

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION No.191 OF 2017

Dated this _____, the _____ day of April, 2018

**CORAM: HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)**

Mahasen Sambhajirao Gandle
Chief Administrative Officer,
Bhabha Atomic Research Centre,
Homi Bhabha National Institute,
Anushakinagar, Mumbai
(R/o A-15, Kedarnath, Anushaktinagar,
Mumbai 400 094.

.. Applicant

(In person)

Versus

1. Union of India, through : Secretary,
Department of Atomic Energy, CSM Marg,
Mumbai 400 001.
2. Chief Executive,
Board of Radiation & Isotope Technology,
Vashi, Navi Mumbai 400 703.
3. Chief Executive,
Nuclear Fuel Complex ECIL Post,
Moulali, Hyderabad 500 062.
4. Director, Bhabha Atomic Research Centre,
Central Complex, Trombay, Mumbai – 400 085.
5. Registrar, Homi Bhabha National Institute,
Training School Complex, Anushaktinagar,
Mumbai 400 094.

.. Respondents

(By Advocate Shri V.S.Masurkar)

OA filed on 14.04.2017

Order reserved on 04.04.2018

Order delivered on _____

O R D E R**PER : SHRI ARVIND J. ROHEE, MEMBER (JUDICIAL)**

The applicant who is presently working as Chief Administrative Officer in Bhabha Atomic Research Centre (BARC), Anushaktinagar, Mumbai approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 in the present OA since aggrieved by initiation of a disciplinary proceeding against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal Rules), 1965 [for short **CCS (CCA) Rules**] and the following reliefs are sought :-

“8(a) To allow the Original Application

(b) To quash and set aside the Charge Sheet issued vide Memorandum dated July 31, 2015.

(c) To direct the Respondents No.1 to 3 to treat the date of relief of the applicant on his transfer from BRIT, as the date of physically serving of relieving order on to the applicant is necessary and is not enforceable during the Medical leave of the applicant.

(d) To direct the respondent No.3 to cancel the dies non for the period from December 18, to December 21, 2016 spent on tour

being approved by the Competent Authority, NFC.

(e) To call for the police report from Police Authorities regarding the investigation carried out on the application of the applicant dated February 07, 2016.

(f) To direct the respondent No.1 and 4 release the payment of PRIS withheld up till now being it is illegal to do so before the employee is found guilty.

(g) To award the cost of Original Application.

(h) To grant any other consequential benefits that Hon'ble CAT may deem fit .

2. The applicant belongs to Scheduled Caste and is Post Graduate in Sociology and has also completed MBA in Human Resource Management. He joined DAE in the year 1980 on the roll of Heavy Water Board Project (for short '**HWBP** ') Central Office, Mumbai as Lower Division Clerk. He secured promotion as Upper Division Clerk in the year 1984 and thereafter Senior Accounts Clerk in 1989 after qualifying the Departmental Competitive Examination. The applicant secured further promotion as Assistant in May, 1990 and was posted to work in

DAE Secretariat, Mumbai. He was, thereafter, transferred to Atomic Energy Regulatory Board (for short '**AERB**'), Mumbai in the same capacity in July, 1991.

3. The applicant further qualified the Departmental Competitive Examination for the post of Assistant Personnel Officer (APO) Group 'B' Gazetted in the scale of Rs.6,550-10,500/- in the year 1992 and was posted to work in Directorate of Construction Services and Estate Management (for short '**DCSEM**') Mumbai.

4. It is stated that few caste biased persons in the Department developed jealousy for the applicant's achievements, since he became APO as topper. He was, therefore, subjected to harassment, with a view to tarnish his image. Within three months, the applicant was transferred from DCSEM to Bhabha Atomic Research Centre

(for short '**BARC**') Mumbai without assigning any reason. It is stated that applicant was subsequently transferred and posted in different sections of BARC on as many as five occasions within a span of just three years.

5. It is stated that since the applicant was fed up with the activities of caste biased persons, he applied for transfer to Atomic Minerals Division (for short '**AMD**') Nagpur, which request was favourably considered and he joined there in the same capacity of APO in June, 1996.

6. It is stated that after rendering valuable service for five years at AMD Nagpur, the applicant was again transferred to DCSEM, Mumbai in June 2000 in the same capacity.

7. The applicant became eligible for further promotion to the grade of Administrative Officer

I/Deputy Establishment Officer in the pay of Rs.10,000-15,400/- (pre revised). Although he faced the interview, he was not included in the select panel. Same thing happened in the subsequent years of 2002.

8. The applicant then approached the National Commission for Scheduled Castes, New Delhi, for redressal of his grievance, which advised the respondent No.1 to review the claims of Scheduled Caste/Scheduled Tribes candidates against the reserved posts. In pursuance, thereof, the respondent No.1 reviewed the cases of eligible SC/ST candidates and empaneled 6 candidates including the applicant at the bottom of the seniority list for the post of Administrative Officer (AO)-I/Deputy Establishment Officer (DEO).

9. It is stated that the applicant was further promoted to

the post of Administrative Officer (AO)-II in the pay of Rs.7,450-11,500/- in July, 2003 in Group 'B' post. He secured further promotion as Administrative Officer (AO)-I in October, 2003 in pay of Rs.10,000-15,400/- in Group 'A' and was transferred to BARC Mumbai. It is stated that the applicant's promotion to the post of Administrative Officer Group 'A' was delayed by three years for no fault of his.

10. It is stated that in the year 2009-2010, although the applicant was called for interview for the further promotion post of Chief Administrative Officer (CAO) in pay of Rs.15,600-39,100/- with Grade Pay of Rs.7,600/-, he could not be empaneled despite giving excellent performance. It is only after approaching this Tribunal, the applicant was promoted to the said post of CAO in June, 2011 and he was

transferred to BARC in the Board of Radiation & Isotope Technology (for short '**BRIT**'), Navi Mumbai. Thus, his promotion to the grade of CAO was delayed by two years.

11. The applicant then applied for request transfer to Directorate of Purchase and Stores (for short '**DPS**'), one of the constituent units of DAE located in Anushakti Nagar, Mumbai. However, instead of posting him in DPS, he was transferred to Nuclear Fuel Complex ('**NFC**'), Hyderabad, which has resulted in incalculable damage to the educational prospects of his children. His request to defer aforesaid transfer to Hyderabad on personal grounds was declined. He was, therefore, constrained to approach this Tribunal once again and this Tribunal had directed the respondent No.1 to dispose of the pending request of the applicant for cancellation of aforesaid transfer.

The same was, however, declined. The applicant, thereafter, joined at NFC Hyderabad on 06.01.2014.

12. It is stated that while working at NFC Hyderabad for a period of over two years and three months, the applicant faced tremendous amount of discrimination, exclusion, isolation and humiliation practiced by his superiors and this led him to apply for request transfer to Mumbai. This time, his request was favourably considered and he was transferred back to BARC Mumbai in May 2016 as CAO.

13. It is stated that the applicant found number of irregularities and backlog in filling the post of SC/ST categories while working in NFC. The applicant alleged discrimination and harassment while working at NFC which were reported to Secretary DAE with a request to initiate departmental action against the

erring officers namely Dr. Saibaba, the then Chief Executive, NFC and his deputy Shri Goverdhan Rao. However, no action was taken. This led the applicant to file police complaint against them at Kusaiguda Police Station at Hyderabad under the provisions of SC and ST (Prevention of Atrocities) Act, 1989. A criminal prosecution to this effect is pending in the Court at Hyderabad.

14. It is stated that the applicant was subsequently transferred to BARC, Mumbai. However, he was served with the Memorandum bearing No.1/15(2)/2014-Vig./10432 dated 31.07.2015 (Annexure A-1) raising false accusation regarding misconduct and insubordination against the officers Dr. Saibaba and Shri Goverdhan Rao. The applicant submitted reply to the said charge sheet on 24.08.2015, with a request to drop it since the

same is biased and *mala fide*. He raised objections against the appointment of Inquiry Officer also alleging bias and on one occasion the Inquiry Officer is changed. Charge sheet has been challenged on various grounds as stated in paragraph No.5 of the OA. The same are reproduced here for ready reference:-

“5.1 The applicant belongs to SC category and has rendered meritorious service to the department for over 37 years. It would be pertinent to mention here that despite of the victim of caste biased ill treatment and harassment meted out to him he has attained the feat of rising up to the level of group 'A' post i.e. Chief Administrative Officer by means of dint of hard work and sincerity of purpose in hostile environment. He has been issued with a commendation certificate by the department for his contributions. He is due for retirement consequent upon his attaining the age of superannuation in May-2018. He is also entitled to be considered for the further promotion to post of Director (P&A). However, to hamper the chances of the applicant for further promotion like onhe has been implicated in the farcical inquiry on flimsy grounds where in plenty of procedural lapses and an inordinate delay has been taken place. Commendation certificate together with the award winning photographs with former Secretaries of the Department are enclosed and marked as Exhibit A60-A62.

5.2 The Government of India,

Department of Personnel & Training OM No.36026/3/85-Estt.(SCT) dated 24.06.1985 and OM No.36011/25/89-11Estt.(SCT) dated 21.08.1989 have issued instructions to protect the interests of SC/ST employees who are subjected for harassment based on the social origin of the employee concerned and that departmental action taken against the erring Government servant. Provisions of this OM were pursued by the applicant while putting up his case from time to time. The copy of said OM dated 24.06.1985 and 21.08.1989 is enclosed as Exhibit A63.

5.3 The charges framed against the applicant to undermine the authority and dignity of the post which he is holding and the same are vague and trivial which do not warrant framing of the charge sheet as per CCS(CCA) Rules 1965. The applicant has not breached any of the specified rules stipulated in the CCS(Conduct) Rule, 1964 and has always behaved like a model Government Servant.

5.4 After the submission of written statement of defence by CO, he should have been given the personal hearing to explain the charge but eh same has not been granted to, despite specific request by made by CO entailing non-adherence of the Principal of Natural Justice leading to miscarriage of justice on the part of DA.

5.5 When the CO submitted bias petition against the IO, the first and foremost duty casted upon DA was to order for suspension of inquiry and then refer the bias petition together with the relevant material to RA for his consideration and this bias petition was required to be disposed of within a period of 15 days which was not done so. The procedural lapse entails the inquiry liable for quashing and setting it aside. The

copy of Government instructions in this respect is enclosed as Exhibit A64.

5.6 Without staying the inquiry after the submission of bias petition, the new IO, Shri Sandeep Hamilton was appointed in place of Shri Nageshwar Rao. Further, appointment order of IO was not personally delivered to the CO nor was sent by registered post as required under rule leading to the procedural lapse in respect of the appointment of Shri Hamilton as new IO.

5.7 When the bias petition against Shri Hamilton was submitted, no inquiry was stayed. No application along with the relevant material sent to RA as required under rule and the same was disposed of by DA and as the appeal lies against the order of DA, it was preferred by the CO but still it has not been referred to RA, and strangely, certain observations on communications transmitted by CO have been communicated by Deputy Secretary, DAE making the mockery and supreme disdain of procedure prescribed for conducting departmental inquiries which is yet another procedural lapse.

5.8 Incidentally, CO pointed out that Secretary, DAE being prejudiced because of his personal involvement and material witness in the present case, it is better for the sake of impartiality that he should not act as DA in instant case and appoint ad-hoc Disciplinary Authority in the case as provided under rule by invoking presidential order. But no proper reply in this respect is received from Secretary DAE.

5.9 The charge imputed in the article I is not sustainable. It is mentioned that the applicant has attempted to bring in his social origin over routine administrative matters with a view to misuse the provisions of law. This is absolutely incorrect inasmuch as the matter of non-

delegation of powers of Appointing Authority and Disciplinary Authority is not a routine matter. In fact, there should not have been any controversy over this issue. The legitimate powers of CAO should have been delegated to the applicant soon after his joining in NFC. But, these powers were not delegated to the applicant without any rhyme or reason which was disgusting hence applicant had mentioned his caste status out of disguise and not for misusing the provisions of law. Further, use or misuse of law is in the hands of Law enforcing agencies, and applicant is the civilian Government Servant. Moreover, it is not a thing of pride to mention his caste status which is at the lowest ebb in the social strata of the society. Hence the charge is baseless.

5.10 The applicant being the Liaison Officer for SC/STs was duty bound to protect the interests of SC/ST categories. In order to assess the implementation of the reservation policy of the Government of India and welfare measures available to them, there are monitoring agencies called National Commissions for SCs & STs, Liaison Officer has to keep in touch with these Authorities. Further, for lodging any complaints to these Authorities no permission is required even for the individual Government servant. The aggrieved employee can directly write to the Commission concerned. Further, non-payment of TA to eligible SC/ST candidates appearing for objective test and an interview is a serious lapse on the part of Shri Goverdhan Rao and Dr. Saibaba and is not a routine matter and not aimed at misusing it by the applicant for furtherance of his interest. The LO for SC/STs is free to ignore hierarchy as and when he deems fit.

5.11 After joining NFC, the applicant had filed Police complaint against Dr.

Kohli, CE, BRIT, Smt Filo Denis, Dy. Controller of Accounts and Shri S.S. Prasad Rao, Administrative officer, BRIT who was subordinate to the applicant had conspired together and instigated one lady employee of BRIT namely Smt Jussy Joseph, Assistant Personnel Officer to lodge false complaint against the applicant aimed at implicating the applicant in a Sexual Harassment case. The copy of complaint together with the reply submitted by the applicant is enclosed and marked as Exhibit A65-A66.

5.12 Prior to this, when the applicant was working in BRIT, the salary of newly appointed ST category employee was not paid deliberately because of the conspiracy hatched by the above trios with an ulterior motive to provoke and implicate the applicant by creating a scene as if the applicant has recruited excess post contrary to the rule position. Further, they had also conspired to deprive the rightful claimant from SC category to bag the canteen contract of BRIT. The canteen located in BRIT premises was run by unqualified Contractor for over 10 years who had no catering licence from the Competent Authority nor he was submitting PVC for his casual worker as required under security instructions. IG(S) was time and again issuing circular for updating the safety and security of men and material in the BRIT. Canteen Management Committee (hereinafter called as CMC for brevity sake) led by the applicant as its Chairman, resolved to get rid of this party namely M/s. Savita Caterers. Under these circumstances, the canteen contractor was emphasised the need to submit PVCs; But he failed to do so. Thereafter after floating Tender, a party namely M/s. Mata Ramabai Ambedkar Mahila Vikas Mandal was finalised by the CMC, BRIT. But, Dr. Kohli, Smt Filo and Shri P. Rao conspired together and hampered the chances of rightful

contractor by means of referring the matter to respondent No.1 and thereafter the Tender process itself was scrapped without verifying the facts by respondent No.1. Thus just because, the party was from SC category, tender process was scrapped. The applicant being the liaison officer for SC/STs had to protect the interests of these category of people and hence the applicant was constrained to approach police to arrange the payment to newly recruited employee. However, in the matter of atrocity case, because of police inaction, these trios remained scot free. And, because the applicant was transferred to Hyderabad hence was unable to pursue the matter further. This entire episode is elaborated in the reply given by the applicant to the show cause notice issued to him by the respondent No.1. The copy of security instructions issued by IG(S) together with letter written to Smt Filo for release of salary of newly recruited ST category employee is enclosed and marked as Exhibit A67 -A 68.

5.13. In the matter of Smt. Madhu Patel, Pharmacist Medical Division BARC, she had shouted at the Applicant and uttered caste biased words in a high pitched tone and insulted the Applicant in full public view when he was in a queue to receive Medicines prescribed by the Departmental Doctor. The Applicant then was very much upset over the matter. But wanted that Smt. Patel should realize her folly and apologies, but this was refused by her. Even the matter was brought to the notice of higher Authorities in BARC but no one had taken the matter seriously. Hence police complaint was lodged, police investigated the matter, examined the witnesses and thereafter FIR was filed against her in Trombay Police Station which was later on got quashed by Smt Patel on technical grounds by the Hon'ble High Court, Bombay on her appeal. Had this matter

been pursued with the Hon'ble Supreme Court, then there could have been big trouble for Smt Patel but the Applicant did not do that on the advice of some of the well-wishers of the Applicant. Thus, Smt Madhu Patel remained scot free on technical grounds and not on merit of the case. Hence, BARC should have initiated departmental action against her. But, instead of taking action against her, matter was twisted and has now been made the part of charge sheet issued after a gap of over 5 years and that too after giving promotion to the Applicant to the post of CAO. Hence this belated matter is contrary to the guidelines contained in CCS (CCA) Rules, 1965 for issue of charge sheet. The Applicant has never invoked his caste status to misuse the provision of law on routine matters. But he had given momentum to law to fetch justice to reinstate loss of dignity as and when he was discriminated and not in a routine matter as alleged. The Applicant is not the law enforcing agency to misuse it. In view of the foregoing this charge cannot be sustained. The copy of complaint lodged with police is enclosed as Exhibit A69.

5.14. Another charge is that the Applicant indulged in, insubordination by recording certain derogatory remark in the file noting. The matter of fact is that the Applicant was not delegated the powers of Appointing and Disciplinary Authority for Group C posts as per the practice followed in Department. This should have been delegated to the Applicant as soon as he joined NFC but in spite of repeated oral requests the same was not done. Then the Applicant put up the noting in which CE, NFC recorded an unwarranted discriminatory remark "convey my displeasure to CAO." This was contested stating that as long as CAO works without fear or favour he is not bothered about pleasure or displeasure of any Authority. This was a

generic statement and was not aimed at insubordination to anyone. This cannot be termed as insubordination from any angle. A copy of notification issued by DAE vide No.1/6(2)/2009/vig./Dated May 22, 2013 is enclosed and marked as Exhibit A70.

5.15. In the Article of Charge-I, II and III only a small verbatim portion of few lines from the communications, noting etc. have been mentioned in the Charge sheet which cannot give the true picture. The factual position can be understood very well if the entire communications is read in its totality. These can be done so to evaluate the Applicant's position. Thereupon, it will be gathered that none of the charge can be construed on the part of the Applicant.

5.16. The article of Charge IV is totally vague and is with full of malice and has been levelled against the Applicant with malafied intention. In fact, the driver who gave the complaint at the instigation of Shri Goverdhan Rao were expecting huge donation from the Applicant in Cash. But when he realised that no donation can be fetched from the Applicant, he lodged the complaint at the behest of Shri Goverdhan Rao to save his skin and trouble the Applicant. This Driver has deceived many such officers in past and was also detained by police for accepting bribe in cash in connection with recruitment matters. The copies of statements obtained from the members present in the meeting are self-explanatory and are enclosed as Exhibit A71.

5.17. The Applicant in his capacity as Liaison Officer for SC/STs in NFC had called a meeting of SC Rights Protection Society on their request on 17.07.2014. This meeting was put under surveillance by Shri Goverdhan Rao and was also included in the monthly Report on

unusual occurrences in NFC. This was highly objectionable and derogatory to the status of the Applicant. Hence inquiries were made whereupon it was told that it has been erroneously recorded by a newly joined officer during the absence of regular one. Then, the Applicant requested to remove it to rectify the error; which was initially agreed to but later on refused. Hence, the matter was brought to the notice of DIG, CISF and IG(S) passing on blame on to the Applicant which is misleading in its totality. Hence the matter was referred to police who had not intimated anything to the Applicant.

5.18. In view of what has been submitted hereinabove, altogether the charges framed against the applicant being full of malice and mala fide and so also authorities being biased and that inquiry is being conducted ex-parte in a half hazard manner amounts to a mere farcical show, hence Hon. Central Administrative Tribunal (CAT), Mumbai Bench can interfere at this stage to avoid harassment and humiliation to the applicant (Supreme Court ruling in case between State of Punjab V/s. V.K. Khanna 2000 AIR SCW 4472-para-3.

5.19. The applicant is eligible to get incentives under Performance Related Incentive Schemes called PRIS(O) and (G) he is eligible to get around Rs.65000/- on half yearly basis. But because of the inquiry proceedings he is deprived to get it till the inquiry proceeding are over, provided he is fully exonerated. This is unjust as the applicant is not yet proved guilty and hence depriving him from such rightful being amount is discriminatory. In case penalty is inflicted on the CO it becomes double jeopardy. A copy of Incentive Schemes in vogue is enclosed and marked as Exhibit A72.

5.20. The applicant vide his representation dated March 01, 2017 has pointed out several lapses to DA with a request to dropping of charges but no reply is received from DA. Copy enclosed and marked as Exhibit A73.”

15. On notice the respondents appeared and by a common reply dated 14.04.2017 resisted the OA in which all the adverse averments, contentions and grounds raised therein are denied.

16. It is stated that the applicant is seeking multiple reliefs in this O.A. and hence it is not maintainable as provided under Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 and hence the OA is liable to be dismissed.

17. It is stated that the present OA is filed with a view to prolong the disciplinary proceedings against him. He has taken series of objections in the disciplinary proceedings with a view that it is not concluded and filed the present OA. The OA is, therefore, liable to

be dismissed.

18. It is stated that the applicant while working as Chief Administrative Officer in BRIT had lodged a false complaint at APMC Market Police Station, Vashi, Navi Mumbai against Dr. A.K. Kohli, Chief Executive, BRIT Shri S.S. Prasad Rao, Administrative Officer, BRIT and Smt Filo Denis, Deputy Controller of Accounts, BRIT invoking his social origin and making false complaints over routine administrative matters by invoking the provisions of SC and ST (Prevention of Atrocities) Act, 1989. However, Police Inspector vide letter dated 12.08.2014 informed the applicant that the complaint filed by him cannot be registered since it does not fall under the provisions of the SC and ST (Prevention of Atrocities) Act, 1989.

19. It is stated that the applicant while working as Deputy

Establishment Officer in BARC, Mumbai had lodged a complaint with Police Station Trombay against Smt Madhu Patel, Pharmacist, BARC, Mumbai again invoking his social origin under the provision of SC and ST (Prevention of Atrocities) Act, 1989 over delay in issuing medicines to him, while the delay was on account of non-adherence of procedure by the applicant. The FIR dated 23.08.2010 was later on quashed by the Hon'ble High Court of Mumbai vide order dated 28.10.2010.

20. The applicant was issued impugned Memorandum/charge sheet dated 31.07.2015 raising following serious charges against him:-

“(i) Attempted to bring his social origin over routine administrative matter with a view to misuse the provisions of law;

(ii) Made false/unwarranted and highly objectionable remarks against Chief Executive and Dy. Chief Executive (A), NFC in his file noting;

(iii) Used derogatory and insubordinate language and made threats of criminal action, taking on and commenting on matter beyond his ambit/jurisdiction and acted in a manner that exceeded his official

ambit/jurisdiction through his file noting and other communications to CE, BRIT and the Department;

(iv) tried to create unrest among employees over religious matters and

(v) Used unparliamentary words with the CISF personnel, over intelligence report given against him.”

21. It is stated that the OA is premature and hence liable to be dismissed, since at present no adverse order is passed against the applicant, except initiation of disciplinary proceeding against him. He raised all the points available to him for his defence in his reply dated 24.08.2015 to the charge sheet. The applicant has not exhausted all the remedies since he has right to prefer appeal against the order that may be passed by the Disciplinary Authority. Hence, the OA is liable to be dismissed.

22. On merits of the case, the respondents relied on the following decisions :-

(i) In the case of Government of Tamil Nadu V/s. K.N. Ramamurthy 1997 SCC (L&S) 1749, the Apex Court has held that “..... the

Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot also take over the functions of the disciplinary authority. The function of the Court/Tribunal is one of judicial review. The parameters of judicial review have been clearly laid down. The Tribunal or the Court can interfere only if on the charges (read with imputations or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out, or the charges framed are contrary to any law.”

(ii) In the case of Union of India & Another Vs. Ashok Kacker 1995 SCC (L&S) 374, the Apex Court has held “The respondent has the full opportunity to reply to the charge sheet and to raise all the points available to him/her including those which are now urged on his/her behalf. This was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge sheet and the appropriate course for the respondent to adopt is to file his/her reply to the charge sheet and invite the decision of the disciplinary authority thereon.”

(iii) In the case of Union of India & Another Vs. Upendra Singh 1994 SCC (L&S) 768, the Apex Court has held as under:-

“In the case of charges framed in a disciplinary inquiry the Tribunal or court can interfere only if on the charges framed “(read with imputation or particulars of the charge, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the function, of the disciplinary authority. The truth or otherwise of the charges is a matter for the

disciplinary authority to go into”.

*(iv) In the case of **Transport Commissioner, Madras Vs. A. Radhkrishnamoorthy ATJ 1995 (1) 299** in para 7 of the Judgment, the Hon'ble Supreme Court has observed “so far as the truth and correctness of the charges is concerned, it was not a matter for the Tribunal to go into more particularly at a stage prior to the conclusion of the disciplinary enquiry. As pointed out by this Court repeatedly, even when the matter comes to the Tribunal after imposition of punishment, it has no jurisdiction to go into truth of the allegation/charges except in a case where they are based on no evidence i.e. where they are perverse. The jurisdiction of the Tribunal is a kin to that of the High Court under Article 226 of the Constitution. It is power of judicial review. It only explains the procedural correctness of the decision making process. For the reason the order of the Tribunal in so far as it goes into or discusses the truth and correctness of the charges, is unsustainable in law.”*

*(v) In the case of **Union of India Vs/. Raj. Kishore Parija 1995 (Supp) 4 SCC 235**, the Supreme Court has gone into the question of delay per se and on the facts of the said case interfered with the order of the Tribunal and held that the charge sheet ought not to have been quashed.”*

23. It is stated that after perusal of the reply submitted by the applicant, Inquiry Officer was appointed to proceed with the enquiry. The applicant is accepted to render his full co-operation to conclude the enquiry. He has full opportunity to defend him during the

enquiry. Hence, OA is liable to be dismissed as premature.

24. The initial appointment of the applicant and his subsequent promotion and various assignment and posting in various constituent units of DAE are not disputed.

25. The applicant vide his representation dated 08.12.2015 raised objection/bias petition for appointment of Shri Nageswar Rao, S.O.(G), AMD as Inquiry Authority on the ground of language, caste, in-experience in administrative matters etc and requested to arrange to replace him. His request was duly considered by the Competent Authority and Shri S. Hamilton, SO(H), AMD was appointed as Inquiring Authority vide order dated 09.05.2016. The applicant thereafter vide his representation dated 07.07.2016 again requested to appoint an officer from Commissioner of Departmental Inquiries, New Delhi

as Inquiring Authority in his case to have free and fair enquiry. The applicant's aforesaid representation was considered and disposed of vide speaking order dated 18.08.2016 with a direction that Shri Hamilton, Inquiring Authority shall continue with the enquiry and complete the proceedings. During continuance of the disciplinary proceeding, the applicant submitted the following representations alleging bias:-

*“(A) representation dated 7/8-12-2015
(B) representation dated 16.12.2015
(C) representation dated 24.08.2016
(D) representation dated 09.09.2016
(E) representation dated 15.09.2016
(F) representation dated 19.09.2016”*

26. All the aforesaid representations have been examined in the Department and disposed of either by the Secretary or by the authority under the direction of the Secretary, Department of Atomic Energy. The applicant was advised that he will be given full opportunity to defend him during enquiry proceeding and to co-operate

the Inquiring Authority to conclude it at the earliest.

27. Despite disposing all the representations/bias petitions, the applicant continued to make various representations raising the same issue and questioning the procedure prescribed for disposal of bias petition and according to him the bias petition should have been referred to Reviewing Authority for its disposal. Applicant's grievance is that the bias petition was referred to the Reviewing Authority but was disposed of by the Disciplinary Authority that too without indicating his designation. As per rules, the Disciplinary Authority is empowered to dispose of the representation without making reference to Reviewing Authority.

28. The Inquiring Authority vide order dated 17.01.2017 informed the applicant about commencement of the regular hearing and to participate

in it. He was also informed that in case of his absence from hearing, the enquiry will be conducted ex-parte. However, the applicant failed to participate and hence the Inquiry Officer concluded the enquiry by following due procedure and submitted the report to the Disciplinary Authority for passing the final order thereon. The OA is, therefore, liable to be dismissed.

29. The applicant then filed rejoinder on 28.06.2017 in which all the adverse averments and contentions made in the reply are denied. It is stated that the Disciplinary Authority in the present case is empowered to impose penalties specified in clauses (i) to (iv) of Rule 11 of CCS(CCA) Rules, 1965 and not under Rule 14 of CCS(CCA) Rules, 1965. Hence, the Disciplinary Authority is not competent to impose major penalty on Group 'A' Officer. Hence, major

penalty charge sheet under Rule 14 does not lie.

30. It is stated that the charges leveled against the applicant are vague, suffer from malice and unsustainable and for this reason also the Disciplinary proceeding is liable to be quashed. Reliance is placed on the decision rendered by the Hon'ble Supreme Court in ***State of Punjab Vs. V.K.***

Khanna and Others, AIR 2001 SC 343 in which it has been held that it is well settled that *“in the event there is an element of malice or malafide motive involved in the matter of issue of charge sheet or the concerned authority is so biased that enquiry would be a mere farcical show and conclusions are well known then and in that event law Courts are justified in interfering at the earliest stage to avoid harassment and humiliation of public official”*.

31. It is stated that procedure prescribed in CCS(CCA) Rules, 1965 is not being followed in the present case. It is stated that the

disciplinary proceeding should be initiated by filing a charge sheet/memorandum by the Competent Authority and if it is not then the charge sheet is vitiated. It is stated that in the present case, the charge sheet is filed by the incompetent Authority. Hence, it is liable to be quashed.

32. It is stated that the Disciplinary Authority himself being personally concerned in the matter is not competent to function as Disciplinary Authority and hence he should have kept himself away from the inquiry proceeding and should have appointed the ad-hoc Disciplinary Authority in the interest of justice.

33. It is stated that personal hearing needs to be given to the charged official by the Inquiry Officer on the charges framed before proceedings with the case. However, since the same has not been given,

principle of natural justice are violated and hence the charge sheet is liable to be quashed. The applicant made a request to the Disciplinary Authority to grant him personal hearing in his reply to the charge sheet. However, since the same was not given. There is violation of principle of natural justice and hence the charge sheet is liable to be quashed.

34. It is stated that since the applicant has filed bias petition, the enquiry should have been stayed till decision on the said petition. However, the enquiry was continued and hence procedure is not followed and for this reason also, the disciplinary proceeding is liable to be quashed. In this respect, reliance is placed on DOPT OM No. 39/40/70-Ests.(A) dated 09.11.1972 which states that whenever an application is moved by the charged officer against the Inquiry Officer

on the ground of bias, the inquiry proceeding should be stayed and application referred along with the relevant material to the appropriate Revisionary Authority for considering the application and passing appropriate orders thereon. In the present case, this procedure has not been followed and Disciplinary Authority himself has decided the bias petition.

35. It is stated that the applicant is not informed regarding order of appointment of second Inquiry Officer as required under Rule 30 of CCS(CCA) Rules and hence this is a procedural lapse sufficient to interfere in the matter and to quash the enquiry proceedings.

36. It is stated that continuance of the enquiry will cause great hardship to the applicant since his son is proceeding to London (UK) for

pursuing higher study course for which the applicant has to incur heavy expenses towards his tuition fee, accommodation and travel expenses etc.

37. It is stated that withholding of benefit of PRIS (for short Performance Related Incentive Scheme) during pendency of the enquiry is arbitrary and illegal. The same should be released to him. Since the Government servant during pendency of the Disciplinary proceeding cannot presume to be guilty unless it is established and punishment is awarded to him. Since when the benefit of PRIS is withdrawn and it amounts to double jeopardy, in the event punishment is imposed upon him in the enquiry. In his behalf, the applicant referred the recommendation of the 6th Pay Commission on PRIS which is applicable to non-scientific staff working in DAE.

38. It is stated that reply given by the respondents is liable to be rejected as wholly inconsistent and far from the truth. It is stated that various initiatives were taken by the applicant for smooth administration while working in BRIT and in order to save the revenue has not been considered by the respondents while filing charge-sheet and deciding to proceed with enquiry.

39. It is stated that Dr. Kohli, Shri Prasad Rao and Smt Filo managed to lodge a false complaint against the applicant by provoking a lady employee for alleged sexual harassment. As such, they are biased against the applicant. The enquiry, therefore, cannot proceed. It is stated that charges are vague and malicious and hence charge sheet is liable to be set aside.

40. It is stated that since the very initiation of the disciplinary

proceeding is illegal, the subsequent appointment of Inquiry Officer and Presenting Officer is also illegal and all the subsequent steps taken by them in conduct of the enquiry behind the back of the applicant. It is stated that enquiry is not conducted in accordance with Rules and hence the charge sheet is liable to be quashed.

41. It is stated that the authorities in the department are most insensitive to the problems of SCs/STs and in the name of Atomic Energy, they are exploiting the interest of SCs/STs.

42. It is stated that the bias petition should have been considered and decided by the Reviewing Authority i.e. Minister in-charge of the department and not by the Disciplinary Authority. He has also challenged the appointment of Shri Hamilton as the Inquiry Officer since the same has been done by the

incompetent Disciplinary Authority without following due procedure.

43. It is stated that the departmental enquiry being quasi judicial in nature, power vested in Disciplinary Authority cannot be delegated to any subordinate authority since it amounts to violation of the provisions of Article 311 of the Constitution. Representation addressed to the Disciplinary Authority by the applicant should have been disposed of by the said authority himself. However, it delegated powers to Deputy Secretary of the department who is a junior counterpart of the applicant to reply the representation which is against the laid down procedure.

44. It is stated that applicant's promotion to the post of Chief Administrative Officer was delayed by two years and he was promoted only when he approached

National Commission for Scheduled Castes, New Delhi and through its intervention alone promotion was given to him.

45. The respondents then filed sur-rejoinder/additional reply on 31.07.2017 in which all the adverse averments and contentions made in the rejoinder by the applicant are denied. Number of documents are also produced along with the sur-rejoinder.

46. It is stated that while conducting the enquiry, procedure prescribed under CCS(CCA) Rules is strictly followed. It is stated that Secretary, DAE is the competent Disciplinary Authority on delegation of powers to him by the Appointing Authority, President of India for Group 'A' Officers. Hence, the memorandum has been filed / disciplinary proceeding has been initiated by the competent authority and the applicant should not have

any grievance for the same. It is stated that on the request made by the applicant, the Inquiry Officer was replaced. However, he continued to make bias petitions on one ground or the other and created hindrances in smooth conduct of the enquiry. On his own accord, he declined to appear before the Inquiry Officer to proceed with the matter and to cross examine the witnesses. The enquiry was thus required to be completed in his absence and the inquiry report is submitted to the Disciplinary Authority for consideration. It was then served on the applicant for submitting representation and final order from the Disciplinary Authority is awaited. Full opportunity was given to the applicant to defend him in the enquiry. It is stated that the applicant being Group 'A' Gazetted Officer, President of India is both the Appointing and the Disciplinary

Authority. However, in terms of Notification No.2/2/82-Vig dated 29.04.1985 in the cases where President is the Disciplinary Authority, Secretary, DAE is competent to impose penalties specified in clauses (i) to (iv) of Rule 11 of CCS(CCA) Rules, 1965 and hence, as per Rule 13(2) thereof, Secretary, DAE is empowered to initiate disciplinary proceedings for imposition of any of the penalties specified in clauses (v) to (ix) under Rule 11 of CCS(CCA) Rules against Group 'A' officer. Accordingly, the charge sheet has been issued to the applicant.

47. Allegations regarding *mala fide* are denied which are baseless according to respondents. It is also stated that the officers against whom the allegations are made have not been impleaded as Private Respondents. As such, those cannot be considered. The action taken

against the applicant is *bona fide* and is based on the material produced against him, for which full opportunity was granted to him to defend in the enquiry. However, for the reasons best known to the applicant he failed to appear after preliminary hearing to proceed with the enquiry. It is stated that the applicant is in habit of making baseless and frivolous complaints against the authorities under SC and ST(Prevention of Atrocities Act), 1989. One such complaint is filed by the applicant against Smt Madhu Patel, Pharmacist, BARC, Mumbai under the provisions of the said Act. The FIR dated 23.08.2010 registered at Trombay Police Station, Mumbai has been quashed by the Hon'ble High Court vide order dated 28.10.2010. Similarly, the applicant while working as Chief Administrative Officer in BRIT lodged a complaint with Senior

Inspector of Police, APMC Market Police Station, Vashi, Navi Mumbai vide his letter dated 21.03.2014 alleging atrocities by Dr. A.K. Kohli, Chief Executive, BRIT Shri S.S. Prasad Rao, Administrative Officer, BRIT and Smt Filo Denis, Deputy Controller of Accounts, BRIT invoking his social origin and making false complaints over routine administrative matters. However, the said complaint was dropped vide letter dated 09.08.2014 issued by the police authorities.

48. The request made by the applicant for appointment of Ad-hoc Disciplinary Authority does not arise since there is no such provision in CCS(CCA) Rules. Secretary, DAE with delegated power to initiate the disciplinary proceedings is fully competent to do so and hence the applicant should not have any grievance regarding his incompetency to initiate the

disciplinary proceedings. The applicant has denied all the charges leveled against him. However, thereafter failed to appear to proceed with the enquiry, although sufficient opportunity was granted to him. The facts reiterated in reply to the OA are also repeated in the sur-rejoinder. It is stated that the applicant did not want to co-operate with the Inquiry Officer for smooth conduct of the disciplinary proceedings and he was disrupting it by making frivolous applications which are disposed of by the Competent Authority. The applicant being the Administrative Head should have been more careful and should not have violated the conduct Rules. However, since he ignored the prescribed Rules and violated it he was charge-sheeted.

49. That under PRIS the benefit therein is extended to the officials subject to condition that they

should fulfill the norms related to gradings in their Annual Performance Appraisal Report (APAR), Minimum Annual Attendance and clear from vigilance angle. PRIS is a variable component of the pay which is awarded after considering the performance of an individual/ Group/organization against the goals set for a given period of assessment. Thus PRIS is not automatic default pay which is given for the nature of duties and responsibilities for a certain post or rank. Further in terms of OM No.1/1(5)/2008-SCS/285 & 286 dated 05.05.2009 these allowances shall be withdrawn immediately on initiation of a disciplinary proceedings and/or placing an employee under suspension. However, grant of this allowance shall be restored with retrospective effect, if the employee is exonerated all the charges. Since the departmental

action against the applicant for his involvement in alleged misconduct, he is not eligible for PRIS payment. It is stated that 5 articles of charges leveled against the applicant are based on the oral and documentary evidence and hence it was open for the applicant to contest the enquiry by defending him and to cross examine the witnesses. However, he failed to do so, although sufficient opportunity was granted to him. The OA is, therefore, liable to be dismissed.

50. The applicant again filed reply to the sur-rejoinder on 19.12.2017 and denied all the adverse averments and contentions made therein. He has also filed certain documents on record. Reliance was also placed by him on the clarification about Rules 12, 14 of CCS(CCA) Rules by which it is stated that in cases where the Disciplinary Authority is the

President, it is necessary that the initiation of the disciplinary proceedings should be approved by the Minister. In the present case, the Secretary DAE himself has initiated the disciplinary proceedings without seeking approval from the concerned Minister and hence for this reason, the charge sheet itself stands vitiated being filed without approval from the Minister. In this respect, he placed reliance on the decision rendered by Hon'ble Supreme Court in ***Union of India & Ors. Vs. B.V. Gopinath, CIVIL APPEAL NO.7761 OF 2013*** in which the charge sheet is quashed on lack of Minister's approval.

51. The respondents again filed additional reply on 03.01.2018 in which all the adverse averments and contentions raised in the reply to sur-rejoinder are denied. It is stated that it would be premature for this Tribunal to exercise

jurisdiction at the stage when charge sheet has been served and inquiring authority submitted the report to the Disciplinary Authority for consideration. Reliance is placed on the decision referred by Hon'ble High Court of Delhi in case of **Dr. Muhammad Iqbal Vs. Union of India & Ors.** **in Writ Petition (C) No.4222/2013** decided on 08.07.2013, in which it has been held as under :-

“It is therefore clear that a Court can only interfere with continuation of enquiry proceedings when there is complete lack of jurisdiction in holding of the enquiry proceedings by the authority which is holding the enquiry, or because the authority did not have the power to initiate the enquiry or the enquiry may be barred by principle of res judicata or double jeopardy or that on the face of the show cause notice even if facts are accepted as correct no charges are made out or there is no cause of action or no violation of any law or rules etc.”

52. It is stated that the enquiry proceeding has been carried out strictly in accordance with CCS(CCA) Rules, 1965 and hence there is no question of interference by this Tribunal.

53. It is stated that Secretary, DAE is competent to impose any of the minor penalties on Group 'A' officers and is also competent to institute disciplinary proceedings against any Government servant for imposition of major penalty since powers are delegated to him by the Appointing Authority itself. It is stated that on institution of the disciplinary proceedings against the applicant, PRIS is not paid to him and hence it was not released to him. The OA is devoid of any substance and is liable to be dismissed.

54. On 04.04.2018, the matter was listed for final hearing at the bottom of the Board. However, on mention made by the applicant for giving priority to the said matter on the ground that he will be retiring on superannuation by 31.05.2018, we have heard the applicant, who appeared in person

and reply arguments of Shri V.S.Masurkar, learned Advocate for the respondents quite at length.

55. We have carefully gone through the entire pleadings of the parties and various documents produced on record by them in support of their rival contentions.

FINDINGS

56. The only controversy involved for resolution of this Tribunal in the present OA is whether the impugned memorandum / charge-sheet dated 31.07.2015 initiating disciplinary proceeding against applicant is liable to be quashed as illegal, incorrect or improper on the grounds raised by applicant by exercising the power of judicial review vested in this Tribunal.

57. The memorandum consist of five Articles of Charges, for the sake of convenience and ready reference, the same are reproduced

here :-

“Article - I

Shri M.S. Gandle, Chief Administrative Officer, NFC has attempted to bring in his social origin over routine administrative matters with a view to misuse the provisions of Law.

By the aforesaid act, Shri M.S.Gandle has acted in a manner unbecoming of a Government servant in contravention of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article - II

Shri M.S.Gandle, Chief Administrative Officer, NFC has made false/unwarranted and highly objectionable remarks against Chief Executive & Dy. Chief Executive (A), NFC in his file noting dated 26.6.2014, 30.06.2014 and other correspondence, and exhibited insubordination to his Senior Officers.

By his above said act, Shri Gandle has acted in a manner unbecoming of a Government servant in contravention of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article - III

Shri M.S.Gandle, Chief Administrative Officer, NFC, while functioning as Chief Administrative Officer in Board of Radiation and Isotope Technology (BRIT) w.e.f. 18.6.2011 to 1.11.2013 has used derogatory and insubordinate language and made threats of criminal action, taking on and commenting on matter beyond his ambit jurisdiction and acted in a manner that exceeds to Chief Executive, BRIT and the Department of Atomic Energy.

By his above said act, Shri Gandle has acted in a manner unbecoming of a Government servant in contravention of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article - IV

Shri M.S.Gandle, Chief Administrative Officer, NFC tried to create unrest among employees over religious matters.

By the aforesaid act, Shri Gandle has acted in a manner unbecoming of a Government servant in contravention of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article - V

Shri M.S.Gandle, Chief Administrative Officer, NFC has used unparliamentary words with the CISF personnel, over the intelligence report they have given against him.

By the aforesaid act, Shri Gandle has acted in a manner unbecoming of a Government servant in contravention of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.”

58. It is obvious that the applicant has challenged the memorandum itself and during pendency of the disciplinary proceeding against him. So far as, the power of judicial review to entertain any claim against the disciplinary proceeding or punishment imposed therein by the Authorities under CCS (CCA) Rules is concerned, the law is well settled. Few decisions are referred by the respondents in their reply to the OA

as stated in paragraph No.22. The scope to interfere is limited in-as-much as unless it is alleged and proved that the charge-sheet has been filed by incompetent authority or that the punishment is imposed by such authority, who was not empowered to do so or that the procedure prescribed in CCS (CCA) Rules in conduct of the disciplinary proceeding has not been followed or the principles of natural justice are violated in-as-much as full opportunity was not given to the delinquent employee to defend him. It is also the settled law that the judicial review of decision making process is to be considered and not the decision itself.

59. So far as this aspect of the case is concerned, it is obvious that there is no bar for filing OA against the charge-sheet itself without waiting for the decision of the Disciplinary Authority on it.

However, in case the decision rendered by the Disciplinary Authority is challenged, there is no question of challenging the charge-sheet. On the other hand, if the charge-sheet itself is challenged, there is no question of considering challenge to the order passed by the Disciplinary Authority, which is still awaited. In view of above, as laid down by the Hon'ble Supreme Court, the Tribunal will not be justified in deciding the correctness or truth of the charges, which is the exclusive prerogative of the Disciplinary Authority to consider it and take the appropriate decision on it as per the rules. Thus, the Tribunal cannot take over the function of the Disciplinary Authority nor it supposed to act or perform the role of the Disciplinary Authority while deciding the OA, challenging the charge-sheet or the punishment imposed by the

Disciplinary Authority. However, so far as challenge to the charge-sheet is concerned, it is also the settled legal position that the same can be challenged only on the ground that the authority, which has issued the charge-sheet was not competent to do so or that the charges leveled against the delinquent employee are so vague or unsustainable for which no proof is required. The same can be challenged also on the ground that the very filing of the charge-sheet is tainted with *mala fides* and hence, it is liable to be quashed.

60. In the light of the aforesaid settled legal position, we shall now turn to consider the grounds raised by the applicant for challenging the impugned charge-sheet.

61. Before doing that we may mention here that in the reply since respondents have raised the plea that the applicant is seeking plural

remedies arising out of different causes of action, the OA itself is not tenable by virtue of the provisions of Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987. This was considered by the applicant and during the course of the hearing, the applicant has elected to proceed with the reliefs claimed under prayer clause 8(b) and 8(f) only. The other reliefs as per prayer clause 8(a), (c), (d), (e), (g) and (h) are given up by him. This being so, the present OA is restricted to prayer clause 8(b) and 8(f) only since it is alleged that on institution of the disciplinary proceeding, the benefit arising under PRIS has been withheld.

62. It is obvious from the tenor of the OA based on the averments made therein that the applicant alleged that since he belongs to Scheduled Caste Category and having given excellence performance and

secured series of promotion, few officers working in DAE did not like him and tried to bring him in trouble. It is also stated that the applicant was instrumental as Liaisoning Officer to ensure that the Government servant belonging to SC and ST category get their legitimate claims, particularly of promotion to various posts and hence he has developed cross terms with his superiors. In the OA, he has given history of his joining, the DAE in the lowest cadre of LDC till he raised to the position of Chief Administrative Officer. He has been transferred to various constituent units of DAE, which he accepted. In other words, the applicant tried to allege *mala fide* against the senior officers namely Dr. Kohli and Shri Rao. It is also alleged that these officers with the help of one lady officer tried to entangle the applicant in a case for sexual

harassment. He has also lodged reports against the senior officers alleging caste based atrocities on him for which Police report was also lodged. However, it is pointed out by the respondents that on enquiry, the said report is filed by the police and no action was taken against those officers.

63. It is, thus, obvious that there are allegations and counter allegations between the parties. However, the above referred three officers against whom the applicant made allegations, they are no way concerned with the present Disciplinary proceeding instituted against the applicant for the simple reason that none of them is the Disciplinary Authority. In such circumstances of the case, there is hardly any force in the contention of the applicant that the impugned charge-sheet is tainted with malice for which except making allegations

by taking advantage of his caste, there is no satisfactory evidence brought on record to hold in his favour.

64. It is obvious from record that the applicant submitted a reply to the charge-sheet and denied the allegations made against him and raised practically all the grounds, which are raised in the OA. However, on the ground that the charge-sheet has not been filed by the Competent Authority after taking part in a preliminary hearing, the applicant on his own accord failed to attend the enquiry and to proceed with and to cross examine the departmental witnesses, in spite of the fact that the Enquiry Officer has specifically issued communication to him to participate in the main enquiry and else the same will be considered and heard in his absence. In spite of that the applicant failed to appear although

submitted series of representations as mentioned in the reply and even made allegations of bias against the Enquiry Officers appointed by the Disciplinary Authority. The bias petition moved by him against the first Enquiry Officer was, however, favourably considered by the Disciplinary Authority and he was replaced. However, the applicant again submitted bias petition against the second Enquiry Officer also, which was rightly rejected by the Disciplinary Authority.

65. In this behalf, the applicant submitted that when a bias petition is filed, the same should have been considered by the Reviewing Authority and the Disciplinary Authority should simply forward such petition to the said authority. However, the applicant failed to point out any specific rule in this behalf. We have also not come across any such specific

provision which required that the Disciplinary Authority is not competent to take a decision on the bias petition. The same is accordingly taken by the Disciplinary Authority for which the applicant should not have any grievance.

66. It is also stated by the applicant that when a bias petition is filed, the enquiry should be stayed. However, it proceeded further and hence, the entire proceeding is vitiated. There is some substance in this averment, however, it is to be considered as to at what stage the bias petition is submitted by the delinquent employee, in as much as in the event, it is submitted after recording evidence of few witnesses by the Enquiry Officer, then for examining further witnesses, normally he should not proceed, since allegation of bias are made

against him. However, in the present case, immediately after submitting the reply to the charge-sheet and on appointment of the Enquiry Officer, bias petition is filed. The original record of inquiry revealed that till the first Enquiry Officer is replaced by the second one and till the second representation submitted by the applicant to replace the second Enquiry Officer also, no effective hearing took place in a disciplinary proceeding. As such, it can safely be said that virtually it was stayed by the Enquiry Officer since no adverse orders were passed against the applicant. We, therefore, do not find any substance in the contention of the applicant that the enquiry was not stayed when he submitted a bias petition for replacement of the Enquiry Officer.

67. The record shows that for the first time in the rejoinder, the

applicant raised the ground that Secretary, DAE, who has issued the charge-sheet was not competent to do so and since admittedly the applicant is the Group 'A' Officer and His Excellency the President of India is the Appointing Authority, the charge-sheet should have been filed either by the Appointing Authority or by the concerned Minister of the Department. However, in the rejoinder itself the applicant has taken a contrary plea that the Secretary DAE was empowered to impose minor penalty as specified in Clause I to IV of Rule 11 of CCS (CCA) Rules and hence, he cannot file major penalty charge-sheet under Rule 14 of CCS (CCA) Rules against him and since the same has been done, the charge-sheet is liable to be quashed.

68. So far as this aspect of the case is concerned, the respondents in their reply placed reliance on

notification dated 29.04.1985 issued by the Government of India by which it is provided that in cases where the President is the Disciplinary Authority, the Secretary DAE is competent to impose penalty specified in Clauses I to IV of Rule 11 of CCS (CCA) Rules. It is also specifically provided referring to the provisions of Rule 13(2) of the CCS (CCA) Rules that by virtue of the aforesaid power delegated to the Secretary DAE, he is competent to institute a disciplinary proceeding for imposition of any of the major penalties specified in Clauses V to IX of Rule 11 of CCS (CCA) Rules.

69. From the above discussion, it is obvious that the applicant has admitted the fact that there is delegation of power to Secretary DAE has been delegated the power of the Disciplinary Authority to institute a major penalty charge-sheet against Group 'A' Officer to whom the

Appointing and Disciplinary Authority is the President. As stated in the aforesaid notification, in the event he comes to the conclusion that in a given case, major penalty should be instituted against the delinquent employee instead of any minor penalty, he is competent to impose, he can make a reference to the Disciplinary Authority / Appointing Authority to pass an appropriate order in the matter. If such reference is made, it will be open to the Disciplinary Authority / Appointing Authority to impose any of the major penalties as stated above. This being the position on record, we do not find any force in the contention of the applicant that the charge-sheet has been filed by the Incompetent Authority (Secretary DAE) since he is not empowered to impose major penalty on proof of the charges leveled against applicant.

As such, it cannot be said that there is any defect in issuance of the major penalty charge-sheet under Rule 14 of the CCS (CCA) Rules by the Secretary DAE or to proceed with it by making appointment of the enquiry and the Presenting Officer or to consider the report submitted to him by the Enquiry Officer on conclusion of enquiry, for taking further appropriate steps in the matter.

70. So far as the ground raised by the applicant that the charges leveled against him are false, frivolous and unsustainable and hence, the charge-sheet is liable to be quashed, on perusal of the nature of the charges leveled against the applicant coupled with statement of imputation, the list of relied upon documents and the list of witnesses cited to prove the above charges, it cannot be said that there is any substance in the aforesaid

contention of the applicant. In fact, serious charges are leveled against the applicant and hence it was incumbent on him to contest the enquiry after filing the reply rather than preferring not to attend when he was specifically called upon by the Enquiry Officer to remain present for final hearing of the charge-sheet by examination of witnesses, so that he could have got reasonable opportunity to cross examine those witnesses. However, as stated earlier, he failed to appear under the pretext that the charge-sheet has not been filed by the Competent Authority and perhaps he thought that for this reason, it is not necessary for him to attend the enquiry and the charge-sheet can be quashed on this ground. However, as stated earlier, there is no substance in the contention that major penalty charge-sheet has not been filed by the Competent

Authority and hence, failing to participate in the enquiry from the stage of final hearing cause a strong prejudice to him for which he himself is reasonable. Since this Tribunal did not concede to the applicant's prayer to grant interim relief to stay the enquiry and hence, it proceeded further in his absence and the Enquiry Officer submitted his report to the Disciplinary Authority for consideration, which is also stated to have been served on the applicant seeking his representation on it. It appears that he has not submitted any representation and the matter is now lying with the Disciplinary Authority to pass the final order on the Enquiry Officer report either exonerating the applicant or imposing any of the penalty prescribed under Rule 11 of the CCS (CCA) Rules. On the request made by the applicant, he is going to retire

on superannuation by the end of May, 2018, the matter was taken up on priority basis and after hearing oral submissions on both the sides, it was closed for orders.

71. During the course of arguments, it is stated by the applicant that the procedure prescribed under CCS (CCA) Rules has not been followed in conduct of the enquiry. However, we do not find any force in this contention, since the applicant did not participate in the final hearing and till that stage and thereafter, prescribed procedure is followed by the Enquiry Officer as well as by the Disciplinary Authority. As such, no adverse inference can be drawn against the respondents to hold that the charge-sheet is vitiated for failing to follow the prescribed rules.

72. During the course of the arguments, the applicant submitted

that the Disciplinary Authority was personally concerned with the matter and hence, he should have kept himself away from the enquiry proceeding and should have appointed adhoc Disciplinary Authority in the interest of justice. However, from perusal of record, it cannot be gathered that the Secretary DAE, who is the Disciplinary Authority by virtue of the powers delegated to him by the President (Appointing Authority) has any personal interest in the matter, except that he is the Administrative Head of the Department in which the applicant is also serving in BARC, one of its constituent units. Further, there is no provision for appointment of adhoc Disciplinary Authority under CCS (CCA) Rules although the Appointing Authority may himself act as the Disciplinary Authority or delegate its power to any other appropriate authority, as has been

done in the present case, discussed earlier. For this reason, we do not find any force in this contention of the applicant and to hold that the Disciplinary proceeding is not properly instituted by the Competent Authority and hence, it is liable to be quashed.

73. The applicant submitted that the Disciplinary Authority before making appointment of the Enquiry Officer has not given personal hearing to the applicant on submission of his reply to the charge-sheet and hence the principles of natural justice are violated, according to him. However, careful perusal of the provisions of CCS (CCA) Rules and particularly that of Section 14(2) to 14(18) of CCS (CCA) Rules, it cannot be gathered that it is necessary for the Disciplinary Authority to call upon the applicant to make oral submissions in respect

of the reply submitted by him, to oppose appointment of Enquiry Officer. This is so because on submission of the reply by the delinquent employee, the Disciplinary Authority is bound to consider all the records pertaining to the disciplinary proceeding including nature of charges leveled against him and the contents of the reply submitted to charge-sheet before taking a decision to appoint the Enquiry Officer. It is also obvious that it is not mandatory for the Disciplinary Authority to record the reasons, therefor, and he can simply issue the order of appointment of suitable Enquiry Officer to proceed with the enquiry. However, in case the Disciplinary Authority thinks that considering the reply to the charge-sheet, no case is made out, he is at liberty to drop the charge-sheet and to exonerate the delinquent employee

instead of proceeding further to hold the regular enquiry by calling witnesses and giving full opportunity to him to defend. In view of above, we do not find any force in this contention of the applicant.

74. So far as the contention of the applicant that since bias petition is filed enquiry should have been stayed, he placed reliance on DOPT OM No.39/40/70-Estt.(A) dated 09.11.1972, which according to him states that whenever an application is moved by the Charged Officer against the Enquiry Officer on the ground of bias, the enquiry proceeding should be stayed and the bias petition should be referred to the appropriate Revisionary Authority. Since the applicant has not produced copy of the said DOPT OM, we have secured it from the library and we have carefully perused it.

75. It is obvious from perusal of the aforesaid OM dated 09.11.1972 that it is styled as departmental enquiries against Government servants - appointment of Enquiring Authority. On the basis of demand based by the Employees Union, some clarification was issued. We are mainly concerned with paragraph No.3 of the said OM, which reads as under :-

“3. A suggestion was made by the Staff Side that where a representation by the delinquent official against the appointment of a particular Inquiry Officer on grounds of bias, is rejected by the disciplinary authority, it should be open to the delinquent official, to prefer an appeal to the appellate authority. It was pointed out that though there was no provision in the CCS (CCA) Rules for filing an appeal against an order appointing a person as Inquiry Officer in a disciplinary proceeding, such an order could, nevertheless, be reviewed under the said Rules. The Staff Side desired that in view of this position, the Inquiry Officer should stay the proceedings if an application for review is filed by the delinquent official. It was agreed that obviously this should be done and the attention of the competent authorities could be drawn to the need for staying the proceeding once a review petition was submitted in such cases.”

76. The above point is further elaborated in paragraph No.4 of the

OM, which reads as under :-

“4. It has accordingly been decided that whenever an application is moved by a Government servant against whom disciplinary proceedings are initiated under the CCS (CCA) Rules against the inquiry officer on grounds of bias, the proceedings should be stayed and the application referred, along with the relevant material, to the appropriate reviewing authority for considering the application and passing appropriate orders thereon. It has also been decided to reemphasize to all Ministries / Departments the following instructions contained in paragraph 5 of M.H.A. O.M. No.39/40/52-Ests, dated the 4th October, 1952, on the subject to expeditious and better disposal of departmental proceedings against Government servant :-

i) In each Ministry or Department specified officer or officers of appropriate rank shall be nominated and earmarked for the purpose of conducting all the departmental inquiries arising within that Ministry / Department.

ii) As soon as occasion arises for taking up such an enquiry, the nominated officer will be relieved of his normal duties to such extent as may be necessary to enable him to devote full and careful attention to the completion of the enquiries and the submission of his report. During this time the work of which the officer is relieved may be distributed amongst other officials.”

77. The Ministry of Finance was requested to bring to the notice of various Disciplinary Authorities, the above clarificatory

instructions.

78. It is obvious from perusal of the aforesaid provision that there is nothing in it to indicate that bias petition should be forwarded to the Revisionary Authority. On the contrary it provides that whenever the bias petition is submitted for replacement of the Enquiry Officer, the Disciplinary Authority should consider and pass an appropriate order thereon. The provisions of appeal against the said order to the Appellate Authority is made. In the present case, the Disciplinary Authority has passed orders on both the bias petitions submitted by the applicant, allowing the first bias petition thereby replacing the previous Enquiry Officer and rejecting the second one. Although it is stated that enquiry should be stayed during pendency of the bias petition. In the present case, as

stated earlier, no effective enquiry was held and it was still at the preliminary stage. As such, it cannot be said that there is violation of the provisions of the aforesaid OM. There is nothing in it to indicate that bias petition at the first instance should be decided by the Revisionary Authority and not by the Disciplinary Authority. We, therefore, reject the contentions of the applicant in this behalf.

79. During the course of arguments the applicant submitted that the order of appointment of second Inquiry Officer has not been communicated to him by registered post as required under Rule 30 of CCS (CCA) Rules and hence this is a serious procedural lapse sufficient to interfere in the matter to quash the enquiry proceedings. In this respect, the provisions of Rule 30 of CCS (CCA) Rules are reproduced here for ready reference:-

“30. Service of orders, notices, etc.
Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by registered post.”

80. However, the applicant himself has stated that photocopy of the said order was subsequently handed over to him. As such, we treat it as sufficient compliance of the above rule and it is not necessary that the said order should have been communicated to him by RPAD only. We simply reject this contention.

81. During the course of arguments, the applicant further submitted that continuance of the Disciplinary Proceedings against him will cause great hardship to him since his son is proceeding to London (UK) for prosecuting higher study and he had to incur the necessary expenses. However, this aspect can be considered only if the major penalty is imposed on the applicant in a Disciplinary

Proceedings and at this preliminary stage since the departmental enquiry is pending against him, no adverse inference can be drawn especially when there is nothing on record to show that the applicant is placed under suspension during pendency of the enquiry. In view of above we simply reject this contention.

82. It is stated by the applicant that he was granted benefit of the PRIS. However during pendency of the enquiry it has been arbitrarily withheld. This prayer is the consequence of the Disciplinary Proceedings. Hence, the same can be agitated in this OA. PRIS is just an incentive which is granted to the Government servants to encourage them to give best performance. This being so, it cannot be withheld only on the ground that the disciplinary proceeding is pending especially when at present no punishment has

been imposed upon the applicant. In this respect, it may be stated that even during pendency of the Disciplinary Proceedings regular increment when it becomes due is released to the charged officer, and revision of pay as per recommendations of the pay commission can also be granted to him. Not only this during pendency of the Disciplinary Proceedings the charged officer can also be considered for promotion post in case he comes under zone of consideration, although the recommendations of DPC are placed in a sealed cover, which is to be opened after decision of the departmental enquiry for taking appropriate steps in the matter in pursuance of the recommendations made therein.

83. From the above discussion it is obvious that the decision of the respondents to withheld PRIS during

pendency of the Disciplinary Proceedings can safely be said to be arbitrary and unwarranted which needs to be quashed. It, however, cannot be said that the applicant is subjected to double jeopardy, since benefit of PRIS is withheld during pendency of Disciplinary Proceedings. This is so because the question of subjecting the applicant to double jeopardy will arise only when the applicant is punished and PRIS is also withheld. In the present case, the enquiry is still pending since no order has been passed by the Disciplinary Authority on the report of the Inquiry Officer submitted on which the applicant's representation is also sought. Hence it can safely be said that there is no force in the contention of the applicant that he has been subjected to double jeopardy.

84. The applicant has alleged *mala fides* against Dr. Kohli, Shri

Prasadrao and Smt. Filo Denis alleging that they provoked one lady employee to lodge a fabricated complaint against him regarding sexual harassment to her. Further although the above officers are high ranking officers they are not cited as the departmental witnesses in the Disciplinary Proceedings against the applicant except Shri Prasad Rao and Smt. Filo Denis. It is not known what happened to the said case of the sexual harassment although Shri Prasadrao under Secretary, DAE Mumbai and Smt. Felo Denis, Deputy Controller of Accounts are cited as the Departmental witnesses. However, simply because complaint has been lodged against the applicant regarding sexual harassment it cannot be said that the present charge-sheet which contains various allegations of misconduct to be established on enquiry, the entire inquiry

proceeding is tainted with malice. We, therefore, simply reject this contention of the applicant.

85. During the course of arguments, the applicant submitted that all the charges leveled against him are vague, malicious and unsustainable and hence charge-sheet is liable to be set aside. However, considering the nature of five articles of charges leveled against the applicant it cannot be said at this preliminary stage without conducting full fledged inquiry that those are vague. The respondents propose to establish the charges leveled on the basis of various documentary evidences relied upon by them in Annexure-II to the charge-sheet. The witnesses in support thereof are also cited. In such circumstances of the case, it cannot be said that the charges are vague, malicious or unsustainable on the basis of circumstances brought on

record and hence entire inquiry proceeding stands vitiated and liable to be quashed, without undertaking the hurricane task of conducting the full fledged enquiry and to come to rational conclusion. We simply reject the contention of the applicant.

86. It is tried to emphasis by the applicant that since initiation of the Disciplinary Proceedings itself is illegal, the subsequent appointment of the Inquiry Officer, Presenting Officer and all the subsequent steps taken by them in conduct of the enquiry behind his back is illegal. However, as stated earlier the applicant after submitting reply to the charge-sheet went on submitting series of representations just with a view to delay the Disciplinary Proceedings. Further, after completing the preliminary inquiry and a decision taken on the representations, the

Inquiry Officer informed the applicant to remain present to proceed with final hearing in the form of examination of the departmental witnesses, so that he could get full opportunity to cross examine them. After examining all the departmental witnesses, it is open for the charged officer to examine himself as the witness in support of his defence or he could examine any other defence witness of his choice to disprove the charges leveled against him. Instead of doing so and availing opportunity to defend him, the applicant voluntarily preferred to abstain himself from enquiry by alleging that the charge-sheet has not been filed by the Competent Authority and since Secretary DAE is not competent to impose major penalty charge-sheet cannot be issued by him. As stated and discussed above, we do not find any force in the contention, based

on the notification relied upon by the respondents. As such Secretary DAE is competent to exercise the delegated power of the President / Appointing Authority of the applicant, not only to initiate the Disciplinary Proceedings without seeking approval of the concerned Minister but he is also empowered to impose the minor penalty on proof of the charges. In such circumstances of the case, we do not find any force in the contention of the applicant that memorandum / charge-sheet stands vitiated in any manner whatsoever.

87. The applicant further submitted that the authorities in the department are most insensitive to the problems of SC / ST employees and they are exploiting their interest. In this case it may be stated from the perusal of the record that the applicant was instrumental and was taking keen

interest being Liaisoning Officer to ensure that the employees belonging to SC / ST category get the legitimate fruits while in service. However, it also appears from record that the applicant by taking advantage of his caste was also exploiting the situation and pressurizing the authorities under the pretext of extending benefits to the employees. In such circumstances of the case it cannot be gathered that the charges levelled against the applicant, which cannot be said to be vague or unsustainable in any manner whatsoever. We, therefore, reject the contentions of the applicant.

88. As stated earlier there is nothing in the Rules to infer that a bias petition for replacement of the Inquiry Officer should be decided by the Reviewing Authority i.e. Minister In-charge of the department and not by the Disciplinary

Authority. On the contrary as discussed earlier the Disciplinary Authority alone is competent to take a decision on the bias petition and he can appeal to the Revisionary Authority (in the present case the Minister In-charge of the Defence Department) against decision rendered by Disciplinary Authority on this issue. As stated earlier, we do not find any force in this contention.

89. The record shows that although the first bias petition was allowed and the previous Inquiry Officer has been replaced by one Shri Hamilton, the applicant again submitted bias against him also. However, it has been rightly rejected by the Disciplinary Authority and there is nothing on record to show that the applicant has approached the Revisionary Authority against the said order. As such, no adverse inference can be

drawn against the respondents. Further, there is nothing on record to show that any decision has been communicated to the applicant by the Subordinate Authority since whatever orders are communicated the same are on the directions of the Disciplinary Authority and on his approval. As such it cannot be said that any relief can be granted to the applicant in this OA.

90. Further, no adverse inference can be drawn against the respondents simply because the promotion of applicant to the post of Chief Administrative Officer was delayed by two years and he was promoted only through the intervention of National Commission for Scheduled Caste. Considering the applicant for promotion post is purely administrative matter to be taken care of by the respondents.

91. From the above discussion, it is obvious that none of the

grounds raised by the applicant to challenge the impugned memorandum / charge-sheet dated 31.07.2015 are made out for interference by this Tribunal at this interim stage, when the enquiry is pending and report is already submitted by the Enquiry Officer to the Disciplinary Authority for consideration and for passing final order thereon. Hence, we are not inclined to exercise the limited power of judicial review vested in this Tribunal so as to quash the entire proceeding. It may be mentioned here that on passing the final order by the Disciplinary Authority, the applicant will have right to approach the Appellate Authority against the said order by challenging its legality and validity so that appropriate decision will be taken by the Appellate Authority in the matter. At present, we do not feel it appropriate to interfere in any

manner whatsoever.

92. In this respect, it may be mentioned here that we did not interfere at the initial stage of admission of OA nor granted any interim relief to the applicant staying the enquiry proceeding. This being so, the Enquiry Officer and Disciplinary Authority were at liberty to proceed with the matter to its logical conclusion. However, as stated earlier, the applicant although called upon by the Enquiry Officer to remain present to proceed with the enquiry from the stage of recording of evidence of departmental witnesses, he failed to do so, by sticking to his contention that the Disciplinary Authority was not competent to file a major penalty charge-sheet. This aspect has already been considered in details in the forgoing paragraphs of this order. As such, no further comments are required.

93. In the result, we do not find any merit in the present OA. The OA, therefore, stands dismissed.

94. The respondent No.1 is, however, directed to take appropriate steps at the earliest in passing a final order in the disciplinary proceeding and communicate the same to the applicant at the earliest for taking appropriate steps in the matter.

95. In the facts and circumstances of the case, the parties are, however, directed to bear their respective costs of this OA.

96. Issuance of certified copy of this order to the parties by the Registry be expedited.

(R.Vijaykumar)
Member (Administrative)

(Arvind J.Rohee)
Member (Judicial)

*kmg**