

ii) He preferred on 24.7.83 a LTC claim for the block years 1982-85 in respect of All India LTC Journey performed by six members of his family from his place of posting (Fatehgarh) to Kanya Kumari and back during 22.6.83 to 8.7.83 and again while posted at Jabalpur he preferred another All India LTC Claim on 15.3.85 for the same block of years 1982 -85 in respect of LTC journey performed by six members of his family from Jabalpur to Kanya Kumari and back during the period 4.7.84 to 12.7.84 furnishing a false certificate that he had not submitted any other LTC claim in respect of his family members for the block years 1982-85.

3. The Inquiry Officer in his inquiry report dated 26.5.88 (Annexure- Pl7) held Charge I partly proved to the extent that the applicant was associated with the business activities of M/s Awadh Travels (although it could not be proved that he was a partner/ active agent in that firm), and held Charge II fully proved. Agreeing with these findings the Disciplinary Authority (CGDA) by his impugned order dated 16.12.88 imposed the penalty of compulsory retirement from service w.e.f. 2.1.89 which was upheld in appeal vide impugned order dated 7.11.89 against which this O.A. has been filed.

4. The first ground taken is that the applicant was not provided with a reasonable opportunity to defend himself because the copies of the relevant documents sought for by him were not supplied or not allowed to be inspected by him. To substantiate this allegation, the applicant contended that the original of the complaints purported to have been written by Shri B.P. Mishra, in association with whom the applicant is alleged to have been running a Travel

Agency, should have been shown to him. To this the respondents have replied that the copies of these complaints were given to the applicant when he came for inspection of the additional documents. The applicant has not produced any evidence to show that inspection of these documents had been denied to him when he came for inspection of the additional documents. If the inspection of these documents had been denied to him, he could very well have lodged a written protest but there is nothing to show that he did so. Similarly, the applicant claims that since he was alleged to be a partner of Awadh Travels, a copy of partnership deed should have been shown to him, to which the respondents have correctly pointed out that a Government servant carrying on illegal activities while absenting from duties, will not enter into a written agreement, and even if he did so, it would only be ^a in/fictitious name. As regards providing ^{him} with the names of persons who made the complaints and the authority who ordered the investigation, the respondents have correctly pointed out that the Inquiry Officer considered such a request irrelevant and hence rejected the same. Similarly, the request for inspection of temporary pass Register of the Ordnance Clothing Factory, Shahjehanpur was rejected because for entering a quarter in the factory-premises, it was not necessary to obtain the Gate-pass and since no Gate-pass was required, the question of production of Gate-pass Register did not arise. As regards the production of cash-memo/receipt, stated to have been issued by the applicant as well as the

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passenger list or the operator list of Awadh Travels, the production of which was allegedly insisted upon by the applicant, the respondents contend that the Presenting Officer had directed the Inquiry Officer to obtain the same from the concerned persons or the Awadh Travels itself. The respondents further more point out that in such type of allegedly illegal activities, the Government servant was highly unlikely to leave behind such documentary evidence.

5. The applicant states that in his letter dated 16.4.87, he had requested the Inquiry Officer to make available the necessary documents and had also given the list of defence witnesses and the Inquiry Officer passed the order dated 23.4.87 acceding to the request of the applicant in respect of all particular documents which the Presenting Officer was bound to obey but thereafter, that Inquiry Officer was replaced by another person but the order dated 23.4.87 remained uncomplied with, which prejudiced the applicant.

6. We have inspected the order-sheets of the proceedings file dated 15.2.88, 18.4.88 and 19.4.88 (at Annexure- P 9 - P12), from which it is clear that the inspection of the listed documents was held in the Inquiry Officer's Office, and the copies of the complaints dated 25.7.84 and 30.7.84 were handed over to the applicant. Directions were also issued for

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production of other documents at the time of regular hearing, and a mention was made of such documents, the production of which was found to be not necessary. All these proceedings were signed by the applicant and the defence assistant without any demur and further more, in the appeal petition dated 16.1.89, the applicant at no stage had taken the plea that he was prejudiced in his defence because the copies of the relevant documents were not supplied to him and were not allowed to be inspected by him. This ground is, therefore, rejected.

7. The second ground taken is that Charge I is false, baseless and self-contradictory. The applicant averred that it is sought to be alleged that while he was posted at Pune at one time and at Jabalpur on another, and again from 3.2.84 onwards he was carrying on business in the name of M/s Awadh Travels at Lucknow, which is a far away place both from Pune as well as Jabalpur. It is also averred that it is for the first time that in the findings it is recorded that the applicant used to operate the business from the quarter of one Dulare Ram in order to organise community tours, whereas neither is there any documentary evidence to support the allegation nor was Shri Dulare Ram examined during the course of enquiry, which shows that the Inquiry Officer deliberately brought in extraneous consideration into his findings.

↑ In reply, the respondents have pointed out

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that the charge nowhere stated that the applicant was associated with the business activities while posted at Pune or Jabalpur. On the contrary, the charge clearly stated that he was associated in these activities 'while remaining absent from duties having been relieved from Fatehgarh on 19.7.83 with a direction to report at Pune, he did not report for duty there but remained absent nearly for six months during which time his request for change of station was acceded to and he was finally posted to Jabalpur from 3.2.84. Even after joining at Jabalpur, he absented himself on medical ground from 16.4.84 to 26.6.84 and 13.8.84 to 11.1.85. The medical certificate submitted by him was not taken to be the conclusive evidence of his alleged sickness and the respondents state that it was during these absences from duties that he was engaged in business activities from the quarter of Shri Dulara Ram at Shahjehanpur. The finding of the Inquiry Officer that the applicant was associated with the business of M/s Awadh Travels was based upon the evidence given by the witnesses who were also cross examined by the applicant during the departmental proceedings. In his enquiry report, the Inquiry Officer has specifically recorded that all the P.Ws stood by their statements made during the preliminary investigation regarding the business activities of the applicant and they also stood by the contents of the complaints made by them earlier. The Inquiry Officer rejected the plea that the applicant was sick with rheumatic arthritis

during the period in question. He noted that the complainants i.e. those who had availed the business of M/s Awadh Travels for LTC had ^{about} categorically deposed/the involvement of the applicant. As the Charged Officer belonged to different department and resided at a different place, his contention that the complaints were actuated by malice was rejected by the Inquiry Officer. The Inquiry Officer, therefore, concluded that while it could not be proved that the applicant was a partner/active agent of the travels agency, the evidence and documents presented before him lead to the conclusion that the applicant was associated with the business activities of M/s Awadh Travels and he to that extent, had followed Rule 15(1) CCS(Conduct) Rules. As the Inquiry Officer himself stated that it could not be proved that the applicant was a partner/active agent of M/s Avadh Travels, the question of producing any partnership deed, emphasised by the applicant, did not arise. In this connection, the applicant has, amongst the grounds taken in the O.A., ~~against~~ cast doubt on the evidence tendered by the State witnesses No.1 to 5. Instead he ^{us} wants / to accept the evidence tendered by the defence witness No.1. It is well settled that we in the Tribunal are not exercising appellate jurisdiction and, therefore, reappraisal of the evidence, tendered in the departmental enquiry would mean, we would be exceeding our jurisdiction. Suffice it to say that this is not a case where

there are no materials to show that the applicant was associated with the business activities of M/s Awadh Travels, the findings of the Inquiry Officer accepted by the Disciplinary Authority as well as the Appellate Authority in respect of Charge I are arbitrary, unreasonable and perverse. Hence this ground also fails.

8. The next ground, taken by the applicant, is that the statements made by the witnesses at the preliminary investigation were read out and if admitted by him, cross-examination was commenced straightway, which was irregular and which seriously prejudiced the applicant. The respondents, on the other hand, have pointed out that it was perfectly in order to follow this procedure and the departmental enquiry was definitely not vitiated by the adoption of this procedure. It is noted that the applicant did not take this ground in his appeal petition and clearly it appears to be an afterthought. He did not object this procedure during the course of enquiry either; nor did he file any objection before the Disciplinary Authority, and he has not stated exactly how he was prejudiced by the adoption of this procedure. Under the circumstances, the applicant's contention that the entire departmental enquiry was vitiated by the adoption of this procedure, fails.

9. The next ground taken by the applicant is that for the Inquiry Officer to have concluded merely on the basis of direct evidence and on the basis of preponderance of probability that the applicant was engaged in private trade, was wholly a perverse conclusion. It is alleged that the Inquiry Officer did not keep in view the ingredients of Rule 15(1) CCS(Conduct) Rules because according to the applicant, the term 'engaged in or carry on a trade or business' means to carry it on, on ones own account, so that one should have the profits or a portion of the profits. The applicant has not explained on what basis, he has given this interpretation to the term 'engaged in or carry on a trade or business'. In fact, the Inquiry Officer himself has stated that while it could not be proved that the applicant was a partner/active agent of M/s Awadh Travels, the evidence and documents presented were sufficient to lead to a conclusion that the applicant was associated with the business activities of M/s Awadh Travels, and it was not necessary to prove the ingredients of the financial interest of the applicant in M/s Awadh Travels to establish that he was associated with the business activities. This ground also fails.

10. The next set of grounds relate to Charge No. II, in which the Inquiry Officer had held that the charge stood fully proved. The applicant has admitted that he had drawn Rs. 5400/- as LTC advance for the block year 1982-85 while serving in Fatehgarh in June, 1983. He submitted two adjustment

claims; one dated 24.7.83 for Rs.1475/- and another dated 15.3.85 for Rs.320/- for the same block year. The first claim pertains to the journey of the applicants' family members from Fatehgarh to Kanya Kumari back and the second claim related to the journey of the applicant's family members from Jabalpur to Kanya Kumari back. The Inquiry Officer noted that along with the adjustment claim dated 15.3.85, the applicant has given a certificate to the effect that he had not submitted other claim so far for LTC in respect of his family members for the block year 1982-85 but this certificate was obviously incorrect. The Inquiry Officer noted that the applicant had taken the plea that he had submitted his adjustment claim but when he found that the two other individuals who had also travelled with his family, faced problems regarding production of original copies of permit of the transporter which resulted in rejection of their claim, he had decided to withdraw his claim with the intention of performing a fresh journey which he did perform as a part of the claim from 4.7.84 to 12.7.84. The Inquiry Officer noted that the applicant had also taken the plea that he had written to CDA on 5.1.84 expressing his intention to withdraw his claim dated 26.7.83 and also sent a reminder on 19.7.84, and also claimed that he had sent another letter dated 2.7.84 to the CDA stating his intention to avail of the LTC for his family against advance already drawn.

The Inquiry Officer also noted that these documents were not available in the concerned CDA records, and it was difficult to believe that the family members of the applicant had performed the journey to Kanya Kumari twice. It was also difficult to believe that had the journey been genuine, he would have withdrawn the claim simply because some problems cropped up in respect of two other employees.

The Inquiry Officer had concluded that from the documents produced by the applicant, it appears that his family performed a later journey from 4.7.84 to 12.7.84 but did not perform the first journey. Hence, the applicant had submitted two adjustment claims for the block year and had submitted wrong certificates and his family members had carried out the second journey without getting the previous claim withdrawn.

The Inquiry Officer noted that there is no provision in the rule to withdraw the LTC claim after submission of adjustment claim for the LTC journey undertaken to the selected leave station. Furthermore, it appears that the applicant had drawn the LTC advance in June, 1983. The first adjustment claim for the disputed journey during the period 22.6.83 to 8.7.83 was preferred on 24.7.83; the second journey was stated to have been undertaken from 4.7.84 to 12.7.84 and adjustment claim was submitted on 15.3.85. Thus, the Government money drawn in June, 1983 remained with the applicant for 1 year and 9 months i.e. upto 15.3.85, when

adjustment bill for his genuine second journey was preferred, which violated the contents of O.M. dated 29.11.83. The Inquiry Officer had noted that even if it is taken that the applicant, who incidentally happened to be the Accounts Officer and is supposed to know all the rules and regulations on the subject, had performed his second journey his apprehension that he would not be able to sustain and prove the genuineness of his first journey, reflected ^{poorly} on his integrity.

11. The applicant has taken the plea that the allegation that he had made double claim of LTC, was false because the applicant had not been paid the amount even for once for the block year 1982-85. He has taken the same defence during the departmental enquiry; namely the journey was performed and the adjustment claim was submitted on 24.7.83 but was subsequently withdrawn by application dated 5.1.84 and the claim was never passed. Therefore, when the claim was not pressed and was withdrawn, no claim in respect of journey made earlier could be said to have been preferred, and the applicant subsequently performed the journey during the period 4.7.84 to 12.7.84 and as such when he submitted the claim for his second journey, he had made endorsement on the form that he has not preferred any claim in respect of the block year 1982-85. In the light of analysis, made by the

Inquiry Officer, on the basis of the evidence recorded during the departmental enquiry, which has been referred to above, and which was accepted by the Disciplinary Authority as well as the Appellate Authority, it cannot be said that there were no materials before the respondents to hold that the applicant by preferring two LTC claims for two bloc years 1982-85, deliberately sought to defraud the Government. The Appellate Authority has discussed these pleas taken by the applicant in detail, and has correctly observed that the fact that the LTC advance was subsequently recovered, does not ⁱⁿ any way mitigate the charge against the applicant of furnishing ~~to~~ ^{an} false certificate to submit a second LTC claim. Hence, this plea also fails.

12. The applicant has also alleged that he was not supplied with the copy of the Inquiry Officer's report; the Disciplinary Authority's order did not contain proper reasons; the Appellate Authority's order is not a reasoned one but *prima facie* these grounds are without any merit. It is clear that a copy of the Inquiry Officer's report was enclosed with the impuned order dated 16.12.88 on the basis of which the applicant filed his detailed representation, which was discussed at length in the appellate authority's detailed and well-reasoned order dated 7.11.89. Hence, this ground has also no merit.

13. In the facts and conspectus of the case, therefore, it is manifest that this is not

a case where the conclusions of the Inquiry Officer, which were accepted by the Disciplinary Authority as well as the Appellate Authority were based upon no evidence or where the findings were perverse, arbitrary, unreasonable or malefide, which violated the provisions of Articles 14 and 16 of the Constitution. There are also no infirmities in the conduct of the proceedings for us to hold that there has been denial of the principle of natural justice. In UOI Vs. Upendra Singh - 1994(27)ATC 200, their Lordships of the Hon'ble Supreme Court held that the jurisdiction of the CAT was akin to the jurisdiction of the High Court under Article 226 of the Constitution and, therefore, the principles, norms and the constraints which apply to the said jurisdiction, apply equally to the Tribunal. Quoting from the decision of H.B.Gandhi, Excise and Taxation Officer-Cum-Assessing Authority, Karnal Vs. Gopi Nath & Sons-1992 Supp.(2) SCC 312, their Lordship affirmed the following principles:-

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"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extent to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

14. Applying the above principle to the facts of this case, after reviewing the manner in which the impugned decision to retire the applicant compulsorily was made, we are satisfied that the applicant received fair treatment and find no reason to interfere with the impugned order. This application, therefore fails and it is dismissed.

15. No costs.

Antohje
(S.R. ADIGE)
MEMBER (A)

Juston
23/11/94
(C.J. ROY)
MEMBER (J)

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