Central Administrative Tribunal, Principal Bench

O.A. No. 2414/2004

New Delhi this the 7th day of ~~November~~ December, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. D.R. Tiwari, Member (A)

Shri Jagdish Lal
S/o Late Uttam Chand
House No.B-1, Village Ghazipur,
New Delhi-110 096. ...Applicant

By Advocate: Shir S.P. Chadha.

Versus

Secretary,
Cabinet Secretariat (DP&T),
North Block, New Delhi-110 096. Respondent

By Advocate: Shri Romesh Chand Gautam.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicant is assailing the order of the disciplinary authority dated 30.4.1998, Annexure A-I, read with order dated 17.2.1999, Annexure A-2, whereby in a disciplinary proceeding for major penalty under Rule14 of the CCS (CCA) Rules, 1965 (Rules, 1965) he has imposed penalty on the applicant of reduction of pay by three stages from Rs.2300/- to Rs.2120/- (pre-revised) with cumulative effect for a period of 3 years with effect from 1.5.1998 and that the applicant would not earn any increment of pay during the period of reduction but on the expiry of the said period, the reduction will not have the effect of postponing his future increment. The applicant has also challenged the order of the appellate authority dated 25.6.2003, Annexure A-3 whereby the appeal filed by the applicant has been dismissed. He also seeks a direction that the period of suspension be treated to be on duty and he should be paid all consequential benefits etc.

2. The background of the case, shorn of unnecessary details, may be briefly stated as follows. The applicant is presently working as Office Superintendent, CBI Academy Ghaziabad. In 1991 he was working as Office Superintendent in CBI Regional office at Jaipur. He was served with notice for holding disciplinary proceeding for major penalty under Rule 14 of Rules, 1965 on 20.1.1994, Annexure A-13, on the following charges:-

"

Article

That the said Shri Jagdish Lal, while functioning as Office Superintendent, CBI Jaipur during the period February-March, 1992 acted in a manner unbecoming of a Government servant in that he unauthorisedly remained absent from duty from 23.2.1992 to 1.3.1992 and during this period unauthorisedly contacted the Principals of Janaki Das Kapur Public School, Malaviya Shiksha Sadan, Nehru Centenary Public School and S.N. Hindu Varishtha Madhyamik Vidyalaya at Sonepat by wrongly posing himself as an officer of CBI authorized to collect certain information with regard to the aforesaid schools, exerted undue threatening pressure and procured some information from the schools and in that course of this action displayed his CBI Identity Card and the visiting card to establish his identity/authority. Shri Jagdish Lal by exerting undue pressure obtained Attendance Certificates from the Principals of these Schools.

Shri Jagdish Lal thereby failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a public servant and committed gross misconduct in violation of Rule 3 (1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964".

3. On conclusion of the enquiry, the Inquiry Officer submitted report that the charges have been proved and the applicant is guilty of misconduct under Rule 3 (1)((i)(ii) and (iii) of CCS (Conduct) Rules, 1964 (Annexure A-42). The disciplinary authority after serving the notice and considering the representation of the applicant, has passed the impugned orders, which are assailed in the present proceeding.

4. The applicant in the OA has assailed the disciplinary proceeding and the order passed therein on the following grounds:-

(i) There is inordinate delay in conclusion of the disciplinary proceedings which has caused prejudice to the applicant in progression in service;

(ii) the appeal was decided after about 4.1/2 years of the filing of it which resulted in undue harm and mental agony to the applicant;

(iii) the order of the disciplinary authority is cryptic and a reproduction of the finding of the Inquiry Officer, contrary to the record so it suffers from non-application of mind;

(iv) the advice of the UPSC to the President of India also suffers from the same vice;

(v) while imposing penalty, the disciplinary authority did not consider the hardship which the applicant and his family underwent;

(vi) rules of natural justice have been violated;

(vii) the applicant's request for allowing Shri R.S. Jamaur as Defence Assistant was unjustly refused since Shri Jamaur was working as Assistant Legal Advisor in the office of the respondent and he was not an advocate;

(viii) The article of charge was about unauthorised absence from 23.2.1992 to 1.3.1992 but the Inquiry Officer has included 3.3.1992 also as unauthorized absence without giving an opportunity to the applicant to explain;

(ix) the applicant was not unauthorisedly absent but was on tour duty from 23.2.1992 to 1.3.1992 of which he had duly informed to the higher authorities that he would be attending the official work at the office of the DIG at New Delhi before going to Sonepat to attend to his domestic work and ;

(x) out of 23 defence documents the applicant was allowed to inspect only one document, i.e., the Register of the year 1992-93.

5. Along with the OA, the applicant has also filed an application (not numbered) for condonation of the delay in filing the OA for the reason stated in the application.

6. The respondents in the common counter-reply have contested this OA and the application for condonation of delay. The allegations of the applicant were refuted and the order of the disciplinary and appellate authorities were justified. It was alleged that the memorandum of charge served on the applicant was duly proved and the order of the disciplinary authority was justified. The UPSC, respondent No.3 herein also examined the record and has recorded finding that the charge of misconduct was proved against the applicant. The applicant had unauthorisedly contacted the Principals of 4 private schools at Sonepat with the intention of collecting certain information for which the applicant was never deputed by any authority. He falsely exerted undue threat/pressure on the Principals of those schools and procured some information from the schools claiming that he was assigned with the task of collecting information from those schools for submission to the Ministry of Home Affairs and by displaying his Identity Card and Visiting Card to establish his identity as an officer of CBI. He had been working with the CBI for over 37 years, therefore, he must be aware of his responsibilities and duties and that his defence to the imputation of charge was patently untenable.

7. The application for condonation of delay has also been resisted and it is submitted that for the reasons stated in the reply the application deserves to be dismissed.

8. In the rejoinder the applicant has reiterated his own case and has controverted the allegations of the respondents.

9. We have heard the learned counsel for the parties and perused the relevant record.

10. First we take up the application for condonation of delay in filing the OA. There is delay of two months in filing the present OA. The order of the appellate authority is dated 25.6.2003. It was accompanied by the letter of the Administrative Officer of the Establishment at CBI Head Office New Delhi, which is dated 8.7.2003 and required the DIG (T) CBI Academy to convey the order to the applicant. The present OA was filed on 17.9.2004. The applicant in the application for condonation of delay has pleaded that the copy of the appellate authority's order was received by him on 17.7.2004 and the present OA was filed on 17.9.2004 so there was delay of about one month and 20 days in filing of the present OA. It is submitted that after the receipt of the copy of the order of the appellate authority, the applicant got very busy in his official duties because the department had increased a number of training courses and it also fixed a target by which it desired to train all CBI personnel by 30.9.2003. The applicant being Office Superintendent had to supervise all this task so he was very busy with the training courses, the department could not achieve the desired target by the end of the training courses and desired to extend the training further to 31.12.2003. In December, 2003, the applicant's children were shifted from New Delhi to Agra and the applicant was busy in relocating children in new school. Moreover, it was submitted that the inordinate delay in disciplinary proceedings and disproportionate penalty imposed upon him was also detrimental to the health of the applicant and he started suffering from hypertension and had to seek medical help. He was advised to avoid tension and stress for about 2 months from May, 2004. Thereafter, the Tribunal was closed till June, 2004 for vacations. Soon thereafter, the applicant's son, who had been suffering from schizophrenia since childhood started becoming violent and the applicant was mentally disturbed as he had to keep a watch over his son and all this resulted in the filing of the present OA late.

11. Conversely, the learned counsel for the respondents in the reply though admitted that the copy of the order passed in appeal was served on the applicant on 17.7.2003 but denied that there was justification in filing the OA late. It was also not denied that the number of training courses in CBI Academy had increased tremendously in the year 2003 and applicant had delivered 144 lectures in 33 training courses during 2003 and 47 lectures in 2004. He was also a course Co-ordinator in 16 courses in 2003 and 7 courses in 2004, which were meant for LDCs to Office Superintendent and DDOs. He was not

Co-ordinator for any of the courses organized during 17.7.2004 to 17.9.2004, i.e., the period of delay. The applicant has also not taken any leave during the period but during the said period he had filed another OA 1330/2004 in the Tribunal with regard to his promotion as Assistant Director so his excuse that he was busy in the training courses is not tenable. It is further submitted that as per the allegations the son of the applicant was suffering from schizophrenia since childhood. It was denied that he has become violent after June 2004 causing mental distress to the applicant, as pleaded. According to the respondent, the applicant was fully alert as he had appeared before the Tribunal during the period of May to September, 2004 for pursuing his cases. During the said period, the applicant was busy in preparing, filing and pursuing two OAs in which he had appeared in person before the Tribunal. The first OA being OA 1330/2004 which was filed for promotion to the post of Assistant Director, which post was no longer in existence and the second OA bearing OA 1948/2004 which was filed for payment of training allowance, in view of his posting as Office Superintendent in CBI Academy. The respondent has also appended a statement showing that the applicant appeared before the Tribunal in person on 28.5.2004 in OA 1330/2004. He filed OA 1948/2004 on 22.7.2004. He again appeared before the Tribunal in OA 1330/2004 on 26.7.2004. On 30.7.2004 he sent a letter to the respondent pointing out the delay in filing the reply to the OA. On 13.8.2004 he appeared in person before the Tribunal in the second OA (OA 1330/2004) and on 25.8.2004, 3.9.2004, 14.9.2004 and 29.9.2004 he was present in person before the Tribunal in the first OA. It is, therefore, submitted that the reasons given by the applicant for delay for not filing the OA within the period of limitation of one year are false.

12. We have given due consideration to the contents of the application for condonation of delay and the reply thereto and the oral submissions made at the bar. Indeed, the facts stated by the respondents in the reply to the application that during the relevant period the applicant had filed two OAs before the Tribunal seeking redressal of his grievances against non-promotion and for payment of training allowance etc. and he had personally persued them, have not been denied. It belies the applicant's claim that he was mentally upset and under great stress because of the illness of his child or because of the delay in the disciplinary proceedings or for other reasons as pleaded in the

application. The learned counsel for the applicant has not been able to refute the allegation made in the reply of the respondents. However, he submitted that the applicant has briefed a lady advocate for drafting the OA but the advocate had to leave for her home town and thereafter did not return to resume practice and the applicant had to reengage a new counsel, brief him, get the OA drafted and filed through him. This was not the reason given in the application under consideration.

13. But the fact remains that the disciplinary proceedings for major penalty was conducted against the applicant in which the applicant was found guilty of gross misconduct and he has been imposed a penalty of reduction of pay by three stages with cumulative effect. It will be traversity of justice if the present OA is rejected on technical ground of delay of two months. Therefore, for doing substantial justice to the applicant, we are inclined to condone the delay and prefer to decide the present proceedings on its merit. Accordingly the application for condonation of delay is allowed and the delay in filing the OA is condoned.

14. The learned counsel for the applicant has challenged the disciplinary proceedings and the orders of penalty on the following grounds:-

(i) That the applicant was not allowed the services of Shri R.S. Jamaur, Assistant Legal Advisor, as Defence Counsel;

(ii) the request of the applicant for changing the Inquiry Officer was rejected by an authority other than the disciplinary authority in a casual manner;

(iii) the finding of the Inquiry Officer that the applicant was unauthorisedly absent from 23.2.1992 to 3.3.1992 was beyond the period imputed in the Memorandum of Charge;

(iv) the applicant was not allowed to cross examine departmental witness No.8, the penalty order was in contravention of the Rules, 1965, since no period for reduction in the pay was fixed and the same was illegally rectified by a subsequent order;

(v) the order of the disciplinary authority was a non-speaking order and does not show the application of mind;

(vi) appeal was not considered by the President of India, which is the appellate authority;

(vii) the applicant was not supplied additional documents and the reasons thereof was not given;

(viii) the applicant had lost the identity card long back so the allegation that he showed identity card etc. to school authority is false and;

(ix) that Inquiry Officer was immediate junior to the controlling authority and had no option but to toe the order of the superior authorities, which resulted in bias against the applicant.

15. Before taking up the grounds for challenge raised during the course of arguments, it will be appropriate to consider the case law applicable. By catena of judgments of the Hon'ble Supreme Court, it is now well settled that in exercise of the power of judicial review the Tribunal reviews the manner in which the decision is arrived at and that it does not review the decision itself. In other words, it reviews the procedure followed in the proceeding and not the conclusion. It is equally well settled that the Tribunal does not act as an appellate court and it does not examine the adequacy or inadequacy of the evidence and reappreciate the evidence to reach at its own conclusion. It is also settled law that every infraction with the procedural rules does not bring legal infirmity in the proceedings and that the Tribunal may interfere with the disciplinary proceeding and the orders of the penalty imposed therein if there is material procedural irregularity which had resulted in prejudice to the defence of the delinquent, in case the order of the disciplinary authority is based on no evidence or it is perverse or it has been passed on the dictates of the superior authorities without application of mind or as a result of consideration of some extraneous material, evidence or circumstances (See **B.C. Chaturvedi Vs. U.O.I and Others, (1995) 6 SCC 749 and Apparel Export Promotion Council Vs. A.K. Chopra, AIR 1999 SC 625**).

16. In the light of the above principles of law, the present proceedings may be examined. First and foremost contention of the applicant is that the respondents have denied a Defence Assistant of the choice of the applicant. It is submitted that the applicant repeatedly approached the Inquiry Officer for allowing Shri R.S. Jamaur, Assistant Legal Advisor of the department to defend him but the same was declined on the pretext that the Presenting Officer was not a law graduate or law knowing officer to match the legal accumanship of the proposed Defence Assistant. It is true that as per

Rule 14(8)(a) of the Rues, 1965, the delinquent official may choose his Defence Assistant but it is not an absolute right. The Legal Advisor of the CBI may not be an advocate but they represent the CBI in its cases so they discharge duties akin to legal practitioners within the meaning of this Rule. The department had discretion to refuse the services of its ALA as Defence Assistant for reasons to be recorded. This has been done in this case. On the appointment of Defence Assistant, the Hon'ble Supreme Court in the case of Bharat Petroleum Corporation Ltd. vs. Maharashtra General Kamgar Union and others 1999 (1) SCC 626 has further held as under:-

> "27. The basic principle is that an employee has no right to representation in the departmental proceedings by another person or a lawyer unless the Service Rules specifically provide for the same. The right to representation is available only to the extent specifically provided for in the Rules. For example, Rule 1712 of the Railway Establishment Code provides as under :
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> "The accused railway servant may present his case with the assistance of any other railway servant employed on the same Railway (including a railway servant on leave preparatory to retirement) on which he is working."
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> 28. The right to representation, therefore, has been made available in a restricted way to a delinquent employee. He has a choice to be represented by another railway employee, but the choice is restricted to the Railway on which he himself is working, that is, if he is an employee of the Western Railway, his choice would be restricted to the employees working on the Western Railway. The choice cannot be allowed to travel to other Railways.
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> 29. Similarly, a provision has been made in Rule 14(8) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, where too, an employee has been given the choice of being represented in the disciplinary proceedings through a co-employee.
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> 30. In N.Kalindi v.Tata Locomotive & Engineering Co. Ltd. A three Judge Bench observed as under :
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> "Accustomed as we are to the practice in the courts of law to skilful handling of witnesses by lawyers specially trained in the art of examination and cross-examination of witnesses, our first inclination is to think that a fair enquiry demands that the person accused of an act should have the assistance of some person, who even if not a lawyer, may be expected to examine and cross-examine witnesses with a fair amount of skill. We have to remember, however, in the first place that these are not enquiries in a court of law. It is necessary to remember also that in these enquiries, fairly simple questions of fact as to whether certain acts of misconduct were committed by a workman or not only fall to be considered, and straightforward questioning which a person of fair intelligence and knowledge of conditions prevailing in the industry will be able to do will ordinarily held to elicit the truth. It may often happen that the accused workman will be best suited, and fully able to cross-examine the witnesses who have spoken against him and to examine witnesses in his favour.
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> It is helpful to consider in this connection the fact that ordinarily in enquiries before domestic tribunals the person accused of any misconduct his own case. Rules have been framed by the Government

as regards the procedure to be followed in enquiries against their own employees. No provision is made in these rules that the person against whom an enquiry is held may be represented by anybody else. When the general practice adopted by domestic tribunals is that the person accused conducts his own case, we are unable to accept an argument that natural justice demands that in the case of enquiries into a charge-sheet of misconduct against a workman he should be represented by a member of his Union. Besides it is necessary to remember that if any enquiry is not otherwise fair, the workman concerned can challenge its validity in an industrial dispute.

Our conclusion, therefore, is that a workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union; though of course an employer in his discretion can and may allow his employee to avail himself of such assistance."

31. In another decision, namely, Dunlop Rubber Co. (India) Ltd. V. Workmen it was laid down that there was no right to representation in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same.

32. The matter again came to be considered by a three-Judge Bench of this Court in Crescent Dyes and Chemicals Ltd. V. Ram Naresh Tripathi and Ahmadi, J. (as he then was) in the context of Section 22(ii) of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971, as also in the context of domestic enquiry, upheld the statutory restrictions imposed on the delinquent's choice of representation in the domestic enquiry through an agent. It was laid down as under : (SCC p.124, para 11)

"11. A delinquent appearing before a tribunal may feel that the right to representation is implied in the larger entitlement of a fair hearing based on the rule of natural justice. He may, therefore, feel that refusal to be represented by an agent of his choice would tantamount to denial of natural justice. Ordinarily it is considered desirable not to restrict this right of representation by counsel or an agent of one's choice but it is a different thing to say that such a right is an element of the principles of natural justice and denial thereof would invalidate the enquiry. Representation through counsel can be restricted by law as for example, Section 36 of the Industrial Disputes Act, 1947, and so also by certified Standing Orders. In the present case, the Standing Orders permitted an employee to be represented by a clerk or workman working in the same department as the delinquent. So also the right to representation can be regulated or restricted by statute."

17. In the present case, indeed the applicant pressed for allowing Shri R.S. Jamuar as Defence Assistant, but he being a Law Officer of the department was not considered fit to be provided to the applicant since the department was not using the services of its law officers as Presenting Officer. We need not dwell into the matter deeply for another reason also as non-providing of Shri Jamuar as Defence Assistant has even otherwise not been proved to have resulted in prejudice to the applicant in his defence. Unless the applicant is able to establish prejudice to his defence, denial of the services of Shri Jamuar to the applicant would not vitiate the proceeding. As a matter of fact, the

applicant has not denied the imputations made against him so far as it related to the collection of information from 4 schools in Sonepat, his home town. His defence was that he did so as a responsible and duty conscious citizen on the suggestion of some of his friends. The learned counsel for the applicant failed to establish that in the absence of Shri Jamuar the applicant was handicapped in establishing his defence. Therefore, we are of the considered view that this contention of the applicant has not vitiated the proceeding.

18. The next contention of the applicant is that out of 23 defence documents he was allowed inspection of only one document or that certain defence documents were not produced in the proceeding on the ground that the same were not available. Another contention of the applicant is that departmental witness No.8 was not allowed to be cross examined by him though it has not been stated that opportunity for cross examination was not provided. If the opportunity was provided and the applicant could not avail of it, there is no violation of the principles of natural justice in this regard. Anyhow, these contentions, i.e., non-production of documents and non cross-examination of departmental witness, have to be judged on the touchstone of the prejudice test. Unless the applicant has been able to make out the case of prejudice caused to him, none of these two contentions would bring legal infirmity in the proceeding. Recently in the case of **U.P. State Textile Corporation Ltd. Vs. P.C. Chaturvedi and Others, 2005 SCCL Com 616** the Hon'ble Supreme Court has held that unless it is shown that the non-supply of certain documents has caused prejudice to the delinquent it cannot be held that there was non-compliance with the principles of natural justice. Same equality holds good for non cross-examination of a departmental witness. The Tribunal may hold that there is violation of the principles of natural justice or the delinquent had been caused prejudice in his defence so the departmental proceeding and the penalty orders are illegal only when it could reach a conclusion that non-supply of the documents or the non-production of the non-examination of a witness has resulted in prejudice to his defence. In the present case it has not been established by the applicant, therefore, the orders of the disciplinary authority do not warrant interference by the Tribunal.

19. Furthermore it is alleged that new documents were also admitted by the Inquiry Officer, notices were not issued to the witnesses, four Sonepat witnesses were summoned though documents were not exhibited and inspection was not allowed; two witnesses were examined on 1.12.1994 and documents were brought on record but their inspection was not allowed on that date; additional documents accept one were disallowed without any reasons, two Sonepat witnesses refused to give evidence but this fact was not recorded in the proceedings etc. etc. Assuming though not holding that the above contention have any grain truth, they will not bring legal infirmity and vitiate the proceedings, unless it is also established that any prejudice is caused to the applicant in his defence. It is not so established in the present case.

20. Similarly the contention of the applicant that the enquiry proceedings are bad in law for the reason that the applicant was unauthorisedly absent on 3.3.1992 which was not an allegation in the memorandum of charge. We have perused the order of the disciplinary authority and the appellate authority and we do not find that the applicant has been punished for being unauthorisedly absent on 3.3.1992. This contention, therefore, has no merit.

21. As regards the argument that the applicant had left his Jaipur Office on 23.2.1992 duly leaving an application with the respondent authority that he was going to Delhi and would attend the office of the DIG there on 24.2.1992 and thereafter would apply for leave to go to Sonepat to attend to his domestic work and that he was allowed to go by the Dy. Director to visit Sonepat it would prove that the applicant was not unauthorisedly absent during the period from 23.2.1992 to 1.3.1992, suffice to say that it has not controverted by the respondents that his leave application has not been sanctioned and that he did not send leave application to the authority. Tribunal will not go into the evidence brought on record by reappreciating the evidence and come to a conclusion of its own. Under the power of judicial review the Tribunal examines whether the applicant had been given fair opportunity of hearing and not to hold that the conclusion reached by the disciplinary authority is necessarily correct in the eye of the court. Therefore, the finding recorded by the disciplinary authority on this part of the imputation of

charge, by no means, can be held to be based on no evidence or perverse. Adequacy or inadequacy of the evidence and the material on record would also not be judged by the Tribunal. Therefore, the finding of the disciplinary authority that the applicant was unauthorisedly absent from duty during the relevant period mentioned in the charge memo, cannot be called in question and interfered with in the present proceeding.

22. Another argument of the learned counsel for the applicant is that the applicant had requested for change of Inquiry Officer. He also argued that the Inquiry Officer was biased since he was direct subordinate of the controlling authorities and rejection of the request of the applicant in this behalf has vitiated the proceeding and the penalty order passed therein. The Inquiry Officer is appointed by the disciplinary authority and there is no bar under the rules or any other administrative instructions to the appointment of the immediate subordinate of the decision making authority as Inquiry Officer. It would be unjust to allege that the subordinate, so appointed as Inquiry Officer, would in any way be influenced in his decision by his mere subordination to the disciplinary/controlling authority. Bias and prejudice of the enquiry officer has to be established by evidence and circumstances of the case. No concrete instances of acts and omission of the Inquiry Officer in conducting the proceedings which resulted in prejudice to the applicant in his defence or which may show that the applicant had a reasonable apprehension that the Inquiry Officer is biased or will not provide fair and impartial hearing. Apprehension of the applicant, therefore, is not on reasonable ground. The Inquiry Officer cannot be held to be biased or partial. The contention of the applicant as such is devoid of any merit.

23. As regards to the contention of the applicant that his suspension order was not reviewed and extended as per Rules and that he was not paid full subsistence allowance, these will not vitiate the proceedings, unless it is shown that gross prejudice was caused to the applicant in defending the case. It is not a case here. Yet another argument is that the applicant had lost its Identity Card in 1989, so allegation that he had shown his Identity Card to school authorities is incorrect. It does not cut much ice, since the charge is not that he showed Identity Card

infringing some service rule or instruction. Charge is that he disclose his official position to bring undue pressure on the school authorities to succumb his demand. It is not the case of the applicant that he had never disclosed his identity for obtaining information from the school authorities. After all his daughter was not a student in those school and he had no concern with them. The argument, therefore, has no merit.

24. Another contention raised on behalf of the applicant is that there was inordinate delay in completing the enquiry. The incident related to February/March, 1992 and the Memorandum of Charge was served in January, 1994 and the enquiry report was submitted in January, 1998. The disciplinary authority also passed the penalty order in April, 1998/February, 1999 yet the appeal preferred by the appellant took 4 years time to be disposed off in June, 2003. It is not denied that the President is the competent authority to dispose of the appeal and that it has sought and was given the opinion by the UPSC which was taken into consideration, while disposing of the appeal. There is of course delay in deciding the appeal, but this by itself cannot be a reason for interfering with the order of the disciplinary authority particularly when the charge against the applicant was of a serious misconduct. Some procedural delay is bound to occur in such matters but simply because the pendency of the appeal or non-finalisation of the proceeding had adverse impact on the applicant's prospect or progression in his career, i.e., promotion etc. it is not a ground on which in the present facts and circumstances the proceedings or the penalty order could be interfered with. The contention of the applicant is accordingly rejected.

25. The Hon'ble Supreme Court in Devi Singh vs. Punjab Tourism Development Corporation Ltd. and another (2003) 8 SCC 9 relying upon the judgment in Bhagat Ram vs. State of H.P. 1983 SCC (L&S) 342, Ranjit Thakur vs. Union of India 1988 SCC (L&S) 1 and U.P. SRTC vs. Mahesh Kumar Mishra 2000 SCC (L&S) 356 observed as under:-

> "6. A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by

directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the abovenoted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case."

26. In Damoh Panna Sagar Rural Regional Bank and another vs. Munna Lal Jain 2004 (10) SCALE 590, Hon'ble Supreme Court on the question of judicial interference in the quantum of punishment awarded by a disciplinary authority for examining the case law had observed as under:

"14. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards.

27. The learned counsel for the applicant has drawn attention to the order of the disciplinary authority dated 30.4.1998 whereby the disciplinary authority had imposed the penalty of reduction of scale by three stages from Rs.2180/- to Rs.2000/- in the time scale of Rs.2000-63-2300-75-3200-EB-100-3500 (pre-revised) with cumulative effect. It was submitted that it was not in accordance with the rules since the period was not specified. At the same time it was admitted that this lacuna was rectified by the disciplinary authority by issue of Corrigendum on 17.2.1999, Annexure A-2. Though it is argued that after the first order the disciplinary authority had become functous officio, but to our view, this by itself does not necessarily justify us to interfere with the order of the disciplinary authority. The order of the disciplinary authority had merged into the order of the appellate authority for which it does not suffer from such legal lacuna. Moreover, this argument will not advance the interest of the applicant rather would further the agony of the applicant since at the best, the penalty order could be quashed (but not the proceeding) and the matter could be remitted back to the disciplinary authority to decide the penalty afresh. The applicant has not argued that such a course should now be adopted. Applying the principles of law laid down by the Hon'ble Supreme Court in the case of Devi Singh (Supra) and Damoh Panna Sagar Rural Regional Bank and another (Supra) cited above, we find that the punishment awarded to the applicant is proportionate to the proven charges and does not call for interference.

28. The result of the above discussion is that none of the grounds pleaded by the applicant has any merit. The order of the disciplinary authority impugned in the OA does not suffer from legal infirmities or are vitiated warranting interference by the Tribunal.

29. As a result of the above discussion, the OA fails and it is dismissed but parties are left to bear their own costs.

(D.R. Tewari)
Member (A)

(M.A. Khan)
Vice Chairman (J)

Rakesh