

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22nd January, 2020

Decided on: 29th January, 2020

+ **W.P(C) 8097/2002 & CM Appl.No. 7642/2018**

S. K. GUPTA

.....Petitioner

Through Mr.R.S.Raju, Ms. Suman Kukrety,
Ms. Megha, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through Mr. Vivek Goyal, CGSC for
Respondent No.1/UOI

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

J U D G M E N T

Dr. S. Muralidhar, J.:

1. This petition is directed against an order dated 29th November, 2001 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT) dismissing the Petitioner's OA No. 630/2001 thereby negating his challenge to a charge sheet dated 9th November, 1994 and the consequent penalty order dated 14th March, 2000 passed by the Secretary, Ministry of Non Conventional Energy Sources (MNES) compulsorily retiring him from service.

Background facts

2. The Petitioner is a qualified Engineer who has done his Bachelor's degree

in Mechanical Engineering from the Delhi College of Engineering, M. Tech from the Indian Institute of Technology, Delhi and a Post-Graduate Diploma in Business Management. In 1979, the Petitioner joined the National Physical Laboratory as Scientist 'B'. In 1982 he came on deputation to Commission for Additional Source of Energy (CASE) entrusted with the duty to establish the Solar Energy Centre (SEC), Government of India as Senior Engineer.

3. The SEC was set up as a scheme of the Department of Non-Conventional Sources (DNES), later to become the Ministry for Non-Conventional Energy Sources (MNES). Through a process of direct recruitment, the Petitioner was appointed as Principal Scientific Officer (PSO) in the SEC in 1986. He held this post till the date of his compulsory retirement. In 1988 the SEC was granted the status of a division of a DNES.

4. According to the Petitioner, although he was assessed for the post of Director by All India Departmental Promotion Committee (DPCs) from 1992 till 1998, those proceedings were kept in a sealed cover when in fact no disciplinary proceedings were pending against him. He further states that although he was due for promotion as Advisor in 1998, he was not called for interview. The Petitioner has annexed as Annexure P-3 to the writ petition his year-wise achievements in the matter of Research and Development (R&D) in the field of solar energy which according to him placed the SEC and the MNES in the place of pride in national and international fora.

5. The Petitioner has sought to explain the background of the setting up of the SEC. It is stated that the Government of India set up the DNES in the

Ministry of Energy in 1982 with, *inter-alia* certain primary objectives of:

- “i) formulating policies and programmes for development of new and renewable sources of energy;
- ii) co-ordinating and intensifying research and development activities new and renewable of source of energy;
- iii) ensuring implementation of GOI policies in regard to all matters concerning new and renewal source of energy.”

6. Extracts of the Annual Reports of the SEC for the years 1985-86 to 1991-92 have been enclosed with the petition to highlight the fact that the SEC was involved in setting up Research & Development and test facilities for new materials and components with several objectives including the following:

- “ii) to serve as a link between R&D institutions and manufacturing units so as to reduce the time lag between basic know-how/ bench scale development/prototype development, pilot plant and commercial manufacture;
- iii) to create facilities for installation of solar demonstration units for new and improved technologies in order to generate field performance results for new equipments/systems and to create public awareness and interest both among users and manufacturers;
- iv) to create facilities wherever possible for package technology transfer service to industry with a view to promote new and improved devices in the filed of solar energy;
- v) pilot plant investigation, field demonstration, data collection, monitoring, evaluation etc.”

7. It is stated that to begin with, the Government of India created a Single Window System (SWS) to facilitate import of equipment/materials for promotion and growth of non-conventional energy used in the country. For

this purpose, it gave an incentive by granting Custom Duty Exemption Certificate (CDEC) to importers, manufacturers and users of materials and components. One of the conditions for issuance of such CDEC was that the materials imported were not manufactured in India. For this they were required to have an indigenous angle clearance from the office of the Directorate General of Technical Development (DGTD) in the form of Not Manufactured in India Certificate (NMIC). The Petitioner clarifies that merely because a unit or manufacturer had an NMIC did not entitle it automatically to the grant of CDEC. The indigenous angle was to be verified from the DGTD. The procedure therefore provided for applications to be made by private parties importing equipment for use of the Non-Conventional Energy Sources which were to be processed by the DGTD.

8. It is stated that Mr. Maheshwar Dayal was appointed as Secretary, DNES in 1984 which was the same year in which Dr. G. D. Sootha took over as an Advisor (MNES) and in that capacity headed the SEC. The Petitioner states that in 1984-85, with a view to accelerating the R&D, demonstration, testing and standardisation in the country in the Non-Conventional Energy area, the DNES headed by Mr. Dayal formulated a new policy known as SWS-2. In terms of the said policy applications received by the Ministry of Industry for grant of NMIC would be referred to the SEC which would in turn examine whether the material imported would be useful for R & D, testing, demonstration and standardisation. The DGTD however was not bound by the opinion of the SEC which at best had a recommendatory role. In other words, the ultimate decision for granting NMIC and CDEC continued to vest with the DGTD and the MNES respectively. In the event of the

Ministry granting the CDEC to private parties the policy made it clear that the goods were to be imported through SEC.

9. The Petitioner referred to a letter dated 17th September, 1985 from Mr. Dayal, the then Secretary, DNES to the Secretary Development in the Ministry of Industry which brings out the said policy decision. *Inter-alia* the letter stated as under:

“Since these equipment are being purchased or being procured for R & D and demonstration applications in the country, it is advisable that no duty be charged on the case. These equipment are being procured through Solar Energy Centre (SEC) which has been set up to test and standardise such equipment and also develop new technologies for new and renewable sources of energy.

2. In the past we have procured a few gasifires under this programme from France and solar photovoltaic pumps from Denmark. Although the certificates were issued by your Organisation indicating that no custom duty be charged on these items since these are not being manufactured in the country, we have to pay lot or demurrage charges since the same could not be obtained in time. In order to avoid payment of huge amounts of demurrage charges, I am suggesting that you may please direct your officers to issue such certificates in the shortest possible time so that SEC collect the equipment in time without paying the demurrage charges. We would be grateful for your help by giving the necessary directions to your officers in this regard.”

10. The Petitioner states that the new policy envisaged NMIC being procured in the name of SEC and for the SEC was to carry out the R & D, demonstration, testing and standardisation in respect of the material imported. A distinction is being made between importing ‘through SEC’ and

importing 'for SEC'. The purpose of importing through SEC was to accelerate the pace of technology development, absorption, field trial and adoption with the industry participation. Relevant pages along with notings of the policy file No. SEC/Store/SJD/TG/87 have been enclosed with the petition as Annexure P-7 respectively.

11. One of the major points of contention raised by the Petitioner is that despite his best efforts to obtain the said policy file No.1/33/Misc./85, which was permitted by the Inquiry Officer (IO), it was not made available to the Petitioner during the disciplinary proceedings.

12. The Petitioner reiterates that the officers working in the SEC themselves had no role to play in the grant of CDEC. In particular he states that his role was confined to dealing with applications referred by the MNES and he himself was neither the authority competent to grant the NMIC nor to issue letters to importers/applicants for CDEC. According to the Petitioner, an Internal Committee of the DGTD has to clear the application even if it is forwarded through the SEC for an NMIC to be issued.

13. The working of the DGTD in this regard was explained by two Section Officers of the DGTD before the IO during the course of the enquiry. According to the Petitioner there were many cases where applications forwarded by the SEC to the DGTD for issuance of NMIC were rejected by the DGTD.

14. The case of the Respondents is that during the period from 1985-1990 three officials of the SEC were involved in irregularities in six cases

concerning private firms. One of these three officials was the Petitioner and the other was his immediate superior Dr. Sootha. Specific to the Petitioner, the case of the Respondents is that he obtained NMIC from the DGTD by giving false information that the import of materials components and equipments for which NMIC was being sought were being imported for the SEC's R & D activities when in fact they were meant for use of the private companies engaged in commercial activities. It is stated that these companies imported items in order to supply them to M.P. Urja Vikas Nigam and other agencies. According to the Respondents the actions of the three officials including Dr. Sootha (since retired) resulted in a loss of Rs.1.44 crores to the Government. According to the Respondents the actions of the Petitioner and Dr. Sootha had no approval of the Secretary or any other competent authority. The case against the Petitioner is that he connived with Dr. Sootha in giving undue benefits to private firms.

15. The case was referred to the Central Vigilance Commission (CVC) for its advice in October, 1990. In turn the CVC referred the matter to the Central Bureau of Investigation (CBI) in November, 1990. The CBI registered six cases and conducted a detailed investigation at the end of which it submitted a report in January, 1994.

16. According to the CBI there had been an arbitrary use of power in all six cases in the issuance of NMIC. The CBI accordingly recommended major penalty proceedings against the officials including placing them under suspension.

17. The report of the CBI was examined in the Ministry and again referred to the CVC in March, 1994 for its advice. As far as the Petitioner was concerned, the CVC tendered its advice in May, 1994 recommending major penalty proceedings. Accepting this recommendation, proceedings commenced against the Petitioner under Rule 14 of the Central Civil Services (Classification, Control and Appeal) ['CCS (CCA) Rules'].

18. Invoking Rule 10 of the CCS (CCA) Rules, the Petitioner was on 19th August, 1994 placed under suspension. The Disciplinary Authority (DA) revoked the suspension on 15th November, 1996 after review. It must be mentioned that during this entire period the inquiry did not commence.

The charges

19. On 9th November, 1994 a memorandum was issued to the Petitioner by the MNES. Enclosed with the said memorandum is Annexure-1 containing the Articles of Charge. It was basically one Articles of Charge sub-divided into further six Articles. The theme of all the six Sub-Articles was the same namely that in connivance with Dr. Sootha the Petitioner misused his official position as PSO (SEC) and issued letters for customs duty exemption to various authorities and obtained NMIC from the office of the DGTD by falsification mentioning that the consignment which was being imported for private parties for their own commercial activities, was being imported by SEC for its research work. The six Sub-Articles referred to the six cases of such import where the beneficiaries of the undue favours were as follows:

- i) M/s. Solaren Technology Private Limited concerning import of 1040 Solar Absorber Sheets imported by it through M/s Western India Industries Private Limited from Japan.
- ii) M/s. Solechrome System India Private Limited (SSIPL) and M/s Universal Manufacturing Company (UMC) in respect of 1911 sq. mts. of Solechrome Sheets imported from Canada by SSIPL for further sale to UMC.
- iii) M/s Surya Jyoti Devices India Private Limited (SJD) concerning import of 3500 Solar Collectors which were being imported by it for its commercial activities.
- iv) SJD for import of 3000 float glass sheets for its commercial activities.
- v) M/s Solar Energy Devices Company Private Limited (SEDC) of a duty free import of Tedlar Polymer film from USA for its commercial activities.
- vi) SJD for duty free import of photovoltaic books from USA for its own commercial activities.

The inquiry proceedings

20. The Presenting Officer (PO) representing the MNES before the IO submitted 82 documents. The statements of 20 witnesses were recorded. The proceedings of the enquiry dated 23rd May, 1997 show that the 20th witness for the prosecution (SW-20) Mr. B. Jana who was required to attend the hearing did not turn up. It was noted that Dr. Sootha had made a request

that the hearing may not be adjourned as he was retiring on 31st August, 1997. The IO acceded to that request and proceeded with the hearing.

21. The proceedings also reflect that the Petitioner had through his Defence Assistant (DA) handed over a letter dated 22nd May, 1997 to the IO with the copy to the PO regarding 10 pending defence documents sought by him. The IO was informed by the PO that the said balance 10 documents asked for by the Petitioner were not available either with the DNES or CBI. Both the Charged Officers (COs) i.e. Dr. Sootha and the Petitioner examined K. Ramaswamy Achary, a Senior Scientific Officer in the MNES as DW-1. The IO directed that both the POs and COs will submit their respective written briefs.

The Petitioner's case before the IO

22. The PO then submitted a written brief on 6th June, 1997. The Petitioner submitted his written brief on 16th June, 1997. *Inter alia* he pointed out that the CBI which had recommended disciplinary proceedings decided not to proceed with registering a criminal complaint or filing a charge sheet. It is pointed out that the CBI decided to close the case under Section 173 Cr.PC. The Deputy Superintendent of Police (DSP) of CBI Mr. R.S. Jaggi who was cited as a witness for the prosecution in the departmental inquiry (i.e. an SW) was in fact not examined as an SW. It is pointed out that Mr. Jaggi had attended all the hearings upto 21st May, 1997. However, when his turn to be examined as a last witness came up on 23rd May 1997, he did not turn up. The Petitioner pointed out how sub-charges (iii) and (vi) did not concern the Petitioner and yet the charge sheet wrongly mentioned that the applications

in those instances had been forwarded by him. As regards sub-charge (i), he states that there was no signed NMIC application. According to the Petitioner, therefore, sub-charges (i) (iii) & (vi) had to fail.

23. In his written brief submitted to the IO, the Petitioner pointed out:

“certain crucial and vital documents in which policy decisions were taken with for solar energy equipments SEC would send NMICs to DGTD and also issue CDECs to the importers has been kept back by the Department and not produced despite repeated efforts by CO-II and even sincere advice given by Shri P.C. Sharma, DSP to the department. These have been solely kept back for the reason that their mere production would clearly establish that whatever CO-II did in the matter of applying for NMICs was not only in accordance with but in compliance with the policy decisions taken at the level of the Secretary.”

24. It was further pointed out:

“a large number of CBI listed witnesses (SWs) were not produced by CBI, inspite of seeking the adjournment on 25.4.1997, including Shri R.S. Jaggi, DSP, CBI, ACB New Delhi who was the Investigating Officer. In fact Shri Jana and Jaggi did not turn up even upto the conclusion of proceedings i.e. upto 7 PM on 23.5.1997.”

25. It was also stated:

“Enclosed at Annexure ‘I’ is a chronology of the continuous and consistent efforts made by the CO-II and CBI to persuade the Department to produce the relevant defence documents and orders to the same effect made by the I.O. All these efforts yielded no results as the department found that production of these documents would lead not only to exoneration of the COs but even the passing of strictures against the CBI/Department IO. By way of illustrative examples, CO-II is enclosing herewith at Annexure ‘J’ and ‘K’ copies of letters dated

22.10.1996 and 22.5.1997 from his DA to the I.O.”

26. Importantly it was pointed out that the Petitioner himself had not issued any NMIC and he had only sent applications for NMIC to the DGTD who were at liberty to grant or reject the application.

Report of the IO

27. The IO submitted a report on 25th July, 1997 holding Articles 1(i) & (iii) not proved, 1(ii) (iv) & (v) proved and 1 (vi) partially proved. In discussing the evidence concerning Charge 1 (ii) it was noted by the IO that the Delhi Energy Development Agency (Delhi Administration) (DEDA) had sent a letter dated 10th May, 1985 to Dr. Sootha for exemption from payment of import duty in connection with the installation of Solar Water Heating System at the Holy Family Hospital by UMC. The letter for NMIC was issued on 24th May, 1985 under the signature of the Petitioner. According to the IO, this letter stated that the NMIC will be issued entirely for R & D projects. The consignment already arrived at Bombay Port. The proforma was signed by the Petitioner and the NMIC was obtained on the same date i.e. 24th May, 1985.

28. The IO noted that Dr. Sootha had issued the CDEC on the same day mentioning that the material was essential for research and will be used for such purpose only. He had stated that before making a request for NMIC to the DGTD approval of the Secretary, DNES was required. However, in the case there was no documentary proof to show that the approval has obtained from the Secretary. The file did not contain even a single note sheet. The IO

then straightaway concluded as under:

“From the above discussion, it is evident that the CO had falsely certified that the imported material was required for R & D work whereas the same was used for commercial purposes by the private firm in the Holy Family Hospital, New Delhi without payment of any custom duty. As such, on the basis of sufficient documentary evidence, Article 1(ii) of the Charge is held as ‘proved’.

29. Turning now to the other charge i.e. Charge 1 (iv) this was concerning total of 4000 Float Glass Sheets imported by SJD, the discussion in the inquiry report is essentially about the note prepared by Dr. Sootha that the matter had been discussed with the Secretary and they should help private industries to procure solar glass without paying customs duty. In forwarding a letter of SJD dated 10th March, 1987 praying for permission to freely import glass sheets and making application for NMIC on 14th December, 1988 to the DGTD, the Petitioner had in the forwarding letter of the same date stated that the imported material was meant for R & D and SEC, the CDEC was issued by Dr. Sootha on 24th March, 1989.

30. Reference was made by the IO to the deposition of Mr. S. S. Ahluwalia, SW-11 who was the MD of SJD that the Float Glass was imported “by our firm through SEC”. The said witness referred to a Memorandum of Understanding (MoU) between his firm and the Director SEC i.e. Dr. Sootha. It was concluded by the IO that the above evidence made it clear that the Petitioner had “facilitated the import of the 3000 glass sheets by obtaining NMIC from DGTD in the name of the SEC by falsification mentioning that the said material was imported for research work”.

31. Charge 1 (v) pertained to import of Tedlar Polymer films by SEDC for its commercial activities without payment of customs duty. According to the IO, the Petitioner and Dr. Sootha had in their respective explanations dated 23rd May, 1997 admitted to having issued the CDEC and obtaining the NMIC from the office of the DGTD respectively. Here again the application of NMIC was signed by the Petitioner on 20th May, 1987 and it was concluded that the Petitioner had “obtained NMIC in the name of the centre by falsely declaring that the said material which had actually been imported by the private firms for its commercial activities was being imported for research work of SEC.”

32. Charge 1 (vi) concerned the import of Photovoltaic Goods from USA by SJD. Again, the deposition of its M.D (SW-11) was referred to. As far as the documents were concerned, they involved notings by Dr. Sootha. The application for NMIC for three items was signed by one Mr. T. P. Chatterjee, Stores Officer. An application for NMIC in respect of the remaining two was signed by the Petitioner on 22nd July, 1988. The CDECs of these items were given by Dr. Sootha. It was accordingly held that this charge was “partially” proved.

Before the DA

33. A copy of the IO’s report was furnished to the Petitioner for his comments by a memorandum dated 16th October, 1997. On 17th November, 1997 the Petitioner submitted a detailed representation pointing out why the report should be rejected. In the covering letter it was pointed out by the Petitioner that he had been seriously prejudiced:

“due to Shri B Jana, now Joint Director absents wilfully from the inquiry on 23.5.97 when his cross-examination was midway on the evening of 21.5.97. I submit that this does not behove a senior officer of the rank of Joint Director in DOPT.”

(ii) That:

“the Investigating Officer, Shri R.S. Jaggi, DSP, CBI, was helping the Presenting Officer (PO), throughout the hearing on all the days, all the time. However, when his turn came on 23.5.97, he conveniently absented himself and never turned up till 7.00 PM.”

(iii) That:

“certain crucial & vital documents, in which policy decisions were Taken with for solar energy equipment, SEC would sent NMICs' to DGTD, have not been made available, inspite of best efforts by myself, CBI & I.O.”

34. He also pointed out that after completion of enquiry on 23rd May, 1997 Dr. Sootha had retired more than 3 months thereafter on 31st August, 1997 and no action had been taken against him. He pointed out that:

“sheer injustice if a senior officer who got all the actions done by us, a copy of his orders, on the foot of the letter, dated 18.9.85 for obtaining the NMIC from DGTD is placed at Annexure-A, albeit correctly, is left unscathed and only I am punished.”

35. The Petitioner also pointed out that Mr. K. R. Achary, the then Purchase Officer of the SEC (DW-1) “did exactly the same and yet on the same facts, CBI has exonerated him.”

36. In his detailed comments on each of the sub-articles of the charge the

Petitioner pointed out *inter alia* that NMICs were never issued by him and they were all issued by DGTD. He had only given indigenous angle clearance and it did not have financial bearings. None of the CDECs were issued by the Petitioner. Each of them was issued by Dr. Sootha. He pointed out that the NMICs were all issued by the DGTD on the basis of merits following the procedure of the DGTD. He pointed out that:

“If there was anything wrong with the NMICs, Custom officials who were trained specifically for this purpose should have not accepted. Therefore, there was nothing wrong as far as filing of NMIC applications with the DGTD is concerned.”

37. A second stage consultation took place with the UPSC (Respondent No.2 herein) and by a letter dated 17th June, 1999 the UPSC gave the opinion that the charge against the Petitioner mentioned in sub-articles 1(ii)(iv)(v) stand fully proved and 1(vi) stands partially proved. The UPSC advised that the ends of justice would be met if the penalty of compulsory retirement from service was imposed on the Petitioner. Interestingly, the UPSC explained that it had not recommended dismissal or removal from service “since it could not be proved from the papers available that he personally gained from the transactions nor the loss, if any, to the Government could be quantified.”

38. Thereafter, the DA passed an order dated 14th March, 2000 accepting the second stage advice of the UPSC and imposed upon the Petitioner the penalty of compulsory retirement from service vide order dated 14th March, 2000. *Inter alia* it was observed:

“It is found from the case records that Shri Gupta did in fact falsify Govt. records and there is no basis for blaming other

officers or Departments for this. Shri Gupta as a responsible officer, should have satisfied himself by taking due care and diligence while processing such applications as he was bound by the provisions of the CCS (Conduct) Rules. It is found that action was initiated against Shri Sootha and common proceedings were held. Major penalty is being imposed against Shri Sootha as well.”

39. The Petitioner filed a Review Petition before the President of India as DA but no order was passed thereon.

40. The Court is informed that as far as Dr. Sootha is concerned since he had already retired by that date so a relatively mild punishment of stoppage of few increments affecting his pensionary benefits was imposed on him.

41. Aggrieved by the above order the Petitioner filed OA No. 630/2001 in the CAT challenging the memo of charges dated 9th November, 1994 as well as the order dated 14th March, 2000 by which he was compulsory retired.

Impugned order of the CAT

42. The CAT while dismissing the Petitioner’s OA by the impugned judgment dated 29th November, 2001 came to the following conclusions:

(i) “there is evidence on record showing that certain applications for obtaining NMIC were made by the applicant and even the record shows that sometimes the applications were made in such a hurried manner as if immediate action was required to obtain the NMIC to clear the goods.”

(ii) “Though for completion of certain projects some research might have been required at the SEC Office but still the CAG report also shows that the projects have been installed for private purposes even the Holy Family Hospital is a private institution and the installation of Solar Water Heater was to be

installed by M/s Universal Manufacturing Company Ltd. after obtaining duty free 1911 Sq. Mts. of Solechrome sheets for which the NMIC was felicitated by the applicant itself. Thus, we find that there is evidence on record which has led to the Inquiry Officer to hold the applicant guilty on some of the charges.”

43. The CAT then went to the question of scope of the judicial review in the disciplinary proceedings and concluded as under:

“but we are unable to hold that the evidence available on record show that the findings arrived at by the Inquiry Officer are in any way perverse or based on evidence at all.”

44. The CAT referred to the decisions in *Union of India v. Upendra Singh (1994) 27 ATC 200*, *Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10* to hold that the CAT cannot be sitting in appeal over the decision arrived at by the Respondents and that the scope of the judicial review is limited to reviewing the decision-making process.

45. As regards the Petitioner’s submission regarding the prejudice caused to him on account of non-supply of material documents, it was observed by the CAT that the non-availability of documents, not within the power and possession of the Respondents, could not vitiate the enquiry. A specific contention was raised by the Petitioner that the charge was about the Petitioner having issued NMIC, whereas it was in fact issued by the DGTD and that there was a serious non-application of mind in issuing the charge-sheet. This was negated by the CAT by observing that the charges distinctly said that the Petitioner “had obtained an NMIC from the office of the DGTD, by falsely mentioning that the consignments were actually

obtained for private purposes, but was indicated the same was imported by SEC for its research and development”

46. The present petition has been pending in this Court for over 18 years, during which time, the Petitioner has gone well past his age of superannuation. The counter affidavits, rejoinder affidavits and even reply to the rejoinder has been filed.

47. This Court has heard the submissions of Mr R.S Raju, learned counsel appearing for the Petitioner and Mr Vivek Goyal, learned CGSC appearing for the Respondents. The settled position in law, as explained in *Union of India v. Upendra Singh* and *Kuldeep Singh v. Commissioner of Police* (*supra*) is that the scope of judicial review is essentially to examine the validity of the decision-making process and not so much the decision itself. Bearing this in mind, the Court first examines the validity of the procedure adopted by the IO during the enquiry.

Non-furnishing of material documents

48. As already noticed, one of the grounds of challenge by the Petitioner to the validity of the enquiry proceedings is the denial of at least ten important documents including the file containing the policy decisions of the DNES/ MNES. The correspondence on record placed by the Petitioner shows that he kept requesting for documents, which were crucial to his defence, and yet, these were not provided to him.

49. Further, the daily order-sheets of the IO are replete with these requests, a sampling of which reads as under:

“23.4. 1997: Despite IO's order dated 7.11.1996 and repeated requests made by S.K. Gupta, the defence documents have not been made available even up to today.

21.5.1 997: Regarding the defence documents, the PO stated that he will file a reply on 23.5.1997 with reference to the order sheet dated 25.4.1997. He further submitted that he could not comply with the same as on date as he was busy with the other important work in his own department.

23.5.1997: PO made an application on the last day of regular hearing saying that balance 10 documents asked for by S.K. Gupta are not available with the department/CBI.”

50. The Petitioner also mentioned how he was permitted inspection of the guard files of the DNES/MNES of the SEC for the years 1984-85 to 1989-90, but those files were in fact not made available to him for inspection. By a letter dated 10th October, 1996, the NMIC informed the CBI of the non-availability of the guard files. At least ten vital documents having a bearing on the case could not be produced and this did prejudice the defence of the Petitioner.

51. This crucial aspect has been overlooked by the IO, and unfortunately by the CAT as well. If these were in the custody of the Respondents, and they could not be produced, it certainly prejudiced the case of the Petitioner. The prejudice is further to be understood in the context of the averments in the petition, where it has been explained by the Petitioner that the DNES was set up for the first time and in its infancy stage i.e. in the years 1985-86 to 1988-89, a concrete policy had yet to emerge. It is explained as to how pending crystallization of such policy, there had been thinking and re-thinking in the MNES itself about allowing and not allowing private parties to import

“through SEC” material into India for R&D, demonstration, testing and standardization. It was only later in September, 1989, that the Secretary, DNES noted that there should be no more such reports made, until and unless a general policy is worked out, in agreement with IFT and Department of Revenue. He also refers to the specific reply given by the DGTD by his letter dated 17th January, 1992 to the CBI, wherein it stated that in the five cases where the NMIC had been issued, it was in compliance with the procedure.

52. That the denial of material documents to a charged officer is prejudicial to his defence is well-settled. In *Trilok Nath v. Union of India* 1967 SLR (SC) 759, in the context of denial of relevant documents to a charged officer facing disciplinary proceedings, the Supreme Court held as under:

"Had he decided to do so, the document would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again, had the copies of the documents been furnished to the appellant he might, after perusing them, have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the FIR and the statements recorded at Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry."

53. The Court, therefore, concludes that the non-production of the relevant files, did severely prejudice the Petitioner's defence. This has vitiated the findings on each of the sub Articles of Charge.

Scope of judicial review

54. At this stage it would be useful to recall the scope of interference by this Court in matters of the present nature. In ***State of Haryana v. Rattan Singh (1977) 2 SCC 491***, the Supreme Court explained the scope of interference by the High Court with a domestic enquiry as under:

"4. in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. ..."

55. In ***Union of India v. P. Gunasekaran AIR 2015 SC 545***, the law in relation to the scope of judicial review of the High Court under Article 226 of the Constitution in the context of departmental enquiries was summarized by the Supreme Court thus:

"In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

56. This Court has in the present case already concluded that there was serious infraction of procedural due process in denying to the Petitioner the material documents which has resulted in prejudice being caused to him in the disciplinary proceedings. The Court now proceeds to examine if as contended by the Petitioner this was a case where the DA overlooked material evidence and reached a conclusion that no reasonable person could have reached or whether this was a case of no evidence.

Substratum of the charges

57. The substratum of the charges against the Petitioner is that:

- (i) The Petitioner issued letters for custom duty exemption to various authorities;
- (ii) Obtained NMIC from the office of the DGTD; and
- (iii) Falsely mentioning that the consignments, which were actually being imported by private parties for their own commercial activities were being imported by SEC for its research work. The sixth sub Article of the main charge related to a particular transaction or occasions where NMICs have been obtained in respect specific articles of import.

58. The Court would focus essentially on those sub Articles of the Charge, which have been held to be proved, viz., 1(ii), 1(iv) and 1(v), as well as the partly proved charge, viz., 1 (vi).

Analysis and reasons

59. The substance of sub Charge 1(ii) concerns the NMICs issued by the DGTD for import of 1911 square meters of Solechrome sheets. These were being imported from SCSPL, Canada. They were being sold to UMC. The Court has perused the letter dated 10th May, 1985, written by the DEDA to Dr. Sootha. It states that the work of installation of the solar water heating system of the capacity of 24,600 litres per day at the Holy Family Hospital, New Delhi was awarded to UMC. It states that UMC had agreed to supply collectors made of selectively coated copper sheets manufactured in Canada. The letter states that UMC informed DEDA that such solar collectors are not being manufactured in India and their material is being imported first time from Canada for the purpose. It is added that the said system of solar water heating “is installed for demonstration purpose” and the material is used to record the efficiency of the imported material, which is expected to be more efficient than the Indian material. The letter ends by stating that UMC had approached DEDA for exemption of custom duty on the imported material. The request was that this should be considered on a priority basis. There are two signatures on this letter, one saying “discussed with Secretary DNES”, which is by Dr. Sootha. The other has signatures of a Senior Scientific Officer. Neither is, therefore, by the Petitioner.

60. The letter 24th May, 1985 written by the Petitioner to the DGTD reads as under:

“Sir,
Enclosed kindly find herewith one set of application for Not Manufactured in India Certificate for the above-mentioned materials which will be issued entirely for R&D projects.

As the consignment has already arrived at Bombay Port, the undersigned will appreciate an immediate action from your end to issue the NMIC.

Sh. T. P. Chatterjee. Stores Officer of this department has been authorised to receive the NMIC from your concerned section by hand. To avoid any confusion at Bombay Customs Department, the NMIC has been asked as per specification given in bill of lading.”

61. What the above letter in fact states is that the material will be “issued entirely for R&D projects”. It does not make any statement about whether the import is by any private party. It is in this context that one needs to understand the background. It is plain from reading the annual report of the SEC for the years 1988-89 to 1991-92 that it is engaged for the development of various materials and components, which are equivalent of importing components. In its annual report of 1986-87 it has included a photograph of the “solar water heating system at Holy Family Hospital, New Delhi”. In the annual report of 1988-89, in para 4, it talks of “field demonstration”. The said para reads as under:

“Field Demonstration

4. The Centre has executed various demonstration programmes of the Department. A number of solar water heating systems were designed and installed at various places. Constant monitoring and evaluation of these systems have helped in improving the quality of water heating systems by identifying limitations in design engineering, materials quality etc.”

62. It must be recalled that this was the nascent stage of development of solar energy in the country, as a non-conventional alternate energy source. The effort was to have a research and development (‘R&D’) carried out not

just in one place but at different sites. Enclosed with the petition is a copy of the 'Advance Information' placed before the Public Accounts Committee ('PAC') for examination of paragraph 10.1 of the Report of C&AG of India for the year ended 31st March 1997 (No.5 of 1998). This is basically about the SEC. It *inter alia* states that the system designing of large number of Solar Water Heaters for institutions such as Holy Family Hospital was carried out by SEC. Further, at page 19 it mentions about 'jobs involving developments of technology for manufacturing of solar flat plate collector absorber utilizing imported selective coated absorber sheet'. This includes the articles that were imported as mentioned under sub charge 1 (ii). The MNES has in its Annual Report 1988-89 mentioned as an achievement that Solar Water Heating Systems designed and installed by SEC through constant monitoring and evaluation helped in improving the quality by identifying limitations in design engineering, material quality etc.

63. These facts, which are already averred in detail in the present writ petition, have not been denied by the Respondents. It is in this context that the distinction between a R&D project being carried out by the SEC itself, for which an import is made by the SEC itself and an import made 'through SEC' for the similar R&D, being carried out through the industry requires to be understood.

64. When one peruses the CDEC issued by Dr. Sootha on 24th May, 1985, it becomes plain that no information was in fact withheld. It may be recalled that the involvement of the Petitioner was only to request the DGTD to issue an NMIC and nothing more. The Petitioner in his letter did not give any

misleading information that the imported material would be used by the SEC itself. He had stated that it would be used “entirely for R&D project” and there was nothing untruthful about that statement. The water heating system in the Holy Family Hospital was part of that R&D exercise, and not different from it. In the CDEC in column (iv) it stated “source of finance”. The information is “Government of India”. In the description of the project in para 3, it was stated as under:

“Durability and reliability testing of Solechrome coating, with a view to develop the product indigenously.”

65. If the central charge was about the Petitioner having falsely stated that the import was for an R&D project of the SEC, then the charge was clearly incorrect, in view of the above factual background. There is merit in the contention that the charge that the Petitioner had himself obtained the NMIC, is incorrect. He had merely written to the DGTD, requesting for issue of NMIC. The NMIC was issued by the DGTD.

66. There is also merit in the contention of the Petitioner that the witnesses who spoke before the IO admitted that it was not automatic for an NMIC to be issued, if there is a request made by the SEC. There have been instances where such an NMIC has not been issued despite the request. For the success of the solar energy development experiments, it was necessary that for demonstration purposes, these projects are located in different places, and Holy Family Hospital, was one such location.

67. Even in respect of charge 1 (v), the department had taken pride in its Annual Report for 1988-89, that the SEC under its research under R&D

programme had developed low cost low weight high efficiency 'flat rate collective technology'. This technology was in fact developed and the knowhow was released, utilizing the imported material. As pointed out by the Petitioner in the petition, which has not been denied by the Respondents:

“Further, the Department has taken the pride in its Annual Reports for the years 1988-89, 1989-90, 1990-91 and 1991-92 that SEC is engaged in the development of various materials and components for generating electric power through thermal route, efforts are being made to develop equivalent of the imported components of 50 KW Solar Thermal Power Plant, so as to make the plant solely indigenous and to reduce the costs, the development of all glass and plastic parabolic trough collectors has also been taken up and development in indigenization efforts specially in the area of electronic components and the receiver tube are bearing results respectively. This effort surprisingly has been made as sub-charge (iv) against the petitioner forms the articles imported under sub charge I (iv).”

68. Unfortunately, the IO's report itself is not a detailed one, analysing the testimonies of the witnesses, 20 in number, who deposed before the IO. The testimony of the sole defence witness, who explained how the process of issuance of a number of NMICs worked, material evidence in the form of the policy documents and what is borne out in the Annual Reports and correspondence referred to hereinbefore have been overlooked by the IO. The conclusion reached is therefore that which no reasonable person would arrive at in the circumstances.

69. In the considered view of the Court, the conclusions drawn by the IO, in relation to the overwhelming evidence before him, which he plainly overlooked can only be said to be perverse. The question required to be answered was whether the Petitioner had made any false and misleading

statement that would have enabled the issuance of the NMIC. The evidence on record in fact indicates to the contrary.

70. The IO appears to have conflated the roles of Dr. Sootha and the Petitioner. A careful reading of the entire report of the IO, would reveal that in each of the sub Articles of Charge, while there is clear evidence as regards Dr. Sootha, there is virtually no evidence as regards the Petitioner, either about his 'connivance' with Dr. Sootha, or about his making any false statement, regarding the purpose of the import. What, however, clearly emerges is that the Petitioner himself did not issue any NMIC, and certainly was not involved at the stage of the issuance of the CDEC. The DGTD appears to have been given full information about who was importing and for what purpose. Given the fact that issuance of neither the NMIC nor the CDEC was automatic, and further given the admitted position that the actual quantum of loss, if any, was unable to be quantified, till the end, none of the charges against the Petitioner, could be said to be proved.

Conclusions

71. For all of the aforementioned reasons, the Court finds that the memorandum of charges and the enquiry report is required to be quashed and are hereby quashed. The impugned order of the CAT is hereby set aside.

72. The pensionary benefits of the Petitioner would now be worked out on the basis of his reinstatement in service on the date of the impugned order, by which he was compulsorily retired. While the Petitioner would not be entitled to arrears of pay, the pensionary benefits shall be worked out from

the date of the Petitioner's superannuation in the normal course, accounting for all the increments that he would have earned upon reinstatement. All other retiral benefits should also be computed accordingly.

73. The consequential orders be issued and the payments be made not later than 12 weeks from today, failing which the Respondent would be liable to pay the Petitioner simple interest @ 6% per annum on the said sum for the period of delay.

74. The petition is allowed in the above terms with costs of Rs.20,000 which will be paid by the Respondents to the Petitioner within eight weeks. The pending applications are disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 29, 2020

mw/rd