

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO. 94 OF 2003

New Delhi, this the 23<sup>rd</sup> day of September, 2004

**Hon'ble Shri Kuldip Singh, Vice Chairman (J)**  
**Hon'ble Shri S.A. Singh, Member (A)**

Dr. (Miss) Kanta Kumari,  
R/o 326-A, Block J&K,  
Dilshad Garden, Delhi-110 095.

...Applicant

(By Advocate: Shri R.Venkatramani, Sr. Counsel with Sh. S.M.Garg  
and Shri Ashok Panigrahi)

-VERSUS-

University Grants Commission  
Thru its Chairman,  
Bahadurshah Zafar Marg,  
New Delhi - 110 002.

....Respondent

(By Advocate: Shri Amitesh Kumar)

**ORDER**

**By Hon'ble Shri Kuldip Singh, Vice Chairman (J)**

The main controversy in this case is regarding grant of reasonable opportunity to the applicant to defend the departmental proceedings, which were initiated against her. The applicant alleges that she was not allowed to engage a defence assistant/legal practitioner to defend her case.

*for*

2. The applicant, who was working as Joint Secretary in the University Grants Commission (for short 'UGC'), was proceeded departmentally on the following charges:

"Charge No.1

That she absented unauthorisedly i.e. without leave application continuously since 24.4.1999 to 13.7.1999. Again without leave being sanctioned by the competent authority she absented from 15.7.1999 to 18.7.1999 and again on 21.7.1999 to 23.7.1999. She was also absent from duties on the following dates without any intimation/prior permission. No application has given by her.

August, 99 :	3 <sup>rd</sup> , 4 <sup>th</sup> , 5 <sup>th</sup> , 9 <sup>th</sup> , 10 <sup>th</sup> , 11 <sup>th</sup> , 13 <sup>th</sup> , 17 <sup>th</sup> , 18 <sup>th</sup> and 24 <sup>th</sup> to 27 <sup>th</sup> .
Sept., 99 :	3 <sup>rd</sup> , 9 <sup>th</sup> , 10 <sup>th</sup> , 20 <sup>th</sup> , 21 <sup>st</sup> , 22 <sup>nd</sup> , 24 <sup>th</sup> and 28 <sup>th</sup> .
Oct., 99 :	1 <sup>st</sup> , 6 <sup>th</sup> , 8 <sup>th</sup> , 12 <sup>th</sup> , 13 <sup>th</sup> to 18 <sup>th</sup> , 25 <sup>th</sup> , 26 <sup>th</sup> , 27 <sup>th</sup> and 29 <sup>th</sup> .
Nov., 99 :	1 <sup>st</sup> , 3 <sup>rd</sup> , 4 <sup>th</sup> , 5 <sup>th</sup> , 8 <sup>th</sup> , 11 <sup>th</sup> and 12 <sup>th</sup> .
Jan., 2000 :	14 <sup>th</sup> , 17 <sup>th</sup> , 18 <sup>th</sup> , 19 <sup>th</sup> , 24 <sup>th</sup> , 25 <sup>th</sup> and 28 <sup>th</sup> .
Feb., 2000 :	1 <sup>st</sup> , 2 <sup>nd</sup> , 3 <sup>rd</sup> , 4 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> , 9 <sup>th</sup> , 10 <sup>th</sup> , 11 <sup>th</sup> , 14 <sup>th</sup> , 15 <sup>th</sup> , 16 <sup>th</sup> , 17 <sup>th</sup> , 18 <sup>th</sup> , 21 <sup>st</sup> , 22 <sup>nd</sup> , 23 <sup>rd</sup> and 25 <sup>th</sup> .
March, 2000 :	1 <sup>st</sup> , 15 <sup>th</sup> and 23 <sup>rd</sup> . Upto 23 <sup>rd</sup> .

Before proceeding on leave no permission for the same was obtained from the competent authority. Even after joining no medical certificate was submitted. This is the instance of gravest misconduct.

Charge No.2

That during the financial year 1996-97, 1997-98 and 1998-99 when she was as Joint Secretary, NRO, Ghaziabad, she took several T.A. advance amounting to Rs.12,97,000/-. Against

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the said T.A. advance she has refunded/submitted T.A. adjustment bill of Rs.8,49,267/-. She had failed to refund a sum of Rs.2,58,730/-. Thus the aforesaid amount of public money has been misappropriation of the T.A. advance of Rs.12,97,000/- are being reflected in the next charges.

### Charge No.3

That during the financial year 1996-97, 1997-98 and 1998-99 she has taken fare for the following sector twice in the nil payment voucher. First the payment have been made in the claim raised by the

a	Rs.5390/-	Delhi-Bhopal-Delhi	19.5.1997 & 21.5.1997 (payment made to the travel agency)
	Rs.4470/-	-do-	Payment claimed by her in plain paper.
b	Rs.2886/-	Delhi-Shimla-Delhi	28.3.1998 (payment made to travel agency)
	Rs.6240/-	-do-	Payment claimed as Taxi fare on plain paper for going to Shimla. On 17.3.1998 and coming back to Delhi on 29.3.1998.
c	Rs.11660/-	Delhi-Varanasi-Delhi	27.4.1997 for Prof. B. H. Krishnamurti, and 26.4.1997 for herself Payment made to travel agency.
	Rs.5740/-	-do-	Payment made to Prof. Krishnamurti on plain paper.
	Rs.2428/-	Varanasi-Delhi	Claimed by her on plain paper.
d	Rs.4712/-	Delhi-Lucknow-Delhi	26.12.1998 the air fare claimed by her.
	Rs. 4712/-	-do-	The ticket was purchased separately by the office from travel agency for her.
e	Rs.6647/-	Delhi-Varanasi-Delhi	16.3.1998 the air fare claimed by her.
	Rs.6647/-	-do-	The ticket was purchased by the office from travel agency.
f	Rs.5150/-	Delhi-Dinanagar (Punjab)	2.5.1998 to 4.5.1998 claimed taxi fare.
	Rs.8344/-	-do-	Again claimed Tax fare for the said Sector.

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In addition a sum of Rs.39,580/- has been taken by her on plain paper for purchase of air tickets of various sectors without any signatures. She has taken fare for the two sectors twice i.e. the payment of Rs.11,330/- has also been made to the travel agency for the sector Delhi-Lucknow-Delhi and Delhi-Varanasi-Delhi and also claimed by her (Item No.2 S.No.3 and 8 of the table). There are some other irregularities in adjustment which can be seen in item no. 11 of the Special Audit Report.

Thus false claim has been adjusted against the advance of Rs12,97,000/-. In this way she deliberately did the irregularities to get the wrongful gains and her integrity is doubtful.

#### Charge No.4

That during the financial year 1996-97, 1997-98 and 1998-99 the imprest money drawn by her on various occasions has been misappropriated. Before drawing another fresh imprest advance, the previous advance should be adjusted. But it was not done so. Some of the instances are as under:

- a. Rs.10,000/-, Rs.5000/- drawn but no adjustment bill was submitted.
- b. Against the imprest money of Rs.1,30,000/- in 1997-98 wrong adjustment claimed/duplicate bills submitted resulting misappropriation of cash to the tune of Rs.18,182/-. There are so many other irregularities. Thus she is guilty for misappropriation of public fund.

#### Charge No.5

That during the financial year 1996-97, 1997-98 and 1998-99 she has wasted public fund on the purchase of wooden stores and ply by ignoring financial norms and also misusing wooden materials. In the deal she has misappropriated Rs.86,615/-. Thus she is guilty to misappropriate public money.

#### Charge No.6

That during the financial year 1996-97, 1997-98 and 1998-99 Rs.13,200/-, Rs.3,212.50

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and Rs.3,740/- were drawn from Bank for various purposes, but no proper record of the payment has been maintained. Thus the discrepancy indicate misappropriation. Further, Rs.38,471.10 was drawn for the disbursement of the salary. The full amount has not been disbursed and Rs.455/- has been misappropriated. Thus she is guilty to misappropriate the public money.

Charge No. 7

- (a) That during the financial year 1996-97, 1997-98 and 1998-99 she and Shri C.N. Banerjee, A.O. have drawn Rs.20,000/- and Rs.1,000/- respectively as advance to incur expenditure on official purpose, but neither expenditure was incurred nor the money was refunded. Thus aforesaid money has been misappropriated by her.
- (b) Rs.25,000/- was drawn in connection with the expenditure to be incurred on payment of TA/DA to expert members attending the meeting of Minor Research Project against the said amount an amount of Rs.8,086/- is still adjustable. Thus she is guilty to misappropriate the public money.

Charge No. 8

That during the financial year 1996-97, 1997-98 and 1998-99 she has incurred an expenditure of Rs.3,36,202/- for hiring taxi without taking the approval of the competent authority. Thus she has exercised her power not delegated to her and misused office fund for hiring vehicle which was purely utilized either for personal use or in some cases false claim have been made for claiming Tax fare. Thus she is guilty of misusing her power and misappropriation the public money.

Charge No.9

That during the financial year 1996-97, 1997-98 and 1998-99 no proper procedure has been followed by her in various purchases (such as purchase of fax machine and computers) and for construction of Reception counter Printing work, electric items etc. Thus she is guilty to misuse her power for getting the wrongful gains.

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Charge No.10

- (A) That during the financial year 1996-97, 1997-98 and 1998-99, 69 Demand Drafts were made in the month of February/March, 1998 which were revalidated by her in April/September, 1999. The amount of these drafts were to the tune of Rs.45.12 lakhs.
- (B) In 25 more cases the Demand Drafts amounting to Rs.40.50 lakhs were not sent to the respective colleges.
- (C) 12 Demand Drafts were found in one of the file amounting to Rs.1.05 lakhs.
- (D) 13 Demand Drafts amounting to Rs.12,51,500/- were found in her almirah when it was opened.
- (E) 12 Demand Drafts amounting to Rs.1,70,061.33 received from the various colleges for the refund were found in her almirah. These were not deposited in the bank.

From the above it seems that she did all this with malafide intentions to get wrongful gain and thus her integrity is doubtful.

Charge No.11

That no proper record of sanction letter/D.D. were maintained. A cheque No. 405499 for Rs.1,63,11,254/- was issued in March, 1998 for preparing D.D. in favour of different colleges. But the bank was not given the list of the colleges to whom the Drafts were to be issued. Thus the money was kept in suspense account up to May, 1998 and the bank issued D.D. amounting to Rs.1,24,50,772/- to various colleges as and when requests came from N.R.O. Ghaziabad,. The balance amount of Rs.38,60,482/- was put in F.D. on 1.7.1998. This practice was not appropriate with the result the office had incurred a loss of Rs.81,750/- as interest. Thus she is guilty of negligence and misconduct of her duties.

Charge No. 12

When the almirah of Shri Amit Chauhan, Ex-computer operator was opened, 73 fair letter signed by the then Accounts Officers dated 14.5.1998 which were to be issued to different colleges along with Demand Draft amounting to Rs.48.12 lakhs were found. The Demand Drafts were not attached with the letters. Some more demand drafts were missing. The detail for which is attached as evidence. The intention behind not sending the Demand draft with the letters was not clear. Thus to satisfy her own need, she misused her power and directed to a man who was on daily wages to act on her wishes as such her integrity is doubtful.

Charge No. 13

That she has threatened Dr. Ravinder Kumar, Deputy Secretary, NRO, Ghaziabad and Shri G.S. Aulak, P.s. on phone for facing consequences for opening her almirah in which unwanted things were found. Thus she is guilty of threatening the Government servant on duty, who were deputed by the office and thus her integrity is doubtful.

Charge No. 14

That library building grant of – 8<sup>th</sup> Plan – amounting to Rs. 10,90,000/- sanctioned/ approved to Narain College, Shikohabad, but the file was kept by her and sanction letter was not issued to the College. She did not discharge her duties, and hence she is guilty of violating the orders of the superiors.

Charge No. 15

That she has failed to submit the Annual Confidential Report in respect of the staff worked/working under her supervision for the last two – three years in spite of various reminders issued to her. She has also not submitted her self-appraisal. Annual Confidential Report for the last two to three years. Every time she told that she has not received any letter/blank Annual confidential Report forms from the Administration while opening her almirah blank Annual Confidential Report forms and some letters issued by the Administration were found. Thus she is guilty of dereliction of duties, indiscipline and misconduct etc.

Charge No. 16

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That she has never attended the Bureau Head Meetings taken by the Chairman/Secretary ever since she joined back from NRO, Ghaziabad. Thus she is guilty of violating the orders of the Chairman/Secretary, negligence and misconduct etc.

3. The applicant was called upon to submit her defence statement in writing against the said charge sheet and finding that the reply submitted by her was not satisfactory, a retired Judge of the High Court was appointed as an Enquiry Officer and the enquiry was conducted under Regulation 13 of the UGC Employees (CC&A) Regulation, 1967. After the enquiry officer submitted its report, the same was considered by the Commission and the reply of the applicant against the proposed penalty was also considered. After considering the same, the impugned order of punishment of dismissal from service was imposed upon the applicant with immediate effect.

4. The applicant has challenged the same by filing the present Original Application. In the grounds to challenge the same, the applicant alleged that the action of the respondents in initiating the departmental enquiry was mala fide and was done with pre-determined and close mind to take grave action against her. It is further contended that the punishment imposed upon the applicant is arbitrary, unreasonable and is violative of Articles 14 & 16 of the Constitution of India. She further submitted that the findings recorded by the enquiry officer against her are based on 'no evidence' and the enquiry officer has taken into consideration the irrelevant and extraneous material.

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5. It is further submitted that the applicant was denied reasonable opportunity to defend herself at every stage of the proceedings, as she was not allowed to have access to the relevant documents. She was also not allowed to have engaged even a defence assistant as none of the employees of the UGC, whether in service or retired, was willing to become her defence assistant. In that situation, the applicant sought permission to engage another Government servant as her defence assistant. However, her plea was rejected with a close mind and without appreciating the fact that the charges levelled against her involved intricacies of accounting, which was not the subject of the applicant and she was not in a position to defend her case at all in the departmental proceedings.

6. It is further stated that the enquiry officer was a personal choice of the disciplinary authority and he acted in a biased manner from the very beginning of the enquiry proceedings. It is further stated that the disciplinary authority has also passed the impugned order in a mechanical manner without applying its mind. On these grounds, it is stated that the entire enquiry is vitiated, as the applicant had not been given reasonable opportunity and the impugned order passed consequent to the enquiry report submitted by the enquiry officer is also liable to be quashed.

7. Respondents, contesting the original application, submitted that the enquiry against the applicant was conducted under the UGC Employees (CC&A) Regulation, 1967 and it is seen that each and every requirement of the Rules is properly followed.

8. As regards reasonable opportunity to engage a defence assistant, it is submitted by the respondents that enquiry officer had

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adjourned the case on three occasions calling upon the applicant to engage a defence assistant but since the applicant failed to appoint any defence assistant within the Rules, enquiry proceeded further in the absence of defence assistant. The applicant had also made a request to appoint one Shri R.C. Sen, an officer of the MTNL, as her defence assistant. Since he was an outsider and was not an employee of the UGC, the disciplinary authority had rightly rejected the said request of the applicant to permit her to appoint Shri R.C. Sen as her defence assistant.

9. The factum that the enquiry officer was the personal choice of the disciplinary authority and, therefore, was biased towards the applicant is also denied by the respondents. It is stated that the enquiry officer is a retired High Court Judge and he had acted in a most impartial manner without any bias towards the applicant.

10. It is further submitted that the irregularities committed by the applicant were of grave nature and when the same had been proved by the Enquiry Officer, proper punishment has been imposed by the disciplinary authority on the applicant and there is no ground to quash and set aside the impugned order.

11. We have heard the learned counsel for the parties and have gone through the record.

12. Learned counsel for the applicant submitted that since the applicant was not permitted to engage any defence assistant from outside the UGC, a serious prejudice has been caused to her, as she has not been provided a reasonable opportunity to defend herself. Learned counsel also referred to an application filed before the Enquiry Officer wherein the applicant had pleaded that she may be

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allowed to engage one Shri R. C. Sen, an employee of the MTNL, but the respondents opposed the same and submitted that since the said Shri R.C. Sen is not an employee of the UGC, the Rules do not permit the delinquent employee to engage a person from outside the UGC.

13. Learned counsel further pointed out that when this reply opposing the appointment of Shri Sen was filed before the Enquiry officer, the applicant replied to that stating that disciplinary authority may provide any competent defence assistant to match the Presenting Officer who was an expert in accounting. However, the said reply was neither forwarded to the disciplinary authority nor it provided any defence assistant to her. In this regard the applicant, referring to her application annexed with the OA at page no. 194, submitted that since the employees of the Commission, whether employed under the Commission or retired, were not willing to act as her defence assistant for a fear of victimization at a later stage and showed their reluctance for the same, she again insisted that she may be permitted to engage Shri Sen as her defence assistant. On this, the enquiry officer passed an order rejecting her request for engagement of Shri R.C. Sen as her defence assistant.

14. Learned counsel further submitted that when the enquiry officer started the proceedings, the applicant had again submitted that it is not possible for her to cross-examine the witnesses in the absence of defence assistant. In this regard she had also moved an application, which was kept on record, <sup>wherein it was the</sup> ~~it is further~~ submitted that the circumstances were such that no defence assistant from amongst the employees of the UGC was coming forward apprehending victimization at the ends of the UGC, the enquiry officer should not have proceeded.

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15. Learned counsel further submitted that the enquiry officer lacked power to proceed with the enquiry until and unless a defence assistant was provided to the applicant. Learned counsel for the applicant also submitted that the applicant, in fact, should have been provided a professional legal practitioner to defend her since no employee of the UGC was coming forward to act as her defence assistant. Learned counsel then referred to Regulation No. 13 (8) of the University Grants Commission Employees (CC&A) Regulation, 1967, which reads as under:

“The employee may take the assistance of any other employee to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits. (emphasis added)

16. Learned counsel for the applicant further submitted that this provision has almost been borrowed from the provisions of Rule 13 of the CCS (CCA) Rules and are *peri materia* with the same Rules which provide that though there is a general bar for engaging any legal practitioner by the parties before the enquiry officer but still having regard to the circumstances of the case, the disciplinary authority can permit a delinquent employee to appoint any professional legal practitioner as defence assistant. In this case, since the delinquent employee had been repeatedly requesting that the charges levelled against her are so complicated, particularly involving intricacies of accounting <sup>to</sup> ~~to~~ which the applicant had no knowledge and none of the Expert Accountants was coming forward to act as a defence assistant for the applicant and even the request of the applicant for engagement

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of Shri R.C. Sen, who is an expert Accountant from MTNL, had also been rejected, in that circumstances the disciplinary authority should have permitted her to engage a legal practitioner to defend her case. Since this has not been done and the enquiry officer proceeded with the enquiry, the whole proceedings are vitiated and the applicant has been definitely denied a reasonable opportunity to defend herself.

17. In reply to this, learned counsel for the respondents submitted that Regulation 38 of the UGC Employees (CC&A) Regulation, 1967 permits the delinquent employee to engage any other employee to present his/her case before the enquiry officer but there is a specific bar that the delinquent employee cannot engage a legal practitioner unless the presenting officer is also a qualified legal practitioner or a special permission is granted by the disciplinary authority.

18. Learned counsel for the respondents further submitted that the definition of "Employee" has been <sup>given</sup> ~~defined~~ in Regulation No. 2 (d) which is such a vast definition and provides that employee means any person in the service of the University Grants Commission who is a member of a cadre or grade or post created under the Commission and includes any such person on foreign service or whose services are temporarily placed at the disposal of a University/College or any other authority by the Commission and also any person in the service of a State Government or Central Government or a local or other authority, University or College or any other autonomous body whose services are temporarily placed at the disposal of the Commission. Referring to this Regulation, the learned counsel for the respondents pointed out that the definition of employee is such a vast definition and so many persons are covered under this definition as an employee of the UGC

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and as such the applicant could have engaged the services of any one of the employees to defend her case before the enquiry officer. It is further submitted that her request for providing a defence assistant was duly considered and she was permitted to engage any defence assistant and despite availing various opportunities she <sup>did</sup> ~~could~~ not be ~~able~~ to engage any defence assistant. Therefore, the enquiry officer had rightly proceeded with the enquiry without the defence assistance of the applicant.

19. In reply, the learned counsel for the applicant submitted that the enquiry officer was not correct in proceeding with the enquiry. In rejoinder to the reply of the department, the applicant has specifically submitted that none of the employees of UGC was willing to act as her defence assistant so the enquiry officer had no right to proceed further and rather her request should have been again forwarded to the disciplinary authority so that the disciplinary authority could have applied its mind and in the circumstances may have permitted her to engage any other person or a legal practitioner as her defence assistant. In support of this contention, learned counsel for the applicant has referred to various judgments such as rendered in the case of **C.K. Rajanandam vs. Director, Postal Services, Andhra Pradesh, Hyderabad**, reported 1972 Lab. I.C., p.89 wherein it has been observed as under:

"The Central Civil Services (Classification Control and Appeal) Rules, 1965, do not prohibit absolutely engaging of an advocate in disciplinary proceedings by the delinquent officer. While exercising the discretion under R.14(4) the disciplinary authority must have regard to the circumstances of the case. Where the facts are complicated or questions of law are involved or the subject matter is technical or the

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evidence is voluminous a lawyer should be permitted to appear for the delinquent officer. In such a case, the disciplinary authority in not permitting him to engage a counsel violates the principles of natural justice inasmuch as he has been denied reasonable opportunity of conducting the case launched against him."

Learned counsel further referred to another judgment in the case of **K.Venkataraman vs. Union of India & 4 others**, reported in 1988(6) ATC 176 rendered by the Madras Bench of this Tribunal, wherein it was observed as under:-

"Applicant charged with production of a spurious document in a court case against the government - Document required examination by Questioned Documents Expert - Held, refusal to engage a legal practitioner resulted in denial of natural justice - Departmental enquiry - Natural justice."

The applicant also referred to yet another judgment rendered in the case of **J.K. Aggarwal vs. Haryana Seeds Development Corporation Ltd. & Ors**, reported as 1991(2) SCC 283, wherein it was observed as under:

"Service Law - Departmental enquiry - Representation by a lawyer - Delinquent officer's right to - Rule vesting discretion on inquiry authority - Discretion when should be exercised - Where delinquent, a non-legal person, is pitted against the presenting officer, being a person of legal mind and experience, held, refusal of services of a lawyer to the delinquent amounts to denial of natural justice - In the context any person assisting or advising on facts and in law must be deemed to be a legal adviser or lawyer. - Directions for further continuation of the enquiry given."

20. After referring to the above judgments, the learned counsel for the applicant submitted that when the applicant, who does not have

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the knowledge of accounts, is pitted against the presenting officer, who is a person belonging to accounts branch of the internal audit of the UGC, there was no equal match particularly so when the charges alleged against the applicants involve intricacies of accounting, the applicant had a right to engage a defence assistant, who could be expert in accountancy, or any professional legal practitioner, could have been provided to her. In this regard, we may mention that as regards rule position, Regulation No. 13(8) permits the delinquent employee to have a defence assistant from amongst the employees of the UGC and there is a specific bar <sup>for</sup> ~~from~~ engaging any legal practitioner unless the presenting officer is also a legal practitioner. However, there is an exception to this Rule that the disciplinary authority, having regard to the circumstances of the case, may permit the delinquent employee to engage a legal practitioner.

21. It is an admitted case of the parties that the applicant had made an application seeking permission to engage Shri R.C. Sen, Deputy General Manager of the MTNL Department and when that request of the applicant was rejected and she was informed before the enquiry officer by way of a reply to her application that the disciplinary authority had not agreed to permit the applicant to have the services of Shri R.C. Sen, the applicant by way of rejoinder had submitted that if Shri R.C. Sen is not permitted to be appointed as a defence assistant then any other defence assistant may be provided. It is also an admitted fact that the applicant never sought for engaging a legal practitioner to defend her case. So there was no occasion for the disciplinary authority to apply its mind or exercise the discretion for permitting the applicant to appoint a legal practitioner.

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22. The contention of the applicant is that there was an unequal combat as she was pitted against the expert Accountant i.e. the presenting officer who was well versed in accounting and was a part of the internal audit team whereas the applicant was not an expert in accounting and as such she could not have effectively defended her case. Since no employee from the UGC was willing to come forward to defend her, under these circumstances the applicant had been prevented to defend herself as the disciplinary authority did not apply its mind to provide any competent defence assistant which act of the respondents amounted to denial of a reasonable opportunity to her.

23. As regards this contention, we may mention here that the Rules of the Department, which have been reproduced above, would go to show that a vast choice is given to the delinquent employee to engage any of the employees from UGC as her defence assistant but there is an exception only for the purpose of engaging a legal practitioner. In this case though the intricacies of accounts were involved but there may be other cases where the intricacies of engineering department may be there or the misconduct of an employee may be such that may involve intricacies of various other disciplines and it may be that presenting officer happens to be having the knowledge of that discipline but the Rules cannot be framed in a manner that equal matching defence assistant should be provided. Rather the legislature in its wisdom has given the complete choice to the applicant to engage her defence assistant from amongst the employees of the UGC who may be expert in the concerned discipline with legal knowledge also but he should be the employee of the UGC. In this case since the complete choice has been given to the applicant in accordance with



the Rules by the department to engage any defence assistant and the enquiry officer also adjourned the case on many occasions so <sup>as</sup> ~~that~~ the delinquent employee cannot have any grievance that she has not been given any reasonable opportunity to engage a defence assistant.

24. As regards judgments cited by the applicant, all the judgments pertained to engagement of a legal practitioner as defence assistant and they do speak that the discretion is vested with the disciplinary authority keeping in view the circumstances of the case to permit the delinquent employee to engage a legal practitioner as defence assistant. However, in this case the applicant never asked for engagement of a legal practitioner as her defence assistant, so the question of exercising the discretion by the disciplinary authority did not arise at all. On the contrary we find that in the reply to the application of the applicant for engaging a defence assistant the respondents had given her a complete choice to engage any of the employees of the UGC who may be suitable to her for defending her case. So far as the contention of the applicant that no one was willing to come forward for fear of victimization is concerned, the enquiry officer had adjourned the case on many occasions so as to enable the applicant to engage any of the employees of the UGC as defence assistant but she could not persuade any of the employees of the UGC to be her defence assistant. Moreover, she never pointed out as to whom she had approached and who had refused to act as her defence assistant nor she has placed on record any affidavit to this effect. This plea taken by the applicant that the employees were not coming forward for fear of victimization seems to be unfounded as fear of

victimization cannot be there since the Rules permit the employees to act as a defence assistant.

25. The next contention of the applicant was that she has also been denied reasonable opportunity to defend, as she has not been supplied the relied upon documents for the purpose of her defence. For this purpose the applicant has referred to letter dated 12.12.2000 (Annexure A-9) in which it is mentioned that the applicant had asked for documents to be inspected by her to prepare comprehensive replies and comprehensive defence statement and the list along with the documents will be produced to sustain the charges against her. An order was also passed by the enquiry officer on 6.1.2001 vide which he allowed to supply the relied upon documents to the applicant and he also allowed her to inspect the documents. Therefore, it cannot be said that the relied upon documents had not been supplied to the applicant and she had not been given a reasonable opportunity to defend herself.


26. The next contention of the applicant is that enquiry officer was biased against the applicant. However, the applicant's counsel was unable to demonstrate from any of the proceedings recorded by the enquiry officer, copies of which have been placed on record, as to how the enquiry officer was biased towards the applicant. Moreover, we find that the enquiry officer is a retired High Court Judge and it cannot be expected that he would be biased for holding such like departmental enquiries against an employee.

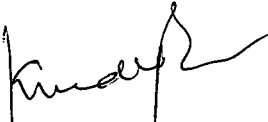
27. Applicant has also tried to make out that it is a case of 'no evidence'. This point was not <sup>con raised in</sup> ~~convicted~~ during arguments. Rather a perusal of the proceedings would show that there was sufficient

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evidence against the applicant. Therefore, it cannot be said that this is a case of 'no evidence'. The enquiry report, which is placed on record running from pages nos. 226 to 656, speaks about volume of evidence against the applicant and as to how the enquiry officer has appreciated the same. Therefore, the contention of the applicant's counsel that this is a case of 'no evidence' fails and the same is rejected. No other arguments were advanced.

28. In view of our above discussion, we find that the case of the applicant is bereft of any merit and no interference is called for. Accordingly, the original application is dismissed without any order as to costs.

  
**(S.A. Singh)**  
Member (A)

  
**(Kuldip Singh)**  
Vice Chairman (J)

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