

(2007) 10 CAL CK 0021

In the Calcutta High Court

Case No : G.A. No. 1997 of 2004, A.P.O. No. 337 of 2005 and W.P. No. 1232 of 2003

Tea Board and Another

APPELLANT

Vs

Rasamoy Roy and Others

RESPONDENT

Date of Decision : 16-10-2007

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14(2), 14(4), 14(5), 15
Central Civil Services (Conduct) Rules, 1964 — Rule 3
Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (2008) 1 CHN 1 : (2008) 116 FLR 614 : (2008) 1 ILR (Cal) 245

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Kalidas Mukherjee, J

Bench : Division Bench

Advocate : Bhaskar Sen, Ashish Ghosh and M.K. Sarkar, for the Appellant; Jaharlal Dey and Surajit Sen, for the Respondent

Final Decision : Dismissed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal is directed against the judgment and order dated 2nd April, 2004 passed by the learned Single Judge while finally deciding the writ petitioner bearing W.P. No. 1232 of 2003.

2. The writ petitioner was an employee of the appellant herein who was ultimately served with an order of compulsory retirement. The instant appeal has been preferred at the instance of the writ petitioner demanding cancellation and/or withdrawal and/or recalling of the aforesaid final order of compulsory retirement dated 4th April, 2003 issued by the Chairman of the appellant No. 1.

3. In July, 1996, a departmental proceeding was initiated against the respondent No. 1 who was the Accounts Officer of the appellant No. 1 and posted at Coonoor. As investigation was conducted by the Director of the appellant No. 1 to ascertain the facts of the case relating to the complaint against the respondent No. 1 being the charged officer. On September 5, 1996, a charge sheet was issued against the

respondent No. 1 disclosing the following four articles of charge:

i) On 6th May, 1996, the respondent No. 1/charged officer wilfully neglected to discuss an official matter of urgency with his senior officer, the Additional Director of Tea Development Authority which is contrary to the conduct and behaviour of an officer of his equivalent status of the appellant Board attracting the provisions of Rule 3 of CCS. (Conduct) Rules, 1964.

ii) In April, 1996 while acting as the Accounts Officer, the respondent No. 1/charged officer had in his own handwriting made derogatory remarks against Smt. Ajitha Nathan, U.D.C. in one of the official files, bearing No. 14(5)/RCS/BG/CNR/1996-Akkamalai, which were found irrelevant and unnecessary causing undue embarrassment to the said Ajitha Nathan since deceased.

iii) During the period and while functioning in the aforesaid office, the respondent No. 1/charged officer had once again written derogatory remarks in a file of the appellant Tea Board against the said Smt. Nathan which was unbecoming of his conduct and the said file remained untraceable thereafter although the same was marked to the respondent No. 1/charged officer.

iv) While functioning in the aforesaid Coonoor office, the respondent No. 1/charged officer on 21.6.96. failed to produce the aforesaid file bearing No. 14(5)/RCS/BG/CNR/1996-Akkamalai when he was specifically asked to bring the same by the C.R.E. and he replied to the latter in presence of a senior A.D.T.D. in a manner which is most unbecoming of his conduct and behaviour attracting Rule 3 of C.C.S. (Conduct) Rules, 1964.

4. Along with the above chargesheet, a list of witnesses was forwarded to the respondent No. 1.

5. On 5th September, 1996 after issuance of the aforesaid chargesheet an Inquiry Officer was also appointed by the appellants. On 19th September, 1996, the respondent No. 1 submitted his reply to the aforesaid chargesheet. Thereafter, the Inquiry Officer conducted the inquiry which was duly participated by the respondent No. 1. The Inquiry Officer filed his report to the disciplinary authority and a copy of the said report was duly forwarded to the respondent No. 1 who in turn filed his representation in writing against the said inquiry report. On March 17, 1997, the disciplinary authority passed an order inflicting punishment of compulsory retirement upon the respondent No. 1.

6. Thereafter, the respondent No. 1 filed a writ petition being W.P. No. 9942(W) of 1997 challenging the validity of the aforesaid order of compulsory retirement dated 17th March, 1997 passed by the disciplinary authority. By a judgment and order dated 20th August, 1998, the Hon"ble Justice Satyabrata Sinha (as His Lordship then was) was pleased to set aside the said order of compulsory retirement dated 17th March, 1997 upon holding that since the report of the Investigating Officer was not served upon the respondent No. 1, the said order dated March 17, 1997 was passed in violation of the principle of natural justice.

By the said order His Lordship was further pleased to direct the disciplinary authority, inter alia, to supply a copy of the said report to the respondent No. 1.

7. In compliance with the said order dated 20th August, 1998, the relevant report of the Investigating Officer was made available to the respondent No. 1. Instead of availing personal appearance, the respondent No. 1 submitted his written reply to the said report of the Investigating Officer.

8. On 22nd September, 1998, the Chairman of the appellant Board informed the respondent No. 1 that further inquiry would be held against him under the provisions of CCS (CCA) Rules, 1965 read with Bye-laws 31 and 31A of the Tea Board Bye-Laws, 1955. Thereafter, fresh inquiry was held and the respondent No. 1 duly participated in the said inquiry. On 25th June, 1999, the disciplinary authority passed a final order imposing major penalty of compulsory retirement against the respondent No. 1 w.e.f. 25th June, 1999.

9. The respondent No. 1 then filed another writ petition being W.P. No. 2116 of 1999 before this Hon'ble Court challenging the validity of the aforesaid order of compulsory retirement dated 25th June, 1999. During the pendency of the said writ petition, on 31st July, 2000, the respondent No. 1 attained the age of superannuation and accepted all his retirement benefits without prejudice. By an order dated 8th December, 2000, the Hon'ble Justice Barin Ghose (as His Lordship then was) was pleased to set aside the aforesaid order of compulsory retirement dated 25th June, 1999 on the ground of violation of principles of natural justice. By the said order, His Lordship was pleased to direct as follows:

i) For the purpose of disciplinary proceeding it shall be deemed that the petitioner is still in service.

ii) The disciplinary authority shall direct the Inquiry Officer, and if he is not willing or unable to function as such Inquiry Officer, to appoint another Inquiry Officer and to direct him to start the inquiry de novo from the stage when the subject report was rendered in evidence upon giving the petitioner appropriate opportunity to cross-examine the person who tendered the said report in evidence.

iii) The Inquiry Officer, upon completion of the inquiry, shall prepare his report and submit a copy thereof to the disciplinary authority. In the event, the disciplinary authority is not disagreeing with the findings of the Inquiry Officer, it shall furnish a copy thereof to the petitioner whereupon the petitioner shall be liable to make representation in respect of the inquiry report.

iv) The disciplinary authority thereupon shall decide whether to retain the order already passed or to revoke the same and pass a fresh order. Until such time, it shall be deemed that the petitioner without prejudice to his rights in the pending inquiry has been compulsorily retired from Tea Board.

10. The appellant acted upon the said order dated 8.12.2000 and since the earlier Enquiry Officer expressed his unwillingness to proceed with further

enquiry, another Inquiry Officer namely, the respondent No. 3 herein, was appointed and fresh inquiry thereafter commenced. The respondent No. 1 duly participated in the said inquiry without insisting on examination of the said Shri Cherrian Mancha or any other officer and without raising any objection. The Inquiry Officer filed his report dated 13th September, 2002 holding that out of the aforesaid four charges against the respondent No. 1, the first two charges have been proved fully and the 3rd and 4th charges have been partially proved against the said respondent No. 1.

11. The Enquiry Officer forwarded his enquiry report to the disciplinary authority being the Chairman of the appellant Board who in turn forwarded a copy of the said report to the respondent No. 1. Upon receipt of the said inquiry report, the respondent No. 1 on 2nd December, 2002 submitted his written representation to the disciplinary authority. After receiving the written representation of the respondent No. 1 against the aforesaid report of the Inquiry Officer, the disciplinary authority considered the case and passed an order on 4th April, 2003 retaining the earlier order of compulsory retirement of the respondent No. 1 w.e.f. 25.6.99.

12. Challenging the aforesaid order of the disciplinary authority dated 4th April, 2003, the respondent No. 1 herein filed another writ petition which has been disposed of by the judgment and order under appeal passed by the learned Single Judge. In the aforesaid writ petition, the respondent No. 1 herein challenged the disciplinary proceedings on the ground of violation of Rules 14(4) and (5) of the CCS (CCA) Rules as the Inquiry Officer was appointed on 5th September, 1996 i.e. on the same day when the chargesheet was issued. The respondent No. 1/writ petitioner further alleged that the order of the disciplinary authority dated 4th April, 2003 is also liable to be set aside on the ground of violation of the principles of natural justice as in spite of direction contained in the said order dated 8th December, 2000 passed in W.P. No. 2116(W) of 1999, no opportunity was given to the said respondent No. 1 to cross-examine Shri Cherrian Mancha, who after investigation submitted his preliminary investigation report. It was also alleged on behalf of the respondent No. 1 that the findings of the Inquiry Officer on each of the charges were based on no evidence and, therefore, the same were perverse and untenable in law.

13. The learned Single Judge by the judgment and order under appeal dated 2nd April, 2004 was pleased to allow the aforesaid writ petition filed by the respondent No. 1 herein and set aside the order of compulsory retirement dated 4th April, 2003 passed by the disciplinary authority. Being aggrieved by the aforesaid judgment and order dated 2nd April, 2004 passed by the learned Single Judge, the appellants herein have preferred the instant appeal.

14. It has been submitted on behalf of the appellants that this Hon'ble Court while exercising writ jurisdiction cannot interfere with the decision of the disciplinary authority by re-appreciating the evidence as an appellate authority. Mr. Bhaskar Sen, learned Senior Counsel representing the appellants herein

submits that in the instant case, it cannot be said that there was no evidence before the disciplinary authority for drawing adverse findings against the respondent No. 1/charged officer. Mr. Sen further submits that the Court cannot decide on the sufficiency of evidence.

15. Referring to the judgment and order under appeal Mr. Sen specifically urged before this that the learned Single Judge while exercising the power of judicial review re-appreciated the evidence as an appellate authority which is not permissible in view of the principle of law as already settled by the Hon''ble Supreme Court. The learned Senior Counsel of the appellants referred to and relied on the following decisions of the Supreme Court in support of his aforesaid arguments:

1) AIR 1963 SC 404 State of Orissa and Anr. v. Muralidhar Jana (Paragraphs 14 and 15 at page 408)

2) State of Andhra Pradesh Vs. Sree Rama Rao,

3) Govt. of A.P. and Others Vs. Mohd. Narsullah Khan, .

16. In our considered opinion, the principles of law as laid down by the Hon''ble Supreme Court in the aforesaid decisions are very much applicable in the facts of the present case.

17. Going through the judgment and order appeal passed by the learned Single Judge we find that the said learned Single Judge on various occasions while coming to the specific findings in respect of the issues raised in the said writ petition appreciated the evidence of the parties. Some of the observations of the learned Single Judge as mentioned in the judgment and order under appeal are set out hereunder:

...I have carefully perused the records of this case and the detailed analysis of the evidence given by both the parties as would appear from the enquiry report as also the written statement of defence submitted by the petitioner... When the said peon was cross-examined she stated, "I also do not recall at this point of time that the charged officer said that he would come after some time." This clearly establishes the fact that the said peon could not positively deny the fact that the petitioner had in fact said that he would come after some time. It has also been established from the evidence that at the relevant point of time there were large number of files over which the petitioner was working on. The petitioner was an Accounts Officer and was involved in the work of checking of accounts which necessarily involves tallying of figures. Leaving such work in the midst can cause serious inconvenience to a person dealing with accounts. The vital question which arises for consideration is whether the petitioner wilfully neglected to discuss a matter of urgency. From the nature of evidence led by parties in the enquiry it does not appear to me that there has been any wilful negligence on the part of the petitioner...it appears to me that the charges were based on extremely flimsy evidence.... In the instant case, as I have already

indicated a large part of the evidence on the basis of which the charges were sought to be proved against the petitioner were based on oral evidence. Even the evidence, which was relied upon, was not conclusive in nature....

18. The learned Single Judge in the aforesaid judgment and order under appeal has also observed that there is no conclusive evidence on the basis of which the charges can be proved against the writ petitioner although the said learned Single Judge observed in various other paragraphs of the said judgment and order under appeal about the existence of the oral evidence and/or flimsy evidence. Therefore, it cannot be said that in the present case, there is no evidence against the respondent No. 1.

19. The respondent No. 1, however, raised several other serious allegations relating to holding of the disciplinary proceedings against the said respondent No. 1 in an illegal, improper and irregular manner. It has been urged on behalf of the respondent No. 1 that prior to initiation of disciplinary proceeding, an investigation was conducted by the appellant herein and the report of the said Investigating Officer was the basis of the chargesheet issued to the respondent No. 1. The Learned Counsel of the respondent No. 1 specifically urged before this Court that the preliminary investigation which formed the basis of the chargesheet issued to the writ petitioner by one Sri C. Mancha was not produced in course of the de novo inquiry and thus, the writ petitioner was prevented from cross-examining the said Sri C. Mancha.

20. From the earlier order passed by Barin Ghosh, J. (as His Lordship then was) while deciding the earlier writ petition filed on behalf of the respondent No. 1 we find that a specific direction was given to the disciplinary authority to direct the Enquiry Officer to start the inquiry de novo from the stage when the said report was tendered in evidence upon giving the writ petitioner appropriate opportunity to cross-examine the person who tendered the said report in evidence. In spite of the aforesaid specific direction passed by Barin Ghosh, J. on 8th December, 2000 while deciding the earlier writ petition being W.P. No. 2116 of 1999, the Enquiry Officer did not arrange for production of said Sri C. Mancha in order to enable the respondent No. 1 herein to cross-examine Sri C. Mancha for the purpose of disproving the basis of the charges mentioned in the chargesheet.

21. It has been contended on behalf of the appellants that the report of Sri C. Mancha was not considered in the subsequent de novo inquiry and, therefore, it was not necessary to examine said Sri C. Mancha on behalf of the prosecution. We do not appreciate the aforesaid stand taken on behalf of the appellants herein.

22. The chargesheet on the basis whereof the subsequent de novo inquiry was conducted against the respondent No. 1 herein was admittedly, prepared on the basis of the enquiry report of said Sri C. Mancha and, therefore, the appellants herein should have granted adequate opportunity to the respondent No. 1 to cross-examine said Sri C. Mancha specially when Barin Ghosh, J. by the order

dated 8th December, 2000 directed the disciplinary authority to grant the respondent No. 1 appropriate opportunity to cross-examine the person (Sri C. Mancha) who tendered the said report.

23. Not allowing a vital witness namely, Sri C. Mancha to be cross-examined by the respondent No. 1, despite the order of the High Court, (Barin Ghosh, J.) should be viewed seriously as, in our opinion, the same constitutes a clear violation of the principles of natural justice in conducting a fair disciplinary proceedings against the chargesheeted employee like the respondent No. 1.

24. The respondent No. 1 made another serious allegation against the disciplinary authority to the effect that the chargesheet was issued by the said disciplinary authority even without considering his reply. Referring to the memorandum dated 5th September, 1996 issued by the Chairman, Tea Board, Mr. Jaharlal De, Learned Counsel of the respondent No. 1 submits that before holding the enquiry against the respondent No. 1, a specific direction was given to submit a written statement of defence within ten days from the receipt of the said memorandum. It was also specifically mentioned in the said memorandum dated 5th September, 1996 by the Chairman, Tea Board that in the event, no written statement of defence has been filed then the inquiring authority may hold the inquiry.

25. However, from the records we find that the chargesheet was issued on the very same day i.e. on 5th September, 1996 although specific ten days time was granted to the respondent No. 1 herein to file his reply in answer to the memorandum dated 5th September, 1996. Mr. De, Learned Counsel of the respondent No. 1 submits that in the present case, chargesheet was issued on 5th September, 1996 upon giving ten days time to the said respondent No. 1 to file his reply but on the very same day, Enquiry Officer was appointed by the disciplinary authority without waiting for the submission of reply and after considering the same in order to come to the conclusion whether the enquiry was at all needed. Mr. De submits that the aforesaid act on the part of the disciplinary authority clearly constitutes biased attitude towards the respondent No. 1 apart from violation of Rules 14(4) and (5) of the CCS (CCA) Rules. Mr. De referred to and relied on a decision of the Supreme Court in the case of State of Punjab v. V.K. Khanna and Ors. reported in 2001 (2) SCC 330 (paragraphs 20, 21 and 24).

26. Mr. Sen, learned Senior Counsel of the appellants submits that the aforesaid point raised on behalf of the respondent No. 1 is devoid of any merit and is barred by the principles of res judicata. The learned Senior Counsel of the appellants submits that before filing the last writ petition, which was finally disposed of by the judgment and order under appeal, the respondent No. 1 had filed two other writ petitions bearing W.P. No. 9942(W) of 1997 and W.P. No. 2116(W) of 1999 challenging the earlier two orders relating to compulsory retirement issued against the respondent No. 1 herein. In none of the aforesaid earlier two writ petitions, the respondent No. 1 herein challenged the validity of the disciplinary proceedings on the ground of violation of Rules 14(4) and (5) if

the CCS (CCA) Rules and, therefore, according to the learned Senior Counsel of the appellants, the respondent No. 1 cannot challenge the disciplinary proceeding on the ground of violation of the aforesaid Rules 14(4) and (5) of the CCS(CCA) Rules in view of the provisions contained in Section 11, Explanation IV of the CPC relating to the principles of constructive res judicata. The aforesaid Explanation IV to Section 11 of the Code of the Civil Procedure is set out hereunder:

Section 11. Res Judicata...Explanation IV.--Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

27. Mr. Sen referred to and relied on a decision of the Supreme Court in the case of Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others, , which is set out herein below:

20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11, CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to our essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force.

28. The learned Senior Counsel of the appellants further submits that the aforesaid Rules 14(4) and (5) of the CCS (CCA) Rules are not mandatory in nature and in any event, the requirements under the aforesaid rules should be deemed to have been waived in the present case by the express conduct of the respondent No. 1. The learned Senior Counsel of the appellants also submits that the respondent No. 1 had all along participated in the disciplinary proceedings without raising any objection with regard to any alleged violation of the requirement and/or provisions under the said Rules 14(4) and (5) of the CCS (CCA) Rules, 1965 and, therefore, it should be presumed that the said respondent No. 1 by his express conduct had waived his right under the aforesaid rules.

29. Mr. De, Learned Counsel of the respondent No. 1, however submits that

there can be no estoppel against the statute and requirements of the statutory rules cannot be waived. Mr. De referred to and relied on the following decisions of the Supreme Court in this regard:

- 1) Nookala Setharamaiah Vs. Kotaiah Naidu and Others,
- 2) Vishnu Kumar Khatar Vs. State of Bihar and Others
- 3) Union of India and Others Vs. Rakesh Kumar etc., .

30. In any event, we do not find that the respondent No. 1 herein voluntarily waived any right. The aforesaid point regarding violation of the Rules 14(4) and (5) of the CCS(CCA) Rules, 1965 was admittedly, not challenged in the earlier writ petitions filed before the learned Single Judge of this Court although the same was established.

31. In the present case, undisputedly, we are to examine whether the disciplinary proceedings initiated against the respondent No. 1 was conducted in an appropriate manner upon complying with the provisions of the prescribed Service Rules and also following the principles of natural justice. There is no dispute that the provisions of Rules 14(4) and (5) of the CCS(CCA) Rules, 1965 have not been complied with while conducting the disciplinary proceedings against the respondent No. 1. Mr. Sen sought to argue that the requirements of the aforesaid Rules are not mandatory in nature but we do not accept the same. In our opinion, the disciplinary authority cannot avoid its obligation to comply with the aforesaid Rules 14(4) and (5) of the CCS(CCA) Rules, 1965 in order to ensure strict observance of the principles of natural justice. The aforesaid Rules 14(4) and (5) of the CCS(CCA) Rules, 1965 are set out hereunder:

14. Procedure for imposing major penalties.-

(1)....

(2)....

(3)....

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article or charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and state whether he desires to be heard in person.

(5)(a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary to do so, appoint under Sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the

disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall Act in the manner laid down in Rule 15.

(b) If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge, or may, if it considers it necessary to do so, appoint, under Sub-rule (2), an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

32. The Hon"ble Supreme Court in the case of State of Punjab v. V.K. Khanna (supra) has specifically held as hereunder:

20. The factual score details out that on 24.4.1997 the impugned chargesheet was issued and the petitioner was asked to submit his reply within 21 days. Statement of imputation will be appended, though rather longish, but shall have to be appended in order to appreciate the issue of mala fides as raised by respondent No. 1 in his writ petition. The same however, reads as below:

1. Shri V.K. Khanna, IAS, while posted as Chief Secretary to Government, Punjab, issued two notifications in the Delhi Special Police Establishment Act empowering CBI to inquire into the two matters viz.:

(i) amassing assets disproportionate to the known means of income by Shri Bikramjit Singh, IAS; and

(ii) allotment of land and funds to the Punjab Cricket Association.

CBI registered FIRs in these two cases. In processing these cases, Shri V.K. Khanna, IAS, acted in a mala fide manner and in gross violation of established norms and procedures of Government functioning and in utter disregard of All-India Service Rules, principles of objectivity, fair play, integrity and the high morals expected of a senior civil servant.

2. Shri V.K. Khanna, IAS, processed the cases with undue hurry and undue interest, not actuated by the nature of cases. This is demonstrated by the following:

(i) Even though elections were on and polling took place on 7th February and the then CM. was in her constituency, away from Chandigarh, most of the action was completed on 6th February and on 7th February which was a holiday. The papers travelled thrice between Chandigarh and Lehragaga on February 6.

(ii) Neither in her first note of 6th February, nor in her second note of the same day did the C.M. direct that the cases were to be handled at breakneck speed.

(iii) The statutory notification issued on 7th February were neither sent to the

L.R. as required by the rules of business of the Punjab Government nor were they sent for gazetting as required by law.

3. Shri V.K. Khanna, IAS, antedated and fabricated the record. Some of the actions/noting, which is shown to have been done on 6.2.1997 and 7.2.1997, was actually done on 8.2.1997. This is established by a fact finding inquiry conducted by Shri Surjit Singh, IAS, Principal Secretary, Vigilance. The notifications and the letters addressed to the Director, CBI were issued and forwarded to the Director, CBI any time after 8.2.1997 A.N. and were predated as on 7.2.1997.

4. Shri V.K. Khanna, IAS, with malicious intent kept the entire operation a closely guarded secret until CBI had completed all formalities and had registered the FIRs. This is demonstrated by the following facts/events:

(i) All papers pertaining to these cases were taken away from the personal staff of CS. and were handled and retained entirely by Shri Khanna himself including delivery of the notification and letters to CBI.

(ii) He took away the files and retained them till the night of 24.2.1997 in one case and 26.2.1997 in the other case, whereas CBI registered cases on 25.2.1997.

(iii) He did not mention anything about these two sensitive cases to the new Chief Minister and Chief Secretary after formation of the new Government, though he met them formally and informally several times before handing over charge as the Chief Secretary.

(iv) When the file for appointment of Shri Bikramjit Singh, IAS, as Principal Secretary to Chief Minister was put up to CM. on 14.2.1997, while pendency of vigilance enquiries against him was referred to, no reference whatsoever, was made to the most relevant fact that less than a week earlier, a case of corruption against him had been sent to CBI a fact which was known only to Shri Khanna and which must have been very fresh in his mind in view of the unusual interest taken in it by him.

5. Shri V.K. Khanna, IAS, failed in the proper discharge of his duties as Chief Secretary, when while putting up to C.M. the file pertaining to the appointment of Shri Bikramjit Singh as Principal Secretary to Chief Minister on 14.2.1997, he did not record the important and most material fact that a case of corruption against Shri Bikramjit Singh had been referred to CBI only a week earlier.

6. Shri V.K. Khanna, IAS, falsely recorded in the files that the Advocate General had been consulted in these cases. In fact, no such consultation took place.

7. Shri V.K. Khanna, IAS, after handing over the charge as Chief Secretary on 14.2.1997 A.N. returned the two files on the above two cases on 15.2.1997 to an officer of the Vigilance Department. The same day he summoned the two files without authority and detained them for a long time with ulterior motives. He

recalled both the files on the plea that the files being top secret in nature would be handed over to the Additional Secretary, Vigilance. However, the two files were returned on 24.2.1997 and 26.2.1997. He, therefore, remained in unauthorised possession of these two files after handing over charge as Chief Secretary.

8. Shri V.K. Khanna, IAS, did not make any proper attempt to verify the assertions and allegations in his note dated 6.2.1997 and in the note of the then CM. of the same date in the PCA case. No. 1 proper preliminary inquiry was conducted in the matter nor was any opportunity to explain given to those who might have been adversely affected by the decision. These are most elementary prerequisite to any such decision by a civil servant. No serious effort was made to ascertain the full facts. Whereas the record shows that the decision to give land at nominal cost and the release of funds had the clear and repeated approval of the Housing Board/PUDA, Finance Department and the then C.M. and whereas the Council of Minister and even Vidhan Sabha had categorically endorsed these decisions, none of these facts was brought on the file. His entire conduct was malicious and premeditated and amounted to total abuse of the authority vested in him.

9. Shri V.K. Khanna, IAS, in referring these cases to CBI violated Election Code issued by the Election Commission of India. He also violated Government instructions issued by himself as Chief Secretary on 10.2.1997 under which it was stipulated that in view of impending change of Government, no important cases were to be disposed of by Secretaries to the Government without showing them to the new Ministers who were to take office shortly. That these two cases were important, is proved by the attention paid by Shri V.K. Khanna. In fact, there was a clear intention on the part of Shri V.K. Khanna to complete all action in these cases before the new Ministry took office. Shri V.K. Khanna, further failed to put up these cases for the information/approval of the new Chief Minister till he handed over the charge as Chief Secretary, late on 14.2.1997.

21. Soon after the issuance of the chargesheet however, the press reported a statement of the Chief Minister on 27.4.1997 that a Judge of the High Court would look into the charges against Shri V.K. Khanna this statement has been ascribed to be mala fide by Mr. Subramaniam, by reason of the fact that even prior to the expiry of the period pertaining to the submission of reply to the chargesheet, this announcement was effected that a Judge of the High Court would look into the charges against respondent No. 1 - Mr. Subramaniam contended that the statement depicts malice and vendetta and the frame of mind so as to humiliate the former Chief Secretary. The time has not expired for assessment of the situation as to whether there is any misconduct involved, if any credence is to be attached to the press report, we are afraid Mr. Subramaniam's comment might find some justification.

33. In the present case, no doubt serious prejudice has been caused to the respondent No. 1 by the aforesaid conduct of the disciplinary authority as the

said disciplinary authority has expressed its biased attitude towards the respondent No. 1 herein by appointing Enquiry Officer without even waiting for the submission of written reply by the respondent No. 1 within the prescribed time-limit as mentioned in the memorandum dated 5th September, 1996. Furthermore, when the specific Service Rule provides for consideration of the reply of the chargesheeted employee before taking the decision regarding holding an inquiry, the disciplinary authority cannot refuse to comply with the same. The disciplinary authority without complying the requirements as mentioned in Rules 14(4) and (5) of the CCS (CCA) Rules, 1965 has committed serious irregularities in the matter of conducting disciplinary enquiry and the said irregularities cannot be cured in any manner afterwards.

34. The principle of res judicata has also no manner of application in the facts of the present case as the disciplinary authority while conducting the disciplinary proceedings is bound to comply with the specific provisions of the Service Rules and must strictly follow the earlier judgment of Justice Barin Ghosh, which is binding on them. Mr. De referred to and relied on the following decision of the Supreme Court in support of his aforesaid arguments:

- 1) Allahabad Development Authority Vs. Nasiruzzaman and Others,
- 2) Smt. V. Rajeshwari Vs. T.C. Saravanabava,
- 3) Nand Kishore Vs. State of Punjab, .

35. The principles of law decided by the Hon''ble Supreme Court in the aforesaid decisions are very much applicable in the facts of the present case.

36. In our view, the aforesaid lapses constitute serious infirmities in conducting the disciplinary proceedings against the respondent No. 1 herein at the instance of the disciplinary authority including the appellants herein. Furthermore, several witnesses were not produced before the Inquiry Officer, which has been seriously viewed by the learned Single Judge. The specific observations of the learned Single Judge. The specific observations of the learned Single Judge in this regard and mentioned in the judgment and order under appeal are set out hereunder:

It will appear from the charges framed against the petitioner was such that a great deal would depend upon oral evidence in the matter of proving and/or disproving the charges. Accordingly, non-production of a vital witness when such witness was named as the witness for prosecution creates a doubt about the manner in which the prosecution conducted the proceedings against the petitioner.

37. We are in full agreement with the aforesaid observations of the learned Single Judge.

38. We cannot approve the conduct of the disciplinary authority for non-production of Sri C. Mancha the Enquiry Officer to enable the respondent No. 1 herein to cross-examine him in spite of the specific direction passed earlier by

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39. It may be that the learned Single Judge while appreciating the evidence adduced by different witnesses has gone a little beyond his sphere, which obviously we cannot approve, but at the same time, we also cannot ignore the other serious infirmities and/or irregularities in conducting the disciplinary proceedings against the respondent No. 1 herein. In spite of specific direction passed earlier by this Court, Sri Cherian Mancha was never produced as a witness during the proceeding although the chargesheet was based on the report of said Sri Cherian Mancha. The disciplinary authority also did not produce vital witnesses before the Enquiry Officer during the inquiry proceedings including the witness who was even named in the list of witnesses by the prosecution and thus, the respondent No. 1 was denied the right of cross-examination.

40. This Hon'ble Court while deciding the earlier two writ petitions passed specific orders against the appellants herein and in spite of the said orders passed by this Hon'ble Court, the disciplinary authority did not conduct the disciplinary proceedings upon complying with the relevant provisions of the Service Rules and due observance of the principles of natural justice and procedural justice.

41. The learned Single Benches of this Hon'ble Court on the earlier two occasions set aside the punishment of compulsory retirement imposed upon the respondent No. 1 herein upon pointing out the various irregularities and illegalities. The disciplinary authority should have taken note of the earlier observations of this Court while conducting de novo enquiry. Unfortunately, in spite of granting repeated opportunities, the disciplinary authority herein failed and neglected to conduct the disciplinary proceedings against the respondent No. 1 in an appropriate manner upon complying with the provisions of the relevant Service Rules and observing the principles of natural justice.

42. For the aforementioned reasons, we are of the opinion that no case has been made out for inflicting punishment upon the respondent No. 1. In our considered opinion, the disciplinary authority unnecessarily magnified the issues in order to victimise the respondent No. 1.

43. In the aforesaid circumstances, we are constrained to hold that the disciplinary proceeding has been vitiated due to various infirmities and irregularities in conducting the disciplinary proceedings by the disciplinary authority as discussed hereinbefore and, therefore, we have no hesitation to hold that the punishment of compulsory retirement imposed upon the respondent No. 1 herein cannot be sustained in the eye of law and the learned Single Judge has rightly set aside and/or quashed the same, may be on some other grounds also.

44. We, therefore, do not like to interfere with the ultimate direction passed by the learned Single Judge in the judgment and order under appeal on the ground of the aforesaid illegalities, irregularities and infirmities committed by the appellants including the disciplinary authority while conducting the disciplinary

proceedings.

45. This appeal thus stands dismissed.

There will be, however, no order as to costs.

The appellants are directed to carry out the order of the learned Single Judge within six weeks from date.

Let xerox copies of this judgment duly countersigned by the Assistant Registrar of this Court be supplied to the parties herein on undertaking to apply for the certified copy of the same immediately.

Kalidas Mukherjee, J.

I agree.