CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.N0.060/00286/2020
(Reserved on: 11.08.2020)
Pronounced on: 24.08.2020

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

R.K. DAWRA AGED 55 YEARS (STAFF NO.8393 GROUP-A) SON OF LATE SH. HANS RAJ PRESENTLY POSTED AS DEPUTY DIRECTOR GNERAL (ADMINISTRATION), PUNJAB LICENSED SERVICE AREA, DEPARTMNT OF TELECOM, MOHALI (PUNJAB) AND RESIDENT OF H.NO. 27 CGO RC, SECTOR 38A, CHANDIGARH.

.... Applicant

(**BY ADVOCATE: MR. RAJEEV ANAND**)

VERSUS

1. UNION OF INDIA THROUGH SECRETARY MINISTRY OF COMMUNICATION, DEPARTMENT OF TELECOMMUNICATION, SANCHAR BHAWAN, NEW DELHI 110001.

2. THE DIRECTOR (VA), DEPARTMENT OF TELECOMMUNICATION, NEW DELHI 110001.

3. UNDER SECRETARY TO THE GOVERNMENT OF INDIA, DEPRTMENT OF TELECOMMUNICATION, NEW DELHI 110001.

Respondents

(**BY ADVOCATE: MR. SANJAY GOYAL)**

O R D E R

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The short points for consideration in this Original Application (OA) is as to whether can the Departmental Authorities, after conducting inquiry against an employee on allegations of sexual harassment under the Sexual Harassment of Women at Work (Prevention, Prohibition & Redressal) Act, 2013 and not bringing the same to a logical conclusion, initiate fresh enquiry under the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (for short "Rules of 1965") and as to whether there is any procedural irregularity or illegality in the impugned departmental proceedings conducted against the applicant?

2. Even though the pleadings on record are very lengthy but to answer the questions involved in this case, a bird's eye view of the same would be sufficient. The applicant, working in Amritsar Secondary Switching Area (SSA) of Punjab Telecom Circle of Bharat Sanchar Nigam Limited (BSNL) was transferred to Haryana Telecom Circle, Ambala, vide letter dated 8.6.2010 as General Manager (EB), in place of Mr. M.N. Upadhyay. However, to adjust Mr. Upadhyay, applicant was asked to join at Yamuna Nagar which he resisted. Mr. Upadhyay was ultimately retained there and applicant was adjusted as G.M (Infra) by creation of a new post. The applicant claims that this incident brought applicant in bad books of the Management of Haryana Telecom Circle. One Ms. 'N' (the real name is not mentioned to avoid any ignominy to the person concerned), who had joined Ambala on 9.8.2010, was not observing office timings properly and as such she was orally asked to be punctual which was not

taken in right perspective by her and she fell prey to bait of Associations/Unions. On instigation, she lodged a vague and ambiguous complaint dated 11.8.2010 (Annexure A-2) against the applicant, though she never pursued the same and was reluctant in participating in the enquiry proceedings.

3. The matter was referred to the Sexual Harassment Committee (SHC), which submitted a report dated 11.8.2010. According to the applicant, this report was to be treated as inquiry report under Rule 14 (2) of the Rules of 1965. Though, the Director (VA) and Sr. DDG (Vig) in Note (Annexure A-3), observed that complaint was vague as it lacked details of incident and not based on solid evidence, Member (Services), directed formation of a fresh SHC at BSNL, Corporate Office level to enquire into the charges. The second SHC gave its report dated 26.10.2010. The applicant pleads that respondents, at best, could have taken this report for further action under Rule 14 (2) of Rules of 1965. Again matter was not processed and a third SHC was formed by the respondents to enquire into the charges. The applicant alleges the same to be against the Rules and Law. A Cr. Misc.M-7503 of 2011 was filed in Hon'ble Punjab and Haryana high Court by one M.S. Kadia, Circle Secretary of BSNL Employees Union Haryana Circle Ambala in which Ms. 'N' also appeared where she stated that she does not want to pursue the case and as such petition was withdrawn.

4. The respondents issued a Memorandum dated 5.6.2013 (Annexure A-6) with the allegations that he indulged in act of sexual harassment of a working woman at her work place in violation of Rule 3-C of CCS (Conduct) Rules, 1964, and acted

in a manner unbecoming of Government Servant contravening provisions of Rule 3 (1) (iii) of CCS (Conduct) Rules, 1964, and GoI decision No.23(4) and (5) below Rule 3 of CCS (Conduct) Rules, 1964. He was asked to appear before SHC on 23.5.2014 at New Delhi. The applicant submitted representations including dated 12.9.2017 (Annexure A-12) explaining that there has been violation of Rule 14 (2) & Rule 15 of Rules of 1965. He submitted further representations that 3rd SHC/enquiry on the same charges is not maintainable. He also submitted complaint against Inquiring Authority-cum-SHC on the ground of bias and prayed for stay of the proceedings but to no avail. However, an ex-parte enquiry was conducted against the applicant and report dated 14.8.2018 (Annexure A-18) was submitted, proving the only charge levelled against the applicant. The applicant submitted representation dated 16.10.2018 (Annexure A-19) and reply (Annexure A-20). However, he was given a show cause notice dated 19.11.2019, as to why punishment of reduction to the next lower post on permanent basis, be not imposed against him. He submitted a reply dated 3.1.2020 (Annexure A-22) and impugned order dated 11.3.2020 (Annexure A-23), in the name of the President of India, was passed against the applicant imposing the proposed penalty. Hence, the O.A.

5. The respondents have filed a reply. They admit that complaint was enquired twice. They submit that first report given by Haryana BSNL Circle SHC, suffered from various infirmities including having been given by a lower level officer. It was put up to the Competent Authority [Member (S), DOT], who decided vide letter dated 16.8.2010, that since the applicant is

of higher rank, the matter be enquired from a High Level Committee in BSNL Corporate Office, headed by an Officer sufficiently higher in rank than the applicant. They submit that even Second Enquiry Report was also not complete in all respects as per procedure prescribed under Rule 15 of Rules of 1965. The Disciplinary Authority examined it and found that since applicant was not accorded any opportunity to cross examine the complainant and other witnesses, the matter be reinvestigated. On a reference made, the DoP&T advised vide letter dated 1.5.2013, that the case may be dealt with in accordance with Rule 14 (2) and 14 (4) of Rules of 1965. Thus, they have taken action against the applicant under Rules of 1965, which is liable to be upheld.

6. We have heard the learned counsel for both sides at considerable length and examined the material available on record including the written submissions given on behalf of the applicant as well as respondents.

7. The learned counsel for the applicant vehemently argued that the applicant has been prejudiced in this case as to hold him guilty on a vague and baseless complaint of sexual harassment, there has been number of enquiries on one complaint ignoring that the respondents could not have done so, more so in view of the Office Memorandum dated 4.8.2005 (Annexure A-24), which clearly provides that Report of the SHC should be treated as an Enquiry Report and not a Preliminary Report. His argument is that once the Competent Authority found that there was flaw in the decision making process, then only available course for it was to initiate a de-novo enquiry and

not a fresh enquiry and, therefore, the orders impugned by the applicant are liable to be quashed and set aside.

8. On the other hand, learned counsel for the respondents has vehemently argued that they have taken the action in terms of the advice tendered by the DoP&T and as such action of the respondents is liable to be upheld. He argued that no prejudice has been caused to the applicant as he has been given due opportunity to defend himself but he failed to participate in the enquiry proceedings conducted under Rule 14 of the Rules of 1965 and as such ex-parte enquiry was concluded and punishment was rightly imposed upon him after following the principles of natural justice.

9. We have considered the submissions made on behalf of both sides minutely.

10. The facts are bye and large not disputed at all in so far as answers to the issues framed above are concerned. It is admitted at all hands that the sexual harassment complaint filed against the applicant was investigated first by SHC at Ambala and Competent Authority found some discrepancies in the same and as such matter was referred to a new SHC at Corporate level, where after the impugned disciplinary proceedings were initiated and concluded against the applicant ex-parte.

11. The applicant had approached this Tribunal through O.A.No.060/00700/2015 titled **R.K. DAWRA VS. UNION OF INDIA & OTHERS**, challenging, inter-alia, the issuance of charge sheet dated 5.6.2013 and to direct the respondents to treat the SHC report of BSNL Corporate Office as final report for

further action and not as Investigation/Preliminary Report for taking further action against him.

12. The aforesaid O.A. was disposed of by a Bench of this Tribunal on 25.10.2016 (Annexure A-10), rejecting the challenge of the applicant to the issuance of a charge sheet and further proceedings under Rule 14 of Rules of 1965. The relevant part of the order is reproduced as under :-

> "12. Arguments advanced by learned counsel for the parties were heard when learned counsel for the applicant narrated the background of the matter in great detail and pressed that since the HLC had given its report, as per the guidelines regarding sexual harassment cases in the work place, this report had to be taken as final and no additional charge sheet could be issued to the applicant. Learned counsel also referred to order of the Hon'ble Punjab and Haryana High Court dated 21.02.2012 in CRM-M-7503 of 2011 (O&M) decided on 21.02.2012 where the counsel for the petitioner in the case had submitted that he did not wish to press this petition and wants to withdraw the same with permission to take alternative recourse available. The victim Ms. Nupur had appeared before the Area Magistrate, Ambala Cantt and stated that she did not want to pursue the case. Learned counsel for the applicant stated that in this view of the matter, the respondent BSNL could not issue a charge sheet to the applicant on the very same issue that was the subject of the case before the Area Magistrate, Ambala. Learned counsel also referred to the notings on file No. 04-16/2010-Vig I (Annexure A-7) stating that the procedural aspect of dealing with sexual harassment cases had been totally given the go bye by the DOT and BSNL.
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> 13. Learned counsel for the respondents drew attention to the representation of the applicant dated 03.06.2011(not on record) whereby he had raised the issue of the violation of the procedure and safeguards available to Government Servant under Article 311(2) of the Constitution. In his representation, he stated that he was not informed of the specific charges against him and was not given reasonable opportunity to defend himself. In this view of the matter, the respondents had sought the advice of the DOPT and were advised that the report of the HLC be treated as investigation report and proceedings be initiated as per Rule 14 of the CCS (CCA) Rules, 1965. As such, the charge sheet dated 05.06.2013 was issued to the applicant and inquiry proceedings were going. He also categorically stated that the provisions of Sexual Harassment of Women at Work (Prevention, Prohibition and Redressal) Act, 2013 were not being applied in the case of the applicant and the matter was only being

pursued as per CCS (Conduct) Rules and CCS (CCA) Rules.

14. We have carefully considered the matter and perused the documents annexed with the OA as well as the rejoinder. It is clear from the record that an initial inquiry was held by the Sexual Harassment Committee at Ambala and since the Chairperson of this Committee was far junior than the applicant, the BSNL had directed that the matter be inquired into through a High Level Committee headed by a DDG. The applicant did not appear for the initial hearings and even when he did appear, he went into unrelated matters and did not make an effort to defend himself except to allege that the allegations had been made by Ms. Nupur at the instigation of the Union. This report (Annexure A-13) was submitted by the HLC in October, 2010. Thereafter, the applicant filed his representation dated 03.06.2011 that he had not been given adequate opportunity by the HLC to defend himself, the statement of witnesses were recorded behind his back, and he was not able to cross-examine the witnesses. In the light of the submissions, finally a decision was taken after obtaining the advice of the DOPT that the Inquiry Committee would proceed as per Rule 14 of CCS (CCA) Rules, 1965 and this inquiry is at present going on. Although representation dated 03.06.2011 is not on the record, applicant has not denied submission of this representation.

15. If the applicant had wanted that the report of the HLC should be treated as final, there was no reason for him to submit the representation dated 03.06.2011 alleging infirmities in the report. After he had raised this issue, the BSNL and DOT handled the matter appropriately and after obtaining the advice of the DOPT, directed that proceedings be carried out in the case of the charge sheet related to the applicant under Rule 14 of the CCS(CCA) Rules, 1965.

16. Even when the hearing was going on in this OA, learned counsel for the applicant was asked as to whether he wished that in view of the findings of the HLC, the applicant be imposed appropriate penalty directly, but the learned counsel did not even want this option to be exercised. Therefore, this appears to be a case where the applicant wants to have his cake and eat it too. On the one hand, he has alleged that in the proceedings before the HLC, he was not allowed adequate opportunity to defend himself and now that he has been afforded such opportunity through proceedings being taken up under Rule 14 of the CCS(CCA) Rules, 1965, he is impugning the relevant orders, perhaps with the idea that if reliance is placed on the HLC report and punishment imposed on him in view of the findings of the HLC report dated 26.10.2010, he could at a later stage, again challenge the HLC report which would form the basis of such penalty on the plea that he had not been given adequate opportunity to defend himself.

17. Impugned notice dated 20.05.2014 (Annexure A-2) does not appear to have been issued in continuation of the impugned charge sheet of 05.06.2013. Besides, in

view of the categorical statement of the learned counsel for the respondents in this regard, it is presumed that no action will be taken against the applicant regarding this notice. The issues raised in the OA regarding reference to the order of the Hon'ble High Court dated 21.02.2012 and written statement not being filed by competent officer are rejected outright. The Hon'ble High Court had allowed the applicant in the CRM to withdraw the petition with permission to take alternative recourse available as per law.

18. In view of the discussion above, we do not consider it necessary to interfere with the impugned charge sheet memo dated 01.07.2013/05.06.2013 (Annexure A-1). It is in the interest of the applicant to face the inquiry proceedings and take the opportunity available to him under Rule 14 of the CCS (CCA) Rules to defend himself. The OA is hence dismissed. No costs."

A perusal of the order reproduced above leaves no doubt, at all, that the applicant has tried to re-argue the case all over again, on the same issue that was involved in earlier case. The Tribunal has clearly recorded that report was submitted by the SHC in October, 2010 and then the applicant filed a representation dated 03.06.2011 that he had not been given due opportunity to defend himself and levelled other allegations as well. Thus, a decision was taken by authorities, after advice of the DOP&T that the Inquiry should proceed under Rule 14 of Rules of 1965. The Court has categorically recorded that had the applicant wanted that the report of the HLC (SHC) should be treated as final, there was no occasion for him to point out infirmities that it was not maintainable. After he took objection to HLC Report, the authorities obtained the advice of the DOP&T and directed that proceedings be carried out in the case of the charge sheet related to the applicant under Rule 14 of the Rules of 1965. Not only this, learned counsel for the applicant was pointedly asked by the Bench, whether he wished that in view of the findings of the HLC, the applicant should be proceeded further, he refused to exercise this option. Not only this, even when proceedings were taken up under Rule 14 of the Rules of

1965, he did not participate and insisted that his objection qua jurisdiction be decided first and then he would take part in the same and in this manner, the enquiry had to be conducted against him ex-parte. Thus, the poser to basic question has to be answered in affirmative that in the given facts of this case, there was no fault on the part of the authorities in taking action in terms of Rule 14 of Rules of 1965, more so when this Tribunal had already rejected similar issue raised by the applicant holding that impugned charge-sheet could not be interfered with and it was in the interest of the applicant himself to participate in the enquiry proceedings and prove his side of the case. The applicant filed a Review Application, which was dismissed. Thus, he accepted his fate and did not file any Judicial Review for review of order of this Tribunal. In view of this, the reliance placed by the applicant upon decision dated 26.4.2004 in Writ petition No. 173-177/1999 – **MEDHA KOTWAL LELE & OTHERS VS. UOI ETC**, of the Hon'ble Supreme Court that Reports of the Complaints Committee shall be deemed to be an inquiry report under Discipline & Appeal Rules or the DoP&T Instructions dated 1.7.2004 and O.M dated 4.8.2005 relating to Rule 14 (2) of Rules of 1965, is misconceived. The indicated decision and Rules do not help him at all.

13. The learned counsel for the applicant challenged the impugned disciplinary proceedings on a number of grounds stating that it is a case of no evidence as only one initial statement of the complainant, which too according to him is due to Union Activities, has been used to destroy the service career of the applicant. It is argued that the charges are totally vague, sweeping and lack any specific details and as such same cannot

be believed at all by a prudent person. He argued that the respondents from the very beginning due to transfer of applicant at Ambala and to adjust their own person against a particular post, started creating a false case against him and Ms. 'N' played as a pawn in their hands to settle score against the applicant. He argued that there is no statement of complainant recorded anywhere relating to incidents in question and she kept on saying time and again that she has already given her statement and does not want to repeat it. It is submitted that applicant was also not given any opportunity to cross-examine the witnesses in the enquiry.

14. Even though various grounds raised by the applicant appear to be quite attractive but a perusal of the record would show that the same are not substantiated at all. The applicant was served with a charge-sheet dated 5.6.2013 under Rule 14 of Rules of 1965, that during July/August, 2010, he had indulged in act of sexual harassment of a working woman at her work place in violation of Rule 3-C of CCS (Conduct) Rules, 1964. The applicant denied the charges vide representation dated 27.8.2013. Enquiry Report dated 14.8.2018 was submitted proving the charge against the applicant. The Disciplinary Authority agreed with the Inquiry Report and furnished a copy of same to the applicant. He submitted representations on 26.9.2018, 16.10.2018 and 17.10.2018 against the Report.

15. Thereafter, the issue was referred to the UPSC for advice. The UPSC has rendered a detailed advice dated 25.10.2019. It was noticed that complainant had reported about

the incident of sexual harassment on 10.8.2010 (though it should be 11.8.2010) with a request to take suitable action against the applicant to protect her from such officer. In her statement dated 13.9.2010 before 2nd SHC, she stated that applicant had called her on 9.8.2010 in his cabin for some work and had misbehaved. On 10.8.2010 also, he had repeated the act. The matter was reported to CGMT on 11.8.2010. She had also stated before the 2nd SHC that she had a desire that the applicant should apologize to all the women staff of the BSNL and restrain himself from such indecent act and she also prayed for her transfer to Jaipur or Ajmer. The incident relating to sexual harassment has been given in detail as to how Mr. D.K. Agarwal, AGM (NC) had introduced the complainant to the applicant. On 9.8.2010, complainant at about 12.00 PM, went to applicant's room about her joining the duty. The applicant called her to his room at 3.00 PM and asked her to make fair copies of the ACRs for review and that since work is confidential one, she has to do it in his chamber only. When the complainant was busy in the work, the applicant hugged and kissed her. She was unable to comprehend and was scared but continued working in the Chamber. At 5.00 P.M. the applicant repeated the act. On 10.8.2010 again, applicant repeated the same act which was resisted by the applicant. On this, he asked that she should not feel bad about it. She told the ladies staff about the incident on 10.8.2010, and she along with ladies staff narrated the incident to CGMT, who asked her to file a written complaint and then further action was taken. The complainant had admitted that date of incident was written by her wrongly due to bonafide error. She explained that she did not report about incident

immediately as she was new to the organization and she was under utter shock. It was her mother who gave her courage to speak against the applicant to the authorities. It was recorded that since she was new to the organization, it was not possible that she made complaint under any influence. The statements of Witnesses have been recorded and stand discussed in the report indicating truth in the statement made by the complainant. After discussing the statements, the IO recorded that the complainant was traumatized by the incident of sexual harassment and applicant had called her multiple times to his room on 9.8.2010 and 10.8.2010, which clearly points to a premeditated attempt to create proximity, so as to do an act of misbehaviour.

16. The authorities, on the allegation of applicant that since he asked the complainant to obtain station leave before leaving the station and observe office timing, so she lodged a false and vague complaint against him and she did not pursue police case, have explained in detail that it is not possible that a new hand having joined duties two days back, would lodge a complaint of sexual harassment against a senior officer like applicant that too at instigation of a Union or any staff member. Merely because she did not pursue police case or did not support Union case in the High Court, does not automatically leads to the conclusion that there was no merit in her charge against the applicant. May be to avoid social stigma/mental strain that she did not pursue those cases on criminal side. The applicant had also tried for a compromise through AD (NC). The allegations of applicant that there were certain inconsistencies in various statements have also been taken due care of by the

authorities explaining in detail that there was hardly any inconsistency. The charge levelled against the applicant has been held to be proved with reasonable certainty and after receipt of advice of the UPSC, the punishment of reduction to the next lower post on permanent basis was imposed against the applicant by the Disciplinary Authority, after considering the reply submitted by him.

17. The plea of the learned counsel for the applicant that no charge of any sexual harassment is made out from the allegations levelled by the applicant as same lack specific details is not true and material discloses otherwise that there is enough evidence on the file to indicate that indeed the applicant had indulged in sexual harassment against the complainant. The allegation that Ms. Amita Manchanda was herself a complainant against the applicant and as such she being an interested person could not be allowed to depose against the applicant and moreover she had held first SHC Meeting. This enquiry never saw light of the day as it was left mid way when applicant complained against constitution of the Committee and a new SHC was constituted. In view of this, the applicant cannot get any benefit by making allegations against proceedings of 1st SHC. For that reason only, even the decision of Hon'ble Supreme Court in the case of **STATE OF U.P. VS. MOHD. NOOR**, AIR 1958 SC 86 and other decisions in that connection, that one cannot be a judge of his/her own cause, do not help him.

18. It is argued that Ms. 'N' and Ms. Manchanda are injured/interested witnesses who appeared before different Forums seven times, but never stated about the alleged

harassment. Thus, statement of an injured witness should not be mechanically accepted as a gospel truth. For this, reliance is placed upon decision of Hon'ble Allahabad High Court in the case of **VIJAY SHANKAR MISRA VS. STATE**, 1984 ALL LJ 1316 and some other decisions as well like **MAHTAB SINGH & ANOTHER VS. STATE OF U.P**. (2009) 13 SCC 670; **RAJU @ BALACHANDRAN & OTHERS VS. STATE OF TAMIL NADU** AIR 2013 SC 983. It is well settled principle of law that testimony of an injured witness has its own relevancy and efficacy as he or she has suffered injuries at the time and place of occurrence which lends support to his/her testimony that he/she was present at the time of occurrence. Thus, the testimony of an injured witness is granted a special status in law as such, a witness comes with a built-in guarantee of his/her presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. It is well settled law that convincing evidence is required to discredit an injured witness. Therefore, the evidence of an injured witness should be relied upon unless there are good and convincing grounds for the rejection of his/her evidence on the basis of major contradictions and discrepancies, as held in a number of cases including in **DURBAL V. STATE OF UTTAR PRADESH**, (2011) 2 SCC 676 and **STATE OF U.P. V. NARESH AND ORS**., (2011) 4 SCC 324. In this case, the authorities have taken due care to ensure that the statements given by the complainant are not false and the allegation of applicant qua inconsistencies in various statements have also been gone by them threadbare to conclude that there was enough evidence to prove the charge against the applicant.

19. It is a matter of record that applicant has taken contradictory pleas in regard to 3rd SHC at Directorate level. On the one hand, he argues that it was not proper and applicant was not afforded proper opportunity to defend himself and when authorities took a decision to conduct enquiry under Rule 14 of Rules of 1965, the applicant argues that this process is not acceptable to him as authorities have no jurisdiction to initiate action under these Rules. As discussed above, this aspect was considered and plea of applicant was rejected by this Court in the earlier lis, which view has attained finality and cannot be opened in a new O.A.

20. The learned counsel for applicant pleads that the applicant should not have been held guilty of the charge in a light hearted manner and he was deemed to be innocent unless proven guilty and applicant has been denied a fair trial and as such, the proceedings stand vitiated. He relies upon **NARENDER SINGH & ANOTHER VS. STATE OF M.P**. 2004 (3) RCR (Criminal) 613 relating to presumption of innocence of accused. Reliance is also placed upon **RANJITSING BRAHMAJEETSING SHARMA VS. STATE OF MAHARASHTRA & ANOTHER** 2005 (5) SCC 294. These cases relate to matters on criminal side and not relate to Disciplinary Matters. It is well settled law that in departmental cases, strict rules of evidence are not applied and proceedings take place on the basis of preponderance of evidence only.

21. The pleas regarding biasness or malafide intentions of the authorities appear to have been taken in a routine and mechanical manner as no person by name has been impleaded

as a respondent in this case and as such, these allegations cannot be gone into by a court of law to record a finding in that relevant connection and the reliance placed by applicant on certain decisions in that regard is of no help to him.

22. The learned counsel for the applicant argued that the proceedings stand vitiated due to delay of 8 years in issuance of charge sheet qua incident that happened in 2010. There does not appear to be any delay in initiating the proceedings against the applicant. The sequence of events would go to show that the action has been taken against the applicant from the date of complaint itself and the charge against him is too serious and it is held that there is no delay at all in initiating the impugned proceedings against the applicant. Courts have held time and again that there is no principle of law that an inquiry would stand vitiated merely for the reason that it has been initiated after a long time. On the contrary, whether delay in initiating inquiry would be fatal or not would depend on various facts and circumstances. Hon'ble Apex Court in **STATE OF PUNJAB V. CHAMAN LAL GOEL** 1995 (2) SCC 570, had declined to set aside disciplinary proceeding initiated after a long time and held that it is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the Court may well interfere and

quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, an enquiry has to be interdicted. Wherever such a plea is raised, the Court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the Court has to indulge in a process of balancing. Similarly, in **ADDITIONAL SUPERINTENDENT OF POLICE V. T. NATRAJAN** 1999 SCC (L&S) 646, Apex Court held that some delay in initiating proceedings would not vitiate the enquiry unless the delay results in prejudice to the delinquent officer.

23. The learned counsel for the applicant invited our attention to the fact that the authorities have not appreciated the evidence in right perspective leading to the imposition of unwarranted penalty upon the applicant. We would like to remind him that the appreciation or re-appreciation of evidence is not within the limited powers of Courts of law in disciplinary matters in which the charges are proved on principle of probability of evidence and strict rules of evidence is not followed. In this case, the hearsay evidence and circumstantial evidence have been considered by the I.O., D.A. and UPSC and findings were recorded that indeed applicant was guilty of the charge levelled against him. The applicant cannot invite this Tribunal time and again to claim that strict rules should be applied in the given facts of this case. In the case of **SBI VS. R. PERIYASAMY**, (2015) 3 SCC 101, the Hon'ble Apex Court has held that "it is well known that the standard of proof that must be employed in domestic enquiries is in fact that of the

preponderance of probabilities. IN **UNION OF INDIA V. SARDAR BAHADUR**, Civil Appeal No.1758 of 1970 decided on 29.10.1971, the Hon'ble Apex Court held that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt.

24. In so far as power of a Court or Tribunal for interference in disciplinary proceedings is concerned, it is well settled by now that such powers are very limited and a Court of Law can interfere only if it is found to be a case of no evidence, there is serious procedure irregularity or illegality in conduct of enquiry proceedings causing prejudice to the defence of employee thereby violating principles of natural justice or the punishment imposed is found to be disproportionate to the degree of charge levelled and proved against an employee. In the case of **INDIAN OIL CORPN. LTD. V. ASHOK KUMAR ARORA**, 1997 (3) SCC 72, the Hon'ble Supreme Court has held that Courts in such cases of departmental enquiries and the findings recorded therein do not exercise the powers of appellate court/authority. The jurisdiction of the Courts in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and/or the punishment is totally disproportionate to the proved misconduct of an employee. In the case of **LALIT POPLI V. CANARA BANK**, 2003 (3) SCC 583 the Hon'ble Supreme Court has held that jurisdiction of Court in such like cases is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest

injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority. In the case of **B.C. CHATURVEDI V. UNION OF INDIA** [1995 (6) SCC 749], the scope of judicial review was indicated by stating that review by the court is of decision-making process and where the findings of the disciplinary authority are based on some evidence, the court or the Tribunal cannot reappreciate the evidence and substitute its own finding.

25. A perusal of the penalty order indicates that the facts of the case were duly considered by the Disciplinary Authority and findings were recorded against the applicant based on evidence. The allegations of alleged procedural irregularities pointed out by the applicant were also taken note of and it was categorically recorded that there was no flaw in decision making process. The case was considered by UPSC in detail and proposed penalty was imposed upon the applicant which was also found to be just and commensurate with the extent of misconduct proved against the applicant. The pleas raised by the applicant were considered in detail in a tabulated manner and as such one cannot say, from any angle, that there has been any violation of principles of natural justice in case of the applicant. To conclude, we hold that one cannot say that it is a case of no evidence. The allegation that charge is vague is not borne out from the record. In fact, evidence is to the contrary against the applicant. The incidents in question have been explained with precise detail backed by hearsay and circumstantial evidence. The plea of biasness and prejudiced attitude is also found to be without any merit more so when no

person by name was impleaded as a party. The applicant was a new incumbent in the office and could not have been won over by the Union, as concluded by the authorities. The applicant himself chose to stay away from the enquiry proceedings during last 3 hearing and in such a situation, IO had to proceed ex-parte against him. Thus, we do not find any grounds made out to interfere in the impugned orders which are found to be speaking and reasoned.

26. In the wake of aforesaid discussion, this O.A. is found to be devoid of any merit and is dismissed, leaving the parties to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A)

Place: Chandigarh
Dated: 24.08.2020

HC*