

(2019) 10 DEL CK 0279

In the Delhi High Court

Case No : Civil Writ Petition No. 8015 Of 2016

National Institute Of Electronics And Information Technology

APPELLANT

Vs

Kalpana Dudeja & Ors

RESPONDENT

Date of Decision : 22-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1), 3(1)(i), 3(1)(ii), 3(1)(iii)
General Financial Rules, 2005 — Rule 3
Central Civil Services (Classification, Control & Appeal) Rules, 1965 — Rule 14(18), 14(20)
Indian Penal Code, 1860 — Section 408
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2019) 10 DEL CK 0279

Hon'ble Judges : Dr. S.Muralidhar, J; Talwant Singh, J

Bench : Division Bench

Advocate : V. S. R. Krishna, Manish Sharma, Abhishek Goyal, Ruchira Singh

Final Decision : Dismissed

Judgement

1. This is a petition by National Institute of Electronics and Information Technology (NIELIT) challenging an order dated 30th April, 2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ("CAT") in T.A. No. 04/2014.

2. By the impugned order, the CAT quashed the report dated 12th May, 2009 of the Enquiry Officer (EO) holding that of the five Articles of Charge served upon the Respondent by a memorandum dated 8th September, 2008, Charges 1, 2 and 4 were proved and Charge 3 was partly proved. The CAT consequently quashed the order passed by the Disciplinary Authority (DA) awarding the Respondent the penalty of removal from service and of the Appellate Authority (AA) modifying the punishment to compulsory retirement. The CAT further directed the Petitioner to reinstate Respondent No.1 in service with all consequential benefits.

3. It must be noted at the outset that the aforementioned order was not immediately challenged by the Petitioner. By order dated 15th June, 2015 issued by the Petitioner's Director, Respondent No.1 was reinstated in service with effect from 21st October, 2009. However, when she was not given the consequential benefits ordered by the CAT, including the arrears of salary from September, 2009 till May 2015, she filed a contempt petition. It was at that stage that the Petitioner filed the present petition. This is also evident from the order dated 9th September, 2016 passed by this Court on the first hearing of the petition which reads as under:

"Challenge in this writ petition is to the order passed by the Central Administrative Tribunal dated 30th April, 2015 by which the O.A. filed by the respondents herein stands allowed.

Learned counsel for the petitioner submits that the Tribunal has allowed the O.A. having been persuaded by the fact that the first charge sheet issued on 20th November, 2006 was withdrawn and the second charge sheet was issued on 8th September, 2008.

Mr. Krishna, learned counsel for the petitioner submits that the petitioner has complied with Rule 3 of Government of India Instructions that a fresh charge sheet can be issued provided reasons for dropping the proceedings are appropriately mentioned. He submits that there is proper compliance of the instructions in this case. As far as non-supply of documents is concerned, Mr. Krishna submits that a list of 51 documents was demanded by the respondents without giving reasons and the relevance of each document. It is submitted that the Inquiry Officer had considered each document and found that only four documents were relevant, copies of which were provided.

It is also pointed out by counsel for the petitioner that the order of the Tribunal has been complied in part as the respondents have been reinstated in service.

Mr. Dinesh Agnani, learned senior counsel appearing for the respondents on instructions submits that there is no infirmity in the order passed by the Tribunal which would require interference by this Court in proceedings under Article 226 of the Constitution of India. He has strenuously urged that the respondents have been unnecessarily put to harassment as the objections with regard to the issuance of charge sheet by an incompetent authority was raised at the first opportunity available i.e. on 4th April, 2007, yet the petitioner continued with the proceedings to harass the respondents. He further submits that the Inquiry Officer failed to comply with the principles of natural justice as he did not provide copies of documents to the respondents and also did not grant opportunity to the respondents to cross examine the witnesses at the opportune moment. It is further submitted that as per the charge sheet, there was only a supervisory lapse on the part of the respondents and for which criminal proceedings were initiated against the subordinate officer (main accused) of the respondents and the petitioner has entered into a settlement with the said subordinate officer and

withdrawn the criminal complaint by a judicial order and thus nothing survives in the present proceedings.

Mr. Agnani has also drawn our attention to the order dated 15th June, 2015 by which the respondents has been reinstated in service. It is thus contended that the petitioner is estopped from filing the present writ petition, as the order would show that it was not a conditional order and neither the order shows that there was any intent on the part of the petitioner to challenge the same.

Issue notice to the respondents to show cause as to why the petition be not admitted. Counsel for the respondents accepts notice and submits that it is not necessary to file reply in this case. Having regard to the submissions made, the respondents will look into the matter with regard to the issue that has been settled with the subordinate office wherein the amount embezzled has been received and the proceedings stand dropped and also as to what would be the effect of such withdrawal in this case.

List on 14th December, 2016."

4. By the same order this Court stayed the contempt proceedings initiated against the Petitioner by Respondent No.1 for non-compliance with the order of the CAT for all the consequential benefits upon reinstatement.

5. The background facts are that the Petitioner, which was formerly known as the Department of Electronics Accredited Computer Centres (DOEACC), had its centre at Chandigarh and had branch office at New Delhi. Respondent No.1 joined the services of the Petitioner, as a Junior Accounts Officer-II in 1992. She was posted in Gorakhpur with the Centre of Electronic Designs and Technology (CEDTI). In 2002 CEDTI merged with the DOEACC. Respondent No.1 was working as Finance Officer-II in the said Branch office at New Delhi with effect from 2nd December, 2005.

6. On 6th December, 2005 an order was issued by the Petitioner requiring Respondent No.1 to assist the Branch Manager in New Delhi in the matter of disbursement of salaries and issues of service tax, income tax etc. According to Respondent No.1, although she was assigned the job of maintenance of accounts for Branch Office and for keeping the records, a formal charge of the records, the cash, the bank, accounts etc. was not handed over to her. No cash register existed from April, 2005 onwards.

7. It must be mentioned here that the Branch Manager of DOEACC in New Delhi was one Mr. Shameem Khan. He along with one Ms. Chetna Rathore, Assistant Analyst, had earlier, by an order dated 13th January, 2003 of the Petitioner, been empowered to jointly operate the bank account of the Delhi Branch. According to the Petitioner she was not asked to do any work of cash handling and processing of bills. That work was handled by one Ms. Pallavi Gajanan Mali, a Junior Clerk, who had been engaged on contract basis for six months and was working under the direct supervision of Mr. Shameem Khan, the Branch Manager.

8. In April, 2006 when Respondent No.1 was directed to finalise the accounts, she noticed various lapses in the records. Vouchers were found missing. She brought this to the notice of the Branch Manager as well as the Financial Controller at Chandigarh. However, no action was taken. By a letter dated 24th May, 2006, Respondent No.1 informed the Headquarters at Delhi about the missing vouchers. On 27th May, 2006 the Chief Financial Officer (CFO) of the Petitioner wrote a letter to Respondent No.1 seeking clarity on the vouchers and their details.

9. A team under the supervision of Shri Y. P. Sondhi, Financial Controller (FC) of the Centre visited the Branch Office New Delhi during the period from 15th and 19th June, 2006. As a result of the exercise of finalisation of accounts, it was found that a number of vouchers, counterfoils of the pay-in-slips in respect of the cash deposited in the bank were missing and also the cash was not tallying with the books of accounts. Since this was a serious matter, the Director In-charge of the Centre ordered a special investigation by the Statutory Auditors of the Centre M/s. J.S. Chopra & Associates, Chandigarh by letter dated 27th June, 2006. The Auditors commenced investigation on 28th June, 2006.

10. On 23rd June, 2006 notice was issued to Respondent No.1 alleging omissions on her part. She responded to the said notice on 28th June, 2006. On the same date the Branch Manager handed over the charge of handling the inquest cash and cheque book to Respondent No.1. The letter under the cover of which this was done indicated that the charge was being handed over to her from "now onwards". According to Respondent No.1, at the time of taking over the cash balance as on 1st July, 2006, in terms of the cash book there should have been Rs.251701.90 whereas on physical verification it was found to be zero. This was confirmed by the initial information furnished by the Auditors.

11. On 3rd July, 2006 the Petitioner lodged a complaint with the Police Station, Defence Colony, New Delhi. In the said complaint, it was noted that Respondent No.1 had drawn the attention of the Petitioner to the missing vouchers. However, the complaint named both Respondent No.1 and Ms. Pallavi as suspects. The complaint explained that the "main activities of the Centre are Computer Education and training. As such the students fee is collected by Front Office Counsellor (FOC), Ms. Renu Sinha and she issues receipts in token of having received the amount of fee from the students.

The amount of fee is handed over at the end of the day to Ms. Pallavi Gajanan Mali, Jr. Clerk, who has been assigned the duty of depositing the amount on the following working day in the bank." It was stated that Ms. Pallavi was working under the supervision of Respondent No.1 who was said to be "directly responsible for all financial activities and is responsible for verification of cash and its proper deposit and account thereof."

12. On 16th August, 2006 the Auditors submitted a report pointing out that cash register was not maintained, vouchers were missing and account entries were

pending. It found that cash in the sum of Rs.3,85,871/- had not been deposited in the bank. The report confirmed that the cashbook indicated a closing balance of Rs.2,51,701/- as on 1st July, 2006, certified by Mr. Shameem Khan, the Branch Manager and Ms. Renu Sinha, the FOC and Ms. Pallavi Mali, the Cashier. However, the physical verification of the cash in hand showed it to be "nil". The report made no allegations against Respondent No.1 and did not hold her liable for any financial irregularity. The allocation of the task of cash handling to Ms. Pallavi, who was a temporary employee, was found to be a serious violation.

13. On 20th November, 2006 Respondent No.1 was served with a charge sheet under Rule 3(1) (i) (ii) and (iii) of the CCS Conduct Rules, 1962 by the Director In-charge, who was not competent to issue the said charge sheet. This objection was raised by Respondent No.1 by a letter dated 4th April, 2007. However by a letter dated 30th April, 2007 the Petitioner negated the said objection.

14. On 1st August, 2007 the complaint filed by the Petitioner with Police Station, Defence Colony was registered as FIR No. 460 under Section 408 of IPC.

15. Meanwhile, on 19th May, 2007 the inquiry against Respondent No.1 commenced. Five prosecution witnesses (PWs) were examined, of which Ms. Renu Sinha was one. She admitted to her role in collecting fees from students. She stated that she had been receiving instructions from the Branch Manager and Additional Director. She further pointed out that the fees were deposited with Ms. Pallavi, and in case she was on leave, then either with the Branch Manager or one Mr. Ramesh, who was a clerk-cum-peon. Ms. Renu Sinha was categorical that she had never worked with Respondent No.1.

16. On 26th July, 2007 the EO submitted his report to the DA. Thereafter a Show Cause Notice (SCN) was issued by the DA to Respondent No.1. On 26th July, 2007 Respondent No.1 submitted a detailed reply to the said SCN.

17. More than year thereafter, accepting the objection of Respondent No.1 that the Director In-charge could not have issued the charge sheet to her, by order dated 8th September, 2008 the charge sheet dated 20th November, 2006 and all proceedings consequent thereupon, were withdrawn by the Petitioner. However, on the same day, a new charge sheet was served upon Respondent No.1, enclosing the same articles of charge.

18. On 4th October, 2008 Respondent No.1 submitted a representation raising objections inter-alia to the maintainability of the charge sheet itself. This was however negated by the Petitioner by an order dated 22nd October, 2008. The EO fixed a preliminary hearing on 21st November, 2008. As she was unable to arrange for a Defence Assistant (DA), Respondent No.1 requested for an adjournment. The inquiry proceedings were fixed for 12th December, 2008 and adjourned to 21st January, 2009.

19. Aggrieved by the issuance of the second charge sheet Respondent No.1 filed CWP No. 336/2009 in this Court. While issuing notice in the said petition on 20th

January, 2009, this Court allowed the inquiry to continue but stayed the passing of any final order.

20. On 29th January, 2009, in the second inquiry proceedings, the Respondent No.1 submitted a list of 51 additional documents mentioning their relevance for defending herself in the inquiry. In the proceedings on 29th January, 2009 the EO noted the above fact and stated that the relevancy of the said documents would be examined by him on the next date i.e. 2nd February, 2009.

21. On 12th March, 2009 Respondent No.1 received a letter dated 13th February, 2009 of the EO enclosing only 5 of the 51 documents demanded by her. It must be noted here that among the documents demanded by the Petitioner was the report of the Committee led by the FC which had not found anything against Respondent No.1, the action taken report on the report of the Auditors and a copy of the charge sheet issued to the Branch Manager Mr. Shameem Khan. However, these were denied. The second mentioned document was denied with the remarks "action taken on the report is not a document". It must be noted that one of the main grounds of challenge to the inquiry proceedings is the failure to provide Respondent No.1 the relevant documents. This will be discussed in some detail later.

22. The EO fixed the hearing on 17th March, 2009. Since she received the documents only on 12th March, 2009, Respondent No.1 informed the EO of her inability to attend the proceedings. The EO proceeded ex parte and examined four PWs other than Ms. Renu Sinha who was not present. He fixed the matter next for 21st March, 2009 for her examination and the examination of DWs.

23. On 13th March, 2009 itself Ms. Renu Sinha had sent a letter to the EO stating that she had nothing further to add to what she had stated in the first round of the inquiry. On the next date i.e. 21st March, 2009 the Respondent submitted a letter stating that she wished to cross-examine the PWs. The order dated 21st March, 2009 passed by the EO declined that request. By the letter dated 20th April, 2009, however, he stated that he would offer her an opportunity of cross-examine the PWs on 8th May, 2009.

24. The EO concluded his inquiry and submitted a report on 12th May, 2009 holding that the charges 1, 2 and 4 were proved. Charge 3 was partly proved and charge 5 was unproved.

25. At this stage, it is required to be noticed that Article 1 of the charges inter-alia was that Respondent No.1 while functioning as Finance and Accounts Officer, Grade-II in the Branch Office at New Delhi between 1st December, 2005 and 1st July, 2006 had failed to maintain accounts, keep records and failed to comply with the responsibilities for effective and proper supervision and control over various matters relating to administration and finance and accounts and that these acts resulted in embezzlement of public funds of Rs.2,51,701.90. Article 2 alleged that she had failed to implement Rule 3 of the General Financial Rules and failed to deposit in the bank account the fees collected from the students.

Article 3 was about non-remittance and short deposit in certain instances of the fee collected from the students. Article 4 alleged failure to maintain properly the cash book and monetary transactions. Article 5 was that she had not been regulating the monthly reconciliation of bank accounts. In all the charges Rule 3(1) of the CCS Conduct Rules was invoked.

26. On 22nd May, 2009 the Respondent No. 1 gave a detailed response to the inquiry report. On 7th September, 2009 W.P.(C) No. 336/2009 was disposed of by this Court giving liberty to the Respondent to challenge the final order of the DA if it was adverse to her.

27. On 20th October, 2009, the DA concurred with the report of the EO and inflicted on Respondent No.1 the major penalty of removal from service. By an order dated 21st April, 2010 the AA disposed of the appeal of Respondent No.1 modifying the punishment to that of compulsory retirement.

28. The CAT has in the impugned order dated 30th April, 2015 quashed the inquiry proceedings and the penalty order of the DA as well as the Appellate order of the AA for the following reasons:

i) The Respondent had been subjected to an illegal inquiry pursuant to the first memorandum of charges served upon her on 20th November, 2006.

ii) The EO did not forward to the competent authority the request by Respondent No.1 for production of documents. The refusal of documents which were relevant to the inquiry including the report of the Committee constituted by the FC, the action taken report on the report of the Statutory Audit Report was done in an arbitrary manner.

iii) The EO completed the inquiry ex parte against Respondent No.1 in "unnecessary haste" which resulted in a denial of an opportunity to her to effectively defend her case. Reference was made to the decision of the Supreme Court in *State of M.P v. Chintaman Sadashiva Vaishampayan* AIR 1961 SC 1623.

iv) Four PWs were examined in the absence of the Respondent No.1 and this was in contravention of Rule 14(20) of the CCS (CCA) Rules. There was also violation of Rule 14(18) of the CCS (CCA) Rules since the EO failed to put the questions to the Respondent No.1. This was a violation of a mandatory provision as explained by the Supreme Court in *Ministry of Finance v. S.B.Ramesh* (1998) 3 SCC 227.

v) The opportunity provided subsequently on 8th May, 2009 to Respondent No.1 to cross-examine the PWs was unfair since by then her defence statement had already been recorded in the presence of the PO. The cross-examination of PWs in such circumstance was an eye-wash. The bias of the EO against Respondent No.1 was writ large in his own conduct and the manner of holding the inquiry against her in failing to provide an effective opportunity to cross-examine the PWs was violative of the principles of natural justice. Reference was made to the decisions in *Laxman Exports Limited v. Collector of Central Excise* (2005) 10 SCC 634 and *State of U.P v. Saroj Kumar Sinha* (2010) 2 SCC 772.

vi) A copy of the advice of the CVC was also not provided to the Respondent by the DA and that this was contrary to the law explained in the *State Bank of India v. B.C. Aggarwal* (1993) 1 SCC 13. Since the Respondent had already been subjected to two inquiries over a span of nine years the CAT did not consider it just to order further fresh inquiry.

29. This Court has heard the submissions of Mr. V.S.R. Krishna, learned counsel for the Petitioner and Mr. Manish Sharma, learned counsel for the Respondent No.1.

30. It was pointed out by Mr. Manish Sharma that in the charge-sheet filed in the criminal proceedings on 1st September, 2011 the Respondent No.1 was dropped from the array of accused persons under Section 408 IPC. On the other hand she was cited as a witness. The only accused was Pallavi Gajanand Mali. The Petitioner, however, chose to compound the offence as against Ms. Pallavi after she paid back the amount. The charge-sheet itself indicates that Ms. Pallavi admitted to having retained the fees collected from the students and not depositing it in the account of the Petitioner.

31. The Court has further been shown the order dated 22nd January, 2013 passed by the ACMM recording the statement of Ms. Kiran Bala on behalf of the Petitioner as complainant that the service of the accused i.e. Ms. Pallavi had already been terminated and that she had already deposited the "cheated amount with the department." The order further records "now the complainant has no grievance against the accused and she has no objection if the offence against the accused may be compounded." In other words, the Petitioner appears not to have initiated any disciplinary proceedings against Ms. Pallavi. Further, although she was the sole accused in the criminal case that too was compounded.

32. It is further pointed out by Mr. Manish Sharma and not contradicted by learned counsel for the Petitioner that although disciplinary proceedings were initiated against Mr. Shamim, the Branch Manager, on even more serious charges, he was found guilty only on one of them for which he was awarded a mild penalty of stoppage of one increment. On the contrary, as far as Respondent No.1 was concerned, even after reinstatement the arrears were yet to be paid. She has had to further miss out on at least three promotions. Her representations in this regard have not been considered only because the present case is pending.

33. Mr. Sharma further pointed out that Ms. Renu Sinha had supported the case of the Respondent No.1 in the first round of the inquiry proceedings. Her evidence showed that Respondent No.1. was in fact the whistle blower and it was on her reporting the matter to the Head office that an Inquiry Committee was set up. However, Ms. Sinha was not examined in the second round and a valuable piece of evidence was therefore not available to Respondent No.1.

34. The Court has perused the record of the inquiry proceedings. There indeed

has been a serious lapse in not providing Respondent No.1 with all the relevant documents. In particular the report of the Committee led by the FC which initially enquired into the allegation of misappropriation of money and had not named Respondent No.1 was a valuable document that would have established her innocence. The following documents as noted out by the CAT in the impugned order were also essential for her defence:

- (a) Duties and Responsibilities of the AFO-II, Duties and responsibilities of the Branch Manager;
- (b) Duties and Responsibilities of Cashier, Report of the Committee led by the F.C. and report of action taken on it;
- (c) Action taken Report on the Report of the Statutory Audit Report,
- (d) I.O.N. dated 25th June 2006 from the Applicant with copy to Ramesh (Jr. Clerk)
- (e) Letter dated 23rd June 2006 from Respondent No.1 to the Branch Manager
- (f) Action report on the cashier and the accounts officer,
- (g) Charge handling/taking report after the suspension of Respondent No.1

35. The relevance of the documents denied to Respondent No.1 becomes evident from a reading of the charge-sheet filed in the criminal case in 2011, where a reference is made to some of them and to the conclusions drawn therefrom. The relevant portion of the charge sheet read thus:

"During the course of further investigation, Ms. Kiran Banal, Admn Officer, DOEACC handed over documents pertaining to vouchers, cash books, details of deposit fees etc. The details of the documents handed over by Ms. Kiran Bala are as under:

1. One register bearing the details of the deposit fees of students handing over by front office to Ms. Pallavi, Jr. Clerk for the period 2005-06 contains 174 pages in total from 01.07.05 to 30.04.06. The register is bearing the receipt of cash by Pallavi Jr. Clerk.
2. One register bearing the details of the deposit fees of students handing over by front office to Ms. Pallavi Jr. Clerk for the period 2006-07 contains with 12 written pages in total from 10.04.06 to 30.06.06. The register is bearing the receipt of cash by Pallavi Jr. Clerk.
3. Copies of statement of account for a/c No. 0176002100250666 for the period of 01.12.05 to 30.06.06 in the name of M/s DOEACC Centre, B-86, Defence Colony, Delhi of Punjab National Bank.
4. One cash a/c book of M/s DOEACC Centre, B-86, Defence Colony, Delhi from 01.12.05 to 31.03.06.

5. One cash a/c book of M/s DOEACC Centre, B-86, Defence Colony, Delhi from 01.04.06 to 31.06.06.
6. One cash ledger a/c Book of M/s DOEACC Centre, B-86, Defence Colony, Delhi from 01.12.05 to 31.03.06.
7. One cash ledger a/c Book of M/s DOEACC Centre, B-86, Defence Colony, Delhi from 01.04.06 to 31.06.06.
8. Six books of fees cash book receipts from S. No. 3801 to 4400- Each book contains 100 receipts in carbon copy. All the fee books are executed.

The above mentioned documents were scrutinized in detail. During the course of investigation, Pallavi Gajanan Mali was interrogated and she was arrested, on 29.1.2009. During interrogation, she admitted to her involvement. A written questionnaire was given to her for answering certain questions. She wrote that she did not deposit the entire cash collected on a day and kept a part of it for herself.

She clarified that she had never shared the misappropriated money with anyone else. Information regarding her arrest was given to CBSE, Delhi.

Pallavi Gajanan Mali deposited the entire embezzled amount with the DOEACC. The amount was deposited on 29.1.2009 and a receipt vide No. 6749 for Rs. 2,51,702/-(total recovery) was issued for the same.

During investigation, statements of witnesses were recorded u/s 161 CrPC

Nothing incriminating came on record against Kalpana Dudeja and Shamim Khan."

36. Therefore, there is merit in the submission on behalf of respondent No.1 that the failure to provide copies of some of the above documents to Respondent No.1 during the enquiry caused her severe prejudice and denied her an effective opportunity of defending herself.

37. That the denial of relevant documents to a charged office during a disciplinary proceedings will be a violation of natural justice was explained by the Supreme Court in Trilok Nath v. Union of India 1967 SLR (SC) 759, where it was held as under:

"Had he decided to do so, the document would have been useful to the appellant for cross- examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the FIR and the statements recorded at Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry."

38. The other serious violation of the principles of natural justice resulted from

the EO in the first place denying respondent No.1 the opportunity of cross-examining the PWs, all of whom were examined in her absence and on a single day. Later the EO did try to make up for this lapse but by then the defence of Respondent No.1 was already disclosed. The purpose of such cross-examination would stand defeated at that stage. The law in this regard has been explained by the Supreme Court in *Ayaaubkhan Noorkhan Pathan v. State Of Maharashtra* (2013) 4 SCC 465 as under:

"23. A Constitution Bench of this Court in *State of M.P. v. Chintaman Sadashiva Vaishampayan*, AIR 1961 SC 1623, held that the rules of natural justice, require that a party must be given the opportunity to adduce all relevant evidence upon which he relies, and further that, the evidence of the opposite party should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party. Not providing the said opportunity to cross-examine witnesses, would violate the principles of natural justice.

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26. In *K.L. Tripathi v. State Bank of India & Ors.*, AIR 1984 SC 273, this Court held that, in order to sustain a complaint of the violation of the principles of natural justice on the ground of absence of opportunity of cross-examination, it must be established that some prejudice has been caused to the appellant by the procedure followed. A party, who does not want to controvert the veracity of the evidence on record, or of the testimony gathered behind his back, cannot expect to succeed in any subsequent grievance raised by him, stating that no opportunity of cross-examination was provided to him, specially when the same was not requested, and there was no dispute regarding the veracity of the statement. (See also: *Union of India v. P.K. Roy*, AIR 1968 SC 850; and *Channabasappa Basappa Happali v. State of Mysore*, AIR 1972 SC 32).

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28. The meaning of providing a reasonable opportunity to show cause against an action proposed to be taken by the government, is that the government servant is afforded a reasonable opportunity to defend himself against the charges, on the basis of which an inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so only when he is told what the charges against him are. He can therefore, do so by cross-examining the witnesses produced against him. The object of supplying statements is that, the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against him. Unless the said statements are provided to the government servant, he will not be able to conduct an effective and useful cross-examination.

29. In *Rajiv Arora v. Union of India & Ors.*, AIR 2009 SC 1100, this Court held:

"Effective cross-examination could have been done as regards the correctness or

otherwise of the report, if the contents of them were proved. The principles analogous to the provisions of the Indian Evidence Act as also the principles of natural justice demand that the maker of the report should be examined, save and except in cases where the facts are admitted or the witnesses are not available for cross-examination or similar situation. The High Court in its impugned judgment proceeded to consider the issue on a technical plea, namely, no prejudice has been caused to the appellant by such non-examination. If the basic principles of law have not been complied with or there has been a gross violation of the principles of natural justice, the High Court should have exercised its jurisdiction of judicial review."

30. The aforesaid discussion makes it evident that, not only should the opportunity of cross-examination be made available, but it should be one of effective cross-examination, so as to meet the requirement of the principles of natural justice. In the absence of such an opportunity, it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice."

39. As regards not providing to Respondent No.1 a copy of the advice of the CVC, the AA in his order admits that in terms of the CCS (CCA) Rules, 1965 advice from the CVC was obtained at two stages: (i) prior to the serving of the charge sheet and (ii) after the, enquiry report. The AA further notes that copies of the said advice "could have been provided" to Respondent No.1 but holds that lapse on the part of the DA not serious as that had no significance in her case.

40. As rightly pointed out by the CAT this was contrary to the law explained in *State Bank of India v. D. C. Aggarwal* (1993) 1 SCC 13 as well as CVC's Circular dated 15th January, 2009. The failure to question Respondent No.1 in the enquiry on the circumstances appearing against her was also in violation of Rule 14 (18) of the CCS (CCA) Rules. This was a mandatory requirement, the violation of which was not 'curable' in terms of the law explained in *Ministry of Finance v. S.B. Ramesh* (1998) 3 SCC 227.

41. The Petitioner has no valid explanation for the relatively lenient treatment of Mr. Shameem Khan, the Branch Manager, who was found by the internal Committee to have committed a serious lapse in entrusting the important function of collecting fees and depositing it in the Petitioner's account to a junior person engaged on contract basis. The law in this regard is fairly well settled in the decisions in *Director General of Police v. G. Dasayan* (1998) 2 SCC 407 and reiterated subsequently in *Rajendra Yadav v. State of M.P.* (decision dated 13th February 2013 in C.A. No. 1334 of 2013), in which it was held:

"The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed.

Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences."

42. Also, there is no explanation forthcoming for not initiating any disciplinary proceedings against Ms. Pallavi. If the matter was as serious as is sought to be made out in the enquiry proceedings against Respondent No.1, then it stands belied by the compounding of the criminal case against Ms. Pallavi.

43. For all of the aforementioned reasons, the Court finds no grounds made out to interfere with the impugned order of the CAT. The Court concurs with the CAT, that to order a fresh inquiry in the face of so many illegalities would be compounding the injustice caused to Respondent No.1, who has been already subject to considerable hardship for over a decade.

44. While dismissing the petition and vacating the interim order passed on 9th September, 2016 the Court directs that the Petitioner will now comply with the remaining part of the impugned order of the CAT and release to Respondent No.1, not later than 30th November, 2019 the entire arrears of the amounts payable to her as a result thereof, including her salary from September 2009 onwards till her reinstatement. As regards the other consequential reliefs including the promotions due to Respondent No.1, the appropriate orders shall be passed by the Petitioner not later than three months from today.