Central Administrative Tribunal
Principal Bench
New Delhi

OA No.540/2011

Reserved on : 20.01.2017
Pronounced on : 10.02.2017

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. V. N. Gaur, Member (A)

Shive Kumar,
34, Bukharpura (Nathansh Puram),
Behind Jain Temple,
PO Sandhana Road,
Kankar Khera, Meerut-251001. ... Applicant

(By Advocate : Mr. M. K. Bhardwaj)

Versus

1. Kendriya Vidyalaya Sangathan through
its Commissioner,
18 Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.

2. Joint Commissioner,
Kendriya Vidyalaya Sangathan,
18 Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.

3. A. P. Prabha Kara Rao,
Enquiry Officer,
Principal, K.V.I.O.C. Haldia,
P.O. Haldia Township,
Distt. East Midnapur (West Bengal).

4. Assistant Commissioner,
Kendriya Viayalaya Sangathan,
18 Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.

5. S. C. Kani,
then Principal,
K.V. Kalikunda, West Bengal. ... Respondents

(By Advocates: Mr. S. Rajappa and Ms. Aditi Sinha)

O R D E R

Justice Permod Kohli, Chairman :

This OA has been filed by the applicant challenging the disciplinary proceedings against him including the inquiry report and the penalty order, and consequently seeking his reinstatement in service.

2. Brief facts leading to the filing of the present OA are that the applicant while serving as PGT (Geography) was issued a major penalty charge-sheet vide memorandum dated 28.04.2000 containing the following article of charge:

> "That Shri Shive Kumar while functioning as PGT (Geography) at Kendriya Vidyalaya No.1 Kalaikunda during the year 1999-2000, manhandled/assaulted the Principal Sh. S. C. Kani in his chamber on 24-02-2000. He thus by the aforesaid acts has committed a misconduct which is in violation of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964 as extended to the employees of the Sangathan and article 55(22) of Education Code of Kendriya Vidyalaya Sangathan."

The charge memorandum was accompanied with the statement of imputation of misconduct, list of documents and list of witnesses etc.

as per mandate of rule 14 of the CCS (CCA) Rules, 1965. On consideration of the representation of the applicant to the charge memorandum, the disciplinary authority constituted a regular inquiry. The inquiring authority submitted its report dated 21.01.2002. The said inquiry report was served upon the applicant vide memorandum dated 31.01.2002 providing him fifteen days' time to make representation to the disciplinary authority. The disciplinary authority, on consideration of the inquiry report and the representation of the applicant, passed order dated 01.03.2002 imposing the penalty of removal from service upon the applicant. Relevant part of the aforesaid order reads as under:

> "Now therefore, the undersigned being the competent authority orders imposition of major penalty of removal from service upon Sh. Shive Kumar, PGT (Geo) (Under suspension) Kendriya Vidyalaya no.1 Kalaikunda. It is further ordered that the imposition of this order will take effect from the date of issue of this order."

The appeal preferred by the applicant against the said order came to be rejected vide order dated 18.09.2003. Aggrieved of the order imposing penalty and the appellate order, the applicant filed OA No.511/2006 in this Tribunal. The said OA came to be allowed vide judgment dated 17.05.2007. The Tribunal noticed that some of the statements relied upon by the inquiry officer were not served upon the applicant with the memorandum under rule 14 of the CCS (CCA)

Rules, 1965, and these documents were also not included in the inquiry, and thus reliance upon such documents without furnishing them to the applicant would certainly amount to denial of reasonable opportunity to defend, which is in violation of the principles of natural justice. The Tribunal accordingly passed following directions:

> "7. Leaving other grounds open, this OA is partly allowed. Impugned orders are set aside. Respondents are directed to reinstate applicant in service, however, without prejudice, if so advised, to take up the proceedings from the stage of consideration of these documents in the enquiry and on giving copies to applicant, to record a finding thereupon or to leave these documents from consideration and thereafter act in accordance with law. The intervening period would have to be operated by the outcome in accordance with Rules and instructions on the subject. No costs."

A writ petition, WP(C) No.8760 of 2007 filed against the aforesaid judgment of the Tribunal came to be dismissed by the Hon'ble High Court of Delhi vide judgment dated 05.11.2007. On dismissal of the writ petition, the order of removal from service was withdrawn and the applicant was reinstated in service treating him as a suspended PGT (Geo), which post he was holding at the time of removal from service, vide order dated 06.02.2008.

3. In view of the liberty granted by the Tribunal to the respondents to proceed further in the matter from the stage the

documents were to be supplied, another inquiry officer was appointed vide order dated 12.12.2007 to continue the inquiry from the stage of collection of evidence of listed witnesses. The applicant did not attend the inquiry on two occasions and accordingly, *ex parte* inquiry was completed. The inquiry officer submitted his report on 22.09.2008. The applicant filed a contempt petition, CP No.350/2008 against non-compliance of the directions of the Tribunal in OA No.511/2006, alleging that the inquiry had been completed *ex parte* without providing him copies of additional documents. The inquiry officer was summoned in the contempt proceedings. He appeared before the Tribunal and stated on oath that the documents sought for by the applicant as additional documents had not been relied upon in any manner in the inquiry. On this statement, the Tribunal disposed of the contempt petition vide order dated 19.11.2008 and allowed the applicant to submit his reply on the inquiry report within two weeks. The applicant accordingly submitted his reply to the inquiry report on 02.12.2008. The disciplinary authority thereafter passed order dated 29.01.2009 (Annexure A-1) again imposing major penalty of removal from service upon the applicant and also ordered for treating the period of suspension as *dies non*. Aggrieved of the penalty, the applicant filed an appeal, which resulted in its dismissal in terms of order dated 12.08.2009 (Annexure A-2). It is under the

aforesaid circumstances this OA has been filed challenging the penalty of removal from service with other related directions. The applicant has accordingly sought following reliefs:

> "i) That the Hon'ble Tribunal may graciously be pleased to quash and set-aside the impugned Disciplinary Authority order dated 29.01.2009 (Annx P/1), Appellate Authority order dated 12.08.2009, charge sheet dt 28.04.2000 and the EA report dt 22.09.2008 and consequently reinstate the applicant in service with all consequential benefits including arrears of pay.
>
> ii) To quash and set-aside the punishment orders and reinstate the applicant in service with all consequential benefits including arrears with 12% interest.
>
> iii) To allow the O.A. with costs.
>
> iv) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant."

4. Validity of the disciplinary proceedings including the inquiry report and the penalty has been assailed primarily on the following grounds:

(*i*) the inquiry is vitiated on account of non-payment of subsistence allowance, which prevented the applicant from participating in the inquiry;

(*ii*) the inquiry is *ex parte* and thus in violation of principles of natural justice;

(*iii*) non-observance of the mandate of sub-rule (18) of rule 14 of the CCS (CCA) Rules, 1965, as the applicant was not put to any question for his explanation in respect of the facts/material against him.

5. Mr. S. Rajappa, learned counsel appearing for the respondents has, however, defended the penalty order against the applicant. It is stated in the counter-affidavit that the applicant while working as PGT (Geo) in K.V. No.1, Kalaikunda during the period 1999-2000 was charge-sheeted vide memorandum dated 28.04.2000 on the charge of physical assault on the Principal, Shri S. C. Kani on 24.02.2000. Giving details of the physical assault, it is stated that earlier, the applicant while functioning as PGT (Geo), K.V. No.1, Kalaikunda, was issued a memorandum dated 24.02.2000 imposing minor penalty of reduction of pay for a period of two years without cumulative effect, for his misbehaviour and misconduct. Aggrieved of the said memorandum, he started shouting and entered the chamber of Principal on 24.02.2000 in an aggressive mood and tore up the memorandum and threw it on the face of the Principal. It is further alleged that the applicant took his shoe and started hitting the Principal. During the said manhandling/assault Shri S. C. Kani, the Principal, suffered injury on his hand. Members of staff entered in the chamber of Principal and the applicant was taken away. The

matter was reported to the local police by the Principal and the applicant was arrested on 01.03.2000 and was kept in judicial custody. He was placed under suspension and subsequently disciplinary proceedings were initiated against him. The said charges were duly proved on inquiry and the applicant was removed from service. Further giving details of the original penalty order dated 01.03.2002, the appellate order dated 18.09.2003 and the order passed by the Tribunal in OA No.511/2006 and the Hon'ble High Court of Delhi, and fresh disciplinary proceedings, it is stated that the charges are proved against the applicant during the inquiry. However, the applicant did not cooperate during the inquiry and thus cannot claim violation of principles of natural justice.

6. From Part-II of the inquiry report recorded by the inquiry officer it is revealed that the regular hearing was fixed on 04.02.2008. The charged officer (applicant) was informed vide order dated 08.01.2008 to co-operate with the disciplinary proceedings and finalize the proceedings by cross-examining the listed witnesses, but the charged officer did not attend the hearing on 04.02.2008. The next hearing was fixed on 23.07.2008. A second opportunity was given to the charged officer to attend the hearing with defence assistant, but the proceedings were postponed on the request of the charged officer. The next date of regular hearing was fixed on 08.08.2008. The

applicant was present on the said date, but refused to cross-examine the prosecution witnesses, and requested the inquiry officer to give some more time to select a defence assistant. He also assured the inquiry officer that in case of failure to select the defence assistant on or before 18.08.2008, he would defend himself. The regular hearing was accordingly postponed to 27.08.2008, which was intimated to the applicant. The presenting officer produced all five witnesses on 08.08.2008, out of which one was from Chennai and one from Visakhapatnam, far away from Kolkata, where the hearing was fixed. On 18.08.2008 the inquiry officer permitted the applicant to take defence assistant from Delhi, a retired KVS employee, whose name was proposed by the applicant, and come with the defence assistant for regular hearing on 27.08.2008, but he did not attend the hearing on 27.08.2008, which was fixed at his request. He even did not inform before the said hearing dated 27.08.2008 the inquiry officer the reasons for his absence. It is further recorded that the presenting officer produced four witnesses on 27.08.2008, out of which one was from Chennai. It is also recorded that opportunity was given to the applicant to submit defence documents and defence witnesses, if any, by 31.07.2008 through the order-sheet dated 23.07.2008, but he did not submit any defence documents or defence witnesses from his side. According to the inquiry officer, the charged officer was not

cooperating with the inquiry proceedings and his interest was only to postpone the inquiry. The disciplinary proceedings were accordingly held *ex parte* on 27.08.2008.

7. The applicant has placed on record the minutes of proceedings/orders passed by the inquiry officer from time to time. The first order passed is at page 165, fixing the date of regular hearing on 04.02.2008 for recording evidence of PWs. The charged officer was required to appear along with his defence assistant on the date and time indicated in the said order. The second order is dated 01.07.2008 whereby the next date was fixed on 23.07.2008 for recording evidence of PWs, and the charged officer was again directed to attend the hearing along with his defence assistant. The next order is dated 19.07.2008, whereby a FAX letter of the charged officer dated 17.07.2008 for postponement of the hearing fixed on 23.07.2008 was disposed of with the direction to the charged officer to select his defence assistant as per norms indicated therein. Another order was passed on 23.07.2008, noting that the charged officer had claimed that he did not receive the order-sheet dated 19.07.2008 about postponement of the regular hearing, he was given further time up to 31.07.2008 to submit the list of DWs and defence documents, if any, and the next date was fixed on 08.08.2008 with direction to the charged officer to attend on the said date. Another

order dated 06.08.2008 is recorded indicating therein that the charged officer had sent a letter dated 31.07.2008 received by the inquiry officer on 05.08.2008 regarding engagement of defence assistant. Vide this order, request of the charged officer to engage a legal practitioner was declined and he was asked to engage a defence assistant between the framework of prescribed rules, and he was informed that regular disciplinary proceedings would be held on 08.08.2008 as per earlier order. The inquiry officer has also recorded order dated 08.08.2008, whereby the charged officer's letter of even date was disposed of asking him to select defence assistant on or before 18.08.2008, failing which he would defend his case himself, and no further time would be granted for selecting defence assistant. The next date was fixed on 27.08.2008, to be extended to 28.08.2008 if the inquiry could not be completed on the first date. The charged officer was directed to appear. From the order-sheet dated 27.08.2008, it appears that the charged officer was not present on the said date. On this date the charged officer did not appear nor defence assistant was appointed. The inquiry officer recorded statements of four PWs, and the inquiry proceedings were closed, including the case of the charged officer. However, the charged officer was given last opportunity to present his arguments in written

brief by 11.09.2008. It is deemed appropriate that the last order dated 27.08.2008 closing the inquiry proceedings is reproduced, thus:

> "Present: 1. Mr. A.P. Prabha Kara Rao ... IO
>
> 2. Mr. Ram Nath ... PO
>
> The charged officer Shri Shive Kumar formerly PGT (Geography) KV. No.1 Kallaikunda and presently PGT (Geography), (u/s), Kendriya Vidyalaya, Behrampore, Kolkata Region, W.B., was given opportunities on 04.02.2008 (Order Sheet No.1), 08.08.2008 (Order Sheet No.4), 27.08.2008 (Order Sheet No.6) for cross examining the prosecution witnesses as per Annexure-III of the memorandum F.47-1/2000-KVS(Cal)/287, dated: 28.04.2000. The C.O. failed to utilize the opportunity given to him for cross examining the witnesses. The C.O. was given an opportunity for taking Defence Assistant as per C.O.'s letter dated 12.08.2008 but C.O. could not utilize the opportunity given to him. The C.O. did not inform the reasons on 27.08.2008 to I.O. which shows his non-cooperation in the disciplinary proceedings. In view of the facts the proceedings are held ex-parte on 27.08.2008.
>
> The P.O. was asked to produce the prosecution witnesses as per Annexure-III of the memorandum F.47-1/2000-KVS(Cal)/287, dated: 28.04.2000. The P.O. produced the following 4 witnesses. (1) Meena Choudhury, formerly working as LDC, KV No.1 Kalaikunda, Kharagpur and at present working as LDC, K.V. Bamangachi, Howrah, W.B. (2) Mr. P.Dutta, formerly Head Clerk, K.V. No.1, Kalaikunda, Kharagpur, W.B. and at present retired from KVS on February 2004. (3) Mr. S.K.Das, formerly LDC, K.V. No.1, Kalaikunda, Kharagpur and at present as UDC, KVS, RO, Koolkata. (4) Mr. S.C. Kani, formerly Principal, K.V. No.1, Kalaikunda, at present working as Principal, K.V. Avadi, CRPF, Chennai. The P.O. could not produce the witness Mrs. S. Hymavathi formerly UDC, K.V. No.1, Kalaikunda and at present working as UDC, K.V. No.1, Nausenabaugh, and the

statements of the witnesses were recorded before I.O. and given a copy....(illegible).

Thus the case from the P.O. side is closed.

The C.O. failed to attend the regular hearing on 27.08.2008 and failed to utilize fourth time opportunity for cross examining the prosecution witnesses.

Thus the case is closed from C.O. side.

Thus the inquiry proceedings in the case are closed on 27.08.2008.

The C.O. is given the last opportunity to present his arguments in the written brief. For this the P.O. would submit his written brief along with the floppy by 11.09.2008 to the inquiry officer and a copy of this to the C.O. The C.O. would submit his written brief in 10 days time from the date of receipt of the P.O.'s written brief."

8. We have heard the learned counsel for parties.

9. Regarding payment of subsistence allowance, Mr. Rajappa has referred to a letter dated 18.07.2008 from the office of Assistant Commissioner, KVS to the Principal, KV, Behrampore. The said letter reads as under:

"Sub.: Payment of Subsistence Allowance to Shri Shive Kumar, PGT (Geo) – Regarding.

Sir,

In continuation to the Office Order of even number dated 04.06.2008 and letter of even number dated 12.06.2008, addressed to Shri Shive Kumar and copy endorsed to you, you are requested to pay the subsistence allowance to Shri Shive Kumar for the period from 06.02.2008 to 30.06.2008 after obtaining Non-employment Certificate for this period from him.

> Thereafter, Subsistence Allowance may be paid every month after obtaining Non-employment Certificate. A copy of LPC received from Kendriya Vidyalaya No.1, Kalaikunda is enclosed. Shri Shive Kumar may be paid Subsistence Allowance @ 75% of the basic pay of Rs.6,500/- plus DP/DA and other allowances at Behrampore rate."

Mr. Bhardwaj, however denied that any subsistence allowance was paid to the applicant pursuant to the aforesaid letter. In absence of any material before the Tribunal regarding actual payment of the subsistence allowance, the Tribunal passed the following order on 17.11.2016:

> "Heard the learned counsel for the parties.
>
> One of the issues raised in the OA is non payment of subsistence allowance. Though in the counter affidavit it is pleaded that the subsistence allowance has been paid, however, from the record we find that there was a direction for payment of subsistence allowance. Whether actually the subsistence allowance has been paid or not is not borne out from the record. Shri S Rajappa wants to produce relevant material to indicate that the subsistence allowance was paid to the applicant during the currency of the inquiry. This OA is posted on 22.11.2016 only for the limited purpose of examining the said material."

Mr. Rajappa has placed on record copy of a letter dated 21.11.2016 of Deputy Commissioner, Kendriya Vidyalaya Sangathan, Kolkata addressed to the Assistant Commissioner (Admn) & (L&C), KVS (HQ), New Delhi, indicating payment of subsistence allowance for

the periods mentioned therein. The said communication reads as under:

> "Sub.: O.A. No.540 of 2011 filed by Shri Shiv Kumar, Ex-PGT (Geog.), K.V. No.1, Kalaikunda/Behrampore before CAT, Principal Bench, New Delhi – regarding.
>
> Sir,
>
> With reference to your e-mail dated 17.11.2016 on the subject cited above, this is to inform you that Subsistence Allowance @ 75% have been paid to Shri Shiv Kumar, Ex-PGT (Geog) for the period from 06.02.2008 to 30.09.2008 for Rs.87,545/- during the currency of enquiry period and from 01.10.2008 to 29.01.2009 for Rs.46,387/- by Kendriya Vidyalaya, Behrampore as per the details given below:-

Period from	To	Amount of subsistence allowance
06.02.2008	28.02.2008	9,199
01.03.2008	31.03.2008	11,128
01.04.2008	0.04.2008	11,128
01.05.2008	31.05.2008	11,128
01.06.2008	30.06.2008	11,128
01.07.2008	31.07.2008	11,278
01.08.2008	31.08.2008	11,278
01.09.2008	30.09.2008	11,278
01.10.2008	29.01.2009	46,387

The Tribunal after examining the aforesaid letter observed that the dates when the actual payments for the periods mentioned in the letter were made are not indicated in the letter. Accordingly, another direction was issued on 05.01.2017 to file an affidavit giving the complete information regarding payments of subsistence allowance

with details of the amount and the periods including the dates of sanction, as also supporting documents by 10.01.2017.

10. The respondents have filed an affidavit dated 10.01.2017, giving details of the payment of subsistence allowance. It is stated that the subsistence allowance becomes payable only when the employee under suspension furnishes non-employment certificate. It is accordingly stated that it is only when the applicant furnished the non-employment certificate that the amount of subsistence allowance was paid to him. Regarding sanction of the subsistence allowance, it is stated the subsistence allowance falls under the head "Pay & Allowances" and hence the drawing and disbursing officer prepares the bills upon submission of non-employment certificate and passes the same, and that no separate orders are issued in this regard. Regarding the actual payments made, following details are furnished:

<table>
<tr><th>Sl. No.</th><th>Period from</th><th>Period to</th><th>Non-Employment Certificate submitted on</th><th>Payment made on</th><th>Amount</th></tr>
<tr><td>1.</td><td>06.02.2008</td><td>28.02.2008</td><td rowspan="5">24.07.2008</td><td rowspan="5">24.07.2008</td><td rowspan="5">53,711</td></tr>
<tr><td>2.</td><td>01.03.2008</td><td>31.03.2008</td></tr>
<tr><td>3.</td><td>01.04.2008</td><td>30.04.2008</td></tr>
<tr><td>4.</td><td>01.05.2008</td><td>31.05.2008</td></tr>
<tr><td>5.</td><td>01.06.2008</td><td>30.06.2008</td></tr>
<tr><td>6.</td><td>01.07.2008</td><td>31.07.2008</td><td>30.07.2008</td><td>30.07.2008</td><td>11,278</td></tr>
<tr><td>7.</td><td>01.08.2008</td><td>31.08.2008</td><td></td><td></td><td></td></tr>
</table>

8.	01.09.2008	30.09.2008	30.09.2008	01.10.2008	22,556
9.	01.10.2008	31.12.2008	19.01.2009	09.20.2009	46,387
10.	01.01.2009	21.01.2009	Not found on the file maintained		

Mr. Bhardwaj has, however, submitted that the inquiry commenced on 04.02.2008, whereas the subsistence allowance according to the aforesaid affidavit was given to the applicant for the first time only on 24.07.2008, which is not compliance to the requirement of law. He has accordingly relied upon a judgment of the Apex Court in ***M. Paul Anthony v Bharat Gold Mines Limited*** [(1999) 3 SCC 679]. In this case, the Hon'ble Supreme Court held that non-payment of subsistence allowance amounts to depriving the Government servant from participating in the inquiry proceedings. We have carefully examined the documents produced by the respondents. The first date of inquiry was on 04.02.2008 and thereafter the next date was fixed on 23.07.2008. In between, no date of hearing was fixed, though there was some correspondence, which was disposed of by the inquiry officer. The applicant was paid the first instalment of the subsistence allowance amounting to Rs.53,711/- for the period 06.02.2008 to 30.06.2008 on 24.07.2008, i.e., the date when he furnished non-employment certificate for the aforesaid period. Thereafter, the next instalment of subsistence allowance was paid on 30.07.2008, on the same day when he furnished the non-employment

certificate for the period 01.07.1008 to 31.07.2008, and again on 01.10.2008 for the period 01.08.2008 to 31.12.2008, and then on 09.02.2009 for the period 01.01.2009 to 29.01.2009. From these details, we find that during the period of inquiry the applicant was paid the subsistence allowance. From the proceedings on record, we find that the following dates were fixed for the inquiry proceedings:

04.02.2008, 23.07.2008, 08.08.2008, 27.08.2008.

The applicant participated in the inquiry on 08.08.2008, and was absent on 04.02.2008 and 27.08.2008. During this period, the subsistence allowance was paid to him, though intermittently, in the manner already noticed hereinabove. There is no violation of the rights of the applicant or his financial deprivation on this count disenabling him to participate in the disciplinary proceedings. The judgment of the Apex Court in ***M. Paul*** Anthony (*supra*) relied upon by the learned counsel for the applicant is not attracted in the present case. In the aforesaid case it was contended on behalf of the appellant that during the period of suspension he was not paid subsistence allowance with the result that he could not undertake the journey from his home town in Kerala to Kolar Gold Fields in Karnataka where the departmental proceedings were being held. This plea was turned down by the High Court on the ground that the

same was not raised before the inquiry officer and it was not pleaded before him that the appellant could not participate in the disciplinary proceedings on account of non-payment of subsistence allowance. However, it was not disputed by the respondents before the Hon'ble Supreme Court nor was it disputed by them before the High Court that subsistence allowance was not paid to the appellant while the proceedings against him were being conducted. It is in this backdrop that the Apex Court observed that on account of the penury occasioned by non-payment of subsistence allowance, the appellant could not undertake the journey to participate in the departmental proceedings and the *ex parte* findings recorded by the inquiry officer were held to be vitiated. However, the facts of the present case are different. From the affidavit dated 10.01.2017 filed on behalf of the respondents and the calculation sheet attached therewith, it is clear that the applicant has indeed been paid subsistence allowance during the currency of disciplinary proceedings against him. Hence, this plea of the applicant cannot be accepted.

11. Insofar as the plea of non-compliance with the provisions of sub-rule (18) of rule 14 is concerned, it is stated that since the applicant did not cooperate in the inquiry, there was no occasion for the inquiry officer to record his statement in terms of the aforesaid provision.

12. As regards violation of principles of natural justice, we have noticed from the minutes recorded by the inquiry officer that the first hearing was fixed on 04.02.2008 for which the applicant was informed. Thereafter, the next date of hearing was fixed only on 23.07.2008 vide order dated 01.07.2008 passed by the inquiry officer. No reasons are indicated for such a long pause in fixing the next date of hearing. The charged officer had requested for defence assistant and sought postponement of the hearing dated 23.07.2008. The inquiry officer vide its order dated 19.07.2008 while allowing the charged officer to select a defence assistant, refused to postpone the date of hearing. On 23.07.2008, the charged officer reported that he did not receive the order-sheet dated 19.07.2008. The inquiry officer met him at Kolkata where he was visiting and furnished him copy of the order-sheet dated 19.07.2008 and asked him to intimate the name of the defence assistant by 31.07.2008, and the next date was fixed on 08.08.2008. No effective proceedings were held on 23.07.2008. On 06.08.2008, it was recorded by the inquiry officer that the charged officer's request vide letter dated 31.07.2008 for appointment of legal practitioner is declined, and reiterated its earlier order for holding the proceedings on 08.08.2008. On 08.08.2008 again the charged officer was allowed to engage a defence assistant on or before 18.08.2008 and the next date was fixed on 27.08.2008. On this date, i.e., 08.08.2008,

the charged officer was present. On 27.08.2008, the charged officer did not appear and the entire prosecution evidence was recorded on the said date and the proceedings were closed. The charged officer was even not provided any opportunity to lead his defence evidence or at least to appear for recording his own statement under sub-rule (18) of rule 14 of the CCS (CCA) Rules, 1965. It is also relevant to notice that earlier the charged officer was asked to give the details of his defence witnesses by 31.07.2008, and defence documents by 06.08.2008. We do not find any valid reasons to close the entire case on 27.08.2008, including the defence of the charged officer, even if he was absent. The right of the charged officer to lead defence or at least his statement under sub-rule (18) of rule 14 is an important and significant right. Sub-rule (18) of rule 14 has been held to be a mandatory provision and its non-observance vitiates the inquiry and consequently the penalty order. In the present case, we find that the inquiry officer completed the entire evidence of PWs on one day, i.e., 27.08.2008, even though the charged officer was not present. He was not afforded even one single opportunity to lead his defence or make his own statement. Mr. Bhardwaj has also pointed to a memorandum dated 23.07.2008 from the disciplinary authority addressed to the applicant asking him to cooperate with the inquiry to enable the inquiry officer to complete the proceedings within one

month, as directed by the court. While endorsing the copy of the aforesaid memorandum, the inquiry officer was asked to complete the inquiry and submit his report by 31.08.2008. The relevant remarks read as under:

> "2. Shri A. Prabhakara Rao, Principal, Kendriya Vidyalala, IOC, Haldia & Inquiry Officer – for information. He is further directed to complete the Inquiry Proceedings immediately and submit the report by 31.08.2008."

It appears that in view of the aforesaid memorandum issued by the disciplinary authority, the inquiry officer had conducted the inquiry in such an utter haste that the entire proceedings were closed on one day without providing any opportunity to the charged officer to lead his defence or put question to him under sub-rule (18) of rule 14 of the CCS (CCA) Rules, 1965. Thus there has been gross violation of principles of natural justice. Sub-rule (18) of rule 14 reads as under:

> "(18) The Inquiring Authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him."

13. The issue is no more *res integra*. In ***Ministry of Finance and another*** *v* ***S. B. Ramesh*** [(1998) 3 SCC 227], while considering the scope of rule 14(18) of the CCS (CCA) Rules, 1965, the Hon'ble

Supreme Court approved the order of the Tribunal holding that the contravention of sub-rule (18) of rule 14 is a serious error. Relevant extract of the order of the Tribunal noticed by the Apex Court reads as under:

> "After these proceedings on 18-6-1991 the Enquiry Officer has only received the brief from the PO and then finalised the report. This shows that the Enquiry Officer has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18-6-1991. Under sub-rule (18) of Rule 14 of the CCS (CCA) Rules, it is incumbent on the Enquiry Authority to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not offer himself for examination as a witness. This mandatory provision of the CCS (CCA) Rules has been lost sight of by the Enquiry Authority. The learned counsel for the respondents argued that as the inquiry itself was held ex parte as the applicant did not appear in response to notice, it was not possible for the Enquiry Authority to question the applicant. This argument has no force because, on 18-6-1991 when the inquiry was held for recording the evidence in support of the charge, even if the Enquiry Officer has set the applicant ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry hereafter/or even if the Enquiry Authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under sub-rule (18) of Rule 14 of the CCS (CCA) Rules. The omission to do this is a serious error committed by the Enquiry Authority. ....."

The above findings of the Tribunal were approved by the Hon'ble Supreme Court in para 15 with the following observations:

> "15. On a careful perusal of the above findings of the Tribunal in the light of the materials placed before it, we do not think that there is any case for interference, particularly in the absence of full materials made available before us in spite of opportunity given to the appellants. On the facts of this case, we are of the view that the departmental enquiry conducted in this case is totally unsatisfactory and without observing the minimum required procedure for proving the charge. The Tribunal was, therefore, justified in rendering the findings as above and setting aside the order impugned before it."

14. The Hon'ble High Court of Delhi examined the question of non-adherence to the procedure prescribed under sub-rule (18) of rule 14 of the CCS (CCA) Rules, 1965 in ***Union of India through Secretary, Ministry of Information and Broadcasting and another*** *v* ***Tarlok Singh*** [WP (C) No.1760/2008, decided on 10.03.2011]. Relevant observations of the Hon'ble Court are reproduced hereunder:

> "19. The next contention on behalf of the petitioner is about the non-compliance of the Rule 14(18) of CCS(CCA) Rules. According to the petitioners, Rule 14(18) was substantially complied with. Perusal of the record, however, reveals that it is an admitted case that the respondent did not examine himself as a witness. In case the respondent had not examined himself as witness, it was incumbent upon the enquiry officer to put evidence adduced against the respondent during the enquiry to him in compliance of Rule 14(18) of CCS (CCA) Rules. The said rule had been enacted with a view that whatever evidence comes in the enquiry, explanation may be sought to rebut the circumstances, which would be in the consonance with the principle of reasonable opportunity and *audi alteram partem* as inbuilt in the

principles of natural justice. On perusal of the questions put by the enquiry officer to the respondent, it is apparent that out of the three articles of charges, only two articles of charge were put to the respondent, while none of the evidence in support of those articles of charges which were against the respondent were put to him.

20. Perusal of Rule 14(18) clearly reveals that it is obligatory upon the enquiry authority to question the delinquent officer on the circumstances appearing against him in the evidence, for the purpose of enabling him to explain any circumstance. As there is no reference to the evidence brought on record or circumstances appearing against the applicant, putting the charges against the respondent was not valid compliance of Rule 14(18) of the CCS (CCA) Rules 1965.

21. Provisions analogous to Rule 14(18) of CCS (CCA) Rule exist in Rule 9(21) of Railway Servant (Discipline & Appeal) Rules, 1958. In the matter of *Moni Shankar* v. *Union of India*, 2008 (1) AJW 479, an enquiry proceeding was conducted in which the following questions that were put to the Charged Officer: "please state if you plead guilty?"; "Do you wish to submit your oral or written arguments?"; "Are you satisfied with the enquiry proceeding" and "Can I conclude the enquiry?", were held to be not in compliance of Rule 9(21) of Railway Servant (Discipline & Appeal) Rules, 1958 as such type of questions did not reveal the evidence adduced in support of charges against the charged officer.

22. In *Ministry of Finance* v. *S.B. Ramesh*, (1998) 3 SCC 227 the Supreme Court had held the Rule 14 (18) of CCS (CCA) Rules, 1965 to be mandatory. The Apex Court had upheld the decision of the Tribunal holding that the order of the Disciplinary Authority was based on no evidence and that the findings were perverse, on the reasoning that even if the Enquiry Officer had set the applicant ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry thereafter. Or even if the Enquiry Authority did not

> choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under Sub-rule (18) of Rule 14 of the CCS (CCA) Rules. The omission to do this was construed to be a serious error committed by the Enquiry Authority. This also cannot be disputed that if the charged officer has examined himself as a witness then it will not be obligatory to examine the charged officer under Rule 14(18) of CCS (CCA) Rules. However, in the absence of any defense statement by the charged official, it was mandatory on the part of the enquiry officer to examine him under Rule 14(18), and the non-compliance of which will vitiate the enquiry proceedings.
>
> 23. Consequently, the order of the Tribunal quashing the enquiry proceeding on account of non-compliance of Rule 14(18) of CCS (CCA) Rules 1965 by not putting the evidence adduced before the enquiry officer in support of the three articles of charge to the charged officer vitiates the enquiry proceeding, cannot be termed to be illegal or unsustainable so as to require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India."

15. In ***State Bank of Patiala & others*** *v* ***S. K. Sharma*** [(1996) 3 SCC 364], the Hon'ble Supreme Court, while considering the application of principles of natural justice in respect to the domestic/departmental inquiries, laid down broader principles which need to be applied while examining the question of validity of disciplinary/departmental proceedings in the context of observance of principles of natural justice. Relevant observations of the Apex Court are reproduced hereunder:

"32. .... The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise.

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/ departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (*a*) the provision violated is of a substantive nature or (*b*) whether it is procedural in character.

(2) A substantive provision has *normally* to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent

officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can *also* be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(*a*) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(*b*) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the

former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it *or* that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in *B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] . The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no *adequate* opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (*a*) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (*b*) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders

> to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]
>
> (6) While applying the rule of *audi alteram partem* (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.
>
> (7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of *audi alteram partem*. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

Since the provisions of sub-rule (18) of rule 14 have been held to be mandatory in nature and thus principle (2) enunciated in para 33 of judgment of the Apex Court in ***State Bank of Patiala*** *v* ***S. K. Sharma*** (*supra*), as noticed hereinabove would be attracted, vitiating the inquiry.

16. Mr. Rajappa has, on the other hand, referred to a judgment of the Hon'ble High Court of Delhi in ***Union of India & others*** *v* ***Pradeep Kumar Modwill and another*** [WP(C) No.2850/2011, decided on 19.08.2013]. In this judgment, the Hon'ble High Court made the following observations:

> "57. In the instant case, Modwill has not shown as to how he has been prejudiced due to Enquiry Officer not examining him in terms of Rule 14(18) of the CCS (CCA) Rules, 1965. A perusal of the statement of defense submitted by Modwill goes to show that he was fully alive to the allegations against him and dealt with all aspects of the allegations in his statement of defense. We do not think that he was least prejudiced by the failure of the Enquiry Officer to examine him in terms of Rule 14(18) of the CCS (CCA) Rules, 1965. Such being the position, nothing turns upon the failure of the Enquiry Officer to examine him in terms of Rule 14(18) of the CCS (CCA) Rules, 1965."
>
> "61. In view of aforesaid, we hold that the Tribunal committed an illegality in setting aside the penalty order dated September 16, 2005 passed by the Disciplinary Authority and remanding the matter to the department on account of non-adherence by the Enquiry Officer to the provisions of Rule 14(18) of the CCS (CCA) Rules, 1965."

With utmost humility, we may say that these observations of the Hon'ble High Court of Delhi are not in consonance with the judgment of the Hon'ble Supreme Court in ***Ministry of Finance and another*** *v* ***S. B. Ramesh*** (*supra*) noticed hereinabove. The ratio of the judgment of the Apex Court is a binding precedent upon all Courts under Article 141 of the Constitution of India. Thus in view of the law laid down by the Hon'ble Supreme Court, non-observance of the provision of rule 14(18) of the CCS (CCA) Rules, 1965 is fatal and the impugned order is liable to be set aside on that count.

17. We have also examined the record produced by Mr. Rajappa. He has only referred to the proceedings recorded by the inquiring authority on 27.08.2008. We have already referred to the said proceedings in detail. Nothing is pointed out from the record that the inquiring authority even offered the delinquent official to answer the questions in respect to the material/allegations against him. Thus, a conclusion has to be drawn that the mandate of sub-rule (18) of rule 14 has not been observed.

18. Mr. Bhardwaj has also argued that the applicant has been acquitted from the criminal charge for the same allegations and the same incident. He has filed MA No.2148/2015 placing on record copy of judgment dated 13.12.2010 passed by the Additional Sessions Judge, 6th Court, Paschim Medinipur. His prayer is accordingly that since he has been acquitted from the criminal charge, the present inquiry is liable to be quashed on this ground. We do not agree to this contention. Even if the simultaneous disciplinary and criminal proceedings are initiated, the standard of proof in criminal proceedings is different and thus such an acquittal will not automatically vitiate the disciplinary proceedings. The parameters being different, the disciplinary proceedings are required to be examined on their own merit.

19. In view of the above, this OA is allowed with the following directions:

(1) The inquiry report and the impugned penalty order dated 29.01.2009 are hereby set aside.

(2) The applicant is directed to be reinstated forthwith. He shall be treated to be in service during the period of suspension. He would be entitled to all emoluments admissible to him. Let the arrears be calculated and paid to the applicant within a period of three months from the date of receipt of this order.

20. Record is returned to Mr. S. Rajappa.

(V. N. Gaur)
Member (A)

(Justice Permod Kohli)
Chairman

/as/