

6

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No. 1865/1987.

Date of decision:

Shri V.K. Agarwal

....

Applicant.

Vs.

Union of India & Another

....

Respondents.

Coram:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the applicant ...

Shri S.C. Gupta, Sr. Advocate
with Shri M.K. Gupta, counsel.

For the respondents ...

Shri N.S. Mehta, Sr. Standing
Counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman)

The applicant, Shri V.K. Agarwal, Assistant Inspecting Officer while functioning as Examiner of Stores in the Office of Deputy Director of Inspection, Kanpur during the year 1982 failed to maintain absolute integrity and devotion to duty and committed grave misconduct inasmuch as he performed his duties perfunctorily in accepting and passing during inspection sub-standard steel trunks supplied by M/S. Awasthi Trunk Store, Kanpur and thus causing wrongful gain to the firm and loss to the Government. He was charged having violated the provisions of Rule 3(1) of C.C.S. (Conduct) Rules, 1964 and rendered himself liable to disciplinary action under CCS (CCA) Rules, 1965.

The applicant denied the charge where upon Shri S.P.K. Naidu, Commissioner for Departmental Inquiries was

af

appointed as Inquiry Officer. He enquired into the charges framed against Shri Agarwal and submitted his report dated 30.6.1986 giving the finding that the article of charge framed against him was held proved. The Director General (Supplies and Disposals) thereafter passed an order dated 24.12.1986 that "the charged officer should be awarded the penalty of reduction to the lower post of Examiner of Stores with immediate effect until he is found fit, after a period of 3 years from the date of this order, to be restored to the higher post of Assistant Inspecting Officer". The applicant thereafter filed an appeal to the President of India through Secretary to the Government of India, Department of Supply, New Delhi (Annexure 'C' to the O.A.). By an order dated 23rd September, 1987 (Annexure 'D' to the O.A.), Government of India, Department of Supply, New Delhi, conveyed the decision of the President of India to the effect that appeal preferred by Shri Agarwal was rejected. Thereafter the applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act') on 18.12.1987.

The applicant has prayed for the following reliefs in the present O.A.:

- "(i) to quash the penalty imposed on the applicant, which is patently illegal and untenable;

- (ii) to direct the Respondents to restore the Applicant to his post of A.I.O. which he was holding before imposition of the impugned penalty, reducing him as Examiner of Stores;
- (iii) to direct the Respondents to give the Applicant the continuity of service, seniority and all other benefits of which he has been deprived because of the imposition of the impugned penalty, on the basis as though the said penalty was never imposed on him. "

The grounds stated in the O.A. are as under:

- (a) There is no evidence, whatsoever, to support the conclusion of guilt arrived at by the Inquiry Officer or by the Disciplinary Authority against the applicant on the basis of which punishment has been awarded.
- (b) A finding based on no evidence is illegal finding and suffers from bias and is called legal perversion.
- (c) None of the allegations levelled against the applicant has any substance. Consequently, no findings in regard to these allegations could be drawn against the applicant.
- (d) The respondents are estopped from going back or retracting from the specifications prescribed by the Indian Standard Institution, in the tender conditions. Consequently, the applicant cannot be held guilty of any of these allegations.
with whom the applicant had
- (e) The Inspecting Officer along/inspected several lots of consignment at the premises of the firm before the stores in question were despatched have not been considered to have committed any irregularity or wrong in the inspection of the very same stores done jointly with the applicant, and consequently, the applicant could not be singled out in making of such allegations against him.

Ag

- 9
- (f) The function of the Inspectorates do not extend to the actual watching of despatches, counting, weighing and watching of stores. No duty was ascribed to the Inspecting Officer or Examiner to be present at the time of actual despatch of the stores by the firm. Paragraph 384 of Manual of the Office Procedure for Supply, Inspection and Disposal, Government of India was clear in this regard and support the applicant.
- (g) There was a problem of duplicate stamps used by some of the unscrupulous suppliers who thereby cheat not only the Government but Examiner of Stores and Inspecting Officer. Further the admitted position in the Joint Inspection Report that the Stores in question had different/duplicate stamps and that no attempt was made by the Joint inspection team to ascertain the genuiness of the stamps. It was, therefore, legally questionable and patently unfair that the applicant was held responsible for goods which were not examined by him.

A perusal of the grounds would show that the main thrust of the challenge was to the findings arrived at by the Inquiry Officer on the evidence placed before him and to the conclusions drawn by him. In other words, most of the grounds raised in the Application pertain to question of facts and the inference to be drawn from the evidence before the Inquiry Officer. It is well settled that the jurisdiction which the Tribunal exercises under Section 19 of the Act is analogous to the provisions of Article 226 of the Constitution of India. The High Courts exercise power under Article 226 and mainly concern with the issue of Writ of Certiorari and/or Writ of Mandamus. In the present case, the first prayer

65

is for quashing the penalty imposed on the applicant.

It is, therefore, evident that the relief that is asked by the applicant is mainly for a writ or direction in the nature of certiorari. It is again very well settled that the High Courts in exercise of their power under Article 226 of the Constitution do not sit as court of appeal or reappraise the evidence in a case where writ of certiorari is prayed for quashing the impugned order. It is also well settled that it is not the duty of the High Court under Article 226 of the Constitution to review the evidence and to arrive at an independent finding on the evidence; it is only an error of law and not the finding of fact by an inferior court of tribunal, as a result of appreciation of evidence that can be corrected by a writ of certiorari. Supreme Court has also held that High Court cannot embark on an evaluation of evidence and may interfere only if the finding is perverse. It has further been held that it is not competent for a court to reappraise the evidence led before the Enquiry Officer and come to a different finding, however, cogent. In the case of U.O.I. Vs. B.K.Dutta (1974 (2)SLR 98 (Rajasthan) the Supreme Court has held that High Court can go into evidence and come to conclusion that findings in departmental enquiry are based on no evidence and that no interference of guilt can be drawn from the evidence. It is also well settled that the High Court has no power under Article 226 of the Constitution to interfere with the quantum of punishment awarded. In a recent decision in U.O.I. Vs. Parma Nanda (1989 (2)SCC 177),

the Supreme Court has taken the view that the Administrative Tribunal has no power to interfere with the award of punishment by the Disciplinary Authority if it was upholding the guilt of the party and dismissing the petition. The power that this Tribunal exercises under Section 19 of the Act is equivalent to that of the power exercised by the High Court under Article 226 of the Constitution. In the case of S.P. SAMPATH KUMAR Vs. UNION OF INDIA ((1987) 2 ATC 82 SC) the position has been made adequately clear. The law laid down by the Supreme Court in respect of the decisions of the High Courts is equally applicable to matters to be decided by the Central Administrative Tribunal. In this view of the matter, we have to examine whether the findings arrived at by the Enquiry Officer are based on no evidence whatsoever. If there is a total lack of evidence to bring home the charge, the order will be termed as perverse and in such an event, this Tribunal will have jurisdiction to interfere. We now proceed to consider the matter from this angle.

The charges framed against the applicant were as follows:

" ARTICLE-I

That the said Shri V.K. Aggarwal, AIO while posted and functioning as Examiner of Stores in the office of Deputy Director of Inspection, Kanpur during the year 1982, failed to maintain absolute integrity and devotion to duty and committed grave misconduct inasmuch as he performed his duties perfunctorily in accepting and passing during inspection sub-standard steel trunks supplied by M/S. Awasthi Trunk Store, Kanpur against A/T No.225/488/K4/917/COAD dated 22.2.82 and thus causing wrongful gain to the firm and loss to the Government.

Shri Aggarwal thus violated the provisions of Rule 3(1) of CCS (Conduct) Rules, 1964 and rendered himself liable to disciplinary action under CCS(CCA) Rules, 1965."

WJ

12

In the statement of Imputations of misconduct or misbehaviour in support of the Article of charge framed against the applicant, it was stated:

1. Shri V.K. Aggarwal, Asstt. Inspecting Officer was posted and functioning as Examiner of Stores in the office of Deputy Director of Inspection, DGS&D, Kanpur during the year 1982.
2. DS&D Kanpur placed an A/T No. 225/488/K4/917/ COAD dated 22.2.82 on M/S. Awasthi Trunk Store, Kanpur for supply of 18,324 nos. steel trunks to various consignees, as given in the subject A/T. As per the contract specifications each Steel Trunk was to be of overall size 673 x 368 x 305 mm manufactured from plain black MS sheets 0.80 mm thick and conforming to the material and dimensional details shown in DGS&D Drawing No. 3837/2. The Letters "CRPF" were required to be inscribed on the lid in 51 mm size and so inscribed as not to go off with passage of time or by ordinary rubbing. The trunks were required to be thoroughly descaled/degreased pickled and given a coat of anti-corrosive red oxide primer. A coat of enamel (one under coat and one finishing coat) were to be applied thereafter and baked in a stoving oven. Adequate stiffeners i.e. 8 nos on all the outside eight corners were to be provided so as to cover the three sides of the corners of three nos. MS Sheets used for fixture such as hinges, hasps and staples flap for holding the handle etc. were required to be made out of 1.25 mm thick sheets as shown in the governing DGS&D Drawing.
3. M/S. Awasthi Trunk Store, Kanpur offered the steel trunks for inspection in instalments during March, 82 to December, 1982. The applicant was detailed for inspection. He visited the firm and visually inspected the store for dimensions, painting, finish and general workmanship. He then accepted the store for release to the concerned consignees.
4. The trunks despatched to two of the consignees namely the Commandant, Group Centre, CRPF, Avadi (Madras) and the Commandant, Group Centre, Ajmer-I remarked that certain consignments were sub-standard. G.C. Avadi (Madras) remarked in respect of four consignments containing 1600 nos and G.C.-I, Ajmer remarked about 3 consignments containing 1000 boxes.

Ag

5. Joint inspection was held at Avadi on 10.1.1984. 97 steel trunks bearing acceptance mark were chosen at random and defects noticed were:- (a) length varied from 664 mm to 682 mm in place of 673 mm. Width found 356 mm to 372 mm in place of 365 mm. Height varied from 300 mm to 310 mm in place of 305 mm. The thickness was found to vary between 0.68 mm to 0.76 mm in place of 0.80 mm; (b) except for a few trunks, the rest were not treated for anti-corrosive treatment by giving a coat of red oxide primer; (c) the inscription of the letters "CRPF" in the trunk lids was painted with white paint likely to go off with the passage of time; and (d) the thickness of MS Sheets used for fixtures such as hasps etc. found to be 1.18 mm to 1.22 mm in place of 1.25 mm. The trunks were sub-standard and, therefore, not considered acceptable.

Another joint inspection was held on 12.4.1985 at Group Centre-I, Ajmer. 25 trunks were picked up at random and were weighed. 5 trunks were also got cut. The team observed that the thickness of the sheet used was found to be less than 0.80 mm and the trunks being sub-standard were not considered acceptable.

6. The above facts established that the applicant had carried out the inspection perfunctorily ignoring the given specifications and thereby committed grave misconduct causing wrongful gain to the firm and loss to the Government and violated the provisions of Rule 3(i) of the CCS(Conduct) Rules, 1964 and rendered himself liable to disciplinary action under CCS(CCA) Rules, 1965.

The defence of the charged officer was that he had visited the firm on 63 occasions and had inspected the trunks as per the procedure laid down. The goods supplied conformed to the specifications laid down and were within the permissible tolerance limits. The joint inspection was not valid as they had only made random sampling and not examined 100% of the stores and the said inspection was carried out by persons who were below the rank of Inspecting Officers.

as

14

The charged officer stated that the first three lots of trunks were examined by him as Examiner of Stores along with the Assistant Inspecting Officer, Shri S.P.Sakhuja. The other lots were inspected by the applicant along with various A.I.Os. They have not been proceeded against as in the case of the applicant. Further, in the instant case there were nearly dozen consignees for the trunks. Two of the consignees were Group Commandant, C.R.P.F., Ajmer and Group Commandant, Avadi (Madras). Three lots were sent to the Group Commandant, Ajmer and he did not make any complaint about the latter two lots. In regard to the first lot, he complained that the thickness of the sheet was 0.71 mm instead of 0.80 mm. There was no other complaint. The Deputy Director (Inspection), Kanpur wrote to the D.G. S & D that this thickness was well within the specifications and urged the D.G. S & D to ask the Group Commandant, Ajmer to accept the consignment. However, the Director of Inspection, N.I. Circle did not agree. A joint inspection was held by Shri R.K.Gupta, A.I.O., DGS&D and the Group Commandant, CRPF, Ajmer. In the report of joint inspection team it was mentioned that the thickness was less than 0.71 mm. There were three lots of trunks totalling to 1000 trunks. The joint inspection team was required, as per D.G. S & D Circular dated 21.11.1966 (Annexure 'E' to the O.A.) to check each and every piece. The circular stated:

"The Investigating Officer should be instructed to carry out a thorough inspection on a reasonable percentage of stores under complaint in case of light items involving voluminous quantity (namely bolts, nuts, washers, screws, sikes, cutters etc.) and 100% inspection of heavier items in respect of which the accounting unit has been shown in the order in terms of "Number/each/Set..!"

00

The joint Inspection team picked out 5 trunks out of 1000, cut them opened, measured the thickness and on its basis submitted a report.

Further 4 lots were supplied to the Group Commandant, CRPF, Avadi (Madras). In February, 1983, the Group Commandant Avadi released copies of Forms Nos.2 and 5 to the firm, thus authorising them to receive the balance of 5% payment. This meant that there was no complaint from the said consignee, viz., Group Commandant, Avadi. Even then, a chargesheet regarding Ajmer was issued to the applicant. Allegation in regard to Avadi was also included. After the Forms Nos.2 and 5 are released, there was no question of making a complaint. Consequently, the chargesheet in this respect was bad in law.

The applicant further submitted that according to the specifications issued by the Indian Standard Institution (I.S.I.), if the lot consisted of 501-1000 items, then at least 50 items should be checked and if out of them 10% were defective, that would still be considered to be normal. The applicant's contention was that the inspecting team had inspected only 5 trunks and it could not be treated as proper joint inspection. Vide circular dated 21.11.1986, the D.G.S&D advised the Heads of Circles to detail on such investigation job only the senior officers not below the rank of Inspecting Officers who were conversant with the items under investigation. Neither of these two requirements have been fulfilled in the present case. Shri R.K.Gupta, AIO was a member of the joint inspecting team at Ajmer. He had no previous experience of inspecting such stores. He was lower in rank than an Inspecting Officer.

16

Thus, the Joint Inspection team had no previous experience in inspecting such items.

Further, as regards the stamp on stores, it was stated by Shri R.K.Gupta, AIO that he had checked it visually and he did not measure the stamp. The other Member of the Joint Inspecting team also made a similar statement before the Inquiry Officer. The applicant contended that there was no certainty that the trunks inspected by the joint Inspecting team were the same as were despatched by the firm in question and as were inspected by the applicant before they were despatched by the firm. The Group Commandant, Ajmer had not found or reported in respect of the two of the three lots received by him and joint Inspecting team did not indicate the lot from which the 5 trunks were inspected by them. The Group Commandant Ajmer had also said that he had found the thickness of the trunks as 0.71 mm. But the joint Inspecting team reported that the thickness varied from 0.63 mm to 0.71 mm. The joint inspection was done $2\frac{1}{2}$ years after the lots in question were received by the Group Commandant, Ajmer.

In regard to Avadi consignment, four defects were pointed out, viz., (a) Dimensions (b) Non-treatment with anti-corrosive coating, (c) Improper lettering of 'CRPF', and (d) thickness of the sheets used for fixtures.

The applicant submitted that 4 % variation in dimension was perfectly permissible and the variation mentioned by the joint inspecting team did not exceed the permissible limit of 4%.

Secondly, there were two different kinds of stamps on the trunks. The applicant's case was that he had used only one

as

kind of stamp when he inspected the trunks in the firm premises to certify the thickness of the sheets.

In regard to the anti-corrosive treatment, what was necessary to be found out was whether the red oxide paint had been applied on the sheet before the boxes were painted in black. This could be ascertained by scratching the black paint which would reveal whether the red oxide paint was visible or not. Both the officers who formed the joint inspecting team had not made any scratching of the black paint. Their report was based on visual observation only.

In regard to the inscription of the letters "CRPF" in the trunk lids was required to be done by painting on the boxes. In the instant case, the tender order did not contain any specification that the lettering was required to be embossed. There was, therefore, no violation of the tender conditions in the letters 'CRPF' being painted instead of being embossed. In the consignment of Ajmer, the letters 'CRPF' were painted and it was not treated to be deficient or sub-standard.

Lastly, on the question of thickness of sheets used for fixtures was well within the tolerance limits as stated by the I.S.I.

In view of the above, the applicant submitted that there was no reliable or cogent evidence to hold that he had improperly passed the consignment for delivery to the respective consignees and the applicant's case is that the matter had not been carefully looked into by the Disciplinary Authority as well as the Appellate Authority and they had

reached the conclusion incorrectly appreciating the evidence and circumstances of the case.

The relevant para of the order dated 24.12.1986, issued by Shri M.Srinivasan, Director General (Supplies & Disposals) (Annexure-B to the O.A.) reads as follows:

"...WHEREAS the undersigned after a careful consideration of the facts and circumstances of the case and the evidence adduced during the inquiry agrees with the findings of the Inquiry Officer. The undersigned also finds from the evidence produced in the inquiry that the charged officer released the stores after visual examination of the boxes at random for dimensions, painting, finishing and workmanship etc. but failed to make a thorough inspection including verification of the weight of the boxes which would have brought to notice the major defect in the rejected lots."

Learned counsel for the applicant had argued that one of the basis of holding the applicant guilty of the charge was that he had failed to make a thorough inspection including verification of the weight of the boxes. There is nothing in the statement of article of charge framed against the applicant (Annexure-I to the O.A.) in respect of the failure to weigh the boxes. There was nothing in the report of the joint inspecting team about the weight of the trunks. The weight of the trunks was not one of the parameters specified in the tender. It was thus argued that the applicant had been wrongly punished for not weighing the trunks for which weight was not specified either in the order or in the drawing.

In regard to the question whether the team that made the joint inspection could be the members of the joint inspection team as they were not of the rank of Inspecting Officers, was disputed by the respondents. Their stand was that the Director can depute any person to conduct the joint inspection. The applicant's case on the contrary is that

a,

19

both Shri R.K.Gupta and Shri K.C.Swaminathan were A.I.Os and they were below the rank of Inspecting Officers, and as such, their report was not admissible. The respondents' argument on the point is that in Para 390 sub-para 4 of Ex.D-8, dealing with Inspection Officer's duties, one sentence reads as follows:

"The term Inspector includes Examiner of Stores unless, it is repugnant to the context."

Even if it is considered that the trunks were examined by two officers who were in the rank of A.I.Os and had been deputed by the Director General and since both the A.I.Os were superior in rank than that of the applicant, their report cannot be brushed aside.

The other question that arises is whether the A.I.Os who inspected the lots had any previous experience of inspecting such trunks. Both the A.I.Os stated that they had no previous experience of inspecting such trunks. In the instructions issued vide circular dated 29.11.1966, it was stated that only such inspecting officers should be deputed to inspect a particular item of store as are technically conversant with the concerned item. Both the A.I.Os having admitted that they had no such experience, the Inquiry Officer and the Disciplinary Authority should have been cautious in accepting the evidence of the witnesses in regard to the inspection and their evidence about the trunks. There is nothing in the report of the Inquiry Officer or the Disciplinary Authority in this regard.

Another aspect of the matter that even though the Inspecting Officers did not examine 100% of the trunks, they

Q

20

should have given clear measurements of the trunks they had examined. It is not that all the trunks they examined were short in length, breadth and height. Shri K.C. Swaminathan, SW 2, who carried out the joint inspection at Avadi had given his observations against column 16 of the report as under:

"Length varies from 664 to 682 in place of 673 mm, width found 356 to 372 in place of 368 mm. Height varies from 300 to 310 in place of 305 mm. Thickness found to vary between 0.68 to 0.76 mm in place of 0.80 mm."

What was required that the trunks should be 673 mm in length 368 mm in width and 305 mm in height. Shri K.C. Swaminathan, SW 2 found that length varied from 664 to 682 mm, width varied from 356 to 372 and height varied from 300 to 310 mm. He also found that the thickness of the steel varied between 0.68 to 0.76 mm in place of 0.80 mm. Exact specification of the trunks that have been examined should have been mentioned which would have shown whether all the trunks so examined differed in length, breadth and height. There is no consideration of the tolerance limit in length, breadth and height.

In Indian Standard (IS: 7257-1973) Specification for Trunks, Steel, Domestic (Annexure 'F' to the OA) it was pointed out in para A-1.1.1 of Appendix A (Clause 9.1) that:

"For ascertaining the conformity of a lot to the requirements of this standard, the sample of trunks shall be selected and tested separately for each lot."

It is further stated in para A-1.2 that:

"The number of trunks to be selected at random from a lot shall depend upon the size of the lot and shall be in accordance with col. 1 and 2 of Table 2."

Cal

If the lot size came within the parameters of 501 to 1000 trunks, then the sample size ought to have been 50 and out of them if 5 trunks were found defective, it would be held that it was permissible. This had not been done. Even from measurements given in the statement of Shri K.C. Swaminathan, SW 2, it is apparent that some of the trunks which were examined at Avadi by the Joint Inspecting team were not similar in size but some were slightly bigger than the required size. One crucial factor in this context was that all those boxes which were examined by the Joint Inspecting team, their exact measurements should have been mentioned so that an inference could be drawn whether they were sub-standard or not. This was not done.

In regard to the lack of application of an anti-corrosive coating of red oxide, the statement of ^{Joint} ~~Joint~~ Inspecting team does not show that they had taken up the elementary trouble of getting the paint removed or scratched to see whether it reveals the sheet or the red oxide. Nothing could be sure about this without removing or scratching the top paint. All that was stated by the Joint Inspecting team that this charge was based on visual inspection. It was not disclosed as to how many boxes were subjected to the examination regarding the use of red oxide. Two other matters remained - one was about the thickness of the sheet and the other was about the thickness of the steel which was used for the joints. The thickness of the steel used in trunks may not have been exactly the same specification asked

90

for. It could have been less or more by a small margin. It is elementary that even those who manufacture steel cannot guarantee the exact thickness of the rolled steel. There could be a slight variation this way or the other and the I.S.I. had certified that the variation could be to the extent of 0.1. mm. There was no data produced by the Joint Inspecting team to show that the width of the trunks was outside the limit of variation allowed by the I.S.I. It is true that 5 boxes were cutopened and some measurement was noticed but in the evidence all that was said that they varied between two measurements. That in our opinion, would not be enough. We may emphasise that it was necessary for the Joint Inspecting team to take the measurement of the boxes which have been subjected to minute inspection, if any. Similarly, for want of proper thickness as specified in the tender was also not brought home for the reason that the inspection team should have entered the data which they found when they inspected the trunks. Merely giving the measurement to show that they crossed the parameters of thickness, one below and one above, the measurement mentioned in the tender. It could be that some steel trunks did not exactly conform to the requirements set out in the invitation to the tender but it is also well settled that the I.S.I. has laid down that these things could not be exactly the same as given in the specification and there was certain allowance for tolerance and that would cover the case. Otherwise the consignment was liable to be rejected as sub-standard.

Another argument raised was about the sealing and stamping of the accepted store. Here too, we find certain

discrepancies in the statement given by the inspecting team. They were not certain that the seal put down by the applicant was there or not.

Apart from the above, there is a basic point.

There were several consignments sent to these consignees at Ajmer and Avadi. Those have been accepted by the Commandants at Ajmer and Avadi without a murmur. It was only in respect of a few lots at Ajmer and Avadi that a hue and cry was raised. But the fact remains that for a large number of trunks sent by earlier consignments, there was no objection whatsoever but even the payment order had been made towards the full price. It was belatedly taken up with one consignment at Ajmer and another consignment at Avadi. It is also relevant to notice that Joint Inspecting team visited Ajmer and Avadi after $2\frac{1}{2}$ years of the supply of the consignments, and lastly, the fact that certain amount of tolerance allowed by the I.S.I. was not even taken into consideration by the Inquiry Officer or the Disciplinary Authority or by the Appellate Authority. It is also relevant to note that only the applicant who was the Examiner of Stores has been charged as if he was the only person responsible for approving the consignments. Admittedly, there was at least one A.I.O. associated with the applicant while the consignment was approved for despatch to the consignees, no such officer has been charged or punished. What is also significant is that the Appellate Authority did not deal with any of the matters raised by the applicant in the appeal.

9/11

An argument was raised that the order passed by the Appellate Authority if it was an order of affirmance, then in that event he did not give any reasons. That is true in certain case but not in all cases. ^{Where} ~~Where~~ ^{it is} ~~a~~ simple matter of assessment of an evidence, the principle mentioned above will be fully applicable. But where certain aspects of the matter have been highlighted in the appeal and to which the order of the Inquiry Officer or the Disciplinary Authority has made no reference whatsoever, such matters will not be covered by the principle of affirmance of the order. Appeals on question of fact require the matters specifically to be alluded in the order either discussing ~~or~~ ^{or} rejecting them outright. A question arises where the Appellate Authority does not allude to such matters at all, can it be said that there was an application of mind to the questions raised. We feel that certain important aspects have been highlighted in the memorandum of appeal which have not been dealt with by the Appellate Authority.

One more aspect needs to be stated here that the Appellate Authority dismissed the appeal on the ground that UPSC feels that the penalty imposed by the disciplinary authority on the applicant is not excessive. If this is the sole ground, then there is no application of mind in the appeal. The order has been passed merely on the assessment made by the U.P.S.C. on the question of punishment. Punishment would come after a party is found guilty of a charge. The adequacy or the appropriateness would not conclude

Ag.

the matter when an appeal is filed against the order of holding the applicant guilty of charge. The appropriateness of punishment is clearly different from the subject matter of bringing the applicant guilty of the charge.

In view of the discussions made above, we are of the view that this is a fit case in which we should interfere and set aside the orders passed by the Disciplinary Authority and the Appellate Authority. The applicant would be entitled to the consequential monetary benefits. The Application is accordingly allowed. There will be no order as to costs.


(B.C. MATHUR)
VICE-CHAIRMAN (A)


(AMITAV BANERJI)
CHAIRMAN
2.2.90

SKS