PETITIONER:
DIRECTOR GENERAL INDIAN COUNCIL OF MEDICAL RESEARCH & ORS.

Vs.

RESPONDENT:
DR. ANIL KUMAR GHOSH & ANR.

DATE OF JUDGMENT: 06/08/1998

BENCH:
SUJATA V. MANOHAR, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

SRINIVASAN, J.

The first respondent who was a senior officer in the cholera Research Centre (now known as National Institute of Cholera and Enteric Disease) had for over a period of ten years wrongly claimed House Rent Allowance to the tune of Rs. 16,819.95. Under the relevant Rules, an officer or employee residing in his own house could claim House Rent Allowance only if the annual rental value as assessed for municipal purposes was more than 10% of the salary. The annual rental value of the house occupied by the first respondent which was his own as assessed for tax purposes and entered in the municipal Registers was much less than 10% of his salary. However, he obtained certificates from the Chairman, Vice-chairman and Secretary of the Municipality that the rental value of the premises "may be safely committed" at a particular amount per month which was in excess of 10 % of his salary. He produced such certificates in support of his statement that the monthly rental value actually assessed for municipal purposes was in excess of 10% of his salary and claimed house Rent. Allowance. Unfortunately for him the Internal Audit Party found out the game which lead to a departmental enquiry against him. He was found guilty and removed from service with a disqualification from future service under the council.

2. The first respondent challenged the order in a writ petition before the Calcutta High Court. A learned Single Judge held that the enquiry against him was vitiated by violation of principles of natural justice and quashed the order. On appeal, a Division Bench affirmed that finding. But strangely, the Bench went one step further and held that even if the charges were true, it would only prove that the first respondent was indiscreet and there was no misconduct on his part. It is that judgment which is assailed in this appeal.

3. Even at the outset, we wish to point out that the view expressed by the Division Bench of the High Court that even if the charges were true, there was no misconduct is shocking especially when benefits have been obtained from

out of public funds on false certificates. Fortunately, learned counsel for the first respondent appearing before us did not justify that view of the Bench. Hence, it is unnecessary to dwell upon it for long. Suffice it to hold that the view of the Division Bench of the High Court is obviously wrong and it is hereby overruled.

4. Now we shall advert to the question whether the principles of natural justice were violated and the departmental enquiry was vitiated. The memorandum of charges issued to the first respondent set out the following tow charges :-

"ARTICLE OF CHARGE - I

That the said Dr. A.K. Ghosh declared in 1964 that the rental value of his own house in 284, Mudially Road, Calcutta -24, was Rs. 150/- p.m. (or Rs. 1920/- per annum) as actually assessed for municipal purposes while in actual fact the annual value of the house as assessed by the Garden Reach Municipality for the house of Dr. Ghose for the year 1961-62 to 1965-66 was Rs. 235/- for the years 1966-67 to 1970-71 Rs.260/- and for the years 1972-73 to 1976-77, Rs. 290/- only.

ARTICLE OF CHARGE II

That Dr. Ghosh claimed house rent allowance of Rs. 16,819.95 which was not admissible to him for the period from August 1964 to August 1975 by submission of false documents."

5. A statement of imputation was attached to it. A list of documents by which the articles of charges were proposed to be sustained was appended. There was no list of witnesses as the department did not propose to examine any witness. The enquiry was held in seven session s commencing from 31.12.76 and ending with 4.6.77. The daily proceedings were recorded and shown to the first respondent who signed the same. The first respondent did not submit any list of witnesses. In fact , he stated on more than one occasion that he had no witness to be summoned on his behalf. In the course of the enquiry he made a request orally for summoning the Administrators and other authorities of the Municipality and the Accounts Officer of the Council to testify the statements made by them. The Enquiry officer expressed his view that they were not necessary but permitted the first respondent to produce them on his own as his witnesses. The latter did not avail of that opportunity.

6. The copies of the proceedings were handed over to the respondent as and when ready and he himself deposed on the all points referred to in the statement of defence . It should be mentioned here that the defence taken by the first respondent in the enquiry was that he claimed HRA on the basis of certificates issued by the Municipal authority and the same had been granted. He contended that the assessment of the annual value for municipal purposes was only for the assessment of taxes levied by the municipality and the assessment of rental value for claiming HRA was entirely different. According to him the rental value could even be assessed by the Special Land Acquisition Officer, 24

Parganas, Alipore.
7. During the enquiry he had opportunity to peruse every document that was sough to be used in evidence. Apart from the certificates produced by himself of r claiming H.R.A., copies of the Municipal assessment register for the relevant period certified to be true copies by the Secretary, Garden Reach Municipality and issued under the seal of Administrator of the municipality were marked as exhibits. A perusal of the list of exhibits shows that they consisted only of the official correspondence and the certificates produced by the first respondent and the certified copies issued by the Municipality. At the conclusion of the enquiry the first respondent made his submission on the basis of the materials on record. The Enquiry officer after considering the matter in detail gave his findings in his report on 21.7.77. He held that both charges stood proved.
8. The Disciplinary Authority accepted the report as he found that the material on record was sufficient to sustain the findings. The main grievance put forward by the first respondent before the High Court in the writ petition with regard to the alleged violation of the principles of natural justice was that the witnesses whom he wanted to be examined by the Enquiry officer were not examined. Secondly, it was alleged that the documents were marked as exhibits only on July 21, 1977 after the conclusion o the enquiry. Thirdly, it was urged that the Enquiry officer was biased against the first respondent. The fourth objection was that the Municipal Authorities who had issued certified copies of the municipal assessment register had not been examined and consequently those documents were not admissible in evidence.
9. Unfortunately, the above objections found favour with the Single judge as well as the Division bench of the High Court. In our opinion, none of the objections has any substance.
10. The entire record of the enquiry proceedings have been placed before us. We have gone through the same and we find that there is absolutely no justification in the allegation that principles of natural justice have been violated. We have already referred to the fact that the first respondent did not furnish any list of witnesses and only in the course of enquiry he requested the Enquiry officer to examine the officials of the Municipality who had issued the certificates produced by him in support of his claim of H.R.A. It is surprising that the High Court overlooked the simple fact that the said certificates were produced by the first respondent himself as having been issued by the high officials of the Municipality and unless the factum of such issuance was in dispute there was no necessity to examine those officials. At another stage the first respondent challenged the authenticity of the internal audit report and wanted the author thereof to be examined in order to substantiate the same. the presenting officer stated that the said report was not necessary for the case and the same was not introduced in evidence. Hence, there was no necessity to examine the Accounts officer who prepared the internal audit report. If the first respondent wanted to examine any witness on his side he was given sufficient opportunity to produce witnesses and examine them but he did not do so. The record shows that he was permitted to reopen his defence and present further defence even on 28.3.1977. On that date as well as on 7.5.77 he had categorically stated that he did not have any witness to be called as defence witness on his behalf.
11. The second objection is equally meaningless. The

documents were taken on file during the curse of the enquiry and the first respondent perused everyone of them before the conclusion of the enquiry. Copies were also furnished to him and as requested by him he was given seven days' time for presenting his defence after the receipt of copies of documents though under the rules only three days' time was permitted. Instead of giving numbers to the exhibits as and when the documents were taken on file, the Enquiry officer would appear to have given serial numbers to the exhibits at the conclusion of the enquiry on 21.7.77. The adoption of such procedure by the Enquiry officer was not violative of the principles of natural justice.

12. There is no material on record whatever to support the contention that the enquiry officer was biased against the first respondent. The record of proceedings of the enquiry shows that the enquiry officer has acted impartially and without any kind of bias whatever.

13. The objection that the certified copies of the assessment register should not have been marked without examining the concerned officials of the Municipality is untenable. The genuineness of the documents was never in dispute. In fact, the case of the first respondent is that the assessment in the municipal register was only for the purpose of taxation and it is not relevant for the claim of HRA.

14. We are fully satisfied that there was no violation of any principles of natural justice in the Departmental Enquiry conducted against the first respondent. A faint attempt was made before us to content that Rule 14(3) of the Central Civil Services. (classification, control and appeal) Rules was violate. The rule is in the following terms:

> "14(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 misbehaviour in support of each article of charge, which shall contain -
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> (a) a statement of all relevant facts including any admission confession made by the Government servant:
>
> (b) A list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained."

15. We have already referred to the fact that the memorandum of charges issue dot the first respondent contained distinct articles of charge and was accompanied by statement of imputation and list of documents. Hence, there is no substance in the above contention.

16. It is sought to be argued that the rental value for the

purpose of HRA Rules need not be the same as the annual value as entered in the Municipal register. There is no merit in this contention. The relevant rule refers to gross rental value of the house as assessed for municipal purposes. An official Memorandum dated 26.5.69 marked as Ex. P-22 in the enquiry has clarified that if a house is situated within a Municipality, the grant of H.R.A. should invariably be regulated on the basis of gross rental value as assessed by the authorities of the municipality. Hence, we hold that the claim of HRA by the first respondent on the basis of the certificates obtained from the chairman, vice-chairman and secretary of the Municipality to the effect that the rental value of the premises may be safely committed at a particular amount when the value entered in the assessment register for municipal purposes was different was in violation of the relevant rules. Consequently, the first respondent was guilty of the charges framed against him.

17. The punishment awarded to him is claimed to be disproportionate to the offence committed by him. we do not agree. the fact that the concerned authorities did not detect the falsity of the claim for about ten years and allowed the same does not help the first respondent to contend that the punishment should be reduced.

18. The High Court is clearly in error in interfering with the order of punishment passed against the first respondent by the Disciplinary Authority. In the result, the appeal is allowed, the judgment and order of the High Court dated 19.2.1991 in appeal from original order, Tender No. 2773 of 1989 and the Judgment and order dated 15.9.89 in Civil Rule No. 212 (w) of 1979 are set aside. The writ petition filed by the first respondent in Civil Rule No. 212 (w) of 1979 on the file the High Court at Calcutta stands dismissed. There will be no order as to costs.