(2011) 11 AP CK 0046

Andhra Pradesh High Court

Case No: Writ Petition No. 10415 of 2000

N. Bhasker Rao		APPELLANT
	Vs	
Government of Andhra Pradesh		RESPONDENT

Date of Decision: Nov. 4, 2011

Acts Referred:

- Andhra Pradesh Civil Service (Disciplinary Proceedings Tribunal) Act, 1961 - Section 10(1)
- Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960 - Section 2, 4
- Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1961 - Rule 3, 3(1), 3(2), 4, 4(2)
- Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1989 - Rule 3, 4, 4(2), 4(4), 6
- Business Rules - Rule 32(1)
- Constitution of India, 1950 - Article 166, 166(1), 226, 227, 229
- Penal Code, 1860 (IPC) - Section 161, 435, 5(1), 5(2)
- Prevention of Corruption Act, 1988 - Section 5

Hon'ble Judges: V.V.S. Rao, J; K.G. Shankar, J

Bench: Division Bench

Advocate: N. Bhasker Rao, Party in Person, for the Appellant;

Final Decision: Dismissed

Judgement

V.V.S. Rao

1. The writ petition is against the order dated 30.7.1999 passed by the Andhra Pradesh Administrative Tribunal in Original Application No. 5279 of 1996 rejecting the challenge to G.O.Ms. No. 128, Transport, Roads and Buildings (S.I) Department, dated 03.7.1993. Though the writ petition was filed by engaging a Counsel, the petitioner argued his case in person for the reason that his Counsel is not well.

Background

2. The petitioner initially joined as Lower Divisional Clerk in Roads and Buildings Department (R&B). He was later promoted as Upper Divisional Clerk. After he acquired the requisite qualifications, he was promoted as Draughtsman, Grade II, in the Office of the Executive Engineer (R&B), Parkal, Hanamkonda, Warangal. On 02.2.1988 the Deputy Superintendent of Police, and the Police Constable of Anti Corruption Bureau (ACB) along with punch witnesses trapped the petitioner when he allegedly accepted bride of a sum of Rs. 500/-from one Dasari Purushotham of Regonda Village for issuing house rental value certificate (RVC) pursuant to an earlier demand. The ACB sent a report to the Government about the misconduct. They referred the matter to the Tribunal for Disciplinary Proceedings (TDP). The TDP framed a charge and conducted enquiry in TEC No. 54 of 1988. The prosecution examined nine witnesses and marked Exs. P1 to P9. The petitioner deposed as D.W. 1 and marked Exs. D1 to D8. Material objects M.O.1 to M.O.8 were also marked. On consideration of evidence, the TDP sent a report dated 29.4.1989 holding that the charge against the petitioner is proved. TDP recommended dismissal of the petitioner from service. The Government accepted the said recommendation and issued a show cause notice dated 09.3.1990 indicating their provisional decision to dismiss the petitioner. The petitioner submitted explanation. On considering the same, the Government issued orders in G.O.Ms. No. 128, dated 03.7.1993 dismissing the petitioner which was assailed before the Tribunal.

3. The petitioner contended before the Tribunal that there is no evidence on record before the TDP to arrive at a finding that charge of accepting the illegal gratification is proved; finding of the Tribunal is perverse and that it has relied on the evidence of P.W. 2 who is interested witness; the Hon''ble Minister for Roads & Buildings recommended the punishment of stoppage of three increments without cumulative effect; again the file was unnecessarily referred to the Minister and the Chief Minister (the CM) which is contrary to the procedure and that the case was referred to TDP without consulting the Head of the Department (HoD). The Tribunal did not find any merit in any of the submission and dismissed the Original Application accordingly.

Submissions

4. Before this Court the party-in-person made the following submissions. i) The learned Tribunal has not given adequate opportunity to the petitioner''s Counsel. ii) The Tribunal ordered the Government Pleader to produce the records on 27.7.1999. The matter was not listed on that day. However, on 30.7.1999 the matter appeared under the caption "for judgment to be delivered at 2:15" and the order was pronounced without the Government Pleader submitting the record. iii) The TDP while submitting the report did not conduct enquiry as per the Rules. Even though there are no independent witnesses, they sent a report finding the petitioner guilty, which is unsustainable. The TDP has no power to recommend dismissal or any

punishment. Before referring the case to the TDP, the Government has not consulted the HoD. iv) Even though the Hon''ble Minister recommended a lesser punishment, the Government issued the Government Order dismissing the petitioner which is illegal and arbitrary. The party-in-person filed a compilation of photocopies of the following decisions in Babu Lal Bajpai Vs. State of U.P., , Kitab Singh Vs. State of Rajasthan, , Mathura Prasad Vs. Union of India (UOI) and Others, , M.V. Bijlani Vs. Union of India (UOI) and Others, , S. Pushpa Raj v. Depot Manager, APSRTC 1996 (8) SLR 402 , Moni Shankar Vs. Union of India (UOI) and Another, , G.V. Nanjundiah Vs. State (Delhi Administration), , State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan AIR 1961 SC 1623 , Lajpat Rai Malhotra v. Financial Advisor and Chief Accounts Officer 1971 (1) SLR 5 592 , Narmada Pd. Yadav v. State of M.P. (2007) 1 SCC 681 : 2006 (8) SCJ 861 , Nand Kishore Prasad Vs. State of Bihar and Others, and Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others,

5. The Assistant Government Pleader for Services -II submits that the plea raised by the petitioner before the Tribunal and this Court is an afterthought. On 02.2.1988 when he was trapped, the petitioner did not make any submission that he has not accepted the bribe and Purushotham tried to forcibly keep money in his pocket. She would also urge that there is no mandatory requirement to inform the HoD before referring the case to TDP; when a decision is taken contrary to the recommendation made to TDP the file has to be referred to the CM; but when there is a change in the Minister, the new Minister agreed with the recommendation of the TDP, and therefore, the procedure is correctly followed. She also refutes other contentions of the petitioner.

6. Learned Tribunal considered all the issues raised by the petitioner and recorded the findings as follows. It is not obligatory on the part of the Government to consult the HoD before referring the case to TDP and the order in memo dated 09.3.1990 issued by the Principal Secretary to the Government is in accordance with Rule 4 of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1961 (1961 Rules). The Government being supreme can take their independent decision even without consulting the HoD. After receipt of the report of the TDP recommending dismissal, initially as per the Rules the file was referred to the Hon''ble Chief Minister because the Minister deviated from the recommendation. Subsequently, when there was a change of Minister, the recommendation of TDP was accepted, which was endorsed by the Chief Minister. The TDP followed the procedure after affording reasonable opportunity to the petitioner and the enquiry by the TDP is not vitiated on any ground.

7. In the background of the case and the submissions made by the rival parties, the issues can be considered in three parts under the following headings: (a) before referring to TDP; (b) the stage of enquiry before TDP; and (c) the stage of Government consideration of TDP''s report. Before taking up these issues for consideration, we will advert to the principles of judicial review of the decisions of

the Tribunal.

8. In accordance with Clause (1) of Article 323-A of the Constitution of India, the Parliament enacted the Administrative Tribunals Act, 1985. The jurisdiction in relation to all ''conditions of service'' in the public employment was to be exercised by the Administrative Tribunal constituted under Chapter II of the said Act. A seven-Judge Bench of the Supreme Court in L. Chandra Kumar Vs. Union of India and others, laid down that the jurisdiction of this Court under Articles 226/227 as well as that of the Supreme Court under Article 32 cannot be ousted. Thus all the decisions of the Tribunals will be subject to judicial review before a Bench of the High Court. Of late, almost all decisions of the service tribunals are challenged on untenable grounds and this Court is forced to perform the role of the first appellate Court.

9. The Tribunal is vested with power to adjudicate upon matters including the vires of legislation and rules as well as to decide the disputes involving interpretation of Articles 14, 15 and 16 of the Constitution of India. Of course all the disputes in relation to conditions of service are within the ambit of the jurisdiction of the Tribunals. The Tribunal however is held to be not competent to decide the vires of the parent statute constituting it. Needless to say that like all the statutory Tribunals, the service tribunals exercise wide adjudicatory powers in relation to service disputes. As held by the Supreme Court in S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, , P. Sambamurthy v. State of Andhra Pradesh, AIR 1987 SC 663 and L. Chandra Kumar as per the theory of alternative institutional mechanism the tribunals are vested with the power of judicial review in service matters.

10. The difference between "appeal" and "review" is well established. An appeal is continuation of the original proceedings and is concerned with the merits of the case. It requires examination of the correctness of the findings of both fact and law. Judicial review is not an appeal from a decision but a review of the manner in which the decision was made and that the judicial review is concerned not with the decision but with the correctness of the decision making process (Chief Constable of the North Wales Police v. Evans 1982 (1) WLR 1155) . In R. v. Entry Clearance Officer, Bombay, Ex parte Amin [1980] 2 All ER 837 : [1980] 1 WLR 1530 : 1983 (2) AC 818 , the House of Lords explained that judicial review is entirely different from an ordinary appeal and that it is concerned not with the merits of a decision but with the manner in which the decision was made. These principles have been quoted with approval in Tata Cellular Vs. Union of India,

11. Further, only grave error of law apparent on the face of the record is amenable to judicial review. A writ of certiorari shall issue if the Tribunal failed to exercise jurisdiction properly or exceeded its jurisdiction. A writ of mandamus may also be sought, if the Tribunal after adjudication declines to exercise proper discretion in discharging its functions. Equally a declaration can be sought when the tribunal

while exercising jurisdiction arrives at a finding which might be perverse on the face of it. (Judicial Review: Law & Procedure by Richard Gordon; Sweet & Maxwell 1996).

12. The Court of judicial review would not ordinarily interfere with the finding of facts however grave they may be. It is only concerned with grave error of law which is apparent on the face of record. The error of law for instance may arise when a Tribunal wrongfully rejects admissible evidence or considers inadmissible evidence in determining facts. In Syed Yakoob Vs. K.S. Radhakrishnan and Others, it was held as follows.

There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding.

(emphasis supplied)

13. In Jagdish Prasad Vs. Smt. Angoori Devi, the law in Syed Yakoob was reiterated thus.

... a writ of certiorari is issued for correcting the errors of jurisdiction committed by the courts or tribunals in cases where they exceed their jurisdiction or fail to exercise it or exercise it illegally or improperly i.e. where an order is passed without hearing the party sought to be affected by it or where the procedure adopted is opposed to principles of natural justice. A caution was indicated by saying that the jurisdiction to issue a writ of certiorari is a supervisory one and in exercising it, the Court is not entitled to act as a court of appeal. That necessarily means that the findings of fact arrived at by the inferior court or tribunal are binding. An error of law apparent on the face of the record could be corrected by a writ of certiorari, but not an error of fact, however grave it may appear to be.

(emphasis supplied)

14. In Commissioner of Income Tax Vs. Karam Chand Thapar and Bros. P. Ltd., the issue was whether the finding of fact of Income Tax Appellate Tribunal can be interfered with in judicial review. Answering the plea in negative, the Supreme Court observed.

It is well settled that the Tribunal is the final fact-finding body. The questions whether a particular loss is a trading loss or a capital loss and whether the loss is

genuine or bogus are primarily questions which have to be determined on the appreciation of facts. The findings of the Tribunal on these questions are not liable to be interfered with unless the Tribunal has taken into consideration any irrelevant material or has failed to take into consideration any relevant material or the conclusion arrived at by the Tribunal is perverse in the sense that no reasonable person on the basis of facts before the Tribunal could have come to the conclusion to which the Tribunal has come. It is equally settled that the decision of the Tribunal has not to be scrutinised sentence by sentence merely to find out whether all facts have been set out in detail by the Tribunal or whether some incidental fact which appears on record has not been noticed by the Tribunal in its judgment. If the court, on a fair reading of the judgment of the Tribunal, finds that it has taken into account all relevant material and has not taken into account any irrelevant material in basing its conclusions, the decision of the Tribunal is not liable to be interfered with, unless, of course, the conclusions arrived at by the Tribunal are perverse.

(emphasis supplied)

15. In H.P. Gandhi v. Gopi Nath (1992) Supp. 2 SCC 312 after referring to Syed Yakoob, it was held:

Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, to a conclusion which is correct in the eyes of the court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the court sits in judgment not only on the correctness of the decision-making process but also on the correctness of the decision itself.

16. In Surya Dev Rai Vs. Ram Chander Rai and Others, the principles of judicial review in certiorari proceedings were, inter alia, summed up as below.

(3) Certiorari, under Article 226 the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction -by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction -by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules or procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of

law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

17. In State of U.P. and Another Vs. Johri Mal, the Supreme Court ruled that to a limited extent the Court can scrutinize the facts to see whether decision making process is in accordance with law. In this regard, the following observations were made.

It is well settled that while exercising the power of judicial review the court is more concerned with the decision-making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact-finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision-maker''s opinion on facts is final. But while examining and scrutinising the decision-making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the court of judicial review can reappreciate the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-neigh impossible to record a finding whether a decision is rational or

irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touchstone of the tests laid down by the court with special reference to a given case.

18. From the above binding authorities, the law may be culled out as follows.

1) The High Court is not an appellate authority over the decision of the Administrative Tribunals. While exercising the power of judicial review, the High Court cannot be oblivious to the conceptual difference between appeal and review;

2) The petition for a judicial review would lie only on grounds of grave errors of law apparent on the face of the record and not on the ground of error of fact, however grave it may appear to be;

3) When the Tribunal renders a decision after determining the facts, no application for judicial review could be maintainable only on the ground that the Tribunal committed an error of fact, however grave it may appear, unless it is shown that such a finding of the Tribunal is based on no evidence and the error of fact itself can be regarded as error of law in the sense that admissible evidence was rejected and inadmissible evidence was relied on;

4) The orders passed by the Tribunal by exercising discretion which judicially vests in it cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal in the sense the Tribunal did not follow an earlier decision of the Tribunal or binding authority of the High Court or the Supreme Court with reference to finding of facts and law;

5) When the Tribunal disposes of the original application by applying the binding precedents of the High Court as well as the Supreme Court, it cannot be said that the Tribunal has committed any error of law apparent on the face of the record; in such cases the limited review before the High Court would be whether the binding principle has been appropriately applied or not; the Tribunal''s decision which is rendered in ignorance of the statutory law including subordinate legislation as well as the law laid down by the Supreme Court must be held to suffer an error apparent on the face of the record and requires judicial review;

6) The grounds of judicial review of administrative action -illegality, irrationality, impropriety and proportionality with necessary changes are equally applicable to cases of judicial review of the Tribunal''s decision; and

7) A mere wrong decision without anything more is not enough to attract jurisdiction of High Court under Articles 226 and 227, and the supervisory jurisdiction conferred on High Court is limited to see that Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

19. In the light of these principles we shall now consider contentions raised under these separate headings.

a) Before referring to TDP

20. The petitioner does not dispute that on 02.02.1988 at about 11.20 am the ACB conducted trap operation. After the trap Deputy Superintendent of Police (DSP) submitted a report to the Director General of ACB, who sent it to the Government. Having come to the conclusion that the petitioner committed misconduct, by memo dated 23.9.1988 the Government referred the case to TDP u/s 4 of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960 (hereafter, the TDP Act).

21. The 1961 Rules are made u/s 10(1) of the TDP Act. Rules 3 and 4 of 1961 Rules are relevant and read as under.

3. (1) The Government shall, subject to the provisions of rule 4, refer to the Tribunal for enquiry and report u/s 4 of the Act-

(a) Cases relating to Government servants on a monthly salary of Rs. 150 and above in respect of matters involving corruption; and

(b) All disciplinary cases in which the Government propose to revise the orders passed on the finding of the Tribunal;

Provided that it shall not be necessary to refer to the Tribunal any cases in which Tribunal has, at any previous stage, reported its findings in regard to the order to be passed and no further question has thereafter arisen for determination;

(2) The Government may, subject to the provisions of Rule 4, also refer to the Tribunal any other case, or class of cases, which they consider should be inquired into by the Tribunal;

(3) Notwithstanding anything contained in sub-rule

(1) or (2), cases arising in the Judicial Department and cases of officers and servants of the High Court who come under the rule making control of the Chief Justice as laid down in Article 229 of the Constitution of India shall not be referred to the Tribunal.

4. (1) In every case referred to in sub-rule (1) or (2) of rule 3, on completion of investigation, the Anti-Corruption Department or other department authority concerned shall forward to the Government all the records of the case.

(2) The Government shall, after examining such records and after consulting the Heads of Departments concerned, if necessary, decide whether the case shall be tried in a Court of Law or inquired into by the Tribunal or a Departmental authority;

(3) If the Government decide that the case shall be inquired into by the Tribunal, they shall send the records relating thereto to the Tribunal;

(4) In any case where the Head of the Department is not consulted, he shall be informed of the action that is being taken.

(5) There shall be a Director of Prosecutions to conduct inquiries on behalf of the Government in disciplinary cases before the Tribunal and the accused officer concerned shall be allowed to be represented by counsel. In case where the director of Prosecutions cannot attend to examination of witnesses commission, and ad hoc Director of Prosecution shall be appointed.

(emphasis supplied)

22. Rule 3 empowers the Government to refer all disciplinary cases in which they propose to pass orders on the finding of the TDP. The cases of the Government servants drawing a monthly salary of less than Rs. 150/-and the cases arising in judicial department and the cases of officers and servants of High Court coming under the control of the Chief Justice of the High Court fall in exempted category. This power to refer the cases for enquiry to TDP is subject to Rule 4 of 1961 Rules. Three stages are contemplated by Rule 4. First the ACB or other departmental authority shall forward the records after completing investigation to the Government; second the Government after examining the records may consult the HoDs if necessary; and the third after examining the records the Government may then decide whether or not the cases shall be tried in a Court of law or enquired into by the TDP or departmental authority. In case not consulted, HoD will be informed the action taken after deciding whether or not the case shall be sent to TDP.

23. The Rules made vide G.O.Ms. No. 895, dated 18.7.1961 stand superseded by a new set of Rules promulgated u/s 10(1) of the TDP Act vide G.O.Ms. No. 304, GAD, dated 03.6.1989. The new set of Rules are called the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1989 (1989 Rules). After amendment, Rules 3 and 4 read as under.

3. (1) The Government may, subject to the provision of Rule 4, refer all cases of Officers, Gazetted or otherwise involving corruption, integrity, enquired into by Anti-Corruption Bureau including cases of misappropriation embezzlement investigated by Anti-Corruption Bureau or emanating otherwise and which are considered not appropriate for prosecution in a court of law, to the Tribunal for Disciplinary Proceedings for enquiry and report u/s 4 of the Act.

(2) Where two or more Government servants are concerned in any case, the Government may make an order directing that disciplinary proceedings against all of them may be taken in a common proceeding; and thereupon the Tribunal shall conduct the enquiry into such case accordingly.

(3) Notwithstanding anything in sub-rule (1) cases arising in the Judicial Department and cases of officers and servants of the High Court who come under the rule making control of the Chief Justice as laid down in Article 229 of the Constitution of India shall not be referred to the Tribunal.

4. (1) In all cases of the type referred to in sub-rule (1) of Rule 3, on completion of enquiry or investigation, as the case may be, the Anti Corruption Bureau or the Departmental authority or any other Agency viz., Crime Branch, Criminal Investigating Department, Director General, Vigilance and Enforcement or any Enquiry Officer appointed by a Government Department shall submit a report in each of the cases to the Government.

(2) The Government shall after examining such records and after consulting the Head of the Department concerned, if necessary, decide whether the case shall be inquired into by the Tribunal.

(3) If the Government decide that the case shall be enquired into by the Tribunal, they shall send or cause to send, as the case may be, the records relating thereto the Tribunal.

(4) There shall be a Government Counsel and as many Government Counsels as may be considered necessary, to conduct enquiries on behalf of the Government in disciplinary cases before the Tribunal and the charged officer concerned shall be allowed to be represented by counsel. In case where the Government counsel or Counsels cannot attend to examination of witnesses on commission, an ad-hoc Government Counsel shall be appointed.

(emphasis supplied)

24. As per Rule 3 of 1989 Rules, the Government is required to refer all cases of officers, Gazetted or otherwise, involving corruption and integrity, enquired into by the ACB including cases of misappropriation and embezzlement to TDP. The cases arising in judicial department and the cases of officers and servants of High Court, however, do not come within the purview of Rule 3 of 1989 Rules. Rule 4 has also been amended. As per the sub-rule (2) of Rule 4 of 1989 Rules requires the Government to consult HoD if necessary and decide whether the case shall be enquired into by the TDP. The difference between the 1989 Rules and 1961 Rules is that in 1961 Rules the Government was having discretion to send the cases to TDP selectively. But under 1989 Rules when the cases are enquired or investigated by the ACB all such cases shall have to be referred to TDP. Insofar as the consultation with HoD is concerned, it is not a mandatory Rule as urged by the party in person.

25. It is well settled that unless and until some penal consequences flow from non-compliance with the statutory provision or rule, the provision is construed only as directory State of U.P. Vs. Manbodhan Lal Srivastava, and Ram Gopal Chaturvedi Vs. State of Madhya Pradesh, . Though Rule 4(4) of 1989 Rules uses the words

"Government shall ... ... after consulting the HoD concerned", the same cannot be construed as mandatory. We have extracted Rule 4(2) of 1961 Rules as well as Rule 4(2) of 1989 Rules. On plain reading of the same it is not possible to countenance the submission that reference of the petitioner''s case to TDP without referring to HoD is illegal. The default of consultation by the Government with the HoD does not render the reference to TDP as illegal or invalid as contended by the petitioner. The language of the Rules does not admit any such conclusion. Therefore, we reject this contention.

b) Proceedings before TDP

26. The party in person would urge that the findings recorded by the TDP are not supported by evidence. Indeed the petitioner went to the extent of urging before us that TDP did not conduct enquiry in accordance with the TDP Rules and ignored the evidentiary principles. We are not impressed with any of these submissions. It is very doubtful whether the petitioner, who did not challenge the report of the TDP dated 29.4.1989 before the Administrative Tribunal, could challenge the same collaterally in this petition for judicial review against the final order of the Tribunal. Nevertheless we may advert to proceedings before the TDP.

27. By their proceedings dated 10.11.1988 in TEC No. 54 of 1988 the following charge was framed by TDP against the petitioner.

CHARGE: "That you, while working as Draughtsman, Grade II, in the office of the Executive Engineer (R&B) Special Executive Division, Warangal, from 01.10.1986, actuated by corrupt motives and in abuse of your official position demanded and accepted illegal gratification of Rs. 500/-on 02.2.1988 at about 11.20 a.m. from Sri Dasari Purushotham, r/o Regonda for issuing a rental valuation certificate for his house let out to Primary Health Central, Regonda, on rent, and that thereby you are guilty of misconduct within the meaning of Rule 2(b) of Andhra Pradesh Civil Service (Disciplinary Proceedings Tribunal) Act, 1960"

28. The allegation in support of the charge was minutely and graphically informed to the petitioner. The said proceedings also give the summary of the statements of various persons recorded, during the investigation, by the DSP (ACB), Warangal Range in Crime No. 1/ACB/WRL/88. Before the TDP the petitioner pleaded not guilty. The ACB examined nine witnesses to prove the charge and marked Exs. P1 to P8, P8(a) to (k) and P9. The petitioner gave evidence as D.W.1 and marked Ex. D1 to D8. The defence of the petitioner all along from the beginning has been that the charge is false; the question of demanding Rs. 500/-from Dasari Purushotham (P.W.1) on 02.2.1988 does not arise as the file pertaining to the issue of RVC for his house let out to Primary Health Centre, Regonda was not pending with the petitioner; the basis for the charge is totally false and that there is no evidence at all on record to prove the charge. The main criticism before us is that the TDP mainly relied on the evidence of P.Ws.1 and 2 and, therefore, the entire enquiry report of the TDP is

vitiated. According to him, P.W.1 is an accused in a murder case being PRC No. 22 of 1983 and a case of forgery being PRC No. 41 of 1984 and, therefore, his version is unreliable. According to him, being the friend of P.W.1, P.W.2 is an interested witness; and importance cannot be given to his evidence.

29. We have perused the report dated 29.4.1989 of the TDP in TEC No. 54 of 1988. Rule 6 of 1989 Rules stipulates the procedure to be followed by the TDP in conducting enquiry into the cases of misconduct referred to it u/s 4 of the TDP Act. After receiving the records relating to allegations of misconduct against the Government servant the TDP shall frame appropriate charges and communicate them to the charged officer together with the list of witnesses proposed to be examined. On the date fixed for enquiry, the Tribunal shall furnish copies of the statements of witnesses proposed to be examined and recorded by the ACB to the charged officer for the purpose of cross-examination. The charge shall be read over to the Government servant and he shall be examined whether he admits and denies the charge. If the charges are admitted, the TDP shall record the plea and return a finding of guilt. If the charged officer denies the charge, evidence shall be recorded on such charge or charges as are not admitted. At the enquiry, oral and documentary evidence shall be first adduced by the prosecution. The defence shall have right to cross-examine the witnesses and explain the documents. Thereafter within the time allowed the charged officer shall file written statement of his defence together with list of witnesses whom he wishes to examine besides offering himself as witness in his own defence. After evidence the officer shall advance arguments to which the prosecution may submit counter arguments.

30. For the purpose of conducting enquiry, the Tribunal is vested with the powers to summon and examine any witness; to call for and exhibit any document or to recall any witness for further examination. Rules 6(1)(d) and (j) of 1989 Rules provide that the Tribunal shall observe the basic rules of evidence relating to examination of witnesses and marking of documents. The enquiry shall conform to the principles of natural justice. Further the proceedings of the Tribunal shall contain sufficient record of evidence. After completing enquiry, the Tribunal shall send report of its findings (Section 6(2) of the TDP Act) to the Government within thirty (30) days.

31. There is no dispute that the Tribunal has followed the procedure as contemplated under Rules 6(1) and (2)(a) of 1989 Rules before sending the report to the Government. We have perused the report. The Tribunal considered the evidence of all the witnesses and came to the conclusion that P.Ws.1 to 3 and 8 corroborated each other regarding the incident. Dealing with the questions, whether issue of RVC was pending with the petitioner and whether it had any bearing, the TDP observed that the certificate to be issued to P.W.1, was sent to the office of the Collector in December, 1987 and was not pending with any of the staff member of R&B, but P.W.1 himself was not aware even by 02.2.1988 when ACB trapped and that there is no evidence on record to show that the petitioner informed P.W.1 about dispatch of

RVC to District Collectorate. It was therefore concluded that non-pendency of the issue before the petitioner or any official of R&B department has no bearing on the charge, and that the petitioner made demand and accepted bribe on the date of ACB trap. On reading the charge, evidence of P.Ws.1 to 8 and the final report of the TDP, it is not possible to accept the submission that the Tribunal gave undue importance to the evidence of P.Ws.1 and 2. We are convinced that the Tribunal has considered the entire evidence on record in accordance with Rule 6 of 1989 Rules. We therefore reject the submission.

C) Government consideration of TDP''s report

32. The admitted facts in this regard are as follows. After submission of the report the Government issued Memo No. 379/S.I-3/88-12, dated 09.3.1990. While enclosing a copy of the TDP report the petitioner was asked to show cause as to why he should not be dismissed from service. The petitioner submitted explanation on 09.5.1990 requesting the Government to drop all further proceedings against him. The file was circulated to Hon''ble Minister for Roads & Buildings (hereafter, M(R&B)) Sri J.C.Diwakar Reddy on 18.11.1990. The petitioner was given personal hearing. He endorsed on the file that the recommendation of the TDP be accepted. Before issuing formal orders there was change of portfolio. Sri S. Santosh Reddy became M(R&B). He also gave personal hearing to the petitioner and on 28.3.1991. In his minutes he opined that the punishment of dismissal is not commensurate with the nature of offence and suggested stoppage of three increments with cumulative effect.

33. As per Rule (xxxi) of the Andhra Pradesh Government Business Rules (hereafter, the Business Rules) when it is proposed to deviate from the recommendations of the TDP or the advice of the Director General (Vigilance & Enforcement) the cases have to be circulated to Hon''ble the Chief Minister. Accordingly the file was circulated to the CM, who by his minutes desired that M(R&B) may speak to him. In the mean while portfolio was again changed and Sri J.C. Diwakar Reddy became M(R&B). When the file was circulated, he endorsed that the punishment of dismissal be awarded to the petitioner. Thereafter the Government issued G.O.Ms. No. 128, dated 03.7.1993 ordering dismissal of the petitioner as Head Draughtsman which was assailed before the learned Tribunal.

34. The petitioner would submit that after the CM''s endorsement the file was kept pending for two years without issuing any orders and thereafter circulated to the M(R&B) who endorsed the report of TDP. According to him, this is arbitrary and illegal. He would also urge that non-circulation of the file when the file was sent to the CM is contrary to the latter which itself is contrary to the Business Rules. He also submits that in the case of one Dr. K. Hanumantha Rajam, the Government deviated from the recommendation of TDP and awarded lesser punishment and the same treatment is denied to the petitioner subjecting him to hostile discrimination.

35. Rule 32(1)(xxxi) of the Business Rules (as it stood at the relevant time) reads as under.

32. (1) The following classes of cases shall be submitted to the Chief Minister through the Minister in-charge before issue of orders:

((i) to (xxx) omitted in this order as not necessary.)

(xxxi) All cases in which it is proposed to deviate from the recommendations of the Tribunal for Disciplinary Proceedings, or the advice of Director-General (Vigilance and Enforcement), as the case may Rule 32(1)(x) of the Business Rules now in force is also the same effect.

33. A plain reading of the above would show that it is only when the Government proposes to deviate from the recommendation of the TDP that the file should be circulated to the CM. In this case indisputably in the first instance the M(R&B) Sri J.C. Diwakar Reddy agreed with the TDP to dismiss the petitioner. There was some delay in issuing formal orders. The file then went to Sri S. Santosh Reddy, the then M(R&B) who deviated from the recommendation. The file was, therefore, circulated to the CM who desired to speak to the M(R&B). In the meanwhile, there was change of portfolios and Sri J.C. Diwakar Reddy again became M(R&B) who endorsed the recommendation of TDP. Therefore, when the Government agreed with the TDP there was no necessity to circulate the file to the CM. The submission, therefore, is devoid of any merit.

34. It is well accepted that invalidation of a Government Order on the ground that it contravenes the Business Rules is not ordinarily permissible in law. Article 166 of the Constitution deals with conduct of the business of the Government of a State. It mandates that all executive actions of the Government shall be expressed to be taken in the name of the Governor. For the sake of convenient transaction of business of the Government, the Governor is empowered under clauses (2) and (3) of Article 166 of the Constitution to make rules of business. The Andhra Pradesh Government Business Rules are made in accordance with this procedure.

35. In Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others, it was held that there is a distinction between taking formal executive decision and giving formal expression; every decision does not require to be formally expressed; and when a decision affects an outsider or is required to be officially notified then only it should be formally expressed in the form mentioned in Article 166(1) of the Constitution i.e., in the name of the Governor of the State. It was also held that, "strict compliance with the requirements of Article 166 gives immunity to the order, in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that Article are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order itself.

36. In Bachhittar Singh Vs. The State of Punjab, a Constitution Bench considered the effect of note orders of the Minister in the file vis-�-vis Article 166(1) of the Constitution of India. The appellant therein was an Assistant Consolidation Officer in the State of Pepsu. He was dismissed from service pursuant to disciplinary enquiry. On his appeal to the State Government the Minister opined that the appellant be reverted to his original lower post of qanungo besides administering a warning. A day after the Minister''s endorsement, the State of Pepsu merged in the State of Punjab. At that stage the Revenue Minister of Punjab solicited the advice of the CM. When the file was placed before the CM, he gave assent for dismissal which was formally communicated to Bachchittar Singh. The challenge to the order failed before the Punjab High Court. In the appeal before the Supreme Court, it was contended that the first order of the Pepsu Revenue Minister was order of the State Government. Alternatively it was urged that it was not within the competence of the CM to deal with the matter when it pertains to the portfolio of Revenue Minister. Whether the order of the Revenue Minister was the order of the State Government? Referring to Punjab Rules of Business, their Lordships of the Supreme Court held that the order of the Revenue Minister is the order of the State Government. But it was ruled that mere writing something on the file does not amount to the order unless it is expressed in the name of the Governor under Article 166(1) of the Constitution. In this regard the following observations made by the Supreme Court are apposite.

The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of PEPSU provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor..... is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the "order" of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned.
(emphasis supplied)

37. In J.P. Bansal Vs. State of Rajasthan and Another, referring to Bachchittar Singh, the Supreme Court ruled that Council of Ministers are advisers to the Governor, who

is the head of the State, and till the advice is accepted by the Governor views of the Ministers do not crystalise into action of the State. Thus the endorsement made by the M(R&B) does not have any basis to support the plea of arbitrariness. The decision of the Government is communicated by G.O.Ms. No. 128, dated 03.7.1993, which is in accordance with Article 166(1) of the Constitution. We, therefore, cannot accept the submission made by the petitioner. The plea of discrimination also must fail. When disciplinary enquiries are conducted and the Government decides and imposes two different punishments on two different employees, it can never be termed as discriminatory. The imposition of punishment pursuant to disciplinary proceedings depends on various circumstances and they cannot be decided by applying the same formula.

38. The petitioner has relied on four decisions from out of the compilation in support of his plea is that P.W. 1 thrust money in his pocket and from that it cannot be held that the charge is proved. In Babu Lal Bajpai the appellant on deputation from Railways, was an Accounts Officer with Lucknow Electric Supply Undertaking. He was charged of demanding bribe from the complainant for sanctioning contract bills and tried for the offence u/s 5(2) read with clause (a) of sub-section (1) of Section 5 of the Prevention of Corruption Act (hereafter, PC Act) read with Section 161 of IPC. Against the order of the trial Court acquitting him, the State carried the matter in appeal before the High Court, who reversed the acquittal, convicted the accused and sentenced him to undergo imprisonment for a period six months on each count. Before the Supreme Court, it was contended that when the complainant tried to thrust money in his pocket, he resisted the attempt and threw down the money on the floor. This was supported by an independent witness who deposed for prosecution. Referring to this evidence, the Supreme Court came to conclusion that appellant''s version stands corroborated by independent witness and acquitted the appellant-accused of both the charges.

39. In Kitab Singh the appellant while working as Station House Officer, Delwara District, Udaipur, was convicted for the offence u/s 161 of IPC, and Sections 5(1)(d)(2) of the PC Act by the learned Special Judge, Udaipur and was sentenced to six months imprisonment. The case of the prosecution was that appellant demanded money from the complainant Bagh Singh, for some work in relation to FIR No. 15/84 for the offence u/s 435 IPC. In appeal before Rajasthan High Court it was urged that by the time the trap was made, the final report had been submitted in FIR No. 15/84 and the case was not pending. In so far as the presence of pink colour on the shirt of appellant is concerned, it was observed that, the Investigating Officer himself admitted that during the investigation, he came to know that a party took place on the relevant day, to give farewell to some constables, where ''gulal'' was sprinkled on the constables by the appellant himself to give farewell which is a tradition in Rajasthan, and the presence of pink colour on the shirt of appellant was thus explained. Giving importance to these aspects, the High Court acquitted the accused holding that the prosecution was not able to prove that the accused had accepted

the bribe.

40. In Mathura Prasad the appellant was a casual labour. After a departmental enquiry for charge of securing employment on the basis of fake service card the appellant was removed from service. The punishment was confirmed by the appellate authority. The appellant filed application before the Central Administrative Tribunal. It was allowed, directing reinstatement with consequential benefits but with 50% backwages. The High Court allowed the writ petition filed by Union of India, aggrieved by which, the matter was carried to Supreme Court. The apex Court observed that the enquiry officer was enjoined with a duty to enquire into the charges of misconduct leveled against the appellant. He enquired into the matter and found that the contents of service card were correct. He might not have recorded that the service card was genuine or fake but substance of the allegation against the appellant was as to whether he obtained an appointment using fake service card. The disciplinary authority merely sent a demi-official letter to the enquiry officer with remarks on all the charges. Without giving any further opportunity of hearing to the appellant, the enquiry officer opined that the service card was forged. The Supreme Court faulted the procedure and allowed the appeal duly remitting to disciplinary authority. It was observed

When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the sub-rules are required to be strictly followed. It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review.

41. In M.V. Bijlani the appellant, who was working as Junior Engineer was removed from service, for misconduct of neglecting to maintain office register. The disciplinary authority had initiated the proceedings after the appellant handed over charge to his successor. The appeal preferred by him to the appellate authority was dismissed. His O.A. No. 200 of 1992 was also dismissed by the Central Administrative Tribunal on 24.06.1999. As regards the delay in disciplinary proceedings it was held that charges were framed on the basis of the findings of CBI and, thus, the delay is properly explained. In the writ petition filed by the appellant, the High Court opining that there had been dereliction of duty which penetrates into the arena of misutilisation, dismissed the writ petition. The Supreme Court allowed the appeal and ordered reinstatement with 50% back wages.

42. We have carefully gone through the decisions and are convinced that they would not in any manner help the petitioner. We have subjected the impugned order of the Tribunal to judicial review by applying well settled principles. Except making an attempt to point out certain factual aspects, the petitioner failed to point out any grave error apparent on the face of the record. Therefore, we are convinced that no

interference is called for.

43. In the result, for the above reasons, the writ petition fails and is accordingly dismissed. There shall be no order as to costs.