Central Administrative Tribunal
Principal Bench: New Delhi

OA No.761/87

New Delhi this the 21st day of May 1996.

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)
Hon'ble Mr R.K.Ahooja, Member (A)

Shri Prafull Kumar
son of Late Shri B.B.Srivastava
formerly Labour Enforcement Officer (Central)
In the Chief Labour Commissioner's Organisation
New Delhi
R/o 19-East Guru Angad Nagar
Road No.1 Patpar Ganj Road
Delhi. ...Applicant.

(By Advocate: Shri P.T.S.Murthy)

Versus

1. Union of India through
Secretary
Ministry of Labour
Shram Shakti Bhawan
Rafi Marg, New Delhi.

2. The Chief Labour Commissioner (Central)
Shram Shakti Bhawan
Rafi Marg, New Delhi.

3. Smt. Tapti Neogi
Commissioner of Departmental Inquiries
Central Vigilance Commission
Jaisalmer House
Akbar Road, New Delhi. ...Respondents.

(By Advocate: Shri M.M.Sudan)

O R D E R (Oral)

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

This litigation between the applicant and the Union of India has a long and chequered history. The background of the case can be stated in a nutshell as follows:

2. While the applicant was working as a Labour Enforcement Officer (Central), an enquiry under Rule 14 of the CCS (CCA) Rules was commenced against him by service of a memo of charges dated 15.4.85. Though the applicant denied the charges, an enquiry was held and he was found guilty of two articles of charges in full, one article of charges in part, and not guilty of the fourth article of charges. On the basis of the above findings which was

accepted by the Disciplinary Authority, an order dated 10.6.86 imposing on the applicant the penalty of removal from service was passed. While the appeal by the applicant was still pending, the applicant filed this OA seeking to quash the impugned order and for the consequential benefits. The applicant had taken various grounds in the OA. The principal grounds were that the enquiry was not held properly, that the evidence was not properly appreciated, that the findings was not supported by evidence, that the penalty imposed on him was grossly disproportionate to the alleged misconduct, even if the misconduct is taken to have been proved, and that the proceedings of the enquiry as also the order of the Disciplinary Authority is vitiated for non-compliance of the principle of natural justice because a copy of the enquiry report was not supplied to the applicant before the Disciplinary Authority took a decision on the question of his guilt. When the application came up for final hearing on 12.1.92, taking note of the contention of the applicant that a copy of the enquiry report was not supplied to him and an opportunity was not given to him to make representation against the acceptability of the enquiry report following the decision of the Hon'ble Supreme Court in Mohd. Ramzan's case, the impugned order of penalty was set aside giving liberty to the respondents for resuming and completing the disciplinary proceedings. Against that decision, the respondents filed an SLP before the Hon'ble Supreme Court. The Hon'ble Supreme Court has set aside the the order of the Tribunal and has remitted the case back to the Tribunal for fresh disposal on the merits of the case.

3. The respondents have contended that there is no merit in the contention of the applicant that the enquiry has been held in violation of the principle of natural justice and that the findings are not warranted by evidence. They have also contended that the penalty imposed on the applicant is also

commensurate with the gravity of the misconduct.

4. When the application came up for final hearing, we heard the arguments of the leared counsel on either side. While maintaining all the grounds raised in the application, learned counsel of the applicant argued that even if it is considered that the applicant is guilty of the misconduct said to have been proved, in the charge [illegible], no dishonesty or intention to make illegal gains is alleged, the penalty of removal from service [illegible] unduly harsh and totally unjustified and that even if the Tribunal is not impressed with the other grounds, at least on the ground of disproportionate / nature of the penalty, judicial intervention is irresistible and justified in the facts of the case.

5. We find that the applicant has filed an appeal against the impugned order of penalty and that the Appellate Authority has not disposed of the appeal. The Appellate Authority is bound by the statutory duty of considering the appeal and passing appropriate orders on the appeal within a reasonable time. We find that the Appellate Authority in this case has failed to discharge that statutory function. It is now well settled that once the guilt of a government servant facing disciplinary proceedings is held established in a duly held departmental proceedings, the scope of judicial intervention with the correctness of the findings and the proportionality of the penalty is minimal. But the Appellate Authority is not under any such disability. The Appellate Authority can re-appreciate the evidence in full and also modulate the penalty considering a variety of factors like the gravity of the misconduct, the antecedents of the incumbent, his age, length of service etc. In view of the limited scope of judicial review, this Tribunal will not be in a position to undertake a similar exercise. In view of this fact as also in the surrounding

circumstances , we are of the considered view that it will be in the interest of justice if we direct the first respondent to consider the appeal submitted by the applicant on 19th July 1986 and to dispose of the same by a reasoned order within a reasonable time frame. We also hope that while disposing of the appeal, the first respondent will consider the mitigating circumstances of the case if any and render justice.

6. In the light of what is stated above, the application is disposed of directing the first respondent to consider and dispose of the appeal submitted by the applicant on 19th July 1986 and to dispose of the same with a reasoned and speaking order within a period of 4 months from the date of receipt of a copy of this order in the light of the observations made above.

There is no order as to costs.

(R.K.Ahooja)
Member (A)

(A.V.Haridasan)
Vice Chairman (J)

A.Ashraf