
(1999) 09 DEL CK 0138
In the Delhi High Court
Case No : CW. No. 3985 of 1982

P.D. Bhatnagar (Dr.)	Vs	APPELLANT
Union of India		RESPONDENT

Date of Decision : 29-09-1999

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Constitution of India, 1950 — Article 226

Citation : (1999) 09 DEL CK 0138

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. Bishwajit Bhattacharya and Mr. R.K. Varshney, for the Appellant;
Mr. Y.K. Kapur, for the Respondent

Judgement

K. Ramamoorthy, J.—The petitioner, by order dated 27.9.1982, was compulsorily retired from service by the President of the first respondent. He filed an appeal and that was dealt with by the Executive Committee, wherein the President of the first respondent participated, and the appeal was rejected by order dated 26.2.1983.

2. According to the first respondent the Executive Committee (appellate authority) had its meeting on the 6th of February, 1983, wherein it was decided to dismiss the appeal against the order of the of the President, who was the Minister for Education in the central Government.

3. The petitioner has prayed for the following reliefs:-

"Under the circumstances, it is most respectfully prayed that this Hon"ble Court may be graciously pleased in the interest of justice to:

i) issue an appropriate writ direction or order quashing the order dated 27.9.1982 of compulsory retirement;

ii) issue an appropriate writ order or direction quashing the order dated 23.8.77

passed by the respondent No. 2 transferring the petitioner with post to Bhubaneswar from Ajmer;

iii) issue an appropriate writ order or direction quashing the order dated 15.3.79 suspending the petitioner;

iv) issue an appropriate writ, order or direction directing the respondents to treat the petitioner as on duty on his post at Ajmer with retrospective effect from 24.8.1978;

v) pass an appropriate writ order or direction holding the impugned inquiry conducted by respondent No. 3 as being null and void and not capable of being legally acted upon in any manner."

vi) issue an appropriate writ order or direction, directing the respondent No.2 to pay to the petitioner his salary and other dues which have not been paid to him from September, 1978 till date."

4. On the 3rd of April, 1979, a chargesheet was issued to the petitioner with imputation of charges. The same reads as under :-

"The President, National Council of Educational Research and Training Proposes to hold an inquiry against Dr. P.D. Bhatnagar under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which have been made applicable to the employees of the National Council of Education Research and Training. The substance of the imputations of mis-conduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of Articles of Charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each article charge is enclosed (Annexure II). A list of documents by which and a list of the witnesses by whom, the articles of charge are proposed to be sustained are all enclosed.(Annexure III & IV).

2. Dr. P.D. Bhatnagar 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 those articles of charge as are not admitted. He should, Therefore, specifically admit or deny each article of charge.

4. Dr. P.D. Bhatnagar 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 provisions of Rule 14 of the Central Civil Services (Classification, Control and Appeal), Rules, 1965 as applicable to the Employees of the National Council of Educational Research and Training or the orders/directions issued in pursuance of the said rule, the Inquiring authority may held the inquiry against him exparte.

5. Attention of Dr. P.D. Bhatnagar is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964 as applicable to the employees of the National Council of Educational Research and Training under which no Council's servant shall bring or attempt to bring any political or outside influence to bear upon any super Authority to further his interest in respect of matters pertaining to his service under the Council. 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 Dr. P.D. Bhatnagar is aware of such a representation and that it has been done at his instance and action will be taken against him for violation of Rule 20 of the Central Civil Services (Conduct) Rules, 1964 as applicable to the employees of the National Council of Educational Research and Training."

5. On the 14th of April, 1979, the petitioner requested the Secretary NCERT, for supply of certain documents and he was also awaiting the statements made by the witnesses in the preliminary inquiry, on the basis of which the second respondent should have decided to take disciplinary action against the petitioner. The letter dated 14.4.1979 reads as under:-

"In order to file the required written statement regarding the charge sheet hereby given to me kindly let me have the following:-

Copies of the statements [referred to at (3) of para 3 under (G) Inspection of documents GOI Inst (22) under Rule 14 para 8 last two lines] of witnesses recorded in the course of

a) preliminary enquiry conducted by the department; and

b) investigation made by Police and a copy of FIR letter dated 20.8.1977 by Shri P.N. Dave and others add. to officer I/C Christianganj TOP Ajmer, listed at No.13 Ann.III of the above mentioned letter.

2. Permission to appear in person, to inspect my own records at Ajmer and other documents referred in the charge sheet at Delhi (NCERT Office) and RCE Office, Ajmer. This will enable me also to prepare a list of other related/relevant documents/reports need to be inspected or photocopy where ever necessary as per para (4) under GOI Inst.22 under Rule 14.

3. Appropriate Secretarial assistance, particularly in view of my ill health and inability to walk as needed due to inflammation in ankles and scarcity and difficulty of such assistance to be procured already faced.

4. Reasonable time (one month) in the receipt of the item reported under 1,2,3.

5. I request the permission to vindicate my conduct in course of discharge of my official duties as per Rule 19(1) GOI decision No.6 to institute proceedings.

In the list of the above, if necessary, I shall also like to be heard in person."

Yours faithfully,

sd/-

(P. D. Bhatnagar)

Regional College of Education,

P.S.

1. I am sorry to bring to your notice that one complete month will be over today after the issue of the suspension order w.e.f. 15.3.1979 but the pay slip for subsistence allowance has not been issued.

2. I have not been paid leave salary for last 8 months although I have submitted the application with M/Cs duly and even in duplicates, triplicates to post, presently controlling officers at Ajmer and Bhubaneswar as well as to Head Office, Delhi.

Attention is drawn to GOI Inst. (37) Rule 14 for timely payment of subsistence allowance specially in view of my long illness and ill health, need for treatment etc.

Another copy of the certificate, that I am not engaged in any other employment is again being attached for early immediate action."

(P.D.Bhatnagar)"

6. On the 7th/8th of May, 1979,, the Secretary, NCERT, wrote to the petitioner in the following terms:-

"Reference is invited to your letter dated the 14th April, 1979 in reply to Council's Memorandum of even number dated the 3rd April, 1979 regarding disciplinary proceedings pending against you. In this connection, you are hereby informed as follows:-

1. Inspection of the relevant documents and supply of copies of the statements etc. as stated by you will be allowed by the Inquiring Authority during the course of oral enquiry.

2. Under the rules, you can have a defense Assistant from amongst the employees of the Council to help you in the departmental proceedings pending against you.

3. You are required to submit your written statement of defense to the appropriate authority as per rules immediately and this may be done early in your own interest.

4. As per Central Civil Services (Classification, Control and Appeal) Rules as applicable to the employees of the Council, no permission is required from the Council, no permission in connection with the institution of the proceedings for vindicating your conduct in the course of discharge of your official duties as stated by you.

Necessary orders for subsistence allowance have already been issued by the

Council vide Order No. F. 7-19/63-RCU Pt. IV dated the 2nd April, 1979. The appropriate authorities in the Council have been directed to expedite payment of salary during the period of your leave as also of subsistence allowance during the period of your suspension. The certificate of unemployment sent by you with your above mentioned letter dated 14.4.79 has also been passed on to the Chief Accounts Officer of the Council for further necessary action.

It may also be pointed out that the oral enquiry has since been ordered by the Disciplinary Authority and copies of the relevant orders have already been sent to you separately."

7. On the 8th of May, 1979, the following order was issued by the Secretary, NCERT, New Delhi:-

"WHEREAS an inquiry under Rule 14 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 as applicable to the employees of the National Council of Educational Research and Training, is being held against Dr. P.D. Bhatnagar, Professor in Science(Presently under suspension) in the Regional College of Education, Bhubaneswar.

AND WHEREAS the President, National Council of Educational Research and Training considers that an Inquiring Authority should be appointed to inquire into the charges framed against the said Dr. P. D. Bhatnagar.

NOW, Therefore, the President, National Council of Educational research and Training, in exercise of the powers conferred by sub-rule 92) of the said rule hereby appoints Shri M. K. Vasudevan, Commissioner for Departments Inquiries, Government of India, as the Inquiring Authority to inquire into the charges framed against the said Dr. P. D. Bhatnagar."

8. On the 13th 5.1979 the petitioner wrote to the Secretary, NCERT, New Delhi in the following terms:-

"I beg to acknowledge the receipt of your memo dated 19th Inst. informing me that my request for change of HQ from Bhubneshwar to Agra has not been considered favourable and that my leaving Bhubneshwar on 12.5.79 has been viewed seriously. In this connection I prey your indulgence to place the following facts for your kind and favourable consideration.

You may be aware and this fact is also borne from record that during the month of August, 1978 I fell seriously ill while I was at Ajmer and suffered from acute fever. Initially, I was attended by college Doctor but unfortunately it showed no improvement and on his suggestion I underwent treatment of doctors of J.L.N. Hospital, Ajmer but as the luck would have it, despite the best efforts of doctors my condition took a turn for worse. Having thus passed a months time at Ajmer under treatment, I managed to reach Agra for treatment and care. It will not be out of the place to mention here that I am a bachelor and had no relations here to look after me during my precarious condition which was unavoidable necessary. Whereas at Agra my relations and near ones are there as per force I

had to shift myself to Agra. Doctors who attend me there advised me for operation of fisher. I was admitted in the S.N. Hospital. Subsequently, I was not operated by the treatment continued at Agra for about four months.

While I was thus undergoing treatment at AGra, the orders for my transfer from Ajmer to Bhubneshwar were issued and in spite of the fact that my condition was not such as to undertake journey, still it was insisted that I should carry out the transfer without delay, as a consequences of these orders I was compelled to come to Ajmer to fetch my luggage, wind up and take T.A. & D.A. advance in the month of January, 1979 but here the luck against went against me as due to strain of journey my condition which had improved due to long treatment at Agra again deteriorated at Ajmer. Though I appraised you about my failing health still it was insisted upon that I should effect the transfer without delay. In obedience to these orders and at the risk of my life I complied with the orders relinquishing charge at Ajmer on 3.2.79 and reported for duty at Bhubneshwar on 17th Feb., 1979. Hardly I had worked for three weeks there at Bhubneshwar. I received orders placing me under suspension which still subsist.

Subsequently, for about three weeks time I received the chargesheet dated 3.4.79 in which certain frivolous charges have been leveled against me. Now the enquiry officer Mr. Vasudevan has been nominated to go into the supposed charge. However, before proceeding to Bhubneshwar, I had very specifically brought to your notice that the climate of that place would not suit my health because it is humid in contrast as Ajmer has a favourable climate as the place is dry. In fact my request was based on the considered opinion of the doctor attending on me. My both parents had passed away chiefly because of humid weather within about years time during 1972, 73 at Bhopal. You must be aware that Bhopal is a city of lakes and has humid climate. The doctors had taken this factor into consideration and were positively against my proceedings to Bhubneshwar. But somehow the administration was shorn of sympathy towards me and every request from my side was looked upon with askance and the more I expressed my inability for moving on transfer (particularly with post) the more it was insisted upon that I should carry out the transfer post.

Kindly excuse me to state that though the transfer, in the present case was not an accident of service but was a calculated action. Nevertheless to show my bonafides I carried out the transfer at the risk of my life even by going against the medical advice to the contrary. In fact I completed the journey while I was under high temperature and was helped by kind fellow passengers who came to my rescue seeing my acute state of health. While at Bhubneshwar though I joined the duty, Principal called the doctor attached to the college who took me under his treatment and throughout my stay there I was under his treatment. But as the luck would have it the treatment showed no improvement in my condition and in the meanwhile I was placed under suspension vide your letter No.F-1-2/74 Rec (P-11) dated 15.3.79. Since I was not discharging any active duties coupled with the fact that the treatment that I was receiving was not

showing any favourable response and in addition the climate of the place worked against me, I was compelled to make a request for change of Headquarters from Bhubneshwar to Agra. It may be appreciated that the chargesheet that followed the order of suspension and progressed for nomination of the enquiry officer also brought mental agony to me and in that way added fuel to the fire. I was alone and forlorn at Bhubneshwar with nobody to take a personal interest in my nursing and giving comfort to me. The greatest blow delivered to me was denial of salary to me for the period of 8 months commencing from 1st Aug., 1978 till I reached Bhubneshwar where I was paid only 15 days salary. Even from the subsistence allowance heavy deductions have been made and only a paltry sum was left in my hand. In this connection please refer to Asstt. Secy's letter dated 24th April, 1979 and Principal RCE Bhubneshwar letter dated 12.4.79. You will appreciate that certain deduction which had been made from the subsistence allowance are such as are not authorised under the rules e.g. a sum of Rs.200/- per month has been deducted for the period of two months from my subsistence allowance for 1/2 months. The subsistence allowance is, as its terminology indicates, for the bare needs of life. Even if such amount has to satisfy the bare need has not been left with me. This financial agency was an insurmountable difficulty for a man laid up with acute weariness. Since in the disciplinary proceedings the names of witnesses suffused to be examined in the support of the charge are mostly at Ajmer, a few only at Delhi and moreover the enquiry officer is also Headquartered at Delhi there was no point in keeping me at Bhubneshwar which is nothing but death cell for me and looked like a body trap at the moment. At any rate of reasons have been advised to me for rejecting my request for change of Headquarters during suspension. Despite heavy odds I would have continued to stay there but the above detailed circumstances left no alternative for me but to leave the Headquarters in anticipation of your permission, in this behalf. These circumstances have been summarised as under:-

1. My physical condition was precarious, the medical treatment was not responding favourably.
2. The climate of that place work have against me as it is humid and does not suit my health.
3. I have no funds to meet the necessary daily expenses. This also a great handicaps for me approach senior doctor great experts.
4. I was under great strain having been placed under suspension without there being any palnsible ground fro the same. The service of Chargesheet full of false charges further doctorated my health and gave me mental shock.
5. There was no body much less am intimate person to look after and nurse me in my critical condition of health.
6. That my condition was deteriorating day by day and my further stay at Bhubaneshwar would have cost me my life and as such it became a question of life and death for me to stay or not to stay at Bhubaneshwar.

7. For my defense also I had to take help of my near ones conversant with the topic and no such person was available at Bhubaneswar.

8. The paramount consideration at the moment for me was to any how survive, to recoup health for which it was the imperative need of the hour to leave Bhubaneswar without losing even a moment. You will also appreciate that my stay at Bhubaneswar while under suspension is nothing in terms of profit so far as the Council is concerned. While under suspension I am sitting idle at Bhubaneswar to whether I idle at Bhubaneswar or at Agra or at Ajmer is of no consequence so far as the council is concerned. On the contrary, my being at Ajmer would be of some advantage to the council in completing the disciplinary proceedings against me in as much as I can be contacted in shorter period as compared to Bhubaneswar as Ajmer is much closer to Delhi. From the defense point of view also my stay at Ajmer is of utmost necessity since I can get the necessary and expert advice here in Ajmer which is not available at Bhubaneswar.

9. In these compelling circumstances, I left for Agra in anticipation of your permission which I have every belief that no person in similar circumstance could be refused.

10. However, here also the luck alluded me though there was brisk treatment many best medical attention to me still my condition did not improve Therefore, once again I was left with no alternative but to come to Ajmer to resume the treatment with my old doctors, who had treated me earlier at thee first instance. In these circumstances, with great difficulty I managed to reach here on 27th May, 1979. I am glad to advice you that the treatment here is turning favourable to me and I hope that in a reasonable period of time I shall recover but as I am very weak and it shall naturally take some time before I regain the lost health and vigour. Medical certificate will be sent to you shortly.

"In the light of what is submitted above, it is earnestly requested that my Headquarters be deemed to be Ajmer during the period of my suspension or in the alternative ex post facto sanction be accorded for leaving Headquarters with permission for the period w.e.f 12th May, 1979 as may be covered by Medical Certificate for which I thank you in advance."

9. Again on the 1.6.1979, the petitioner wrote to the Secretary, NCERT, New Delhi for supply of documents in the following terms:-

"Respectfully, I beg leave to submit that I have been issued a charge sheet under your Memorandum No.F.1-2/79/RCEED/ dated 3.4.79 and I have been called upon to submit my written statement of defense.

2. In reference thereto, under my letter dated 14.4.79, I denied the charges in- to but with a view to submit an effective written defense statement, I requested you to supply me copies of thee documents detailed therein as also to allow me inspection of the records. I regret to say that I have not received any direct reply

whether my request has been accepted or rejected.

3. That instead I have been advised under your above cited letter that inspection of the relevant documents and supply of copies of the statements etc. will be allowed by the inquiries authority during the course of the oral enquiry. In this connection, it is pointed out that supply of documents and inspection of the records is necessary for me to enable me to submit my defense statement. The question of nominating thee I.A. adverts in only after I have submitted my defense statement and provided such statement is not considered satisfactorily by the Discipline Authority Rule 14(5)(a) of the CCS CCA Rules is quite clear on the point which stipulates that on receipt of the written statement of defense, the disciplinary authority may itself inquire into such of the charges as are not admitted, or if it considers it necessary to do so_____". The Supreme Court has also taken the view that supply of documents be considered from the point of view of the defense, in the case reported in 1967 Services Law Report at p.759. The position has been further made clear in the Government of India's decision No.F.30/5/61-AVD dt. 25.8.1961 fully particularised in my letter dated 14.4.1979.

4. That by appointing the is straight away without waiting for receipt of the defense statement is nothing but refusal to consider the defense. It may be that after considering my defense, you may feel satisfied therewith and drop the charges. By not considering my defense not only the statutory rules have been breached but also the principles of natural justice have been violated and it has been assented even at this stage that I am guilty of the charges.

It is, Therefore, requested that nomination of the is be cancelled, documents be supplied and inspection of the records be allowed to enable me to submit my defense statement which I surely went to submit, that statement my kindly be duly taken into consideration and after such consideration it is not considered satisfactory, then & then also I A be appointed to inquire into the charges."

10. The petitioner received a communication that preliminary hearing in the inquiry would be held at Akbar Road New Delhi on 25.6.1979. The petitioner was admitted into the hospital and he wrote the Secretary, NCERT about his condition and informed him that he would not be able to attend the inquiry on the 25th of June, 1979. That was not brought to the notice of the inquiry officer. On the 25th of June, 1979, the Inquiry Officer wrote to the petitioner the following:-

"The preliminary hearing in the above cited inquiry was held in my office at New Delhi as scheduled at 10.30 a.m. today the 25th June, 1979. Only the P.O. Shri S. R. Gupta was present. Your letter dated 18.5.1979 explaining the reasons for your inability to attend has been taken note of by me even though it was not accompanied by a proper medical certificate. Never the less to make the beginning with the case, I am sounding you herewith one complete set of copies of all the documents cited in Annexure III of the chargesheet memo in support of the charges framed against you. You will kindly go through thee copies of documents and forward within two weeks time from the date of receipt of letter a

list of additional documents and a list of witnesses when you propose to cite in your defense. The additional documents and witnesses to be listed by you shall be wholly relevant to the charges framed against you as otherwise they will be disallowed as irrelevant and admissible. Full particulars of the additional documents together with the offices/officers in whose custody they are available should be mentioned by you. Likewise, full particulars of the defense witness and there levancy should also be cited by you in brief manner, so as to enable me to determine the relevance and admissibility of the defense documents/defense witnesses. Please note that if I do not get a reply from you within 15 days will take it that you do not require any defense documents or defense witnesses. Further action will be taken by me on receipt of your reply."

11. On the 11th of July, 1979, the petitioner wrote to the Inquiry Officer the following:-

"Thank you very much for your kind letter mentioned above. I note that the preliminary hearing was held in your office as was scheduled in spite of illness duly advised to you under my letter dated 18.6.1979 and having taken note of it.

In this connection I may pleased be allowed to bring to your kind notice and record the following facts:-

1. That the intimation (duly accompanied with Medical Certificate from the J. L. N. Hospital, Ajmer) about my having been admitted in the J. L. N. Hospital, Ajmer on 4th June, 1979 in precarious condition was sent to the Secretary NCERT on 11.6.1979 and in my letter dated 18.6.1979 to your kind self. Since only one medical certificate had been issued which has already been sent to Secretary , NCERT none could be sent to you. I had informed you of the same from my bed in the Hospital. I further requested you that as soon as I am able to, I shall bring before you several important points in regard to handicaps I have already been put to, that have already hampered proper defense on my letter dated 31.5.79 to Secretary, NCERT (copy endorsed to you) that:

(i) for last 8/9 months I have not been paid my salary for one "reason" or the "other" even though the CAO and the Secretary and the President NCERT had been duly informed from time to time and have been writing to the Principals, RCE, Ajmer and Bhubaneswar .One example will indicate the fact that after 8 months it is being pointed out and I am being persuaded that I should submit a Charge Relinquishing Report to some vague backdate. (App.I). This has not only put me to great financial hardship, agony and affected my proper treatment but has also adversely affected any efforts and capability to defend myself and participate in the disciplinary proceedings properly.

(ii) That even the subsistence allowance sanctioned to me months after the actual suspension order, has been paid only for 1-1/2 months, that too after heavy deduction (of various installments etc. etc. that were being done with full salary used to be paid to me) in spite of the spirit, rules and my ill-health and requests to please defer such deduction as per rules (App.II.a).

(iii) That the payments of leave salary for leave taken during July/August, 1978 for which pay slips have been issued as early as Sept.1978 have also not been made by RCE, Ajmer although the Secretary & President of the Council have been informed that "proper action" has already been taken etc. (App.II,b).

(iv) No other/arrangement for drawing TA, DA etc. to appear before you has been made by the Council from RCE Ajmer. Even letters to take private ward during serious illness/tests/treatment have not been attended to for last 4 weeks (App.II, e)

3. That it was desired in your letter dated 15.8.1979 (confirmation copy of your Express Telegram dated 16.6.79 the Secretary NCERT may direct the charged officer and presenting officer to attend the preliminary bearing on 15.6.1978.

But it seems that the Secretary has neither complied with your request by intimating/directing me for the same nor he was kind enough to intimate to you or forward the information about my lying in the Hospital in precarious condition (duly accompanied with medical certificate of the Hospital authorities). Instead, he perhaps only ordered to the presenting Officer to present himself to you and get the enquiry started and rushed through even in my absence.

4. While I am very thankful to you for at least making some documents available to me I may state that:

(i) That in spite of my several requests, I was neither allowed to inspect these and other documents earlier nor was any copy of photo copy of statements. FIR investigation report sent to me as per rules and was necessary to have enabled me to file a written statement of defense.

(ii) Even now so may copies (paraprint type) received by me only through your good offices are unreadable. In fact in none of these copies one can read the remarks, signature stamps, initial, seals, dates etc. at all.

(iii) Even the documents sent are in complete in the themselves e.g. 13.9.1979 and concerned staff letter dated 14.9.1977 are missing. (Please also see the list of documents).

(iv) The vital documents referred in the few documents made available only now (through your good offices), have not been supplied and several most vital documents about the incidents and charges have been withheld intentionally. I may mention few for example. Their relevancy will be appreciated in view of the outline given about the incidents in App.III.

a) Luthra Committee Report and its allied documents.

b) Action taken by the police on the FIR dated 20.8.77 lodged by Mrs. P. N. Dave.

c) Statements, reports, letters sent to President, NCERT and Luthra Committee regarding this unrest by:

1. President Staff Association.

2. Student adviser during 76-77, 77-78.
 3. Secretary/President Class III/IV Association during 76-77, 78.
 4. Statement by the commonly accepted by the Principal and Students who worked as mediator during negotiations on 14th and 15th Aug., 1977.
 5. Statement by the above and other local/public persons regarding the above unrest given to Luthra Committee.
- d) Report, Letters by the Principal appointed after Shri Gonda Rao and before the Permanent Principal S. N. Saha, took over.
- e) Reply sent to Shri Shiv Kumar (Hapur) in reference to his notice dated 25.4.1977.
- f) List of all the candidates admitted to B.Ed (Sc.) for the Session 1975-76 and dispatch register for this period of the RCE Ajmer office.

I am myself anxious to see an early disposal of enquiry and end of this mental torture. It is only now that it has been possible through your good office to have a glimpse of material which must have been considered of the most damaging extreme for me. This matter itself indicated of deliberately left gap due to non supply of documents outlined above. These end allied documents (App.IV) that will lead to actual facts and truth.

May I request you to kindly direct the presiding officer to please:

1. First of all got an arrangement made for the inspection of documents by myself and my defense assistant (A practicing lawyer Shri Laxman Das, Advocate, in view of the legal nature the strum of documents and complex nature of questions/issues/reasons involved, having clear legal ramifications) so that I am able to give you the details of the documents, as desired.

You will also kindly appreciate the need of an inspection of these documents personally as early as possible so that I may compare them with the "panaprinte" supplied and provide you with clues/details for the documents considered relevant and necessary for my defense I feel obliged if you get this right of mine upheld and provided for as this has been denied to me so far as and there by already putting me to a great handicap in my defense tantamount to denial of reasonable facilities.

2. To provide me in the meanwhile with the paraprint photo copies of the documents mentioned under (4IV) and appendix IV so that I may prepare myself for proper and fruitful inspection of vital and connected documents (about the events on which the charge sheet is made) and submit to you an exhaustive list of documents with necessary details and custody.

3. Kindly instruct the President Officer to please supply (without further delay proper copies photostat of the documents, whose glimpse of print and illegible "panaprint" could be secured only through your good office so that

endorsements with inks, seals initials) dates etc. on them could be properly studied.

4. a) Please be kind enough to instruct the presenting officer(vis-?-vis convey the President NCERT) to kindly accord me permission to me and inform well in time to present myself before yourself, secure TA and DA to enable me to arrange reservations etc. for myself (lawyer defense Asstt. Physician) from RCE Ajmer. This is very important as unfortunately your order was not heeded to by the Secretary NCERT when you wanted me to appear in person even for the first time on 25.6.79 and has specifically instructed the Secretary NCERT for this.

b) Kindly secure the approval of President NCERT for drawing TA and DA for myself and my defense Assistant from Principal, College Ajmer well in time in view of the economic stringencies already forced upon me as outlined above.

c) In view of my frail health on one hand and the need that this case and (vis a vis the harassment) is not prolonged or delayed unnecessarily on the other hand, May I request you to kindly recommend the permission from President of NCERT for taking the Physician treating me along with me for emergencies when reporting for dates given by your kindself.

d) I am not familiar with actual procedure and practices in the department enquiries, but as it has started in this case with urgent telegram for appearing in person at a very short notice, I humbly request you to kindly keep my illness and frail health in mind and given sufficient time so that I may draw TA and DA and get reservation done well in advance for myself and my physician and got a convenient date for the lawyer defense Asstt. I am sure you will kindly accede to this request in particular knowing fully well the heavy advance bookings in trans and engagement of lawyers to be fixed well in advance and my economic and physical condition.

5. Kindly endorse and recommend my request and instruct the presenting officer for secretarial assistance to be extended to me from RCE Ajmer. This is being very badly seeded and his absence causing great hardship and handicape as Regional College campus is situated far from the city.

6. Lastly, I may be allowed to suggest that in case it is not inconvenient to your kindself, (it will definitely be economical for the public exchequer and the Government of India), in the interest of expeditious disposal of matter and papers (concerning this enquiry involving persons mostly posted earlier and now at Ajmer you may kindly consider to hold a few Sessions at Ajmer itself. Ajmer is extremely pleasant and picturesque during rainy season and the Circuit House providing accommodation to Government Officers is exceedingly well located at the hillock abutting on the bank of famous Anasagar Lake. My hospital is also very close to it."

12. On the 31st of July, 1979, the Secretary of the second respondent wrote to the petitioner the following in response to his request for engaging a lawyer:

"With reference to his letter dated the 11th July, 1979 addressed to Shri M.K. Vasudeva , Inquiring Authority in the above-mentioned proceedings, Dr. P.D. Bhatnagar, Professor in Science (presently under suspension) Regional College of Education, Bhubaneswar, is hereby informed that the matter of allowing him the assistance of Legal Practitioner has been considered by the President, NCERT, who has ordered that the assistance of Legal Practitioner cannot be allowed to him in the above-mentioned proceedings. Dr. Bhatnagar may however take assistance of any other Council's servant as his defense Assistant to defend him in the said proceedings and he may indicate the name and designation of such person immediately for further necessary action."

13. The second respondent who had kept the petitioner under suspension, ought have paid subsistence allowance but that was not done. Therefore, on the 8th of August, 1979, the petitioner wrote to the Secretary in the following terms:-

"Kindly refer to your letter No. F.1-2/79 RCIU (Pt. III) dated 23.7.79 in connection with my letter dt. on 11th July, to Commissioner of Inquiries.

1. I am sorry to point out that in spite of my several letters during June & July 1979, no reply has been given to me by Principal Regional College Bhubaneswar regarding payment of my subsistence allowance. My request to send blank bill forms and write the payment of subsistence allowance without deduction of CPF. etc. (due to acute need of money by me for treatment and vindicating myself in court of law (as permitted by you implacably vide your letter dated 7/8 May, 1979 at Ajmer) has not been replied to.

2. As regards non-payment of leave salary for last 9 months, the leave account which should have been requested as per rule 25 Note it has not been done so far by CAO/Principal RCE Bhubaneswar.

The actual date of change relinquishing, i.e. 3.2.79 at Ajmer has also not been finally entered or replied to by the Principal RCE Ajmer, in respect of LPCS issued with several incorrect dates time to time.

I, Therefore, request you to kindly held expedite matters at your level at your earliest so that I may participate in the enquiry, get my proper treatment and put in proper effect in vindicating proceedings initiated at Ajmer.

Yours faithfully,

sd/-

(P. D. Bhatnagar)

Prof. of Science,

Ps. note that:-

(i) I had come here in connection with urgent work and medical consideration on 4th Aug. Unfortunately, due to my acute condition of my old Aunt, I have to stay here for another week or so for her treatment and attendance. Kindly Therefore

correspond with me in urgency here. It will be safe and kind of you if you address this letter at both the address for the time being keeping in mind the unfairly and urgency due to her illness. Please note that she is old and shilling and has no family member to attend accept equally old aunt and myself.

(ii) I came to know that Vigilance Officer Col. Gupta visited Ajmer recently in connection with my enquiries. He has taken statements of certain persons and has also given time to produce certain papers records perhaps requested by me from the Inquiry Officer Shri Vasudevan). It is very unfortunate that I was not given copies of statement and records etc. for filing my WS of defense and now these things are being prepared."

sd/-

(P.D. Bhatnagar)

14. On the 29th of July, 1979, the Inquiry Officer wrote to the petitioner that a re-hearing would be held at Ajmer from 17th to 19th of September, 1979. The letter is as under:-

"The regular hearing in the above cited inquiry will be held at Ajmer from 17th to 19th September, 1979 both days inclusive. The hearing will commence at 10.30 A.M. on 17.9.1979. The venue of the hearing will be the local Circuit House, Ajmer. At this hearing the Presenting Officer will introduce documentary and oral evidence of witnesses. You are requested to attend along with your defense assistant if any as permissible under the rules. Please note that if you fail to attend, the proceedings will be held ex-parte.

As regards the additional documents asked for by you in your letter of 11.7.1979 I have carefully examined the matter and find that none of the documents asked for by you has any bearing on the charges being inquired into by me. I, Therefore, consider them as not relevant and Therefore not admissible. You have not given me any list of defense witnesses so far in response to my letter of 25.6.79 and in continuation of your letter of 11.7.1979. I, Therefore, take it that you do not required any defense witness.

I have already supplied you and complete set of copies of all the listed documents cited in Annex. III to the Chargesheet Memo. The P.O. has been requested by me to show the originals of these listed documents to you in the office of the Principal, Regional College of Education, Ajmer on the 15th and 16th September, 1979 so as to enable you to compare the copies with the originals for your satisfaction in case you so chose."

15. On the 21st of September, 1979, the Secretary of the second respondent rejected the request of the petitioner for change of Inquiry Officer. On the 22nd of September, 1979, the Inquiry Officer wrote to the petitioner fixing dates of inquiry. The same reads as under:-

"In view of the decision taken by the Competent Authority vide their No.1-2/79-

RCEU/Pt.IV, dated 21.9.79 on your letter dated 29.8.79, rejecting your representation for change in the Inquiry Officer and directing me to continue the present inquiry, I have decided to take up the regular hearing in the above cited inquiry at Ajmer from 11th to 13th of October, 1979 both days inclusive. The hearing will be continued on 14th October, 1979 if found necessary. The venue of the hearing will be the local Circuit House at Ajmer. You are requested to attend along with your defense assistant, if any as permissible under the rules. Please note that if you fail to attend the proceedings will be held ex parte.

The Presenting Officer has been requested by me to arrange to show the originals of the listed documents (Annexure III to the chargesheet memo) to you in the office of the Principal, RCE, Ajmer on the 8th and 9th October, 1979 so as to enable you to compare the copies of the documents already supplied to you with the originals for your satisfaction, in case you so choose.

It is learnt that a copy of the Luthra Committee Report referred to by you in your letter dated 11.7.79 has already been supplied to you by the NCERT and it is Therefore, to you to reply on that document for your defense."

16. On the 26th of September, 1979, the petitioner wrote to the Inquiry Officer stating that the copy of the Luthra Committee Report had not been supplied to him. On the 28th of September, 1979, the petitioner wrote to the Inquiry Officer that he had again moved the President for the review of his decision. On the 28th of September, 1979, the Presenting Officer wrote to the Inquiry Officer seeking to file certain documents. The same reads as under:-

"Reference is invited to Council's memorandum No.F.1-2/79-RCEU dated the 3rd April, 1979 on the above mentioned subject. The following two documents are introduced as additional documents in annexure-III of the said memorandum:

(i) Report of Sri Pran Nath Luthra, one-man Fact finding Committee dated 8th June, 1978 sent him vide his letter NO.F.1FEC/78 dated the 9th June, 1978 addressed to the President, National Council of Educational Research and Training, New Delhi-16, read with NCERT letter No.F.12-35/77-RCS(Vol.III/701 dated 21st February, 1978.

(ii) Letter No.F.1/FFC/78 dated the 9th June, 1978 from Sri Pran Nath Luthra, One-Man Fact Finding Committee addressed to the Union Minister for Education and Social Welfare, Government of India, New Delhi.

It may be stated that copies of the report of Shri Pran Nath Luthra and letter dated 9th June, 1978 referred to above have already been supplied along with other documents to Dr. P. D. Bhatnagar through his lawyer who is representing him and Shri Shiv Kumar in two petitions pending in the High Court of Rajasthan, Jaipur Branch, Jaipur, regarding quashing of the criminal proceedings against concerned staff members of the Regional College of Education, Ajmer etc. in the courts of City Munsif and Judicial Magistrate and Ajmer and Bharatpur. The inspection of these two additional documents as stated above, may also be

allowed to the charged officer on 8th and 9th October, 1979 dates fixed by you for the inspection of the documents by the charged officer. Your instruction in this connection may kindly be issued to the charged officer under intimation to me. Copies of these documents are also enclosed for your perusal and necessary action."

17. On the 11th of October, 1979, the petitioner wrote to the Inquiry Officer that he was moving the High Court of Rajasthan for staying all the proceedings. On the same date, he wrote to the Inquiry Officer another letter about the inquiry. On the 12th of October, 1999, the petitioner wrote to the Inquiry Officer about proceedings before City Munsif and Judicial Magistrate, Ajmer and Bharatpur.

18. On the 19th of December, 1979, the Inquiry Officer submitted his report on the basis of the inquiry conducted on the 11th and 12th of October, 1999, wherein the petitioner did not participate. In the preamble portion of the report, the Inquiry Officer, has stated:

"In his order No. F.1-2/79-RCEU(pt.III) dated 8.5.1979, the President, NCERT, New Delhi, appointed me as the Inquiring Authority to inquire into the charges framed against Dr. P.D. Bhatnagar, Professor in Science (U/S). The relevant papers were received by me in the second week of June, 1979 following which the preliminary hearing was fixed at New Delhi 25.6.1979. As Dr. P.D. Bhatnagar did not attend the preliminary hearing, I forwarded to him one complete set of copies of all the documents (Annex.III to the Charge-sheet Memo dated 3.4.79) listed in support of the charges framed against him, and he also duly acknowledged receipt of the same. Thereafter, the regular hearing was taken up and completed at Ajmer on the 11th/12th October, 1979. Although the defendant was informed in my letter of 22.9.1979 that if he failed to attend, the proceedings will be held ex parte, he chose to stay away from the proceedings at Ajmer on the 11th and 12th October, 1979 and Therefore the proceedings were held ex parte. Details of witnesses examined and documents exhibited in the course of the inquiry proceedings have been given in two separate lists added to the deposition folder."

Ultimately, the Inquiry Officer found Article Nos.1 to 4 and 6 to 8 had been proved by the second respondent. With reference to Article No. 5, the Inquiry Officer held that it had not been proved.

19. On the basis of the Inquiry Report, the order of compulsory retirement of the petitioner was passed. The same reads as under:-

"WHEREAS an inquiry under Rule 14 of the Central Civil Services (Classification, Central and Appeal) Rules as applicable to the employees of the Council, is being held against Dr. P. D. Bhatnagar, Professor in Science (Presently under suspension) in the Council;

2. WHEREAS vide Council's order No.F.1-2/79-RCEU (Pt.III) dated 8.5.1979, Shri M. K. Vasudevan, Commissioner for Departmental Inquiries, Government of

India, New Delhi, was appointed as the Inquiring Authority to enquire into the articles of charge against the said Dr. P. D. Bhatnagar vide Council's memorandum No.F.1-2/79-RCEU dated 3.7.1979;

3. AND WHEREAS the aforesaid Inquiring Authority, after having heard and recorded evidence, has submitted his inquiry report dated 19.12.1979, copy of which is enclosed;

4. Now, scrutiny of the records of the inquiry reveals that Dr. P. D. Bhatnagar did not participate in the oral inquiry in spite of reasonable opportunity given to him against the articles of charge. There is nothing on record contradicting to the depositions of the witnesses in support of the charges. Therefore, the President of the Council has no reasons to disagree with the inquiry and she feels that this should be accepted. After having carefully considered the inquiry report and its findings, the President of the Council is of the following opinion regarding the various articles of Charge:-

ARTICLE-1 :

The oral testimony of S/Shri V.N. Wanchoo, P.N. Dave, P. Ramakrishnan, B.N. Lal, S.N. Panda, Balbir Singh, H.C. Jain and S.S. Srivastava and other documentary evidence adduced during the inquiry prove this article.

ARTICLE-2 :

This article is proved by depositions of S/Shri H.C. Jain, P.N. Dave and V.N.Wanchoo along with documentary evidence as brought out in the oral inquiry.

ARTICLE-3 :

Based on documentary evidence as well as oral depositions of S/Shri P. N. Dave, P. Ramakrishnan, S. N. Panda and Balbir Singh, this article stands proved.

ARTICLE-4 :

This article is proved by evidence or oral testimony of Shri C. V. Govinda Rao and other documentary records to the extent that Dr. P. D. Bhatnagar was instrumental in sealing the door of office room of Dr. P. N.Dave, Professor in Education in the Regional College of Education, Ajmer, on 20th August, 1977.

ARTICLE-5 :

This article is not substantiated by oral testimony of Shri V. N. Wandhoo as well as other documentary evidence. Hence, this is not proved.

ARTICLE-6 :

Oral testimony of Shri V. N. Wandhoo and Dr. P. N.Dave, as well as other documentary evidence brought out during inquiry prove this article.

ARTICLE-7 :

This article is proved by documentary evidence as well as oral depositions of S/ Shri P. N. Dave, B.N. Lal, S.N. Panda, S.S. Srivastava, H.C. Jain and

C. V. Govinda Rao.

ARTICLE-8 :

(a) The documentary records adduced during inquiry as well as oral deposition of Prof. C. V. Govinda Rao, prove this article.

(b) The testimony of S/Shri S. S. Srivastava, C. V. Govinda Rao, B. N. Lal and other documentary evidence put forth during oral inquiry prove this charge.

5. All the articles of charge framed against Shri P. D. Bhatnagar stand proved barring article of charge No.5 which has not been substantiated and stands disproved. Keeping in view the seriousness of the articles of charge Nos.1 to 4 and 6 to 8 having been proved, the President of the Council has come to the conclusion that Dr. P. D. Bhatnagar is not suited for service in an educational institution where teachers are expected not only to observe discipline but also to set an example to be emulated by their students. The President of the council Therefore, orders imposition on him the major penalty of compulsory retirement from service of the Council.

6. This order will take effect from the date of its issue."

20. On the 11th of November, 1982, the petitioner preferred an appeal after filing of the writ petition and the appeal was dismissed by the Executive Council.

21. The petitioner amended his writ petition. What survives is the challenge of the order of compulsory retirement. It is not necessary to go into the validity of order of transfer and other reliefs prayed for by the petitioner.

22. The learned counsel for the petitioner, Mr. Bishwajit Bhattacharya, submitted that the inquiry conducted by the second respondent is vitiated; the petitioner was not given an opportunity to engage a lawyer; the relevant documents were not furnished to the petitioner; the Inquiry Officer was biased against the petitioner, the inquiry was held ex parte without granting opportunity to the petitioner, the findings of the Inquiry Officer are not based on any evidence; and the order of compulsory retirement, Therefore, was not valid. About the order passed by the appellate authority (Executive Council), it was submitted by the learned counsel for the petitioner, Mr. Bishwajit Bhattacharya, that the President of the second respondent (Ministry of Education) participated in the proceedings of the Executive Council in deciding the appeal, and, Therefore, it is vitiated by the doctrine of bias.

23. The learned counsel for the second respondent Mr. Y. K.Kapur, submitted that the petitioner was given sufficient opportunity and he did not avail of the same. The second respondent conducted the inquiry by examining witnesses. The inquiry officer had rendered findings on the basis of materials placed on record, and this is not a case where it could be said that the findings are not supported

by any evidence. In respect of the point that the President, who had passed the order of compulsory retirement of the petitioner, had participated in the proceedings of the Executive Council (appellate authority), the learned counsel submitted that the Executive Council consisted of several officers and they had decided the matter on the basis of the documents, evidence and the report of the Inquiry Officer, and the President had no part to play in the deliberations of the Executive Council. The charge by the petitioner that the President had influenced the decision of the Executive Council, according to the learned counsel, is not sustainable in law. According to the learned counsel for the second respondent Mr. Y. K. Kapur, the writ petition is not competent and the second respondent is not an authority within the meaning of Article 12 of the Constitution of India.

24. Regarding the maintainability of the writ petition, in view of the judgment of the Supreme Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others* etc. etc., it cannot be said that the writ petition is not competent.

25. I have perused the charge-sheet, the correspondence, report of the Inquiry Officer, appeal presented by the petitioner to the Executive Council and the decision of the Executive Council, and I have also perused the records produced by the learned counsel for the second respondent. The first impression I gathered was that the petitioner had not been dealt with fairly by the second respondent but on a closer scrutiny of the entire proceedings, as I had noticed above, I am not able to persuade myself to say that the findings rendered by the Inquiry Officer could be brought within the principle, "findings on no evidence". The petitioner has not been able to establish that the second respondent has committed any illegality. Therefore, I am of the view that the petitioner is not entitled to any reliefs. Accordingly, the writ petition is dismissed.

26. There shall be no order as to costs.