CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.476/2003

New Delhi this the 22nd day of July, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. S.A. SINGH, MEMBER (ADMNV)

Tarsem Lal Verma,
S/o Shri Madan Lal,
R/o 7A, M.S. Flats,
Minto Road,
New Delhi. -Applicant

(Applicant in person)

-Versus-

Union of India through
Secretary, Ministry of
Defence, South Block,
New Delhi-110011. -Respondents

(By Advocate Shri S.M. Arif)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant an ex-Photographic Officer in AFFPD was proceeded against for a major penalty on the following articles of charge:

"ARTICLE-I

Shri TL Verma, Photographic Officer in AFFPD, has entered into another marriage while his first wife is living.

By his above act, Shri TL Verma has violated Rule 21 (2) of CCS (Conduct) Rules, 1964 and also acted in a manner which is unbecoming of a Govt servant and thereby vilated Rule 3 (I)(iii) of CCS (Conduct) Rules, 1964.

ARTICLE-II

Shri TL Verma, Photographic Officer in AFFPD, submitted false date of birth certificate and false experience certificates with a view to secure employment to the post of Assistant Information Officer in Directorate of Information & Publicity, Delhi Administration, Delhi in Feb 96.

By his abovt act, Shri TL Verma has failed to maintain absolute integrity and thereby violated Rule 3 (I)(i) of CCS (Conduct) Rules, 1964.

ARTICLE-III

Shri TL Verma, Photographic Officer in AFFPD, did not intimate to the administration the fact of a criminal case under Section 420/468/371 IPC having been registered against him by Directorate of Information and Publicity, Delhi Administration Delhi on 7 May 96.

By his above act of suppressing the material information, Shri TL Verma has exhibited conduct which is unbecoming of a Govt servant and thereby violated Rule (3) (I)(iii) of CCS (Conduct) Rules, 1964."

2. The Inquiry Officer (IO) has held applicant guilty of the charge. On representation disciplinary authority imposed a punishment of dismissal from service by an order dated 8.11.2001, which stood affirmed by the appellate authority vide order dated 28.2.2002. These orders are assailed in the present OA. Applicant seeks re-instatement with all consequential benefits.

3. At the outset a plethora of legal grounds have been taken by applicant who appeared in person to challenge the impugned orders. One of the grounds is that IO has not followed the substantive mandatory provisions under Rule 14 of the CCS (CCA) Rules, 1965. Inter alia, it is contended that there has been a violation of Rule 14 (18) of the CCS (CCA) Rules, 1965. Applicant was neither examined nor has he been questioned by the IO on the circumstances appearing against him in the evidence. This, according to applicant, is a mandatory substantive procedure, violation of which does not require test of prejudice as a sine qua non. Moreover, applicant has been prejudiced as he could not effectively defend the proceedings.

4. Learned counsel for respondents Sh. S.M. Arif has been asked to point out whether the aforesaid provision has been complied with and the IO has questioned applicant to the circumstances of evidence brought against him in the inquiry. On scanning through records same has not been explained. However, it is contended by Sh. Arif that the matter be remanded back from the stage of Rule 14 (18) as the charge stood proved against applicant.

5. On consideration of the submissions made by applicant in person and the respondents' counsel we find that the last hearing in the inquiry had taken place on 11.10.2000 with daily ordersheet No.15, where the charged officer has availed the opportunity of making defence statement after the Presenting Officer submits his written brief the inquiry proceedings were closed. On scanning through the entire proceedings, including inquiry officer we do not find that after closing of the case of defence the IO has examined applicant and questioned him as to the circumstances appearing against him on the basis of evidence brought on record.

6. Rule 14 (18) of the Rules ibid is reproduced as under:

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

7. In **Ministry of Finance v. S.B. Ramesh,** 1998 (3) SCC 227 the following observations have been made by the Tribunal, which have been affirmed by the Apex Court:

> "13. It is necessary to set out the portions from the order of the Tribunal which gave the reasons to come to the conclusion that the order of the Disciplinary Authority was based on no evidence and the findings were perverse. The Tribunal, after extracting in full the evidence of SW 1, the only witness examined on the side of the prosecution, and after extracting also the proceedings of the Enquiry Officer dated 18-6-1991, observed as follows:
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> "After these proceedings on 18-6-1991 the Enquiry Officer has only received the brief from the PO and then finalised the report. This shows that the Enquiry Officer has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18-6-1991. Under sub-rule (18) of Rule 14 of lthe CCS (CCA) Rules, it is incumbent on the Enquiry Authority to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not offer himself or examination as a witness. This mandatory provision of the CCS (CCA) Rules has been lost sight of by the Enquiry Authority. The learned counsel for the respondents argued that as the inquiry itself was held ex parte as the applicant did not appear in response to notice, it was not possible for the Enquiry Authority to question the applicant. This argument has no force because, on 18-6-1991 when the inquiry was held for recording the evidence in support of the charge, even if the Enquiry Officer has set the applicant ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate iin the enquiry hereafter/or even if the Enquiry Authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under sub-rule (18) of Rule 14 of the CCS (CCA) Rules. The omission to do this is a serious error committed by the Enquiry Authority. Secondly, we notice that the Enquiry Authority has marked as many a 7 documents in support of the charge, while SW 1 has proved only one document, namely, the statement of Smt. K.R. Aruna alleged to have been recorded in his presence. How the other documents were received in evidence are not explained either in the report of the Enquiry

Authority or in the proceedings. Even if the documents which were produced along with the charge-sheet were all taken on record, unless and until the applicant had requested the Enquiry Officer to mark certain documents in evidence on his side, the Enquiry Authority had no jurisdiction in marking all those documents which he had called for the purpose of defending himself on the side of the applicant while he has not requested for making of these documents on his side. It is seen that some of these doucments which are marked on the side of the defence not at the instance of the applicant, have been made use of by the Enquiry Authority to reach a finding against the applicant. This has been accepted by the Disciplinary Authority also. We are of the considered view that this is absolutely iirregular and has prejudiced the case of the applicant. These documents, which were not proved in accordance with law should not have been received in evidence and that, any inference drawn from these documents is misplaced and opposed to law. We further find that the Enquiry Authority as well as the Disciplinary Authoriity have freely made use of the statement alleged to have been made by Smt. K.R. Aruna in the preence of SW 1 and it was on that basis that they reached the conclusion that the applicant was living with Smt. K.R. Aruna and that, he was the father of the two children of Smt. K.R.Aruna. SW 1 in his deposition which is extracted above, has not spoken to the details contained in the statement of Smt. K.R. Aruna which was marked as Ex. 1. Further it is settled law that any statement recoreded behind the back of a person can be made use of against him in a proceeding unles the person who is said to have made that statement is made available for cross-examination, to prove his or her veracity. The Disciplinary Authority has not even chosen to include Smt. K.R. Aruna in the list of witnesses for offering her for being cross-examination for testing the veracity of the documents exhibited as Ex.1 which is said to be her statement. Therefore, we have no hesitation in coming to the conclusion that the Enquiry Authority as well as the Disciplinary Authority have gone wrong in placing reliance on Ex.1 which is the alleged statement of Smt. K.R. Aruna without offering Smt. K.R. Aruna as a witness for cross-examination. The applicant's case is that the statement was recorded under coercion and duress and the finding based on this statement is absolutely unsustainable as the same is not based on legal evidence. The other documents relied on by the Enquiry Authority, as well as by the Disciplinary Authority for reaching the conclusion that the applicant and Smt. K.R. Aruna were living together and that they have begotten two

children have also not been proved in the manner in which they are required to be proved."

14. Then, again after extracting the relevant portions from the Disciplinary Authority's order, the Tribunal observed as follows:-

"We have extracted the foregoing portions from the order of the Disciplinary Authority for the purpose of demonstrating that the Disciplinary Authority has placed reliance on a statement of Smt K.R. Aruna, without examining Smt Aruna as a witness in the inquiry and also on several documents collected from somewhere without establishing the authenticity thereof to come to a finding that the applicant has conducted himself in a manner unbecoming of a government servant. The nomination form alleged to have ben filed by Shri Ramesh for the purpose of Central Government Employees' Insurance Scheme, was not a document which was attached to the memorandum of charges as one on which the Disciplinary Authority wanted to rely on for establishing the charge. This probably was one of the documents which the applicant called for, for the purpose of cross-examining the witness or for making proper defence. However, unless the government servant wanted this document to be exhibited in evidence, it was not proper for the Enquiry Authority to exhibit it and to rely on it for reaching the conclusion against the applicant. Further, an inference is drawn that S.B.R. Babu mentioned in the school records (admission registers) and Shri Ramesh mentioned in the Municipal records was the applicant, on the basis of a comparison of the handwriting or signature or telephone numbers are only guesswork, which do not amount to proof even in a disciplinary proceedings, need not be of the same standard as the degree of proof required for establishing the guilty of an accused in a criminal case. However, the law is settled now that suspicion, however strong, cannot be substituted for proof even in a departmental disciplinary proceeding. Viewed in this perspective we find there is a total dearth of evidence to bring home the charge that the applicant has been living in a manner unbecoming of a government servant or that, he has exhibited adulterous conduct by living with Smt K.R. Aruna and begetting children."

15. On a careful perusal of the above findings of the Tribunal in the light of the materials placed before it, we do not think that there is any case for interference, particularly in the absence of full materials made available before us in spite of opportunity given to the appellants. On the facts of this case, we are of the view that the departmental enquiry conducted in this

case is totally unsatisfactory and without observing the minimum required procedure for proving the charge. The Tribunal was, therefore, justified in rendering the findings as above and setting aside the order impugned before it."

8. This Tribunal in OA-1826/98 in **Charanjit Singh Khurana v. Union of India**, decided on 14.9.2001, in so far as compliance of Rule 14 (18) ibid recorded the following observations:

9. As regards the contention of the applicant by taking resort to Rule 14 (18) is concerned, where it is mandated upon the enquiry officer to question the applicant as to the circumstances against him in the evidence to enable him to explain the same, the learned counsel of the applicant states that being a substantive provision of the procedure its non-compliance, which is not denied in the present case has vitiated the enquiry as he has been greatly prejudiced in the matter of his defence. The applicant stated that on the perusal of the evidence of Sh. R. Parmeswar and his cross-examination a non committal reply has come on record. As the previous OA was allowed due to non-examination and cross examination of R. Parmeswar answers to the question of the witnesses clearly demonstrate that the earlier stand has been negated. In this background it is stated that it was essential for the enquiry officer to accord an opportunity to the applicant to explain the aforesaid evidence which required his explanation as to contradiction by a witness to his own question. The learned counsel of the applicant has further placed reliance on a decision of the Apex Court in Ministry of Finance v. S.B. Ramesh, 1998 (3) SCC 227, wherein appeal had been preferred against the order of compulsory retirement to the Tribunal and was allowed as there has not been any attempt on the part of the inquiry officer to question the delinquent's reply as under Rule 14 (18) on the evidence appearing against him despite an ex-parte proceedings the Apex Court affirmed the decision of the Tribunal and this, inter alia, impliedly affirmation of the law laid down by the Tribunal as to the violation of Rule 14 (18). The learned counsel of the applicant has further placed reliance on a decision of this Court in Ghanshyam Kabat v. Union of India, 1989 (10) ATC 774 where infirmity by not following the provisions of Rule 14 (18) has been held to have vitiated the enquiry. The learned

counsel has also placed reliance on a decision of this Court in S. Gopalan v. Directorate General of Works, C.P.W.D., 1991 (16) ATC 691, wherein it has been held that having failed to question the delinquent under Rule 14 (18) the inquiry is vitiated and amounts to denial of an opportunity.

10. On the other hand, the learned counsel of the respondents placing reliance on Rule 8 (19) All India Services (Discipline & Appeal) Rules, which is akin to Rule 14 (18) and the decision of the Apex Court in Sunil Kumar Banerjee v. State of West Bengal, held that failure to comply with the requirement of Rule 8 (19) does not suo moto vitiate the enquiry, unless it is shown that the prejudice has been caused to the delinquent. In this background it is stated that the applicant has failed to show that any prejudice has been caused to him. The applicant has cross-examined the witnesses and submitted his defence and had full opportunity to rebut the allegation, but, however, it is admitted that there has not been a compliance of Rule 14 (18) in the present case.

11. We have carefully considered the rival contentions on this issue and are of the confirmed view that the failure of the inquiry officer to put question to the applicant with regard to the circumstances appearing in the evidence has vitiated the enquiry. The above stated provision is a mandatory substantive procedure of law and the applicant by demonstrating that the evidence of Parmeshwar which has come on record has itself contradicted the cross-examination in chief and some questions are to the extent of rebutting the previous stand taken by the witnesses has certainly caused prejudice to him as the inquiry officer has not put question with regard to these circumstances and this deprived him an opportunity to rebut the same and this testimony was later on placed reliance by the inquiry officer. We also agree with the ratio cited by the learned counsel of the applicant of this court. The decision of the Apex Court cited by the learned counsel of the respondents is distinguishable, firstly the same applies to All India Service Rules and secondly therein though the rule has not been held ultra vires but as the petitioner therein failed to show the prejudice the SLP was rejected but herein having established the prejudice the mandatory provision is to be complied with and in this view of ours we are fortified by the ratio of the Apex Court decision in State Bank of Patiala v. S.K. Sharma, JT 1996 (3) SC 722.

9. When Union of India challenged the decision of the High Court in SLP No.9816/2002 in **Union of India v. C.S. Khurna** by an order dated 9.5.2002 the decision has been upheld. As such the issue is no more res integra and is laid at finality. Accordingly being a binding precedent for want of compliance of Rule 14 (18) the inquiry as well as consequent orders are vitiated as not legally sustainable.

10. One of the contentions raised at this stage by learned counsel for respondents is that the matter be remanded back. We find that both in **Charanjit Singh Khurana** and **S.B. Ramesh** (supra) by the Apex Court the matter has not been remanded back for curing the illegality. Accordingly, as a binding precedent we follow the same. The request of the learned counsel for respondents is turned down.

11. In the result, for the foregoing reasons, OA is allowed to the extent that the impugned orders are set aside. Respondents are directed to re-instate applicant forthwith. He shall be entitled to all consequential benefits but the back wages are restricted to 50%, which shall be paid to applicant within a period of three months from the date of receipt of a copy of this order. No costs.

12. The other legal contentions raised are not adjudicated.

(S.A. Singh)
Member(A)

S. Raju

(Shanker Raju)
Member (J)