

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO. 865/95

(X)

New Delhi, this the 7th day of September, 1999

HON'BLE MR.JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN (J)
HON'BLE MR. J.L.NEGI, MEMBER (A)

Sh. O.P.Rajpal, S/O Late Sh.
K.C.Rajpal, R/O H-64, Kirti Nagar, New
Delhi - 110 015.

(By Advocate: Mr. Shyam Babu) *****Applicant.

VERSUS

1. Chief Secretary, Govt. of N.C.T. of Delhi, 5, Sham Nath Marg, Delhi.
2. Lt. Governor, Delhi, Raj Niwas, Delhi.

(By Advocate: Mr. Arun Bhardwaj through
Mr. Bhaskar Bhardwaj) *****Respondents.

O R D E R (ORAL)

By Hon'ble Mr. Justice R.G.Vaidyanatha, VC (J):

This is an application under Section 19 of the A.T. Act filed by the applicant. Respondents have filed their counter opposing the application. We have heard Mr. Shyam Babu, counsel for applicant and Mr. Bhaskar Bhardwaj, proxy counsel for Mr. Arun Bhardwaj, counsel for respondents.

2. The facts necessary for the disposal of this case are as follows:

At the relevant time, the applicant was working as Sales Tax Officer under the Delhi Administration. Due to certain alleged misconduct, charge sheet dated 28.3.1988 was issued against the applicant. The charge contains 4 articles of charges framed against the applicant. The allegation in the (I) charge is that in



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order to give undue favour to M/s. Paper Traders, the applicant allowed additions of certain items which were not directly related to the primary business of the dealer without obtaining any spot verification report from the ward inspector. It is also further alleged that applicant also favoured the said dealer in the matter of issuance of large number of statutory forms during the period between 17.11.86 to 5.1.87 without obtaining a complete utilisation account of the forms issued on previous occasions. It is alleged that the applicant failed to safeguard the interest of revenue. Then, in article (II), it is alleged that applicant while working as STO issued statutory forms to M/s. Yamuna Sales Corporation despite the availability of adverse material against the said dealer. In article (III), it is alleged that applicant showed undue favours to another trader M/s. Singh Traders despite the availability of adverse material against the said dealer. Then, in article (IV), it is alleged that the applicant showed favour to another trader M/s. Kanwar Shanker & Bros. in issuing the statutory forms despite availability of the adverse material against the said dealer. It is, therefore, alleged that the applicant has showed undue favour to the above dealers and thereby failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Govt. servant and thereby violated the C.C.S. (Conduct) Rules, 1964.

2. The applicant's defence was one of denial. He pleaded the rules under which he granted the



amendment of the items to the traders mentioned in para 1 of the charge and then, he explained the circumstances under which he released statutory forms to other traders. He denied the allegation of showing undue favour to any of the traders. According to him, he acted as per rules in releasing the statutory forms and in granting amendment to M/s. Paper Traders and he has done nothing contrary to rules.

3. The Enquiry Officer of the Central Vigilance Commission was appointed to enquire the case against the applicant. 5 witnesses were examined on behalf of prosecution and 16 prosecution documents were exhibited. The applicant produced 9 defence documents as his evidence. He did not examine himself nor he did examine any defence witness in support of his defence. But, however, the applicant was questioned generally by the Enquiry Officer about the evidence appearing in this case against him. Written briefs were submitted both by the Presenting Officer and the applicant. Then the Enquiry officer prepared a report dated 30.7.90 under which he held that all the charges against the applicant are proved. Then, a copy of the enquiry report was furnished to the applicant. He submitted a detailed reply against the enquiry report. Then, the disciplinary authority passed the order dated 12.4.94 under which he held agreeing with the enquiry report that all the charges are proved against the applicant and imposed a penalty of compulsory retirement with immediate effect. Being aggrieved by this order, the

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applicant preferred an appeal. The appeal was not disposed of, therefore, the applicant has come up with the present application.

4. The applicant's case is that he has never committed any misconduct as alleged in the charge sheet. He has acted as per rules and issued statutory forms without showing any undue favour. Then, he referred to some earlier litigation to show that all was not well between himself and the Administration. He has taken number of grounds in the OA to show that the findings of the Enquiry Officer are not warranted from the evidence on record. His case is that the case was not proved against the applicant but still he has been held guilty by the disciplinary authority. He has, therefore, by the present application challenged the order for compulsory retirement dated 12.4.94 passed by the disciplinary authority and for reinstatement with all consequential benefits.

5. Respondents in the reply have justified the action against the applicant. It is stated that the enquiry was conducted as per rules. All evidence was placed before the Enquiry Officer. It is stated that inspite of availability of adverse material against the traders, the applicant issued large quantity of statutory forms to the dealers. That the addresses given in the utilisation account, were incomplete, but inspite of that, the applicant has acted upon the same. It is stated that all the charges were proved against



the applicant during the enquiry and no grounds are made out for interfering with the findings of the Enquiry Officer and order of disciplinary authority.

The applicant has filed rejoinder again asserting whatever he had alleged in the OA and denied the allegations made in the counter.

6. Learned counsel for the applicant contended that the findings of the enquiry officer are perverse and he has ignored the material evidence and he has drawn conclusion contrary to the evidence on record. He argued that the applicant has acted bonafide on the basis of available materials and he has not shown any undue favour to any of the traders. In response to allegation about some adverse material, the applicant got clearance and then only issued statutory forms. It is, therefore, argued that the impugned enquiry report and orders of disciplinary authority based on the same, are not sustainable in law.

Learned proxy counsel for the respondents contended that there is sufficient evidence on record to prove the case against the applicant and this Tribunal cannot sit in appeal over the orders of domestic Tribunal. After hearing both the counsel for parties, we have to examine the scope of judicial review. While exercising judicial review, it is well settled, that this Tribunal cannot sit in appeal over the orders of a domestic Tribunal. We cannot reappreciate the material and take another view. The

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scope of judicial review is to find out whether the enquiry has been done as per rules and whether the principles of natural justice have been followed. If once the enquiry has been done as per rules and as per principles of natural justice, then this Tribunal cannot interfere with the findings of fact recorded by domestic Tribunal unless it is case of "no evidence". The sufficiency of the evidence is not a matter to be considered by the Tribunal whether the evidence witnesses should be believed or not is not a matter to be considered by the Tribunal. Therefore, while exercising judicial review, this Tribunal cannot act as an Appellate Forum and cannot go into the question of fact. It is not necessary to refer to number of recent judgements of Hon'ble Supreme Court on the point, but we refer only one recent judgement reported as AIR 1999 SC 625 (Apparel Export Promotion Council Vs. A.K.Chopra) where the Apex Court has clearly held that the Tribunal or Court cannot act as an Appellate Court and cannot reappreciate the evidence. In that case, the High Court had interferred with the order of a domestic Tribunal by discussing the evidence and recorded that the misconduct was not proved. Hon'ble Supreme Court allowed the appeal and set aside the findings of the High Court by observing that High Court cannot go into the question of adequacy or sufficiency of evidence while exrecising judicial review. Supreme Court has referred to number of earlier judgements on the point in the present case.



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7. Now the question is whether on the basis of available evidence, can we say that the report of the Enquiry Officer or the findings of the Disciplinary Authority, is a case of "no evidence". After hearing both the counsel and perusing the materials on record, our answer is negative. in The main charge against the applicant is that he issued statutory forms to different traders in spite of adverse material against them. This is purely a question of fact to be decided on the basis of evidence led during the enquiry. The Enquiry Officer who is from the Vigilance Commission has written a lengthy order and considered the evidence on record and recorded the findings that the applicant had issued statutory forms without proper enquiry, when there was adverse material available against the traders. We cannot re-appreciate the evidence and then come to the conclusion that the applicant had issued statutory forms after getting the clearance regarding adverse material and that there was no such adverse material for the applicant to deny the supply of statutory forms. As already stated, we cannot go into the question of appreciation of documents or sufficiency of evidence.

8. We have perused the enquiry officer's report which is at page 160 of the paper book. The enquiry officer in the preamble, has reproduced all the articles of charges against the applicant. Then, he has taken discussion of each charge "one-by-one". There is some debatable argument as far as part one of article I of the charge which we will consider later.

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7 The second part of charge and all remaining charges were in respect of the applicant issuing statutory forms indiscriminately and without proper enquiry and further he did this in spite of adverse material against the traders. As far as second part of the I charge, the enquiry officer has considered the evidence in particular documentary evidence and he has recorded finding that the statement and utilisation of statutory forms did not contain the full addresses of the traders. The dealers had purchased a heavy materials for more than one lakh, then, he considered the explanation of the applicant and stated documentary evidence and utilisation account submitted by M/s. Papers Traders and on that basis, he recorded findings of fact that the applicant failed in his duty in making enquiries which revealed misconduct and loss of revenue to Govt. by this dealer. He also recorded the finding that the applicant did not care to prescribe additional surety for proper use of statutory forms issued to the dealers. Therefore, he held that the second part of the I charge has been proved.

9. Now, taking up article II which is about supplying of statutory forms to M/s. Yamuna Sales Corporation despite availability of adverse material, the enquiry officer has considered the evidence and noticed that there was no business activity in the firm and the firm was not in existance. The dealer did not produce account book in spite of notice. Then, he has taken in to consideratioin the statement of the applicant regarding this point. This goes to show that

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the applicant's defence has been considered alongwith the prosecution evidence and then, he has come to his own finding of fact. He has pointed out in particular para 6.3, that the applicant himself had ordered on 17.8.86 that the Inspector to verify the production and sale and report on 23.10.86. He has further recorded that the Inspector in his report had very clearly stated that it was non-existant firm and issuance of statutory forms should be stopped. But the applicant without calling for the said report, issued the statutory form on 15.12.86. Therefore, this again is a finding of fact recorded by the enquiry officer based on the available records including the clarification or statement of the applicant.

10. As far as the charge III is concerned, the allegation is that applicant had issued statutory forms to M/s. Singh Traders despite availability of adverse material against the dealer. Here also the Sales Tax Inspector in his report dated 22.10.86 had clearly recorded that this firm was non-existant and no further statutory forms should be issued. In spite of his report, the applicant ignored it and issued large number of statutory forms to M/s. Singh Traders.

Then, coming to the last charge, article IV, the enquiry officer has considered the evidence and in particular he has considered the service report dated 25.6.86 and the Inspector's report dated 27.10.86 and he also noted that the dealer had not produced the details of sales during the year and he also had not

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produced the sales register by the particular date in spite of notice. The enquiry officer, therefore, holds that in spite of such adverse materialo and report from subordinate official, the applicant ordered for issuance of 50 statutory forms on 6.10.86 and 100 statutory forms on 12.12.86 and 100 statutory forms on 5.1.87 to M/s. Kanwar Shanker & Bros. He also takes into consideration that file of M/s. Kanwar Shanker & Bros. was kept in personal custody of the applicant and whenever any application was received, the concerned clerk has to go to the applicant and take the file from his personal custody. Then, he considered the applicant's version. Then after discusssion, he recorded the finding against the applicant.

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11. Therefore, we see that the enquiry officer has considered the evidence and considered the explanation of the applicant and then has come to his own conclusion regarding findings of facts. We cannot take a different view by reappreciating the evidence, we are afraid that we cannot do that in view of the law declared by the Apex court which we have pointed earlier. Counsel for applicant invited our attention to some of the documents to show that applicant has acted bonafide but we cannot reappreaciate the evidence and take a different view as argued by the counsel for applicant.

12. It may be that as far as first part of article (I) of the charge sheet, there appears to be same debatable point. According to the applicant, the

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matter is covered by circular No. 29 of 1981-82 under which according to him, no enquiry is necessary unless the amendment sought for was soon after certificate of registration. But according to the Administration, the relevant circular No. 20 dated 28.10.74 under which in case of amendments, it should not be done in a routine manner and spot enquiry etc. is necessary. In our view, we need not go into this question in detail to find out whether circular No. 29 of 1981-92 is applicable or circular No. 20 dated 28.10.74 is applicable since even if we ignore the first part of (I) charge and findings on second part of I charge and charges II to IV are findings of fact and cannot be interfered by this tribunal and those findings are sufficient to sustain the action taken against the applicant. It is argued by the counsel for applicant that the disciplinary authority has committed a mistake interpretation of evidence and this shows non-application of mind. In particular, our attention was drawn to the orders of the disciplinary authority where he has mentioned in para 8 that applicant had kept possession of that particular file even before he come to that ward. In our view, this statement is not correct and is contrary to the evidence. He may not have properly read the evidence since witness stated that the applicant was in possession of the file even before he (witness) joined the office. Therefore, what the witness was referring to was before he joined the said office applicant was in possession of the file which has been wrongly recorded in para 8 of the order of the disciplinary authority that the applicant was in

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possession of the file before he (applicant) came to that particular office. This may be a mistake of fact but the disciplinary authority has considered the facts of the case and accepted the enquiry report and held that the charges are proved against the applicant. After going through the materials on record and in the light of the submissions made by both the sides, we find that this is purely a case finding on fact recorded by the Enquiry Officer and upheld by disciplinary authority. As already stated, we repeat that we cannot go into the question of reappreciation of findings or go into the question of adequacy of the evidence and, therefore, we cannot interfere with the findings of fact recorded by a domestic Tribunal. We must also point out that there is no allegation and no arguments that there was violation of rules or violation of principles of natural justice in conducting the enquiry. The applicant had full and sufficient opportunity to defend himself. Therefore, when the enquiry was done as per rules, we cannot interfere with the findings of fact recorded by the domestic Tribunal.

In the result, the application is dismissed. No order as to costs.

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(J.L.NEGI)
MEMBER (A)

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R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN (J)