CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3065/2001

New Delhi this the 7th day of May, 2002.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

S.S. Yadav,
R/o Village & Post Office
Bharawas, Distt. Rewari,
Haryana. -Applicant

(By Advocate Shri Yogesh Sharma)

-Versus-

1. Union of India, through
the Secretary, Govt. of India,
Cabinet Secretariat,
New Delhi.

2. The Additional Secretary (Pers.),
Govt. of India, Cabinet Secretariat,
Room No.7, Bikaner House,
Shahjahan Road,
New Delhi.

3. Joint Secretary (Pers),
Govt. of India Cabinet Secretariat,
Room No.7, Bikaner House,
Shahjahan Road,
New Delhi. -Respondents

(By Advocate Shri Madhav Panikar)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns an order of penalty dated 1.11.2000, imposing upon him a major penalty of compulsory retirement as well as the appellate order dated 6.8.2001, upholding the punishment.

2. Applicant is an ex-serviceman. After joining the respondents, on a preliminary enquiry he was placed under suspension on 9.3.95 and was served with a memorandum under Rule 14 of the CCS (CCA) Rules, 1965, alleging his habitual acts of indiscipline and misbehaviour despite an opportunity to improve as well as dereliction of duties on 14.2.95 wherein he left the office without seeking permission of the competent authority, Shri Adesh Kumar,

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Under Secretary (Admn.III) and further questioning his authority and showing indiscipline by throwing his identity card and attendance register and remarking in a threatening tone.

3. In pursuance of the inquiry the applicant was held guilty of the charge and was compulsorily retired by an order dated 10.3.97, against which the appeal preferred was also rejected.

4. Applicant approached this Tribunal by way of filing OA-2466/97 which was disposed of on 21.7.2000 by setting aside the impugned orders. As no reasons for disagreement have been recorded by the disciplinary authority, the respondents have been given liberty to record reasons and thereafter to extend a reasonable opportunity to the applicant.

5. In compliance thereof, by a memorandum dated 21.9.2000 disciplinary authority disagreed in respect of article of charge No.I and II by recording tentative reasons, against which the applicant preferred a representation. The disciplinary authority on the basis of the disagreement after considering the contentions of the applicant proved both the articles of charge and imposed upon applicant a major penalty by the impugned order dated 1.11.2000.

6. Appeal preferred against the order was also rejected by the order dated 6.8.2001, giving rise to the present OA.

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7. We have carefully considered the rival contentions of the parties and perused the material on record.

8. Learned counsel for the applicant Shri Yogesh Sharma has taken the first plea that the impugned charge memo is vague and is not clear, as such depriving the applicant an opportunity to effectively defend the same. On the other hand the respondents contended that the chargesheet issued to the applicant is definite and clear and the imputations have been detailed supported by the witnesses and documents.

9. On perusal of the memorandum alongwith the imputations we find that the charges levelled against the applicant are neither vague nor inconclusive. The alleged misconduct of the applicant has been described with full details and particulars. As such, this ground fails.

10. Another contention of the learned counsel for the applicant is that the listed documents have not been served upon the applicant, which has prejudiced him in his defence. On the other hand, respondents denied the same and stated that all the relevant documents which were attached with the memorandum have been furnished to the applicant.

11. We have considered this contention and find that the applicant has miserably failed to show that he has made any request to the authorities on receipt of the memorandum for supply of the relevant documents. This

clearly shows that the applicant was provided with the documents and has not been denied any reasonable opportunity, prejudicing his right.

12. Another contention of the applicant is that whereas he has been exonerated from both the charges by the inquiry officer through his detailed findings, the disciplinary authority despite directions of the court has not recorded any reasons in support of the disagreement. This has been controverted by the respondents by referring to the memorandum issued by the disciplinary authority, which is detailed, containing reasons.

13. We have perused the memorandum and find that the reasons have been recorded by the disciplinary authority while disagreeing with the conclusions of the inquiry officer arrived at in his findings and this is a valid compliance of the principles of natural justice.

14. The learned counsel for the applicant has also stated that the applicant has not been held guilty of Article-I of the charge. The inquiry officer has only proved three instances out of five of past misbehaviour where he has already been warned. In this backdrop it is stated that the charge against the applicant could not be proved and once he has been punished for the past misconduct it amounts to double jeopardy to punish him again in the disciplinary proceedings on the same charge. The disciplinary authority has clearly recorded his disagreement on this Article of charge by stating that although out of five, three instances of past misbehaviour have been proved, clearly shows that the applicant is an

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undisciplined official and despite being accorded warnings kept on indulging misbehaviour habitually. Respondents have contended that this charge has been proved on the basis of the material and evidence brought on record.

15. We are of the considered view that in a judicial review it does not lie within our jurisdiction to re-apprise the evidence. The conclusions of the inquiry officer are neither irrational or based on extraneous matters. The gravamen of the first charge was that the applicant was involved in past incidents of misbehaviour showing him in the habit of indulging in the acts of indiscipline. As the three incidents of past misbehaviour have been proved against him which have not been rebutted by any evidence, we do not find any fault with the findings of the disciplinary authority, proving this part of the charge. The question of double jeopardy will not be attracted as in the past the applicant was warned for his misbehaviour and despite the warnings he continued to misconduct in the like manner which certainly shows his habit of indulging in such a misconduct. Charge is of his habitual involvement in misbehaviour despite opportunity to reform and do not attract the principles of double jeopardy.

16. As regards the second charge where the applicant has been held guilty of leaving the office before time, without seeking permission, the learned counsel by referring to his pleadings in paragraph 4.5 contended that as per office order dated 5.10.94 the duty hours for Care Taker were 8.00 a.m. to 4.30 p.m. Respondents on the other hand denied this and stated that this office order is

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not applicable to the applicant as the instructions were applicable in RPC Ghatorni and not in respect of Care Taker working in Headquarter officer where the applicant was deputed temporarily during February, 1995 and as his duty hours were upto 6.00 a.m. he should not have left the premises without seeking permission of the competent authority.

17. We have applied our mind to this contention and are of the considered view that the instructions from this office order cannot be made applicable as the applicant was in the Headquarter officer where the duty hours for a Care Taker were upto 6.00 p.m. and as admittedly the applicant has left the office though the time of leaving his duties have some contradiction but yet as he left the office before duty hours before 6.00 p.m. this charge is validly proved on the basis of the material in disagreement by the disciplinary authority and cannot be found fault with.

18. Another contention of the learned counsel is that he has been held guilty of part of Article of charge No.II and the inquiry officer in his report has only proved the allegation against the applicant of questioning the authority of PW-1 marking him on half-a-day casual leave against his name in the attendance register but leaving the office early and throwing his identity card and attendance register on the face of PW-1 could not be proved. It is only in this conspectus stated that the applicant has been punished by the disciplinary authority despite admitting that the charge of throwing identity card and attendance register on the face of Shri Adesh Kumar, Under Secretary

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(Admn-III) (controlling officer) has not been conclusively proved but yet he has punished him merely on suspicion and surmises by observing that although his misbehaviour of having heated exchange and throwing his identity card on the table as admitted by the applicant himself thus clearly points out towards his misbehaviour. It is contended that such a conclusion is perverse based on no evidence and cannot be relied upon by the disciplinary authority to punish him. Respondents on the other hand stated that the applicant himself admitted leaving office early and having heated exchange with the controlling officer and having regard to the fact that the charges have been fully proved in substance there is no infirmity in the order passed by the disciplinary authority.

19. We have carefully considered this contention of the parties and are of the considered view that although it has not been conclusively proved that the applicant has thrown the identity card and attendance register on the face of the controlling officer but the conduct of the applicant by throwing the identity card and attendance register on the table and remarking in a threatening tone has been validly proved even as per the admission of the applicant himself in the inquiry. As this charge has been proved in substance on the basis of pre-ponderance of probability we cannot act as a criminal court to see the relevancy of the evidence and re-apprise the same. We do not find any infirmity in the conclusions arrived at by the disciplinary authority, holding this charge proved.

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20. Lastly, it is contended that the punishment imposed is inconclusive and is not commensurate with the misconduct. Although we find that in appeal the applicant has not taken such a ground and has gone to the extent of writing that filing an appeal is a waste of time and energy, the appellate authority has gone into the proportionality of punishment in its order and sustained the same. Once the proportionality of punishment has been gone into at the department level, this Tribunal cannot interfere with the same, unless the penalty imposed shocks our conscience. Having regard to the allegations against the applicant where he has been found in the habit of misbehaving with the seniors and his particular misconduct of questioning his controlling authority does not persuade us to interfere in the matter of punishment.

21. No other legal and valid grounds have been taken by the learned counsel for the applicant to assail the impugned orders.

22. In the result and having regard to the reasons recorded, we do not find any merit in the OA, which is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member(J)

V.K. Majotra

(V.K. Majotra)
Member(A)

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