
(2008) 05 CAL CK 0033
In the Calcutta High Court
Case No : WPCT 645 of 2007

Supriya Basu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-05-2008

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10(1), 14
Central Civil Services (Conduct) Rules, 1964 — Rule 3
Constitution of India, 1950 — Article 226

Citation : (2008) 2 ILR (Cal) 954

Hon'ble Judges : Tapen Sen, J; Sadhan Kumar Gupta, J

Bench : Division Bench

Advocate : Arunava Ghosh and Anindya Lahiri, for the Appellant; Madan Mohon Mallick, Mousumi Mallick and J. Saha, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—This Writ Petition has come to us from the Order of the Central Administrative Tribunal, Calcutta Bench, Calcutta dismissing T.A. No. 1 of 1999 (W.P. No. 15480 (W) of 1997) on 15.3.2007 by Annexure- P 44. Apart from praying for the quashing of the said Order of the Tribunal, the Petitioner also prays for the following reliefs:

a) for quashing the Order dated 16.7.1996 (Annexure- P 6) passed by the Director (Respondent No. 6) whereby and whereunder, in purported exercise of powers conferred upon him under Rule 10(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and in contemplation of disciplinary proceedings, the Petitioner was sought to be put under suspension with a direction that he should not leave Head Quarters (Calcutta) without obtaining his permission;

b) for quashing the Charge-sheet dated 27.9.1996 (Annexure-P 8) issued by the said Director-cum-adhoc Disciplinary Authority, Regional Medical Research Centre for Tribals (ICMR), Jabalpur (Respondent No. 3);

c) for quashing the Order dated 8.1.1997 (Annexure-P 20) passed by the said Respondent No. 3 whereby and whereunder, on the ground of alleged "dilatory tactics" resorted to by the Petitioner in not submitting his Written Statement of defence in the nature of a Reply to the Charge-sheet, the Subsistence allowance being paid to him was reduced to 50% of the amount initially granted with immediate effect;

d) for quashing the Enquiry Report which was given to the Petitioner as an enclosure to Letter dated 25.11.1997 (Annexure-P 39) and which was issued by the said Respondent No. 3;

e) for quashing the Order dated 7.1.1998 (Annexure-P 41) issued by the Respondent No. 3 in the capacity of the adhoc disciplinary authority, whereby and whereunder he imposed the punishment of removal from service upon the Petitioner from the National Institute of Cholera and Enteric Diseases, Calcutta with the observation that such removal shall not be a disqualification for further employment;

f) for quashing the Memorandum dated 1.7.1999 issued by the Director General of the Indian Council of Medical Research (Respondent No. 2) (Annexure-P 43) whereby and whereunder the Appeal filed by the Petitioner was rejected thereby upholding the Order of removal from service passed on 7.1.1998 (vide Annexure-P 41);

g) for quashing the Memorandum dated 5.7.1999 (Annexure-P 43) issued by the Director, National Institute of Cholera and Enteric Diseases (Respondent No. 6) whereby and whereunder the Petitioner was informed that in terms of the Order of the Disciplinary Authority passed on 7.1.1998 as well as in view of the Order of the Appellate Authority passed on 1.7.1999 the Order dated 7.1.1998 (Annexure- P- 41) removing him from service was upheld by him (the appropriate authority);

h) for quashing the Order dated 15.3.2007 (Annexure-P 44) passed by the Central Administrative Tribunal, whereby and whereunder the Petitioner's Application being T.A. No. 1 of 1999 challenging the Order of removal from service was Dismissed.

i) for the issuance of an appropriate Writ or a Writ of or in the nature of a Writ of Mandamus Commanding upon the Respondents to release the outstanding salary of the Petitioner together with subsequent enhancements thereon plus Interest @ 18% till the date of actual payment;

j) for the issuance of an appropriate Order or a Direction, Directing the Respondents to release the arrears of Subsistence Allowance amounting to approximately Rs. 5 lakhs together with Interest thereon calculated at 18% till the date of payment.

2. The facts of the Case, as pleaded in the Writ Petition, is that the Petitioner was appointed as a Health Assistant in the services of the Respondent No. 4 (National

Institute of Cholera and Enteric Diseases) in the year 1989. His services were made permanent with effect from 7.9.1992.

3. According to the Petitioner, he is one of the main activists of the Staff Welfare Association which was duly recognised by the authorities by their letter dated 4.3.1986 as contained in Annexure-P 2 issued by the Respondent No. 6 by which he informed the Secretary of the said Staff Welfare Association that the Director General, ICMR (Respondent No. 2) had been pleased to accord formal recognition to the said Staff Welfare Association vide his letter No. 65/22/76-E.C.D II dated 21.2.1986.

4. According to the further case of the Petitioner, a room was also allotted from where the Association could carry on their day-to-day activities. Since he played a vital role in negotiating matters pertaining to the enhancement of the emoluments and improvement of the Conditions of Service of the employees, he became an "eye-sore" to the Authorities and because of his Trade Union activities, the Respondents always harassed him. The Petitioner has given references in Para-7 where he has stated that the Respondent No. 5 had restricted him on two consecutive occasions from joining the prestigious one year Post-Graduate Diploma Course in Health Education conducted by the Government of India. By his letter dated 6.1.1995 he had applied to the Respondent No. 5 for being allowed study leave but the same was refused without disclosing any reasons vide letter dated 6.4.1995 purporting to have been issued on behalf of the Respondent No. 5 who also directed the Petitioner not to address any further letters to him. As a consequence of such refusal, the Office of the Director, All India Institute of Hygiene & Public Health, Government of India informed the Petitioner that since he had not joined the D.H.E. Course by 21.7.1995, the offer of admission stood cancelled.

5. On 24.4.1996, the Petitioner again made a prayer for grant of study leave but that was again refused by the Administrative Officer by his letter dated 12.6.1996 on the ground that the Petitioner's application was "not in public interest". The Petitioner therefore lost his opportunity of enhancing his educational qualifications. These, according to the Petitioner, were examples showing that he suffered setbacks in his career on account of his trade union activities. Further case of the Petitioner was that on 16.7.1996, he prayed for casual leave in the 2nd half for some personal work. The Application was received and consequently approved by the competent authority. The Petitioner signed the Attendance Register in the first half and went out for making field survey.

6. Thereafter, having been released for the 2nd half on 16.7.1996, he left the premises for lunch but at about 1.55 P.M., he was urgently summoned by his co-employees to return saying that the Respondent No. 5, along with other Officers, had visited the Office of the Staff Welfare Association and had directed its member to vacate the room. The Petitioner was further informed that the Respondent No. 5, being the Director, had held out open threats that he would

"sack" the Petitioner. Being apprehensive of such a vindictive intention, the Petitioner, in his official capacity as the Joint General Secretary of the Staff Welfare Association, made a complaint before the local Police Station. Another complaint was lodged on 17.7.1996 by Kamal Kr. Sadhu being another Joint General Secretary of the Staff Welfare Association and in that complaint, Mr. Sadhu narrated the events of the previous day , i.e. on 16.7.1996.

7. According to the Petitioner, there are other Associations also but they have been allowed to occupy more than one room within the Institute as per Annexure-P 5A. According to the Petitioner, the room in which the Office of the Staff Welfare Association was situated, was located inside the premises of the Institution and on 16.7.1996 i.e. the day on which he was granted casual leave for half a day, the Respondent No. 5 entered the room during tiffin hours from the front and took over vacant possession of the room by ousting the members of the Staff Welfare Association. The room was then locked by the Respondent No. 5 from inside and he left the room through another door which was located behind the room.

8. On 17.7.1996, when the Petitioner went to resume his duties, he was served with the Order dated 16.7.1996 (Annexure-P6) putting him under suspension in contemplation of a departmental proceeding. On 24.7.1996, the Respondent No. 5 set up a "fact finding" Committee vide Annexure-P7 to enquire as to who was in possession of the room in the Animal House Section of the Institute and also, as to who was possessing the lock and key. The Committee was also required to find out the person responsible for sticking posters on the walls of the Institute building and to also find out as to whether any Office property was being used by the Staff Welfare Association for Association purposes.

9. On 27.9.1996 a Charge-sheet was issued, which according to the Petitioner, contained allegations which were all erroneous and incorrect. A corrigendum to the Charge-sheet was then issued vide Annexure-P9 on 30.9.1996. Subsequently and in view of the continuance of the suspension, an Order was passed on 10.10.1996 vide Annexure P-11 by the Respondent No. 3 directing that since the delay in issuing the Charge-sheet was not attributable to the Petitioner, the Subsistence Allowance be enhanced to 50%. Thereafter, by letter dated 14.10.1996 (Annexure P-12), the Petitioner was informed that Dr. R.S. Tiwari, Director, Regional Medical Research Centre for Tribals, Jabalpur in Madhya Pradesh, had been appointed as the Adhoc Disciplinary Authority. A further corrigendum to the Charge-sheet was issued on 7.11.1996 and yet, on the next day, i.e. on 8.11.1996, the Respondent No. 3 by Annexure P-14, refused to extend the time for submission of the Written Statement of defence and directed the Petitioner to file his reply within 15 days from the date of issuance of the said letter i.e. 8.11.1996.

10. On 25.12.1996 the Petitioner, by Annexure-P19, informed the Respondent No. 3 that he had been forced to submit a very brief reply in the absence of important documents. Accordingly he prayed for the said documents mentioned

therein and stated that in the event they were not supplied, the Charge-sheet should be dropped and he should be reinstated with exoneration from the charges.

11. On 8.1.1997, the Respondent No. 3 reduced the Subsistence Allowance on the ground that the Petitioner had not cooperated in the filing of the Written Statement of defence and that the delay was therefore directly attributable to him. Thereafter, and on the same day, a Presenting Officer as well as an Enquiry Officer to enquire into the charges levelled against the Petitioner were appointed by Annexures P-21 (at pages 147 and 148 of the Paper- book). The Petitioner stated that in the meantime, he filed a Writ Petition being W.P. No. 15480 (W) of 1997 *Supriya Basu v. Union of India* wherein he challenged the order of suspension, the Charge-sheet as well as the Order dated 8.1.1997 reducing the subsistence allowance.

12. The Petitioner then nominated one Dr. Ratanesh Kr. Sarkar as his Defence Assistant. The Enquiry commenced on 12.8.1997. A request was made to postpone the enquiry on account of the pendency of the aforementioned Writ Petition but the Enquiry Officer refused to do so and proceeded with the enquiry. According to the Petitioner, on 12.8.1997, the Examination-in-Chief of the Management witnesses who were 15 in number, continued beyond Office hours and the defence Assistant, realising that time will not permit their cross-examination, made a representation at 9.25 P.M. praying for an opportunity to cross examine the witnesses on 13.8.97 & 14.8.97 but the Enquiry Officer refused such a prayer and held the enquiry on various dates. According to the Petitioner, the Enquiry Officer was acting illegally and displayed a highly antagonistic attitude towards the Petitioner right from the very beginning. On 31.10.1997, the Petitioner filed his Written Brief before the Enquiry Officer. Subsequently, he was surprised to receive a letter dated 25.11.1997 signed by the Respondent No. 3 in which a copy of the Enquiry Report dated 20.11.1997 was enclosed and he was asked to submit his Representation thereto within 15 days.

13. The Petitioner stated that on perusal of the Report of the Enquiry Officer, it would appear that he has been found guilty on all the four charges by the Enquiry Officer. The Petitioner immediately sent a letter dated 15.12.1997 vide Annexure-P40 being in the nature of a Representation against the Report but on 7.1.1998, without considering the same in the manner that it should have been done, the Respondent No. 3 passed the Order imposing the penalty of Removal from Service upon the Petitioner.

14. The Petitioner then sent a letter dated 19.2.1998 by way of an Appeal to the Respondent No. 2 and according to the Petitioner, the Director General called him for hearing but the same was a mere eyewash as although the Petitioner made his submissions, the Director General proceeded with a preconceived mind.

15. In the meantime, on 3.6.1999 the Writ Petition being W.P. No. 15480 (W) of

1997 was transferred to the Central Administrative Tribunal where it was renumbered as T.A. 1 of 1999.

16. Thereafter the Petitioner received the Memorandum dated 1.7.1999 rejecting the Appeal filed by the Petitioner and subsequently the other impugned Orders were passed including the Order dated 15.3.2007 (Annexure P-44) which was passed by the Central Administrative Tribunal dismissing the Writ Petition filed by him.

17. In this Writ Petition before us, learned Counsel for the Petitioner has principally submitted that the entire attitude and/or action of the Respondent authorities in proceeding against the Petitioner was mala fide and that they built up a concocted story which they incorporated in the Charge- sheet and although these charges could not be proved, yet the authorities proceeded to punish him with the penalty of removal from service. The learned Counsel for the Petitioner also submitted that the Respondent authorities have punished the Petitioner by imposing the harshest of penalties which, in the facts of this case, would appear to be not only shocking to this Court but also, totally disproportionate to the nature of the offence alleged against the Petitioner.

18. In their Affidavit-in-opposition, the Respondents have stated that the Writ Petition is misconceived, based on unfounded surmises and conjectures and being speculative, it should be dismissed. According to them, the Petitioner was found to have committed the grave misconduct of insubordination by misbehaving and by exchanging unparliamentary and irrational language with no other person than the Director of the Institute which was totally unbecoming of a government servant and as such, unpardonable.

19. They have further stated that the scope of judicial review in such matters is very limited and in the instant case, there was no question of any denial of opportunity and at the time of cross-examination, the Petitioner was deliberately absent but his defence helper was present. They have stated that so far as the Appellate Authority's order is concerned, the Petitioner was given the opportunity of personal hearing, his documentary evidence was considered and the Appellate Authority merely confirmed the Order of the Disciplinary Authority and therefore, absence of reasons by the Appellate authority will not invalidate his order as per the Judgment of the Hon'ble Supreme Court passed in the case of State Bank of Bikaner and Jaipur and others Vs. Prabhu Dayal Grover, .

20. The Respondents have further stated that the Enquiry Officer conducted the enquiry and proved the misconducts which were of gross insubordination shown to the Head of the Institution in the presence of several senior superior Officers and therefore, the charge being very serious and detrimental to the status and dignity of the Research Institution, the punishment of removal from service was justified.

21. The Respondents have further stated in Para-9.4 under the heading "Parawise-Reply" of their Affidavit-in-opposition that the alleged Staff Welfare

Association is not recognised whereas another Staff Association which was recognised and to which a room had been allotted, was on the basis of its recognition but so far as the Petitioner is concerned, he has no nexus with the said recognised Association. The Respondents have further stated that the real fact is that on 16.7.1996, the Petitioner had behaved in an "insubordination manner with the Head of the Institution" in presence of several senior officers and therefore, his conduct was unbecoming of a government servant and therefore, his attempts to frustrate the findings of the disciplinary proceedings are totally unwarranted and do not deserve any consideration.

22. In answer to the statements made by the Petitioner in Para-9 of the Writ Petition, the Respondents have stated that the Petitioner has tried to introduce irrelevant facts based on surmises and conjectures which have no nexus with the matter in issue and because of his misconduct and insubordination, he has behaved in a manner "unbecoming" of a government servant and therefore, the scope of judicial review cannot be extended in his favour.

23. According to the learned Counsel for the Respondents, the procedure adopted in holding the disciplinary proceedings was perfectly within Rules and Procedure. A "fact finding enquiry" was firstly held which was followed by an Order of suspension, then payment of Subsistence Allowance. Thereafter appointments of the Disciplinary Authority, Enquiry Officer and Presenting Officer were made. Thereafter an enquiry was held in which the Petitioner was allowed to be represented by a Defence Assistant and finally, the Enquiry Report was supplied to the Petitioner. Then the Order of punishment was passed whereafter the Petitioner filed his Appeal. After considering the same, the Appellate Order was passed. Therefore, according to the learned Counsel appearing for the Respondents, the Authorities have strictly followed procedure and as such, the High Court should desist from interfering as the Respondents have followed the due process of law and specially Rule 14 of the Central Civil Services (Classification, control and Appeals Rules). Consequently, in view of the ratio laid down in the case of Union of India (UOI) and Another Vs. K.G. Soni, , the High Court should not interfere.

24. According to the learned Counsel, the Petitioner entered into an altercation with the disciplinary authority and used unparliamentary language which was subversive of discipline. Learned Counsel then refers to a letter dated 17.7.2006 (Annexure-P6) sent by the Director to the Senior Deputy Director General (Administration) reporting to him about the incident and submitted, that taking into consideration the gravity of the situation referred to therein, the action taken by the Authorities was fully justified. He submits that the letter of the Petitioner in retaliation to the Order of suspension contained language which shows that he was arrogant in nature right from the beginning and therefore, such persons should be dealt with firmly.

25. In the background of what has been pleaded, submitted and brought on record, this Court therefore has to consider as to whether the scope of judicial

review warrants interference by us in a case where the Authorities have proceeded against a delinquent employee purportedly following the procedure laid down in their own Standing Orders/Rules ? In this context but before we answer this question, we must look into a couple of documents which are absolutely crucial to the issue. To begin with, and as has been pointed out by the learned Counsel appearing for the Respondents themselves, the letter dated 17th July, 1996 (Annexure-P6 at page 94) of the Director, Mr. S.K. Bhattacharya himself indicates that it was a prelude to the Charge-sheet which was issued two months thereafter on 27.9.1996 (vide Annexure-P8 at page 102). We find that the said Director, National Institute of Cholera & Enteric Diseases wrote this to the Senior Deputy Director-General (Administration) ICMR; New Delhi wherein, while referring to the Order of Suspension given effect to upon the Petitioner vide his Order dated 16.7.1996 (Annexure-P6 at page 93), he justified the same by giving details of what had happened on 16.7.1996. He stated that he had gone to the USA on 6.7.1996 to attend a meeting after handing over temporary charge of the Institute to Dr. S.P. De, Deputy Director (Senior Grade). He returned on 14.7.1996 which was a Sunday and attended office on the same day but since it was a holiday, he did not notice anything unusual but in the evening of the same day he received an information over telephone that the Staff Welfare Association, which he termed as "fictitious and unrecognised" had converted a room which was meant for keeping the Sheep of the Animal House Section into an "Association Room" by putting a lock on the door and pasting a paper with the name of the "Staff Welfare Association" on the front room without any permission.

26. He then stated that after having received such an information and on the next day i.e. on 15.7.1996, he called for an explanation from one Dr. Ratanesh Kr. Sarkar, a Veterinary Officer and In-charge of the Animal House Section to explain as to how a room of the said Animal House Section could be converted into an Association Room. He was also asked to submit a Report giving details of the names of persons responsible for such action. The said Veterinary Officer agreed to submit a Report but on the next day i.e. on 16.7.1996 he himself absented from duty without information. Therefore, on the said day, i.e. on 16.7.1996 at about 1.30 P.M. the said Director, along with a few other Officers went towards the Animal House Section on the ground floor and found that the Petitioner, along with a few other employees, had forcibly and unauthorisedly occupied a room (used for keeping Sheep) in the Animal House Section located inside the Institute building on the ground floor. The Director, along with Drs. A. Dutta, S. Chakraborty, P. Datta, B.K. Sarkar, Monoj Kr. Chakraborty, P.Das, M.K. Bhattacharya, Sri Kamal Kr. Sadhu, a Caretaker requested the Petitioner to remove the lock and hand over the room immediately but he refused to hand over the key and "argued irrationally and in subordinate tone" which was "humiliating" him in the presence of so many Officers. Accordingly, he had no alternative but to put him under suspension.

27. Thus, through this letter (which is really the genesis of the Charge-sheet) we

notice that the allegations against the Petitioner were:

- a) the Director found that the Petitioner, along with a few other employees, had forcibly and unauthorisedly occupied a Room;
- b) the Director and the other Officers requested the Petitioner to "take out the lock" and "hand over the room";
- c) but the Petitioner vehemently refused to hand over the key and argued irrationally and in an insubordinate tone thus humiliating the Director in the presence of so many Officers.

A Charge-sheet was then issued after about 2 months on 27.9.1996 and upon a perusal of the Statements of the Imputations of the Misconducts in relation to the Charges, we find that Article-I thereof pertained to the allegation that the Petitioner had unauthorisedly occupied a Room which was meant for keeping Sheep of the Institute from 8.7.1996 to 16.7.1996 without permission. On 8.7.1996, it was noticed that the Petitioner had locked the room with his private lock and kept the keys in his personal custody. The Director had been out of the country from 6.7.1996 to 14.7.1996. Dr. Manoj Kr. Chakraborty who had been supervising the Animal Section had informed Dr. S.P. Dey (the acting Officer-in-charge during the absence of the Director) by his letter dated 8.7.1996 that the room had been illegally occupied in the name of Staff Welfare Association, (a fictitious and unrecognised entity) and that the keys were in the custody of the Petitioner.

28. It was further alleged in the Charge-sheet that on 8.7.1996 when Dr. S.P. Dey visited the site, he found the Petitioner along with a few other employees, playing cards inside the room during working hours which was also a Misconduct under Para-23 of the Government of India Orders under Rule 3 of the CCS (Conduct) Rules 1964. According to the allegations, this was one of the illegal purposes for which the room had been unauthorisedly possessed.

29. It was further alleged in the Charge-sheet that thereafter, the Director along with other Officers, visited the room at about 1.35 P.M. on 16.7.1996 and he found that a few employees were playing Cards inside the room and they told him that the keys were with the Petitioner. Therefore, according to the allegations, the Petitioner unauthorisedly occupied and possessed the room for illegal purposes like playing cards during Office hours and thus, the Petitioner prima facie committed a grave misconduct of "nondevotion to duties" which were "unbecoming of a government servant". This, in effect, is the imputation of Misconduct qua Article-I at running page 105 of the Writ Petition.

30. The next Imputation of Misconduct, namely Article-II pertained to the allegation which was to the effect that when the Director ordered the Petitioner to hand over the keys, he refused to carry out the said order in the presence of the several officials.

31. The 3rd Imputation of Misconduct, namely Article- III pertained to the

allegation that the Petitioner not only refused to hand over the keys but also indulged in arguments in an arrogant and impertinent manner in protest to the Orders of his Superior Officer in the Office premises and in front of several employees which was likely to have an adverse effect on the general discipline and harmony of the Institute.

32. The 4th Imputation of Misconduct, namely Article- IV pertained to the allegation that the Petitioner not only refused to obey the lawful orders but also continued to keep the room under his unauthorised possession and therefore on 17.7.1996, the Director of the Institute had to break open the lock in the presence of certain staff members of the Institute. It was further alleged that on 16.7.1996, at about 1.35 P.M. he had admitted, in the presence of several staff members of the Institute that he is in possession of the keys and thus, by illegally occupying the room in spite of Orders to vacate, he had committed a grave misconduct under Rule 3 (i), (ii) & (iii) of the CCS (Conduct) Rules, 1964.

33. These then were the charges against the Petitioner. Before we proceed, a point, which appear to us as rather curious is the repeated reference to the Staff Welfare Association as being "an unrecognised and a fictitious entity" as mentioned not only in the Imputation of Misconduct pertaining to Article -I but also referred to in Para-9(4) of the Affidavit-inopposition. We say this as being "curious" because we find from page-77 of the Writ Petition that the earlier Director, Sri S.C. Pal had sent a letter dated 4th March, 1986 (Annexure P-2) which was addressed to the Secretary of the said Staff Welfare Association informing him that the Director General, Indian Council of Medical Research, vide his letter dated 21.2.1986 had been pleased to accord formal recognition to the Staff Welfare Association. On the face of such a letter, this Court does not understand as to why the Respondents have repeatedly attempted to state that the Staff Welfare Association is a "fictitious and unrecognised entity" ? Moreover this letter has not been dealt with by the Respondents at all in their Affidavit-in-opposition. In this context, Para-6 of the Writ Petition and the reply thereto given by the Respondents in Para 9.4 of the Affidavit-in-opposition are therefore being quoted below:

6. The petitioner is one of the main activists for the Staff Welfare Association which was recognised by the respondent authorities vide its letter dated 04-03-1986. Subsequently it was also allotted a room from where it could carry on the day to day activities of the association. The petitioner played a vital role while negotiating with the respondent No. 4 with regard to the demands of the employees of the respondent No. 4 in connection with enhancement of the emoluments and improvement in the condition of service. Because of such leading role played by the petitioner in organising the employees of the respondent No. 4 he became the eye sore of the authorities. Copy of the letter of recognition of the Association dated 04-03-1986 is annexed hereto and marked with the letter "P-2".

9.4 The statement made in paragraph 6 of the said Application is incorrect,

misleading and malafide. The alleged staff welfare Association is not recognised as wrongly alleged. There is an other staff Association which has been recognised and an office room was allotted the recognised Association but the petitioner has not association with the said Association. Sub-Para (2) of paragraph 6 is vague, indefinite, conjecture and surmise, misleading, baseless, unfounded and as such I can not admit the correctness of the same. I beg to point out that it is apparent on the face of the record that the claimed of the petitioner was only considered by the Inquiry Authority where he found that there is no evidence either verbal or in writing that the disputed room was ever allotted to the staff welfare Association. So the allegation is concocted, moderated and malafide. Moreover he is not entitled to raise the issue in this Hon''ble High Court.

(Quoted but emphasis by bold fonts is by this Court)

Reading their Reply, it is thus evident that the Respondents veered of at a tangent because they were not able to reply to an existing document (Annexure P-2) which proved that the Staff Welfare Association is a recognised Association and not a "fictitious and unrecognised entity".

34. Reverting to the Imputation of Misconducts, we notice that in the aforementioned Articles of charges relating to the incident, one Dr. S.P. De has been referred to at a number of places and it is needless to mention that it is Dr. S.P. De who was handed over temporary charge of the Institute by the same Director Sri S.K. Bhattacharya (with whom the allegations qua the Petitioner are related to) prior to his visit to the U.S.A. We find his deposition as S.W.1 before the Enquiry Officer at Page 186 of the Writ Petition and upon its perusal, it is evident that all that he said was that he visited the room in question during tiffin hours "and found some employees playing cards inside the room" where the Petitioner was also present but in Article-I of the Imputations of Misconduct, the allegation was that Dr. S.P. De visited the site and found that Supriya Basu (Petitioner) along with few other employees, was playing cards inside the room during working hours. Thus, while in the Imputation of Misconduct qua Article-I the charge was that the Petitioner was also playing cards along with other employees, the statement made before the Enquiry Officer by Dr. S.P. De was that other employees were playing cards and the Petitioner was also present in the room.

35. State Witness No. 14, Sri Kamal Kr. Sadhu, Caretaker, whom the Director had mentioned in his letter dated 17.7.1996, stated (at running Page 194 of the Writ Petition) that at the time, the Petitioner was not in the spot as he had gone for lunch and he was called by another person and after his arrival the Director asked him to hand over the keys. Sadhu stated that the Petitioner then politely told the Director that he will hand over the keys after some discussions with him. Thereafter the Director gave him only two minutes and as such the Petitioner could not talk to the Director because of the short time. Yet, the Enquiry Officer says that the allegation is confirmed by the statement of Sadhu (SW-14). The relevant portion of the statement reads as follows:

Record of Deposition/Cross-Examination

SW-14 Calcutta

Deposition of Shri Kamal Kumar Sadhu aged around 57 years s/o Late Atul Krishna Sadhu R/o 13-A, Sura Cross Lane, Calcutta-700010 working as Care-taker, NICED, Calcutta.

I, Shri Kamal Kumar Sadhu, state that on 16.7.96 at around 1-35 PM when I was going for lunch outside the Institute the Director called me and brought me in the Ground Floor in front of a vacate room and he pushed the door and the door is opened. At that time some staff members of NICED, Calcutta was gossiping inside the room. Director asked them to come out from the room and immediately they came out. Then Director along with some staff members including myself entered into the room and asked me that he wanted to close the room. I told Director that the room can be closed from inside with the help of Chitkani. Accordingly the door was closed and the door of the backside of that room was also closed with the help of hold-drop and came out from this room through the corridor. The front portion of the door could not be locked since there was an another lock hanging on the hole meant for lock. Director enquired about the key of that particular lock and came to know that the key is lying with Mr. Supriya Basu. At that time Supriya Basu was not in the spot. As he went for lunch. He was called by an another person and after his arrival Director asked Supriya Basu to give the key. Supriya Basu then politely told Director that I will handover the key to you after some discussion with you. But Director gave him only two minutes time as such Supriya Basu could not talk to the Director because of the short time. This is the incident of 16.7.96 which I know.

(Quoted but emphasis by bold fonts is by this Court)

36. Similarly, the statement of SW-5, Dr. Monoj Kr. Chakraborty who was supervising the Animal Section stated before the Enquiry Officer that on 16.7.1996 when the Director visited the spot, he was physically present. The Director enquired about the key from the persons who were playing cards in that room and they told the Director that the key was with the Petitioner and then, on being called, the Petitioner came to the spot and told the Director that he was in possession of the key. He further stated that the Petitioner refused to hand over the key to the Director. Thus, the Petitioner, according to SW-5, was not playing cards.

37. A startling revelation comes from the statement of SW-6 Dr. B.K. Sarkar about whom the Director had mentioned in his report to the Senior Deputy Director General on 17.7.1996. This witness gave a statement (at page 192 of the Writ Petition) which is not only startling but it would also show that the contents of the Charge-sheet are not what they actually want to convey inasmuch as this witness specifically stated that the Director called him and requested him to accompany him. He along with the Director went to the ground floor near one of the rooms and found that there were some staff of NICED inside

the room. The Director asked them to vacate the room and "some people" said that it was the room for the Staff Welfare Association and cards used to be played there during lunch. However most of the Staff left the room and then "somebody pointed out" that the keys "might be" with the Petitioner who, at that time, was not even present there. It was after sometime that the Petitioner came and he was requested by the Director to hand over the key whereupon the Petitioner told the Director that he would discuss with the members and then there was "some exchange of arguments" regarding the key of the room but finally, the Director gave him 3 to 5 minutes to hand over the key and left the place. The Director also ordered to close the room and then at 3.15 P.M. the Director called Dr. B.K. Sarkar again and told him that he had decided to suspend the Petitioner because he had not handed over the keys to him. The statement of Dr. B.K. Sarkar is at Page 192 and the same is worth quoting:

Record of Deposition/Cross Examination

SW-6 Calcutta

Deposition of Dr. B.K. Sircar aged around 59 years s/o Late phanindra Chandra Sircar R/o CK-203, Sector II, Salt Lake, Calcutta-700091 working as Deputy Director, Incharge of Epidemiology Division, NICED, Calcutta.

I, Dr. B.K. Sircar, state that on 16.7.96 while I was going for lunch, the Director of the Institute called me from 2nd floor and requested me to accompanied with him. We went to Ground Floor near one of the room. Although the room was closed but not locked. One lock was seen in one of the whole of the hold- drop. There were some staffs of NICED inside that room. The Director ordered to vacate the room immediately. Some people said that it was the room for Staff Welfare Association and used to play during the lunch time playing cards. However, most of the staffs left that room. The Director requested them to handover the key immediately. Somebody pointed out that the key was not with them, might be with Mr. Supriya Basu who was the Joint Secretary of Staff Welfare Association. He was not present that time. After sometime Mr. Basu came to the spot, the Director requested him to handover the key immediately. Shri Basu informed the Director that he would discuss their member regarding the room. There was some exchange of arguments regarding the key and the room. Finally, Director gave him 3-5 minutes time to handover the key of the room and he left the place. Director also ordered to close the room from behind. After that I went to Canteen for lunch. About 3-15 PM Director called me again and said that he had decided to suspend Shri Supriya Basu, because Shri Basu did not handover the key as per his instruction. Examination-in-Chief is over.

(Quoted but emphasis by bold fonts is by this Court)

38. We thus find that the overall picture that emerges upon reading the Imputation of Misconducts as well as the statements of the witnesses is that a room belonging to the Institute had been occupied and some people were playing cards but the Petitioner was not actually playing cards. It is also evident,

even from the statement of the Director himself, that when the employees of the Institute (who were playing cards) told him that the key was with the Petitioner, that he asked one of them to call him. It was then that the Petitioner came and he argued in an insubordinate tone thereby the Director felt humiliated in the presence of the others. The relevant portion of the statement of Dr. S.K. Bhattacharya, reads as follows:

On 16.7.96 at 1-30 PM myself along with a few other officers of the Institute namely Drs. A. Datta, S. Chakrabarty, P. Dutta, B.K. Sircar, Monaj Kumar Chakrabarti, P. Das, M.K. Bhattacharya and Shri Kamal Kumar Sadhu, Care-taker of the Institute went towards the Animal Section House, on the Ground Floor of the Institute building and observed that several employees of the Institute were engaged in playing cards. So I told them to leave the room which they did. Then I asked them where is the key of the room, they said that it is with Shri Supriya Basu, Health Asstt., Epidemiology Section of the Institute. So, I asked one of them to call Shri Supriya Basu. Meanwhile, with the help of the Care-taker we locked the room from inside through the other door to which we entered through the side passage and locked the room from inside. Then Shri Supriya Basu came and I asked him do you have the key of this lock of this room with you? He said in the affirmative that the keys is with him then I requested him repeatedly to handover the key to me or to the Care-taker so that the lock which Shri Basu had put could be removed and we can take possession of the room from him. In spite of my repeated request he refused to handover the key of take out the lock. By that time a large crowd gathered there. Then Shri Kamal Kumar Sadhu, Care-taker joined me in requesting Shri Supriya Basu to handover the key or take out the lock. Then he started arguing irrationally and in insubordinate tone thus humiliating my orders in presence of so many staff of the Institute. I also told him that first you give the key of take out the lock and then if you have anything to say or discuss you are most welcome to do so. Still then he refused to obey my orders then I told him I am giving you some time (ten minutes) you can think over it and handover the key either to me or to the Care-taker and then I left the spot and entered my room. Then in the evening while leaving the office I found that the lock has now been put into both holes of the handle so that we cannot open the room from the corridor facing Electron Microscopy Room. So it is very clear that Shri Supriya Basu had put the lock in place again after I left the spot and took possession of the room again.

(Quoted but emphasis by bold fonts is by this Court)

39. Thus the charge to the effect that the Petitioner along with few other employees were playing cards inside the room has not been established at all. We are therefore, faced with a situation where at best, it can be said that the Petitioner argued with the Director in an arrogant and impertinent manner ("irrationally and in a insubordinate tone") as a result of which the Director felt that he had been humiliated.

40. Thus we come to a conclusion that although there is no evidence on record to

prove or establish that it was the Petitioner who had grabbed the room, yet the Enquiry Officer, mechanically came to the conclusion based on no evidence, that "Even if it is accepted that the room was lying vacant the action of the Staff Welfare Association through the Charged Officer to capture the room unauthorisedly and convert the same into a association room which is a part of the Govt. building, can not be appreciated. The Charged Officer, therefore, resorted to an unexpected act and extended the unlawful facility to the members of his association to indulge into unlawful activities". What therefore remains is perhaps the only offence of not giving the keys and arguing in a defiant and arrogant manner and/or in an irrational manner with the Director. Para- 53 of his analysis is therefore relevant to be taken note of and the same reads as follows:

53. As regards playing of cards in that room all the state witnesses as well as defence witnesses have deposed that the members of Staff Welfare Association used to play cards in that room. Some of the Defence witnesses have also deposed that union activities was also being carried out in that room. So there is no dispute about the possession and use of the room by the Staff Welfare Association. There is no evidence either verbal or in writing that the disputed room was ever allotted to the Staff Welfare Association. The defence witnesses have all the time tried to say that this was not a sheep-keeping room and they wanted to prove that the room was lying vacant and there was no incharge of this room. All the state witnesses have categorically stated in their deposition as well as cross- examination that the disputed room was a sheep keeping room under the animal house. Even if it is accepted that the room was lying vacant the action of the Staff Welfare Association through the Charged Officer to capture the room unauthorisedly and convert the same into a association room which is a part of the Govt. building, can not be appreciated. The Charged Officer, therefore, resorted to an unexpected act and extended the unlawful facility to the members of his association to indulge into unlawful activities.

(Quoted but emphasis by bold fonts is by this Court)

41. We are aware of the fact that in an Application under Article 226 we should not normally interfere with matters pertaining to disciplinary proceedings but when we find that the charges are such that they did not warrant the punishment of removal from service or that the punishment imposed is shockingly disproportionate, then we can certainly interfere as has been held by the Apex Court in the case of Union of India (UOI) and Another Vs. K.G. Soni, , which was cited by the learned Counsel for the Respondents himself to bolster his submission to the effect that the High Court should not interfere. Similar view has been taken by the Apex Court in the cases of V. Ramana Vs. A.P.S.R.T.C. and Others, and U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others, .

42. In the instant case, for an offence of "playing cards" or "for being in possession of a key" (though unauthorisedly) or for "arguing in an intemperate, irrational manner" with the Director, in our opinion, was not so serious that the

Petitioner should have been dismissed from service. Such a punishment, according to us and in the background of the charges alleged, shocks our conscience.

43. We find that these aspects were not at all gone into by the Tribunal. On the contrary, the Tribunal proceeded to straightaway shut out the Petitioner only because there was the charge of misbehaviour and/or causing humiliation to the Director. Let it be recorded that we have perused the depositions of each of the Witnesses that have been included in the Writ Petition and we find that none of them have confirmed the charge that the Petitioner had directly and actually humiliated the Director. All that we find is that some of them have stated that the Petitioner argued with the Director or that the keys of the room were not handed over in spite of the Order of the Director. We therefore feel that this is really a case of "hurt sentiments" of the Director but we do not, at the same time, uphold the conduct of the Petitioner who cannot be allowed to go totally free but taking into consideration the facts and circumstances involved in this case, we are satisfied that the punishment of removal from service is "shockingly disproportionate" and the interests of the Institution could have been taken care of by the imposition of a lesser punishment.

44. The Tribunal ought to have considered these aspects but without doing so, it straightaway came to the conclusion that misbehaviour and humiliating the Director were sufficient to inflict the punishment of dismissal. In doing so, he relied upon the case of Mahindra and Mahindra Ltd. v. N.B. Narawade etc. 2005(27) AIC 14 (S.C.) for the proposition that such a punishment was not disproportionate when the delinquent had used abusive and filthy language. In the instant case, there is no such charge of abusing the Director or using filthy language against him. Even the Director, in his own statement, has stated that the Petitioner started arguing irrationally and in an insubordinate tone. This does not amount using filthy or abusing language.

45. We are therefore of the view that the order of the Tribunal is erroneous which has proceeded to dismiss the case of the Petitioner mechanically and is therefore, fit to be set aside.

46. We accordingly set aside the Order of the Central Administrative Tribunal passed on 15.3.2007 in T.A. 1 of 1999 and as a consequence, we also set aside the impugned order of removal from Service but we remand the matter to the authorities to pass a fresh Order in terms indicated in Para-43 supra by leaving it entirely to the Respondents to decide as to what would be, according to them, a lesser punishment which would meet the ends of justice and also, the allegations. The Writ Petition is accordingly allowed. There shall however, be no Order as to costs. Upon appropriate Application(s) being made, urgent photostat Certified copy of this Judgment, may be given/issued expeditiously subject to usual terms and conditions.

Sadhan Kumar Gupta, J.

47. I agree.

Later:

48. After the aforementioned Judgment was delivered in Court, an oral Application was made on behalf of the Respondents for stay of the operative effect of this Judgment.

49. We have considered the said submission and we refuse the said prayer.