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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.330/2002

New Delhi this the 6 th day of September, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri V.K. Majotra, Member (A).

Shri Dharamvir Singh,
S/o late Shri Sultan Singh,
Grade-II (Delhi Administrative
Subordinate Services)
GH-10/12G, Sunder Apartments,
Paschim Vihar,
New Delhi.

... Applicant.

(By Advocate Shri J.K. Das with Shri G.S. Lobana)

Versus

1. Shri P.T.S. Kumar,
Chief Vigilance Officer,
Hindustan Teleprinter Ltd.,
GST Road Guindy,
Chennai-600032.
Tamil Nadu.
2. The Chief Secretary,
Govt. of Delhi,
Secretariat Building,
Govt. of NCT of Delhi,
Players Building,
New Delhi-110002.
3. Lieutenant Governor,
Govt. of NCT of Delhi,
Raj Niwas,
New Delhi-110034.

... Respondents.

(By Advocate Shri Harvir Singh)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

This application has been filed by the applicant against
the action of the respondents in initiating Departmental inquiry

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against him vide letter dated 4.8.1997, findings of the Inquiry Officer in his report dated 1.9.1999 and the order of the disciplinary authority dated 26.7.2000 imposing major penalty on him of reduction to a lower post for the period of 5 years and rejection of his appeal by the appellate authority vide his order dated 26.6.2001.

2. The brief relevant facts of the case are that the applicant while working in the post of Grade-I of Delhi Administrative Subordinate Services (DASS), was posted as Sub-Registrar-II, Janakpuri, New Delhi, from 14.12.1993 to 26.2.1996. According to him, the respondents have unfairly initiated the aforesaid Departmental proceedings on the basis of receipt of some secret information by the CBI, that the officers of the Sub Registrar-II, Janakpuri, New Delhi had been habitually accepting illegal gratification from public while discharging their official duties. The CBI had conducted the surprise check on 16.8.1995 at Janakpuri Office of Sub-Registrar-II, when the applicant was not present as he was admittedly holding a dual charge of the office of Sub-Registrar at Janakpuri as well as Asaf Ali Road and had left for that office at that time. The applicant has submitted that the CBI themselves have stated that " the general search of the office premises, including almirahs were conducted and no cash or incriminating articles were recovered" . He has submitted that in respect of that, the CBI had recorded statements of 8 officials/witnesses in the preliminary inquiry which has been done at his back. The applicant has annexed copies of these statements as well as CBI report of the surprise check conducted by them on 16.8.1995.

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3. The charge levelled against the applicant reads as follows:

" That the said Shri Dharamvir Singh while functioning as Sub-Registrar-II, Janakpuri, New Delhi during the years 1993-95 failed to maintain absolute integrity and devotion to duty as much as he did not ensure proper supervisory control on his staff and as result of this he allowed a private person to perform official work in his office as a private person namely Shri Madan Gulati S/O Shri Prakash Chander Gulati, was found to be discharging official duties/work in the office of Sub-Registrar-II on 16.8.1995 by the C.B.I. surprise checking party. It was further found that for the services rendered by Shri Madan Gulati he was being paid Rs. 50/-per day for discharging of such official work allotted to him. ".

4. We have heard Shri J.K.Dass, learned counsel for the applicant and Shri Harvir Singh, learned counsel for the respondents and perused the documents on record.

5. By Tribunal's order dated 8.2.2002, the prayer to stay the operation of the impugned orders of punishment was rejected. Against this order, the applicant filed CW No.1246/92 in the Hon'ble High Court. The High Court vide order dated 28.2.2002 has held that this was not a fit case to exercise their jurisdiction under Article 226 of the Constitution of India. However, it was held that it would be open to the petitioner to prefer an appropriate application for early hearing of the main matter. In pursuance of these orders, both the parties have been heard at length.

6. One of the main contentions of the learned counsel for the applicant is that Shri Madan Gulati is a star witness who had not been called at the time of the Departmental Enquiry which was held in pursuance of the charge Memo. issued to the applicant dated 4.8.1997, although his name figured in the list of witnesses at Serial No.7. There were altogether 10 witnesses in this list by which it was stated that the article of charge

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framed against the applicant was proposed to be sustained. Shri J.K. Dass, learned counsel has relied on the judgements of the Hon'ble Supreme Court in a number of cases, namely, Hardwari Lal Vs. State of U.P. & Ors. (2001(1) SCC 65) and other judgements (copies placed on record). He has submitted that in the absence of calling Shri Madan Gulati in the Departmental proceedings, the entire proceedings are vitiated because he was the most important witness, i.e. the star witness, as the charge was that the applicant had allowed a private person (Shri Madan Gulati) to perform official work for which he had also paid him Rs.50/- per day. According to the learned counsel, the charge has not at all been made out in the Departmental proceedings without calling this witness. He has also relied on the judgement of the Hon'ble Supreme Court in Union of India Vs. H.C. Goyal (AIR 1964 SC 364) stating that mere suspension is not enough but there has to be sufficient evidence to prove the charge. According to the learned counsel, there is no evidence against the applicant as Shri Madan Gulati has not been called as a witness. He has also stated that at the time when the surprise check was conducted by the CBI Officers, the applicant was also not present in the office of Sub-Registrar-II, Janakpuri, as he was away in the other office at Asaf Ali Road. According to him, no explanation has been given by the respondents as to why this witness has not been called in the Departmental proceedings held against the applicant. He has also contended that the documents ought to have been proved as signed by Shri Madan Gulati who must have been produced in the inquiry and the mere presence of Shri Madan Gulati in the office was not enough to prove that he was discharging public duties at the behest of the applicant nor he was being paid by him at

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the rate of Rs.50/- per day. He has submitted that neither the disciplinary proceedings nor the appellate authority's orders deal with the charge levelled against the applicant and there is no discussion of the payments said to have been made by the applicant to Shri Madan Gulati. He has also submitted that none of the witnesses had identified Shri Madan Gulati's signatures and his statement given earlier had also not been signed. Learned counsel has, therefore, submitted that with all these flaws and infirmities in the inquiry proceedings, particularly with regard to the star witness not being produced in the inquiry, the decision of the competent authorities is based on conjectures which, therefore, has to be quashed and set aside.

7. We have seen the reply filed by the respondents and heard Shri Harvir Singh, ^{learned counsel.} According to them, the disciplinary proceedings held against the applicant have been conducted as per the Rules. They have submitted that based on certain secret information received by the office, the CBI had registered a preliminary inquiry dated 16.8.1995 and the CBI team along with independent witnesses conducted a surprise check of the office of Sub-Registrar, Janakpuri on 16.8.1995 and found that a person, later identified as Shri Madan Gulati, was occupying the seat of Book No.1 located in Room No. G-24 of the said office and was making entries on the documents submitted by the parties. According to them, this person was working in the office with the permission of the applicant and was not on the pay roll of the D.C. Office, Delhi. According to them, it was also found that for the service rendered by Shri Madan Gulati, he was being paid Rs.50/- per day for discharging such official work ^{as} allotted to him.

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Accordingly, the applicant has been charge-sheeted under Rule 14 of the CCS (CCA) Rules, 1965 and the proceedings held against him. The Inquiry Officer had found the charges proved against the applicant vide his report dated 1.9.1999, copy of which was also given to him ^{which} to/he had given his reply. The disciplinary authority, after considering all the relevant material had agreed with the findings of the Inquiry Officer and imposed the penalty of reduction to a lower post, i.e. from Grade-I to Grade-II of DASS for a period of 5 years vide order dated 26.7.2000. Appeal filed by the applicant had also been considered by the Hon'ble Lt. Governor of Delhi and rejected.

8. Shri Harvir Singh, learned counsel has also submitted the relevant Departmental files for our perusal. He has submitted that the summons were issued to all the witnesses, including Shri Madan Gulati, cited in the Disciplinary proceedings on 2.7.1999 and 12.7.1999 but he did not turn up at the inquiry. Learned counsel has submitted that PW-5 and other witnesses have stated that he was in the office during the relevant period and Shri Madan Gulati had also signed the surprise check memo on 16.8.1995 which has been annexed by the applicant himself. He has submitted that this is not a case where there was no evidence against the applicant and as there were witnesses who had confirmed that Shri Madan Gulati was in the office who have also been cross-examined by the applicant, there was no procedural infirmity in the proceedings. He has,

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therefore, prayed that the O.A. may be dismissed. He has relied on the judgement of the Supreme Court in High Court of Judicature at Bombay through its Registrar Vs. Uday Singh and Ors. (1997 (5) SGC 129). Learned counsel has submitted that although Shri Madan Gulati did not attend the disciplinary proceedings, he had been summoned by the Inquiry Officer. As there were other witnesses who had stated that he was present in the office and doing official duty, the Departmental proceedings were not vitiated. He has, therefore, prayed that the O.A. may be dismissed.

9. We have carefully considered the pleadings, submissions made by the learned counsel for the parties and the Departmental records submitted by the learned counsel.

10. One of the main contentions of Shri J.K. Dass, learned counsel was that in the absence of the 'star' witness Shri Madan Gulati in the Departmental proceedings, nothing can be held as proved against the applicant. He has very vehemently contended that the whole charge-memo against the applicant by the respondents was that he did not ensure proper supervisory control on his staff and as a result of this, he allowed a private person, Shri Madan Gulati, to perform official work in his office, ~~as a private person~~, namely, discharging official duties/work in the office of Sub-Registrar-II for which he had been paid. We find that in the statement of articles of charge framed against the applicant, it has been stated, inter alia, that the applicant had failed to maintain absolute integrity and devotion to duty which ^{lack of proper} was/supervisory control and he had ^{a private person} allowed/to perform official duty in his office. That person, namely, Shri Madan Gulati, was found to be discharging official duties in the office on 16.8.1995 by the CBI surprise check party. From the copies of documents annexed to the O.A.

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itself, it is found that on 16.8.1995, Shri Madan Gulati had signed the surprise check memo. In the statement of Shri Madan Gulati given on the same date, he has also stated that he was working in the office with the knowledge of the applicant and that he was being paid Rs.50/- per day from May, 1995. It is true that the applicant himself was not present in the office at the time of surprise check because he was in the other office at Asaf Ali Road. In the Departmental proceedings held against the applicant, PW-5, i.e. Shri H.C. Joshi, UDC in the office of Sub-Registrar-II, had confirmed the signature and contents of the statement as correct except "the statement that monthly payment of Rs.1000/- was paid by Shri D.V. Singh". He has further stated that he has seen the statement PW-5(a) which was recorded on 4.11.1996 by Shri B.K. Pradhan, Inspector, and confirmed the statement as true and correct. In the statement recorded by this witness on 4.11.1996, he has stated that the Peshi Register was generally being written by Shri Rakesh, LDC prior to his posting and also by Madan Gulati, prior to his joining the Sub Registrar's office and he was given the impression that he was a daily wager and not was on the pay roll of the office. He has also stated that apart from the above, Shri Madan Gulati also used to make endorsements on the documents pertaining to Book I, which was a practice that was being followed before his posting. After making the said endorsements, he also used to get the signatures of Shri D.V. Singh who was the Sub-Registrar of the office. He has also stated that during the time of the surprise check on 16.8.1995, Shri Madan Gulati was present in the Sub Registrar's office in Room No. G-24 and was found working in the said seat and he had also informed the

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raiding party that Madan Gulati comes to the office generally in the morning and sometimes in the afternoon also. This witness has also been cross-examined by the applicant. Learned counsel for the applicant had relied on the replies given by this witness in the cross-examination, which at best can be termed as somewhat vague and evasive, for example, to the question whether Madan Gulati was occupying a chair and table before him, the answer was that chair and table were there. The Inquiry Officer has in his report referred to the evidence that has been placed before him, including the testimony of the witnesses and these witnesses have also been cross-examined by the applicant. PW-4 has also deposed in cross-examination that Madan Gulati was found sitting in Room No. G-24 at the seat of documentation Vol. I, Sub-Registrar's office. In the list of witnesses enclosed with the charge-memo, Shri Madan Gulati is shown at serial No.7 and it is also seen from the Departmental records that he had been summoned along with the other witnesses by the Inquiry Officer on two dates, namely, 2.7.1999 and 12.7.1999 to appear at the hearing but he failed to do so. Having regard to the evidence that has been produced before the Inquiry Officer which has been fully discussed by him in his report dated 1.9.1999, it cannot be concluded that this is a case of no evidence nor that merely because Shri Madan Gulati was not present in the hearing, the proceedings have been vitiated.

11. Learned counsel for the applicant has relied on the judgement of the Supreme Court in Hardwari Lal Vs. State of U.P. & Ors. (1999 (8) SCC 582). In that case, it was held that neither the complainant nor the other employee who had accompanied the appellant to hospital for medical examination

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was examined ¹⁸
[as a witness and hence, the inquiry was vitiated. That judgement will not be applicable to the facts in the present case. In the present case, a number of witnesses have not only stated in the surprise check memo dated 16.8.1995 that Shri Madan Gulati was present in the office and was doing official duties with the permission and direction of the applicant, which statements were also confirmed by them in later statements and in the inquiry proceedings but these witnesses have also been allowed to be cross-examined by the applicant. Accordingly, the other judgements relied upon by the applicant that the findings of the Inquiry Officer and those of the disciplinary authority and appellate authority are based on conjecture and surmises, cannot be accepted in the facts of the case as the charge has been fully proved on evidence that has come on record in the disciplinary proceedings. A perusal of the Inquiry Officer's report shows that he came to the conclusion that the evidence establishes that the applicant did not ensure proper supervisory control on his staff and that he allowed a private person to work in his office and that the private person was also paid every month by him. This is, therefore, not a case of no evidence. The respondents have summoned Shri Madan Gulati on two occasions to appear as a witness in the disciplinary proceedings but he failed to do so. In the circumstances, they have proceeded in the matter on the basis of the other evidence before them. Further, as there are other material witnesses who had testified that Madan Gulati was generally present in the office and doing official work which was clearly in the knowledge of the applicant, we do not find that the conclusions arrived at by the Inquiry Officer or the disciplinary authority or the appellate authority are either perverse or unjustified to warrant any interference.

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The fact that one of the witnesses had stated that when he was totally new to the job, the applicant had asked him to learn the work from Shri Madan Gulati, a private person as he was an experienced hand, is relevant and has also been taken into account. The other prosecution witnesses had also corroborated the case against the applicant regarding the presence of Madan Gulati in the office generally and on 16.8.1995..

12. In the facts and circumstances of the case, the contention of Shri J.K. Dass, learned counsel that the respondents must have produced Madan Gulati at the enquiry under the provisions of the Departmental Enquiry and Production of Witnesses Act, 1972 is without any basis. As discussed above, there was sufficient evidence which was before the competent authorities to come to the conclusions they have done in the enquiry proceeding that the applicant had failed to ensure proper supervisory control over his staff. In the circumstances of the case, another objection taken by the learned counsel for the applicant that the handwriting and signatures of Shri Madan Gulati were not properly identified and an expert ought to have been called is not relevant as there was sufficient documentary and other evidence before the competent authorities that a private person had been attending the office and attending^{to} the official work which was very much in the knowledge of the applicant. It is settled law that the Tribunal is not to reappraise the evidence and substitute its own decision/authority^{for that of the competent}. (See. Managing Director

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ECIL Vs. B. Karunakar & Ors. (JT 1993(6) SC 1) and Union of India Vs. Parma Nanda (AIR 1989 SC 1185). From a perusal of the documents on record and the Departmental records submitted to us, we are unable to come to the conclusion that the findings of the Inquiry Officer or competent authority are either arbitrary or utterly perverse. The principles of natural justice have been fully complied with as the applicant has been given adequate opportunity to be heard and ^{to} cross-examine the witnesses. The mere fact that Shri Madan Gulati who was one of the witnesses in the Departmental inquiry did not appear in spite of the fact that he was summoned, ~~does~~ not have the effect of vitiating the Departmental inquiry so as to justify setting aside the punishment orders. In the punishment order dated 26.7.2000 passed by the disciplinary authority, he has examined the various aspects of the evidence placed before him and he has given the reasons for his conclusions. It is also relevant to mention that although the disciplinary authority has stated that "The gravity of proven charges negates any idea of retention of Shri Dharam Vir Singh in Govt. service any longer, yet the undersigned feels that with this decision his family would be affected adversely and they would be deprived of their bread earner, but at the same time the undersigned cannot ignore the omission on the part of Charged Officer", ^{the lesser punishment} Accordingly, / of reduction to the lower post has been imposed on the applicant, that is, from Grade-I to Grade-II for a period of 5 years and he will be restored to the higher post if he is found fit by the competent authority after this period. The punishment is also not excessive or harsh considering the nature of the charges ^{held proved} against the applicant. The appellate authority has,

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like the disciplinary authority, passed a reasoned and speaking order taking into account the grounds taken by the applicant in appeal. The other cases relied upon by the applicant's counsel will, therefore, not assist him in the facts of this case. We have also considered the other grounds taken by the learned counsel for the applicant but do not find sufficient cause to interfere in the matter.

13. Therefore, in the facts and circumstances of the case, we find no good grounds justifying any interference in the matter having regard to the settled position of law on the question of judicial review to be exercised by the Tribunal in disciplinary proceedings. The O.A. is accordingly dismissed. No order as to costs.

V.K. Majotra

(V.K. Majotra)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'