

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No.3451/2012

Order Reserved on 04.08.2015  
Order Pronounced on: 05.01.2016

***Hon'ble Mr. Sudhir Kumar, Member (A)***  
***Hon'ble Mr. Raj Vir Sharma, Member (J)***

Shri Ganga Singh  
Aged 62 years  
S/o Late Shri Sudama Singh  
C/o A-242  
Minto Road Complex  
New Delhi-110002

-Applicant

(By Advocate: Shri B.L. Wanchoo)

**Versus**

1. Union of India  
Through  
Secretary to Govt. of India  
Ministry of Culture  
Shastri Bhawan  
New Delhi-110003
2. Director  
National Gallery of Modern Art  
Ministry of Culture  
Jaipur House, New Delhi-110003.

-Respondents

(By Advocate: Shri H.K. Gangwani)

**ORDER**

**Per Sudhir Kumar, Member (A):**

The applicant of this O.A. is before this Tribunal aggrieved by the order dated 31.08.2012 passed by Respondent No.2 imposing upon him a penalty of reduction of monthly pension to the minimum admissible pension of Rs.3500/- per month for a period of three years, and further gratuity amount in full having been withheld permanently

without holding any disciplinary enquiry as per the procedure laid down under the Central Civil Services (Classification, Control and Appeal) [CCS (CCA), in short] Rules, 1965.

2. The applicant was a Receptionist at the Office of Respondent No.2, and was In-charge of Sale of paintings, souvenir items of public etc. at the Reception. He was placed under suspension on 17.06.2005, as disciplinary proceedings were contemplated against him, and the Respondent-Authorities thereafter failed to review or revoke the suspension for a long period in spite of the mandatory provisions of sub rules 6 & 7 of Rule 10 of the CCS (CCA) Rules, 1965, and he continued to remain suspended for 5 years, till the date of his superannuation on 28.02.2010.

3. He has, therefore, approached this Tribunal submitting that the enquiry held against him was not as per law, and was conducted by an Administrative Officer, who was himself directly responsible for the overall control and issuing of the articles, which had been alleged to be short under the charge of the applicant, and was, therefore, not a neutral officer, and had, in fact, himself committed irregularities, and made the applicant a scapegoat. He has submitted that the whole enquiry proceedings against him were vitiated, and were not conducted as per the laid down procedure, and principles of natural justice, rendering the subsequent penalty imposed upon him also as illegal, arbitrary and perverse, and liable to be quashed and set aside. Since his suspension

was never reviewed, the applicant has also prayed to be treated to be deemed to have been on duty from 17.06.2005, till his superannuation on 28.02.2010, by regularization of the period of his suspension as per spent on duty, and set aside the impugned order, which has treated the period of his long suspension as not having been spent on duty.

2. The facts of the case lie in a brief compass. Certain publications, articles & artifacts, which the applicant was supposed to have under his control for sale at the Reception counter of Respondent No.2 National Gallery of Modern Art (NGMA, in short), were found to be short during a surprise check. The applicant was placed under suspension on 17.06.2005, as mentioned above, and on 04.02.2006, a charge sheet under Rule 14 of the CCS (CCA) Rules, for disciplinary proceedings leading to imposition of major penalty was issued against him. The applicant has alleged that in fact it was the then Administrative Officer himself who would often order the applicant to issue to various visitors and dignitaries certain items meant for sale, as complimentary copies, which directions he had to obey. But, in spite of that, when the disciplinary enquiry against him was to be held, the same Administrative Officer was appointed as the Enquiry Officer, against all the norms of natural justice. He has also submitted that when he requested copies of the relevant documents, on the basis of which the charges were proposed to be sustained against him, even those were not supplied to him for the purpose of his defence before the Enquiry Officer, nor the day to day enquiry proceedings were maintained, nor the applicant was given any

copy of such day to day record of enquiry proceedings, nor was he given any proper opportunity to produce evidence to defend his case effectively during those proceedings.

3. The applicant has submitted that his junior Shri Brij Pal, the Gallery Attendant, was often operating the Sales Counter during his absence and leave periods, but he was not provided with any opportunity of examination and cross examination of the said Shri Brij Pal, or of one Shri D.S. Sagar, on whose purported complaint, a surprise check was made, and later charge sheet was issued, and the disciplinary enquiry was conducted.

4. The applicant has also submitted that there is neither any specific laid down procedure in the Respondent-NGMA for its annual stock taking of stores held under the charge, nor any checking of ledger, as well as the balance of material available, by any board of officers periodically.

5. The applicant has, therefore, taken the grounds in filing the OA that the then Administrative Officer, who was the immediate superior of the applicant, and during whose period the charge sheet was issued, and who was himself witness of material facts, could not have been appointed as the Enquiry Officer. He has further taken the ground that apart from non-supply of relevant documents to enable him to defend his case effectively, the enquiry proceedings were held only on three dates, on 13.10.2007, 31.10.2007 and 27.02.2008, and without maintaining any

proper daily order sheet signed by the Enquiry Officer, the Presenting Officer, and the Charged Official, which was in violation of the procedure laid down in the CCS (CCA) Rules, and, therefore, both the conduct of the disciplinary enquiry, as well as the conclusions arrived at thereafter, are highly irregular, irrational and are vitiated, and not sustainable in the eyes of law.

6. He has taken the further ground that the charges stated to have been proved against him have merely been so held based on assumptions, surmises and conjectures of the Enquiry Officer, without ascertaining any facts from any documentary evidence or witnesses. He has also denied that he had ever made any attempt to meddle with the stock of publications fed into the computer system, as it was the Enquiry Officer alone, who was the then Administrative Officer, who had arranged the installation of computers, and had got the relevant data fed into the computer, and the applicant was not even aware about the stock inventory which had been fed into the memory of the computer. He had taken the ground that only in order to save his own skin, the Enquiry Officer had acted as a judge in his own cause, and had alleged misappropriation by the applicant of cash amounting of Rs. 1,98,122/-, without any supporting or corroborative evidence for proving that charge. As regards the non-maintenance of proper records of sales prior to the period of computerization of inventory w.e.f. 14.07.2004, the applicant has taken the ground that he himself also had not received any inventory ledger from his predecessor, and had clearly stated before the Enquiry

Officer that he had never sold any item without issuing Cash Memos, still, the Enquiry Officer has concluded the charge having been proved, even in the absence of any evidence or witness.

7. In respect of Charge V mentioned in the Charge Sheet that the applicant had been found under the influence of liquor during duty hours on several occasions, despite several warnings issued to him, the applicant has taken the ground that this charge could not be held to be proved in the absence of any medical report to the effect, or after examining any witness for sustaining of the charge, and, therefore, any findings arrived at in this regard are perverse.

8. The applicant has taken the further ground that all the five charges which the Enquiry Officer has in his report stated to have been proved were in the absence of any documentary evidence, or in the absence of proving the charges against him during oral hearing, since he had not admitted to any charge, and no proper witnesses were produced. The applicant has further taken the ground that since both in the enquiry proceedings, and in his report, the Enquiry Officer has not made any assessment of the evidence, nor made any analysis of the evidence, as required under Rules, before arriving at his conclusions, the whole enquiry proceedings are liable to be quashed and set aside, and the penalty imposed is also liable to be quashed and set aside.

9. Thereafter, he had cited some cases in which, during the visits of various foreign dignitaries and others, he was forced to issue

complimentary copies of the items and publications concerned, and when he used to follow up through written Notes, and get them approved by the Director, i.e., Head of Department, the charges in respect of such items could not have been held to be proved against him. He has further taken the ground that the Disciplinary Authority also had not at all applied his mind, but has merely imposed the penalty in accordance with the advice of the Union Public Service Commission (UPSC, in short), as it is, without taking any decision of its own volition, and hence the order of penalty is perverse and motivated, and not an independent decision, and liable to be quashed and set aside.

10. He has further taken the ground that since the Enquiry Officer has not even bothered to examine a single witness in support of the charges levelled against him, and even the Team of officials who had conducted a surprise check on 20 and 21<sup>st</sup> May 2003 of the stores held on the charge of the applicant had not been called as witnesses and examined during the enquiry proceedings, and he had been denied an opportunity to be allowed to cross examine those officials, hence the entire enquiry proceedings were vitiated, arbitrary and malafide. In the result, the applicant had prayed for the following reliefs:-

- “a) direct the Respondents to produce the relevant files/records pertaining to the initiation of impugned disciplinary proceedings and imposition of impugned penalty, for perusal of this Hon’ble Tribunal.
- b) allow the OA and quash & set aside the impugned orders dt. 31.08.2012 (Annexure A-1) holding it illegal, arbitrary, perverse and discriminatory.

- c) consequently direct respondents to give all the consequential benefits eg. release of regular and full pension, amount of gratuity, leave encashment, CGEIS benefits and other consequential benefits with compound interest @ 12% per annum.
- d) to quash and set aside the order No. A-20019 /2005/ NGMA -II dated 31.08.2012 under which the suspension period has been treated as non-duty illegally and arbitrarily.
- e) to award costs in favour of the applicant.
- f) to pass any other order or directions as this Hon'ble Tribunal may deem fit and proper in the interest of justice".

11. The applicant had also filed an MA No.470/2013 seeking some directions upon the respondents to release his monthly pension etc., but when the respondents had produced a copy of the communication dated 29.05.2013, enclosing a copy of the Pension Payment Order issued in favour of the applicant, on 30.05.2013 that MA came to be disposed of.

12. Counter reply was filed by the respondents on 30.09.2013, denying that the applicant's suspension had not been reviewed, and it was submitted that the suspension has been reviewed, and the Competent Authority had decided that he would continue to remain under suspension until the termination of the disciplinary proceedings, in view of the grave misconduct of misappropriation of Government money. While it was admitted that the competent officers sometimes authorise in writing for the sale counter to issue certain items for giving as complimentary gifts to various dignitaries and VVIPs, but it was submitted that it was mandatory for the applicant as the Receptionist/Sales Clerk to account for such issues in the books of



accounts, of “sales as complimentary issues”. It was also submitted that all the relevant documents by which the Articles of Charges were proposed to be proved and sustained, were supplied to the applicant, and that neither his representation dated 23.02.2006, nor the Daily Order Sheets signed by him, anywhere mentioned that he had protested regarding non-receipt of the relevant documents at the relevant time. The respondents also filed a copy of Annexure R-2 dated 04.02.2006, by which documents were supplied to the applicant, and Annexures R-4, R-5 & R-6 as the Daily Order Sheets of the disciplinary enquiry proceedings signed by the applicant as the charged officer without any protest.

13. It was further submitted that since the entire enquiry was based on documentary evidence, there was no need for the respondents to produce any individual witnesses, and for allowing the applicant to cross-examine those witnesses. It was further submitted that surprise checking of the stock of the sale shop was done *suo-motu*, and that the complaint of Shri R.S. Sagar was neither the basis for the checking, nor framed the basis of the charge sheet. They had denied that the applicant had not been given full opportunity to defend his case, and it was submitted that the enquiry proceedings were conducted properly, in accordance with the procedure as laid down in the CCS (CCA) Rules, 1965, after affording ample opportunities to the applicant as the Charged Officer to defend himself, either in person, or through his Defence Assistant. It was further submitted that there was no denial of any rights, or violation of principles of natural justice as alleged, and actually it was only the

applicant who had brought on record the name of Shri Brij Pal, Gallery Attendant, who was assisting him at the counter, and who was well versed in operating the computerized inventory system, but the applicant himself had failed to produce him as a Defence Witness, and had only stated that he had delegated the responsibility of maintaining the computerized Inventory Management System to the said official. It was submitted that the enquiries made had revealed that both the applicant-charged official, and his assistant, used to sell the items without issuing proper computerized receipts to the unsuspecting customers, and then the charged official used to misappropriate the sale proceeds.

14. In respect of publications, it was submitted that the charged official was actually found in possession of various publications in excess of what stock was initially fed into the computer system, and that he was not able to provide any valid reasons for such excess, and it was, thus, evident that the applicant had wilfully concealed the actual stock of publication available with him, so that he could sell them from the sale counter without proper billing. It was submitted that such excess of publications had not been officially issued to him, but had been arranged by the applicant from the sources best known to him. It was, therefore, submitted that the conclusions drawn by the Enquiry Officer were not based on surmises and conjectures, but were based on documentary evidence. It was further denied that the Administrative Officer was the applicant's immediate superior, and that, therefore, there was no bar on him being appointed as the Enquiry Officer. Though it was admitted that

the absence of periodical checks on the applicant as the charged officer, and his assistant, were due to the vacant post of Deputy Keeper (Publication), but it was reiterated that the absence of such periodical checks does not give rise to any right for the applicant to misappropriate Government money by selling the items to unsuspecting customers without issuing Cash Memos.

15. It was further submitted that the amount of misappropriation is as computed related to the period after computerisation of the inventory, and it has not been possible to quantify the amount of misappropriation that might have taken place prior to the computerisation, due to non-maintenance of proper register or account of inventory by the applicant. It was submitted that mere denial that he did not sell any items without cash memo does not carry any conviction in view of non-maintenance of records in a proper manner, and that the actions of the applicant amounted to wilful disobedience, dereliction of duties, fraud, and conduct unbecoming of a Govt. servant.

16. As regards consumption of liquor by the applicant, it was submitted that the applicant cannot take undue advantage of the leniency shown towards him by the Director of the Respondent No.1 organization by way of only warning him orally, and not in writing, in respect of his consumption of liquor. It was submitted that the Daily Order Sheet dated 27.02.2008 to conclude the disciplinary enquiry discloses that the applicant had admitted his lapse in regard to his

consumption of intoxicating drinks, and, therefore, the charge as framed against him in this regard stood proved.

17. It was denied that the Enquiry Officer had ever threatened the applicant, and submitted that the applicant had not complained of any threat even in his statement of defence on 21.04.2010 (Annexure R-11), or in any of his representations after the submission of the disciplinary enquiry report. It was, therefore, submitted that the disciplinary enquiry was conducted properly, and the Enquiry Officer had arrived at his findings in his enquiry report only after assessing, analyzing and weighing all the evidence produced, and that the orders of penalty impugned relating to reduction of monthly pension, forfeiture of gratuity etc. were also passed by the Disciplinary Authority in consultation with the UPSC, through Annexures R-12 & R-13, and it was, therefore, prayed that the OA be dismissed as being devoid of any merits.

18. The entire record of proceedings of the disciplinary enquiry, and the advice of the UPSC as received in the applicant's case, had been produced as Annexures R-1 to R-13.

19. The applicant filed a rejoinder on 25.10.2013, and it was reiterated that the Enquiry Officer himself was overall in-charge of stores as the Administrative Officer of the Respondent-Gallery, and that the whole blame, which was actually attributable to him, has been put on the applicant in order to save the real miscreant. It was submitted that the Enquiry Officer, being the Administrative Officer, was himself

writer/maker of all the documents presented by the Presenting Officer, which he had then gone on to accept in his capacity as an Enquiry Officer. It was further submitted that the Disciplinary Authority had kept the case pending thereafter for more than two and half years, and then passed the impugned order of punishment, without treating his suspension period as on duty.

20. It was reiterated that since the Disciplinary Authority had failed to review the suspension order within 90 days, but had reviewed it only much after such period of 90 days, in terms of the submissions made in the counter reply, the applicant has to be deemed to be on duty in terms of Supreme Court's decision in the case of **Union of India & Ors. vs. Dipak Mali (2010) 2 SCC 222.**

21. It was again reiterated that since the Administrative Officer himself was In-charge of the Central Stores, and the issuing authority of materials for the applicant's sale counter, if any deficiency has been found in the Stores, he alone could have been responsible, and it was wrong on the part of the respondents to have made him as the Enquiry Officer.

22. It was further submitted that the Enquiry Officer has merely held the charge to be proved on the basis of the written report regarding surprise check conducted by some staff members, but that none of the staff members who had conducted the surprise check had been produced as witnesses in the Disciplinary Enquiry, and he could never cross

examine them, which was in violation of the principles of natural justice. It was further submitted that the Enquiry Officer was prejudiced, and was having a pre-determined mind to somehow hold the charges against the applicant as proven, without any evidence, and without affording him any opportunity to cross-examine any witnesses. It was submitted that the very fact that the enquiry was completed in just three sittings, and copies of the Daily Order Sheets had not been provided to him, only goes to show that the disciplinary enquiry proceedings were vitiated, and the subsequent penalty orders issued to him, on the basis of such vitiated enquiry proceedings, are in themselves wrong.

23. It was further submitted that the stock ledger, through which the items for sale had been issued to the Reception Counter, was not exhibited as a document, and, therefore, the surprise check team could not have arrived at a conclusion regarding shortage of any sale items, and, therefore, the disciplinary enquiry report itself is not based on any evidence, and deserves to be quashed, and the penalty awarded on the basis of that report is also liable to be quashed. It was further submitted that he himself was given only two days' training of computers, and he was not at all well versed with the operation of computers, and it was only his assistant Shri Brij Pal who was mainly operating the computer system, and had issued receipts, and that, therefore, it was obligatory on the part of the respondents to have produced the said Shri Brij Pal as a witness, which was not done.

24. It was further submitted that neither the charge-sheet Article-I was based on any evidence, nor any documentary evidence or any material has been produced to prove the statements of any material witnesses, and, therefore, the enquiry was prejudged from the very beginning, and the Enquiry Officer had actually acted as a judge in his own case. The charge of misappropriation of Government fund was totally denied, and it was further stated that the Enquiry Officer has failed to prove the charge that the applicant was actually selling the items without issuing cash memos on the basis of any supporting or corroborative evidence. It was denied that the applicant had admitted any charge during the Disciplinary Enquiry in the absence of any threat.

25. It was further submitted that while imposing penalty, the Disciplinary Authority has not at all applied its own independent mind, and has merely gone by the advice of UPSC, which is contrary to the law as laid down in various Apex Court's judgments. It was, therefore, submitted that the applicant is entitled to full pay and allowances for the period from 17.06.2005 to 20.02.2010, when he was under suspension, without the suspension period having been reviewed prior to 90 days, and it was prayed that the OA may be allowed.

26. Heard. During his arguments the learned counsel for the applicant sought shelter behind many judgments and orders of Coordinate Benches. In **Bhule Ram vs. Union of India & Ors.**, OA No.3389/2011 decided on 09.07.2013, it was pointed out that when the statements of certain witnesses have been taken on record, but those witnesses were

not produced, and they were not allowed to be cross-examined, the statements made by such persons could not have been relied upon during the Disciplinary Enquiry, as per the law laid down by the Supreme Court in **Kuldeep Singh v. Commissioner of Police, 1999 (3) SLJ 111 (SC)=JT 1998 (8) SCC 603.**

27. The learned counsel for the applicant had further cited the judgment and order passed in the case of **Latoor Singh vs. Union of India & Ors.**, OA No.51/1996 of Lucknow Bench of this Tribunal decided on 18.11.2002, in which it was held that under principles of natural justice, any document which is produced during the disciplinary enquiry cannot be held to have been validly proved if the maker of that document is not summoned in the process of conducting the disciplinary enquiry, for the purpose of affording a reasonable opportunity to the charged officer to cross examine him.

28. Learned counsel for the applicant had further relied upon the Supreme Court's judgment in **Union of India & Ors. vs. Dipak Mali** (supra), in which it was held that a review and extension of the period of suspension has to be held within 90 days, and if it was not done, the suspension cannot survive after the period of 90 days, and any subsequent review and extension after the prescribed period of 90 days could not revive the suspension order. It was pointed out by the learned counsel for the applicant during his arguments that the respondents have, in their counter reply, in reply to Para-4(d), submitted that suspension of the applicant was reviewed only after the expiry of 90 days of suspension period, and it was pleaded that such being the case the



competent authority could not have ordered the applicant to be deemed to have continued to remain under suspension.

29. On his part, learned counsel for the respondents first pointed out that it was a case of plural reliefs having been sought in the same OA, and it was submitted that during the course of enquiry, as recorded by the Enquiry Officer, it had been clearly recorded by the Enquiry Officer as to how on the basis of documents alone the charges levelled against the applicant stood proved. He had valiantly defended the conduct of the disciplinary enquiry as having been proper in all respects.

30. We have carefully considered the facts of this case. Firstly, it is apparent that the suspension of the applicant was not reviewed before completion of 90 days' period after he had been placed under suspension. The respondents have in their counter reply themselves accepted this proposition, and have stated that such review was for the first time undertaken after the expiry of period of 90 days from the date of applicant's suspension. Therefore, going by the law as laid down by the Supreme Court in **Dipak Mali's** case (supra), we have to hold that the continued suspension of the applicant for a very long period, without repeated reviews of the period of his suspension within 90 days of every such review, was wrong and inappropriate, and against the Rules and the law laid down in this regard.

31. Secondly, the respondents have themselves partially accepted the contention of the applicant that the Administrative Officer himself was

the custodian of the publications, and other articles of sale, though not in respect of the NGMA, Delhi, alone, but including 3-4 other places also, as indicated in the counter reply. Such being the case, at least in regard to the issue and sale of such items from the NGMA Reception Counter, the Administrative Officer himself was the immediate superior authority of the applicant. In such a case, it was wrong on the part of the Respondent-department to have appointed the same Administrative Officer as the Enquiry Officer, as he could not have been expected to apply his mind to the fact situations judiciously and independently, beyond what procedures and computer programmes he had himself prescribed and laid down for recording the sale of the publications, and other articles of sale at the Reception Counter. Therefore, to our mind, the Disciplinary Enquiry against the applicant was vitiated *ab-initio* on account of the Administrative Officer himself having been appointed as the Enquiry Officer, as he could not have obviously looked beyond his own prescriptions of procedures, and considered the case of the applicant with an open and judicious mind.

32. We also fail to understand as to how on the one hand while the respondents have alleged shortage of inventory of around Rs.1,33,508/- worth of goods and publications, and on the other hand they have themselves expressed surprise at the excess availability of certain publications at the Reception Counter, which they have summarily dismissed, as if the applicant could have somehow got printed and procured such excess quantity of publications on his own, through unknown means!! To our mind, it cannot be the case that if a

publication is being published officially by the Respondent-Gallery, the applicant could on his own have had the foresight and the means to get a few-hundred copies of those publications printed extra, by the same Printers, and then keep them for sale at the Reception Counter, as the counter reply of the respondents seems to suggest!!

33. It is also an admitted fact from both sides that the stocks of various saleable items at the Reception Counter were maintained in a manual form up to a particular date, when the computerization of the inventory management system of the same was introduced, and, thereafter, the respondents have sought to fix responsibility upon the applicant for shortage in the inventory items. Whether the shortage as alleged had occurred during the manual sale period, or during the computerized sale period, has also not been effectively established during the disciplinary enquiry conducted by the Enquiry Officer, even though he himself was the in-charge of the introduction of the computerized inventory management system, as the Administrative Officer.

34. The respondents have also, in a way, admitted that there was an informal system prevalent in the organization of gifting certain saleable items and publications to visiting VVIPs and dignitaries, and that, in respect of such gifted items, the applicant, as the In-charge of the Reception and Sales counter, was supposed to seek ex-post facto sanction from the Director of the Gallery, or any other superior, by moving a Note afterwards. The respondents have not been able to establish during the Disciplinary Enquiry that every such request of the

applicant for grant of ex-post facto sanction for complimentary issue of saleable goods and gift items had been approved by them, and entered in the computerized system, before the surprise inspection had found the shortages.

35. Even in quasi-judicial proceedings, like in the Disciplinary Enquiries, a particular document cannot be proved without examination of the author(s) of a document, and, in the instant case, the respondents have neither named the members of the surprise check team, which had found the shortages at the Reception-sum-Sale Counter, as alleged in the Charge Memo as issued to the applicant-delinquent official, nor produced as a witness even one person from amongst those who were members of that checking team, and, thereafter, the authors of the shortage report, so that the applicant could have cross-examined him or them in regard to the manner in which they had arrived at the quantum of shortages.

36. The only point on which we would not accept the contention of the applicant is regarding the charge relating to his having been found under the influence of liquor during duty hours by the Director of the Gallery, and other officials, though not punished in writing, which is quite possible and plausible, and the applicant cannot be allowed to plead that on every such occasion the respondents ought to have got his medical check conducted to determine whether he was really under the influence of liquor or not. The large heartedness and kindness of the superiors to overlook such misdemeanours on the part of lower level officials cannot be assailed by such officials just because they had not been immediately

brought to book for their misdemeanour on each and every such occasions, through a proper medical and legal procedure.

37. But, further, the respondents have also not been able to explain in their counter reply as to on which date or dates were the reviews of the suspension of the applicant conducted, and the orders of continuation of his suspension communicated to him. One of the intentions of the Legislature in providing for such a review of the period of suspension is that in such cases of a prolonged suspension, the subsistence allowance is increased after such a review, in case the suspension is ordered to be continued. But the respondents have only made a bland statement that the suspension of the applicant was reviewed after the period of 90 days from time to time, but without indicating any dates of such review, or enclosing any copy of the orders passed for continuation of such suspension after such reviews were conducted, along with their counter reply.

38. Therefore, we have no hesitation in holding that the respondents have taken the matter of suspension of the applicant very lightly, and have been unduly harsh on him, by placing him on a long continued suspension, without timely review of the need for his continued suspension, or the need for an increase in his subsistence allowance. Therefore, following the orders of the Coordinate Benches, as cited by the learned counsel for the applicant, we order that the period of the applicant's suspension beyond the first 90 days of the suspension should be treated as "period spent on duty", as if the applicant had been

reinstated in service from the 91<sup>st</sup> date onwards, in the absence of a timely review of his suspension.

39. Further, as discussed above, we have also found merit in the submission of the applicant that the immediate superior officer in regard to the issue and sale of the saleable publications and gift items, the then Administrative Officer himself, could not have been appointed as an Enquiry Officer. Therefore, we hold that the enquiry as conducted itself had got vitiated *ab-initio*.

40. The applicant appears to be a victim of an informal and inappropriately laid down system and procedure of sale of publications and gift articles at the Reception-cum-Sale Counter of the Respondent Gallery. While the informality of the system can be well appreciated, as every single VVIP guests' or visiting dignitaries' visits cannot always be anticipated by the Respondent-Gallery in advance, to obtain advance approval for issuance of complimentary articles and publications to them, but, at the same time, that cannot be the basis for framing of charges and arriving at a figure for misappropriation of funds, which is not substantiated by the actual stocks of each of those items as issued to the applicant prior to the computerization process, and after the computerization of the inventory management system.

41. Lastly, but not the least, the advisory role of UPSC has been clearly laid down under Article-320 of the Constitution of India, and the Disciplinary Authority is in no way bound to follow those recommendations. In the instant case, it is seen that UPSC has gone to

great lengths for suggesting even a quantum of punishment, which is basically the function only of the Disciplinary and Appellate Authorities, and sending a report which appears to have been published by the UPSC very carefully, and, thereafter, very dutifully followed by the Respondent-authorities, without even an iota of variation in imposing the very same punishment upon the applicant, as had been suggested by the UPSC. It is, therefore, clear that Respondent-Authorities had passed the impugned order of punishment without proper application of their own mind, at the dictation of the UPSC, which is only a consultative body, and there has been no proof of any application of mind thereafter by the Disciplinary Authority.

42. Even though the Supreme Court has in a plethora of cases laid down the law that the Disciplinary Authorities are the best judges of facts, and that the Courts and Tribunals should not try to re-appreciate the evidence, and arrive at their own conclusions on the basis of that evidence, or to try to supplant their conclusions in place of the conclusions regarding appreciation of evidence and quantum of punishment arrived at by the Disciplinary Authorities concerned, an exception has always been carved out in respect of those cases where the procedure adopted has not been proper, or the punishment imposed is shocking to the conscience of the Court/Tribunal.

43. We find that the instant case is one case in which the disciplinary enquiry itself was *void ab-initio*, and also the quantum of punishment

imposed upon the applicant is shocking to our conscience, as a lowly official, who had got promoted from a Class-IV job of a Peon to a Group-III level post, and had been given only two days' training on computer, without his having ever operated that computer, which was managed by his assistant actually, has been punished on the basis of the shortage of books & publications and computerized inventory of saleable items, and excess of certain other books and publications, which were found in his possession, the source of which excess stocks the respondents themselves not sure about, having been punished harshly, so as to deprive him of his pension for long years!!!

44. As has been held by the Supreme Court in **D.S. Nakara & Ors. Vs. Union of India, AIR 1983 SC 130**, pension of a Govt. servant is not a bounty to be released at the whims and fancies of the pension sanctioning authority, as pension of a Govt. servant is a reward in regard to the long years of service put in by him in a pensionable job, and to which he acquires a right, which cannot be denied to him in a frivolous or non-serious manner, as appears to have happened in the instant case. The case of the present applicant is particularly pathetic, as he was a low paid Government employee, and was hardly in a position to stand up before the authorities, and to be able to explain the shortages on the one hand, and the excess of the other items on the other hand, but was yet held responsible for misappropriation of Government funds, on the basis of grounds and evidence which are not at all very convincing to our mind.



45. Therefore, by way of an exception, having been shocked by the denial of due process of conduct of a D.E. by an impartial E.O., and also shocked by the quantum of the punishment imposed upon the applicant, we declare the whole process of enquiry conducted by the respondents as illegal and *void ab-initio*, since the Administrative Officer could not have functioned as an Enquiry Officer in this case, and also set aside the order of punishment imposed upon the applicant. We have already held in para 38/above that the period of his suspension from the 91<sup>st</sup> day of his suspension and onwards would be treated as “period spent on duty.”

46. We further order that all dues which become payable to the applicant by way of our orders as above shall be computed and paid to him within three months from the date of receipt of a copy of this order, with interest as applicable to the GPF from time to time, for the entire period when the amount due to him was denied to be paid to him.

47. The OA is, therefore, allowed in the above terms, but there shall be no order as to costs.

**(Raj Vir Sharma)**  
**Member (J)**

**(Sudhir Kumar)**  
**Member (A)**

cc.