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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO. 582/2002

New Delhi this the 25th day of April, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S.TAMPI, MEMBER (A)

Shri Biman Basu
S/o Shri B.B.Basu
R/o 7UF, Safdar Hashmi Marg
New Delhi-110 001
Working as Scientist 'F' in the National
Institute of Science Communication
CSIR, Dr.K.S.Krishnan Marg
New Delhi-110 012. **Applicant**

(By Shri Avijit Bhattacharjee, Counsel
with Shri Atanu Saikia, Shri B.K.Gupta Advocates)

vs.

1. The Council for Scientific & Industrial Research, Ministry of Science & Technology
Govt. of India
Anusandhan Bhavan, Rafi Marg
New Delhi-110 001
Through its Director General.
2. The Director, NISCOM
Disciplinary Authority, NISCOM
CSIR, Ministry of Science &
Technology, Govt. of India
Dr.K.S.Krishan Marg, PUSA
New Delhi-110 012.
3. Central Vigilance Commission
Government of India
Through Mr.Surjit Singh
Deputy Secretary
Central Vigilance Commission
Satarkata Bhavan, GPO Complex
New Delhi-110 023.
4. Mr.P.S.Khuntia
Commissioner of Departmental Inquiries
(CDI), Inquiring Authority
Central Vigilance Commission
Govt. of India, Satarkata Bhawan
GPO Complex
New Delhi-110 023. **Respondents**

(Shri M.Chandrashekaran, Sr.Counsel with
Ms. K. Iyer, Advocate.)

O R D E R (ORAL)

Justice V.S. Aggarwal:-

The applicant (Shri Biman Basu) was a



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Scientist in the National Institute of Science Communication. Disciplinary proceedings had been initiated against him. The inquiry report was adverse to him. Thereafter, the disciplinary authority had imposed a major penalty of compulsory retirement on the applicant. His appeal has since been dismissed. By virtue of the present application, he seeks quashing of the order of punishment dated 21.1.2002 and of the appellate authority besides that of the inquiry officer.

2. Applicant had been served with 8 articles of charge which read as under:-

"Article-I"

That Sh. Biman Basu while functioning as Scientist in the erstwhile Publications & Information Directorate (presently known as National Institute of Science Communication) during the year 1996 committed misconduct inasmuch as, in his capacity as Chairman of the EB Committee constituted for considering the case of Sh. LK Chopra, TO's EB crossing, by not pointing out that Part II (c) of APAR should be written only in case of dispute between the Reporting and the Reviewing Officer, and by not recommending the crossing of EB of said Sh. Chopra, in who's APAR for the year ending 31.3.94, part II (c) was wrongly filled up by the then Director, PID thereby awarding Sh. Chopra a grading adverse to the one given by the Reporting and Reviewing Officer, he thwarted Sh. Chopra's EB crossing at the stage of Rs.2300 in the scale of Rs.2000-60-2300-EB-75-3200-100-3500. Thus by his above acts Sh. Biman Basu failed to maintain devotion to duty and contravened thereby Rule 3 (1) (ii) of CCS (Conduct) Rules, 1964 as made applicable to Council employees.

Article-II

That the aforesaid Sh. Biman Basu while functioning as Scientist in the erstwhile Publications & Information Directorate (presently known as National Institute of

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Science Communication) during the period January 1994 and onwards committed misconduct inasmuch as, he, as member of SPC-II's sub-Committee, while deliberately sidelining the offers of M/s. Roto Print and M/s. HMT, recommended on 14.2.94 purchase of Two-colour Offset printing machine from M/s. J. Mahabeer & Co. (P) Ltd. leading thereby to irregular recommendations by Standing Purchase Committee (SPC)-II for placement of order on the said firm for Rs. 26,74,787-50 (Rupees Twentysix lakhs seventyfour thousand seven hundred eightyseven and paise fifty only) resulting in purchase of costlier machine, and thereby contributed to incurrence of avoidable expenditure of Council funds and perpetuation of the monopoly of machines of the above firm at PID. Thus by his above acts Sh. Biman Basu failed to maintain absolute integrity and devotion to duty and contravened the rule 3 (1) (i) and (ii) of CCS (Conduct) Rules as made applicable to Council employees.

Article-III

That the aforesaid Sh. Basu while functioning as Scientist in PID (NISCOM) during the year 1994 and onwards committed misconduct inasmuch as, i) inspite of the order dt. 14.2.95 having been placed on "repeat order basis" on M/s. Vyapar Sadan, New Delhi, he, as member of SPC-II proposed on 22.2.95 sanction for additional funds to meet the increase in price of Printing Paper as proposed by the said firm vide its letter dt. 20.2.95, resulting thereby into delivery of supplies at increased prices and ii) also further proposed in April 1995 for more funds to meet yet another enhancement of rates put forth by the firm for the items supplies of which had been deferred till April 1995 and the rates for which had already been enhanced in October 1994, leading thereby to placement of revised order at increased rates on a sister concern of M/s. Vyapar Sadan, New Delhi, - the firm, M/s. ABM Agencies, who had, in fact, never quoted any rates and from which the enhanced rates had also not been got confirmed before placing the order on it.

Thus, Sh. Biman Basu failed to maintain absolute integrity and devotion to duty and contravened thereby Rule 3 (1) (i) and (ii) of CCS (Conduct) Rules, 1964 as made applicable to Council employees.

Article-IV

That the aforesaid Sh. Basu while functioning as Scientist in PID (NISCOM)

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during the period 1994 and onwards committed misconduct inasmuch as, he, as member of Standing Purchase Committee-II, instead of negotiating with M/s. Vyapar Sadan for lowering their rates, recommended on 16.3.95 to place order with the said firm at enhanced rate of Rs.40.61/Kg. for purchase of printing paper which the firm had not been able to supply within the delivery schedule earlier agreed to. Thus, Sh. Biman Basu contributed to incurrence of excess expenditure of Council funds and extension of undue benefit to the firm and thereby failed to maintain absolute integrity and devotion to duty contravening Rule 3 (1) (i) and (ii) of CCS (Conduct) Rules, 1964 as made applicable to Council employees.

Article-V

That the aforesaid Sh. Basu while functioning as Scientist in PID (NISCOM) during the year 1995 and onwards committed misconduct inasmuch as, he, as member of SPC-II, recommended on 24.4.95 the purchase of Printing Paper at the rate of Rs.43.50 per Kg from M/s. ABM Agencies, New Delhi as against the revised order placed earlier on 11.4.95 on the same firm at the rate of Rs.41.05 less 1% discount for the same item, which led to placement of order on 26.4.95 on the firm at enhanced rates. Thus, Sh. Biman Basu contributed to incurrence of excess expenditure of Council funds and extension of undue benefit to the firm and thereby failed to maintain absolute integrity and devotion to duty contravening Rule 3 (1) (i) and (ii) of CCS (Conduct) Rules, 1964 as made applicable to Council employees.

Article-VI

That the aforesaid Sh. Basu while functioning as Director in PID (NISCOM) during the year 1995 and onwards committed misconduct inasmuch as, he, as member of Standing Purchase Committee-II, wrongfully recommended purchase of 3000 reams of Sunshine Super Printing Paper as Proprietary article of M/s. Ballarpur Inds. Ltd. thereby extending undue favour to the said manufacturer and its agency, M/s. ABM Agencies, New Delhi. Thus, Sh. Biman Basu failed to maintain absolute integrity and devotion to duty and contravened Rule 3 (1) (i) and (ii) of CCS (Conduct) Rules, 1964 as made applicable to Council employees.

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Article-VII

That the aforesaid Sh. Basu while functioning as Scientist in PID (NISCOM) during the year 1995 and onwards committed misconduct inasmuch as, in his capacity as member of SPC-II, he, without pointing out that the quotations were obtained directly by the Indenter usurping the authority of SPC, violated the provisions laid out in CSIR Rationalised Purchase Procedure, which led to SPC-II recommending placement of order for computer designing and printing of stickers on M/s The Effects, New Delhi. In this way Shri Biman Basu caused expenditure of Council funds in an irregular manner and extended undue benefit to the firm and thereby failed to maintain absolute integrity and devotion to duty contravening Rule 3 (1) (i) and (ii) of CCS (Conduct) Rules, 1964 as made applicable to Council employees.

Article-VIII

That the aforesaid Sh. Basu while functioning as Scientist in PID (NISCOM) during the year 1989 and onwards committed misconduct inasmuch as, he, by firstly proposing on 4.10.89 to subscribe to the Chemical Abstracts in Micro film (Microfisch) from American Chemical Society and later on 15.10.90 to continue the same, when the microfisch reader-cum-printer was not available in the Institute even till February 1994, brought about incurrence of infructuous and wasteful expenditure of Council funds approximately to the tune of Rs.5,94,250/- (Rupees five lakhs ninetyfour thousand two hundred fifty only). Thus, Shri Biman Basu failed to maintain absolute integrity and devotion to duty and contravened thereby Rule 3 (1) (i) and (ii) of CCS (Conduct) Rules, 1964 as made applicable to Council employees.

The disciplinary authority held the articles of charge to have been proved except article of charge No.VII which is reported to have been partly proved.

3. At this stage, we deem it necessary to mention that in judicial review the scope for interference is limited and this Tribunal cannot sit as a court of appeal while construing the



question involved. The Tribunal would only be competent to interfere on facts if it is concluded that the findings arrived at are erroneous, adverse, based on no evidence or no reasonable person would come to such a conclusion. The principle of law in this regard is very well-settled and it becomes unnecessary to again review the same but we will only refer to some of the judicial precedents on the subject. In the case of **State Bank of India and others v. Samarendra Kishore Endow and Another**, (1994) 2 SCC 537, the Supreme Court in unambiguous terms held that in judicial review, the findings arrived at by the authorities unless erroneous do not require interference. Similarly in the case of **State of Tamil Nadu v. Thiru K.V. Perumal and Others**, (1996) 5 SCC 474, the Supreme Court held:-

"So far as the fourth ground is concerned, it has been repeatedly held by this Court that it is not the province of the Tribunal to go into the truth or otherwise of the charges and that the Tribunal is not an appellate authority over the departmental authorities. Accordingly, the Tribunal must be held to have exceeded its jurisdiction in entering upon a discussion whether the charges are established on the material available."

Identical was the view point expressed a year later in the case of **Union of India and Another v. G. Ganayutham**, (1997) 7 SCC 463. Once again the Supreme Court held that it is improper for the Tribunal/court to interfere with the decision of the authorities while judicially reviewing a

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decision unless it suffers from the vice already referred to above. The Tribunal/Court would not interfere unless the decision is illegal or suffers from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards.

4. Keeping in view the aforesaid, it is patent that while looking into the findings that have been arrived at, the restrictions necessarily have to be imposed and it would only be permissible to interfere if the findings are irrelevant, totally illegal, perverse or based on no evidence.

5. The first article of charges as against the applicant pertained to assertions that in his capacity as Chairman of the Committee constituted for considering the case of Shri L.K.Chopra for crossing of Efficiency Bar, he considered the observations made by the Director and decided against the concerned official. Reliance on this opinion would have been of any relevance only if there was any difference between the remarks by the reporting and the reviewing officer. In the case of Shri L.K.Chopra for the year 1993-94, it was not so and, therefore, remarks of the Director had become irrelevant and redundant. The said adverse remarks had also not been communicated to the official concerned. Since the contention in this

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regard had been considered and findings arrived at, we deem it proper in face of the decisions referred to above, not to interfere. As regards article of charge No. II, which we have already reproduced above, it transpires that the applicant was only a member of the purchase committee. The learned counsel explained that the purchases were being made for more than 10 years from the same company and the committee had given the recommendation. All these factors had been taken note of and in face of all these facts, once the inquiry officer had considered the same, it is not permissible for this Tribunal to scrutinise the matter as if an appeal was being heard and to come to a conclusion. Even if this Tribunal was to come to a contrary conclusion, still the law does not permit interference in this regard.

6. So far as articles of charge Nos. III, IV, V and VI are concerned, they pertained to an alleged misconduct of similar nature on the part of the applicant. It pertained to purchases of printing paper from M/s. Ballarpur Industries at the enhanced rate which gave undue benefit to the said firm. On these counts also we have noticed that there is appreciation of evidence by the inquiry officer and as such we deem it improper to interfere because we are precluded from doing so, while exercising the powers of judicial review.

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For same reasons, there is no interference called for with respect to articles of charge No.VII and VIII.

7. Confronted with this position, it was pointed at the Bar that in any case, the punishment awarded is disproportionate to the alleged dereliction of duty which has been described as misconduct.

8. We know from the decision rendered by the Supreme Court in the case of B.C.Chaturvedi v. Union of India and Ors., JT 1995 (8) S.C.65 that this Tribunal can interfere only if the punishment imposed shocks the conscience of the Tribunal. In para 18, the principle of law laid was:-

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to re-consider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

Same principle was also enunciated though

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differently by the Supreme Court in the case of State Bank of India (supra) and also in the case of State of Karnataka and others v. H.Nagaraj, (1998) 9 SCC 671 relying upon a decision in the case of G.Ganayutham (supra), the Suprme Court held:-

"This Court has held that the principle of proportionality can be invoked regarding punishment only in a case where the punishment was totally irrational in the sense that it was in outrageous defiance of logic or moral standards. Such is not in the present case."

In the present case before us though the disciplinary authority found that the charges have been proved, still our attention was drawn to the fact that so far as article of charge No.1 is concerned, a very clear cut verdict was not available on the question of treating the Director's grading. As regards article of charge No.II, the applicant was not a member of the Standing Purchase Committee which took a decision to purchase two colour offset printing machines. Earlier also similar purchases had been made from the same dealer M/s. J.Mahabeer & Company. Articles of charge No.III, IV, V and VI have already been referred to above. The paper manufactured by the same mill (M/s Ballarpur Industries) had been purchased by the PID from the same dealer (M/s.Vyapar Sadan) and increase in the mill price is stated to have been accepted in the

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past years. So far as Article of Charge No.VIII is concerned, the decision to purchase of microfiche edition of Chemical Abstracts was taken by the library committee in view of lack of space in the PID library. It would appear that the applicant in the above decision was not guided by any personal profit motive or malafides. The worst scenario could be that of not following the prescribed procedure but the same could not be taken as a deliberate attempt to cause loss to the exchequer. It cannot also be taken as a gross misconduct. That being the case, while we do not call in question the procedure initiated by the respondents culminating in the imposition of penalty on the applicant, we feel that the penalty imposed was disproportionate to the charges shown as proved, more so keeping in mind the long years of service rendered by the applicant, a fact acknowledged by the respondents themselves. In the facts and circumstances of the case, a penalty less harsh than compulsory retirement awarded by the Disciplinary authority would have adequately met the requirement of justice.

9. Accordingly we allow the application, quash the impugned order and direct that the disciplinary authority may impose any other penalty

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in accordance with law. No costs.

Announced.

(Govindan S. Tampi)
Member (A)
/sns/

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