
(1981) 01 DEL CK 0001

In the Delhi High Court

Case No : Civil Writ Appeal No. 405 of 1972

K.K. Bali

APPELLANT

Vs

Comptroller and Auditor General of India and Others

RESPONDENT

Date of Decision : 27-01-1981

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 7
Constitution of India, 1950 — Article 14

Citation : (1981) ILR Delhi 454 : (1981) LabIC 1467

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Advocate : E.X. Joseph, Y.K. Sabharwal and M.M. Sudan, for the Appellant;

Judgement

S.B. Wad, J.

(1) The petitioner challenges legality of the departmental enquiry held against him for various acts allegedly committed by him in reference to the illegal strike. This was a token strike on 19th September, 1968 by the staff of the A.G.C.R. Office all over India. The strike was a total strike in which more than 50,000 employees had participated. He was found guilty of contravention of various Rules of the C.C.S. (Conduct) Rules, 1964. As a penalty he was reduced by five stages in the time scale fixing Ids salary at Rs. 260. This was to operate for five years without cumulative effect. His increments were also stopped for the said period. The Appellate Authority and Reviewing Authority confirmed the findings of guilt as well as the sentence. In this petition the petitioner has challenged the orders of the Disciplinary Authority, the Appellate Authority and the Reviewing Authority.

(2) At the relevant time the petitioner was the President of the Association of A.G.C.R. Office at Delhi. The Association was called Civil Accounts Association. The Association was recognised by the Government. It appears that the employees of the A.G.C.R. Office were, for some time before, agitating for full neutralisation of the rising cost of living by payment of D.A., merger of D.A. with

pay, policy of retrenchment and retirement etc. A Joint Consultative Machinery was set up for negotiations with the Government. The agreement with the Government provided for arbitration. It is alleged that the Government refused to consider their demands and also to refer the disputes to arbitration. The Association, Therefore, decided to go on a token strike on 19-9-1968. A strike notice was duly served on 7-9-1968. Various statements were issued by the Association giving a strike call to its members. They were signed by the petitioner as a President and the Secretary of the Association. One S. G. Paranjpe was the Secretary of the Association. On 13-9-1968 a notification was issued declaring the strike illegal under sub-section I of Section 3 of the Essential Services Maintenance Ordinance, 1968. It is an admitted fact that the strike was peaceful. There was no violence nor any infraction of the prohibitory Orders-

(3) A large number of employees who absented from duties were suspended. The Association collected funds for the welfare of the families of the suspended employees. Meetings were held, processions taken out and handbills distributed by the Association. The Association was de-recognised by the Government by this time.

(4) On 26-12-1968 the petitioner was served with the following charge-sheet under Rule 14 of the C.C.S. (C.C.&A.) Rules, 1965:

" COPY of Office Memorandum dated 26-12-68 from Shri D. D. Dhingra, A.G.C.R., New Delhi to Shri K. K. Bali, Offg. Sgc (under suspension). The undersigned proposes to hold an enquiry against Shri K. K. Bali under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of mis-conduct or misbehavior in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure 1). A statement of the imputations of mis-conduct or misbehavior in support of each article of charge is enclosed (Annexure II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexures Iii & IV). 2. Shri K. K. Bali is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defense and also to state whether he desires to be heard in person. 3. He is informed that an inquiry will be held only in respect of these articles of charge as are not admitted. He should, Therefore, specifically admit or deny each article of charge. 4. Shri K. K. Bali is further informed that if he does not submit his written statement of defense on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the C.C.S. (C.C. & A.) Rules, 1965 or the orders[directions issued in pursuance of the said Rule, the inquiring authority may hold the enquiry against him ex-parte.

(5) Attention of Shri K. K. Bali is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service

under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri K. K. Bali is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the C.C.S. (Conduct) Rules, 1964.

(6) The receipt of the Memorandum may be acknowledged.

SD/-(D. D. DHINGRA) Accountant General, Central Revenues, New Delhi."

"ANNEXUREI

STATEMENT of Articles of charge framed against Shri K. K. Bali, Officiating S.G.C. (Permanent U.D.C.) in the office of the A.G.C.R-, New Delhi.

THAT the said Shri K. K. Bali while functioning as Officiating S.G.C., during the period August, '68 and September '68 instigated the employees of the office of the A.G.C.R. to join the threatened strike by the "Central Government Servants scheduled for the 19th September, '68.

ARTICLE of Charge II

THAT during the aforesaid period and while functioning in the aforesaid office the said Shri K. K. Bali participated in the strike and also actively encouraged other officials from attending office on the 19th September, 1968, which was illegal under clause 4 of the Essential Services Maintenance Ordinance, 1968 and the orders issued there under as also under Rule 7 of the C.C.S. (Conduct) Rules, 1964.

ARTICLE of Charge III

THAT during the aforesaid period and while functioning in the aforesaid office and also during the months of September, '68, October '68, November, '68 and December, '68 (till the date of this charge-sheet) when he was under suspension, the said Shri K. K. Bali sought to raise subscriptions from the staff in the office of the A.G.C.R. during office hours and within the office premises for supporting the cause of strike and of the suspended employees. This was in contravention of Rule 12 of the C.C.S- (Conduct) Rules, 1964.

ARTICLE of Charge IV

THAT during the aforesaid period and while functioning in the aforesaid office and later on while under suspension the said Shri K. K. Ball indulged in gross indiscipline and misbehavior. The conduct of Shri K. K. Bali during the period has been not in keeping with the requirements of Rule 3(l)(ii) & 3(l)(iii) of the C-C.S. (Conduct) Rules, 1964"

"ANNEXUREII Statement of Articles of charge framed against Shri K. K. Bali, officiating S.G.C. (Permanent UDC) in the office of the A.G.C.R., New Delhi. Article of Charge I Shri K. K. Bali while functioning as officiating S.G-C., during the period August, '68 and September '68 in violation of Rule 7(ii) of the C.C.S.

(Conduct) Rules, 1964, instigated employees of the office of the A.G.C.R. to join the strike by the Central Government Servants scheduled for the 19th September, '68 in a series of meetings organized by him for this purpose within the office premises and within the office building and also during office hours. These meetings were arranged without obtaining permission of the competent authority for holding these meetings. Shri K. K. Bali thus committed a breach of para 16 of the Manual of Administration and office Procedure also. Further even after the promulgation of the Essential Services Maintenance Ordinance, 1968 on 13th September, 1968 and orders issued there under the said Shri K. K. Bali continued to hold and organise meetings for the purpose of instigating the employees of the office of the A.G.C.R. to go on strike and delivered speeches exhorting the said employees to participate in the proposed strike on the 19th September, 1968 in gross violation of rule 7 Of the C.C.S. (Conduct) Rules, 1964. He also distributed posters, handbills etc. within the office exhorting employees to go on strike. Article of Charge Ii He not merely absented himself unauthorisedly on 19th September, 1968 and thus struck work in spite of the specific instructions and appeals issued to the staff of the office of the A.G.C.R. not to go on strike but also actively tried to encourage others not to come to work. Article of Charge Iii He collected subscriptions before the threatened strike on 19th September, 1968 and after the strike during the months of September, October, November, and December, 1968 from the staff of the office of the A.G.C.R. during office hours and within the office premises for supporting the cause of the strike and of the suspended employees. This was in contravention of Rule 12 of the C.C.S. (Conduct) Rules, 1964. Article of Charge Iv Specific instructions were issued to the Civil Accounts Association of which he was the President about organising meeting?, distribution of leaflets, posters and pasting of notices and posters in the office. In contravention of these instructions the said Shri K. K.Bali organized meetings during the months of August, September, October and November, 1968 within the office premises without obtaining the permission of the competent authority. These meetings were a source of annoyance and indiscipline amongst the members of the staff of the office of the A.G.C.R. By organising these meetings he seriously attempted to undermine administrative authority in the office. On the 16th October, 1968 Shri K. K. Bali along with others picketed the office Canteen and prevented the use of office Canteen facilities by the employees. He forced his entry into the office on the 17th October, '68 without obtaining a pass from the Home Ministry's Receptionist although he was fully aware that his entry was prohibited unless a pass was obtained and encouraged members of the staff to undermine authority and indulge in shouting. The commotion created by him dislocated work. He was thus guilty of violation of Security instructions and of gross indiscipline and inciting other members of the staff to act in an in disciplined manner raising slogans during office hours- in one of the unauthorised meetings held on the 17th October. 1968 the said Shri K. K. Bali criticized the A.G.C.R- for issuing the orders for reporting on the attendance after the expiry of the lunch interval and asked the audience not to comply with these orders. Shri K. K. Bali went to the

rooms of the Accounts Officers and asked them not to report on late coming of employees in the sections on expiry of lunch break. Shri K. K. Bali organized and led processions around the office shouting abusive slogans against certain officers during office hours. Shri K. K. Bali went to the office of the Chief Pay and Accounts Officer, Ministry of Food and Agriculture, Rehabilitation and Supply and instigated the employees of that Office regarding the disciplinary measures that have been taken against some of the members of that office staff, for their active participation in September 19 strike. The conduct of Shri K. K. Bali during the period has been not keeping with the requirements of Rule 3(1) (ii) & 3(I)(iii) of the C.C.S. (Conduct) Rules, 1964."

"ANNEXUREIII

LIST of documents by which the articles of charge framed against Shri K. K. Bali, S.G.C. (name and designation of Government servant) are proposed to be sustained:

- (1) Posters, hand-bills etc. distributed in the office or pasted in the office premises by him or at his instance.
- (2) Notes "kept by Administration of certain occurrences.
- (3) Reports sent to Police from time to time.
- (4) Written statements made by certain persons.
- (5) Attendance Registers."

"ANNEXUREIV List of witnesses by whom the articles of charge framed against Shri K. K. Bali, Offg. S.G.C., Office of the A.G.C.R. (Name and designation of the Government servant) are proposed to be sustained. 463 Dy. Accountants General 1. Shri M. K. Behl, Sr- Deputy Accountant General (EA). 2. Shri K. J. Kuryan, Sr. Deputy Accountant General (DAD). 3. Shri G. N. Tandon, Deputy Accountant General (GAD). 4. Shri R. Venkataraman, Deputy Accountant General (GAD). 5. Shri R. M. Bhargava, Deputy Accountant General (RA). 6. Shri Sathepalli S. Rao, Deputy Accountant General (DA). 7. Shri P. N. Malviya, Deputy Accountant General (SD). 8. Shri P. C. Dasi, Pay and Accounts Officer, Office of the Chief Pay and Accounts Officer. Ministry of Food Rehabilitation & Supply, New Delhi- Asstt. Accountants General 1. Shri G. R. Sood 2. Shri H. R. Tandon 3. Shri G. S. Krishnan 4. Shri J. P. Berry 5. Sh. Hem Chand 6. Shri Dharam Bir Gurwara 7. Shri D. S. Bist 8. Shri N. C. Aggarwal 9. Shri T. S. Sahni 10. Miss Usha Bahl. 11. Shri A. M. Sehgal. Accounts Officers 1. Shri S. P. Bhatia 2. Amar Singh Gupta 3. R. K- Anand 4. Shri J. R. Acharya 5. S. P. Goel 6. H. N. Mathur 7. S. D. Sharma 8. Harnam Singh 9. " D. B. Ghoshal 10. P. D. Agarwal 11. O. P. Tyagi 12. K. P. Bindal (on deputation) 13. Sadhu Ram 14. S.A.H. Zeidi 15. B. K. Saxena 16. " K. J. Thadant 17. , J. P. Jain. 18. C. G. Bhatia 19. Prakash Singh (on training) 20. G. K. Saxena. 21. " Laxmi Narain 22. " Gur Prashad 23. N. N. Majumdar 24. P. R. Pannikar 25. H. P. Das 26. J. P. Sharma 27. V. D. Pun 28. " R. C. Bansal 29. S. S. Gupta 30. M. S. Bedi 31. Gurbax Singh 32. " Sundar Dass 33. Shri Kirpal Singh

34. R. P. Kohli 35. S. K. Jain 36. R. P. Sabharwal 37. K. C. Mehra 38- H. L. Gupta 39. S. L. Khanna 40. R. L. Kumar 41. P. N. Sharma 42. B. N. Mehrotra 43. H. R. Agnihotri 44. " H. S. Kochhar 45. " J. C. Bhagat"

At the time of the enquiry the Government did not examine any witnesses although a list of large number of witnesses was given. Number of documents were produced by Government and that was the sole evidence. On 30-5-1969 the Enquiry Officer recorded : "Presenting Officer said that he had completed the production of written evidence. No oral evidence was proposed to be produced on behalf of the disciplinary authority. The case for the disciplinary authority was then closed." The hearing was adjourned to 31-5-1969. The record of the proceedings for that date is as follows:

" THE case for the defense opened at the hearing on 31-5-69. Shri Bali said, that at that stage, he did not think it necessary to say anything in his defense beyond what he had already stated in his reply to the chargesheet. The Inquiry Officer asked Sh- Bali whether he had any objections on any of the documentary evidence produced by the Presenting Officer. He answered that such objections that he may have, will be given by him in the written brief that he proposed to file after the close of the defense case- No documentary evidence was proposed to be produced by S. Bali. The Inquiry Officer asked him whether he had any oral witness to produce. He replied that in view of the fact that the Presenting Officer had not produced any oral witnesses he did not . think it necessary to produce any oral witness on the defense side. The Inquiry Officer asked Shri Bali whether he wished to be his own witness. He replied that "I do not propose to examine myself on my own behalf, but if the P.O. wants to put some questions to me, I am willing to answer." 1. O. "Does that mean that you are willing to be cross-examined by the P.O. " (Shri Bali) "Yes Madam if he so prefers."

Thereafter several questions were put to the petitioner which he answered. He also submitted the written brief in his defense. The Enquiry Officer held that all the charges were proved against the petitioner. On 18-7-1969 the Disciplinary Authority issued a Show Cause Notice. The Disciplinary Authority agreed with the findings of the Enquiry Officer. The Authority proposed the penalties of compulsory retirement or reduction to the lower stage in the time scale and the stoppage of increments for five years. The petitioner submitted his reply to the Show Cause Notice on August 11, 1969. Thereafter on August 27, 1969 the Disciplinary Authority rejected the petitioner's submissions and passed the impugned order (Annexure "X") holding the petitioner guilty of four charges and imposing the penalty. The petitioner filed an appeal to the Accountant General under Rule 27. The same was rejected on April 21, 1970. A review application filed by the petitioner was also rejected on November 22, 1971.

(7) On March 13, 1969 the Minister for Home Affairs made a statement in the Lok Sabha regarding the liberal treatment proposed to be given to the striking employees. On 15-3-1969 the detailed instructions were issued by the Government regarding follow-up action on the statement made by the Minister in

the Parliament. The relevant portions of the Government instruction read as follows :

".....THE question of further liberalisation in this matter has been considered against the decisions taken by Government on it are indicated in the following paragraphs. 2. Except in these cases in which there is a complaint of violence, intimidation of public servants, loyal workers or their families or of active instigation, the orders of suspension against Govt. employees on account of arrest or prosecution in connection with the strike may be revoked and such Govt. employees may be reinstated in service. 3. . . .If any employee happens to be convicted in a Court for an offence other than one u/s 4 of the E.S:M.O 1968 [Act, namely, for mere absence from duty disciplinary action should be taken against him and one of the appropriate penalties mentioned in Rule 11 of the CCS(CCA) Rules. 1965, may be imposed- The penalty of dismissal or removal from service would, however, be warranted only in those cases in which the accused has been found guilty of violence, intimidation or active instigation. It has also been decided that a careful scrutiny should be made of the pending prosecution cases and in cases in which there is not sufficient evidence, steps should be taken with a view to termination of the legal proceedings according to law. It has further been decided that cases of employees who have been placed under suspension under Rule 10(1) (a) of the CCS(CCA) Rules, in connection with the strike, should be dealt with on the lines indicated in para 2 above- Where such proceedings have been initiated on charges other than for only unauthorised absence from duty, the disciplinary proceedings may continue on the lines indicated in para 3 above. Employees who are reinstated would also be subject to the consequences, namely : (i) such employees unauthorised absence from duty shall result in a break in service; (ii) their work and conduct will be under observation for a period of three years by the competent authority; and (iii) an entry will be made in the character rolls of the employees stating that they showed gross indiscipline and sense of utter irresponsibility in taking part in the illegal strike."

(8) The submissions of the petitioner and the respondents in this petition are as follows :

(I)Petitioner submits that in view of the Minister's assurance and the Government instructions holding of the departmental enquiry was illegal. He submits that the strike was the token strike admittedly conducted in a peaceful manner. There were no allegations of violence or criminal intimidation against him. The respondents, countered this submission and support the disciplinary action on the ground that the petitioner had actively instigated the strike. The petitioner next submits that he was discriminated in the matter of the disciplinary proceedings because some other employees and particularly the Secretary Paranjpe were differently treated. The submission of the respondent in reply is that the action was taken against other employees including Paranjpe. Different penalties were imposed on them. Penalty is a matter of discretion and

writ court cannot interfere with it. The third submission of the petitioner is that there was no evidence to support the overt acts alleged against him and the findings were perverse. He submits that the entire evidence produced by the Government was documentary evidence. The best evidence regarding the overt acts was the evidence of the persons who had seen the acts or had heard the alleged intemperate slogans given by the petitioner. The officers who had made the report regarding the said overt acts were available. Their names were included in the list of witnesses proposed to be examined. Documentary evidence regarding the alleged overt acts was inadmissible and no evidence in law. He relies on some decision of this Court and the Supreme Court in support. The respondents contend that it was not obligatory in a disciplinary proceeding to prove the overt acts by means of oral evidence. Documentary evidence with high probative value can be a valid basis for conviction in a departmental proceeding. Respondents have also relied upon some decisions of the Supreme Court. The next contention of the petitioner is that the documentary evidence in the form of the notices and bills issued by the petitioner are issued by them as a President of the Association. He submits that to hold an office bearer of recognised Association guilty on the said acts, is denial of the right to form an association and free expression guaranteed by Article 19 of the Constitution. The respondents claim that there was no violation of the fundamental rights, as the strike was declared illegal. I am inclined to uphold the submissions of the respondents on the facts of the present case.

(9) It is well established now that right to strike is not a fundamental right. Rule 7 of Ccs (Conduct) Rules prohibits strikes in all forms. The strike in the present case was declared illegal. Although initially the Association was recognised by the Government. It was de-recognised on the eve of the unlawful strike. Certain conclusions flow from these facts. Where a strike is declared illegal the Government would naturally need more discretionary powers to cope up with the situation created by the strike. All activities of the employees in relation to an illegal strike including their participation would be the acts contrary to law. Such illegal acts are qualitatively different from the stray cases of misconduct. Discipline in Government offices during and after the strike acquires special importance where the illegal strike is a mass strike paralysing working in a particular service all over India.

(10) Let me deal with the complaint of the petitioner of the violation of right of association and expression granted by Article 19 of the Constitution. The petitioner admits that he was a signatory to various posters and handbills exhorting employees to go on strike or to continue the strike. Exhibits 1 & 2 are hand-bills and posters. They were published or issued after the strike the notice was given. He also admits that the contributions were collected from the employees by the Association for supporting the employees suspended in relation to the illegal strike. The counsel for the petitioner submits that these are legitimate activities of any welfare association of the Government employees. He says that if, these rights are to be denied, right to form an association and right

of free expression guaranteed as fundamental rights would be meaningless. His propositions are indefensible in normal circumstances but when the strike is declared as an illegal strike, the rationale changes. Since right to strike is not a fundamental right the two other rights mentioned by the petitioner will have to stop short of a strike. In other words the formation of an association by Government servant and expressing their grievances are legitimate expressions of their fundamental rights but they do not extend to the activities by way of a strike. Particularly where- a strike is declared as an illegal strike all such activities in relation to an illegal strike are not saved by reliance on the right of association or right of expression. It is only where the legality of the Government notification declaring a particular strike as an illegal strike is itself challenged the other questions would arise. In this case the petitioner has not challenged the legal validity of notification issued by the Central Government on 13-9-1968 u/s 3 of the Essential Services Maintenance Ordinance 1968. Once it is accepted that the strike is an illegal strike all actions of the employees association in relation to such a strike would also become illegal. Each of the office bearer thereafter would be responsible. The petitioner who was a President, Therefore, must take the blame for the illegal actions.

(11) The petitioner submits that the strike was only a token strike. He submits that there was no violence involved. The decision to go on strike was taken by the entire Association in a secret ballot. He further submits that an individual office bearer may hold a view that the employees should not go on strike but once the decision is taken by the Association an office bearer, such as the President of the Association has to take action in furtherance of the said decision of the Association. Here again the normal activities of the Association and activities in relation to an illegal strike are to be distinguished. If an act is an illegal act it is irrelevant as to whether it is performed as an individual or as an office bearer of an Association. So also where an illegal action is taken by an office bearer it is no defense that the decision was not his but that of all the members. The strike may be a peaceful " strike or may be a token strike only but all the same it was an illegal strike.

(12) The next" submission of the petitioner is that all participants in the strike were not equally treated by the Government. He particularly points out that the Secretary of the Association Shri Paranjpe was equally responsible for the alleged activities in relation to the illegal strike. He complains that he had been given more harsh treatment and punishment than the Secretary. This according to him is discriminatory treatment, violative of Art. 14 of the Constitution. First of all the petitioner has not produced sufficient material on record to show as to how Paranjpe had been more leniently or favorably treated. Departmental proceedings were also initiated against him. Penalty or sentence is always a matter of discretion. It is particularly so in a departmental proceeding where the aspect of discipline is highlighted in dealing with an illegal strike. In Ramrao Laxmikant Shirkhedkar Vs. Accountant General, Maharashtra and Another, it was held that there is no right of equality in matters of punishment and Art. 14

cannot be invoked in to contest a harsher punishment. I respectfully agree. The contention of the petitioner is, Therefore, rejected.

(13) The next submission of the petitioner is that the collection of funds by him on behalf of the Association was in the nature of a welfare activity. He submits that this is permissible according to the circular of the Ministry of Home Affairs No. 24/20/25-Ests(B) dated 10-8-1955. This circular was issued as a clarification to Rule 12 of the C. C. S. (Conduct) Rules 1955 which prevents raising of subscriptions by Government employees. The relevant portion of the said Memorandum" is reproduced :

" THE members of a union can freely collect subscription among themselves for welfare activities of the union. So long as their appeal is confined to the members, no permission need be sought. If any approach to the public is made whether directly or indirectly, such permission should be necessary. Similarly, in a union where a matter affecting the general interest Of the members of the union is in dispute and it is permissible under the rules of the union to spend its funds over such a matter its members should be free to collect funds especially for that special purpose, from amongst its members. Where, however, action is taken against a person who happens to be a member of the union, in his personal capacity or on grounds which concern him in particular, no funds should be collected from even amongst its members by the Union for his defense."

It may be assumed that the fund was collected for generally helping all the members of the Association who were suspended during the strike. But the funds can be used for a special purpose only if the Rules of the Association permit such spending. No material is produced on record to show that collection of funds for a strike was permitted by the Rules of the Association. Once the strike is declared as an illegal strike it would be difficult to find out as to whether the fund is utilised for perpetuating the strike or purely for the general Welfare activity of its members. I do not find that the said Memorandum any way helps the petitioner.

(14) I may now turn to the two grievances of the petitioner regarding the legality of the disciplinary proceeding. He submits that he was entitled to the assurance given by the Home Minister in Parliament and also the instructors issued in regard to the participation in strike by the Ministry of Home Affairs on 15-3-1969. It may be seen that when the Ministry of Home Affairs issued the circular for the liberal treatment of the participants in the strike the enquiry against the petitioner was already pending. He was also suspended. The circular expressly provides that where such proceedings under C. C. S. (CCA) Rules of employees suspended under Rules 10 (1) (a) were already initiated on charge other than for only unauthorised absence from duty the disciplinary proceedings may continue on the lines indicated in para 3. A reference to Para 3 is made because para 3 primarily deals with the persons convicted by a court u/s 4 of the Essential Services Maintenance Ordinance and against whom disciplinary proceedings Were started. Such proceedings were to continue under the C. C. S. (CCA) Rules, 1965 and appropriate penalties mentioned in Rule II were to be

imposed. The said paragraph further states that the penalty of dismissal or removal should not be imposed unless an employee was found guilty of violence, intimidation or active instigation. The assurance of the Minister and the liberal treatment in the Home Ministry circular are directed mainly against persons who merely absented on 19-9-1968. The charge against the petitioner was not merely absenting but of active instigation , gross indiscipline and misbehavior. I do not think that the petitioner can derive any benefit either from the Minister's assurance or from "the Home Ministry circular.

(15) The next submission of the petitioner is that the alleged overt acts against him were not proved by legal evidence and, Therefore, the case was one of no evidence. This submission relates to charges No. 3 and 4. This submission raises a general question regarding the nature of evidence in a disciplinary proceeding. Evidence Act is not applicable to disciplinary proceedings. It means that technical rules of Evidence Act are not applicable to disciplinary proceedings but the principles of natural justice must be followed by a disciplinary authority. The petitioner's complaint is two-fold. He submits that the Government withheld the best evidence and produced only the "secondary" evidence of documents in which the said overt acts were mentioned. He says that the officers who had made the report were available and the Government had submitted a list of over 60 witnesses which they intended to examine. His second complaint is that he was deprived of the opportunity to cross-examine the witnesses who had made the report regarding the overt acts.

(16) The counsel for the respondents submits that after the closure of the evidence by the Disciplinary Authority the petitioner had full opportunity to raise all these objections before the Enquiry Officer. When in his presence the Disciplinary Authority made a statement that they were not going to examine any witnesses the petitioner should have requested Enquiry Officer to call the concerned officers for cross-examination. It is submitted that the Enquiry Officer followed this procedure and asked the petitioner whether his willingness to make a statement would also include his cross-examination. The petitioner replied affirmative. The counsel submits that there was no illegality in the procedure followed by the Enquiry Officer. The petitioner failed to avail of the opportunity and he cannot now be heard on "breach" of natural justice. Although it is true that in his written submission and in his appeal memo the petitioner had made the grievance, to my mind it was too late. At the stage when the petitioner had an opportunity he did not object to the documentary evidence being produced nor did he ask for the cross-examination of the officers who had made the reports. On the facts of this case the petitioner's grievance is without any merit. There is another equally important consideration. The counsel for the respondents submit that even if the evidence regarding indiscipline and misbehavior is excluded the penalty imposed on the petitioner could still be sustained on the other charges. He states that the main charge, against the petitioner was of participation and instigation to the illegal strike. The counsel for the petitioner stated that of all the charges the charge of indiscipline and mis-

conduct was most serious. He goes on to submit that if this charge fails no action could be taken against him merely for absenting from duty on the strike day. I do not agree with the petitioner's submission. Even if the first three charges or even first two charges are established against the petitioner his guilt would stand established and would attract the penalty imposed on him. If it is so, the charges of indiscipline and misconduct can even be ignored.

(17) Relying on Syed Yakoob Vs. K.S. Radhakrishnan and Others, the Supreme Court in State of Andhra Pradesh and Others Vs. Chitra Venkata Rao, "In regard to a finding of fact recorded by a Tribunal, a writ can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari." This observation would mean that the rules of the Evidence Act regarding best evidence, primary evidence and secondary evidence are applicable to a disciplinary proceeding. In State of Haryana and Another Vs. Rattan Singh, a Bench of three learned Judges of the Supreme Court observed : "It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary .to cite decisions nor textbooks, although we have been taken through case law and other authorities by counsel on both sides." The rules of relevancy of facts laid down by Evidence Act are strictly technical rules. The said decision of the Supreme Court accepts that the rules of relevancy are applicable to disciplinary proceedings as a self-evident proposition. At the same time the Supreme Court stated : "It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent, mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility..... The simple point is, was there some evidence or was there no evidence not in the sense of technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept." In English Law the word hearsay is also used to connote irrelevant evidence or the secondary evidence where in fact the primary evidence should have been produced, In this sense the documentary evidence regarding overt acts without the oral evidence would be a hearsay evidence. The decision of the Supreme Court in State of Haryana seems to suggest that such evidence as in the present case can be considered if it is logically probative". But being an inadmissible evidence under the Evidence Act it cannot be considered by the Disciplinary Authority as laid down by the Supreme Court (also by the three-Judge Bench) in its decision in State of Andhra Pradesh. These two judgments illustrate that the last word on the correct principle is yet not spoken and there are always difficulties in the application of principles on different sets of facts. The question need not be probed further in the present case as on peculiar facts

of this case I have held against the petitioner.

(18) The only question now left is whether there is any infirmity as regards the findings on the first three charges against the petitioner. Exhorting Government employees to participate in an illegal strike through posters, handbills, telegrams, meetings and processions would amount to active instigation for commission of an illegal act. The petitioner had the knowledge that the strike was declared illegal. The solicitation was to participate in the illegal strike. In these circumstances the activities of the petitioner do amount to active instigation. There is some dispute as to whether the petitioner collected the fund in the office premises during office hours. The petitioner contends that no witnesses were examined to prove this charge. To my mind it is rather irrelevant-whether the funds were collected inside or outside the office. The funds were collected to support an illegal strike. It is a tainted fund. I am satisfied that the Enquiry Officer had correctly appreciated the evidence produced. The findings in regard to these charges is based on evidence and does not suffer from. any infirmity.

(19) For the reasons stated above the writ petition fails and is dismissed. Since the petitioner has already suffered monetarily, I would not impose any cost on him.

THE Rule is discharged.