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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1837/2002

New Delhi, this the 30th day of January, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Shankar Prasad, Member(A)

S.P. Gupta
F-3, Block B Plot No.38, Surya Kiran
Aptt. Ram Prastha Colony, Ghaziabad .. Applicant
(Shri Shyam Babu, Advocate)

versus

1. Chief Secretary
Govt. of NCT of Delhi
Players Building, IP Estate, New Delhi 2.
2. Secretary-cum-Director(Employment)
2, Battery Lane, Rajpur Road, Delhi
3. Secretary-cum-Commissioner (Transport)
Directorate of Transport
5, Underhill Road, Delhi .. Respondents

(Shri Ajesh Luthra, Advocate)

ORDER(oral)
Shri Justice V.S. Aggarwal

Applicant, Shri S.P.Gupta, is Junior Employment Officer. By virtue of the present application, he seeks setting aside of the enquiry report dated 14.1.2000 and also the order imposing punishment dated 15.1.2001 by virtue of which the disciplinary authority has imposed punishment of withholding of three increments of pay. Appeal of the applicant has since been dismissed.

2. Consequences of events which led to the above infliction of penalty are that one Shri Jitender Mehta had made a complaint in the office of Commissioner (Transport). He had asserted that a particular vehicle (motor cycle) was transferred by the Zonal staff in connivance with the dealer on basis of forged signatures inspite of the fact that the complainant had warned the MLO(JPO) against the attempt of the dealer to get the

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vehicle transferred in the name of some other person on basis of forged signatures. On basis of this letter, MLO(JP) kept the file relating to the said vehicle in the safe custody. Applicant who was working in the general administration was supposed to supervise safe custody of that file. It was the file which was lost while in custody of the applicant.

3. Article of charge had been framed which is extracted below for the sake of convenience:

"Article No.1

1. Sh. S.P. Gupta, Head Clerk (under Suspension) while working at Janak Puri Zonal Office during the month of January, 1997, failed to maintain devotion to duty and absolute integrity inasmuch as the file relating to vehicle No.DL 4 SK 0034 was lost on account of his negligence.

2. By his above act, Sh. S.P. Gupta, Head Clerk (Under suspension) has failed to maintain devotion to duty and integrity and has, thus, violated Rule 3 of CCS(Conduct) Rules, 1964."

4. Enquiry Officer has gone into the facts and the findings of Enquiry Officer were that applicant's failure to maintain devotion to duty i.e. negligence is proved; failure to maintain integrity is not proved. On basis of the said report of Enquiry Officer, disciplinary authority had inflicted penalty referred to above and as already referred to above in opening para, appeal preferred was dismissed.

5. Needless to state that respondents have contested the application and assertions to the contrary made by the applicant have been denied.

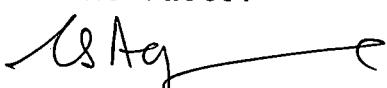
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6. During the course of submission, learned counsel for applicant has raised two arguments; (a) in the facts of the case report could not have been that the applicant was negligent or in other words has failed to maintain devotion to duty and (b) in the alternative punishment imposed on the applicant is disproportionate to the alleged dereliction of duty on the part of the applicant.

7. So far as first argument of learned counsel is concerned, indeed he has taken pains to take us through the report of the Enquiry Officer in support of his contention. Principle of law is not in dispute on either ends. This Tribunal in judicial review will not interfere in the finding of facts or order passed by concerned authority. Only in exceptional cases where there is no evidence on record or findings are totally perverse any reasonable person would come to such conclusion that this Tribunal should interfere on such finding.

8. What is the position herein? Enquiry Officer went through the evidence and concluded despite certain surprise consequences noted by him that applicant though has no means rea for loss of the file did not maintain devotion to duty i.e. negligence. Such a finding can also be arrived at on preponderence of probability. It appears that applicant has been called by MLO at that relevant time and he did not care ^{to} ~~or~~ keep the file in safe custody while leaving his seat of work. When such a finding has been arrived at, we are of the considered opinion that the present matter does not fall within the exceptions referred to above to prompt us to interfere with the finding of the facts.



9. In that event, as already pointed, the second argument was pressed into service. Herein also so far as legal position is concerned, there is no controversy. The same can be stated in a few words that it is within the domain of the concerned authority to impose the necessity punishment in departmental enquiry. Only where the conscience of court/Tribunal is shocked, there may be occasion for intervention in the matter of its nature.

10. In the present case, it was pointed by learned counsel for the applicant that the Enquiry Officer has already concluded in terms that there was no mala fide on the part of the applicant and there was no doubt about the integrity of the applicant. Taking cue from this finding such an argument was tried to be used as a tool for lesser punishment. Of course, learned counsel for respondents referred to the principle already mentioned above that it is not a fit case where any lesser punishment could have been awarded and in any case this Tribunal should not interfere.

11. Certain facts that have been highlighted in this regard cannot be lost sight of. It appears that certain photocopies of the listed documents attested by the Joint Director (Vigilance) had been prepared. Report of the Enquiry Officer in this regard reads as under:

"Last but not the least question arises as to how photocopies of the listed documents P-I, P-II, P-III attested by the Joint Director (Vigilance), Transport Department, Delhi on 1/7/99 (i.e. more than 2 years after the loss of file on 6/1/97) could be produced in the absence of the originals? Mr. S.K. Ahluwalia former UDC of Vigilance Branch of Transport Department, Delhi (Exhibit DW-V) was questioned as to how the photocopies of the listed documents (Exhibit P-I, P-II & P-III) could be

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prepared/produced in the absence of original file? To this he replied that the said copies were provided by the complainant. This reply is very much surprising. How could a photocopy provided by the complainant be listed as a document of proof of charges? For this I believe that the file was not lost but removed with machination and for that means rea cannot be proved against Mr. S.P.Gupta, CO."

On the basis of the said finding, Enquiry Officer concluded that the file was not lost but was removed. One has to read this finding with the fact already recorded above that at the relevant time when the applicant had been called by MLO the file had been lost/was missing from his seat of work. This is the position which prompts us to conclude that punishment inflicted on the applicant is far more excessive than should have been imposed. It is for the reason that such a punishment necessarily does have a long lasting impact on the service career of the delinquent.

12. Accordingly, on this short point alone, we allow the present OA and quash the impugned punishment order dated 15.1.2001. We leave it to the disciplinary authority, therefore, to pass appropriate penalty order keeping in view the observations made above.

13. OA is disposed of as aforesaid. No costs.

Shankar Prasad
(Shankar Prasad)
Member (A)

V.S. Aggarwal
(V.S. Aggarwal)
Chairman

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