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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No. 381/2019

Dated this Wednesday the 23rd day of October, 2019

CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Shri Peeyush Kamalkumar Pandey
 Age 59 years,
 Son of Kamal Kumar Pandey,
 Working as Superintendent of Customs
 (Preventive), Customs Zone-I, Mumbai
 residing at 201/202, 2nd Floor,
 Saurabh, Plot 39, Swastik Park,
 Chembur, Mumbai - 400 071. . . . **Applicant**

(By Advocate Shri S.V. Marne)

VERSUS

1. Union of India
 Through the Secretary,
 Ministry of Finance,
 Department of Revenue,
 North Block, New Delhi - 110 001.
2. Chairman
 Central Board of Indirect Taxes & Customs
 North Block, New Delhi - 110 001.
3. The Principal Commissioner of
 Customs (General), Customs Zone-I,
 New Customs House,
 Ballard Estate,
 Mumbai - 400 001. . . . **Respondents**

(By Advocate Shri R.R. Shetty)

ORDER

PER: RAVINDER KAUR, MEMBER (J)

This application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8(a) This Hon'ble Tribunal may graciously be pleased to call for records of the cases from the respondents and after examining the same, quash and set aside the entire disciplinary proceedings conducted in pursuance of Memorandum of Charge-sheet dated 01.09.2016 and leading to report of the Inquiring Authority served on the applicant vide letter F.No.S/9-20/2014/Vig. dated 19.12.2017 with further direction to the respondents to conduct disciplinary proceedings afresh strictly in accordance with the provisions of CCS(CCA) Rules, 1965.

(b) This Hon'ble Tribunal may further be pleased to direct the respondents not to conduct disciplinary proceedings in respect of remanded inquiry, or otherwise, and further stay such remanded inquiry, or otherwise, till the entire evidence in the criminal prosecution is over i.e. completed and decided.

(c) Costs of the application be provided for.

(d) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2. The applicant was appointed to the post of Preventive Officer in Indian Customs, Mumbai on 28.11.1985. He was promoted to the post of Superintendent of Customs (Preventive) on 31.03.1998. In the year 2013, he was posted as Superintendent of Customs

(Preventive) at Jawaharlal Nehru Customs House, Nhava-Sheva, Raigad. It is stated that a false complaint was made against him by one of the Importers to the CBI alleging demand and acceptance of illegal gratification by some of the representatives of Customs House Agents on behalf of some Customs Officers including the present applicant. CBI conducted trap and some representatives of Customs House Agent were caught accepting bribe of Rs.50,000/- from the complainant. Since there was no allegation against the applicant that either he demanded or accepted any amount, the CBI had filed closure report (Annex A-2) in the said trap case. Later, on 19.03.2013, CBI registered FIR No.RC BA1/2013/A0011 under Section 13(2) read with 13(1) (e) Prevention of Corruption Act, 1988 against the applicant with the allegations of possessing assets disproportionate to the known source of his income. Chargesheet (Annexure A-3) was filed by the CBI before the Special Judge.

2.1 It is further stated by the applicant that respondent No.2 issued Memorandum of

chargesheet dated 01.09.2016 (Annexure A-4) to the applicant with the following articles of charge:-

"Article of Charge I"

A huge amount of cash of Rs.96,92,101/- was recovered from the residential premises of Shri Peeyush Kumar Pandey, while he was functioning as a Superintendent of Customs (P), JNCH, Nhava Sheva, by the officers of CBI, ACB during search of his residential premises on 04.02.2013 in relation to investigations in RC-5(A)/2013 CBI, ACB, Mumbai. Shri Peeyush Kumar Pandey could not account for the huge amount of cash recovered from his residence.

Article of Charge II

Shri Peeyush Kumar Pandey, while functioning as Superintendent of Customs (P), JNCH, Nhava Sheva, was found in possession of assets disproportionate to his known sources of income to the tune of Rs.1,02,07,172/- in his own name and in the name of his family members, during the period from 01.01.1998 to 04.02.2013. Shri Peeyush Kumar Pandey could not satisfactorily account for the above assets found in his possession.

By the above acts of omission and commission, Shri Peeyush Kumar Pandey, Superintendent of Customs (Preventive) has failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government servant, thereby violating Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964."

2.2 The applicant further states that the contents of Annexures A-3 and A-4 are based on identical set of facts and evidence with identical allegations. The documents sought to be relied upon in both sets of proceedings are same. Even the witnesses in both the cases are same except five extra witnesses

cited in the criminal proceedings. The applicant on receipt of Annexure A-3 submitted letter dated 14.09.2016 (Annexure A-5) to the Disciplinary Authority that since the charges, documents and witnesses in both the proceedings are same, therefore the departmental chargesheet should be withdrawn. However his request was declined vide order dated 10.10.2016 (Annexure A-6). The applicant again requested for dropping of the chargesheet vide letter dated 19.12.2016 (Annexure A-7) which was again declined vide reply dated 23.01.2017. Thereafter the applicant submitted letter dated 08.02.2017 (Annexure A-8) whereby he made request that the disciplinary proceedings be kept in abeyance during the pendency of the criminal proceedings. However, his request was declined vide letter dated 22.02.2017 (Annexure A-9). In the meantime, the Disciplinary Authority had appointed an Inquiry Officer as well as Presenting Officer vide order dated 23.12.2016.

2.3 It is stated that the Inquiry Officer fixed the first hearing on 15.02.2017. In the

meantime, the trial before Special Judge CBI commenced and the charge was framed on 16.02.2017. The evidence commenced from 01.08.2017. It is stated that on account of framing of charge and commencing of trial, the applicant was busy giving instructions to his Advocate and with preparation of his defence as there were 61 witnesses cited by the CBI. He further states that Inquiry Officer went on fixing repeated dates of inquiry at short intervals which he could not attend for the reason he was busy giving instructions to his Advocate in the CBI case.

2.4 It is stated that the Inquiry was scheduled only on 5 dates on which mere recording of absence of the applicant was done but non witnesses were called and kept present for recording of evidence. Thus no specific decision was taken nor was any witness called. In a shocking manner the applicant was issued letter dated 24.08.2017 (Annexure A-10) by the Inquiring Authority stating that the Presenting Officer had submitted his brief and the applicant was called upon to give comments on the same.

2.5 It is stated that the Inquiring Authority committed vital illegality in calling for Presenting officer's brief without conducting any inquiry vide examination of a single witness out of 56 witnesses cited in the chargesheet which is in violation of Rule 14(11) of CCS(CCA) Rules, 1965. That the procedure required to be followed by the Inquiring Authority has to be followed even in case the charged officer fails to attend the inquiry proceedings. Further, the Inquiring Authority in the present case did not direct the Presenting Officer to lead any evidence and straightway permitted to submit his brief.

2.6 The applicant has further relied upon Annexure A-11 i.e. letter dated 24.02.2011 issued by Deputy Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs directing that in cases where *ex parte* hearing was held, it is essential that a witness is required to record/affirm his statement in the regular hearing and that these instructions are reiterated by the

department in letter dated 17.01.2019 (Annexure A-12). That the entire procedure adopted by the Inquiring Authority and the Presenting Officer is unknown to law.

2.7 The applicant further states that the Inquiring Authority continued with illegality and submitted her report to the Disciplinary Authority. The applicant received the copy of the same from the office of Disciplinary Authority vide letter dated 19.12.2017 (Annexure A-1). As per the said report, the Inquiry Officer has held that all the charges levelled against the applicant stand proved. Further in the said report, the Inquiring Authority has admitted that all the five hearings held by her were merely preliminary hearing. The applicant submitted letter dated 15.11.2018 (Annexure A-14) to the Disciplinary Authority whereby he specifically made reference to the effect that the inquiry was conducted in violation of principles of natural justice and made request to adjourn the disciplinary proceedings till final disposal of criminal proceedings. It is further mentioned that he

had submitted one more letter dated 19.02.2019 before the Disciplinary Authority for adjournment of hearing as he was repeatedly required to attend the trial and for preparation of his defence. Thereafter again he gave a detailed representation dated 02.05.2019 (Annexure A-16) pointing out the illegalities in the inquiry. The applicant was given personal hearing by the Disciplinary Authority on 21.05.2019.

2.8 The applicant has expressed his apprehension that Disciplinary Authority would impose major penalty on the applicant on the basis of the report of the Inquiry Officer and he has approached this Tribunal to quash and set aside the entire disciplinary proceedings conducted in pursuance of Memorandum of chargesheet dated 01.09.2016, leading to the report of Inquiring Authority served upon the applicant vide letter dated 19.12.2017 with directions to the respondents to conduct disciplinary proceedings afresh in accordance with the provisions of CCS(CCA) Rules, 1965.

3. This OA was filed on 06.06.2019 and

vide order dated 07.06.2019, the interim relief to the following effect was given:-

"In these circumstances, issue notice to the respondents to file a short reply on the legal issues pointed out by the applicant, within two weeks during which time the Disciplinary Authority is directed not to pass any final orders in regard to the Disciplinary Proceedings."

4. The respondents have filed their detailed affidavit in reply. It is submitted that CBI in its report dated 13.11.2014 recommended prosecution against the applicant for commission of offence punishable u/s 13(2) r/w Sec.13(1)(e) of the Prevention of Corruption Act, 1988 and it also recommended RDA for major penalty against the applicant for violating CCS Conduct Rules, 1964. Disciplinary Authority accorded the Prosecution Sanction Order dated 05.12.2014 against the applicant. DGoV, New Delhi on 20.07.2016 communicated the First Stage Advice for taking RDA for major penalty against the applicant. Charge Memorandum F.No.S/9-20/2014-Vig/700/S/5-42/2013-Vig dated 01.09.2016 was issued against the applicant. Applicant did not reply to the Charge Memorandum dated 01.09.2016 in terms of Rule 14(4) of CCS(CCA) Rules, 1965 even if reminders dated 10.10.2016 & 09.12.2016 were issued to

him for making representation against the Charge Memorandum dated 01.09.2016. Accordingly, Inquiry Officer & Presenting Officer were appointed on 23.12.2016 for holding inquiry against the applicant under Rule 14 of CCS(CCA) Rules, 1965. The Inquiry Authority had to submit the inquiry report dated 21.11.2017 ex-parte as the applicant had at no stage of the Inquiry refuted or countered the statements of the witnesses. As there was no rebuttal of charges by the applicant and has not presented his version of facts it was presumed he accepted the statements being relied upon in the inquiry. There was no co-operation on the part of the applicant in the said inquiry and the said proceedings were completed. The Inquiry Authority had also observed that at no point of time during the course of the inquiry the applicant had made a complaint written or oral stating that he does not have any faith in the sanctity of the the inquiry proceedings of the officers appointed by the Disciplinary Authority. If the applicant wanted to cross-examine any witness he could have requested during the time of the inquiry

proceedings. Accordingly, on the basis of evidence available in the RUDs the inquiry had to be concluded ex-parte as per Sub rule (20) of Rule 14 of CCS(CCA) Rules, 1965. Disciplinary Authority accepted the inquiry report dated 21.11.2017 and the same was served to applicant on 19.12.2017 for his comments under Rule 15(2) of CCS(CCA) Rules, 1965 before finalizing the case. But applicant didn't make his representation on the inquiry report dated 21.11.2017 in which all the charges levelled against him stand proved. After failing to reply to reminders issued to him on 19.12.2017, 09.01.2018 & 01.02.2018 for making his representation on Inquiry Report, Disciplinary Authority granted personal hearing on 15.11.2018, 20.02.2019 & 02.05.2019 keeping in line with the natural justice. However, at the request of applicant, these hearings were adjourned by Disciplinary Authority. The applicant was given personal hearing on 21.05.2019 whereby he submitted his representation to Disciplinary Authority. From above, it is apparent that no haste was shown by Disciplinary Authority or Inquiry Officer in

conducting disciplinary proceedings against the applicant. He was given enough opportunity to present his case but applicant deliberately failed to do so. In para 6.2 of Inquiry report, Inquiry Officer has specifically mentioned that Preliminary Hearings were conducted on 15.02.2017, 05.04.2017, 05.05.2017, 14.06.2017 & 30.06.2017 with a view to ascertain the applicant has received all the relevant documents (RUDs) under the said Memorandum dated 01.09.2016 and also with the aim that the CO would be able to present his case along with any supporting documents/evidence in support of such submission, if any. But applicant did not cooperate during the entire course of inquiry and deliberately avoided inquiry proceedings.

4.1 It is stated that the applicant has alleged serious violation of principles of natural justice on account of non-examination of any of the witnesses or production of documents during the course of inquiry proceedings. It is stated that all the relevant documents have been produced during the course of inquiry. However, the applicant refused to participate in the inquiry and is therefore

estopped from contending that principles of natural justice were not adhered to therein. The applicant is strangely seeking quashing of the chargesheet itself/conducting of the disciplinary proceedings afresh in accordance with CCS(CCA) Rules, 1965. It is stated that it does not lie in the month of the applicant to seek a fresh inquiry on the purported ground of not-adhering to the principles of natural justice by the Inquiry Officer after based on his conduct of not remaining present or participating in the departmental proceedings.

4.2 The respondents further stated that the applicant cannot invoke the jurisdiction of this Tribunal in 2019 in respect of a chargesheet which was issued to the applicant on 01.09.2016 and the claim of the applicant is thus barred by limitation.

4.3 The respondents have relied upon the Board's instructions vide No.F.No.C-14010/3/2011-Ad.V, New Delhi dated 24.02.2011 issued by the Deputy Secretary to the Govt. of India, Ad.V, New Delhi regarding Departmental inquiry under CCS(CCA) Rules, 1965 - consideration of statements recorded earlier in

preliminary inquiry or under Customs Act, 1962

which states as under:-

"It may be legally permissible and in accordance with the principles of natural justice to take on record the statements made by witnesses during the preliminary inquiry/investigation at oral inquiries, if the statement is admitted by the witness on its being read out to him. Accordingly, it was decided that in future, instead of recording the statement of a witness already recorded at the preliminary inquiry/investigation afresh, it may be read out to him at the oral inquiry and if it is admitted by him, the cross examination of the witness may commence thereafter straightway. A copy of the said statement should however, be made available to the delinquent officer sufficiently in advance i.e. at least three days before the date on which it is to come up at the inquiry. This procedure of reading out the earlier statement to the witness and seek his affirmation enables expeditious recording of the evidence from the prosecution side."

4.4 It is stated that the Inquiry Officer in view of the conduct of the applicant had to submit the Inquiry report dated 21.11.2017 ex-parte as applicant had at no stage of the inquiry refuted or countered the statements of the witnesses. Further there was no rebuttal of charges by the applicant and since he had not presented his version of facts, it was presumed he accepted the statements being relied upon in the inquiry. During the course of inquiry proceedings, the applicant did not make any request to cross-examine the witnesses, accordingly on the basis of the evidence available in the RUDs.

The inquiry had to be concluded *ex-parte* as per Rule 14 (20) of CCS(CCA) Rules, 1965.

4.5 The Inquiring Authority had followed due process of law and gave enough opportunity to the applicant to preset his case but he deliberately failed to do so.

4.6 Regarding the contention of the applicant for stay of the departmental proceedings pending criminal proceedings, the respondents have relied upon the judgments of Hon'ble Apex Court in the case of *State of Rajasthan Vs. B.K. Meena & Ors.*, reported in *AIR 1997(1) LLJ 746 (SC)*, *Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited & Ors.* *1999(3) SCC 679* and *OM dated 01.08.2017 issued by DoPT vide F.No.11012/6/2007-Estt A*. The Hon'ble Apex Court in its above referred judgments held that departmental proceedings and proceedings in criminal case can proceed simultaneously as there is no bar in there being conducted simultaneously though separately. The respondents have prayed that the OA is liable to be dismissed and the interim relief granted on 07.06.2019 is liable to be vacated.

5. The applicant has filed rejoinder

whereby he reiterated all his averments as per the OA.

6. We have heard Shri S.V. Marne, learned counsel for the applicant and Shri R.R. Shetty, learned counsel for the respondents at length and gone through the relevant provisions of law.

7. Learned counsel for the applicant has submitted that the perusal of the inquiry report clearly shows that the procedure required to be followed in conducting the inquiry proceedings has not been followed as none of the witnesses cited to be examined during the course of inquiry have been examined by the Inquiry Officer nor any documents has been proved against him and merely on the basis of the statements recorded by the CBI during the course of investigation, the Inquiry Officer gave her findings that all the charges levelled against the applicant stand proved. Learned counsel has drawn our attention to the internal page 25 of the inquiry report whereby the Inquiry Officer has made the following observations:-

"The CO has at no stages of the Inquiry refuted nor countered the statements of abovementioned witnesses, annexed to the Memorandum as Annexure III. As there is no rebuttal of charges by the Charged Officer and has not presented his version of facts it is presumed he accepts the statements being relied in this Inquiry.

Accordingly the evidence on the basis of these RUDs are clearly holding the charges of Article of Charges I and Article of Charge II."

8. It is submitted that the procedure followed by the Inquiring Authority is against the CCS(CCA) Rules and therefore the entire departmental proceedings are required to be set aside and directions be issued for conducting disciplinary proceedings afresh as per the rules. It is further argued that Vide letters dated 15.11.2018(Annexure A-14), dated 19.02.2019(Annexure A-15) and dated 02.05.2019 (Annexure A-16), he had pointed out to the Disciplinary Authority the discrepancies/errors committed by the Inquiring Authority during the conduct of the inquiry proceedings. Further the non-examination of any of the cited witnesses by the Inquiring Authority is fatal to the applicant and amounts to gross violation of principles of natural justice. None of the witnesses have proved their statements made

before the CBI which have been relied upon by the Inquiring Authority and on the basis of these statements only the Inquiry Officer has opined that the charges against the applicant stand proved. It is submitted that during the course of personal hearing with the Disciplinary Authority, the applicant was made aware of the fact that the Disciplinary Authority is likely to impose the punishment of dismissal upon the applicant and therefore in these circumstances the entire departmental proceedings are liable to be set aside as he has *prima facie* case in his favour and he is likely to suffer irreparable loss. The balance of convenience also lies in his favour.

9. On the other hand, learned counsel for the respondents has submitted that the relief claimed by the applicant cannot be granted by this Tribunal at this interlocutory stage of the departmental proceedings. The applicant is required to follow the procedure by filing his reply to the Disciplinary Authority and in any case, if the major penalty is imposed upon him then he has a statutory right to

approach the Appellate Authority. It is submitted that before the applicant exhausts all the statutory remedies, he cannot approach this Tribunal at this interlocutory stage and seek relief to set aside the entire departmental proceedings with directions to the respondents to conduct disciplinary proceedings afresh strictly in accordance with the provisions of CCS(CCA) Rules, 1965. It is further submitted that the applicant who did not participate in the inquiry proceedings at all, cannot question the inconsistency in the procedure followed by the Inquiry Officer.

10. It is submitted that this Tribunal has no jurisdiction to interfere in the departmental proceedings at the interlocutory stage and therefore the OA is liable to be dismissed.

11. After hearing the submissions of both the parties, we have carefully gone through the material available on record.

12. The short question for consideration in the present OA is whether the Tribunal can interfere in the departmental proceedings at

the interlocutory stage when the proceedings are yet not concluded. Admittedly there are statutory remedies available to applicant which he has yet to avail for redressal of his grievances. We are conscious of the fact that major penalty proceedings are to be carried out in terms of Rule 14 of CCS(CCA) Rules, 1965. The applicant has not disputed that the matter is still at the interlocutory stage as after the Inquiring Authority gave the inquiry report dated 19.12.2017, the Disciplinary Authority has yet to pass final order thereon. Since as per the applicant he has already filed reply/letters dated 15.11.2018, 19.02.2019 & 02.05.2019 with Disciplinary Authority pointing out the various discrepancies in the conduct of the enquiry proceedings, thus now it is for the Disciplinary Authority to pass an appropriate order on the Inquiry report. The contention of the applicant that during the personal hearing with the Disciplinary Authority, he came to know that the Disciplinary Authority is likely to impose major penalty of dismissal upon the applicant is of no

consequence and is no ground to interfere in the departmental proceedings at this interlocutory stage. It is not disputed by the applicant that the order of Disciplinary Authority is appealable. Thus In case the applicant is not satisfied with the order of Disciplinary Authority, he has statutory right to prefer an appeal to challenge the same.

13. On query from learned counsel for the applicant as to whether we can interfere in the disciplinary proceedings at this stage, he cited the judgment of Hon'ble Apex Court in the case of Deepak Puri Vs. State of Haryana and Others reported in 2000(10) SCC 373 whereby the Hon'ble Apex Court made the following observations in paras 4 and 5 of the judgment:

“4. This Court, generally, does not entertain any petition or appeal at the interlocutory stage of the disciplinary proceedings. But in this case a glaring fact is that even prior to the issuance of the memo dated 24-11-1992, the appellant as also his colleague Shri C.P. Aggarwal, who were both District Drug Inspectors, had jointly written to the Director General, Medical Health Services, Haryana, Chandigarh on 21-9-1992 with a copy to the Commissioner and Secretary to the Government of Haryana in the Health Department that they apprehended harsh treatment against them and that the whole matter may be inquired into by him personally or some senior officer may be deputed to look into the questions and grievances raised by them.

5. Having regard to the facts and circumstances of this case as also the fact that the respondents had appointed an enquiry officer after about six years of the charge-sheet, we direct that the inquiry shall not proceed till copies of all the documents asked for by the appellant are supplied to him. The appeal is allowed. No order as to costs.

Though we fully agree with the above judgment however the same is not applicable to the facts and circumstances of the present case. The applicants in that case were vigilant and had been attending the departmental proceedings regularly and despite his request for supply of copies of certain documents, the same were not supplied to him and inquiry was being proceeded against him. The applicants were also apprehending harsh treatment against them which fact was brought on record by them vide letter dated 21.09.1992 i.e. even prior to the issuance of memo dated 24.11.1992. Besides, the Inquiry Officer was appointed in those proceedings after six years of the charge-sheet and therefore in the special set of circumstances, the Hon'ble Apex Court allowed the appeal of the charged officer.

14. The observation made in para 4 of above cited case clearly shows that even the Apex Court generally does not entertain any petition or appeal at the interlocutory stage of the disciplinary proceedings.

15. Learned counsel for the respondents has submitted that there was total lack of cooperation on the part of the applicant during the course of inquiry proceedings and therefore he does not deserve any concession in his favour and in this regard he has placed reliance on the judgment of Hon'ble Apex Court in the case of Sayed Rahimuddin Vs. Director General, CSIR and Others, 2001 (9) SCC 575

wherein the scope of powers of judicial review to be exercised by this Tribunal as well as the conduct of the delinquent during the course of the proceedings has been discussed elaborately. The contention raised in this case by the delinquent was that despite the order of the inquiring authority directing production of documents, non production of some of those documents itself tantamounts to denial of reasonable opportunity to the delinquent to defend his

case and therefore the Tribunal was in error in not accepting the contentions before it. However, the Hon'ble Apex Court made the following observations in para 3 of its judgment :-

3. *We have considered each of the contentions raised by the learned counsel for the appellant, but we do not find any substance in any one of them. It is, no doubt, true that the delinquent had made an application for production of certain documents and the Enquiring Officer did pass an order for production of those documents. It also transpires that some of those documents I were produced any yet some of them had not 1 been produced. When a grievance was made on this score before the Enquiry Officer by filing a representation of 3rd of August, 1989, the said Enquiring Officer considered the said grievance and came to the conclusion that the very fact that though the inquiry continued from 3-7-1989 to 6-7-1989 and the delinquent had been cross-examining the departmental witnesses, yet no grievance had been made on the score of non-production of any of those vital documents which, according to the delinquent, could have established the defence case. The Enquiring Officer came to the conclusion that the so-called representation D/- 3rd of August, 1989 making a grievance is a dilly dally tactics on the part of the charged officer and the sole intention was to stall the inquiry by any means. In view of the aforesaid conclusion of the Enquiring Officer in its order disposing of the grievance made on 3-8-1989 we do not find any substance in the argument of the learned counsel that in fact the delinquent was really prejudiced by non-supply of some of the so-called vital documents though for production of the same the Enquiring Officer had ordered. The Tribunal, therefore rightly came to the conclusion that such alleged non-production cannot be held to be a denial of reasonable opportunity to the delinquent in making his defence.*

As pointed out by learned counsel for respondents, in the present case the conduct

of the applicant is also deplorable as he did not file reply before the Disciplinary Authority despite he was given several opportunities. Vide order dated 10.10.2016 the applicant was given one week's time to submit his reply, specifically admitting or denying the charges. Thereafter again he was directed vide order dated 08.12.2016 and 19.12.2016 but he did not file reply to the chargesheet. It is in these circumstances, when the applicant failed to reply to the charges, the Inquiry Officer and Presenting Officer were appointed. The applicant was directed to appear before the Inquiry Officer and to co-operate but he did not attend any of the hearings during the course of inquiry and was proceeded *ex parte*. It is argued by learned counsel for respondents that in these circumstances when the applicant did not attend to any of the proceedings before the Inquiry Officer, now it does not lie in his mouth to challenge the procedure adopted by the inquiring authority while conducting the inquiry.

16. Keeping in view the facts and circumstances of the case, at this stage we do not want to make any comment on the procedure adopted by the Inquiry Officer.

The Inquiry Officer has already submitted her report to the Disciplinary Authority.

The applicant has been given personal hearing by the Disciplinary Authority. He has also filed detailed representations dated 15.11.2018 (Annexure A-14) and 02.05.2019 (Annexure A-16) respectively whereby he claims to have pointed out the illegalities in the inquiry proceedings. It is in these circumstances we are of the opinion that when the departmental proceedings are still at the interlocutory stage, this Tribunal cannot interfere as, as per procedure it is for the Disciplinary Authority to look into the grievance of the applicant. The applicant needs to exhaust all the statutory remedies available before approaching the Tribunal. The errors, if any, committed by the Inquiring Authority are required to be dealt with by the Disciplinary Authority and thereafter if

required by the Appellate Authority. After exhausting all the statutory remedies, if the applicant is not satisfied with their findings, he can approach this Tribunal for redressal of his grievances. Therefore without commenting on the merits of the case, we are of the considered opinion that this OA is premature and therefore we cannot exercise the power of judicial review at this interlocutory stage.

17. In view of these observations, the Original Application is devoid of merits and is hereby dismissed. No order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

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23/10/10