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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.**

O.A./XXXX No. 1835/1995

Decided on:

10.2.97

Shri Manoj Kant ChaturvediApplicant(s)

(By Shri B.S. Mainee _____ Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By Shri P.S. Mahendru _____ Advocate)

CORAM:

THE HON'BLE SHRI MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter *YR*
or not?

2. Whether to be circulated to the other *No*
Benches of the Tribunal?

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((K. MUTHUKUMAR
MEMBER (A))

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. NO. 1835 of 1995

NEW DELHI THIS THE ¹⁰_a DAY OF JULY, 1997

HON'BLE MRS. LAKSHMI SWAMINATHN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri Manoj Kant Chaturvedi
R/o Quarter No.177-A,
Northern Railway Colony,
Moradabad. ...Applicant

By Advocate Shri B.S. Mainee

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad.
3. The Sr. Divisional Mech.Engineer,
Northern Railway,
Moradabad. ...Respondents

By Advocates Shri P.S. Mahendru

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

This application is directed against the order of the respondents imposing on the applicant the penalty of removal from service following disciplinary enquiry. The charge against the applicant was that on 19.1.1994, the applicant did not attend to his duties and remained on unauthorised absence and on that day about 8.30 A.M., he got Shri Hari Chand assaulted by two other persons with hockey sticks while Shri Hari Chand was coming on duty. This act was treated as an act unbecoming of a Railway Servant and, therefore, he was proceeded departmentally. The applicant has prayed for quashing of

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the impugned order on the ground that the charge of his unauthorised absence on 19.1.1994 and his engineering an assault on Shri Hari Chand is false and baseless and that there was no evidence in support of his charge and Shri Hari Chand himself was not produced during the enquiry although he was a material witness and that the only witness, namely, Shri Yashpal Singh, who was produced during the enquiry, did not depose anything on his unauthorised absence as well as on the assault on Shri Hari Chand and that the disciplinary authority wrongly held that the charge had to be disproved by the applicant although it was for the prosecution to prove the charge. The applicant has also taken the ground that the appellate authority had presumed wrongly that the applicant had been acquitted by the criminal court on the basis of the benefit of the doubt whereas the applicant had been acquitted honourably, there being no evidence whatsoever. In view of these grounds, the applicant alleges that the respondents have taken action against him out of malice and, therefore, the impugned orders are arbitrary, discriminatory and void ab initio.

2. In the counter-reply filed by the respondents, it has been averred that in the disciplinary enquiry all the relevant witnesses were examined and the deposition of the witnesses during the enquiry clearly brought out the fact that the assault was at the behest of the applicant. The cross-examination of the prosecution witness Shri Yashpal Singh proved beyond doubt that the assault on Shri Hari Chand was engineered by the applicant. The respondents have also averred that not only did the witness see two persons running away but had also heard

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them saying "Chaturvedi's work has been done. Let us run away". The respondents submitted that the disciplinary authority had passed the order after considering all the facts of the case including the report of the Enquiry Officer and the appeal was also rejected by the competent authority after due consideration and proper application of mind.

3. The learned counsel for the applicant argued that this was a case where none of the essential requirements during the enquiry was followed. He pointed out that the key witness in this case was Shri Hari Chand himself and he was not produced. The non-production of key witness was a serious lacuna vitiating the departmental proceedings. He referred to the decision in Hari Giri Vs. U.O.I. & Others, 1991 (2) ATJ page 580, Principal Bench. He also submitted that there was absolutely no evidence to substantiate the charge against the applicant. Inspite of that, the Enquiry Officer returned the finding that the charge was proved. He referred to the decision in Ananda Prakash Singhal Vs. U.O.I., SLJ 1991(1) CAT (Principal Bench) page 137. The learned counsel also argued that it was strange that the applicant was asked to prove his innocence in this case whereas the onus was on the prosecution to prove their charge against the applicant. He also submitted that the Enquiry Officer had proceeded merely on the basis of assumption, conjecture and surmises and he also pointed out that the entire findings in the enquiry was perverse. He referred to the case of Ajit Kumar Khara Vs. U.O.I. & Others, 1994 (1) SLJ page 370 (Calcutta Bench).

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4. The learned counsel for the respondents submitted that in a case of this kind, there was enough circumstantial evidence as it was clear by the deposition of Yashpal Singh, PW who not only saw two persons running away but also heard them saying "Chaturvedi's work has been done. Let us run away". He also submitted that Enquiry Officer had come to the conclusion that the whole thing had been plotted by the applicant to have Shri Hari Chand beaten up with the help of outsiders.

5. We have heard the learned counsel for the parties and have perused the record placed before us.

6. From the records placed before us, a clear fact emerges that the material witness Shri Hari Chand was not produced in the enquiry. The Enquiry Officer also had not dealt with the reason why the material witness was not produced. Although the provisions of Evidence Act are not strictly applicable in a departmental enquiry, the non-examination of material witness in this case has prima facie vitiated the enquiry. It is settled law that where crucial or material witness is not produced in the enquiry and there is also no conclusive circumstantial evidence to prove the charge, the enquiry is vitiated. We may refer to decision in Mangal Singh Vs. Commissioner of Himachal Pradesh, (1975) 1 SLR 500 (H.P.) and Apex Court's decision in Suraj Mal Vs. State (Delhi Administration), (1979) 4 SCC 725. The deposition of Shri Yashpal Singh only confirmed that he had seen that Shri Hari Chand had been beaten by hockey sticks by two persons. He deposed that one of them running away may be Shri Chaturvedi but this could not be confirmed by the prosecution witness. This

observation seems to be contradictory to what the Enquiry Officer had stated. The Enquiry Officer had stated that it was clear that Shri Chaturvedi did not directly beat Shri Hari Chand but planning had been made by Shri Chaturvedi to beat Shri Hari Chand. At the same time, the Enquiry Officer comes to the conclusion that one of the persons "may be Shri M.K. Chaturvedi". He also says that this was not confirmed by the prosecution. All this suggests that the Enquiry Officer has made inconsistent findings and there is no direct or convincing circumstantial evidence to support the charge and we have no alternative but to conclude that the Enquiry Officer has returned a perverse finding. It was on the basis of this finding that the disciplinary authority had imposed this punishment, which cannot be sustained. Merely on the evidence of witness, who had deposed that he had heard the name of Shri Chaturvedi from the two persons who were running away, it was not clear how the Enquiry Officer could come to the conclusion that the charge was proved. We also find that the appellate authority had simply stated that he was convinced that there was preponderance of probabilities that the applicant was guilty of engineering the assault. He had observed that no CDO would make a false report of the employee working under him specially in a Police Station when he knew that making a false report would land him in trouble. It was stated that Shri Yashpal Singh, prosecution witness, had answered that he had heard the person running away saying that "Chaturvedi's work has been done. Let us run away". But we find that in answer to Question No.10 of the Enquiry/Officer, this witness had denied any knowledge of this and this was also inconsistent with the answer to the earlier question/No.5. We find that the appellate

authority had observed that Shri Hari Chand himself had reported that the applicant caught hold of the collar and the other two persons started beating him. We find this is not borne out in the deposition of the witnesses. The appellate authority has given his observations and conclusions on the basis of preponderance of probabilities. As the material witness had not been examined in this case, we have to observe that the enquiry proceedings have been vitiated. From the inconsistent reply of the witness, namely, Birender Yashpal Singh even the preponderance of probability is not evident and the finding is based on evidence and is perverse.

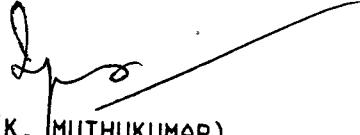
7. While observing as above, we wish to make it clear that we have not attempted to appraise the evidence afresh. While on the one hand, the decision making process has been vitiated, the finding is also based on no evidence. We are conscious that in disciplinary matters, the Tribunal cannot sit in appeal or reappraise the evidence as a court of appeal. All that we have observed here is that, prima facie, the finding of the Enquiry Officer does not appear to be based on any evidence. Hon'ble Supreme Court in B.C. Chaturvedi Vs. U.O.I., JT 1995(8) SC page 65 has held that the Tribunal may interfere when the conclusion or finding is based on no evidence.

8. In the light of this, we have to conclude that the impugned orders passed on the basis of the vitiated enquiry and the finding based on no evidence cannot be sustained.

9. In the result, the application is allowed and the impugned order of punishment is set aside. The respondents are directed to reinstate the applicant.

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service forthwith. The applicant will not, however, be entitled to any back wages. In the circumstances, there shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

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