
(2008) 09 GAU CK 0089
In the Gauhati High Court
Case No : Writ Petition (C) No. 878 of 2007

Pijush Chattorpadhyay

APPELLANT

Vs

National Council for Co-operative Training and Others

RESPONDENT

Date of Decision : 22-09-2008

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Constitution of India, 1950 — Article 311(2)

Citation : (2010) 3 GLR 344

Hon'ble Judges : T. Nanda Kumar Singh, J

Bench : Single Bench

Advocate : Kh. Tarunkumar, for the Appellant; N. Kumarjit Singh, for the Respondent

Final Decision : Allowed

Judgement

T. Nanda Kumar Singh, J.—Heard Mr. Kh. Tarunkumar Singh, learned Counsel appearing for the petitioner as well as Mr. N. Kumarjit Singh, learned advocate appearing for the respondents.

2. By this writ petition, the petitioner, who is now serving as Principal, Institute of Co-operative Management, Manipur, prays for quashing the order of the Secretary, National Council for Co-operative Training (National Co-operative Union of India) being No. 1-1/2/92-Pers dated 16.11.2007 for appointing one Shri Paramjit Sharma, Professor, VAMNICOM, Pune, as Enquiry Officer to inquire into the charges levelled against the writ petitioner and also the order of the Secretary, National Council for Co-operative Training being No. 1-1/2/92-Pers dated 16.11.2007 for appointing one Shri Diwakar Rai, Assistant, NCCT, New Delhi as Presenting Officer and also for a direction to the respondents to supply the necessary documents to the petitioner for effective defence in the departmental enquiry.

Factual Background

3. While the petitioner was serving as Principal, Institute of Co-operative Management, Dehradun, the Secretary, National Council for Co-operative Training (National Council) issued a Memorandum being No. 1-1/2/92-Pers dated 12.7.2006 that on the basis of fact finding enquiry/the petitioner was found guilty for 7(seven) irregularities and asked him to explain his conduct as to why disciplinary action under the provision of CCS (CCA) Conduct Rules, should not be taken against him for the said 7 irregularities or lapses and his explanation should reach to the council within 15 days of the issue of the Memorandum, failing which it will be presumed that he has nothing to say in that behalf.

4. It is the case of the petitioner that the fact finding enquiry mentioned in the said Memorandum dated 12.7.2006 was done without issuing any notice to him and also he was not even informed as to who was the officer conducting the said fact finding enquiry and also that the said fact finding enquiry was done without following the due process of law and as such the petitioner had no idea about the said fact finding enquiry, which was said to have been held against him. After raising such preliminary objection, the writ petitioner, pursuant to the said Office Memorandum dated 12.7.2006, submitted his explanation/written statement of defence to the respondent No. 1. After receiving his explanation or/written statement of defence, the respondent No. 1, it appears, satisfied with the explanation submitted by the writ petitioner and as such the respondents did not take up any action against the petitioner.

5. The petitioner made a number of complaints to the Director General, NCCT against Shri Diwarkar Rai, Assistant NCCT and also Shri S. D. Kumar, Joint Director, NCCT, New Delhi for their activities during their visits to ICM, Dehradun while the petitioner was working as its Principal between 17 to 20.5.2006 for the DPC meeting. During that period, i.e., from 17 to 20.5.2006 said Shri S.D. Kumar, Diwarkar Rai, searched the file, papers and Register maintained by the office of the Principal, SEMD Dehradun without obtaining the consent of the Principal, i.e., the present petitioner. For that incident, the Accountant of the Office of the ICM Dehradun made a written complaint. It is the case of the petitioner that the said Shri Diwarkar Rai had done many mala fide acts against the petitioner by taking advantage of nearness of Dr. T.N. Singh, the then Secretary, NCCT, New Delhi and Shri S.D. Kumar, Joint Director (ADMN) NCCT, New Delhi.

6. After lapse of about one year from the date of issuing the said Memorandum dated 12.7.2006, the Director, NCCT, New Delhi issued a Memorandum being No. 1-1/2/92-Pers dated 6.6.2007 for holding enquiry against the petitioner for the period while he was working as Principal, Institute of Co-operative Management, Dehradun under Rule 14 of the CCS (CCA) Rules, 1965 for 6(six) article of charges and asked the petitioner to submit his written statement of defence within 10 days from the date of receipt of the said Memorandum and also to state whether he desires to be heard in person. For easy reference, said 6(six) article of charges are quoted hereunder:

ARTICLE OF CHARGES

CHARGE-1

That Sh. R Chattopadhyay while functioning as Principal, Institute of Co-operative Management, Dehradun has confirmed vide his reply letter dated 25.7.2006 that the construction of Classrooms, hostel, quarters of lecturers, Class-III and Class-IV staff was undertaken by Labour Federation. It is clear that when the construction took place by the Labour Federation, there must be scrap left behind after construction was in progress. Beside, the Labour Federation did not complete the whole construction particularly the staff quarters of Class-III staff which is still pending. It proves that there was scrap left by Labour Federation, Hence, he misused his official position and the scrap of Labour Federation amounting to Rs. 15,000 approximately was disposed off by the Institute. He tried to conceal the record when demanded by the Joint Director(A), in the presence of the then Secretary, NCCT who was deputed by the Authorities to enquire into the facts. Concealing of record which relates to financial involvement leads to disciplinary action under CCS (CCA) Conduct Rules.

CHARGE-2

That Sh. P. Chattopadhyay while functioning as Principal, Institute of Co-operative Management, Dehradun misused his official power while sanctioning advances frequently to Sh. U.P. Singh, Class-IV, ICM, Dehradun for repair of ICM building and its equipments from time to time. He also sanctioned the second or third advance to Sh. Singh with out settling the previous advances as per rules. Besides, as per record, it proves that on number of occasions the advances have been paid to him much more than the actual expenditure incurred. Moreover, the advances should be either paid to the contractor or the dealers of the raw material used in constructions directly through cheque and not by cash which was given to Sh. Singh. Besides, Sh. Singh is not having any technical knowledge of the construction, work. If any technical knowledge is required in the construction repair the PWD/CPWD officials should have been consulted instead of assigning the work to Sh. U.P, Singh. Hence, this proves the misuse of Official powers and leads to disciplinary action under CCS (CCA) Rules.

CHARGES-3

That Sh. P. Chattopadhyay while functioning as Principal, Institute of Co-operative Management, Dehradun misused his official power by paying Rs. 200 p.m. only towards the electricity charges for the electricity consumed by him at his residence provided by the Institute. The reply given by Sh. Chatopadhyay vide his letter dated 25.7.2006 the electricity meter installed in the Principal's residence measures not only the consumption of electricity consumed by the Principal but also the consumption of other load such as street lights. It is not understood as to how and when the connection of the Street Light was connected with the meter installed at the residence of the Principal and also with whose approval when there is already electricity meter installed by the Electricity Dept.

for this purpose in the name of the Institute. Hence, taking into area of the residence and electric points installed in the quarter owned by Sh. Chatopadhyay, the amount of Rs. 200 p.m. paid by him seems to be on very lower side. Therefore, this leads to disciplinary action under CCS(CCA) Conduct Rules for financial loss to the Organisation as well as misuse of powers being a DDO.

CHARGE-4

That Sh. P. Chattopadhyay while functioning as Principal, Institute of Co-operative Management, Dehradun misused his official power by using both facilities of mobile as well as land line telephone at his residence for official use. Not only that he purchased the Mobile Phone set from the Institute account. The Principal is entitled to have only one telephone facility either land line or mobile phone as per rules. It is unlawful and deviation of the instructions of the council not obeying the instructions of the council leads to disciplinary action under CCS(CCA) Conduct Rules along with the recovery of the amount of the Mobile Hand Set and the bills reimbursed to him from time to time.

CHARGE-5

That Sh. P. Chatopadhyay while functioning as Principal, Instituto of Co-operative Management, Dehradun did not draw his salary as usual for months together. This shows that he has some other source of income to met the day-to-day expenditure. Non-drawal of salary for months together clearly shows that he has some other source of income. Not showing the actual income leads to disciplinary action under CCS(CCA) Rules.

CHARGE-6

That Sh. P. Chatopadhyay while functioning as Principal, Institute of Co-operative Management, Dehradun is involved in investing his amount in share market like debenture/mutual fund scheme with many firms which is against CCS(CCA) conduct rules. Besides, as accepted by Sh. Chattopadhyay vide his leter dated 25.7.2006 that he has invested his savings in mutual funds from his savings, he must have gained interest in mutual funds. As per the statement received by the council with regard to the investment in mutual funds, etc., he made a transaction for a sum of Rs. 5,07,057 to sale and purchase of his equities within a period of 7 months from 24.9.2004 to 25.4.2005 whereas as per the Form 16A made available by the Institute in respect of Sh. P. Chatopadhyay for the period from April 2004 to March 2005 and Assessment year 2005-06 did not reflect any income from other sources. This leads to serious lapse on the part of DDO and comes under disciplinary action under CCS(CCA) Rules.

7. As the respondents did not supply the documents basing on which the said six article of charges had been framed against the petitioner, he submitted a representation dated 25.6.2007 to the respondent No. 1 for furnishing the necessary documents for enabling him to submit his detailed written statement of defence. By the said representation dated 25.6.2007, the petitioner had

requested the respondent No. 1 for allowing him to submit his written statement of defence within 10 days after receipt of the copies of the documents mentioned in the representation itself. He further requested the authority for allowing him to appear along with his defence assistant in the departmental enquiry. The copies of the documents requested for furnishing to the petitioner under his said representation dated 25.6.2007 are mentioned at para 2 of the said representation, which, reads as follows:

2. That, after perusal of the Memorandum No. 1-1/2/92-Pers, dated 6.6.2007 along with statement of articles of charges Framed against Shri P. Chattopadhyay, former Principal, ICM, Dehradun, Statement of Imputation of Misconduct or Misbehaviour in support of articles of charges framed. Statement of Documents by which the articles of charges Framed along with List of witnesses by whom the articles of charges framed against Shri P. Chattopadhyay, formerly Principal, ICM, Dehradun, are sought to be sustained, the applicant requires the following documents to be supplied by the authorities concerned of NCCT, New Delhi for giving effective written statement of his defence with reference to the said memorandum for the ends of justice.

(i) Copies of documents listed at Sl. Nos. 2, 3, 4, 6 and 7 of Annex ure-III of the NCCT Memorandum No. 1-1/2/92-Pers, dated 6.6.2007.

(ii) Under Charge No. 11:

(a) Copies of documents showing disposal of scrap material of Labour Federation for Rs. 15,000 (Rupees fifteen thousand) only allegedly made by the undersigned.

(b) Copy of the proceeding of the Local committee of ICM, Dehradun regarding disposal of scrap/waste materials of ICM, Dehradun.

(c) Copy of the Letter of NCCT New Delhi approving disposal of scrap/waste materials of the ICM, Dehradun.

(d) Copy of minute of the meeting of the Committee constituted for disposal of scrap/waste materials of the ICM, Dehradun as approved by the NCCT, New Delhi.

(iii) Under Charge No. 2:

In connection with payment of advances to Shree U.P. Singh, Grade IV referred at Charge No. 2.

(a) Copy of Proceeding of the purchase committee and approval of the Chairman of the Management Committee for undertaking the Construction works.

(b) Copy of Certification of the work by the Purchase Committee.

(c) Copy of Related bills/vouchers of the transactions.

(d) Copy of Expenditure Statements for the construction works.

(e) Copy of Details of all advances and adjustments of the bills submitted by U.P.

Singh.

(f) Copy of Details of advances Pending Settlement.

(iv) Under Charge No. 3:

Related documents based on which payment of Rs. 200 (Rupees two hundred) only as electricity rent was considered to be on the lower side.

(v) Under Charge No. 4:

Instruction of NCCT regarding use of one telephone only by the Principal, ICM.

(v) Under Charge No. 6:

Copies of documents indicating investment of Rs. 5,07,057 (Rupees five lakh seven thousand and fifty-seven only) allegedly made by the applicant during 24.9.2004 to 25.4.2005.

(vii) Copy of the report of the fact finding enquiry to Shri P. Chattopadhyay, formerly Principal ICM, Dehradun with reference to NCCT Memorandum 1-1/2/92- Pers, dated 12.7.2006.

8. The petitioner also submitted a representation dated 25.6.2007 to the respondent No. 1 by highlighting all the misdeed/irregularities committed by S/ Shri Dr. T.N. Singh, the then Secretary, NCCT, New Delhi and S.D. Kumar, Joint Director (Admn.) NCCT, Shri Diwarkar Rai, Assistant NCCT along with the necessary documents regarding their misdeeds. It is also stated in the said representation dated 25.6.2007 that the said three persons had taken out various official documents from the office of the ICM Dehradun without the knowledge of the petitioner and also that they might have manipulated those documents just to give harassments to the petitioner. Despite submitting the representation dated 25.6.2007, the respondents did not supply the necessary documents and because of this, petitioner could not file an effective written statement of defence. Petitioner again submitted a reminder dated 27.7.2007 requesting the respondent No. 1 to supply the relevant documents. The Joint Director (P) NCCT under his letter dated 3.8.2007 furnished only some of the copies of the documents mentioned in his said representation dated 25.6.2007; For easy reference, the letter dated 3.8.2007 is quoted below:

NATIONAL COUNCIL FOR COOPERATIVE TRAINING (NATIONAL COOPERATIVE UNION OF INDIA) Speed Post By Registered CONFIDENTIAL

1-1/2/92-Pers Dated 3.8.2007 Sh. P. Chattopadhyay

Principal,

Institute of Cooperative Management Imphal.

Sub: Supply of Relevant Documents in terms of Memorandum dated 6.6.2007-Regarding.

Sir, I am directed to refer to your letter No. ICM/Imphal dated 25.6.2007 on the subject cited above and to enclose herewith the following documents as per your requirement:

1. Regarding Payment of Advances to Sh. U.P. Singh Class-TV.

1. Copy of the proceedings of the Purchase Committee dated 30.3.2005 on which an advance of Rs. 30,000 was given to Sh. U.P. Singh, Class-IV through Cheque No. 049556 (p. 17).

2. Copy of settlement of advance of Rs. 30,000 duly signed by the Members of the Purchase Committee (p. 3).

3. Related (Dash Memos and Bills by which the purchases were made to settle the advance of Rs. 30,000 (pp. 1 to 16 except p. 3).

4. Copy of the proceedings of the Purchase Committee dated 22.3.2005 on which an advance of Rs. 15,000 was given to Sh. U.P. Singh, Class-IV through Cheque No. 049538 dated 22.3.2005 (p. 41).

5. Copy of settlement of advance of Rs. 15,000 duly signed by the members of the Purchase Committee (p. 26).

6. Related Cash Memos and Bills by which the purchases were made to settle the advance Rs. 15,000 (pp. 27 to 39).

7. Approval of the Chairman, Management Committee, ICM, Dehradun (p. 40).

2. Related Documents based on which payment of Rs. 200 as Electricity Charges was considered to be on the lower side.

1. Statements (from p. 1 to 25) which shows that the Electricity charges were considered to be on lower side.

3. Instructions issued by the NCCT to surrender STD Facility on the telephones installed at the Institute as well as residence of the Principal.

1. The Council's letter No. 7-1/87-Audit dated 27.11.1991 in terms of O.M. No. 7(2)-E (Coord)/91 dated 12.2.2001 and subsequent letter No. 6-1/90-F & A dated 24.10.1992.

2. When there are already instruction from the NCCT to reduce the expenditure on telephone, the question of using Mobile Phone does not arise.

4. Documents relating to Investment of Rs. 5,07,057 during 24.9.2004 to 25.4.2005 and Fact Finding Inquiry Report.

The statement showing investment of Rs. 5,07,057 and Fact Finding Inquiry Report are enclosed herewith (pp. 1 to 4)

Yours faithfully, Sd/- (Dr. N. Ranjana Devi) Joint Director (P)

9. The petitioner, having no alternative, had submitted his written statement of

defence on 20.8.2007 in a tentative manner against the charges levelled against him as all the necessary documents were not supplied to him. In his written statement of defence, the petitioner had denied all the charges levelled against him by giving a well reasoned statement for each of the charges levelled against him.

10. Without taking into consideration of the repeated requests of the petitioner for supplying him all the relevant documents mentioned in his said representation dated 25.6.2007 for enabling him to file an effective written statement of defence, the respondent had issued an order being No. 1-1/2/92-Pers dated 16.11.2007 for appointing one Shri Paramjit Sarma, Professor VMNICOM, Pune as Enquiry Officer to inquire into the charges framed against the present petitioner and also another order dated 16.11.2007 for appointing said Diwarkar Rai, Assistant NCCT, New Delhi as Presenting Officer, it is the further case of the petitioner that the said Shri Diwarkar Rai, cannot be appointed as the Presenting Officer inasmuch as the petitioner had made serious complaints against him for his misdeed during his stay at the office/ premises of ICM Dehradun and also that Shri Diwarkar Rai, who is holding a lower rank, shall be biased against the petitioner as the petitioner had made many serious complaints against him and also he had committed many illegal activities in a mala fide manner against the petitioner.

11. The respondents filed joint affidavit. In their joint affidavit it is stated that the competent authority is not bound to furnish or enclose all the documents/ papers relating to the charges levelled against the delinquent official. If the delinquent official makes a request/ representation, the authority shall supply those, which are not voluminous or of confidential in nature, but the delinquent official may get a chance for inspection of those relevant papers by visiting the office of the competent authority.

12. In reply to paras 6 to 9 of the writ petition, the respondents denied the allegation that the charges were not specific or vague. But, it is submitted that the competent authority is not bound to furnish or enclose all documents, papers relating to the charges to the delinquent officer. If the delinquent official makes a request, representation, the authority shall supply those which are not voluminous or of confidential nature, but the delinquent may get a chance for inspection of those relevant papers by visiting the office of the competent authority concerned.

13. On bare perusal of the joint affidavit in-opposition filed by the respondents as well as from the submission of the learned Counsel appearing for the respondents, it is the case of the respondents that the respondents are not bound to furnish or enclose all the documents/ papers relating to the charges to the delinquent official and the only documents which are not voluminous in nature could be supplied and also that the writ petitioner may get a chance for inspection of those relevant papers personally by visiting the office of the competent authority.

14. Mr. Tarunkumar, learned Counsel appearing for the petitioner strenuously contends that the respondents are bound to furnish all the documents relating to the said 6 charges against the petitioner even though those documents are voluminous and also that mere allowing the petitioner for inspection of the relevant documents would not be sufficient for filing effective written statement and also for a fair departmental proceeding. Mr. Tarunkumar, in order to substantiate his submission, has relied on the decision of the Apex Court: (1) Kashinath Dikshita Vs. Union of India (UOI) and Others, (2) State of U.P. Vs. Shatrughan Lal and Another, (3) Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others, and (4) The Government of Andhra Pradesh and Others Vs. A. Venkata Rayudu,

15. The gist of the fact in Kashinath Dikshita (supra) was that a preliminary enquiry was initiated against the petitioner. The copies of the documents on which reliance was placed in support of the charges and also the statement made by the witnesses at the said preliminary enquiry were not furnished to the petitioner, but the petitioner (appellant) was allowed to inspect the copies of the statement and documents in Question and make note without taking the help of his Stenographer. The Apex Court in that case held that no one facing a departmental enquiry can effectively meet charges unless the copies of the relevant statements and documents to be used against him are made available to him and also that mere allowing the petitioner/appellant to inspect the documents cannot be treated as a reasonable opportunity to defend himself. The facts of the case are spelt out in paras 2, 4 and 10 and the finding in para 14 of the SCC which read as follows:

2. The scope of the inquiry whether the impugned order of dismissal is null and void is restricted to two facets, Whether the principles of Natural Justice were violated by the respondents by refusing to supply to the appellant (1) copies of the statements of the witnesses examined at the stage of preliminary inquiry preceding the commencement of the inquiry and (2) copies of the documents said to have been relied upon by the disciplinary authority in-order to establish the charges against the appellant. Such is the position having regard to the fact that this Court whilst granting special leave, has so restricted the scope of the appeal in the following terms:

Special leave granted limited only to the question whether there was any violation of Article 311 of the Constitution in regard to the documents and the statement of witnesses referred to in the affidavit of the petitioner dated 12th February, 1977.

4. The following facts are not in dispute:

(1) The appellant had requested for the supply of the statements made by the witnesses at a pre-enquiry stage as also for copies of the documents on which reliance was placed in support of the charges levelled against him, as per his letter dated 21st April, 1962 addressed to the Chief Secretary.

(2) The request made by the appellant was in terms turned down by the Disciplinary Authority as per his letter dated 25th July, 1962.

(3) The Disciplinary Authority granted permission to the appellant to inspect the copies of the statements and documents in question, if he so desired.

(4) The request made by the appellant for being accompanied by his stenographer to whom he could dictate notes based on his inspection was in terms turned down by the Disciplinary Authority, though the appellant was told that he himself could make such notes as he desired on the basis of the inspection made by him.

(5) The aforesaid copies of the statements of the witnesses and the copies of the documents have not been supplied to the appellant till the conclusion of the departmental proceedings.

(6) In all as many as 38 witnesses were examined in the course of the departmental proceeding and as many as 112 documents were produced to substantiate the eight charges levelled against the appellant.

10. This application was unceremoniously rejected by the Board on 20th December, 1963. It is, thus, clear that the appellant's request for supply of copies of relevant documents and statements of witnesses has been refused in no unclear terms. We do not consider it necessary to burden the records by quoting the extracts from the letters addressed by the appellant and the reply sent to him. The extracts quoted hereinabove leave no room for doubt that the disciplinary authority refused to furnish to the appellant copies of documents and copies of statements. When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question; "What is the harm in making available the material?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it. It is not even the case of

the respondent that there was involved any consideration of security of State or privilege. No doubt the disciplinary authority gave an opportunity to the appellant to inspect the documents and take notes as mentioned earlier. But even in this connection the reasonable request of the appellant to have the relevant portions of the documents extracted with the help of his Stenographer was refused. He was told to himself make such notes as he could. This is evident from the following passage extracted from communication dated 25th July, 1962 from the disciplinary authority to the appellant:

The government has been pleased to allow you to inspect all the documents mentioned in Annexure II to the charge sheet given to you. While inspecting the documents, you are also allowed to take notes or even prepare copies, if you so like, but you will not be permitted to take a stenographer or any other person to assist you. In case you want copies of any specific documents; from out of those inspected by you, the request will be considered on merits in each case by the government. In case you want to inspect any document, other than those mentioned in Annexure II, you may make a request accordingly, briefly indicating its relevancy to the charge against you, so that orders of the Government could be obtained for the same. As pointed out above, if you wish to have copies of any specific documents, from those inspected by you, you should make a request in writing accordingly, mentioning their relevancy to the charge, so that orders of government could be obtained.

Government, however, maintains that you are not entitled to ask for copies of documents as a condition precedent to your inspection of the same. I am further to add that in case you do not inspect the documents on the date fixed, you will do so at your own risk.

14. In view of the pronouncements of this Court it is impossible to take any other view. As discussed earlier the facts and circumstances of this case also impel us to the conclusion that the appellant; has been denied reasonable opportunity to defend himself. In the result, we are of the opinion that the impugned order of dismissal rendered by the disciplinary authority is violative of Article 311(2) of the Constitution of India inasmuch as the appellant has been denied reasonable opportunity of defending himself and is on that account null and void. We accordingly allow the appeal. The judgment of the High Court is set aside. The impugned order of dismissal dated 10th November, 1967 passed against the appellant is quashed and set aside. We further declare that the impugned order of dismissal is a nullity and non-existent in the eye of law and the appellant must be treated as having continued in service till the date of his superannuation on 31st January, 1983. Taking into account the facts and circumstances of this case and the time which has elapsed we are of the opinion that the State Government should not be permitted to hold a fresh inquiry against the appellant on the charges in question. We, therefore, direct the State Government not to do so.

16. The Apex Court in *State of U.P. (supra)* reiterated that non-supply of the statements of witnesses recorded during the preliminary enquiry and also the

copies of the documents relied on to substantiate the charges shall vitiate the departmental enquiry. Para 10 of the SCC in State of U.P. (supra) read as follows:

10. It has been found that during the course of the preliminary enquiry, a number of witnesses were examined against the respondent in his absence, and rightly so, as the delinquents are not associated in the preliminary enquiry, and thereafter the charge sheet was drawn up. The copies of those statements, though asked for by the respondent, Were not supplied to him. Since there was a failure on the part of the appellant in this regard too, the Tribunal was justified in coming to the conclusion that the principles of natural justice were violated and the respondent was not afforded an effective opportunity of hearing, particularly as the appellant failed to establish that non-supply of the copies of statements recorded during the preliminary enquiry had not caused any prejudice to the respondent in defending himself.

17. The Apex Court in V.A. Venkata Raidu (supra) held that in a departmental enquiry, if any materials are sought to be used, the copies of that materials should be supplied to the party against whom such enquiry is being held. The Apex Court, further, held that even the copies of the G.Os. or direction of the Government should be placed before the enquiry and copies thereof should be available to the parties against whom enquiry is made for violation of the said G.Os. and direction of the Government. Para 9 of the SCC in Venkata made as follows:

9. We respectfully agree with the view taken by the High Court. It is a settled principle of natural justice that if any material is sought to be used in an enquiry, then copies of that material should be supplied to the party against whom such enquiry is held. In Charge-I, what is mentioned is that the respondent violated the orders issued by the Government. However, no details of these orders have been mentioned in Charge I. It is well settled that a charge sheet should not be vague but should be specific. The authority should have mentioned the date of the GO which is said to have been violated by the respondent, the number of that GO, etc., but that was not done. Copies of the said GOs or directions of the Government were not even placed before the enquiry officer. Hence, Charge-I was not specific and, hence, no finding of guilt can be fixed on the basis of that charge. Moreover, as the High Court has found, the respondent only renewed the deposit already made by his predecessors. Hence, we are of the opinion that the respondent cannot be found guilty for the offence charged.

18. Keeping in view of the ratio laid down by the Apex Court in the cases, discussed above and also the requirement of the documents for filing effective written statement, for which the petitioner filed the said representation dated 25.6.2007 for supplying the same to him, this Court is of the considered view that for fair departmental enquiry against the writ petitioner by giving him opportunity to file an effective written statement of defence, the respondents are duty bound to furnish the copies of those documents mentioned in the said representation of the petitioner dated 25.6.2007. This Court is of the further

view that the stand of the respondents in their joint affidavit in-opposition that respondents are not bound to furnish all the documents or/papers relating to the charges to the petitioner, is not sustainable in the eye of law.

19. It is fairly well settled that primary function of the Presenting Officer is to marshal the acts before the Enquiry Officer and to examine and cross-examine the witnesses produced during the trial. In order to achieve this aim, the Presenting Officer must act fairly and present the case in its true colour. The Presenting Officer, who must act fairly, shall not relate to any of the matters which is directly or indirectly related with the enquiry against the officer, against whom the enquiry is being held. For the fair departmental enquiry, there should not be any material against the Presenting Officer for having bias against the employee/officer against whom the departmental enquiry is being initiated. Justice must not only be done, but must also appear to be done. In the present case, there is strong case of likelihood of bias against the petitioner by the said Shri Diwarkar Rai, Asstt. NCCT, New Delhi, who had been appointed as Presenting Officer under the impugned order dated 16.11.2007 in the present departmental enquiry against the petitioner. This Court is of the considered view that for the ends of justice and for fair departmental enquiry against the petitioner, Shri Diwarkar Rai, Assistant, NCCT, New Delhi, should not be appointed as Presenting Officer in the present departmental enquiry.

20. For the aforesaid reasons, the impugned order dated 16.11.2007 for appointing Shri Diwarkar Rai, Asstt. NCCT, New Delhi as Presenting Officer, is hereby quashed and the respondents are further directed to furnish remaining copies of the documents mentioned in the representation dated 26. 5.2007 as early as possible to the petitioner and after furnishing those documents to the petitioner, the departmental enquiry against the petitioner may proceed.

21. With the above observation and direction, this writ petition is allowed to the extent as indicated above.