



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
WRIT PETITION NO.968/2008

<u>PETITIONERS</u>	1. The Chief Commissioner of Income Tax, Aaykar Bhawan, Telengkhedi, Nagpur. 2. The Commissioner of Income Tax, Aaykar Bhawan, Telengkhedi, Nagpur.
<u>...VERSUS...</u>	
<u>RESPONDENTS</u>	1. Shri R.B. Saire (Since deceased) through legal heir S.R. Saire, aged major, resident of Plot No.53, Ram Nagra, N.M.C. Primary School, Nagpur – 10. 2. Central Administrative Tribunal, Camp at Nagpur.
Mrs. Mugdha Chandurkar, Advocate for petitioners Mr. Anubhav Mardikar, Advocate for respondent no.1	

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**CORAM : AVINASH G. GHAROTE AND
URMILA JOSHI-PHALKE, JJ.**

Date of reserving the judgment : 10/11/2023

Date of pronouncing the judgment : 01 /12/2023

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J U D G M E N T: (PER : AVINASH G. GHAROTE, J.)

1. Heard Mrs. Mugdha Chandurkar, learned counsel for the petitioners and Mr. Anubhav Mardikar, learned counsel for the respondent no.1.

2. The petition challenges the judgment of the learned 5
Central Administrative Tribunal (“CAT” for short hereinafter)
dated 04/12/2006, whereby the Original Application
No.2071/2004 filed by the original respondent against the order
of the Disciplinary Authority dated 17/01/2000, dismissing him
from service; the order dated 13/10/2003 of the Appellate 10
Authority, confirming the said punishment by rejecting his appeal
and the memo dated 17/09/1998 by the Additional
Commissioner of Income Tax, Range-1, Nagpur proposing to hold
an enquiry against him under Rule 14 of the Central Civil Services
(Classification, Control and Appeal) Rules, 1965 [“CCS(CCA) 15
Rules, 1965” hereinafter for short) has been allowed and the
termination of the original respondent has been set aside.
However, since the original respondent had already expired, the
reinstatement was not directed but the other benefits like
computation of pension, family pension and other pensionary 20

benefits have been directed to be paid to his legal heirs, the present respondent no.1.

3. It is necessary to note that the CAT had allowed the original application on two grounds: (i) that the enquiry initiated 5 against the original respondent stood vitiated on account of non-supply of the documents filed along with the chargesheet and (ii) that material extraneous to the enquiry namely letter dated 31/08/1999 by Mr. D.P. Shrivastava was considered by the Enquiry Officer, which did not form part and parcel of the enquiry 10 proceedings. On account of both these grounds the enquiry has been held to have been vitiated.

4. Mrs. Mugdha Chandurkar, learned counsel for the petitioners while assailing the impugned judgment of the learned 15 CAT contends that the finding rendered that the enquiry stood vitiated, is not sustainable in law, for the reason that the documents were supplied, maybe later in point of time on 10/08/1999, which, according to her, is reflected from the ordersheet of the said date (page 97). Relying upon the language 20 of Rule 14 (4) of the CCS (CCA) Rules, 1965, it is contended that

the requirement of the Rules was only to supply a list of documents and witnesses, and since there is no dispute that a list of documents was indeed supplied and no demand was made for supply of the documents included in the list, the provisions of Rule 14 (4) of the CCS (CCA) Rules, 1965 stood complied with. 5

Since the aforesaid Rules, according to learned counsel, do not require the documents to be supplied, non-supply of the same, or for that matter, delay in supplying of the same, would not result in vitiating the enquiry, nor causing any prejudice to the original respondent and the enquiry conducted, in that view of the matter 10

was legal and proper. It is also contended that even otherwise an inspection of the documents on record was granted to the original respondent, which position is not disputed and that would suffice the requirement of Rule 14 (4) of the aforesaid Rules. She places reliance upon *State Bank of Patiala and others Vs. S. K. Sharma* 15

(1996) 3, SCC 364; Narendra Nath Bhalla Vs. State of Uttar Pradesh and others (2007) 15 SCC 775; State Bank of India and others Vs. Bidyut Kumar Mitra and others (2011) 2 SCC 316; State of Uttar Pradesh and others Vs. Rajit Singh 2022 SCC

OnLine SC 341 and Chairman, State Bank of India and another 20

Vs. M J. James (2022) 2 SCC 301, in support of her contentions.

5. Insofar as the finding that the enquiry stood vitiated on account of extraneous material being considered by the Enquiry Officer, she contends that the finding in this regard is equally unsustainable in law, for the reason that the original respondent was well aware of the said communication and therefore could not claim ignorance of the same or that it was an extraneous material. It is, therefore, contended that the judgment of the CAT is liable to be quashed and set aside and the findings rendered in the enquiry and the punishment of termination imposed was clearly justified. 5 10

6. Mr. Anubhav Mardikar, learned counsel for the original respondent supports the impugned judgment and contends that supply of the entire documents relied upon in the chargesheet is a sine-qua-non, failure of which would vitiate the entire enquiry on account of denial of a reasonable opportunity to meet the case claimed to have existed against the original respondent and would also be in violation of the principles of natural justice. It is also contended that the conduct of enquiry would not permit any extraneous material to be considered such as the communication between Mr. Shrivastava, which was given 15 20

to the original respondent by the Presenting Officer, along with the prosecution brief, which was never taken on record during the enquiry proceedings, as a result of which, the right of the original respondent to deny the contents of the letter dated 31/08/1999 of Mr. Shrivastava was clearly thwarted, resulting in vitiation of the enquiry. Learned counsel places reliance upon *State of Uttar Pradesh and others Vs. Saroj Kumar Sinha (2010) 2 SCC 772*; *Union of India and others Vs. B.V. Gopinath (2014) 1 SCC 351*; *Bilaspur Raipur Kshetriya Gramin Bank and another Vs. Madanlal Tandon AIR 2015 SC 2876*, in support of his contentions. 5 10

7. The entire case depends upon the language of Rule 14 of the CCS (CCA) Rules, 1965, which is the procedure by which the enquiry for imposing major penalties has to be conducted. For the sake of ready reference Rule 14 of the CCS (CCA) Rules, 1965 is reproduced as under: 15

“14. Procedure for imposing major penalties. - (1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(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.

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Provided that where there is a complaint of sexual harassment within the meaning of Rule 3-C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

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Explanation. - Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.

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(3) Where it is proposed to hold an inquiry against a Government Servant under this Rule and Rule 15, the disciplinary authority shall draw up or cause to be drawn up-

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(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

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(ii) a statement of the imputations of misconduct or mis-behaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

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(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, the statement of the imputations of

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misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence and state whether he desires to be heard in person.

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(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary so to do, appoint, under sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government Servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 15.

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

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

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(6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority-

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(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of the defence, if any, submitted by the Government Servant;

(iii) a copy of the statements of witness, if any, referred to in sub-rule (3);

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(iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government Servant; and

(v) a copy of the order appointing the "Presenting Officer".

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(7) The Government Servant shall appear in person before the inquiring authority on such day and at such time

within ten working days from the date of receipt by the inquiring authority of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by notice in writing, specify, in this behalf, or within such further time, not exceeding ten days, as the inquiring authority may allow.

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(8)(a) The Government Servant may take the assistance of any other Government Servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits ;

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Provided that the Government Servant may take the assistance of any other Government Servant posted at any other station, if the inquiring authority having regard to the circumstances of the case and for reasons to be recorded in writing so permits.

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Note : The Government Servant shall not take the assistance of any other Government Servant who has two pending disciplinary cases on hand in which he has to give assistance.

(b) The Government Servant may also take the assistance of a retired Government Servant to present the case on his behalf, subject to such conditions as may be specified by the President from time to time by general or special order in this behalf.

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(9) If the Government Servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government Servant thereon.

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(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Government Servant pleads guilty.

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(11) The inquiring authority shall, if the Government Servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall, adjourn the case to a later date not exceeding thirty days, after recording an order that the Government Servant may, for the purpose of preparing his defence :

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(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);

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(ii) submit a list of witnesses to be examined on his behalf;

Note.- If the Government Servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

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(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are, in the possession of Government but not mentioned in the list referred to in sub-rule (3).

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Note.- The Government servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

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(12) The inquiring authority, shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition :

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Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

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(13) On receipt of the requisition referred to in sub-rule (12), every authority having the custody or possession

of the requisitioned documents shall produce the same before the inquiring authority :

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government Servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government Servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government Servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government Servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government Servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interests of justice.

Note.- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in

the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) When the case for the disciplinary authority is closed, the Government Servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government Servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government Servant shall then be produced. The Government Servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government Servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) The inquiring authority may, after the Government Servant closes his case, and shall, if the Government Servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government Servant to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the Government Servant, or permit them to file written briefs of their respective case, if they so desire.

(20) If the Government Servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte.

(21)(a) Where a disciplinary authority competent to impose any of the penalties specified in clause (i) to (iv) of Rule 11 (but not competent to impose any of the penalties specified in clauses (v) to (ix) of Rule 11), has itself inquired into or caused to be inquired into the articles of

any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government Servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

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(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witness and examine and cross-examine and re-examine the “witness” and may impose on the Government Servant such penalty as it may deem fit in accordance with these rules.

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(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding, may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

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Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

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(23)(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-

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(a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(b) the defence of the Government servant in respect of each article of charge;

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(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and the reasons therefor.

Explanation.-If in the opinion of the inquiring authority the proceedings of the inquiry establish any

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article of charge different from the original articles of the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government Servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

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(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include :-

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*(a) the report prepared by it under clause (i);
(b) the written statement of defence, if any, submitted by the Government servant;*

(c) the oral and documentary evidence produced in the course of the inquiry;

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(d) written briefs, if any, filed by the Presenting Officer or the Government Servant or both during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.”

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8. A perusal of Rule 14 of the CCS (CCA) Rules, 1965 would indicate that Sub-Rule 3 requires that where it is proposed to hold an enquiry against a Government employee, the Disciplinary Authority shall draw or cause to be drawn up the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charges which shall contain a statement of all relevant facts, including an admission or confession made by the Government employee and a list of documents by which and a list of witnesses by whom the articles

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of charges are proposed to be sustained. Sub-Rule 4 requires that the articles of charges and the list of documents and witnesses have to be delivered to the Government employee, consequent to which, the Government employee is required to submit within the time specified, the written statement of his defence and state 5 whether he desires to be heard in person.

9. The placement of these Sub-Rules in Rule 14 of the CCS (CCA) Rules, 1965 would indicate that the supply of the chargesheet and the list of documents and witnesses has to be 10 prior in point of time, so as to enable the charged Government employee to prepare and file his written statement. The question is whether mere supply of the list of documents, alone, without the documents, annexed thereto, would satisfy the requirement of Sub-Rule 4 of Rule 14 of the CCS (CCA) Rules, 1965. In other 15 words, whether the principles of natural justice which require a reasonable opportunity to be afforded to the charged Government employee would stand satisfied by mere supply of the list of documents, sans the documents themselves, to enable him to prepare an effective written statement/defence. 20

10. The purpose of supply of the chargesheet, the list of documents and the list of witnesses, is to enable the charged Government employee to know what the charges, in the contextual background of the documents, which claim not only to support but also to prove them, are, and to prepare an effective 5 defence which would enable him to meet the charges. Mere supply of the list of documents without making available the documents on which the Disciplinary Authority seeks to rely upon to bring home the charges, in our considered opinion, would not satisfy the object of affording a reasonable opportunity to the 10 charged Government employee to meet the charges by preparing an effective defence. The documents annexed with the list of documents, to be filed with the chargesheet, in our considered opinion, form an integral part of the chargesheet and therefore Sub-Rule 4 of Rule 14 of the CCS (CCA) Rules, 1965 will have to 15 be read, so as to mean as including the supply of the documents themselves to the charged Government employee, along with the list of documents as contemplated therein, otherwise, the very object of supply of the chargesheet, in order to enable the charged Government employee to prepare an effective defence, 20 would stand frustrated.

11. The argument that the supply of the list of documents, would satisfy the object of enabling the charged Government employee to prepare an effective defence, is clearly misconceived, for the reason that the articles of charges are framed on the basis of the documents, annexed to the list of documents, and unless and until the documents annexed with the list are perused, analysed and their import and effect understood by the charged Government employee, he would not be in a position to prepare an effective defence. Mere inspection of these documents, in our considered opinion, also would not satisfy the purpose and object of Sub-Rule 4 as that would also not be considered to be equivalent or effective as supplying the documents themselves. Inspection and supply of documents are two different and distinct things altogether. Whereas the supply of the documents would enable the charged Government employee to peruse, sift and analyze them, at his leisure, the mere inspection of the documents, may not have the same effect, and therefore would not result in satisfying the object and purpose of granting a reasonable opportunity to prepare an effective defence, as is contemplated and mandatorily required by the principles of natural justice. Sub-Rule 4; Sub-Rule 6 (iv); Sub-

Rule 11 (i) as well as Sub-Rule 15 of the CCS (CCA) Rules, 1965 will, which merely provide for inspection, may then fall foul of Article 14 of the Constitution, as on the one hand the prosecution has full control and access to the documents annexed with the list of documents, as against which, the charged Government employee is denied such equal access to them, thereby creating an inequality. Sub-Rule 4; Sub-Rule 6 (iv); Sub-Rule 11 (i) as well as Sub-Rule 15 of the CCS(CCA) Rules, 1965 in order to save them, from the vice of inequality, therefore will have to be read down to mean that the supply of the list of documents or the inspection as indicated therein would include the supply of the documents themselves, to the charged Government employee. Any other meaning put upon the language of the expression 'list of documents', as contained therein would not satisfy the purpose of affording a real and effective opportunity of defence to the charged Government employee.

12. It is also material note that there are as many as 20 documents included in the list of documents, which also would indicate that the mere inspection of these documents would not serve the purpose of affording a reasonable opportunity to the

charged Government employee in the matter of formulating an effective defence in absence of the documents being supplied to him, though it is not the volume which is material. It is also necessary to note that the requirement of supply of the documents, cannot be termed as a procedural requirement, but 5 would be a substantial requirement to be mandatorily followed, as the documents, themselves form the basis of the charges against the charged Government employee, which he has to meet and without these documents being supplied, the charged Government employee is deprived a right to a real, substantive 10 and effective defence.

13. ***State Bank of Patiala Vs. S. K. Sharma*** (supra) while summarizing the principles, which it has held not to be exhaustive, holds that in case of violation of a procedural 15 provision, the complaint should be examined from the point of view of prejudice. The judgment itself creates exceptions to this in respect of cases falling under 'no notice, no opportunity and no hearing categories'. As indicated above, the requirement of providing documents which form a part and parcel of the 20 chargesheet cannot be termed to be a procedural requirement

and thus the present case would clearly be covered by the exceptions as indicated in para 33(3) therein and there cannot be any question of applying the test of prejudice. **Narendra Nath Bhalla** (supra) goes on a general proposition and does not consider the language of the CCS (CCA) Rules, 1965 which we have held to be a substantial requirement to be mandatorily followed and thus is of no assistance. **Bidyut Kumar Mitra** (supra) also goes on the proposition that non supply of the document, was not shown to have caused any prejudice, whereas the present case, as indicated above, is covered by exceptions as indicated in para 33(3) of **State Bank of Patiala Vs. S. K. Sharma** (supra), which was distinguished on facts. **Rajit Singh** (supra) in para 15 and 16, itself holds that where it is found that the enquiry stands vitiated on account of violation of the principles of natural justice, the matter is to be remanded back for proceedings with the enquiry from the stage of violation of the principles of natural justice. **M. J. James** (supra) holds that violation of natural justice must be tested on the principle whether observance of that rule was necessary for just decision in the facts of that case. In the instant case, we have already held that the requirement of supply of the copies of the documents to the charged Government

employee was mandatory, considering which *M. J. James* (supra) is of no assistance to the learned counsel for the petitioners.

14. That takes us to the next contention that extraneous material was considered by the Enquiry Officer in the conduct of the enquiry. The CAT has recorded that the letter dated 31/08/1999, by Mr. Shrivastava, was not a part of the enquiry proceedings and consideration thereof vitiates the enquiry. Mrs. Chandurkar, learned counsel for the petitioners, does not dispute that this letter did not form part of the record but has tried to support the consideration of this communication on the contention that the Charged Officer was aware of the same. This cannot, in our considered opinion, be a ground to consider material which was not a part of the record by the Enquiry Officer while conducting the enquiry and forming an opinion as to the guilt of the Charged Officer as any such consideration would clearly again amount to denial of an opportunity to the Charged Officer to effectively meet the allegations levelled against him, based upon what was contained in the said letter. The enquiry therefore has rightly held to have been vitiated on this count also.

15. In view of the above discussion, we do not see any reason to interfere in the impugned judgment. The writ petition is therefore dismissed. Rule stands discharged. No order as to costs.

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(URMILA JOSHI-PHALKE, J.)

(AVINASH G. GHAROTE, J.)

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