

**(2011) 07 DEL CK 0014**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 720 of 2008**

The Secretary, (Railway Board) and Another

APPELLANT

Vs

Sh. R.K. Sareen

RESPONDENT

**Date of Decision : 26-07-2011**

**Acts Referred:**

**Citation : (2011) 07 DEL CK 0014**

**Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J**

**Bench : Division Bench**

**Advocate : Kumar Rajesh Singh and V.S.R. Krishna, for the Appellant; Meenu Mainee, for the Respondent**

**Final Decision : Allowed**

## **Judgement**

Sudershan Kumar Misra, J.—The Petitioners, Secretary, Railway Board and the General Manager, Northern Railways have challenged the order dated 12th July, 2007 of the Central Administrative Tribunal, Principal Bench in OA No. 760/2005 titled as "Sh. R.K. Sareen v. UOI through the Secretary, Railway Board and Anr." setting aside the penalty order of withholding of 100% monthly pension on permanent basis and the forfeiture of the entire amount of gratuity that was inflicted upon the Respondent, pursuant to the disciplinary proceedings, on the ground that the copy of the second stage advice of Central Vigilance Commission (hereinafter referred to as CVC) was not given to the Respondent. Thus leaving the other grounds open and allowing the original application partly, the matter was remitted back by the Tribunal to the Disciplinary Authority in order to serve upon the Respondent a copy of the second stage CVC advice and thereafter to take a final decision within a period of two months from the date of receipt of the copy of the order dated 12th July, 2007.

2. The Respondent was served a memorandum of chargesheet for major penalty on 29th January, 2002 on the allegation that he had demanded an amount of Rs. 20,000/- from Shri Bhagwant Goel, contractor for clearing his pending bills amounting to about 2 lakhs. Before the charge sheet was drawn against the

Respondent, CVC first stage advice was sought by the Petitioners and thereafter, during the inquiry proceedings the witnesses were examined and on consideration of the defence statement, the inquiry officer had found the Respondent guilty of the charges made against him. The finding of the inquiry officer was also sent to CVC for second stage advice. The material which was before the Disciplinary Authority was also sent to the UPSC and as the Respondent had superannuated on 31st August, 2003, the penalty of withholding 100% monthly pension on permanent basis and forfeiture of entire amount of gratuity had been inflicted on him in consultation with UPSC. The penalty imposed on the Respondent was challenged by him in an original application before the Tribunal contending, inter alia, that the Respondent was not the concerned bill clearing authority, which infact had been the prerogative of his lower officers and therefore, the charge against him had not been established. The CBI raid had also failed to culminate in his prosecution. While taking various legal grounds for quashing the order of punishment, the Respondent also contended that the order of the President was non-speaking and that the copy of the second stage CVC advice was not provided to the Respondent. The Respondent relied on State Bank of India and Ors. v. D.C. Aggarwal and Anr., 1993 SCC (L&S) 109 and the CVC Instructions dated 28th September, 2000 mandating the furnishing of the copy of the CVC second stage advice by the Disciplinary Authority to the charged officer before passing the penalty order against him. Before the Tribunal, it was contended on behalf of Respondent that CVC advice was an additional material which had weighed on the Disciplinary Authority while imposing the penalty, and by not supplying the copy of the second stage CVC advice the Respondent was deprived of a reasonable opportunity to effectively defend himself, which was in violation of the principles of natural justice. The learned Counsel for the Respondent had also relied on some of the orders passed by the Tribunal, holding that the copy of the second stage advice of CVC ought to have been given to the charged officer.

3. The order of the Disciplinary Authority was also challenged on the ground that the Disciplinary Authority had not taken into consideration the representations made by the Respondent and he had merely passed bald orders showing complete non-application of mind, by mechanically agreeing with the recommendations of the UPSC.

4. The pleas and contentions of the Respondent were contested by the Petitioners contending, inter alia, that the CVC guidelines of 28th September, 2000 are not applicable in Railways and consequently, there was no requirement to serve upon the Respondent a copy of the CVC advice. The Petitioners also relied upon the decision of the Apex Court in UOI v. T.V. Patel (Civil Appeal No. 2067/2005 decided on 19th April, 2007) to contend that non-affording the advice tendered by the UPSC would not vitiate the punishment imposed on the Respondent, nor would the Respondent have a vested right or cause of action to have a copy of the UPSC advice. However, the Tribunal, considered whether or not the Disciplinary Authority should have passed a reasoned order and also

referred to the instructions issued on 13th July, 1981 which was reiterated by the Railway Board's letter dated 5th December, 1985 stipulating that the Disciplinary Authority has to record the reasons when acting as a quasi-judicial authority. The Tribunal also referred to the order of the President and observed that the President instead of applying his mind independently, had relied upon the advice tendered by the UPSC and that the contentions of the Respondent were not considered in the right perspective. The Tribunal also held that the Presidential order, on the face of it, is a bald order signifying non-application of mind, which cannot be countenanced in the wake of the role of the quasi-judicial authority, which is also an infraction to the principles of natural justice. Though the Tribunal observed that the Presidential order was an infraction to the principles of natural justice, however, while setting aside the penalty order, the Tribunal held that the other grounds have been left open and that the original application was partly allowed, on the ground that the copy of the second stage CVC advice was not given to the Respondent and not on the ground that the Presidential order is bald and showing non-application of mind.

5. The impugned order is challenged by the Petitioners primarily on the ground that non supply of the second stage CVC advice will not vitiate the penalty imposed upon the Respondent, as it had not been stated by the Respondent anywhere as to what was the relevance of the second stage CVC advice and there was nothing on record to show that the CVC second stage advice had been taken into consideration and whether it had caused prejudice to the charged officer. So much so, that neither the Petitioner nor the Respondent even produced a copy of the second stage CVC advice before the Tribunal. Even in the present writ petition, on the basis of which allegedly the penalty order dated 9th March, 2004 imposing a penalty of withholding 100% monthly pension on permanent basis and forfeiture of entire amount of gratuity, has been challenged by the Respondent but the copy of the second stage CVC advice has not been filed. The Petitioners also contended that the order of the President dated 9th March, 2004 was not to be read in isolation, as it is to be read along with the UPSC advice which forms part and parcel of the said order and in any case, the Tribunal did not set aside the order dated 9th March, 2004 on the ground that it was a non-speaking order, even though such observations were made, however ultimately all the other grounds were left open, except for the ground that the copy of the second stage CVC advice was not supplied to the Respondent, thereby, setting aside the order of penalty and remitting the matter back to the Disciplinary Authority to pass an appropriate order after supplying a copy of second stage CVC advice to the Respondent.

6. Learned Counsel for the Petitioners categorically contended that the Presidential order has been set aside only on the ground that copy of the second stage CVC advice was not rendered and not on any other grounds as is apparent from the operative paragraph of the Tribunals order which is as under:

22. Leaving other grounds open, OA is partly allowed. Impugned order is set

aside. However, the matter is remitted back to the disciplinary authority to serve upon the applicant copy of the second stage CVC advice and thereafter, to take a final decision within a period of two months from the date of receipt of a copy of this order. No costs.

7. Learned Counsel for the Respondent, Ms. Mainee, also agreed that all other grounds have been left open and the presidential order dated 9th March, 2004 has been set aside only on the ground that the copy of the second stage CVC advice was not given to the Respondent. Though an observation had been made by the Tribunal stating that the said order is bald, as it is alleged to be without giving any reasons and is contrary to the principles of natural justice.

8. The learned Counsel for the Petitioner in order to impugn the order dated 12th July, 2007, has contended that according to the allocation of business rules, CVC is to be consulted at two stages and according to the guidelines of CVC dated 28th September, 2000, it is not applicable to Railways and therefore, there was no requirement to serve upon the Respondent a copy of the CVC advice. Reliance was also placed on a letter dated 16th June, 2004, which was in reply to the letter addressed to the CVC regarding consultation with CVC and making available a copy of the CVC advice to the charged officer. In the reply dated 16th June, 2004, it was categorically stipulated that the matter regarding consultation with CVC and making available a copy of the CVC advice was extensively discussed in the meeting of CV Os of Zonal Railways. The contention of the CVC which was incorporated in the letter dated 16th June, 2004 is as under:

The advice tendered by the CVC is just that, it is for the D.A. to apply his mind independently on the facts of the case and come to a conclusion on the nature of proceedings under the relevant rules of the organization and later the decision on the inquiry report and the quantum of punishment. The role of the CVC is to ensure that disciplinary cases having vigilance overtones are dealt with properly in the overall interest of integrity and probity in public service. To this extent the disciplinary action against the charged officers, is not expected to be influenced by the advice from the CVC. Where, however, the Disciplinary Authority relies on the advice and communication from the CVC-cases should really be exceptional. It is only fair and just that the charged officer should have access to this advice in order to defend himself properly. The overriding concern of the CVC, when it issued the circular under question, is with regard to satisfying the principles of natural justice. The Railway Board will have to take necessary action to decide on this issue keeping in view the spirit behind the circular. It will be open to them to take a view on supplying copies of the CVC's advice on a case to case basis ensuring always that principles of natural justice are not violated. Should this be contested by the CO, it will be for the Railway Board to satisfy any Court that the charged officer has not been adversely affected by their decision to withhold copies of documents including CVC's advice.

9. The learned Counsel for the Petitioners also contended that the advice of the CVC has to be supplied only if it is considered during the disciplinary proceeding

and the charged official specifically asks for it.

According to the learned Counsel in special cases such request need not be considered, however, the competent authority has to record the reason for not supplying such documents and relied on decision of Supreme Court in Civil Appeal No. 3369/2010 decided on 16th April, 2010 titled as "Union of India and Ors. v. Alok Kumar". The counsel also contended that from the order of the disciplinary authority it is apparent that the disciplinary authority while passing the order of penalty has relied on the advice rendered by the UPSC, but has not referred to the second advice of the CVC. It is asserted that the charged officer has not alleged as to how he has suffered prejudice on account of non furnishing of the CVC second stage advice, which factors have not been considered by the Tribunal, and the order of penalty dated 9th March, 2004 has been set aside by the Tribunal mechanically without adjudicating other grounds and remitting back the matter to the disciplinary authority to take the final decision.

10. The writ petition is contested by the Respondent contending inter-alia that any material which is considered by the disciplinary authority, including the CVC report, should be supplied to the charged officer before the imposition of penalty and reliance was placed on the decision dated 1st October, 1993 of the Constitution Bench of the Supreme Court in case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., The learned Counsel also relied on the decision of the Supreme Court in the matter of State Bank of India and others Vs. D.C. Aggarwal and another, holding that when CVC second stage advice is obtained, a copy thereof may be made available to the concerned employee along with the IO's report, in order to give him an opportunity to make the representation against the IO's finding and the CVC advice, if he desires to do so.

11. This Court has heard the learned Counsel for the parties in detail and has perused the documents and the pleadings of the parties. It is surprising that even though the Respondent had sought the quashing of penalty order dated 9th March, 2004 on the ground that the copy of the second stage CVC advice was not given to him, however, neither the Respondent nor the Petitioners have filed the copy of the second stage CVC advice. The copy of the second stage CVC advice which was allegedly not given to the Respondent had not been filed by either of the parties even before the Tribunal. The Tribunal primarily set aside the penalty order on the ground that the copy of the CVC advice was not given to the Respondent and also assumed that the CVC advice was considered by the disciplinary authority while imposing the punishment under Rule 9(2) of the Railway Service (Pension) Rules, 1993. While dealing with the plea of the Petitioners that the CVC guidelines of 28th September, 2000 would not be applicable in Railways and, therefore, there was no requirement to serve upon the Respondent a copy of the CVC advice, the Tribunal has held as under:

Another ground raised is also relevant to be adjudicated, which is non-furnishing to the applicant the second stage advice of the CVC under the Railway Servants (Discipline & Appeal) Rules, *ibid*. Though we do not find any methodology for

CVC advice, the Railways are following CVC consultation and advice at two stages. One at the time of charge sheet and other at the time of infliction of the penalty. By prescription, there is an admission of the Railways as to the amenability in the matter of procedure to the CVC advice. We are also not impressed by the contentions raised by learned Counsel for Respondents that CVC guidelines are excluded by necessary implication in the wake of allocation of business Rules. Government including Railways as a model employer are stopped from taking contradictory stand and also not to indulge in approbating and reprobating simultaneously. No doubt, in the present case, on first stage advice by the CVC, charge sheet culminated into the enquiry report, which had been sent by the disciplinary authority to the CVC for its second stage advice and acting on the aforesaid advice. Matter has been referred to the President, which in turn consulted the UPSC and ultimately penalty has been inflicted upon the applicant. Railway Board Circular i.e. RBE-93/2001 dated 16.05.2001 and RBE 167/2002 dated 23.09.2002 recognizes consultation with the CVC. In so far as the CVC report is concerned, the Apex Court in the case of D.C. Aggarwal (supra) observed as under:

5. Reliance was placed on Sub-rule (5) of Rule 50 which reads as under:

(5) Orders made by the Disciplinary Authority or the Appointing Authority as the case may be under sub-rules (3) and (4) shall be communicated to the employee concerned, who shall also be supplied with a copy of the report of inquiry, if any.

12. The Tribunal has further held that non supply of the CVC advice, prepared behind the back of the Respondent, without his participation and as the Respondent did not know about the material that was relied on by the disciplinary authority, it is violative of procedural safeguard and contrary to fair and just enquiry. The Tribunal had observed as under:

But non-supply of CVC recommendation which was prepared behind the back of Respondent without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry.

13. The Tribunal has also held that the Respondent prior to service of the order passed by the disciplinary authority did not have any occasion to note that CVC had submitted some report against him and repelled the contention on behalf of the Petitioners that the CVC advice is confidential which could not be supplied. According to the Tribunal, the CVC advice prior to the initiation of proceedings, is different from the advice which was the basis of the punishment order passed by the disciplinary authority and, therefore, any material which has been collected behind the back of an employee, having an adverse inference and which can impact upon the service career of a Government servant, application of the principle of audi alteram partem applies and mandates furnishing of the CVC advice to the delinquent officer. The Tribunal has also referred to the CVC circular

dated 28th September, 2000 relevant portion of which is as under:

Para 3.6 (iii), Chapter XI and Para 8.6, Chapter XII of the Vigilance Manual, Vol. 1, provide that the advice tendered by the Central Vigilance Commission is of a confidential nature meant to assist the Disciplinary Authority and should not be shown to the concerned employee. It also mentions that the Central Vigilance Commission tenders its advice in confidence and its advice is a privileged communication and, therefore, no reference to the advice tendered by the Commission should be made in any formal order.

14. The Tribunal observed that the CVC circular dated 28th February, 2000 categorically stipulated that Para 3.6 (iii), Chapter XI and Para 8.6, Chapter XII of the Vigilance Manual, Vol.I and also para 2 of the Commission's letter No. 6/3/73-R dated 20th August, 1974 was to be treated as deleted. The Tribunal also held that it does not find in the CVC advice any exclusion of the Railways from its purview and, therefore, if CVC advice at two stages is sought by the Railways, the CVC mandate, which is based on the principle of audi alteram partem and the decision of the Apex Court would be applicable mutatis mutandis. Thus, non-furnishing of the second stage advice to the Respondent, when such an advice resulted in the infliction of penalty, violates the principles of natural justice and has caused prejudice to the Respondent. Finding of the Tribunal in paragraph 20 and 21 of the impugned order is as under:

20. We do not find in CVC advice any exclusion of the Railways from its purview. Accordingly, once CVC advice at two stages has been sought in Railways, the CVC mandate, which is based on audi alteram partem and decision of the Apex Court would have applicability mutatis mutandis. Unless the same has been specifically excluded from its application under the Railway Rules, which we do not find to have been placed by the Respondents. The decision of the Madras Bench of the High Court where non-supply of CVC advice has been held not to have vitiated the order, the observation of the High court in so far as CVC advice was on the count that there was no rule or Government order mandating the departmental supply copy of the CVC advice. As we find CVC OM of 28.9.2000 mandates supply of the copy of CVC advice, the aforesaid decision would not have application and is rather per-incuriam of the CVC instructions dated 28.09.2000.

21. In this view of the matter, non-furnishing of the second stage advice to the applicant when such an advice resulted in infliction of penalty violates principles of natural justice and has caused prejudice to the applicant.

15. During the pendency of the petition, this Court had directed the parties to file circular dated 28th September, 2000 and the latest circular of 2004 issued by Central Vigilance Commission along with an affidavit by order dated 23rd July, 2008, pursuant to which an affidavit dated 20th August, 2008 of Sh. Sunder Singh, Senior Personnel Officer(Gaz.), Railways, Baroda House, New Delhi was filed. The circular dated 28th September, 2000 pertaining to consultation with

CVC and making available a copy of CVC's advice to the concerned employee in para 3 stipulates as under:

The Commission, at present, is being consulted at two stages in disciplinary proceedings, i.e. first stage advice is obtained on the investigation report before issue of the charge sheet, and second stage advice is obtained either on receipt of reply to the charge sheet or on receipt of inquiry report. It, however, does not seem necessary to call for the representation of the concerned employee on the first stage advice as the concerned employees, in any case, gets an opportunity to represent against the proposal for initiation of departmental proceedings against him. Therefore, a copy of the Commission's first stage advice may be made available to the concerned employee along with a copy of the charge sheet served upon him, for his information.

However, when the CVC's second stage advice is obtained, a copy thereof may be made available to the concerned employee, along with IO's report, to give him an opportunity to make representation against IO's findings and the CVC's advice, if he desires to do so.

16. The said circular stipulates that the Commission's second stage advice along with the disciplinary authority's views may be made available to the concerned employee and on receiving his representation, if any, the disciplinary authority may impose a penalty in accordance with the Commission's advice, or if it feels that the employee's representation warrants consideration, it may forward the same, along with the records of the case, to the Commission for its reconsideration. However, subsequently by clarification given in letter dated 16th June, 2004 it was stipulated that the role of CVC is to ensure that the disciplinary cases having vigilance overtones are dealt with properly in the overall interest of integrity and probity in public services and to this extent the disciplinary action against the charged officer, is not expected to be influenced by the advice from the CVC. The said circular further stipulated that it will be open to the Railway Board to take a view on supplying the copies of CVC advice on a case to case basis ensuring always that principles of natural justice are not violated. According to that circular, it is for the Railways to satisfy any Court that any charged officer has not been adversely affected by their decision to withhold copies of documents, including the CVC advice. The relevant CVC advice dated 16th June, 2004 is as under:

The advice tendered by the CVC is just that, it is for the D.A to apply his mind independently on the facts of the case and come to a conclusion on the nature of proceedings under the relevant rules of the organization and later the decision on the enquiry report and the quantum of punishment. The role of the CVC is to ensure that disciplinary cases having vigilance overtones are dealt with properly in the overall interest of integrity and probity in public service. To this extent the disciplinary action against the charged officers, is not expected to be influenced by the advice from the CVC. Where, however, the Disciplinary Authority reliance on the advice and communication from the CVC ? cases should really be

exceptional. It is only fair and just that the charged officer should have access to this advice in order to defend himself properly. The overriding concern of the CVC, when it issued the circular under question, is with regard to satisfying the principles of natural justice. The Railway Board will have to take necessary action to decide on this issue keeping in view the spirit behind the circular. It will be open to them to take a view on supplying copies of the CVC's advice on a case to case basis, ensuring always that the principles of natural justice are not violated. Should this be contested by the CO, it will be for the Railway Board to satisfy any Court that the Charged officer has not been adversely affected by their decision to withhold copies of the documents including CVC's advice.

17. This is not disputed that the Respondent, while challenging the order of punishment before the Tribunal in his original application, did not file the copy of the CVC second stage advice nor did he seek the production of the second stage advice from the Petitioners before the Tribunal. From the perusal of the original application filed before the Tribunal it is also apparent that it has not been pleaded by the Respondent as to what was the relevancy of the second stage advice of CVC in respect to the order of punishment passed against him by the disciplinary authority. In the absence of the copy of the CVC advice, the production of which was not sought by the Respondent, it cannot even be inferred whether it had been taken into consideration by the disciplinary authority while imposing the punishment of withholding of 100% monthly pension and forfeiture of entire amount of gratuity on the Respondent. From the said order of punishment it cannot be inferred that CVC's advice was taken into consideration while passing the said order.

18. There is no averment by the Respondent whether any prejudice had been caused to him/charged officer on account of non supply of second stage CVC advice to him. The learned Counsel for the Respondent has not been able to refute that it is a settled rule of departmental proceedings that it is for the charged officer/delinquent officer to specifically raise such an issue and discharge the onus of prejudice.

19. From the record produced before us it is clear that there is nothing to show that the CVC's second stage advice had actually been taken into consideration and that the second stage advice had affected the mind of the disciplinary authority while considering the defence of the delinquent officer and imposing the punishment of withholding of pension and forfeiture of gratuity upon him. It is also no more res integra that unless the second stage advice had actually been considered and had some prejudicial affect on the interest of the Respondent, it would not be necessary for the Court to interfere in the departmental enquiry proceedings on this ground.

20. In Sunil Kumar Banerjee Vs. State of West Bengal and Others, though the Vigilance Commissioner had been consulted but the copy of the Vigilance Commissioner's report was not supplied to the charged officer. A three Judge bench of the Supreme Court had taken the view that the finding of the

disciplinary authority and its decision was not tainted nor was the order of the disciplinary authority held to be illegal. The Supreme Court in para 4 of the judgment had held as under:

4. We do not also think that the disciplinary authority committed any serious or material irregularity in consulting the Vigilance Commissioner, even assuming that it was so done. The conclusion of the disciplinary authority was not based on the advice tendered by the Vigilance Commissioner but was arrived at independently, on the basis of the charges, the relevant material placed before the Inquiry Officer in support of the charges, and the defence of the delinquent officer. In fact the final conclusions of the disciplinary authority on the several charges are so much at variance with the opinion of the Vigilance Commissioner that it is impossible to say that the disciplinary authority's mind was in any manner influenced by the advice tendered by the Vigilance Commissioner. We think that if the disciplinary authority arrived at its own conclusion on the material available to it, its findings and decision cannot be said to be tainted with any illegality merely because the disciplinary authority consulted the Vigilance Commissioner and obtained his views the very same material. One of the submissions of the Appellant was that a copy of the report of the Vigilance Commissioner should have been made available to him when he was called upon to show cause why the punishment of reduction in rank should not be imposed upon him. We do not see any justification for the insistent request made by the Appellant to the disciplinary authority that the report of the Vigilance Commissioner should be made available to him. In the preliminary findings of the disciplinary authority which were communicated to the Appellant there was no reference to the view of the Vigilance Commissioner. The findings which were communicated to the Appellant were those of the disciplinary authority and it was wholly unnecessary for the disciplinary authority to furnish the Appellant with a copy of the report of the Vigilance Commissioner when the findings communicated to the Appellant were those of the disciplinary authority and not of the Vigilance Commissioner. That the preliminary findings of the disciplinary authority happened to coincide with the views of the Vigilance Commission is neither here nor there.

21. In *Union of India (UOI) and Others Vs. Alok Kumar*, while dealing with the question of non-furnishing of advice of the CVC and its consequences the Supreme Court had considered *Sunil Kumar Banerjee (Supra)* and *D.C. Aggarwal and Ors. (Supra)* relied on by the Tribunal and held that what is really required to be seen by the Court is, whether the duty to furnish such a report arises out of a statutory rule or in consonance with the principles of natural justice and whether non-furnishing of such a report has caused any prejudice to the officer concerned. In para 52 of the said judgment the Supreme Court had further held that unless the second stage CVC report was actually considered and had some prejudicial affect on the interest of the delinquent officer, it will not be necessary for the Court to interfere in the departmental enquiry proceedings on that ground. In para 76 and 77 at page 375 the Supreme Court had held as under:

76. From the aforementioned facts it is clear that there is nothing on record to show that the alleged CVC notes have actually been taken into consideration and that the same have affected the mind of the disciplinary authority while considering the defence of the delinquent officer and imposing punishment upon him. Unless such notes were actually considered and had some prejudicial effect to the interest of the delinquent officer, it will not be necessary for the court to interfere in the departmental enquiry proceedings on that ground.

77 In *Sunil Kumar Banerjee (supra)*, where the Vigilance Commissioner had been consulted, there was alleged non-supply of the Vigilance Commissioner's report to the officer. A three-Judge Bench of this Court took the view that the findings of the disciplinary authority and its decision was not tainted and, therefore, would not be termed as illegal. The Court in para 4 of the judgment held as under: (SCC pp. 307-08)

4. We do not also think that the disciplinary authority committed any serious or material irregularity in consulting the Vigilance Commissioner, even assuming that it was so done. The conclusion of the disciplinary authority was not based on the advice tendered by the Vigilance Commissioner but was arrived at independently, on the basis of the charges, the relevant material placed before the enquiry officer in support of the charges, and the defence of the delinquent officer. In fact the final conclusions of the disciplinary authority on the several charges are so much at variance with the opinion of the Vigilance Commissioner that it is impossible to say that the disciplinary authority's mind was in any manner influenced by the advice tendered by the Vigilance Commissioner. We think that if the disciplinary authority arrived at its own conclusion on the material available to it, its findings and decision cannot be said to be tainted with any illegality merely because the disciplinary authority consulted the Vigilance Commissioner and obtained his views on the very same material. One of the submissions of the Appellant was that a copy of the report of the Vigilance Commissioner should have been made available to him when he was called upon to show cause why the punishment of reduction in rank should not be imposed upon him. We do not see any justification for the insistent request made by the Appellant to the disciplinary authority that the report of the Vigilance Commissioner should be made available to him. In the preliminary findings of the disciplinary authority which were communicated to the Appellant there was no reference to the view of the Vigilance Commissioner. The findings which were communicated to the Appellant were those of the disciplinary authority and it was wholly unnecessary for the disciplinary authority to furnish the Appellant with a copy of the report of the Vigilance Commissioner when the findings communicated to the Appellant were those of the disciplinary authority and not of the Vigilance Commissioner. That the preliminary findings of the disciplinary authority happened to coincide with the views of the Vigilance Commission is neither here nor there.

22. The Respondent has not relied on any rule which makes it mandatory for the

disciplinary authority to supply a copy of the CVC advice to the charged officer nor any rule has been quoted and relied on for the disciplinary authority to take the CVC advice into consideration before passing the order against the charged officer. From the order of the disciplinary authority it is also apparent that the advice of CVC has not been referred to while passing the order of punishment. The advice tendered by the CVC, is to enable the disciplinary authority to proceed in accordance with law. Thus the findings of the tribunal in this regard cannot be sustained in law.

23. The Supreme Court in the said judgment had also held that it is a settled rule of departmental proceedings that it is for the delinquent officer to specifically raise such an issue as to whether the CVC report has been actually taken into consideration and whether it had caused prejudice to the delinquent officer and thus discharge the onus of prejudice. Element of prejudice should exist as a matter of fact or there should be such definite inference of likelihood of prejudice flowing from such default which relates to statutory violations. It will not be permissible to set aside the departmental enquiries merely on the basis of apprehended prejudice. Absence of pleading of essential feature of prejudice read with the fact that both the parties have not even produced the second stage advice of the CVC except the demand by the Respondent of the CVC's second stage advice, we are of the considered view that even on this account no prejudice, as a matter of fact, has been caused to the CO and the plea of the Respondent that it may not be necessary at all to show de facto prejudice to the Respondent cannot be accepted. Non supply of second stage advice of CVC in the fact and circumstances causing de facto prejudice to the Respondent was one of the essential ingredient before the order of punishment could be set aside. Prejudice normally would be a matter of fact and a fact must be pleaded and shown by cogent documentation and pleaded categorically so that the Petitioners could rebut that. In the circumstances, the order of the Tribunal setting aside the order of punishment of disciplinary authority on this ground alone cannot be sustained and thus the order of the Tribunal dated 12th July, 2007 leaving all the grounds open and partly allowing the original application of the Respondent and remitting the matter back to the disciplinary authority to serve the second stage CVC advice to the Respondent and then to take final decision cannot be sustained and is liable to be set aside.

24. Thus the writ petition is allowed. Impugned order dated 12th July, 2007 passed in O.A No. 760 of 2007 titled "Sh.R.K. Sareen v. Union of India and Anr." is set aside holding that the punishment order dated 9th March, 2004 could not be set aside on the ground that the copy of second stage advice of CVC was not supplied to the Respondent. Since the Tribunal had left all other grounds open except this, the matter is remitted to the Central Administrative Tribunal to decide all other grounds raised by the Respondent on merits in accordance with law. Parties are directed to appear before the Tribunal on 12.8.2011. Considering the facts and circumstances the parties are left to bear their own costs.