CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2155/2003

New Delhi, this the 4th day of June, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K.UPADHYAYA, MEMBER (A)

Vishv Bandhu Gupta
aged about 53 years
s/o Shri B.L.C. Gupta
Residence of B-1/1522
Vasant Kunj,
New Delhi. ... Applicant

(By Advocate: Sh. Sudhir Aggarwal with Sh. Anubhav Trivedi)

Versus

1. Union of India through
The Secretary, Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
North Block, New Delhi.

2. Union Public Service Commission
Dhaulpur House
Shahjahan Road
New Delhi through its Chairman.

3. Central Board of Direct Taxes
New Delhi, through its Chairman

4. Sri V.K.Bhatia (Enquiry Officer)
The then Director, Income Tax Research
New Delhi (To be served through the
CHairman, CBDT, New Delhi). .... Respondents

(By Advocate: Sh. V.P.Uppal)

**O R D E R**

Justice V.S. Aggarwal:-

Applicant (Vishv Bandhu Gupta) was selected in the combined All India Services Examination held by the Union Public Service Examination in the year 1975 and was allotted Indian Revenue Service (IRS). He joined in Junior Time Scale

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on 17.7.1976. He earned his due promotions and was working as Additional Commissioner of Income-tax. He was served with the following Articles of Charge:

**Article-I**

That Shri Vishv Bandhu Gupta, while posted as Additional Commissioner of Income Tax in the region of the CCIT, Delhi remained unauthorisedly absent from duty from 9.11.1998 till the date of his suspension, i.e. 19.6.2000 and performed other acts of insubordination related thereto.

By his aforesaid conduct, Shri Vishv Bandhu Gupta has shown lack of devotion to duty and has acted in a manner which is unbecoming of a Government servant, thereby contravening Rules 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964 besides violating Rule 25 of the CCS (Leave) Rules, 1972.

**Article-II**

That Shri Vishv Bandhu Gupta gave statements to the Press and on the electronic media irresponsibly, without authority and recklessly on sensitive issues and even on matters of government policy, constituting acts of gross in-discipline, unacceptable for any government servant.

By his act aforesaid, Shri Vishv Bandhu Gupta not only showed unbecoming of a Government servant, thereby contravening Rule 3(1)(iii) of CCS (Conduct) Rules, but also Rules 9 & 11 of the said Rules."

2. The inquiry officer had returned the findings against the applicant. The Union Public Service Commission (in short 'UPSC') had also been consulted before passing the impugned order. Considering the advice of the UPSC, the applicant had been dismissed from service under Su-Rule(4) to Rule 15 read with Rule 11(ix) of CCS (CCA) Rules, 1965.

3. The following advice of the UPSC had been referred to and relied upon:

> "3. The UPSC vide their letter F.No.F-3/328/20-2/C.I dated 8.5.2003 forwarded their advice. While giving their advice, the UPSC made the following observations.
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> (a) The CO had earlier been charge-sheeted in 1990 on similar charges. The UPSC, at that time, has advised imposition of a penalty of reduction of pay by three stages for three years with the stipulation that the CO would not earn increments during the period of reduction. The department has found the proposed penalty as harsh, excessive and unreasonable and, after consulting that DOP&T, a penalty of 'Censure' was imposed on the CO in 1994.
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> (b) The Department has been unable to enforce any transfer orders on the CO over the last ten years. The circumstances from which the present charge-sheet has arisen are also centred around an order transferring the CO from Range 15, New Delhi to the ITAT.
>
> (c) In relation to the first element of the first article of charge, namely the CO's unauthorised absence from duty, the CO has not denied his absence. The IO after examining the copies of leave applications stated to have been made by the CO had left that some of them may not be bona fide applications but were afterthoughts. Even if the CO had been sending leave applications, he was never sanctioned the leave applied for, and this would be known to any government servant, particularly an officer of CO's seniority. Since the CO was in Delhi only, he could have sorted out the matter personally with the competent authorities during his long period of absence and it was not his case that he was bedridden or was immobilised.
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> As regards the second element of the charge, namely, the CO's failure to leave a handing over note to his successor after receipt of his transfer orders, the CO has neither been able to produce a copy of the handing over note claimed to have been left by him nor any witness to the existence of such a note. This act of omission also amounted to disobedience of his superiors' orders in this regard and in any case the practice

of handing over of charge to the successor was mandatory in most of the offices.

(d) The interviews given by the CO to Business Today, the video tapes and his direction inter action with the "Hindustan Times", none of which have been objected to by the CO in the magazines/newspapers/T.V. Channels, proved that he has been indeed critical of the Government policy to the press and has spoken even on issues of a confidential nature. The CO had been warned by the DA several times on the issue of his making unauthorized statements to the media but the warnings do not appear to have had any effect on the CO. The CO did not produce any documentation to show that he had tried to either brief his senior officer or utilised other channels available to the government servants to deal with the issues on which he had waxes so eloquent to the press.

Finally the UPSC have observed that retention of such an undisciplined and incorrigible officer in Government service would sent entirely wrong signals particularly as it would appear that the CO had gained some media notoriety in this case. Taking all factors into account and after a very careful consideration, the UPSC has expressed the view that ends of justice would be met if a penalty of dismissal from service is imposed on the CO."

4. The said order is being assailed by the applicant on various grounds to be considered hereinafter.

5. Needless to state that in the reply, the application is being contested.

6. Learned counsel for the applicant, at the outset, contended that the impugned order cannot be sustained because rules of natural justice have been thrown to the winds. It was urged that right in the initial stage, the applicant had been examined. At that time, no witness was examined by the Department

and this examination only shows that the cart was put before the horse. It caused prejudice to the applicant.

7. The learned counsel in support of his contention relied upon certain precedents to which we shall refer to namely, in the case of **PREM BABOO** v. **UNION OF INDIA AND OTHERS**, [1987] 4 ATC 727. This Tribunal had held that inquiry must be conducted according to the prescribed procedure instead of questioning of the Charged Officer generally on the circumstances. The inquiry officer had questioned him in a manner normally expected from the prosecution. Keeping in view the said fact, punishment awarded had been quashed.

8. Similarly, in the case of **N.K. VARADARAJAN** v. **SENIOR DEPUTY DIRECTOR GENERAL, AMSE WING, GEOLOGICAL SURVEY OF INDIA AND ANOTEHR**, 1991(1) SLR 667, the delinquent was cross-examined by the inquiry officer. It was held that the same is totally irregular and this Tribunal had held:

> "4. Having heard the arguments at the bar and having perused the documents produced before us, we find that there is substantial force in the arguments advanced on behalf of the applicant that the inquiry has been conducted in a manner which is against the procedure laid down in Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 in regard to conduct of enquiries in cases where major penalties are to be imposed. The object of questioning the delinquent Government servant by the IO is only to give him an opportunity to explain the incriminating circumstances appearing in the evidence adduced against him. But, in this case, we see that the IO has cross-examined the applicant in regard to

the particulars of the charges levelled against him. This is clearly prohibited. There is no provision for compulsory examination of a delinquent Government servant. The Government servant may, if he chose, examine himself on his side. If he does not choose to examine himself, there is no question of his examination. But there is only a provision for questioning him, for the purpose of giving him opportunity to explain the evidence appearing against him after the evidence is closed. So, the cross-examination of the applicant by the IO is irregular and that naturally has caused prejudice to his case. From the IO's report itself it is evident that though the applicant had sought permission to examine 14 witnesses, the IO has refused permission to examine 8 witnesses and permitted examination of only 6 witnesses. No reason has been stated as to why the IO has refused permission to examine the remaining witnesses. The person who can decide what evidence is to be adduced in his favour is the delinquent Government servant and not the IO. So, his refusal to permit the applicant to examine all the witnesses whom he wanted to examine without assigning any reasons as to why he has not permitted, amounts to denial of reasonable opportunity to defend his case. The documents in this case, as is evident from Annexure-III are voluminous. There were 12 heads of charges and several documents were relied on by the Presenting Officer to establish the charges. So, in fairness to the applicant, copies of the documents should have been given to him. In the decision of the Supreme Court in Kashinath Dikshita v. Union of India and Others, 1986 (2) ATR 186, the Supreme Court has observed that when the documents relied on to establish the charges are voluminous, the non-supply of the copies of the relevant documents, if requested for by the delinquent, amounts to denial of reasonable opportunity. In this case, without assigning any reasons, as evident from the report of the IO itself, the IO has refused to give the delinquent the copies of the material documents which he requested for to enable him to defend his case properly."

9. Same view prevailed with this Tribunal in the case of **SHRI NAWAB SINGH MEENA** v. **UNION OF INDIA & ORS.** 1999 (1) ATJ 413. Therein also, the Charged Officer was cross-examined before the evidence in

support of the charge. It was held that it is unjust and irregular and in this regard, the petition on that count was allowed.

10. Our attention has also been drawn towards the decision of the Himchal Pradesh High Court in the case of **S.C.BHARDWAJ** v. **UNION OF INDIA AND OTHERS**, 1983(1) SLR 32 wherein the said High Court held that reasonable opportunity means compliance with the necessary procedure.

11. Another decision of this Tribunal in the case of **ANANT PRAKASH KASHYAP** v. **UNION OF INDIA**, 2002(1) ATJ 77 can be referred to with advantage. Herein also, the order of removal from service was challenged on the ground that inquiry officer had thoroughly examined the applicant before examining the PW-6. This Tribunal held that this procedure cannot be sustained and the chargesheet was quashed. The findings read:

> "7. A perusal of the materials at Annexure-A12 indicates that the Enquiry Officer did indeed examine applicant throughly before he examined the PWs. In a DE, it is the PWs who are required to be examined and cross-examined under Rule 9(17) Railway Servants (Disc. & Appeal) Rules before the delinquent is called upon to enter into his own defence under Rule 9(19) and 9(20) of those Rules. This departure from the Rules promulgated under Article 309 of the Constitution, is an infirmity grave enough to warrant quashing of the entire proceedings from the stage of service of the chargesheet on applicant."

12. Our attention has also further been drawn towards the decision of the Supreme Court in the case of **MEENGLAS TEA ESTATE** v. **THE WORKMEN**, AIR 1963 SC 1719. The Supreme Court had held:

> "4. The Tribunal held that the enquiry was vitiated because it was not held in accordance with the principles of natural justice. It is contended that this conclusion was erroneous. But we have no doubt about its correctness. The enquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was questioned. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him. In the present case neither was any witness examined nor was any statements made by any witness tendered in evidence. The enquiry, such as it was, made by Mr. Marshall or Mr. Nichols who were not only in the position of judges but also of prosecutors & witnesses. There was no opportunity to the persons charged to cross-examine them and indeed they drew upon their own knowledge of the incident and instead cross-examined the persons charged. This was such a travesty of the principles of natural justice that the Tribunal was justified in rejecting the findings and asking the Company to prove the allegation against each workman de novo before it."

Perusal of the cited decision would show that it is patently distinguishable because herein, no further evidence was permitted and this prompted the Supreme Court to hold that the principles of fair-play and natural justice was violated.

13. If the matter had ended here, we would have referred the same to a Larger Bench keeping in view all the earlier decisions of this Tribunal. However, we are aware of the decision of the Supreme Court in the case of **EMPLOYERS OF FIRESTONE TYRE AND RUBBER CO. (PRIVATE) LTD.** v. **THE WORKMEN**, AIR 1968 SC 236. Herein also, the delinquent was examined before leading of the evidence against him. The question for consideration before the Supreme Court was as to whether the inquiry would be vitiated or not? The Supreme Court answered this question holding:

> "9. This leaves over the contention that before examining the witnesses Subramaniam was subjected to a cross-examination. This was said to offend the principles of natural justice and reliance was placed on, Tata Oil Mills Co. Ltd. v. Its Workmen, 1963-2 Lab LJ 78 (SC); Sur Enamel and Stamping Works Ltd. v. Their Workmen, 1963-2 Lab LJ 367: (AIR 1963 SC 1914); Meenglas Tea Estate v. Its Workmen, 1963-2 Lab LJ 392: (AIR 1963 SC 1719): and Associated Cement Co. Ltd. v. Their Workmen, 1963-2 Lab LJ 396 (SC). These cases no doubt lay down that before a delinquent is asked anything, all the evidence against him must be led. This cannot be an invariable rule in all cases. The situation is different where the accusation is based on a matter of record or the facts are admitted. In such a case it may be permissible to draw the attention of the delinquent to the evidence on the record which goes against him and which if he cannot satisfactorily explain must lead to a conclusion of guilt. In certain cases it may even be

> fair to the delinquent to take his version first so that the enquiry may cover the point of difference and the witnesses may be questioned properly on the aspect of the case suggested by him. It is all a question of justice and fairplay. If the second procedure leads to a just decision of the disputed points and is fairer to the delinquent than the ordinary procedure of examining evidence against him first, no exception can be taken to it. It is, however, wise to ask the delinquent whether he would like to make a statement first or wait till the evidence is over but the failure to question him in this way does not ipso facto vitiate the enquiry unless prejudice is caused. It is only when the person enquired against seems to have been held at a disadvantage or has objected to such a course that the enquiry may be said to be vitiated. It must, however, be emphasised that in all cases in which the facts in controversy are disputed the procedure ordinarily to be followed is the one laid down by this Court in the cited cases. The procedure of examining the delinquent first may be adopted in a clear case only. As illustration we may mention one such case which was recently before us. There a bank clerk had allowed over-drafts to customers much beyond the limits sanctioned by the bank. The clerk had no authority to do so. Before the enquiry commenced he admitted his fault and asked to be excused. He was questioned first to find out if there were any extenuating circumstances before the formal evidence was led to complete the picture of his guilt. We held that the enquiry did not offend any principles of natural justice and was proper (See Central Bank of India Lt. v. Karunamoy Banerjee, Civil Appeal No.440 of 1966, D/- 18-8-1967: (AIR 1968 SC 266)."

14. This decision of the Supreme Court binds and, therefore, it becomes unnecessary for us to follow the earlier precedents to which we have referred to. If the enquiry was held in the interest of justice and fairplay to arrive to a just decision which is fair to the delinquent, the proceedings need not be quashed. Only if the said person has been placed at a disadvantage or in other words prejudice is caused, the proceedings would be quashed.

15. With this backdrop, one can revert back to the present case before us. Herein, the Presenting Officer had examined the delinquent. He had answered the questions. Thus there does not appear to be any prejudice to the applicant at the relevant time. Thereafter the inquiry proceeded. When the inquiry proceeded and a fair conclusion had been arrived at after giving a fair opportunity to the applicant, it cannot be permitted to state that justice or fair-play was violated. The applicant cannot be held to have been placed at any specific disadvantage to prompt us to state that prejudice has been caused. The said argument so much thought of by the learned counsel, must be rejected in the peculiar facts of the present case.

16. Confronted with that position, the learned counsel for the applicant had urged that the documents were not supplied. Some original documents were even not available and, therefore, the principles of natural justice have been violated.

17. Our attention was drawn to the decision of the Calcutta High Court in the case of **NAG NARAYAN SINGH** v. **UNION OF INDIA**, 2001 (3) ATJ 158. In the cited case, it was held that when documents relied upon by the inquiry officer are not supplied, it tantamounts to denial of a reasonable opportunity to defend and, therefore, the inquiry would be vitiated.

As would be noticed hereinafter, the present case is not the one where documents were not supplied. Therefore, the decision would be distinguishable.

18. Reliance was further being placed on the decision of the Mumbai Bench of the Central Administrative Tribunal in the case of **CHANDRASEN KONDIBA BANSODE** v. **UNION OF INDIA AND ORS.**, O.A.No.644/2000, decided on 8.6.2001. In the cited case also, the applicant was denied copy of the document in disciplinary proceedings on the ground that the said document was a part of CBI Investigation and if the same is supplied, it would affect the investigation. It was held that it is the duty of the disciplinary authority to supply the documents. For the reasons already recorded in the preceding paragraphs, it must follow that even this decision will have a little application and must be taken to be distinguishable.

19. In the case of **SHRI R.B.LAL** v **UNION OF INDIA AND ORS.**, 2001 (1) ATJ (CAT) 14, in the departmental inquiry, failure to supply copies of the statement of the witnesses recorded during the preliminary enquiry was the ground on basis of which the impugned order was quashed. This is not the position in the case in hand and we have no hesitation, therefore, in concluding that these precedents will not help the applicant.

20. Two decisions of the Supreme Court in this regard can be taken note of. In the case of **KASHINATH DIKSHITA** v. **UNION OF INDIA AND OTHERS**, AIR 1986 SC 2118, there was non-supply of copies of statements of witnesses and copies of the documents relied upon by the disciplinary authority. The Government had failed to show that no prejudice was caused to the employee. Even the Supreme Court in this regard held:

> "9..... No doubt the disciplinary authority gave an opportunity to the appellant to inspect the documents and take notes as mentioned earlier. But even in this connection the reasonable request of the appellant to have the relevant portions of the documents extracted with the help of his stenographer was refused. He was told to himself make such notes as he could. This is evident from the following passage extracted from communication dated 25-7-1962 from the disciplinary authority to the appellant:-
>
> "The Government has been pleased to allow you to inspect all the documents mentioned in Annexure II to the charge-sheet given to you. While inspecting the documents, you are also allowed to take notes or even prepare copies, if you so like, but you will not be permitted to take a stenographer or any other person to assist you. In case you want copies of any specific documents, from out of those inspected by you, the request will be considered on merits in each case by the Government. In case you want to inspect any document, other than those mentioned in Annexure II, you may make a request accordingly, briefly indicating its relevancy to the charge against you, so that orders of the Government could be obtained for the same. xxxxx As pointed out above, if you wish to have copies of any specific documents, from those inspected by you, you should make a request in writing accordingly, mentioning their relevancy to the charge, so that orders of Government could be obtained.
>
> Government, however, maintains that you are not entitled to ask for copies of documents as a condition

> precedent to your inspection of the same. I am further to add that in case you do not inspect the documents on the date fixed, you will do so at your own risk."

From the cited case, it is clearly revealed that even a reasonable request of the appellant to have the relevant portions of the documents extracted during the inspection, had been refused. It was held that, therefore, prejudice has been caused.

21. Similarly, in the case of **STATE OF U.P.** v. **SHATRUGHAN LAL AND ANOTHER**, (1998) 6 SCC 651, the Supreme Court held that non-supply of the copies of the documents would cause prejudice. The concerned person must be, in the alternative, allowed to inspect the documents. If it was not done, the inquiry would be vitiated.

22. Even in the case of **STATE BANK OF PATIALA AND OTHERS** v. **S.K.SHRAMA**, 1996 SCC (L&S) 717, the Supreme Court held that "Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice."

23. The net result of the aforesaid would be that the documents relied upon must be supplied. Inspection can be permitted of the documents and ultimately it has to be seen whether prejudice has been caused or not.

24. In the present case before us, the inspection of the documents was permitted. It is not the case of the applicant that he wanted to take some notes which was not permitted. If the inspection had been allowed and at that time there was little whisper or objection not raised, it is too late in the day to contend that fair hearing had not been given. In fact, it was not shown that what prejudice has been caused. Therefore, hyper technical pleas that in some case the original was not available will not be of much valid keeping in view that it was a departmental inquiry rather than a trial.

25. Yet another limb of the argument floated was that the inquiry officer became a prosecutor and examined two witnesses at his own instance. This fact that two witnesses were examined by the inquiry officer could not be denied. But can on this ground it be stated that when he became prosecutor, prejudice has been caused to the applicant? In our opinion, the answer would be in the negative in the facts and circumstances of the case.

26. It cannot be taken as a straight jacket formula that in all such cases the proceedings would be vitiated. This is for the reason that in the present case before us, witnesses were examined and allowed to be cross-examined. At that time, the applicant seemingly had not raised any objection. This is apparent from the para 9.9 of the inquiry report. The inquiry officer had asked the presenting officer to produce two witnesses. In such a

situation, it cannot be termed that prejudice was caused to the applicant. We reject the said contention.

27. The learned counsel for the applicant had taken pains to point out that in the facts of the present case, the applicant cannot be held to be on unauthorised absence from duty or had been shown to have given Press and Electronic Media statements on sensitive issues.

28. For the reasons that we will be recording hereinafter, it will not be proper for us to express any opinion because any expression given on our part in the matter would be embarassing to either party.

29. The learned counsel for the applicant had eloquently pointed that copy of the opinion of the Union Public Service Commission had not been provided before passing the order and in this process, the prejudice is writ large because fair opportunity to represent had not been granted. In the impugned order, reference has been made to the observations/advice of the Union Public Service Commission which we have reproduced above.

30. In the case of **STATE BANK OF INDIA AND OTHERS** v. **D.C.AGGARWAL AND ANOTHER**, 1993 SCC (L&S) 109, it was a little different. The concerned officer was being dealt with misappropriation of bank funds. The inquiry officer had exonerated him. The report of

the Central Vigilance Commission had not been supplied. The Supreme Court held that it should have been supplied. The findings read:

> "5. ..... It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the disciplinary authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasised that if the exercise would have been mechanical the disciplinary authority would not have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the disciplinary authority having passed detailed order discussing every material on record and the respondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of powers or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of sub-rule (5). But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the disciplinary authority but was examined and relied on, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From the letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as "The correspondence with the Central Vigilance Commission is a privileged communication

and cannot be forwarded as the order passed by the appointing authority deals with the recommendation of the CVC which is considered sufficient". Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the disciplinary authority. May be that the disciplinary authority has recorded its own findings and it may be coincidental that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the Vigilance report was one of the grounds taken in appeal. But that was so because the respondent prior to service of the order passed by the disciplinary authority did not have any occasion to know that CVC had submitted some report against him. The submission of the learned Additional Solicitor General that CVC recommendations are confidential, copy of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different than CVC recommendation which was the basis of the order passed by the disciplinary authority."

31. Similarly in the case of **MANAGING DIRECTOR, ECIL, HYDERABAD AND OTHERS** v. **B. KARUNAKAR AND OTHERS**, 1993 SCC (L&S) 1184, it was held that the report of the inquiry officer should be supplied. It is an essential part of the reasonable opportunity to contest. The Supreme Court held:

"26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority

while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."

32. Ultimately, as is apparent from the findings of the Supreme Court, it has to be seen whether prejudice is caused or not.

33. We have already reproduced above the copies of the articles of charge and also the opinion of the Union Public Service Commission. It appears from the opinion of the UPSC that there were certain facts mentioned which were not a part of the charge and the UPSC held that the applicant is responsible for it.

34. The Union Public Service Commission in paragraph 3(b) recorded that the Department has been unable to enforce any transfer orders on the CO over the last ten years. It also recorded in Paragraph 3(c) that the CO's failure to leave a handing over note to his successor after receipt of his transfer orders. It was also not a charge. In Paragraph 3(d), the UPSC opined that "The CO had been warned by the DA several times on the issue of his making unauthorized statements to the media ....". This is not a charge nor it was shown that such a warning has been given. If such factors had crept into the report of the UPSC, the disciplinary authority should have ignored it or applied its mind to conclude that extraneous factors which have been mentioned in the report of the UPSC, are being ignored and thereupon the order could be passed.

35. In the present case before us, the disciplinary authority had by and large acted on the opinion of the UPSC. In other words, even the factors which we have already referred to, should have been

ignored but thay have been taken note of and, therefore, the learned counsel rightly contended that prejudice is caused.

36. For the reasons recorded above, we allow the present application and quash the impugned order. It is directed that the disciplinary authority may pass a fresh order in accordance with law.

37. As already referred to above, for this reason, certain facts which were though argued, are not being decided by us as mentioned in Paragraph No.28.

(R.K.Upadhyaya)
Member (A)

(V.S. Aggarwal)
Chairman

/NSN/