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KOLKATA BENCH  
KOLKATA

No.O A /350/1570/2018  
M.A.350/848/2018

Date of order : 20.11.2018

**Coram** : Hon'ble Mrs. Bidisha Banerjee, Judicial Member  
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

Sujit Kumar Shaha,  
Aged about 50 years,  
Son of late Rajendra Prasad Shaha,  
Presently working as Chief Manager (A/Cs),  
National Small Industries Corporation Ltd., Howrah,  
Presently residing at 45-Jaggnth Tiwari Road,  
Dum Dum Cantonment,  
Kolkata – 28.

.....Applicant.

-Versus-

1. Union of India,  
Represented through its Secretary,  
Ministry of Small Scale Industries & Enterprises,  
Udyog Bhawan, Rafi Marg,  
New Delhi – 110011.
2. National Small Industries Corporation Ltd.,  
Represented through its Chairman cum-Managing Director,  
National Small Industries Corporation Limited,  
Okla Industrial Estate,  
New Delhi – 110020.
3. General Manager-Cum-Disciplinary Authority,  
National Small Industries Corporation Limited,  
Technical Service Centre,  
Japanigate, Balitukuri,  
Howrah – 711113.
4. Sri Anil Kumar Ralhan,  
Inquiry Officer, Ex-G.M.(I/c),  
HRD & Vigilance Management,  
UP Gramin Bank, B-22A (Ground Floor), Kalkaji,  
New Delhi – 110019.

..... Respondents.

For the applicant : Mr. S.K. Ojha, counsel

For the respondents : Mr. C. Sinha, counsel

### ORDER

#### Bidisha Banerjee, Judicial Member

This application(O.A.) has been filed in order seek the following reliefs:-

"8.(i) *To quash the order No.NTSC (H)/GM/2018/7307, dtd. 01.10.2018 (Annex.A/6) holding the same is illegal, arbitrary and being issued in mala fide exercise of power;*

(ii) *To direct the Respondent No.2 & 3 ensure fair proceeding against the applicant basing on the Charge Memo dtd. 29.05.2018 and give the applicant chance to file the proper written statement of defence after supplying copies of listed so also requested documents;*

(iii) *To direct the Respondent No.2 to supply documents as requested vide representation dated 12.07.2018;*

(iv) *To pass any other order/orders as deemed fit and proper;"*

2. The order impugned in the present O.A. is an order dated 01.10.2018 whereby the Disciplinary Authority has appointed an Enquiry Officer to enquire into the charges framed against the applicant and a Presenting Officer to present the case in support of the articles of charge before the Enquiry Officer along with the relevant documents.

3. By way of a representation dated 12.07.2018 the applicant had sought for copies of additional documents which was rejected vide rejection order dated 30.07.2018 which has not been annexed or challenged in this O.A. The grounds put forth in order to challenge the charge memo dated 29.05.2018 are that the Respondent No.3 is not the appointing authority so far as the applicant is concerned, and, therefore, Memorandum of charges issued against the applicant without approval of the Respondent No.2 i.e. the Appointing Authority was in

violation of the law enunciated by Hon'ble Apex Court in **Union of India & Others vs. B.V. Gopinath**. The applicant has also assailed the action of the respondents in not furnishing the additional documents to him stating that such inaction is violative of Hon'ble Supreme Court's decision in the case of **Chandrama Tiwari Vs. Union of India** and in the case of **Government of A.P. & Ors. Vs. A. Venkata Raidu** and in case of **Deepak Puri Vs. State of Haryana & Ors.** wherein the Hon'ble Apex Court held that:-

*....if, copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges framed against the officer, the enquiry would be vitiated for the violation of principles of natural justice. Further, it is also held that if a charged employee is required to submit reply to the charge-sheet without having copies of the statements he is deprived of the opportunity of effective hearing. Supply of copies is also necessary where witnesses making the statements are intended to be examined against him in regular enquiry. It has further been observed in the said judgment that if the state did not intend to give copies of the documents to the employee it should have been indicated to the delinquent officer in writing that he might inspect those documents. Access to records must have been assured to him.*

Taking strong view against the action of the Administration, the Hon'ble Supreme Court directed that *"enquiry would not proceed till copies of all the documents asked for by the delinquent were supplied"*. This has been the persistent view of the Hon'ble Supreme Court that *"non-providing of documents relied upon by the prosecution will constitute a major violation of the principles of natural justice. Hence, delinquent should be given the opportunity for inspection of documents and thereafter the enquiry should be conducted."*

4. At hearing, when the Id. counsel for the applicant was asked whether he wishes to proceed with the present O.A. which is preferred without challenging the rejection order, he submitted that he can challenge the initiation of the

charge memo by an authority not being the appointing authority and without approval of the appointing authority, only if the minutes of the Board of Directors 440<sup>th</sup> meeting, held on 12.08.2008, whereby the General Manager has been delegated the power to initiate proceedings, is provided to him, otherwise, he would not be in a position to challenge initiation of proceedings.

5. At this Juncture, Id. counsel for the respondents fairly submitted that the department would provide a copy of the minutes of Board of Directors' meeting dated 12.08.2008 and the entire bunch of RUDs to the applicant within 4 weeks and till such time no date shall be fixed by the Enquiry Officer in regard to the proceedings against the applicant.

6. Accordingly both the counsel agreed that the O.A. can be disposed of with a direction upon the respondent authorities to supply the minutes of the Board of Directors' meeting dated 12.08.2008 and to issue a reasoned and speaking order in respect of the prayer of the applicant for supply of additional documents to put up his defence effectively against the charge memo dated 29.05.2018.

7. Let such reasoned and speaking order be issued within a period of 4 weeks from the date of receipt of a copy of this order and till such time no date of enquiry shall be fixed by the respondent authorities.

8. With the above observation and direction, both the O.A. and M.A. stand disposed of. No costs.

  
(Dr. Nandita Chatterjee)  
Administrative Member  
sb

  
(Bidisha Banerjee)  
Judicial Member