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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(1) **O.A.NO.2947/2003**
with
(2) **O.A.NO.3092/2003**

(3) **O.A.NO.3141/2003**

New Delhi, this the 18th day of May, 2004

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

(1) **O.A.No.2947/2003:**

Vijay Kumar Aggarwal, I.A.S.
s/o Shri Prem Chand Aggarwal
r/o C-8-C, Pandav Nagar
Patpar Ganj Road
Near Mother Dairy Milk Plant
East Delhi - 110 092.
Last post : Assistant Collector
Kolhapur (Maharashtra) ... Applicant

(By Applicant in person)

Versus

1. Union of India through
the Secretary
Ministry of Personnel, Public Grievances
& Pensions,
Department of Personnel & Training,
Govt. of India,
North Block
New Delhi - 110 001.

2. State of Maharashtra through
The Chief Secretary
Government of Maharashtra
Mantralaya, Madam Cama Road
Mumbai - 400 032.
through the Principal Secretary &
Special Commissioner,
Goverment of Maharashtra, Maharashtra Sadan
Copernicus Marg
New Delhi - 110 001. ... Respondents
(By Advocate: Sh. Nitin Tambwekar for R-2
None for Respondent No.1)

WITH

(2) **O.A.No.3092/2003:**

Vijay Kumar Aggarwal, I.A.S.
s/o Shri Prem Chand Aggarwal
r/o C-8-C, Pandav Nagar
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(By Advocate: Sh. Nitin Tambwekar for R-2
None for Respondent No.1)

AND

(3) **O.A.No.3141/2003**:

Vijay Kumar Aggarwal, I.A.S.
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None for Respondent No.1)

(15)

O R D E R (Common)

Justice V.S. Aggarwal:-

Since the parties are common, it would be in the fitness of things to dispose of the following three Original Applications by a common order:

(1) O.A.NO.2947/2003

(2) O.A.NO.3092/2003

(3) O.A.NO.3141/2003

(1) **O.A.NO.2947/2003:**

2. The applicant was directly recruited as a member of the Indian Administrative Service (1982 batch, Maharashtra Cadre). He was earlier conveyed the remarks about the act and conduct pertaining to his assumption of the work while he was at Lal Bahadur Shastry National Administrative Academy, Mussoorie. The applicant had challenged the said remarks and finally succeeded in the Supreme Court. The same had been expunged. He has filed OA 2947/2003 seeking setting aside of the inquiry report dated 1.11.2003.

3. Suffice to mention that departmental proceedings had been initiated against the applicant. Thereupon an inquiry officer had been appointed. The article of charge reads:

> "Shri Vijay Kumar, IAS has been reinstated in Government Service after revoking his suspension under Government

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> order, General Administration Department No.AIS-1988/2115/CR-218/88X-A, dated the 13th May 1996 and under D.O. letter, General Administration Department No.AEO-1196/181-96/X, dated the 7th June 1996, he has been appointed as Deputy Secretary in the Social Welfare, Cultural Affairs and Sports Department of Mantralaya. However, he has not taken charge of the said post as yet and remained absent from duty unauthorizedly and left headquarters without the expressed permission of the competent authority.
>
> Thus he has acted in a manner unbecoming of a member of the All India Services and thereby contravened provisions of the Rule 3 of the AIS (Conduct) Rules, 1968."

4. The record reveals that the inquiry officer had submitted the report on 2.9.2003. The applicant seeks quashing of the said report on various pleas.

5. Needless to state that, in the reply filed the application has been contested.

(2) **OA 3092/2003:**

6. In this application, the applicant seeks setting aside of the Memorandum dated 5.10.1998 and the letter of 20.9.2003. He has been served with a memorandum under Rule 10 of the All India Services (Discipline and Appeal) Rules, 1969 asking him to submit his representation, if any. The operative part of the assertions made by the respondents in this regard are:

> "It is seen that Shri Vijay Kumar IAS has submitted the returns for the years from 1982 to 1991 but he has failed to submit any return thereafter. Moreover, the inquries made through the Anti Corruption Bureau into some of the

> complaints against Shri Vijay Kumar have revealed that he had purchased a plot of land for Rs.45,000/- (Forty Five Thousand) in the name of his wife from one Shri Arun Khanna in the year 1989 and constructed a two storied house thereon during the years 1990 to 1993. Shri Vijay Kumar has neither obtained prior permission for the said purchase/construction nor has he submitted any information about this in the annual returns which were filed by him upto the year 1991. Shri Vijay Kumar has thus failed to comply with the provisions contained in sub rules 1(a), (2) and (4) of the Rule 16 of the All India Services (Conduct) Rules, 1968."

This had been conveyed on 5.10.1998. Vide subsequent letter of 20.9.2003 which the applicant also seeks to be quashed, he had been told to submit his representation within 15 days. The said letter reads:

> "To
>
> Shri Vijay Kumar IAS
> House No.C-8-C,
> Pandav Nagar
> Patpar Ganj Road
> Delhi (E) - 110 092.
>
> Subject: Department al Proceedings under Rule 10 of AIS (D&A) Rules, 1969 against Shri Vijay Kumar, IAS.
>
> Sir,
>
> I am directed to refer to this Department's memorandum of even no. dated 5.10.1998 and letters of even no. dated 2.12.1998, 6.1.1999, 1.6.2001 & 29.7.2003 on the subject mentioned above. It is stated that the copy of the said memorandum was sent on your official correspondence address vide letter dated 29.7.2003. Hence you are requested to submit your representation if any in writing on the said charge memorandum to the disciplinary authority within 15 days of the receipt of this letter. It is also to inform you that in case of your failure to submit the representation within the time stipulated the decision in this case will be taken exparte as per the provision of AIS (D&A) Rules, 1969."

(3) **O.A.No.3141/2003**:

7. By this application, the applicant seeks quashing of the order of 7.6.1996 with consequential reliefs. The said order reads:

"Dear

After revocation of suspension you are appointed to the vacant post of the Deputy Secretary, Social Welfare, Cultural Affairs & Sports Department. Accordingly, you may accept the charge of that post.

Yours

Sd/-
(D.K.Afzulpurkar)

Shri Vijay Kumar
I.A.S.

D.O.Letter No.AEO 1196/181-96/X
General Administration Department
Mantralaya, Mumbai 400 032
Dt. 7th June, 1996."

8. The said relief is being claimed primarily on the ground that the order of reinstating the applicant dated 13.5.1996 is invalid. The order is not bonafide and it is motivated.

9. The said application also is being contested.

10. We have heard the applicant, who appeared in person, and the respondents' learned counsel, appearing on behalf of the State of Maharashtra (Respondent No.2).

11. Along with OA 3141/2003, an application (MA No.2722/2003) has been filed seeking condonation of delay. It has been pleaded that the alleged order of revocation of suspension and reinstatement of the applicant in service dated 13.5.1996 and the impugned

order of 7.6.1996 were the subject matter of Contempt Petition No.241/1997 in Civil Appeal No. 3464/1987. The Supreme Court had been pleased to issue notice and subsequently the petition was dismissed but liberty was granted to the applicant to challenge the impugned order of posting.

12. Consequently, once the applicant had been permitted to file the application before the Tribunal, he preferred OA 1714/2003 and this Tribunal had allowed his MA praying for condonation of delay. This Tribunal had disposed of the said application on 18.11.2003. Since the applicant has illegally been deprived of his pay and allowances, therefore, according to him, there is a delay in filing of the application which may be condoned. The present application is stated to be a sequel to the order passed by this Tribunal on 18.11.2003 in OA No.1714/2003.

13. Subject to the other findings about the maintainability of the present application, if the present petition is a sequel to the earlier order passed by this Tribunal on 18.11.2003, we find no reason to conclude that delay should not be condoned. There is just and sufficient ground for condonation of delay. Accordingly, we condone the delay.

14. Reverting back to the merits of the said application No.3141/2003. Once the order of revokation of suspension had been quashed by this Tribunal as a necessary corollary, the applicant who

appeared in person, argued that the impugned order of 7.6.1996 asking him to accept charge of the post is invalid and in contravention of Rule 5(B) of All India (Discipline and Appeal) Rules, 1969.

15. Admittedly, in the earlier Original Application filed by the applicant, he had claimed the following reliefs:

> "8. RELIEFS SOUGHT:
>
> In the facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Court may be graciously pleased to:
>
> a) Quash and set aside the impugned order dated 13.5.96 (ANNEXURE A) to the extent of contravention of Rule 5-B of All India Services (Discipline and Appeal) Rules, 1969, with consequential benefits.
>
> b) Quash and set aside the impugned orders dated 7.6.96, 4.5.98, 5.10.98, 18.9.02 and 27.3.03 (ANNEXURES B, C, D, E and F), with consequential benefits.
>
> c) Direct respondent no.2 to make bona fide reinstatement and posting orders, in compliance with Rule 5-B of All India Services (Discipline and Appeal) Rules, 1969, with consequential benefits.
>
> d) Direct respondent no.2 to pay full salary for the period 1.5.88 till date, with interest and compensation for damages caused to him and his family members, with consequential benefits."

The said OA No.1714/2003 was decided on 18.11.2003. This Tribunal had considered Rule 5(B) of the Rules referred to above and recorded:

> "23. If one has regard to above, when a member of service who is under suspension is re-instated, it is incumbent upon the authorities concerned, while ordering re-instatement, to make a specific order regarding pay and allowances to be paid to the member and

> to decide whether or not the said period of suspension shall be treated as a period spent on duty. If it is found that suspension was wholly unjustified, under clause (3) of the Rules ibid, suspension period is to treated as a period spent on duty and a member is to be paid full pay and allowances to which he was entitled. However, as per clause (6), where suspension is revoked pending finalisation of the disciplinary proceedings, any order passed under sub-rule (1) shall have to be reviewed on its own motion after the conclusion of the proceedings by the authorities concerned."

The Tribunal thereupon held that an order had to be passed pertaining to the subsistence allowance in terms of the Rule 5(B) of IAS (D&A) Rules, 1969 which this Tribunal had reproduced. It was further held:

> "24. If one has regard to above, the only logical interpretation to be given to the aforesaid provision is that as soon as a member of service is re-instated, whether he is facing enquiry or not, an order in terms of rule 5(b)(1)& (3) has to be passed. From the perusal of the order passed by the respondents, it transpires that the order of suspension was revoked and was subjected to completion of departmental enquiry and the question of regularising the suspension period has been kept in abeyance whereas the same has to be decided for the reasons to be recorded. As such keeping the suspension to be decided after completion of disciplinary proceedings and non-payment of subsistence allowance is violative of the dictum laid down by the Apex Court in Capt. M.Paul Anthony vs. Bharat Gold Mines, 1999 (2) JT 456.
>
> 25. We are of the considered view that respondents are bound to pass an order under rule 5(b) and the applicant is entitled for pay and allowances as per rules on decision to be arrived at by the respondents and also keeping in view the pendency of disciplinary proceedings.
>
> 26. As regards claim of the applicant for grant of pay and allowances from 5.6.1996 is concerned, as the applicant, without express permission of the competent authority, has failed to bring on record any credible material

showing that he has joined the post of Deputy Secretary in Social Welfare Department, having not worked on the post by the applicant, at present he is not entitled for this relief of grant of salary for the aforesaid period. However, the aforesaid period shall remain subject to pending finalisation of the disciplinary proceedings and on culmination, the law shall take its own course. However, we observe that in the event, the applicant joins the post of Deputy Secretary in the Social Welfare Department, respondents shall start paying him the salary as per rules. We, at present, are not inclined to allow the prayer of the applicant for grant of salary for the period from 1996 till date.

27. In the result, as the applicant has prayed for multiple reliefs, which is barred under Rule 10 of the CAT (Procedure) Rules, 1987, the OA is partly allowed. Impugned order dated 13.5.1996 is quashed and set aside. Respondents are directed to pass a fresh order in so far as treatment of suspension period is concerned under Rule 5(b) of the Rules ibid within a period of three months from the date of receipt of a copy of this order. Whatever is entitled in the shape of subsistence allowance or the pay and allowances as a consequence of revocation of suspension, shall be paid to the applicant within the aforesaid period. As regards disciplinary proceedings, in case any final order is passed, applicant shall be at liberty to take recourse in accordance with law. No costs."

16. These facts clearly show that this Tribunal had not quashed the order of 13.5.1996 whereby the suspension of the applicant had been withdrawn. It is true that this Tribunal in the order passed, recorded that the impugned order of 13.5.1996 is quashed but in the subsequent line it was made clear that respondents had to pass a fresh order so far as the suspension period is concerned under Rule 5 (B) of the Rules within a period of three months. This makes it clear that the main order whereby the suspension was revoked, was not quashed. The order

passed by this Tribunal should be read as a whole and not one line in isolation of the rest. In fact, in paragraph 26 which we have reproduced above, the Tribunal recorded that the applicant had not brought anything on the record that he joined the post of Deputy Secretary in Social Welfare Department. It went on to hold further that if the applicant joins the post of Deputy Secretary, the respondents shall start paying him salary as per the Rules. This clearly shows that the revocation of the suspension order was not quashed, otherwise question of permitting the applicant to join the post of Deputy Secretary in the Social Welfare Department would not have arisen.

17. To state that, in the earlier OA from which we have quoted in extenso, this Tribunal had recorded that the applicant had prayed for multiple reliefs which was barred under Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987. But the Tribunal had not recorded that only the prayer was confined to the subsistence allowance and the other prayers had been permitted to be withdrawn to file a fresh petition. If the petition had been dismissed on the said ground to which we have already referred to above, the fresh petition would not be maintainable. Therefore, it would become unnecessary to delve into the other contentions of the applicant because we hold that in the present application, the said relief cannot be claimed because the impugned order is a

sequel to the order passed whereby the suspension was revoked and applicant was posted on a particular place.

18. Reverting back to the other applications, namely, OA 2947/2003 and OA 3092/2003, as already pointed above, in OA 2947/2003 the applicant seeks quashing of the inquiry report of 1.11.2003 and in the other Original Application No.3092/2003, he seeks setting aside of the order of 5.10.1998 and the letter of 20.9.2003. In these orders, on 5.10.1998, a notice to show cause has been served calling for the representation, if any, of the applicant for an action proposed under Rule 10 of the All India Service (Discipline & Appeal) Rules, 1969.

19. We had put it to the applicant as to how, at this stage, the petition would be maintainable because no final order has yet been passed. The applicant had referred to various precedents to contend that his fundamental rights are affected. He referred to Articles 14, 21 and 51(A) of the Constitution of India. In the peculiar facts, we find that it would be an exercise in futility to go into the merits of the matter. This is for the reason that the inquiry had been started against the applicant more than five years ago and even the show cause notice in the subsequent petition, under Rule 10 of the CCS (CCA) Rules, is of the year 1998.

20. At this stage, to rake up the plea that his fundamental rights are affected, would be improper. The applicant may take legal and factual pleas, if any, when the final order is subsequently passed. Therefore, in all fairness to the applicant, who had referred to us some case laws on the subject, we deem it unnecessary to delve into this controversy.

21. As already referred to above, in one case the applicant seeks quashing of the inquiry report and in the other, a show cause notice issued under Rule 10 of the CCS (CCA) Rules, 1965 pertaining to certain minor penalties whereby the representation of the applicant is being called.

22. We know from the decision of the Supreme Court in the case of **SHRI CHANAN SINGH** v. **REGISTRAR, CO-OPERATIVE SOCIETIES, PUNJAB AND OTHERS**, AIR 1976 SC 1821 that when a show-cause notice is served, the petition challenging the same ordinarily would be premature. In the cited case, the disciplinary proceedings were dropped by the inquiry officer who was not competent to impose the punishment. The same were revised by the competent authority and a fresh show cause notice was issued. It was held that such a show cause notice could not be challenged. The petition was dismissed as premature. The Supreme Court held:

> "5. Other obstacles in the way of granting the appellant relief were also urged before the High Court and before us, but we are not inclined to investigate them for the short reason that the writ petition was in any case premature. No punitive action has yet

been taken. It is difficult to state, apart from speculation, what the outcome of the proceedings will be. In case the appellant is punished, it is certainly open to him either to file an appeal as provided in the relevant rules or to take other action that he may be advised to resort to. It is not for us, at the moment, to consider whether a writ petition will lie or whether an industrial dispute should be raised or whether an appeal to the competent authority under the rules is the proper remedy, although these are issues which merit serious consideration.

6. We are satisfied that, enough unto the day being the evil thereof, we need not dwell on problems which do not arise in the light of the view we take that there is no present grievance of punitive action which can be ventilated in court. After all, even the question of jurisdiction to re-open what is claimed to be a closed enquiry will, and must, be considered by the Managing Director. On this score, we dismiss the appeal but, in the circumstances, without costs."

23. Similarly in the case of **STATE OF UTTAR PRADESH** v. **SHRI BRAHM DATT SHARMA AND ANOTHER**, AIR 1987 SC 943, a show cause notice had been served to a Government servant called upon to show cause. The same was challenged and the Supreme Court held that the purpose of issuing the show-case notice is to afford an opportunity of hearing and thereafter a final decision has to be taken. Interference, at this stage, by the Court was held to be not called for and petition was stated to be premature. The Supreme Court held:

> "9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a Govt. servant under a statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably

> without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature. The High Court in our opinion ought not to have interfered with the show cause notice."

24. The same principle was carried forward in the case of **UNION OF INDIA & ORS.** v. **UPENDRA SINGH**, 1994 (2) SLJ 77. The Supreme Court held that the inquiry has to be held by the disciplinary authority and granting relief at the initial stage is not permissible and to that effect, therefore, the petition would be premature. The Tribunal should not interfere with the truth or correctness of the charges. The findings recorded were:

> "6. 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 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. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the Court/Tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal & Ors. v. M/s Gopi Nath & Sons and Ors. (1992 Supp.(2) S.C.C 312). The

Bench comprising M.N.Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus:

> "Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

7. Now, if a Court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is un-understandable how can that be done by the Tribunal at the stage of framing of charges? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but mainly on the basis of the material produced by the respondent before it, as we shall presently indicate."

25. No different was the view expressed in the case of **THE EXECUTIVE ENGINEER, BIHAR STATE HOUSING BOARD** v. **RAMESH KUMAR SINGH & ORS.**, JT 1995 (8) S.C. 331. In the cited case, a show cause notice had been issued. The High Court had entertained the Petition. The Supreme Court held that it would be premature because there was no attack on the vires of the statute, nor there was any fundamental rights violated. The findings of the Supreme Court are reproduced for the sake of facility.

"10. We are concerned in this case, with the entertainment of the Writ Petition against a show cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is ex facie a "nullity" or totally "without jurisdiction" in the traditional sense of that expression - that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case, for entertaining a Writ Petition under Article 226 of the Constitution of India against a show-cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him, to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India."

26. So far as the fundamental rights are concerned, we have already held above that the applicant at this stage, after the inquiry report has been submitted, cannot press into service the said fundamental rights. It cannot be taken note of at any time at the sweet will of the said person, when he did not take up this plea at the threshold. We, therefore, decline to entertain the said plea.

27. Similarly in the case of **UNION OF INDIA AND ANOTHER** v. **ASHOK KACKER**, 1995 SCC (L&S) 374, the charge-sheet was being impugned without waiting the

decision of the disciplinary authority. The Supreme Court held that it is premature. The findings of the Supreme Court are:

> "4. Admittedly, the respondent has not yet submitted his reply to the charge-sheet and the respondent rushed to the Central Administrative Tribunal merely on the information that a charge-sheet to this effect was to be issued to him. The Tribunal entertained the respondent's application at that premature stage and quashed the charge-sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned counsel for the respondent made no attempt to support. The respondent has the full opportunity to reply to the charge-sheet and to raise all the points available to him including those which are now urged on his behalf by learned counsel for the respondent. In our opinion, 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 reply to the charge-sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the respondent had rushed to the Tribunal, we do not consider it necessary to require the Tribunal at this stage to examine any other point which may be available to the respondent or which may have been raised by him."

28. Even in the case of **MANAGING DIRECTOR, MADRAS METROPOLITAN WATER SUPPLY AND SEWERAGE BOARD AND ANOTHER** v. **R. RAJAN AND OTHERS**, (1996) 1 SCC 338, the Supreme Court held that no interference was called for at an interlocutory stage of the disciplinary proceedings. The findings of the Supreme Court are:

> "7. As rightly held by the learned Single Judge and the Division Bench, no interference was called for at an interlocutory stage of the disciplinary proceedings. The enquiry was no doubt over but the competent authority was yet to decide whether the charges against the respondents are established either wholly or partly and

what punishment, if any, is called for. At this stage of proceedings, it was wholly unnecessary to go into the question as to who is competent to impose which punishment upon the respondents. Such an exercise is purely academic at this stage of the disciplinary proceedings. So far as the learned Single Judge is concerned, he did not examine the regulations nor did he record any finding as to the powers of the General Manager, the Board or the Government, as the case may be. He merely directed that in view of the statement made by the learned counsel for the Board, the punishment of dismissal shall not be imposed upon the respondents even if the charges against them are established. When the respondents filed writ appeals, the Division Bench was also of the opinion that this was not the stage to interfere under Article 226 of the Constitution nor was it a stage at which one should speculate as to the punishment that may be imposed. But it appears that the Board insisted upon a decision on the question of power. It is because of the assertion on the part of the appellants (that the Managing Director has the power to impose the penalty of compulsory retirement) that the Division Bench examined the question of power on merits. The said assertion of the Managing Director that he has the power to impose the punishment of compulsory retirement probably created an impression in the mind of the Court that the Board has already decided to impose the said punishment upon the respondents and probably it is for the said reason that they examined the said question on merits. (Insofar as the respondents are concerned, it was their refrain throughout that the Board had already decided to impose the punishment of dismissal/compulsory retirement upon them and that the enquiry and all the other proceedings were merely an eye-wash).

Same was the view expressed by the Supreme Court in the case of **STATE OF PUNJAB AND OTHERS** v. **AJIT SINGH**, (1997) 11 SCC 368 and in the case of **AIR INDIA LTD.** v. **M. YOGESHWAR RAJ**, 2000 SCC (L&S) 710.

29. Even in the case of **DISTRICT FOREST OFFICER,** v. **R. RAJAMANICKAM AND ANOTHER,** 2000 SCC (L&S) 1100, the Supreme Court held that interference is not called for pertaining to the correctness of the charges. The findings are:

> "1..... Learned counsel appearing for the appellant urged that the kind of limited jurisdiction conferred upon the Tribunal, it was not open to the Administrative Tribunal to go into the correctness or otherwise of the charges levelled against the respondents and thereby quashed the charge-sheets issued against them. We find merit in the submission. In Union of India v. Upendra Singh [(1994) 3 SCC 357] it was held thus: (SCC p.362, para6)
>
> > "6. 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 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. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be."
>
> 2. In view of the aforesaid decision we find that the Tribunal was not justified under law to interfere with the correctness of the charges levelled against the delinquent officer. We, therefore, set aside the order and judgment of the Tribunal under appeal. ....."

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30. From the aforesaid, it is clear that when only a show-cause notice is served or where the only inquiry report has been made and the disciplinary authority has not passed any final order, it would be premature for this Tribunal to entertain the Original Applications. We are purposefully, therefore, not delving into any other aspects though the same were raised by the applicant.

31. In the present cases before us, since in one matter the inquiry report has been filed and in the other only a show-cause notice for minor penalty has been served, it would be appropriate for the applicant to raise his grievance, if any, in case of any final order is passed. At this stage, all the aforesaid three Original Applications must be taken as premature or not maintainable.

32. For these reasons, we find that the aforesaid Original Applications are without merit and the same are accordingly dismissed.

(R.K.Upadhyaya)
Member (A)

(V.S. Aggarwal)
Chairman

/NSN/