

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No.288/2015
with
OA No.3312/2011
(MA No.1783/2015)**

**OA No.54/2012
(MA No.1782/2015)**

OA No.599/2015

**OA No.3843/2011
(MA No.1878/2015)**

Reserved on : 31.01.2017
Pronounced on : 08.05.2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Ms. Nita Chowdhury, Member (A)**

OA No.288/2015

U. Das S/o U. C. Das,
R/o A-501, Sahara Apartments,
Plot No.11, Sector-6, Dwarka,
New Delhi-110075.

... Applicant

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

Versus

1. Union of India through its Secretary,
Ministry of Culture, Shastri Bhawan,
New Delhi.

2. Director General,
National Museum,
Janpath, New Delhi-110001.

... Respondents

(By Advocate : Mr. Hanu Bhaskar)

**MA No.1783/2015 in
OA No.3312/2011**

Union of India & others

... Applicants

(By Advocate : Mr. Hanu Bhaskar)

Versus

U. Das

... Respondent

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

**MA No.1782/2015 in
OA No.54/2012**

Union of India & others

... Applicants

(By Advocate : Mr. Hanu Bhaskar)

Versus

John Emmanuel Dawson

... Respondent

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

OA No.599/2015

John Emmanuel Dawson S/o C. E. Dawson,
R/o C-604, Krishna Apra Residency,
Plot No. E-8, Sector-61, Noida,
U.P.-201301.

... Applicant

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

Versus

1. Union of India through its Secretary,
Ministry of Culture, Shastri Bhawan,
New Delhi.

2. Director General,
National Museum,
Janpath, New Delhi-110001.

... Respondents

(By Advocates : Ms. Harvinder Oberoi and Mr. Rajesh Katyal)

**MA No.1878/2015 in
OA No.3843/2011**

Union of India & others

... Applicants

(By Advocate : Mr. Hanu Bhaskar)

Versus

K. K. S. Deori

... Respondent

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

O R D E R

Justice Permod Kohli, Chairman :

OA No.288/2015 & OA No.599/2015

The question raised in the present OAs is whether the disciplinary proceedings continued against the charged officers beyond the limit/time period allowed by the Tribunal for completion of the proceedings are legal and valid.

2. The issue involved in both the OAs being similar, these OAs are disposed of by this common order. Facts are primarily extracted from OA No.288/2015. The applicant was serving as Director (Collection and Administration), National Museum, New Delhi. He was served with a memorandum dated 26.07.2006 alleging loss caused to the National Museum by passing fake bills in favour of M/s Packwell & Co. and not following the process fairly. A perusal

of the aforesaid memorandum indicates that it was not a memorandum issued for initiating any disciplinary proceedings either for major or minor penalty in accordance with rules 14/16 of the CCS (CCA) Rules, 1965. The applicant submitted his reply to the aforesaid memorandum on 17.08.2006. Vide another memorandum dated 28.01.2011, a charge-sheet was served upon the applicant proposing to hold inquiry under rule 14 of the CCS (CCA) Rules, 1965. The aforesaid memorandum was accompanied with the articles of charge framed against the applicant, statement of imputations, list of documents and list of witnesses to prove the charges. The applicant was asked to submit his written statement of defence within ten days. It is stated that the aforesaid memorandum was received by the applicant on 31.01.2011, i.e., the date of his retirement. The applicant, however, submitted a representation dated 05.02.2011 for supply of copy of necessary documents as the charge memorandum was issued to him pertaining to the period 1996, i.e., after a period of almost 14 years. It is alleged that the respondents did not supply him all the documents. The applicant, however, submitted reply to the charge memorandum on 05.03.2011. Receiving no further intimation, the applicant along with two others, namely, John Emmanuel Dawson and K. K. S. Deori, who were also served similar charge-sheets along with the applicant, filed OA Nos.3312/2011, 54/2012 and 3843/2011 respectively, before this

Tribunal. The said OAs came to be disposed of by the Tribunal vide common order dated 16.01.2014. This Tribunal, making certain observations in para 16 of its judgment, while declining to set aside the charge-sheet on the ground of delay and noticing the factor of separate criminal cases having been registered against the applicants, disallowed the OAs, but at the same time directed the respondents to complete the inquiries within a period of nine months. Relevant observations of the Tribunal are noticed hereunder:

“19. In view of our above discussion, we disallow the instant three OAs being devoid of merit. However, in so far as conduct of departmental proceedings is concerned, we direct the respondents to complete the same in recognition of the fact that one U. Das (applicant in OA No.3312/2011) has already retired, within a period of nine months from the date of receipt of a certified copy of this order. There shall be no order as to costs.”

3. The respondents did not complete the inquiry within a period of nine months, as directed by the Tribunal. The applicant was served with an office memorandum dated 25.11.2014 to attend the proceedings pursuant to the charge memorandum dated 28.01.2011. This memorandum was issued by the inquiry officer appointed by the respondents. The memorandum is reproduced hereunder:

“Subject: Departmental Inquiry against Shri U. Das,
Director (C&A) (since retired), Charged

Officer, National Museum, Janpath, New Delhi - reg.

The Disciplinary Authority has appointed the undersigned as Inquiring Authority in the above mentioned case vide order No. F.14011-1/2010-Vig. dated 5th November, 2014.

2. The undersigned will hold a Preliminary Hearing (PH) in the above mentioned case on 10/12/2014 at 11.00 A.M. in his office at National Museum, Janpath, New Delhi. The Presenting Officer (PO) and the Charged Officer (CO) alongwith his Defence Assistant, if any, are directed to attend the hearing, failing which ex-parte proceedings will be held. The PO is directed to furnish copies of listed documents to the IO and CO. The CO is directed to submit copies of Statement of Defence to the IO and PO.

3. No witness will be examined during the hearing.

4. Receipt of this memorandum should be acknowledged."

4. The applicant responded to the aforesaid memorandum through his advocate vide letter dated 09.12.2014 communicating the inquiry officer as under:

"Sir,

In reference to your aforesaid letter, it is necessary to bring to your kind notice that disciplinary proceedings initiated against my client in which you have been appointed as I.O., have already been abated inasmuch as, the Hon'ble Tribunal vide its order dated 16.1.2014 granted 9 months time to complete the proceedings. The 9 months period expired on 15th October, 2014. After expiry of time granted by Hon'ble Tribunal, the Disciplinary Authority ceases its jurisdiction and as a consequential to aforesaid legal position, you being nominee of disciplinary authority

as per Rule 14 of CCS, CCA Rules also ceases any authority to proceed further.

Accordingly, it is requested to withdraw your aforesaid notice dated 24.11.2014 and close the proceedings. Any contrary action may attract other legal issues.

In case, the needful as requested above is not done, I will have no option except to advise my client to take recourse to appropriate legal remedy."

The applicant was, however, served with an order dated 14.12.2014 passed by the inquiry officer, which reads as under:

"In pursuance of Ministry of Culture Memo No. F.14011-1/2010-Vig. on dated 25.11.2014 and order dated 10.12.2014 preliminary hearing was held today from 12.00 noon onwards as scheduled. Presenting Officer (PO) attended the proceedings but the CO was absent.

Under these circumstances Preliminary Hearing in this case will now be held on 29.12.2014 at 12.00 noon in National Museum, New Delhi. The PO is directed to arrange to serve a copy of this order as well as a copy of order dated 10.12.2014 to the CO through National Museum by Speed Post as well as by Special Messenger. If the CO/PO fails to appear on 29.12.2014 the proceedings will be held ex-parte."

Thereafter the present OA has been filed on 14.01.2015 seeking the following reliefs:

"(a) To quash and set aside the impugned charge memo dated 28.01.2011 (A-1A) and direct the respondents to release all the retirement dues i.e. Gratuity, Leave encashment, Commutation of Pension with 12% interest.

- (b) To declare the disciplinary proceedings initiated against the applicant vide charge memo dated 28.01.2011 as abated and consequently quash the same with further directions to the respondent to release all consequential benefits withheld due to said proceedings.
- (c) To allow the OA with exemplary cost.
- (d) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case."

5. When this OA was taken up for hearing, it was observed that the impugned order was passed on 28.12.2011 and the OA was filed beyond the period of limitation. Time was sought by the counsel for the applicant to take steps. The applicant thereafter filed MA No.443/2015 seeking condonation of delay. This Tribunal made following observations regarding the application for condonation of delay in its order dated 13.02.2015:

"MA 443/2015 filed for condonation of delay without specifying the exact period of delay is not maintainable, and accordingly, the same is dismissed. However, the applicant is at liberty to file a better MA, if so advised.

- 2. Heard the learned counsel for the applicant.
- 3. Issue notice to the respondents. Shri Gyanendra Singh accepts notice on behalf of all the respondents and seeks time for filing reply.
- 4. List on 03.03.2015."

Without any order having been passed on this condonation application, the court passed the following order on 03.03.2015:

“Reply is sought to file within four weeks. Rejoinder, if any, be filed within two weeks thereafter.

List on 17.04.2015 before Registrar's Court for completion of pleadings.

Sd/- Member (A)

sd/- Member (J)

Later on Ms. Priyanka Bhardwaj appeared and stated that the matter pertains to interim relief and may, therefore, be listed early. Accordingly, list this case on 12.03.2015. She undertakes to inform the learned counsel of the above change.”

On the next date of hearing when the matter was taken up on 12.03.2015, the Tribunal passed the following order:

“Heard the learned counsel for the applicant on the point of interim relief, as prayed for in paragraph 9 of the OA. Learned Counsel for the respondents submits that disciplinary inquiry has since been completed, and the Inquiry Officer has submitted his report to the Disciplinary Authority, who is now supposed to pass his final order.

On the other hand, learned counsel for the applicant submits that the inquiry has since not been completed within the specific time allowed by Tribunal's order dated 16th January, 2014 in OA 3312/2-11, OA 54/2012 and OA 3843/2011, and even no extension of time was sought for. The interim relief as prayed for is, therefore, allowed, and it is ordered that the disciplinary authority should not pass any final order till the disposal of the present OA.

Call on 17.04.2015.

Order Dasti.”

Thereafter, this OA was directed to be taken up along with MAs filed in OA Nos.331/2015, 3843/2011 and 54/2012 vide order dated 15.09.2015. Vide subsequent order dated 16.10.2015, MA

Nos.1782/2015 in OA No.54/2015, 1878/2015 in OA No.3843/2011 and 1783/2015 in OA No.3312/2011 filed by the Union of India seeking extension of time, were directed to be listed for consideration along with present OAs 288/2015 and 599/2015. As far as OA No.331/2015 is concerned, it was directed that the said OA be not listed with present OAs.

6. OA No.599/2015 has been filed by applicant John Emmanuel Dawson. He was posted as Curator (Archaeology), National Museum during the period U. Das (applicant in OA No.288/2011) was serving as Director (Collection & Administration), National Museum, New Delhi. The applicant John Emmanuel Dawson was also issued a memorandum dated 26.07.2006 on the allegation of causing loss to the National Museum by passing fake bills in favour of M/s Packwell & co. This memorandum was not for initiating disciplinary proceedings either under rule 14 or rule 16 of the CCS (CCA) Rules, 1965. It is stated that the applicant submitted his reply to the said memorandum. While the matter remained as it is, a certificate dated 29.04.2010 was issued by the Director (Conservation)/Vigilance Officer, National Museum, New Delhi in respect to ten officers including U. Das (applicant in OA No.288/2011), present applicant and K. K. S. Deori, who was also

served with a similar memorandum and had filed OA No.3843/2011.

Said certificate reads as under:

“Certified in respect of the following Officers of the National Museum, New Delhi, who are being considered for grant of financial up-gradation under Modified Assured Career Progression Scheme (NACP), as verified from the official records that:

- (i) Their integrity is beyond doubt.
- (ii) There is no vigilance/disciplinary case pending of being contemplated against any of them and
- (iii) There is no major/minor penalty imposed against any of them.

Sl. No.	Name of the officer	Designation
1.	Shri U. Das	Director (C&A)
2.	Dr. R.R.S. Chauhan	Ex-Director (Exhibition & PR)
3.	Dr. Daljeet	Ex-Curator (Painting)
4.	Shri K.K.S. Deori	Curator (Display)
5.	Shri J.E. Dawson	Curator (Archaeology)
6.	Smt. Jayshree Sharma	Curator (archaeology)
7.	Smt. Anamika Pathak	Curator (Decorative Art)
8.	Shri S.V. Tripathi	Deputy Curator (Manuscripts)
9.	Shri Pramod Ganpatye	Deputy Director (Painting)
10.	Smt. Pratibha Prashar	Library & Information Officer

Even though when the respondents had granted clearance from vigilance angle and integrity of the applicant was said to be beyond doubt, the applicant was served with a memorandum dated 31.03.2011 for initiating disciplinary proceedings under rule 14 of the CCS (CCA) Rules, 1965. This memorandum was accompanied with articles of charge, statement of imputations and the lists of documents and witnesses. From the articles of charge and the statement of imputations it appears that the charge-sheet was issued in respect to allegations pertaining to the period 2004-05. The applicant filed his reply on 11.04.2011 denying the allegations, and thereafter filed OA No.54/2012 before this Tribunal.

7. Another officer, K. K. S. Deori who was posted as Curator (Display), National Museum during the period applicant U. Das was Director (C&A) and applicant John Emmanuel Dawson was Curator (Archaeology), National Museum, was also issued a memorandum dated 03.08.2006 indicating certain lapses on the allegations of helping M/s Packwell & Co., the same firm in respect to whom there were allegations against applicants U. Das and John Emmanuel Dawson. This memorandum was also not for initiating any proceedings under rule 14 or rule 14 of the CCS (CCA) Rules, 1965. The said officer also submitted his reply on 18.08.2006. He was also issued memorandum dated 01.03.2011 for initiating disciplinary

proceedings under rule 14. The said officer also submitted his reply and filed OA No.3843/2011. This OA was also disposed of vide common judgment dated 16.01.2014 along with OA No.3312/2011 and OA No.54/2012 filed by U. Das and John Emmanuel Dawson respectively.

8. In case of the applicant John Emmanuel Dawson also, despite directions vide common judgment dated 61.01.2014 to complete the disciplinary proceedings within nine months, the disciplinary proceedings were not concluded. To the contrary, the applicant was served with an order dated 17.12.2014 passed by Amar Mudi, Inquiry Officer in the inquiry proceedings allegedly held against the applicant pursuant to the memorandum dated 31.03.2011. The applicant also responded to the said order vide his letter dated 23.12.2014 through his advocate communicating that the inquiry officer had no authority to proceed with the inquiry after expiry of the period of nine months granted by the Tribunal to complete the disciplinary proceedings. The inquiry officer, however, passed another order dated 29.12.2014 in absence of the applicant stating therein that the charged officer did not appear. The applicant again submitted his response vide his letter dated 07.01.2015. Thereafter the applicant filed OA No.54/2012 which came to be disposed of by the common order dated 16.01.2014. Since the respondents continued

to proceed with the inquiry, present OA was filed challenging the charge memorandum dated 31.03.2011 and order passed by the inquiry officer dated 17.12.2014 with further relief in the nature of declaration that the disciplinary proceedings stand abated.

9. During the pendency of these OAs, the respondents have filed misc. applications seeking extension of time for completion of the disciplinary proceedings. MA No.1783/2015 has been filed in OA No.3312/2011 filed by U. Das; MA No.1782/2015 has been filed in OA No.54/2012 filed by John Emmanuel Dawson; and MA No.1878/2015 in OA No.3843/2011 in case of K. K. S. Deori.

10. The grounds for seeking extension in the MAs are more or less common. In MA No.1783/2015 in OA No.3312/2011 it is stated that after the order of the Tribunal dated 16.01.2014 directing the respondents to complete the disciplinary proceedings within a period of nine months, the disciplinary authority appointed one Ms. Sreya Guha, Joint Secretary, Ministry of Culture as the inquiry officer to inquire into the charges against U. Das, and one Ms. Renu Navani was appointed as the presenting officer in the matter. Subsequently, on 05.04.2014 Ms. Renu Navani expressed her inability to perform duties of presenting officer and accordingly on 17.04.2014 one Mohan Pratap was appointed as new presenting officer. Mohan Pratap was asked by the inquiry officer to prepare a short note in regard to the

inquiry. The presenting officer met the inquiry officer on 04.06.2014 and handed over the documents along with the short note to the inquiry officer. However, the inquiry officer did not proceed in the matter thereafter. The period of nine months expired on 16.10.2014 and after fresh opinion, Amar Mudi was appointed as new inquiry officer on 05.11.2014, who held preliminary hearing on 17.12.2014. The charged officer did not appear before the inquiry officer. Dates of hearing were fixed by the inquiry officer on 29.12.2014, 17.01.2015, 11.02.2015 and 19.02.2015. The charged officer remained absent. The inquiry officer proposed day to day hearing w.e.f. 27.02.2015 for examining the prosecution witnesses. The inquiry was concluded on 28.02.2015 when the presenting officer was asked to submit his written brief. It is stated that the inquiry officer was expected to submit the inquiry report by 30.04.2015.

11. In MA No.1782/2015 in OA No.54/2012 filed by John Emmanuel Dawson, similar averments have been made except that one Ms. Manisha Sinha, Director, Ministry of Culture was appointed as the inquiry officer to inquire into the charges against this applicant. Ms. Renu Navani was also the presenting officer. In this inquiry proceeding also Ms. Renu Navani withdrew from the assignment and Mohan Pratap was appointed as the presenting officer. The appointed inquiry officer Ms. Manisha Sinha was

replaced by Shri Amar Mudi as inquiry officer on 05.11.2014. The said inquiry officer held preliminary hearing in the matter on 17.12.2014 on which date the charged officer did not appear. The inquiry officer accordingly held sittings on the same dates as fixed in applicant U. Das's case and concluded this inquiry also simultaneously. In this case also it is stated that the inquiry report was expected by 30.04.2015.

12. MA No.1878/2015 in OA No.3843/2011 in the case of K. K. S. Deori is again based upon the similar facts and circumstances. In this case also Ms. Manisha Sinha was appointed as the inquiry officer and Ms. Renu Navani as the presenting officer. Ms. Renu Navani withdrew from the assignment and Mohan Pratap was appointed as the new presenting officer. The inquiry officer was also replaced by Amar Mudi on 05.11.2014, who passed orders on the same dates simultaneously with the cases of U. Das and John Emmanuel Dawson. Similar averment have been made that the report of the inquiry officer is expected by 30.04.2015. This applicant has not filed any fresh OA seeking abatement of the disciplinary proceedings.

13. Applicants in the OAs have filed their replies to the applications for extension of time. Objections are also on similar grounds. A preliminary objection has been raised that after passing

of the final order granting time for completion of the disciplinary proceedings, the Tribunal becomes *functus officio* and ceases to have any jurisdiction to extend time, and for this purpose the applicants have relied upon an order dated 18.11.2014 passed by this Tribunal in MA Nos.3544/2014 & 3551/2014 in OA No.1173/2014. The extension application was rejected by the Tribunal holding that once the time fixed by it has expired, the Tribunal becomes *functus officio* and cannot exercise its jurisdiction except in review, or for correction of any typographical error/clerical mistake. In regard to the averments made in the applications seeking extension, it is stated that the respondents were under an obligation to complete the disciplinary proceedings within the time stipulated by the Tribunal and their failure to do so renders the disciplinary proceedings abated. The applicants have justified their non-appearance before the inquiry officer after expiry of the nine months period granted by the Tribunal for completion of the disciplinary proceedings.

14. Since the respondents have filed applications seeking extension of time for completion of the disciplinary proceedings, it is deemed appropriate first to deal with the applications for extension of time, as in the event of grant of extension, both the OAs would be rendered infructuous. The substance of the averments made in the application for extension has been noticed hereinabove.

15. Mr. Bhardwaj, learned counsel appearing for the applicants in the OAs and for non-applicants in the extension applications, has sought dismissal of the extension applications on the preliminary objection being raised by him that on the expiry of the period granted by the Tribunal for performance of any act, the Tribunal ceases to have jurisdiction to extend time as it is rendered *functus officio*. In support of his contention, learned counsel has relied upon order dated 18.11.2014 passed by this Tribunal in MA Nos.3544/2014 & 3551/2014 in OA No.1173/2014, which reads as under:

“8. Further even otherwise, once the time fixed by this Hon’ble Tribunal is expired, this Hon’ble Tribunal becomes functus officio and it cannot exercise its jurisdiction except in review, or for correction of any typographical error/clerical mistake.

9. In the circumstances, the MA filed for extension of time after the expiry of the time fixed by this Hon’ble Tribunal and the MA for condonation of delay in filing the said MA are not maintainable and accordingly, both the MAs are dismissed.”

16. We have thoughtfully considered this objection. Even though, this Tribunal has passed the aforementioned order declaring that the Tribunal becomes *functus officio* after expiry of the period granted by it for performance of any act and the application for extension beyond the period stipulated by the Tribunal is not

maintainable, however, we do not agree with this proposition of law on account of the following reasons.

17. Procedures and powers of the Tribunal are prescribed under Section 22 of the Administrative Tribunals Act, 1985, which reads as under:

“22. Procedure and powers of Tribunals. —

(1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.

(2) A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representations and after hearing such oral arguments as may be advanced.

(3) A Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely: —

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence of affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) requisitioning any public record or document or copy of such record or document from any office;

- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it ex parte;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (i) any other matter which may be prescribed by the Central Government.”

By virtue of sub-section (1) of section 22, the Tribunal is not bound by the procedure laid down in the Code of Civil Procedure. The Tribunal, however, is to be guided by the principles of natural justice, and subject to the provisions of the Act and any rules made by the Central Government, the Tribunal is to regulate its own procedure. Sub-section (3), however, empowers the Tribunal to exercise the same powers as are vested in a civil court while discharging its functions under the Act in respect to matters indicated in clauses (a) to (h) and in respect to other matters as may be prescribed by the Central Government. The expression “prescribed” has been defined under clause (l) of section 3 of the Act, which reads as under:

“(l) “prescribed” means prescribed by rules made under this Act;”

The expression “prescribed” means prescribed by the rules. The Central Government has framed Central Administrative Tribunal (Procedure) Rules, 1987 as also the Central Administrative Tribunal

(Rules of Practice), 1993. The 1987 rules deal with various stages while dealing with the matters by the Tribunal, and the manner in which the pleadings are to be filed, scrutiny etc., contents of the applications, and all other ancillary matters, including service of notices, dismissal in default *ex parte*, power to review and various other matters, whereas the 1993 rules deal with the procedure and practice to be adopted by officials of the Tribunal in maintenance of record and matters related thereto. None of the rules specifically deal with the judicial powers of the Tribunal except the remedies available, i.e., review and the manner and method of dealing with the cases. Insofar as the judicial powers of the Tribunal are concerned, in respect to some of the matters, the powers exercisable by the civil court are available to the Tribunal under sub-section (3) of section 22 and to that extent, the provisions of the Code of Civil Procedure would apply. As regards other matters, there are specific provisions for dealing with the applications in absence of the applicant or the respondent, consequences thereof and the remedies. The Tribunal is, however, required to act in a fair manner and even is entitled to regulate its own procedure. The Administrative Tribunals Act, 1985 being a special Act, it is not necessary to lay down the detailed procedure for discharging the judicial functions by the Tribunal. Even though the Code of Civil Procedure is not applicable in terms to the proceedings before the Tribunal except those prescribed under

sub-section (3) of section 22, the Tribunal is entitled to adopt the principles available under the Code for the fair and effective discharge of its functions and duties under the Act, and for this purpose the Tribunal is entitled to adopt some of the principles enshrined under the Code, which are fair, judicious and are otherwise not prohibited by the Act. For example, the Tribunal applies the principle of *res judicata* where there are earlier decisions available on the same issue, notwithstanding the fact that section 11 of the Code is not applicable as such. Section 148 of the Code empowers the court to enlarge the time either fixed by the court or by the Code. Section 148 reads as under:

“148. Enlargement of time. - Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, not exceeding thirty days in total, even though the period originally fixed or granted may have expired.”

Section 151 of the Code further confers the inherent powers upon every court to pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Section 151 reads as under:

“151. Saving of inherent powers of Court. - Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

18. From the reading of the aforesaid provisions it can be safely held that the Tribunal is also entitled to pass orders contemplated under section 148 and section 151 of the Code of Civil Procedure. Learned counsel for the applicants, however, submits that section 151 applies only to civil court. The Tribunal being a judicial forum falls within the purview of “court” while discharging its functions to administer justice. We do not agree on second contention as well. Inherent powers vest in every court by virtue of its duty to do justice. That is why these powers are called “inherent”. Section 151 *per se* does not confer inherent power. It only recognizes the inherent powers of the court existing in it by virtue of its duty to do justice. In *Mahant Ram Das v Ganga Das* [AIR 1961 SC 882 : (1961) 3 SCR 763], the Hon’ble Supreme Court held as under:

“5. The short question is whether the High Court, in the circumstances of the case, was powerless to enlarge the time, even though it had peremptorily fixed the period for payment. If the Court had considered the application and rejected it on merits, other considerations might have arisen; but the High Court in the order quoted, went by the letter of the original order under which time for payment had been fixed. Section 148 of the Code, in terms, allows extension of time, even if the original period fixed has expired,”

The Hon’ble Supreme Court in *Padam Sen v State of Uttar Pradesh* [(AIR 1961 SC 218)] held as under:

“The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature. It is also well recognized that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code.”

In view of the aforesaid legal position and the authoritative opinion of the Hon'ble Supreme Court, the view of this Tribunal that it becomes *functus officio* after the expiry of the prescribed period is *per incuriam*. It thus emerges that the Tribunal has the jurisdiction and power to enlarge the time fixed by it or even by the statute even after expiry of the period so prescribed. Even under section 151 CPC, the Tribunal has the jurisdiction to pass any order to secure the ends of justice and to prevent the abuse of its process. The preliminary objection raised by Mr. Bhardwaj is thus rejected.

19. Coming to the merits of the OAs, it is admitted case of the parties that the three OA Nos.3312/2011, 54/2012 and 3843/2011 were filed by U. Das, John Emmanuel Dawson and K. K. S. Deori challenging the disciplinary proceedings initiated against them by issuing charge-sheets. The allegations against them are common. They were posted in the same organization when the alleged act of misconduct was attributed to them. The incident pertains to the year

2004-2005. Non-statutory show cause notices were issued to the applicants in 2006 followed by formal charge-sheets for initiating disciplinary proceedings in accordance with the statutory rules. These charge-sheets were challenged in aforementioned three OAs. All the three OAs were decided by a common judgment dated 16.01.2014 by this Tribunal quoted by us in para 2 hereinabove. While rejecting the challenge to the charge-sheets the Tribunal directed the respondents to complete the disciplinary proceedings within nine months. It is also admitted position that the disciplinary proceedings were not concluded within the period of nine months. The respondents have attempted to explain in the misc. applications for extension the causes for delay in completion of the disciplinary proceedings. As a matter of fact, except appointment of the inquiry officer and the presenting officer, nothing else was done within the period of nine months stipulated by the Tribunal in its order dated 16.01.2014 for completion of the disciplinary proceedings. The inquiry officer held the first preliminary hearing on 17.12.2014, whereas the period for completion of the proceedings had expired on 15.10.2014. The applicants made representations/legal notices to the inquiry officer specifically pleading therein that the inquiry officer had no jurisdiction to hold the inquiry after expiry of the period fixed by the Tribunal. The inquiry officer, however, in a most irresponsible and arbitrary manner proceeded to hold the inquiry *ex parte* without

considering the plea of the applicants. The disciplinary authority also did not care to approach the Tribunal for extension of time for completion of the disciplinary proceedings before the expiry of the period fixed by the Tribunal, or even thereafter when the inquiry officer initiated the inquiry, despite specific plea raised by the applicants regarding the inquiry officer's jurisdiction. Even the disciplinary authority was informed about the expiry of the period fixed by the Tribunal. The applications for extension have been made only in April-May, 2015, i.e., after six/seven months from the date of expiry of the of the time granted by this Tribunal for completion of the disciplinary proceedings. The only reasons for seeking extension are withdrawal of the presenting officer and the inaction on the part of the originally appointed inquiry officers who failed to act promptly, and it was only in April, 2015, precisely on 05.04.2015, that a new inquiry officer was appointed. It goes without saying that the original inquiry officers were the officers of the department and were under the control and jurisdiction of the disciplinary authority, although they were to act independently and fairly. However, for purposes of complying the directions of the Tribunal and for promptly completing the disciplinary proceedings, the disciplinary authority had the jurisdiction to request the inquiry officers to do so. Nothing seems to have been done. The inquiry officer also proceeded to hold the inquiries after the period for completion of the

entire disciplinary proceedings had expired without even seeking approval of the disciplinary authority, what to say of the Tribunal. The respondents have thus abused the process of law by proceeding to hold the inquiry after expiry of the period stipulated by the Tribunal. Even in the applications for extension it is stated that the inquiries are likely to be completed by 30.04.2015. These matters were heard in January, 2017. Even by then nothing was brought on record to indicate that the inquiry officer had completed the inquiries and submitted reports to the disciplinary authority. Vide interim order dated 12.03.2015 the disciplinary authority was directed not to pass any final order till the disposal of the present OAs.

20. As far as the fate of the proceedings carried out beyond the time fixed by the Tribunal is concerned, such proceedings are without any authority of law and could only be legalised on judicial order granting extension from the date of expiry of the period stipulated by the Tribunal for completion of the proceedings. There is no legal embargo in doing so, but in the present case, the inquiries against the applicants were conducted *ex parte*, as the applicants did not participate, the inquiries having been initiated beyond the time allowed by this Tribunal. The applicants were justified in not participating in the proceedings. It was the obligation of the disciplinary authority to have promptly acted by approaching this

Tribunal for extension of time when it found that even the inquiry could not be concluded within the time granted by this Tribunal, what to say of the complete disciplinary proceedings. The disciplinary authority, however, either on account of the callousness or any other unknown reason chose to allow the inquiry officer to proceed beyond the time granted by the Tribunal for completion of the process even in the absence of the charged officers. Even if the respondents are allowed to complete the disciplinary proceedings, the inquiry having been continued in absence of the charged officers being an *ex parte* inquiry is likely to prejudicially affect the charged officers. Their non-appearance before the inquiry officer is totally justified in the facts and circumstances of these cases. They cannot be blamed for non-appearance even if the disciplinary authority is allowed to proceed further. The challenge to the inquiry being *ex parte* and in violation of the principles of natural justice would have to be sustained, and thus this Tribunal cannot be instrumental in allowing illegality. The respondents cannot be allowed to proceed on the basis of *ex parte* inquiries against the charged officers. This is an important factor which has to weigh with the Tribunal not to grant extension. The incident relate to the year 2004-2005. The charge-sheets were served i the year 2011, i.e., after 5 to 6 years of the incident. Even though the challenge to the charge-sheets on account of delay was not accepted by this Tribunal in its judgment dated

16.1.2014, however, the subsequent circumstances during the *interregnum*, i.e., non-completion of even the inquiry within the nine months period granted by the Tribunal and holding *ex parte* inquiry thereafter have contributed to the delay and illegality committed by the respondents. In the event the extension applications are allowed, another challenge has to be made by the charged officers to the inquiry reports being *ex parte* and thus *de novo* inquiries have to be commenced. Already 12-13 years have passed and if fresh inquiry is allowed, another year or so would be required to complete the fresh inquiries and the conclusion of the subsequent disciplinary proceedings.

21. In view of the above circumstances, the applications for extension are rejected.

22. The only question that now needs to be determined is whether the pending disciplinary proceedings would abate having not been concluded within the time stipulated by this Tribunal in its judgment dated 16.01.2014.

23. Rule 14 of the CCS (CCA) Rules, 1965 does not prescribe any period for completion of the inquiry, except for certain acts, for which periods have been stipulated. The Central Vigilance Commission has, however, issued administrative circulars prescribing the period for completion of inquiry. Earlier circular

No.000/VGL/18 dated 23.05.2000 was issued, relevant extract whereof is extracted hereunder:

“Delays in disposal of disciplinary cases are a matter of serious concern to the Commission. Such delays also affect the morale of the suspected/charged employees and others in the organisation. The Commission has issued instructions, vide its communication No. 8(1)(g)/99(3) dated 03.03.1999, that departmental inquiries should be completed within a period of six months from the date of appointment of Inquiry Officers.....

S.No.	State of Investigation or inquiry	Time Limit
1.	Decision as to whether the complaint involves a vigilance angle	One month from receipt of the complaint.
2.	Decision on complaint, whether to be filed or to be entrusted to CBI or to be taken up for investigation by departmental agency or to be sent to the concerned administrative authority for necessary action.	-do-
7.	Issue of charge-sheet, if required.	(i) One month from the date of receipt of Commission's advice. (ii) Two months from the date of receipt of investigation report
8.	Time for submission of defence statement	Ordinarily ten days or as specified in CDA Rules.
9.	Consideration of defence statement.	15 (Fifteen) days.
10.	Issue of final orders in minor penalty cases.	Two months from the receipt of defence statement.
11.	Appointment of IO/PO in major penalty cases	Immediately after receipt and consideration of

		defence statement.
12.	Conducting departmental inquiry and submission of report	Six months from the date of appointment of IO/PO.
13.	Sending a copy of the IO's report to the Charged Officer for his representation.	i) Within 15 days of receipt of IO's report if any of the Articles of charge has been held as proved; ii) 15 days if all charges held as not proved. Reasons for disagreement with IO's findings to be communicated.
14.	Consideration of CO's representation and forwarding IO's report to the Commission for second stage advice	One month from the date of receipt of representation.
15.	Issuance of orders on the Inquiry report.	i) One month from the date of Commission's advice. ii) Two months from the date of receipt of IO's report if Commission's advice was not required.

This circular was, however, superseded and the latest circular on the issue is No.000-VGL-18/30505 dated 18.01.2016. The last circular is issued pursuant to directions issued by the Hon'ble Supreme Court in case of *Prem Nath Bali v Registrar, High Court of Delhi & another* [(2015) 16 SCC 415]. The Hon'ble Supreme Court in the aforesaid case observed as under:

“28. Keeping these factors in mind, we are of the considered opinion that every employer (whether

State or private) must make sincere endeavour to conclude the departmental enquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time-frame then efforts should be made to conclude within the reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.”

On consideration of the directions of the Apex Court, the Commission made following suggestions:

- “(i) In cases where investigation has been conducted by the CBI/ other investigating agency and the documents have been seized by them for prosecution in courts and RDA is also contemplated, it is the responsibility of the CVO/DA to procure from the CBI/investigating agency legible certified copies of seized documents required for RDA. In cases investigated by CVOs it must be ensured that certified legible photocopies of all documents are made available at the time of preparation of draft charge-sheet itself
- (ii) While drafting the charge-sheet it may be ensured that all the relied upon documents as well as copies of relevant rules/instructions are in the custody of CVO. After issue of charge-sheet and submission of defence statement, the DA is required to take a decision within 15 days for appointment of IO/PO in major penalty cases.
- (iii) As far as practicable, the IO should be chosen from amongst the serving officers/retired officers in the same station where the charged officer is posted, who is likely to continue till the conclusion of inquiry.

- (iv) It may be ensured that the PO is appointed simultaneously. Changes in IO/PO be resorted to only in exceptional cases under intimation to the Commission (in respect of officers within the jurisdiction of the Commission).
- (v) In cases involving more than one charged officer, it may be ensured that, as far as practicable, same IO/PO is appointed in all cases.
- (vi) The PO must keep copies of relevant Rules/Regulations/Instructions etc. readily available with him. Departments/Organisations should also ensure online availability of all their Rules/Regulations/Instructions etc. so that it can be downloaded during the inquiry proceedings without any loss of time.
- (vii) It may be ensured that the defence documents are made available within the time allowed by the IO. Responsibility should be fixed on the custodian of such documents for any undue delay/not producing it in time or loss of these documents.
- (viii) The IO should normally conduct Regular Hearing on a day to day basis and not grant more than one adjournment for appearance of witnesses. It may be ensured that all the prosecution or defence witnesses are summoned and examined in separate but simultaneous batches expeditiously.
- (ix) If witnesses do not appear in response to notices or are not produced by PO/CO as the case may be, powers conferred under the Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972 be exercised to request the Competent Court to pass orders for production of the witness through summons issued by the Court.
- (x) The IO should, as far as practicable, desist from allowing interlocutory documents sought either by the PO or the CO as additional documents during the deposition of witnesses.

- (xi) The time-limit for various stages of inquiry, as prescribed by the Commission vide its Circular No. 8(1)(g)99(3) dated 03.03.1999, may be complied with strictly by the disciplinary authorities and the inquiry officers.
- (xii) Where the CO or PO do not co-operate in the manner of attendance, production of documents, witnesses etc., IO may after affording reasonable opportunity, proceed to give a report ex-parte based on facts, documents, witnesses produced before him."

24. We find that none of these suggestions have been adhered to. Our experience has shown that the time limit prescribed in the above circulars is not realistic. The Hon'ble Supreme Court was persuaded to fix the time limit on the basis of the circulars issued by CVC. The upper limit prescribed by the Hon'ble Supreme Court is one year. The CVC or the Government must consider the question of fixing realistic time limit for completion of the inquiry and the subsequent disciplinary proceedings keeping in view various steps to be taken including CVC and UPSC's advice, wherever required. Hardly there is any case where the time limit prescribed in the above mentioned circulars has been adhered to. Thus, it becomes imperative for the respondents to re-examine the whole issue and if so desired, issue fresh circular making instructions/guidelines for completion of the disciplinary proceedings. The respondents may also approach the Hon'ble Supreme Court with the detailed data and facts for consideration of the Hon'ble Court, as in every case the time

limit is not being adhered to and in some cases despite serious allegations against the charged officers, they go scot free, while in other cases even innocent persons have to suffer on account of prolonged proceedings. The respondents have failed to complete the disciplinary proceedings within the time limit prescribed by the Tribunal, or even by the Hon'ble Supreme Court, if we were to allow the period to be extended in terms of the judgment of the Apex Court in case of *Prem Nath Bali* (supra). Any action or proceedings beyond the time fixed by the court are impermissible and thus must be deemed to have abated.

25. On account of these reasons, both these OAs are allowed. The disciplinary proceedings pending against the applicants are deemed to have been abated. It is thus declared that the disciplinary proceedings against the applicants in all these cases are *non est* in the eyes of law.

(Nita Chowdhury)
Member (A)

(Justice Permod Kohli)
Chairman

/as/