CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.960/2002

this the day of 4 th October, 2002

Hon'ble Sh.Govindan S.Tampi, Member(A)

Umang Mohan,
Dy.CGDA (AT),
R/o C-77, Anand Niketan,
New Delhi. ...Applicant

(By Advocate: Shri S.C.Saxena)

Versus

1. Union of India
Through Secretary
Ministry of Defence
South Block
New Delhi-110001.

2. Controller General of Defence Accounts
West Block - V, R.K.Puram,
New Delhi-110066. ...Respondents

(By Advocate: Shri A.K.Bhardwaj)

O R D E R

Relief sought in this OA are as below:-

i) Quash the order of punishment dated 6.9.99 of 'withholding of two increments of pay without cumulative effect' with all consequential benefits to him.

ii) Quash the orders bearing No. A-45011/1/96/ D(Est.I)/Gp I) dated 10.12.99 and subsequent orders rejecting the appeal, review and representation of the applicant against the punishment.

iii) Award costs of the application.

2. Heard S/Shri S.C.Saxena and A.K.Bhardwaj, learned counsel for the applicant and the respondents.

3. The applicant belonging to IDAS, 1982 batch is presently Deputy Controller General(Audit) in CGDA's Organisation. On his Central Deputation w.e.f. 5.8.1996, he was posted as Director (Civilian Personnel), Director (Cost Guard) and Director(AG), all within one month. As the last order dated 30.8.1996, was not served on him his having been on leave, he continued as Director(CG) on the advice of Jt. Secretary(Navy) on 6.9.1996 but he found himself

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locked out of his room under direction of Jt. Secretary(Estt.) w.e.f. 12.9.1996, who also proposed his arrest and suspension which came into effect on 14.9.1996. Chargesheet issued to him on 15.10.1996, alleging in-subordination and use of abusive language was denied by him on 7.12.96. Report of the Inquiry Report dated 22.4.98 showed the first charge as partially proved and the second charge as proved. Inspite of applicants' representations dated 31.5.98 and 1.9.97, minor penalty of withholding of two increments was imposed on him on 6.9.99. His appeal dated 20.9.99 was rejected on 10.12.99 as the ground that no appeal lay against Presidential Order. His further representations of 23.8.2000 and 27.3.2001 were turned down on 19.10.2000 and 16.4.2001. According to the applicant, he was dealt with as false and concocted charges on account of the animus of the Jt. Secretary(Estt.), who was annoyed the applicant did not join under him as per order dated 30.8.96. The later created problems for the applicants and also engineered false complaints against him. Proceedings conducted against him were faulty as:

i) his request for having a lawyer to assist him as the Presenting Officer was a legally trained person was rejected.

ii) Copies of crucial documents sought by the applicant were not supplied;

iii) Crucial witnesses like Addl. Secretary (R) and Defence Secretary and material witnesses like Joint Secretary(Estt.) Director (Estt.) and JS (Navy) were not called inspite of the applicant's request;

iv) Inquiry officer did not question the applicant as provided under Rule 14(18);

v) Substantive charge was not 'proved', as the applicant had not wilfully disobeyed the orders and he was relieved only on 12.9.1996 and could not have reported for duty earlier:

vi) Inquiry officer had totally believed the statements of the witnesses who were junior to JS (Estt) with regard to the charge of abusing the seniors;

vii) Inquiry officer did not call for the order of JS (Estt) for want of the applicant and examine it;

viii) all the statements against him are of 12/13.9.1996 wherein he is stated as having abused the seniors, while he had come to office only in the evening of 13.6.1996, and they were engineered;

ix) he had a blemishless record of 20 years;

x) all the complainants were subordinates of JS(Estt) and AS(R) and were thus motivated in their actions;

xi) inquiry officer had acted in a biased manner and despite a complaint to the disciplinary authority, he was permitted to conduct the enquiry; and

xii) the order of the disciplinary authority was not a speaking order and had only relied as I.O's report and UPSC's recommendations.

4. In view of the above the orders were illegal perverse, based on no evidence, and mechanically passed.all the concerned authorities had failed to discharge the statutory prescription. The findings were biased and in direct violation of the principles of natural justice. OA, therefore, deserved to be allowed with full reliefs to the applicant, pleads the learned counsel Shri Saxena.

5. In the reply filed on behalf of the respondents, reiterated during the oral submissions by Shri A.K.Bhardwaj their learned counsel, it is alleged that the OA, filed in April, 2002 assailing the orders of September, 1999, December, 1999 and October, 2000, was hit by limitation and that the Tribunal's intervention in disciplinary matters, by way of judicial review amounted only to non-fulfilment of procedural requirements and violations of the principles of natural justice, which had not occured in the instant case. The applicant was posted as

Director (AG) on 30.8.1996, Having not complied with the orders he was proceeded against for insubordination and for abusing his official superiors and threatening them. At the culmination of the departmental inquiry, wherein the charges were held as proved, penalty was imposed on him by withholding two increments without cumulative effect, after consulting UPSC. In between he was also placed under suspension which was revoked. Although no appeal lay against an order passed by the president, his appeal/representation and review petition were considered and rejected by the competent authorities. All the proceedings having been gone through correctly, the applicant cannot have any legitimate grievance. His allegations that within a month he was transferred thrice was not correct as only two transfers were ordered. The applicant had intentionally avoided joining as Director (AG) as ordered but was only trying to take shelter behind the argument that JS(Navy) was against his relief, which was against the fact. The inquiry had proceeded on the basis of the evidence clearly brought on record and the applicant's averment that the statements against him were engineered by the JS(Estt) or that proceedings were not conducted properly has no basis. The applicant could not have asked for a lawyer to assist him, as the presenting officer was not a legal practitioner but only a government servant. Further it is for the disciplinary authority or the inquiry officer to assess the relevance or otherwise of any document and to arrive at a conclusion whether any of them should be made available to the charged officer. Once a decision has been taken not to supply such a document, as it was not relevant or material,

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the same cannot be questioned. Defence Secretary, Additional Secretary, JS(Estt.) and DS(Estt) were not called for as witnesses as the same was not felt necessary and if the applicant had so desired he could have arranged for them to be brought in as defence witnesses. While examination of the charged officer by the inquiry officer was mandatory in terms of Rule 14 (18) of CCS(CCA) Rules, 1965 omission per se of this requirement would not vitiate the proceedings unless the interest of the employee was prejudiced as ordered by the Honourable Supreme Court in Sunil Kr. Bannerjee Vs. State of West Bengal. The witnesses had clearly indicated that the applicant had been using abusive language against JS(Estt.) and AS(R), being annoyed with his transfer. While it is true that a document was initiated by the JS (Estt) for the arrest of the applicant the same was subsequently cancelled and withdrawn on the same day and, therefore, the I.O. did not deem it necessary to bring the same on record. The applicant had made baseless allegation against JS(Estt.) and AS(R) and alleged that those who had complained against his conduct were influenced by the two seniors, as they were their official superiors. This allegation was malafide. It was also true that the applicant had alleged bias against the I.O., who had in fact stayed the proceedings, on receipt of the said complaint but proceeded with the same only after the competent authority had held the charges baseless. The inquiry authority had acted

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throughout in a fair, judicious and impartial manner and the applicant was making baseless allegations, to deflect the attention of the Tribunal from the correct steps taken by the respondents.

5. The orders passed by the disciplinary authority, the revisionary authority were all issued in just and proper exercise of their powers and well within their jurisdiction. The penalty imposed was only a minor penalty which was commensurate with the offence committed by the applicant who as a senior officer of the department was expected to show greater sense of responsibility towards the discharge of his duties. OA should therefore, merit dismissal, according to the respondents.

6. I have carefully deliberated upon the rival contentions. In this OA imposition of penalty of withholding of two increments without cumulative effect imposed on the applicant on the charge of insubordination and use of abusive and intemperate language is assailed by the applicant, as according to him there has been adoption of incorrect procedure, violation of the principles of natural justice and absence of evidence. On the other hand the respondents plead that the entire proceedings had gone through correctly and strictly and therefore no case for interference by the Tribunal was called for. Respondents had also raised the preliminary objection of limitation which in the circumstances of this case is not being sustained by me. In para 4 (iii) of their counter affidavit dated 1.7.2002, the respondents had referred to the following circumstances which alone justified the intervention by the Tribunal,

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i) Statutory provision or rules prescribing the mode of inquiry were disregarded;

ii) Rules of natural justice were violated;

iii) there was no evidence, that is punishment

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has been imposed in the absence of supporting evidence.

iv) Consideration extraneous to the evidence or the merits of the case taken into account.

v) the conclusion was so wholly arbitrary and capricious that no reasonable person could easily arrive at that conclusion.

What the respondents have indicated is that the Tribunal by way of its power for exercising judicial review should only go into violation of specific statutory prescriptions as well as violation of the principles of natural justice and shall not undertake any reappeciation of the evidence.

I am in full agreement with the same. Tribunal shall not tread on to turfs which do not fall within its domain or reappreciate the evidence or substitute its judgement for the judgement of the executive authorities who are assigned specific statutory functions. Therefore, I am confining myself to the specific points raised by the respondents mentioned above. This examination itself would show that the respondents had not acted legally or properly. Throughout the proceedings the applicant had been making repeated requests for supply of crucial documents relied upon as well as demanding that certain material witnesses should be made available for examination/cross examination. Respondents - Disciplinary Authority and the Enquiry Officer have repeatedly rejected the same. A specific plea was made by the applicant for bringing on record the copy of the order dated 12.09.1996 proposing his arrest which according to him would have buttressed his defence, showing malafide on the part of JS(Estt) but the same had been repelled, holding the said document to be not relevant. The applicant's averment in this connection that the production of the said witnesses would have helped his defence cannot be

rejected out of hand. This gains strength from the observation of the respondents' conduct in transferring him three times in a month though the respondents state that he was transferred only twice. Rejection of the applicant's representation dated 23.1.98 alleging bias against the IO, cannot be endorsed in law in the circumstances of the case. It is also on record that the I.O. did not exercise the functions under Rule 14(18), which as per the judgements in Sunil Banerjee's case (Supra) relied upon by the respondents was mandatory. In fact this omission had prejudiced the cause of the applicant and therefore the rationale of the Honourable Apex Court's decision goes in favour of the applicant. It therefore follows that the inquiry proceedings had been faulty, incomplete and biased. The findings arising therefrom and their endorsement adopted by the disciplinary authority as well as the revising authority are vitiated and are therefore liable to be quashed and set aside.

8. In the above view of the matter the OA succeeds and is accordingly allowed. The impugned orders dated 6.9.99, 10.12.99 and 19.10.2000 and 16.4.2001 are quashed and set aside. This order, however, does not preclude the respondents from initiating the proceedings against the applicant, if they are so advised to do so. The respondents shall if they choose to do so conduct the proceedings from the stage of the issue of the charge sheet and provide full opportunities to the applicant to explain/defend his case in accordance with law as well as instructions in force. This exercise shall be completed within four months of the date of receipt of this order, OA is disposed of in the above terms, without any order as to cost.

(GOVINDAN S. TAMPI)
MEMBER (A)

Patwal/