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**(2007) 05 CAL CK 0034**  
**In the Calcutta High Court**  
**Case No : W.P.C.T. No. 86 of 2007**

Union of India (UOI)

APPELLANT

Vs

Pratul Chandra Biswas

RESPONDENT

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**Date of Decision :** 16-05-2007

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 19  
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 14(2)  
Constitution of India, 1950 — Article 226, 227  
Public Servants (Inquiries) Act, 1850 — Section 3

**Citation :** (2007) 3 CHN 505

**Hon'ble Judges :** Kishore Kumar Prasad, J; Bhaskar Bhattacharya, J

**Bench :** Division Bench

**Advocate :** Subir Krishna Mukherjee and Sujatna Mukherjee, for the Appellant;  
Amrita Sinha, for the Respondent

**Final Decision :** Allowed

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## Judgement

Bhaskar Bhattacharya, J.—This application under Article 226/227 of the Constitution of India is at the instance of the employer, the Union of India, and is directed against order dated 8th June, 2006 passed by the Central Administrative Tribunal, Calcutta Bench in O.A. No. 836 of 2001 thereby setting aside the order of the appellate authority affirming the order of removal from service of the respondent before us and remanding the matter back to the disciplinary authority for appointing an appropriate authority to enquire into the charge against the private respondent in terms of Rule 14(2) of the Service Rules.

2. The only ground on which the Tribunal has set aside the order of removal and that of the appellate authority affirming the same is that the enquiry was done by a retired Government servant and according to the Tribunal, it should be done by a sitting Government servant.

3. In arriving at such conclusion, the Tribunal relied upon the decision of the Supreme Court in the case of Ravi Malik v. National Film Development

Corporation Ltd. and Ors. reported in 2004(13) SCC 427 wherein the Supreme Court in terms of the Regulation 23(b) of the Service Rules and Regulations, 1982 of the concerned organisation came to the conclusion that the enquiring officer must be a public servant.

4. In the case before us, the private respondent was put under suspension and was served with a major penalty chargesheet under Rule 14 of CCS (CCA) Rules, 1965 and a retired APMG (P) was appointed as enquiring authority by the disciplinary authority. The matter was enquired into and the enquiring officer filed his report to the disciplinary authority, which after considering the report imposed the penalty of removal from service, and the appellate authority affirmed such finding.

5. Although the several points were raised on behalf of the respondent, the Tribunal set aside the order of the removal only on the ground that according to Rule 14(2) of the CCS (CCA) Rules, 1965, the enquiring officer should not be a retired person and according to the Tribunal, the said rule was akin to Regulation 23(b) as quoted in the case of Ravi Malik v. National Film Development Corporation Ltd. (supra), and thus, the order of termination was set aside on the ground alone.

6. Being dissatisfied, the employer has come up with the present application under Article 226/227 of the Constitution of India.

7. Mr. Mukherjee, the learned Advocate appearing on behalf of the petitioner has vehemently contended before us that the Tribunal below acted illegally in relying upon the decision of Ravi Malik (supra), inasmuch as, the scope of the Regulation 23(b) of the National Film Development Corporation was not *pari materia* with Rule 14(2) of the CCS (CCA) Rules, 1965. According to Mr. Mukherjee, in terms of Rule 14(2) of the latter Rules, even a retired person can be an enquiring officer.

8. Ms. Sinha, the learned Counsel appearing on behalf of the private respondent has, however, opposed the aforesaid contention of Mr. Mukherjee and has supported the order passed by the Tribunal.

9. To appreciate the only dispute involved in this application, we quote below the Regulation 23(b) of the National Film Development Corporation as relied upon by the Supreme Court in the case of Ravi Malik (supra) as also Rule 14(2) of the CCS (CCA) Rule, 1965 by which the present proceedings are governed:

Regulation 23(b): Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself enquire into, or appoint any public servant, thereafter called the inquiring authority to inquire the truth thereof.

(Emphasis given by us)

Rule 14(2): Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850 as the case may be, an authority to inquire into the truth thereof.

10. After going through the provision contained in Regulation 23(b) above, it appears that any case of misconduct under that rule can be enquired into by the disciplinary authority itself or can be delegated to any public servant whereas under Rule 14(2), the disciplinary authority itself can enquire into or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to enquire into the truth thereof.

11. According to Section 3 of the Public Servants (Inquiries) Act, 1850, the enquiry may be committed either to the Court, Board or other authority to which the person accused is subordinate or to any other person or persons, to be specially appointed by the Government, commissioners for the purpose: notice of which commission shall be given to the person accused ten days at least before the beginning of the enquiry.

12. Therefore, under Rule 14(2), there is no compulsion of entrusting the job of an enquiring officer to a public servant alone as mentioned in Regulation 23(b) and it can be given to any authority or to any person or persons in terms of the Public Servants (Inquiries) Act, 1850. Therefore, the delegation of the authority by the disciplinary authority to a retired Government official was not in conflict with the Public Servants (Inquiries) Act, 1850 or Rule 14(2). Therefore, the decision of the Supreme Court in the case of Ravi Malik (*supra*), cannot have any application to the present case.

13. We, therefore, find that the Tribunal below illegally set aside the order of the appellate authority only on the ground of the incompetency of a retired Government servant to act as an enquiring officer.

14. Since the Tribunal has found all the other points raised by the employee against him, we find no reason to interfere with the order passed by the departmental appellate authority approving removal of the respondent from service. This application, this, is allowed; the order passed by the Tribunal is set aside and the application filed by the respondent u/s 19 of the Administrative Tribunals Act is dismissed.

15. In the facts and circumstances, there will be, however, no order as to costs.

Kishore Kumar Prasad, J.

16. I agree.