

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 1952/2004

New Delhi this the 12th day of April, 2005

Hon'ble Mr. V.K. Majotra, Vice-Chairman (A)
Hon'ble Mrs. Meera Chhibber, Member (J)

V.K. Sabharwal,
Sector 33/418, Type-IV,
NPTI Complex,
Faridabad (UP).

.... **Applicant.**

(By Advocate Ms. Tamali Wad)

Versus

1. National Power Training Institute,
through Director General,
NPTI Complex,
Sector 33, Faridabad.

2. Chairman,
Governing Council NPTI &
Secretary, Ministry of Power,
Shram Shakti Bhawan,
Rafi Marg, New Delhi.

.... **Respondents.**

(By Advocate Shri M.M. Sudan)

O R D E R (ORAL)

Hon'ble Mrs. Meera Chhibber, Member (J).

By this O.A, applicant has sought quashing of the order dated 13.12.2002 (page 23) whereby disciplinary authority has given the following punishment to the applicant:

"...the penalty of 'Compulsory Retirement' on Shri V.K. Sabharwal, Dy. Director (Tech./Faculty) under Clause (vii) of Rule '11' of CCS (CCA) Rules, 1965 whereby Shri Sabharwal shall stand compulsorily retired from the service of the National Power Training Institute with effect from the date of issue of this Order. Further, considering the gravity of misdemeanour on the part of the Charged Officer, the undersigned in exercise of the powers conferred by Rule 40 of CCS (Pension) Rules, 1972, as applicable to the Charged Officer, hereby orders that he will be entitled for two-third (2/3) of the Pension and Gratuity as admissible to him on the date of his compulsory retirement. The entire period of absence from



1-9-2001 till the date of issue of this Order shall be treated as unauthorized absence from duty entailing loss of pay under Proviso of Fundamental Rule 17 in terms of Govt. of India Decision No. 3 below Rule 25 of CCS (Leave) Rules, 1972".

He has further sought quashing of the order dated 18.12.2003 (page 27) whereby his appeal has been rejected. He has also sought quashing of the order dated 2.4.2004 whereby revision has also been rejected.

2. The brief facts, as submitted by the applicant, are that a charge-sheet was issued on 8.1.2002 (page 48) but before the same could have been served on the applicant, the disciplinary authority issued the order dated 28.1.2002 whereby the Inquiry Officer as well as the Presenting Officer were appointed. Counsel for the applicant submitted that this vitiates the entire inquiry because unless the charge-sheet was served on the applicant, the disciplinary authority could not have appointed the Inquiry Officer and Presenting Officer and this action of the disciplinary authority shows vindictive attitude of the authorities against the applicant. Therefore, initiation of the charge-sheet itself is bad in law. In order to substantiate her claim, counsel for applicant relied on publication done by the Inquiry Officer on 19.3.2002 (page 157) wherein it was clearly mentioned that the charge-memorandum sent to the applicant's address through messenger/Regd. Post (A/D) was returned with the remark that 'the person is not available'. Therefore, Shri V.K. Sabharwal (applicant) was informed to collect the said charge memorandum and other connected documents either from the Director (F&A), NPTI Complex, Sector 33, Faridabad or from the Executive Director, NPTI (SR), Block-14, Neyveli (Tamil Nadu) on or before 10.4.2002. It was in view of this Notification that counsel for applicant submitted that the very fact that the person was not available shows that the charge-sheet was never served upon the applicant. Therefore, the starting point of service of charge-sheet has to be treated as 19.3.2002, that is the date on which this notice was issued by the inquiring authority whereas the Inquiry Officer and the Presenting Officer were appointed vide order dated 28.1.2002, i.e. prior to the deemed service of charge-



sheet. Therefore, the order dated 28.1.2002 is clearly violative of Rule 14 (5) of the CCS (CCA) Rules, 1965, which are mandatory in nature and the same not having been followed vitiates the entire inquiry and the orders passed thereon. She relied on the judgment given in the case of State of Punjab Vs. V.K. Khanna (2001 (2) SCC 330 at page 348) and the judgment given in OA 481/2004, decided on 3.1.2005 to substantiate her argument.

3. The second point raised by the counsel for applicant for challenging the impugned orders is that the inquiring authority and the disciplinary authority took into account extraneous considerations, which do not form part of the main charge. She relied on page 79 to show that Inquiry Officer was pre-determined to hold him guilty. The Inquiry Officer's report on pages 78 and 79 reads as follows:

"It is proved beyond doubt that Shri V.K. Sabharwal had

- (a) deliberately failed to carry out the lawful orders of his superior authorities by not joining at NPTI (SR), Neyveli and also not obtaining the No Due Certificate from NPTI (NR), Badarpur;
- (b) tampered with the attendance register of NPTI (NR) by unauthorisedly writing his name on his own and marking attendance therein during November – December 2001 inspite of the fact that he was relieved from there earlier and was no longer on the strength of the said institute.
- (c) Attempted to mislead the office threatening legal action against non-payment of his salary and other dues for which he himself is solely responsible".

Counsel for the applicant submitted that applicant was never given the charge of "attempting to mislead the office threatening legal action against non-payment of his salary and other dues for which he himself is solely responsible". She further relied on page 23 to show that the disciplinary authority also stated in the order that applicant "absented himself unauthorisedly since 1.9.2001 from his place of posting i.e. NPTI (SR), Neyveli and not reporting there at all, putting the interest of the organization at stake. He also attempted to mislead the office by threatening legal action against non-payment of his salary and other dues



16

beyond 31.8.2001 for which he himself is solely responsible" whereas this was never a part of the charge. She, thus, submitted that since the disciplinary authority had taken into consideration some extraneous material, the order has to be quashed and set aside. She also submitted that this only shows that the disciplinary authority was pre-determined to punish the applicant by hook or by crook. She further submitted that charge has to be distinct and definite as per Rule 14 of the CCS (CCA) Rules, 1965 but since the charge of unauthorized absence was never a part of the charge and yet that was taken into consideration, therefore, the whole inquiry is vitiated as it would be violative of Rule 14 of the CCS (CCA) Rules, 1965. In this regard, she relied on the judgment of this Tribunal in the case Smt. C.P. Gupta vs. Union of India & Ors. (OA No. 2322/2002 decided on 20th March, 2003).

4. Counsel for the applicant next contended that the applicant was, in fact, given multiple punishments as he was already given the punishment of compulsory retirement yet his pension and gratuity were also reduced which is a further punishment and the entire period was also decided as unauthorized absence entailing loss of pay. Therefore, this amounted to double jeopardy, which is not permissible in law. The last, but not the least, she submitted that the punishment awarded is too excessive and is not proportionate to the gravity of the misconduct. Therefore, this matter needs to be interfered by the Tribunal and the relief may be granted, as prayed for.

5. O.A. has been opposed by the respondents, who have submitted that charge-sheet was drawn on 8.1.2002. It was tried to be served on the applicant at his residence by hand but his wife did not accept the same and wrote on the envelope that 'he is in Badarpur Office', therefore, it may be sent at office. In the peon book also, wife of the applicant gave the same remarks on 9.1.2002 (pages 13 and 14). They have also annexed a Note given by S.O (Admn.) on 9.1.2002 which states that an attempt was made to hand over the letter bearing



dispatch No.4064-65 received from HQ through special messenger to Shri V.K. Sabharwal, Dy. Director, who was seen in the Institute at around 2.00 p.m. on 9.1.2002 in the presence of S/Shri N.K. Srivastava, Asstt. Director, Mrs. Mamta Kumaria, S.O, Satnam Singh, D'Man, Gr.II and Dhir Singh, Peon (HQ.) but Shri Sabharwal refused to receive the letter. The said note was signed by all the witnesses who have been referred to in the Note (page 15). Thereafter, a registered AD post was sent to the applicant at his residence. The postman visited his house on 11.1.2002, 12.1.2002, 14.1.2002, 15.1.2002 and finally gave a remark on 16.1.2002 as "Refused" (pages 16 and 17). Counsel for the respondents thus submitted that since the applicant had refused to take the charge-sheet, it is deemed to have been served on the applicant and since refusal was recorded on 16.1.2002, the disciplinary authority was well within its rights to appoint the Inquiry Officer and Presenting Officer vide order dated 28.1.2002. Therefore, the judgment in the case of V.K. Khanna (supra) will not be applicable in the present case. Moreover, It cannot be stated that the order dated 28.1.2002 is in violation of Rule 14 of the CCS (CCA) Rules nor can it be said that the disciplinary authority was sitting with a vindictive attitude or closed mind. They have, therefore, explained that vide order dated 8/11.2.2002, the charge-sheet was forwarded to the Inquiry Officer narrating all these facts along with the documents, namely, the page of peon book dated 9.1.2002, the Note along with testimony of six officials in whose presence applicant had refused to acknowledge the memorandum dated 8.1.2002, envelope containing memorandum which was received back undelivered from the Post Office with the remarks "Refused" and the copies of the documents by which the articles of charge framed against the applicant were proposed to be sustained, with the request to conduct the inquiry quickly and submit the inquiry report at the earliest (page 20). After receiving this letter, the Inquiry Officer sent a letter by registered post to the applicant at his residence informing him the date of



preliminary hearing on 10.4.2002 (page 22) but the same was returned back by the postal authorities after recording thereon "BAAR BAAR JAANE PAR PRAPT KARTA NAHIN MILTA". This envelope shows that Postman visited the house of applicant on 1.3.2002, 2.3.2002, 4.3.2002, 5.3.2002 and finally made remark on 6.3.2002. The Inquiry Officer, therefore, gave a notice by publication in the Newspaper 'The Indian Express' on 19.3.2002 further giving intimation to the applicant to collect the said charge-sheet and other connected documents, failing which it would be deemed that the said charge-sheet is deemed to have been issued and further proceedings would continue. By this publication, the applicant was informed that preliminary inquiry would be conducted on 30.4.2002 in his Chamber in NPTI (SR), Block-14, Neyveli, Tamil Nadu. He was further informed to attend the preliminary inquiry otherwise the inquiry will be conducted ex-parte (page 26). He was further sent another letter dated 3.4.2002 by registered post informing the applicant that the preliminary hearing shall be held on 30.4.2002 at 11 A.M. at NPTI (SR), Neyveli. Therefore, he may attend the proceedings either alone or accompanied by his defence assistant on the appointed date, time and place, failing which the proceedings shall be held ex-parte (page 27) but even this letter was received back along with the postal remarks "BAAR BAAR JAANE PAR PRAPT KARTA NAHIN MILTA". This envelope shows that Postman visited the applicant's house on 10.4.2002, 11.4.2002, 12.4.2002, 13.4.2002, 14.4.2002, 15.4.2002, 16.4.2002, 17.4.2002 and 18.4.2002 (page 30).

6. Thereafter, the proceedings were held on 30.4.2002 and since the charged officer did not appear before the inquiring authority, the proceedings were adjourned and even this order sheet was sent to the applicant vide letter dated 1.5.2002 again through registered AD (page 36) but even this was also returned undelivered (page 43 and 44). The postal remark given is "not found on 7.5.2002, 9.5.2002, 10.5.2002, 11.5.2002" and ultimately on 13.5.2002 the



✓

Postman has put the remark "BAAR BAAR JAANE PAR PRAPT KARTA NAHIN MILTA".

7. The respondents have annexed the entire proceedings and have shown that on 17.6.2002, the applicant participated in the inquiry and even cross-examined the prosecution witness Shri V.K. Gupta but refused to sign on the proceedings (page 58 at 60). The Inquiry Officer gave his remark as under:

"Though Shri V.K. Sabharwal charged officer participated in the proceedings but refused to sign this document".

Copy of this order sheet was received by the applicant by duly signing the same. Similarly, one of the other witnesses, namely, Shri R. Chaudhary, Deputy Director was also examined in presence of Shri V.K. Sabharwal (applicant) and he was given a chance to cross-examine the witness but the charged officer said that he does not want to cross-examine the witness No.3. In these proceedings also the applicant did not sign, which was recorded by the Inquiry Officer (page 62) though applicant received copy of the said order sheet. On 18.6.2002, Witness No.4, Smt. Mamta Kumaria, was examined in presence of Shri V.K. Sabharwal and he did not put any question to her. Once again, the Inquiry Officer recorded that though Shri V.K. Sabharwal charged officer participated in the proceedings, he refused to sign this document. Copy of this order was also given to the applicant. The applicant cross-examined Shri U.K. Sarkar, prosecution witness though refused to sign the proceedings, which is evident from page 69. Similarly, though Shri Krishan Pal, prosecution witness was examined in presence of Shri V.K. Sabharwal but he refused to cross-examine even though opportunity was given to him and once again the applicant refused to sign the proceedings, which is evident from page 71. Prosecution Witness Shri Mathura Dutt was examined by the applicant but refused to sign the proceedings, which is evident from pages 73 and 74. Prosecution Witness Shri P.S. Dhapola was also cross-examined by the applicant, which is evident from page 76 but he refused to sign and the Inquiry Officer recorded the same, copy

S
B

29

of which was given to the applicant. They have also annexed a certificate issued by the Inquiry Officer to show that the officers had appeared before him as witnesses on different dates in the departmental inquiry against the applicant and were discharged on 17.6.2002 and 18.6.2002, respectively. Counsel for respondents thus submitted that from the perusal of order sheets, it is abundantly clear that full opportunity was given to the applicant and since he has cross-examined the prosecution witnesses, it cannot be said that any prejudice has been caused to the applicant. Not only this, applicant was again informed by registered letter dated 24.6.2002 by giving him copies of the daily order sheets from 17.6.2002 to 19.6.2002 and a list of further documents proposed to be produced by the prosecution along with copies of those documents by giving him liberty to inspect the original documents at NPTI (SR), Neyveli on or before the date of next regular hearing, which was fixed as 15.7.2002 at 11 A.M. This document was refused by the applicant, which is evident from page 88. He thus submitted that at each stage all the relevant documents and order sheets were sent to the applicant but since he refused, which is further evident from page 132 wherein the postal authorities have clearly given the remark as "Lene Se Inkar Kiya" on 1.7.2002. The order sheet dated 15.7.2002 further shows that still in order to provide another opportunity to the applicant, proceeding were again adjourned to 1.8.2002 (page 134) and this information was duly sent to the applicant in the letter dated 15.7.2002 (page 137) but even this was returned with the remark "refused" on 19.7.2002 (page 141 and 142). In these circumstances, the evidence was finally closed on 1.8.2002. The Presenting Officer was directed to submit his brief on or before 2.9.2002 and even this order sheet was also sent to the applicant but once again this letter was returned back on 29.8.2002 with the remark as "refused". Therefore, the Inquiry Officer finally sent the report to the Director General, NPTI, Faridabad, on 19.9.2002 (page 165). This report was also sent to the applicant but even this was returned back

30



with the postal remark as "refused" on 26.9.2002 (page 203). Therefore, the authorities had to resort to again publication in 'The Indian Express' on 3.10.2002 wherein it was clearly mentioned that the report of the Inquiry Officer against Shri V.K. Sabharwal was sent to him at his official as well as residential address in registered post, on 25.9.2002 but the same was returned by the post office with the remark as "refused". Therefore, the notice is being published with a view to give him final opportunity. He was advised to collect the report of Inquiry Officer on or before 10.10.2002 and to submit his representation or submission, if any, on the report of the Inquiry Officer within 15 days of its receipt. It was further made clear that if he fails to avail this opportunity, the undersigned would be constrained to proceed further and take a final decision in the matter without any further notice.

8. It was at this stage that applicant gave his written submission on 17.10.2002 (page 207), which was taken into consideration by the disciplinary authority and he passed the final orders on 13.12.2002. Copy of this order was sent at the address of applicant but even this could not be served on the applicant as this letter was returned back by the postal authorities with the remarks "BAAR BAAR JAANE PAR PRAPT KARTA NAHIN MILTA", on 21.12.2002 (page 216). Ultimately, respondents had to publish even this in the newspaper on 18.3.2003 to inform the applicant that he has been compulsorily retired vide order dated 13.12.2002 (page 217). Applicant then filed an appeal which was rejected vide order dated 18.9.2003 (page 218). Thus, counsel for the respondents submitted that all these facts clearly show that applicant was not interested in defending himself in the inquiry as he was himself avoiding at every stage in spite of efforts being made by the respondents to intimate him about the proceedings, etc. Therefore, it is not open to the applicant to make the grievance now regarding non-service of charge-sheet and issuance of the order



for appointment of the Inquiry Officer or the Presenting Officer by the disciplinary authority.

9. He further submitted that as far as page 77 is concerned, these were not the ultimate findings written by the Inquiry Officer but it was only in the process of discussion as conclusions are given at page 83. Therefore, it cannot be said that Inquiry Officer took into consideration any extraneous facts. In any case, he relied on the judgment of Union of India Vs. Parma Nanda (supra) to suggest that once charge is proved even if some extraneous material is referred to, it would be of no consequence. He also relied on the judgment in Canara Bank (supra).

10. On the point of double jeopardy, he referred to Rule 40 of the CCS (Pension) Rules to show that this is a composite order and fixing of pension and gratuity is only a consequence of giving the punishment of compulsory retirement. Therefore, this is not a case of double jeopardy.

11. On the point of disproportionate punishment, counsel for the respondents submitted that Hon'ble Supreme Court has repeatedly held that once charge is proved what punishment should be given to the delinquent are the matters which should be left to the disciplinary authority and courts cannot sit in appeal over the quantum of punishment. They can interfere only if the punishment is so disproportionate that it shocks the conscience of the court but in the present case looking at the conduct of applicant the punishment granted cannot be said to be shocking by any stretch of imagination. Therefore, this case calls for no interference. The same may accordingly be dismissed.

12. We have heard both the counsel and perused the pleadings as well.

13. Counsel for the applicant strongly argued that by way of additional affidavit respondents are trying to show that applicant had refused to take the charge-sheet but this is contradicted by the notice given by the Inquiry Officer himself who had stated in the public notice that the charge-memorandum was sent to the address of applicant through messenger/registered post AD but was returned



27

with the remark that the person is not available which shows that charge-sheet was never refused by the applicant and these documents were not available with the respondents earlier otherwise Inquiry Officer would not have mentioned these facts. We are not impressed by this contention. Simply because the Inquiry Officer has used some language which is not in consonance with the original record produced by the respondents, the language used by Inquiry Officer cannot be said to be final because ultimately the original record has to be seen to decide the facts. Respondents not only placed on record the photo-copies of all the records but produced the original records also for court's perusal. After perusal of the original records, we are satisfied that respondents made all efforts to serve the charge-sheet on the applicant by sending the same to the applicant's house through registered post as well as special messenger. It is evident from the record that on both the occasions wife of applicant gave in writing to serve the same on applicant in office but when the charge-sheet was tried to be served on applicant in office, he refused to accept the same which is evident from the Note prepared by the S.O. which is countersigned by the witnesses in presence of whom the applicant refused to accept the charge memorandum, on 9.1.2002. The postman visited the house of applicant on 11.1.2002, 12.1.2002, 14.1.2002, 15.1.2002 and gave the remark as "refused" on 16.1.2002 (pages 15,16 and 17). 'Refused' amounts to as deemed service in law. It can, therefore, easily be concluded that the charge-sheet was deemed to have been served on applicant on 9.1.2002 and again on 16.1.2002. Once charge-sheet is deemed to have been served on applicant, naturally it was open to the disciplinary authority to proceed further by appointing the Inquiry Officer and the Presenting Officer to look further into the alleged misconduct of the applicant. The said order was issued on 28.1.2002 which is after the applicant had refused to accept the charge-sheet. In these circumstances, it is wrong to suggest that the order of appointing Inquiry Officer as well as the Presenting Officer was issued without



serving the charge-sheet on applicant or that the said order dated 28.1.2002 was in violation of Rule 14 of the CCS (CCA) Rules. In view of the facts as explained above, naturally the judgment of V.K. Khanna (supra) will also not be applicable in the present case nor would the judgment of Dina Nath Shantaram Karekar (supra) be relevant in the present case. In the case of V.K. Khanna (supra), soon after the issuance of the charge-sheet, the press reported a statement of the Chief Minister that a Judge of the High Court would look into the charges against Shri V.K. Khanna. The said statement was issued without even waiting for the defence statement of the delinquent therein. It was in that conspectus that the question of pre-determined mind was being discussed in the said case whereas in the instant case from the detailed facts, as narrated by the respondents, it is seen that the disciplinary authority made all efforts to serve the charge-sheet on the applicant and it was only after he refused to accept the same that he was forced to appoint the Presenting Officer and the Inquiry Officer. Therefore, the facts of the present case are not at all identical with that of V.K. Khanna's case (supra). Similarly, the facts in the case of Dinanath Shantaram Karekar (supra) are absolutely different inasmuch as in the said case the charge-sheet was sent to the delinquent but the same was returned back with the postal remark "not found". It was, therefore, held in the said circumstances that it could not be said the document was legally served on the employee whereas in the instant case the original records show that not only there was an office note to show that applicant had refused to accept the charge-sheet in the presence of other witnesses but even the postal authorities had returned the envelope with the remark "refused". Therefore, the judgment of Dina Nath Shantaram Karekar (supra) also cannot advance the case of applicant. The first contention of applicant is, therefore, rejected.

14. The notice issued by the Inquiry Officer shows that even he took additional pains to inform the applicant about the charge-sheet asking him to collect the

same on or before 10.4.2002, failing which further proceedings will continue. By this notice, applicant was also informed that preliminary inquiry shall be held on 30.4.2002 in his Chamber in NPTI (SR), Block-14, Neyveli, Tamil Nadu. He was further informed that in case he fails to attend the preliminary inquiry, the same will be conducted ex-parte (page 26). This notice was issued on 19.3.2002. The applicant did not co-operate with the Inquiry Officer in spite of sending the letters to the applicant at each and every stage of the inquiry. There are number of envelopes available on the original record with the postal remarks "BAAR BAAR JAANE PAR PRAPT KARTA NAHIN MILTA" and at some of the places as "LENE SE INKAR KIYA". All the copies of the order sheets were sent to the applicant at his known address and ultimately the records show that applicant did participate in the inquiry and even cross-examined the prosecution witnesses but did not sign the proceedings, which was duly recorded by the Inquiry Officer in the order sheets. Therefore, it is clear that applicant was given full chance to defend himself by cross-examining the prosecution witnesses as well. Not signing on the proceedings by the delinquent officer only shows his attitude but as far as the Inquiry Officer is concerned, his bona fides are clearly seen from the records produced before us. The Inquiry Officer also sent the letter dated 24.6.2002 to the applicant informing him about the documents which would be taken note of and also informing him that hearing would be fixed for 15.7.2002. This letter was sent along with the order sheet and the documents by registered AD post but this was also refused by the applicant which is evident from page 133 as the postal remark clearly states "LENE SE INKAR". On 15.7.2002, since delinquent did not attend the hearing, Inquiry Officer adjourned the hearing to give yet another chance to the delinquent by adjourning the hearing to 1.8.2002. Once again this order sheet was also sent to the applicant calling upon him to send his written defence statement vide letter dated 15.7.2002 (page 137) but even this envelope was returned back by the postal





authorities with the remark "reused" on 19.7.2002 (page 141 and 142). Since the delinquent decided not to co-operate in spite of trying to serve him, the evidence was closed and Presenting Officer was directed to submit his brief on or before 2.9.2002. Even this order sheet was sent to the applicant and the brief of Presenting Officer was also sent to the applicant but the same was also returned back on 29.8.2002. Therefore, the Inquiry Officer sent his report to the Director General, NPTI, Sector-33, Faridabad (page 165). Thereafter, copy of the report was sent by the disciplinary authority to the applicant but even that was refused by the applicant. Therefore, ultimately the disciplinary authority had once again to publish in the newspaper on 3.10.2002 informing the applicant that report of the Inquiry Officer was sent at his residential address which has been received back with the remarks "refused" yet this notice is being published with a view to give him final opportunity. He is advised to collect the copy of report of Inquiry Officer on any working day on or before 10.10.2002 and submit his representation within 15 days of its receipt. In case he fails to avail this opportunity, the disciplinary authority would be constrained to proceed further and take a final decision in the matter without any further notice (page 205). It clearly shows that how applicant had been acting at his whims by sometimes participating in inquiry and behaving in a most irresponsible manner by refusing the letters sent to him and not co-operating properly in the inquiry. It was only after this notice was issued in the Indian Express on 3.10.2002 that applicant gave his written submission on 17.10.2002 which was taken into consideration by the disciplinary authority and he finally passed the order on 13.12.2002. Once again these orders were sent at the residential address of applicant but even they were returned back with the postal remark "BAAR BAAR JAANE PAR PRAPT KARTA NAHIN MILTA" (page 216). In these circumstances, once again respondents had to publish a notice in newspaper on 18.3.2003 informing him that applicant stood compulsorily retired from service of National Power Training



Institute w.e.f. 13.12.2002, the date of issue of the order. The entire period of his absence from 1.9.2001 till 13.12.2002 has been treated as an 'unauthorized absence' from duty entailing loss of pay under proviso of Fundamental Rules 17 in terms of Govt. of India Decision No. 3 below Rule 25 of the CCS (Leave) Rules, 1972. He was further informed that order dated 13.12.2002 had been displayed on the Notice Boards of NPTI as well as at his residence because he was willfully evading service of the said order. He was also advised to submit an appeal, if he so desires, as admissible under the CCS (CCA) Rules, 1965 (page 217). After this notice was issued in the newspaper, applicant filed his appeal, which was considered by the appellate authority and by a reasoned order he rejected the same on 18.9.2003 (page 218). These facts prove beyond any doubt that full opportunity was given to the applicant at each and every stage and even by issuing public notices in the newspaper which was the only mode left available to the respondents in view of the fact that applicant was not co-operating with the respondents and was either evading or refusing the letters sent to him through registered AD post. At this juncture, it would be relevant to quote the view taken by the Hon'ble Supreme Court in such cases. In the case of Nagar Palika Vs. U.P. Public Service Tribunal reported in 1998 (2) SCC 400, it was held that where opportunity is afforded but not availed by delinquent in spite of repeated reminders nor he submits his reply or appears before the Inquiry Officer, he cannot be allowed to challenge the ultimate orders on the basis of report submitted by the Inquiry Officer. Similarly, in the case of Ranjan Kumar Mitra Vs. Andrew Yule & Co. Ltd. And Ors. reported in 1997 (10) SCC 386, it was held that if an employee chooses not to participate and is ultimately terminated pursuant to the inquiry, the order cannot be said to be vitiated. The present set of facts are fully covered by the judgment, as referred to above. Since applicant was given the opportunity but he did not avail at his own volition, he cannot be now allowed to make any grievance on this count. Moreover,





since applicant has already cross-examined the prosecution witnesses, it also cannot be said that any prejudice has been caused to him. In the case of State Bank of Patiala and Ors. Vs. S.K. Sharma reported in JT 1996 (3) SC 722, Hon'ble Supreme Court laid emphasis on the test of prejudice. It was held by Hon'ble Supreme Court that a duty is cast on the courts to see whether by committing such irregularities, it can be said that prejudice has been caused to the delinquent or not because the technicalities and irregularities which do not occasion failure of justice cannot be allowed to defeat the ends of justice because principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end as that would be a counter productive exercise. In the case before us, in view of the fact that full opportunity was given to the applicant which was sometimes availed by him and sometimes not, due to his own volition, it cannot be said that any prejudice has been caused to the applicant. Admittedly, the charges were found to be proved against the applicant.

15. Therefore, the next question that comes for consideration in these circumstances is whether the court can interfere on the question of quantum of punishment? Hon'ble Supreme Court has repeatedly held that once the charges are proved what punishment should be given to the applicant is the matter which should be decided by the authorities and courts should not interfere in the quantum of punishment by sitting in appeal over the orders passed by the authorities. The courts can interfere only if the punishment awarded is so disproportionate to the gravity of the offence that it shocks the conscience of the court and in that case also the courts should remit the matter back to the authorities for reconsideration. In the instant case, looking at the conduct of applicant, we can say without any difficulty that the punishment awarded to the applicant cannot be said to be so disproportionate so as to shock our conscience. At this juncture, it would be relevant to quote the judgment of



Hon'ble Supreme Court reported in 2003 (2) SCALE 42 in the case of Chairman and Managing Director, United Commercial Bank & Ors. Vs. P.C. Kakkar, wherein it is held as under:

"The courts 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. In view of what has been stated in the Wednesbury's case, the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. It was clarified that the scope of judicial review is limited to the deficiency in decision-making process and not the decision".

It is the consistent view taken by the Hon'ble Supreme Court that once charges are proved, other considerations are not relevant. Courts cannot interfere in quantum of punishment, as is evident from following judgments. (JT 1995 (8) SC 65, B.C. Chaturvedi Vs. Union of India & Ors. and Union of India Vs. Narain Singh, 2002 SCC (L&S) 623). In the case of Parma Nanda reported in AIR 1989 SC 1185, it was held by the Hon'ble Supreme Court that if there has been an inquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter. Similarly, in the case of Canara Bank (supra), Hon'ble Supreme Court has deliberated on the theory of useless formality and theory of prejudice. After discussing all the facts, it was held by Hon'ble Supreme Court that in view of the fact that no prejudice has been



caused, it is open to the court to reject the petition. In the instant case, the charges against the applicant are as follows:

"That the said Shri V.K. Sabharwal while functioning as Deputy Director (Tech./Faculty) in the NPTI during April 2001 was transferred in public interest from NPTI (NR), Badarpur to NPTI (SR), Neyveli. The Writ Petition (Civil No. 6739/2001 and C.M. No. 11546/2001 filed by him against the order dated 3.10.2001 of the Hon'ble Central Administrative Tribunal (Principal Bench), New Delhi in O.A. No. 2612/2001 upholding the said transfer were listed, heard and dismissed in the Hon'ble High Court of Delhi on 2.11.2001. He, however, in deliberate failure to carry out the lawful orders of his superior authorities did not obtain 'No Dues Certificate' from NPTI (NR), Badarpur nor reported for duty at NPTI (SR), Neyveli by the stipulated date i.e. 30.11.2001 and tampered with the Attendance Register of NPTI (NR), Badaur by unauthorisedly writing his name on his own and marking Attendance therein during November-December, 2001 notwithstanding the fact that he was relieved from there and was no longer on the strength of the said institute.

That during the period October-December, 2001, the said Shri Sabharwal has been willfully evading the acknowledgement of official communications. He refused to accept delivery of the communications sent to him in person. The same were also sent to him by Registered Post, Acknowledgement Due but were received back undelivered from the Post Office".

These charges have been fully proved in the inquiry held wherein full opportunity was given to the delinquent officer and since the punishment has been given on the proved misconduct against the applicant, we are satisfied that no case has been made out for interference on the question of disproportionate punishment.

16. Counsel for the applicant next contended that the Inquiry Officer as well as the disciplinary authority have taken some extraneous considerations into account while deciding the punishment, namely, the 'unauthorized absence' and 'misleading the authorities'. However, in view of the judgment, as referred to above, this contention has to be rejected keeping in view the fact that the charges levelled against the applicant were fully proved against him. Therefore, even if while passing the final orders disciplinary authority referred to some extraneous material, it is of no consequence.



17. Coming to the last contention raised by the counsel for the applicant of double jeopardy, we would only like to refer to Rule 40 of the CCS (Pension) Rules which, for ready reference, reads as under:

"A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement".

It was being suggested that once the punishment of compulsory retirement was imposed on the applicant, respondents could not have further reduced his pension or gratuity but a reading of Rule 40 would show that reduction of pension and gratuity is only a consequence of penalty of compulsory retirement. Therefore, it cannot be said that the applicant has been imposed more than one punishment. It cannot be said to be a case of double jeopardy as Rule 40 of the CCS (Pension) Rules makes the position absolutely clear. As far as the last portion is concerned with regard to treating the period of absence, that is not a punishment but it only states as to how the period of absence has been treated. Since that is not a part of punishment, therefore, it is wrong to suggest that this is a case of double jeopardy. This period could have been decided by a separate order but it looks, the way applicant was behaving and trying to evade or refuse every letter, the respondents decided this period also in the same order. However, this cannot be stated to be a punishment.

18. In view of the above discussion, we find no merit in the O.A. The same is accordingly dismissed. No order as to costs.


(MRS. MEERA CHHIBBER)
MEMBER (J)

'SRD'


(V.K. MAJOTRA)
VICE CHAIRMAN (A)
12.4.05