initially filed a O.A. challenging the impugned order dated 26.7.96 on the file of the Principal Bench which was further transferred to this Bench and registered as OA 1444/96 as indicated earlier.

8. The applicant in this OA submits that his wife is also running a small scale industry and that the earning shown as disproportionate to his income is not his income but the income derived by his ~~wife~~ Smt. Vijaya Inbasagaran being a small scale entrepreneur." It is further submitted that the applicant never indulged in any malpractice. He is a very straight forward honest officer. He ~~was~~ never entertained any outsiders on his own. If some one comes to his house for finding out some details, it cannot be said that he entertained them with ulterior motives. Further he has an exemplary service records which enabled him to get deputation to the Central Government and it also gave him a chance for higher studies abroad twice in the early period of 1980 even relaxing the rules in this connection. He had performed exemplary service as Health Secretary and the services rendered by him during the period when he worked as Health Secretary had helped the State Government by way of adequacy of medicines in the hospitals and also ensuring



that the price tag on these medicines were reasonable. He further submits that inspite of his good qualities, efficient working and congenial personality, the charge memo already closed is revised under the revisionary powers by the present Government with malafide intentions. He had no support other than his education and exemplary way of working for promoting his career prospects. The present Government has unnecessarily levelled the charges against him and his image was tarnished by the answers to the questions given on the floor of the assembly by the Minister concerned.

9. The applicant submitted letter dated 12.8.96 for obtaining certain documents to effectively answer the charges levelled against him. Among the documents asked for by the applicant is the Inquiry report of Shri C.Ramachandran, IAS who had inquired the charges levelled against him earlier and also the remarks given by the Vigilance Commissioner, Government of Tamil Nadu on the report. These two documents were held to be non essential for the purpose of replying the memo issued to him on 26.7.96 and hence he was informed that those two documents would not be supplied, by the letter No.CH/INQ/IS/96-I dated 6.9.96 (Annexure 3 at page 86 of the OA).

10. Aggrieved by the above developments he has filed this OA with two main prayers. They are:-

i) To quash the G.O.Ms.No.836 Public (Spl.A) Department dated 26.7.96 (Annexure A at Page 29 of the OA);
and



(ii) [redacted] for direction to the respondents to deliver to the applicant the inquiry report of Shri C.Ramachandran and also the remarks given by the Vigilance Commissioner, Government of Tamil Nadu.

11. A reply has been filed in this OA. The respondents have denied all the allegations made in this OA. They further deny ^{his} the good qualities enumerated by the applicant and the facts brought out by him that he is a very straight forward honest officer and did nothing against the conduct rules. It is further submitted in the reply that the applicant is not such an efficient officer as averred by him and ^{that there were} incidents when displeasure was conveyed to him and other such matters ~~were~~ indicated in the reply. The respondents have brought out certain details in Page 2 at Para 3(1)(a) to 3(1)(d) of the reply to state that the details mentioned in those paras have been ~~not been~~ taken into account in issuing the charge sheet and further submitted that those details had been brought to the notice of this Tribunal to amplify the gravity of the charges and necessity for proper inquiry there for. They further submit that the earlier inquiry by Shri C.Ramachandran was not done properly and that the proper facts were not ~~been~~ appreciated in the inquiry report. On account of the inadequate appreciation of the facts of the case, ~~because~~ the concerned documents and the witnesses, the earlier Inquiry Officer had come to an erroneous conclusion that the proceedings may be closed and on that basis the proceedings initiated in the earlier charge sheet were closed by the order dated 4.9.95 giving

him only a warning to be more careful in future in cash transactions etc. The disposal of the case was brought to the notice of R-1 by the letter dated 29.2.96 including the subject of final orders passed in the disciplinary action initiated against the applicant and the Central Government on receipt of that letter gave certain directions by the letter dated 23.4.96. After perusing the letter and also taking into account, the gravity of the charges levelled against him, R-2 had decided to reopen the proceedings under the revisionary powers vested with him under rule 24(1)(d) of the All India Service (D&A) Rules, 1969. The earlier order dated 4.9.95 was cancelled and a further fresh inquiry was ordered by appointing Shri A.S.Padmanaban. The rules contained under Rule 24(1)(d) of A.I.S.(D&A) Rules, 1969 have been strictly followed by the State Government while ordering fresh inquiry. The respondents also submit that ^{the} two documents requested by him were denied as the previous inquiry report of Shri Ramachandran is not one of the documents relied upon in support of the charges framed against him and it is also not relevant for a proper decision in the inquiry. Further the remarks given by the Vigilance Commissioner, Government of Tamil Nadu on the report is in the nature of an internal communication within the Government and it was considered not relevant for a proper decision and it is also not to be given in the interest of public. The respondents also submit that there was no malafide intention while issuing the impugned revision order as it was done as a matter of routine and as per the directions of the Central Government as referred to above. For all these reasons, R-2 submits that the OA is to be dismissed as having no merits.




12. At the outset a preliminary objection was taken by R-2 by his proceedings dated 30.12.96. The objection was that this OA was transferred to Hyderabad Bench by the Hon'ble Chairman without hearing R-2 and that this Bench has no jurisdiction to hear this case and only the Madras Bench of the Tribunal can hear this case. That objection was repelled in view of the full powers vested with the Chairman under Section 25 of the Administrative Tribunals Act, 1985 to transfer cases from one Bench to another by order dated 29.11.96. Thereafter the case was heard in subsequent hearings. The learned counsel for the applicant did not object to hear this case by this Bench of the Tribunal.

13. The main contention of the applicant in this OA can be summarised as follows:-

(i) The authority to pass the impugned order has no jurisdiction and hence the impugned order is not valid in the eye of law.

(ii) The favourable order issued to him by the letter dated 4.9.95 (Annexure 2 at Page 85 of the OA) was cancelled by the impugned order dated 26.7.96. Such a cancellation without giving an opportunity to the applicant is a violation of the principles of natural justice. Before cancelling the favourable order dated 4.9.95, a show cause notice should have been issued to him and on the basis of reply to be given by the applicant to that show cause notice, the authorities could have cancelled that order.



(iii) The Government has no power to order denovo inquiry; and

(iv) The applicant was warned and it should be treated as Censure as observed in an earlier case by the Tribunal. Hence the applicant had been punished already and hence revival of that inquiry denovo is not called for.

14. The learned counsel for the applicant fairly submitted that he is contesting this case only on two grounds viz, denial of opportunity to explain his (applicant's) case before cancelling the earlier favourable order dated 4.9.95, thereby violating the principles of natural justice and questioning the jurisdiction of R-2 in issuing the impugned G.O.Ms.No.836 dated 26.7.96 under the residuary powers under Rule 24(1)(d) of the All India Services (D&A) Rules, 1969. Even if the issue of the impugned Government order does not prejudice the case of the applicant as no final orders have been passed and only an inquiry has been ordered by that impugned order, it is essential that before cancellation of the earlier favourable orders, an opportunity should be given to the applicant to explain why the earlier favourable orders should not be cancelled, submits the learned counsel for the applicant.

15. For the above two main contentions, the applicant relies on the reported judgment in 1987 SLJ Vol.3 p.639 (P.V.Pavitran v. State of Andhra Pradesh and others).

R

D

16. The contentions as raised by the applicant are examined as below:-


Before we go into these contentions, facts of Pavitran's case cited supra needs to be explained briefly. In that case, Shri Pavitran was issued, with the charge sheet and an inquiry was conducted. The Government of A.P. thereafter issued order in G.O.No.4572 G.A.(S.C.C.) dated 5.9.84 stating that it has considered the enquiry report of Sri V.K.Rao and taking into consideration the totality of the circumstances and the findings of the enquiry authority, have decided to drop further action and directed reinstatement of the applicant (Sri Pavitran). Soon after issue of this order, there was a change of Government and a new Ministry headed by Sri N.T.Rama Rao, assumed office. The Government, thereafter, issued G.O.Rt.No.2930 G.A. (S.C.C.) Department, dated 5th July, 1985 summarising the finding of the Enquiry Officer wherein components (3) and (4) of the charge were held proved and stated that the dropping further action and reinstatement of the applicant by the then Government in G.O. 4572, dt.5.9.1984 was an order passed without giving proper consideration to the report of the enquiry officer and the evidence on record, that the Government on a review of the case under rule 24 of the All India Services (Discipline & Appeal) Rules, 1969 held that the conclusion and decision of the previous Government that the charges were not proved and consequently the decision to drop further action was arrived at without proper assessment and consideration of the case. The Government order G.O.2930, dated 5.7.1985

went on to state that the previous G.O. 4572, dated 5.9.74 was cancelled to the extent of dropping further action against the applicant, that the applicant deserves the penalty of compulsory retirement from service and called upon him to show cause within 15 days from the date of receipt of the order, why the proposed penalty of compulsory retirement from service should not be imposed upon him.

17. It was argued on behalf of State of A.P. that the above said impugned order was a composite one in that the earlier order was cancelled and a show cause notice was issued for the proposed penalty of compulsory retirement. It was further explained by the State Government that the issue of the above order is in accordance with the revisionary powers vested with them under Rule 24 of the All India Services (D&A) Rules and thus there is nothing wrong to resort to that rule.

18. The impugned order was challenged in the Pavithran's case mainly on two grounds viz, that before cancelling the favourable order of closure of the enquiry and reinstatement of the applicant therein, a show cause notice should have been issued. Without hearing him, the favourable order issued cannot be cancelled as it is a violation of the principles of natural justice. Further it was also contended in that OA that the State Government has no jurisdiction to issue the revision order.

19. The challenge in the present OA is also on the same lines. Hence the learned counsel for the applicant



relied very heavily on that judgment to say that as the said OA was allowed for reasons stated in that judgement and for the same reasons this OA also should be allowed.

20. Before we go further into analysis of this case, we think it proper to bring on record the order challenged viz, G.O.Ms.No.836 dated 26.7.96 for the purpose of better appreciation of this case. This G.O.Ms. is reproduced below:-

Government of Tamil Nadu

ABSTRACT

IAS - Thiru K.Inbasagaran, IAS, formerly Secretary, Health and Family Welfare Department - disciplinary proceedings under All India Services (Discipline & Appeal) Rules, 1969 - Further action dropped - Revision under Rule 24 ibid - Appointment of Inquiring Authority and presenting Officer under relevant rules - Ordered.

PUBLIC (SPECIAL.A) DEPARTMENT

G.O.Ms.No.836

Dated: 26th July, 1996

Thadhu, Aadi-11,
Thiruvalluvar Aandu-2027

Read:

1. Government letter No.5282/93-12, Public
(Special.A) dated 22.2.94,
2. G.O.Ms.No.740, Public (Special.A), dated
18.8.94,
3. Government letter No.5282/93-27, Public
(Special.A) dated 4.9.95.



ORDER:


WHEREAS the charges framed against Thiru K.Inbasakaran, IAS, formerly Secretary, Health and Family Welfare Department in the Government letter first read above were grave in nature;

AND WHEREAS, there are prima facie serious lapses in the report of the Inquiring Authority appointed in the Government Order read above to inquire into the said charges and whereas the recommendations by him are not based on the evidence and facts brought out during the inquiry by the records and by the Presenting Officer;

AND WHEREAS the Government consider it necessary to cancel the order third read above by way of revision under Rule 24 of the All India Services (Discipline & Appeal) Rules, 1969;

NOW THEREFORE In pursuance of Rule 24(1)(d) of the said Rules, the Government of Tamil Nadu cancel the order issued in the Government letter third read above and direct that the said charges against Thiru K.Inbasakaran, IAS, be enquired into afresh by appointing an Inquiring Authority for the purpose.

2. AND also, in exercise of the powers conferred by sub-rule (2) of Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969, the Government of Tamil Nadu hereby appoint Thiru A.S.Padmanaban, IAS, now Chairman, State Industries Promotion Corporation of Tamil Nadu Limited, as the Inquiring Authority to inquire into the said charges framed in the Government letter first read above as provided in the said rules.



3. And, further, in exercise of the powers conferred by clause (c) of sub-rule (6) of rule 8 of said rules, the Government of Tamil Nadu hereby appoint Thiru K.E.Venkataraman, Legal Advisor, Office of the Director of Vigilance and Anti Corruption as the Presenting Officer to present on behalf of the disciplinary authority, the case in support of the articles of the charges framed against Thiru K.Inbasakaran, IAS, before the Inquiring Authority.


(By order of the Govt.)

Sd/-

Chief Secretary to the Government."

21. The first contention is that the principles of natural justice are violated in view of the fact that the earlier favourable orders dated 4.9.95 were cancelled without a show cause notice which is irregular. Even presuming that the present impugned order may not cause any prejudice to the applicant, cancellation of the earlier order may not be done without adhering to the principles of natural justice in that cancellation can be effected only after the applicant is heard.

22. Before we examine this issue in regard to the violation of the principles of natural justice, it is necessary to note the observations of the Supreme Court in regard to the principles of natural justice as observed by their Lordships in AIR 1976 SC 2002 (State of Gujarat v. Ambalal Haiderbhai etc.) and AIR 1973 SC 389 (Kesava Mills Co. v. Union of India and others). In the first judgment of the Supreme Court referred to above, it was observed as follows:-

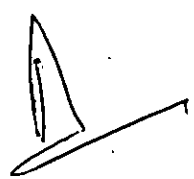


"Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its content should be for a given case must depend to a great extent on the facts and circumstances of that case, the frame work of the law under which the enquiry is held, and the constitution and nature of duties of the Tribunal or the body of persons appointed for that purpose."

The later judgment gives still better appreciation to understand the principles of natural justice. It was held in that judgment as follows:-

"The principles of natural justice do apply to administrative orders or proceedings. The concept of natural justice cannot be put into a straightjacket. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly."

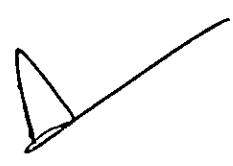
23. Though the above two citations ^{relied on} ~~were~~ ~~relied~~ by the learned counsel for R-2, the learned counsel for the applicant fairly submitted that the general principles as enunciated by the Apex Court as referred to above can be



taken as fair definition to arrive at a decision. With that understanding, this case is further examined in that light.

24. In Pavitran's case, the learned members who heard that case came to the conclusion that the principles of natural justice were violated in that case relying on the observations of the Apex Court reported in AIR 1981 SC 136 (S.L.Kapoor v. Jagmohan and others). A perusal of the Kapoor's case reveals that the New Delhi Municipal Committee was superseded without issuing a show cause notice to its members before superseding the Committee. There was no slightest hint until the order was made under the order of supersession that there was any proposal to supersede the Committee and the Committee never had the opportunity either before or after the order of supersession was passed to offer their explanation against the allegations made in the order of supersession. In that context the Apex Court held as follows:-


"In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It will come from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one



penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal".

From the details of that case, it is evident that the observations made by the Apex Court is against the condemnation of the New Delhi Municipal committee without giving show cause notice before superseding it whereas the facts in the present case and in Pavitran's case are entirely different. The facts in the case of Shri Pavitran are also similar to the present case. Both these cases can be distinguished from the facts of the case of supersession of the New Delhi Municipal Committee which judgment was relied upon to state that the principles of natural justice are violated. Hence we respectfully submit that the observation of the Apex Court which was relied upon (reported in AIR 1981 SC 136) to come to the conclusion that the principles of natural justice are violated in Pavitran's case may not be in order and we respectfully disagree with the view expressed by that Bench in Pavitran's case in this regard. Hence it has to be further examined whether the impugned order dated 26.7.96 was issued following the principles of natural justice in the light of the observation of the Apex Court extracted in para 22 supra.

25. The impugned G.O. has already been extracted above. It has two components viz, (i) earlier order dated 4.9.95 was cancelled and (ii) a fresh inquiry has been




instituted to inquire into the charges levelled against the applicant by appointing Shri Padmanaban as the Inquiry Officer. In Pavitran's case, the earlier favourable order was also cancelled as was done here. But in that case, the impugned order was not to the effect of ordering a fresh inquiry but a show cause notice was issued to inflict punishment of compulsory retirement from service. Thus in Pavitran's case, the challenged order was to the effect of inflicting punishment straightaway without inquiring into the case de novo, whereas in the present case, the applicant has been given an opportunity to explain his case fully including his contention in cancelling the earlier favourable order dated 4.9.95 without notice. Thus the details of the impugned order in the present case can easily be distinguished from the impugned order in Pavitran's case.

26. In Pavitran's case, after cancellation of the earlier favourable order, Shri Pavitran was asked to explain why the punishment of compulsory retirement cannot be inflicted on him. That would mean that Shri Pavitran had to give his explanation for not inflicting that punishment and on that basis the competent authority will take necessary decision in regard to the inflicting of the punishment. Shri Pavitran had no avenue to examine the witnesses and other documents as no inquiry was ordered. Even if he stated that the earlier order favourable to him was to be upheld for the reasons mentioned by him, that would not be an effective argument as no inquiry was held and no witnesses were examined and no fair and sufficient opportunity was given to him to prove his contentions. It

may be possible that the disciplinary authority in that case may come to the conclusion without giving much weightage to his submission against cancelling the earlier favourable order. If there was an inquiry in between the show cause notice and issue of the final order, it would have been the effective channel for him to ventilate his grievance and that would have enabled him to project his case very forcibly and that forcible projection may have had a salutary factor in deciding his case otherwise. In that context, the observations of the Bench in Pavitrans case has to be seen. As there was no inquiry in that case and it was proposed to inflict punishment if found necessary, after receiving the reply to the show cause notice, it was held by the learned members of that Bench that the principles of natural justice were denied to the applicant in that OA. But as stated earlier, the facts in this case are entirely different.

27. The earlier order dated 4.9.95 was cancelled, no doubt, without giving him an opportunity before cancellation. But that does not prevent him from submitting further in the inquiry why that cancellation is irregular and also how such cancellation will violate the principles of natural justice. The impugned G.O. does not inflict any punishment on him. It only orders a further inquiry after cancelling the earlier order. In the present case, the applicant has ample opportunities to submit what he wants, examine the records and cross examine the witnesses at the time of inquiry and also to submit various points which are to be considered before taking any view in regard to his case. When an enquiry has been ordered, even



though the earlier order was cancelled, it will give adequate opportunity to the applicant to submit his case fully and effectively and in that view we humbly feel there may not be violation of principles of natural justice. As observed earlier, if cancellation is followed by a show cause notice for inflicting punishment, then it may be construed as violation of the principles of natural justice. We do not have to further dwell on this aspect as in the present case the impugned order does not state that a show cause notice is issued for inflicting punishment. In that view, we are of the opinion that the present case is easily distinguishable from the case of Shri Pavitran and hence the observations made by the learned members of that Bench in regard to the violation of the principles of natural justice have no context and that observation will not apply to the present case. We feel that the applicant has an opportunity by way of enquiry and that opportunity given to him is in a way upholding the principles of natural justice. In view of that, we do not subscribe to the view that the principles of natural justice are violated in this case merely because the earlier favourable order was cancelled without a show cause notice to the applicant.

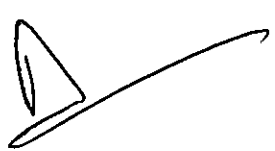
28. In the present context, the observations of the Apex Court in the two cases mentioned above have to be seen whether there is any violation of principles of natural justice. As observed by the Supreme Court, the principles of natural justice are not a straight jacketed one. It is not a precise mathematical equation. Each case has to be looked into on its own merits. In view of the facts and circumstances quoted above in the present case, we are

justified in coming to the conclusion that there is no violation of principles of natural justice.

29. The second contention is that R-2 has no power to issue the impugned G.O. dated 26.7.96 under the said rule. For this also, the applicant relies on the Pavitran's case. It was held in Pavitran's case that, "Rule 24 of the All India Services (D&A) Rules does not confer ^{on} the State Government the power to review its own order as power of revision conferred in this proviso means only the power to revise the order of the subordinate authority and as such the impugned order in that case is illegal and also ^{beyond the} powers of the State Government".

30. The learned counsel for the applicant further submits that there is no subordinate authority to the State Government. As the applicant belongs to the All India Services, the power is vested for review only with the Central Government and no permission was obtained from the Central Government to issue the impugned order under the revisionary powers under Rule 24 of the All India Services (D&A) Rules, 1969. In view of that, the order is void and has to be set aside.

31. The learned counsel for R-2 submitted that the reasons for the cancellation of the earlier order and issue of the impugned G.O. have been noted in the impugned order itself. He further read out the reasons for issuing ~~and~~ the impugned order. The impugned order states that, "there are prima facie serious lapses in the report of the inquiring authority appointed in the Government Order read above to



29

27
30

inquire into the said charges and whereas the recommendations by him are not based on the evidence and facts brought out during the inquiry by the records and by the Presenting Officer". In view of that R-2 has taken a judicious decision to cancel the earlier order and to order a fresh inquiry. He further relied on the judgment of the Supreme Court reported in (1996) 8 SCC 461 (Janardan Dubey v. State of Bihar and others) to substantiate his case that R-2 has not crossed his jurisdiction. Before going further into these contentions, we do not agree with the submission of the learned counsel for R-2 that his contention is substantiated by the Apex Court judgment referred to above. However, the other reasons submitted by him in this connection have to be looked into.

32. The learned counsel for R-2 submitted that the proceedings of the earlier Inquiry Committee and the decision thereon were submitted to the Central Government by the State Government letter No.E2/21-8/96 dated 29.2.96. That letter was disposed of by the Central Government with the following observation:-

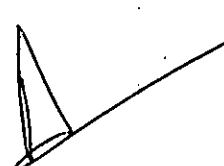
"Where it is considered, after the conclusion of the disciplinary proceedings, that some blame attaches to the officer concerned which necessitates cognizance of such facts, the disciplinary authority should award one of the recognised statutory penalties. If the intention of the disciplinary authority is not to award the penalty of Censure, then no recordable warning or reprimands should be awarded."

✓

That will be sufficient for the State Government to initiate a fresh inquiry and that letter dated 23.4.96²⁴ should be taken as a permission given by the Central Government if at all any permission is required to review the orders under the residuary provisions of sub rule 1(d) of Rule 24 of the All India Services (D&A) Rules, 1969.

33. The learned counsel for the applicant submitted that the above stated letter canⁱⁿ no way be construed as permission to the State Government to initiate fresh inquiry. It only says that if it is the intention of the disciplinary authority not to award penalty of Censure, then no recordable warning or reprimand should be awarded. In the present csse, the applicant was warned to be more careful in regard to cash transactions and other activities and that was stated to be incorrect by the Central Government in its letter dated 23.4.96 (Annexure IV to the reply). He further amplified his submission by producing the letter of D.P.& A.R. No.11018/5/79-AIS(III) dated 3.4.81 to state that the instructions contained in the letter dated 3.4.81 in no way gives^{any} levitate to the State Government to initiate disciplinary action without express permission from the Central Government.

34. It is a fact that R-2 had brought to the notice of the Central Government in regard to the final order^{ly} passed in the disciplinary action initiated against the applicant by the order dated 4.9.95. When that letter was perused and certain directions were given on the basis of that letter, it has to be held that the Central Government is aware of the proceedings and also the final order passed in



31

that connection. Because the Central Government ~~had~~ felt that non cognizance of the blame attached to the officer may not be proper, it had directed the disciplinary authority not to record warning if penalty of Censure is not awarded. That in our opinion implies that a fresh look at the case is essential in view of the serious charges levelled against him. The word "implies" would mean that the Central Government had given permission to ascertain the full facts by instituting a fresh inquiry. In that view, we are of the opinion that the submission of counsel for R-2 in regard to the implied meaning of the letter dated 23.4.96 of R-1 cannot be brushed aside as a fiction and that letter may mean permission for initiating denovo inquiry.

35. The learned counsel for the respondents further submitted that under Rule 24 of All India Services (D&A) Rules, 1969, no permission is required from the Central Government for revision by R-2. Nowhere in the rule it has been stated that the revisional authority has to take permission from the Central Government. He further submitted that only if there is a case of punishment such as removal, dismissal or compulsory retirement, then only the question of taking permission from the Central Governemnt arises. In Pavitran's case, it was proposed to inflict punishment of compulsory retirement and as that is a major penalty that penalty can be imposed or even show cause notice for that penalty can be issued only with the permission of the Central Government in view of the provisions contained in Rule 8(22) of All India Services (D&A) Rules, 1969. Rule 8 gives procedure for imposing

✓

penalties on the members of All India Services. Sub rule 22 of Rule 8 requires that "Where a State Government which has caused to be inquired into the articles of any charge and, having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (vii) to (ix) of Rule 6 should be imposed on the member of the Service, the State Government shall forward the records of the inquiry to the Central Government suggesting imposition of the penalties specified in clauses (vii) to (ix) of rule 6 as is competent to impose the last mention penalty".

When the Rules, 1969 expressly provides under Rule 8 of the said rule for obtaining specific approval of the Central Government and under Rule 24 there is no ~~(xxx)~~ express provision, the presumption that under Rule 24 ^{such} no permission is required from Central Government may not be out of place.

36. Hence when the learned counsel for the applicant submits that for issue of the show cause notice for denovo inquiry, no permission is necessary from the Central Government, the same may have to be upheld. This opinion also strengthened as stated earlier because of the fact that when imposition of the major penalties requires permission of the Central Government which is explicitly expressed in Rule 8(22) of the All India Services (D&A) Rules, 1969 and there is no mention in this regard to obtain Central government permission under Rule 24 of All India Services (D&A) Rules, 1969. If a specific permission is necessary, ~~(then)~~ in our opinion ^{it} should have been clearly stated under that rule. In the absence of any such instructions, we also sail with the learned counsel for R-2

that for applying rule 24 of All India Services (D&A) Rules, no permission is necessary from the Central Government insofar as it relates only to order a fresh inquiry.


37. The next contention of the applicant is that the earlier Government had exonerated him which is evident from the letter dated 4.9.95 with a minor warning for certain minor lapses. That was sought to be reviewed by the impugned order in view of the vindictiveness of the present Government. To substantiate his statement, he further submits that his reputation was sought to be marred by certain statements made in the State Assembly by the Minister concerned. He also submits that the present Government is against him as can be seen from the previous statements before they came to the power. When they came to power, they victimised him by resorting to the issue of the impugned order.

38. The learned counsel for R-2 submitted that the letter of the Central Government is dated 23.4.96 and that was issued earlier to the assumption of power by the present Government. The present Government has only followed up the instructions of the Central Government issued on 23.4.96 when the previous Government was in power. Hence it cannot be stated that the present impugned order was issued to victimise the applicant. Further it is stated by the learned counsel for R-2 that the charges levelled against him are serious in nature. Even the Income Tax authorities had come to the conclusion that the applicant had violated the rules while submitting his Income Tax returns. Further a lot of unaccounted money has

D

been unearthed in his house. That unaccounted money cannot be imagined as having earned from and out of the business of his wife. Taking the overall view of the situation and with a view to prevent corruption, action has been initiated especially when the previous Inquiry Officer had not dealt with all the relevant points. It is also incorrect to state that the suspension of the previous Inquiry Officer is another reason to institute review. There is no connection between suspension of the previous Inquiry Officer and the issue of the present impugned order. The Government of Tamil Nadu also has filed another additional reply statement dated 10.3.97 wherein they have filed a judgement of the Additional Chief Metropolitan Magistrate (Economic Offences II), Egmore, Madras-08 by which order the applicant has been convicted and sentenced to undergo imprisonment for three months and to pay a fine etc. Though the applicant states that the order has been suspended by the higher court, the appeal is still pending, consideration.


26. The applicant as well as R-2 have filed a number of documents to prove their contentions. At this stage, we do not consider it necessary to make any observations in regard to the contention of malafides raised by the applicant. He has full opportunity to state and plead what he wants during the inquiry and also bring out his case fully by inspecting the records and materials and by examining defence witnesses. He has also got a further avenue to submit his defence statement when the inquiry is over to the disciplinary authority on the basis of the inquiry report. If need arises, an appellate forum is also



available to him. The applicant has various channels to fight his case in case there is any malafide intention in the issue of the impugned order. Therefore, we do not propose to look into the contention of malafides at this stage and it is not warranted also.

40. The impugned order was issued by the Chief Secretary to the Government of Tamil Nadu. There is no malafides attributed to the Chief Secretary, Govt. of Tamil Nadu personally. The proceedings initiated by the Chief Secretary is a quasi-judicial one. A political boss cannot dictate terms or directions in a quasi-judicial proceedings. We also believe that a very senior officer who is controlling the IAS cadre may not go astray by any directions given by others. He will take decisions on his own on the basis of the material available before him. At this juncture no sufficient material has been brought to our notice that even the Chief Secretary, Govt. of Tamil Nadu is biased against him and hence intentionally issued the impugned order. As stated above this can be agitated if the applicant feels that it is necessary to agitate, during the inquiry. This is not the stage for this Bench to examine that issue. Hence we do not propose to consider this contention at this stage.

41. The applicant submits that he was denied of two documents by the letter dated 6.9.96 (Annexure 3 at Page 86 of the OA) and he prays that a direction be issued that these two documents be made available to him. If these two documents are essential and non supply of these documents is going to prejudice his case, he should submit so in the



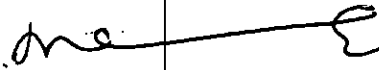
inquiry and also he should submit in his defence statement after the inquiry is over. As stated earlier, if need arises, he may also take this contention in his appeal. We do not consider it necessary to give any direction in regard to the supply of the documents when he has got official channels to ventilate his grievances at the inquiry stage and thereafter also. We feel submission made by the learned counsel for R-2 that these two documents are not proposed to be relied upon by disciplinary authority in the fresh enquiry has some force.

42. The second prayer in this OA is only an appendix to the first one and hence the second prayer needs no consideration at this stage. It is for the applicant to put forward this request before the appropriate authority at the appropriate stage even if it is rejected initially.

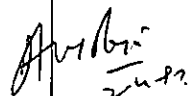
26. In the result, we think that no sufficient reason has been brought out in this OA to set-aside the impugned G.O.Ms.No.836 dated 26.7.96. We do not also consider it necessary to give any direction at this stage in regard to the second prayer.

44. Hence the OA is dismissed. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)


(R. RANGARAJAN)
MEMBER (ADMN.)

2-4-97
DATED: 2-4-97
Dictated in the open court.


Dnol