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In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. CA-2705/92

Date: 30.8.93

Shri Asi Mohammad Applicant

Versus

Union of India & Ors. Respondents

For the Applicant

For the Respondents

CORAM: Hon'ble Mr. J.P. Sharma, Member (Judl.)
Hon'ble Mr. N.K. Verma, Member (A).

1. To be referred to the Reporters or not?

yes

(Judgement of the Bench delivered by
Hon'ble Mr. J.P. Sharma, Member)

The applicant, while working as Mali in the works charge establishment of President's Garden, was put under suspension w.e.f. 25th March, 1988. The Military Secretary to the President served a charge-sheet dated 29.3.1988 on 4.4.1988 upon the applicant with the following charge:-

".....During the period March, 1987 to to January, 1988, Shri Asi Mohammad, while functioning as Mali on the work charge establishment of the President's Gardens, New Delhi, was assigned by superior officers, from time to time, tasks that Malis are required to perform, but he refused to perform these, or did not perform them. Shri Asi Mohammad is thus guilty of disobedience of orders, dereliction of duties and negligence

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amounting to misconduct, thereby rendering him liable to disciplinary action against him."

The applicant submitted a detailed reply to the above charge-sheet. An enquiry was ordered and Shri Sunil Verma, IA&AS, Internal Financial Adviser to the President, was appointed as Enquiry Officer and Shri R.S. Bhandari, Section Officer (Admn.), was appointed the Presenting Officer. The applicant was provided the services of the Defence Assistant, Shri R.A. Darbari. The Enquiry Officer conducted the enquiry according to the procedure applicable to work charge employees in the President's Estate Garden on the lines analogous to C.C.S. (CCA) Rules, 1965. After the conclusion of the evidence, the Presenting Officer submitted his written brief on 29.8.1990 and the applicant submitted his written brief on 26.10.1990. The Enquiry Officer submitted the report to the disciplinary authority. On 5.9.1992, the applicant was served with a copy of the copy of the Enquiry Officer's report asking him for making representation within 15 days of the receipt of the said report. After considering the representation of the applicant, the disciplinary authority imposed the major penalty of compulsory retirement besides forfeiting the entire period of suspension by the order dated 19.9.1992.

2. In this application, the applicant has prayed for the grant of relief that the impugned order of compulsory

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retirement, etc., including the entire proceedings, be quashed and the applicant be reinstated in service with all consequential benefits. The respondents contested the application and in their reply, they opposed the grant of the relief. It is stated that the applicant has been given the fullest opportunity to defend himself and that there were a number of complaints against him by the supervisory officers/staff, that the applicant was not performing the work assigned to him and refused to do the same. He was provided with a competent Defence Assistant and since the Presenting Officer was not a legal expert, his request for allowing a lawyer to defend himself was rightly disallowed which was maintained by the appellate authority on the appeal of the applicant. The allegation of bias or of mala fide act on the part of the Garden Superintendent, Shri Mathur, is totally misconceived and is an after thought to undo the result of the enquiry. The applicant has cross-examined the witnesses of the Administration at length and as many as 15 defence witnesses were examined by the applicant. The relevant documents were also taken into evidence by the Enquiry Officer, who was a senior Class I Officer of IA&AS. The allegations made by the applicant that the Enquiry Officer has a pre-determined and prejudiced

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mind or that there was a denial of reasonable opportunity to the applicant, is only a figment of imagination on the part of the applicant. There is no violation of the principles of justice and fairplay. The enquiry has been conducted on the lines of the C.C.S. (CCA) Rules, 1965 and the applicant was given the fullest opportunity as per those rules, though not specifically applicable to his case. He also could have appealed against the decision of the disciplinary authority, which he did not do and he cannot now take the plea that there was no right of appeal and the applicant also appealed against the order of his suspension before the then Secretary of the President on 25.3.1988.

3. We have heard the learned counsel for the parties at length and perused the records. The learned counsel for the applicant assailed the order of punishment on the ground that there are no rules or administrative instructions regarding the disciplinary proceedings in respect of the work charged employee of the President's Gardens Establishment. ^{Under} the provisions of CCS (CCA) Rules, 1965 by virtue of Rule 3 of Sub-rule(2), notification was issued by the President on 25th May, 1959 and 27th July, 1986 stating that the aforesaid rules are wholly excluded from its application to such employees. In view of this

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fact, it is argued that there are no rules under which the enquiry could have proceeded against the applicant and in the absence of the specific rules on the subject, the whole proceedings of enquiry are vitiated. The learned counsel has supported his argument by the authorities of Smt. Pramila Ghai Vs. Union of India, 1983, Vol.2, SLR 619 and Rajeshwar Singh Vs. Union of India 1990(1) SLR 24. Article 311 of the Constitution of India lays down that no person who is a member of the civil service of the Union or holds a civil post under the Union, shall be dismissed or removed by an authority subordinate to that by which he was appointed. Further, no such person shall be dismissed or removed or reduced in rank except after enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. If there are no statutory rules or administrative instructions on the subject, then well-known principles of natural justice have to be followed, as observed by the Hon'ble Supreme Court in the case of S.N. Mukherji Vs. Union of India, reported in 1991, Supreme Court Cases (L&S) 242. Thus, it is evident that where departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice and the conclusion arrived at is wholly arbitrary, capricious

and no reasonable person could have ever arrived at that conclusion, then the procedure adopted in the enquiry or decision taken by the disciplinary authority, are vitiated. In the light of the above, the contention of the learned counsel for the respondents is that the applicant has been informed well in advance on his representation dated 14.4.1988 by a memo. dated 19.4.1988 that he is being tried by rules for a work charged employee. The disciplinary rules regarding the work-charged employee state that the entire procedure laid down in the CCS(CCA) Rules, 1965 should be followed while initiating the disciplinary proceedings against the accused employee on the work-charged establishment without quoting any reference to these rules as the CCS(CCA) Rules do not apply to the work-charged staff. Para.20.03 lays down the procedure for taking disciplinary action against members of the work-charged staff suspected of offences is prescribed in the CPWD Manual, Vol.3, a copy of the same is annexed by the respondents to the counter as Annexure R-13. This contention of the learned counsel for the applicant ^{re-}inforced by the above authorities, have no weight because the applicant, before the enquiry commenced, was specifically informed that the principles of natural justice shall be duly complied with on the lines indicated in the CCS(CCA) Rules, 1965. In fact, what is to be seen

is whether the principles of natural justice, i.e., giving the fullest opportunity to the applicant to put up his case, have been followed or not. A perusal of the proceedings of the enquiry goes to show that at every stage the applicant has made certain well-drafted representations and also numbered them and those representations have been decided and orders passed by the Enquiry Officer and in some cases, by the disciplinary authority. It goes to show that at every stage of the pending enquiry proceedings, the applicant has been duly heard and his grievance in any respect whatsoever was met by giving a reasoned order. We have also seen the file of the departmental proceedings and are satisfied that in the absence of any specific rules on the subject of holding the departmental enquiry, there has been no violation of the well laid principles of audi alter partem. If the contention of the learned counsel for the applicant is accepted as such, then any person belonging to the class to which he belongs, i.e., an employee of President's Gardens Establishment, can never be proceeded against for any indiscipline or misconduct which may arise in the course of his employment. The notification issued by the President, excluding the C.C.S. (CCA) Rules on application to the work-charged employees of the President's Gardens Establishment, cannot be a permanent bar in holding departmental proceedings

against the delinquent employee. That notification does not amount to excluding such employees being departmentally tried. The main purpose to exclude the work-charged employees, appears to be that they are not on the permanent establishment as temporary or permanent Government employees and their emoluments are paid on the basis of work charged. Thus, in the absence of any specific rules or administrative instructions, it cannot be said that the applicant has in any way been prejudiced in the departmental enquiry.

4. The next contention of the learned counsel for the applicant is that the charge served on the applicant is vague and lacks material particulars. The charge against the applicant is that during the period March, 1987 to January, 1988, he refused to perform the duties of a Mali assigned to him, or did not perform them at all. As such, he is guilty of disobedience of orders, dereliction of duties, and negligence amounting to misconduct. It is, therefore, argued that the applicant, who is a work-charged employee, was per force to meet the aforesaid vague charge, which did not specify the details as to what particular work which was assigned by his superior officers from time to time, was not done. The learned counsel has also supported the contention by the authority of Shri Surat

Chand Chakravarty Vs. State of West Bengal reported in AIR 1971 SC 752. Their Lordships held that if a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him. The learned counsel has also referred to the authorities of Tribhuvan Nath Pandey Vs. Union of India, A.I.R. 1953, Nagpur, 138, where the High Court held that vagueness in the charge is not excused on the plea that the worker concerned should be deemed to have known the facts or the same has come out through the deposition of the witnesses ultimately. The emphasis of the learned counsel has been on the fact that the Enquiry Officer has repelled this contention on the ground that by the deposition of all the witnesses, defence as well as prosecution, the contention is repelled. Another authority relied upon by the learned counsel is A.L. Kalra Vs. P&E Corporation of India Ltd., 1984 Lab. I.C. (SC) 961 where the Hon'ble Supreme Court observed that it is obligatory on the employer to specify with precision and accuracy the charge so that any acts post facto incorporation of some incident, may not be camouflaged as misconduct. The learned counsel has also referred to the authority of State of U.P. Vs. Mohd. Sharif 1982 (2) SCC 376. In that

99

case, the Hon'ble Supreme Court held that when the particulars with regard to date and time of the incident were not given out and even the location of the incident was not indicated in the vast forest with sufficient particulars, the plaintiff was obviously prejudiced in the matter of his defence at the enquiry. From the above cited law as well as the other authorities relied upon by the learned counsel, that on the principles of natural justice the employer has to give and furnish the statement of allegations giving necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. However, none of the authorities relied by the learned counsel has any application to the present case when the statement of imputation of misconduct of misbehaviour in support of the Article Charge, has been enclosed as Annexure II to the Article of Charge. A perusal of the Annexure II at page 86 of the paper-book shows that the applicant has been duly informed of the time and date when he refused to do work or disobeyed the orders of his superior officers. There are reports dated 13.3.1987, 15.4.1987, 20.4.1987, 22.4.1987, 16.6.1987, 22.6.1987, 23.7.1987, 15.7.1987, 21.8.1987, 2.1.1988, 7.1.1988 and 11.1.1988, which go to show that the applicant did not attend to the

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work of Mali which was a part of his duty and there is also a mention of certain memos. issued to the applicant to some of which he had also replied. When the imputation of misconduct of misbehaviour is a detailed one, running into 4 foolscap pages in 19 paragraphs, it cannot be accepted that the applicant was unaware or was misled by the charge framed against him regarding disobedience of the orders, dereliction of duties and negligence in performance of the work of Mali on the dates specified in the said imputation of misconduct. In fact, a charge is an accusation giving the charged official the facts which renders him liable for disciplinary action on account of certain acts of omission and commission. The authorities cited by the learned counsel for the applicant, therefore, are not at all relevant and are out of context in the facts and circumstances of the present case.

5. The learned counsel for the applicant also challenged the initiation of proceedings against him stating that all these were motivated at the instance of Garden Supdt., Shri S.K. Mathur. The said Shri Mathur was neither the disciplinary authority of the applicant, nor was the appointing authority. He has also not been impleaded as a respondent in this case. The applicant had the apprehension that the enquiry proceedings were instituted with

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a view to removing him from service. But, his apprehension cannot at all be gathered from the circumstances of the case. If a superior officer pulls up someone working under him, it does not mean that such a superior officer harbours a grudge and intends to wreak vendetta. The contention of the learned counsel is that the applicant has brought to light certain misdeeds and abuse of power of the staff and officers in the Garden Establishment and the Secretariat and the applicant was, therefore, was found as an inconvenient obstacle in their way. We have gone through the statement of witnesses examined by the parties in the departmental proceedings. Certain insinuations have been made against Shri Mathur, but, in fact, as the imputation of misconduct goes to show, it was not the one supervisory officer of the applicant, but a number of them under whom he worked, i.e., Shri Nathi, Chaudhary, Shri N.R. Yadav, S.O., Head Collector Shri Dev Karan, Chaudhary, Shri Bundu Chaudhary, Shri Ram Prasad Chaudhary, and Shri Tulsi Chaudhary have made in writing reports against the applicant for not performing the duties and for taking suitable disciplinary action. Shri S.K. Mathur as Supdt.(Gardens) in fact, has to bear the brunt of the applicant by issuing him memos. and also warning him to perform the work assigned to him as Mali. Thus, it cannot be said that initiation of disciplinary proceedings are motivated ones or they have been alleged

with mala fide intentions. The Enquiry Officer in this case is a senior Class I officer of IAAS.

6. The learned counsel for the applicant also assailed the proceedings before the Enquiry Officer to the extent that he was not provided with the services of a lawyer while the Presenting Officer was a legally trained person. The learned counsel has referred to the authority of State of Andhra Pradesh Vs. Mohd. Sarwar, 1971 (1) SLR 507. Their Lordships had held that the question of granting or refusing to grant permission to engage a lawyer is in the discretion of the Enquiry Officer, but this discretion has got to be exercised judiciously and not in a capricious manner. In the circumstances of that case, it was held that there was no proper exercise of discretion and as such, the delinquent was handicapped in effective cross-examination of the prosecution of the witnesses. The learned counsel has also referred to the case of C.L. Subramanian Vs. Collector of Customs, Cochin, 1972 (3) SCC 542. In this case also, the applicant was pitted against the trained Prosecutor. It was taken to be a good ground to allow the delinquent to engage a legal practitioner to defend himself and it was held that the authority clearly failed to exercise the power conferred on it under the rules. Reliance has also been placed on the Board of

32A

Trustees of the Port of Bombay Vs. Dilip Kumar Raghavindra Nath Nadkarni and Ors. reported in 1983(1) SCC 124. In this case also, the delinquent was pitted against the two legal minds. In view of this fact, it was held that the delinquent was denied a reasonable opportunity to defend himself. A similar view was taken in the case of Shri J.K. Aggarwal Vs. Haryana State Development Corporation Ltd. and Others, 1991 (2) SCC 283. In this case, the Presenting Officer was a Legal Adviser and it was observed that the combat being unequal and entailing miscarriage or failure of justice and denial of a reasonable and real opportunity for defence. The position of law is quite specific that in a case where the Presenting Officer is a Legal Adviser or expert in legal affairs, or a lawyer, then the delinquent also should be provided with the services of a lawyer to meet his defence. In the present case, the Presenting Officer, on behalf of the Administration, was not a lawyer. The Presenting Officer, Shri R.S. Bhandari, is S.O. (Admn.) and as such, he cannot be equated with a lawyer. The defence of the applicant was presented by an equally senior Central Government employee, Dr. R.A. Darbari. During the course of the arguments, the learned counsel for the respondents has highlighted that Dr. Darbari has also acted as a Defence Assistant earlier. While going through the proceedings of the enquiry, the various

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37

petitions or interlocutory applications filed before the Enquiry Officer and the mode and manner of cross-examination of the witnesses conducted by the Defence Assistant itself goes to show that Dr. Darbari has done full justice with his overall experience and intelligence and was an equal match in every respect to a Section Officer, Shri Bhandari, who belongs to the ministerial staff. The authorities relied upon by the learned counsel for the applicant, therefore, are totally different and do not fit in with the particular circumstances of this case. The Hon'ble Supreme Court considered the similar situation in the case of State of Rajasthan Vs. S.K. Dutt Sharma reported in 1993, Vol.I, ATJ 565. Shri S.K. Dutt Sharma was a Member of the Rajasthan Administrative Service and a disciplinary enquiry proceeded against him and he was removed from service by an order of the disciplinary authority dated 21.9.1978. The delinquent officer preferred a writ petition before the Hon'ble High Court and the learned Single Judge dismissed the same, but the Division Bench on appeal, set aside the judgement of the Single Judge as well as the order of removal from service. The Hon'ble Supreme Court, on appeal by the State of Rajasthan, restored the judgement of the Single Judge upholding the order of removal from

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service. One of the grounds taken by the Division Bench in that case was that the delinquent was not permitted to engage a Legal Practitioner to represent him during the course of the enquiry though the departmental nominee was a person in the rank of Deputy Supdt. of Police in the Anti-Corruption Department. In that case, the view prevailed that the learned Single Judge was that the Defence Assistant was Shri Malik, who had remained Prosecuting Inspector for a number of years. At the time when the enquiry was held, Mr. Malik was holding the post of Dy. Supdt. of Police. In such circumstances, the request of the delinquent for engaging a lawyer was declined. In the present case, the misconduct against the applicant has been that he did not perform his duties assigned to him and there were complaints by the superior staff under whom the applicant worked. There was no specific legal question involved which required the services of a lawyer, except that the Defence Assistant should be versed in the art of eliciting truth from the witnesses examined by the Administration while cross-examining them. The departmental enquiry file shows, as well as the Annexures of the statement of the prosecution witnesses filed by the applicant, that Dr. Darbari knew very well the art of cross-examination. In view of this fact, after the consideration of the facts and circumstances of the case

28

and the law on the point, we do not find that the Enquiry Officer has not exercised his discretion fairly and judiciously in disallowing the applicant the services of a lawyer.

7. The contention of the learned counsel for the applicant is that the documents--which were required by the applicant in his defence, were not allowed to be produced except the four documents. The contention of the learned counsel for the respondents is that the documents mentioned by the applicant were not considered relevant to the enquiry by the enquiring authority. We have considered this aspect in greater detail. The learned counsel for the applicant emphasised that the daily work distribution register which was one of the documents desired by the applicant to be produced was necessary to show as to what type of work was assigned to the applicant throughout his posting in the President's Gardens Establishment. This register, according to the Counsel, was material to show that during the period in question, the output of the work done by the applicant to falsify the complaint made against him. In this context, the details of the documents desired by the applicant have been perused by us. Most of the documents pertain to certain files maintained in the Garden Establishment and by those files, the applicant wanted to show that he maintained some of those files, and that he was assigned

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230

technical and allied duties in the Gardens Establishment. Also, certain memos. dated 16.9.1985, 13.5.1986 and 8.2.86 and the representations submitted by the applicant, were also desired to be summoned to show that the Supdt. (Garden), Shri S.K. Mathur, had a strong determination to malafide initiate action against the applicant. The applicant also desired to summon some files pertaining to elections and the applicant as a member of the Staff Counsel. The applicant has also summoned certain receipts of Garden produce received from the President's retreat from various places, Simla, Hyderabad, etc. He also wanted to summon certain log-books of car/scooter of the Supdt. (Gardens) from 1975 onwards to show that these are fraudulent documents. Considering all these aspects and the circumstances of the case, and the charges the applicant was to meet, go to show that the Enquiry Officer has exercised his discretion fairly and in a judicious manner. It is to be considered by the Enquiry Officer whether the documents or witnesses desired by the delinquent in his defence are relevant only to the extent of rebutting the allegations levelled against him in the charge. The charge in this case has been that the applicant on various occasions in a particular period either did not perform the work assigned to him or refused to do so. There was a complaint in this regard of the supervisory staff. The complaints are

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dated 13.3.1987, 31.3.1987, 6.4.1987, 22.4.1987, 16.6.1987, 6.5.1987, 3.7.1987, and 2.1.1988. In all these complaints, made by the supervisory staff, there is a mention of the fact that the applicant did not perform the work or he refused to do it. The documents summoned by the applicant, therefore, in no way can be said to be material to falsify these complaints made on a particular occasion, when the applicant did not discharge his duties as Mali to the satisfaction of the supervisory staff under whom he was posted. Similarly, the applicant has given a list of 44 witnesses to be examined as defence witnesses out of which 15 witnesses were allowed to be examined, taking into account the relevance of the deposition of these witnesses to substantiate the defence taken by the applicant.

8. We have also considered the non-furnishing of documents to the applicant from the point of view whether he has been prejudiced. In fact, the documents which are relied upon by the Department, are annexed with the memo. of article of charges. The applicant has no grievance with regard to any such documents. The applicant wanted certain documents from the respondents in order to rebut the charges. It is not the case of the applicant that he has been prejudiced in cross-examining the witnesses examined by the Department. In fact, the line of cross-examination adopted by the Defence Assistant invariably

98 /

goes to show that all sorts of questions have been put and the cross-examination runs into a good number of foolscap pages and is an exhaustive one. It cannot, therefore, be said that non-furnishing of a number of documents has resulted in any prejudice to the applicant. The main document referred to in the ground 6 of the grounds taken by the applicant to challenge the impugned order, is the Daily Work Distribution Register and this register, according to the respondents, is not maintained. In fact, the history of the case of the applicant also is relevant in this regard. The applicant in his application, has admitted that when the file on 5th November, 1986 - OA-961/86 - challenging the arbitrary denial of his appointment to the post of an LDC on the ground that the services of the applicant were throughout utilised by the Secretariat for clerical and supervisory work and he deserved to be promoted to the said post and was never paid the salary of LDC, only then he had been denied by the Garden Supdt. the handling of Register, file or any other official documents, or doing of a clerical work and was exclusively put on the plant protection operations. When he objected to that on the ground that he had not been provided with protective gears and also was not being paid risk allowance, he was shifted to do another work of digging the parched land lying unclaimed in the extreme South-West for the last

two decades. Thus, on the overall analysis, it appears that the applicant, who was doing earlier clerical or supervisory work, was put to hard task and which the applicant, as alleged, either could not do or refused to do and there were complaints against him of dereliction of duty. The said register of allotment or assignment of work to the Malis, therefore, cannot be taken to justify the defence desired to be put by the applicant that he never refrained from doing the work. In the application, there is a direct averment about the work assigned to the applicant and his inability to perform the work because of not having been provided with proper safeguards or implements, etc. In any case, the Enquiry Officer has got the tacit power to find out which of the documents is necessary, but that exercise of power should be judicious. We find that the Enquiry Officer has not at all erred in that respect. Similarly, regarding the non-summoning of a number of defence witnesses by the Enquiry Officer, has not prejudiced the case of the applicant. It is the quality of the evidence and not the quantity which is to be appreciated and judged for establishing a relevant fact. In a departmental enquiry, it is for the Administration to discharge the burden of establishing

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the guilt of the delinquent on the basis of proving by cogent evidence the misconduct alleged against him. The defence evidence is only to create a doubt. As many as 15 defence witnesses have been examined. Thus, we do not find fault with the procedure adopted by the Enquiry Officer.

9. The learned counsel has laid much emphasis on the delay in the enquiry itself and also in passing the final order by the disciplinary authority. Firstly, on this account, no prejudice has been caused to the applicant. The respondents have explained the delay on account of the fact that the Enquiry Officer was engaged with other important work also. He is a senior officer in the President's Secretariat. Looking at the voluminous evidence which gathered size during the course of the enquiry and the lengthy cross-examination of a number of witnesses examined, the delay cannot be said to be of any oblique motive. The applicant cannot get any benefit by the delay so caused when there is a clear finding of the charge having been established against him. The applicant was free to approach the Tribunal and, in fact, he has done so for expeditious conclusion of the enquiry proceedings. Thus, on account of delay, the enquiry proceedings cannot be vitiated.

10. The learned counsel for the applicant also argued that the appreciation done by the Enquiry Officer of the documents produced by the Department, is illogical and the finding given by him is perverse. In fact, the learned counsel argued that this is a case of no evidence. We have gone through the whole of the enquiry proceedings as well as the witnesses examined by both the parties before the Enquiry Officer. By any stretch of arguments, it cannot be said that this is a case of no evidence. The witnesses examined by the prosecution are Section Officers, Chowdharies, and Senior Malis and all of them have stated about the conduct of the applicant in refusing ~~the~~ to do the work assigned to him. That is substantiated by the complaints made against the applicant by the supervisory staff. The complaints have been made constantly, as referred to above in the earlier part of the judgement. The author of those complaints have also been examined and the applicant has also cross-examined them. He has also examined the defence witnesses to highlight his defence and to establish that the complaints were got manufactured at the instance of Shri S.K. Mathur, Garden Supdt. The Enquiry Officer, who is a Class I senior officer and cannot be said to be under the thumb of Garden Supdt., has analysed and appreciated the rival contentions brought forth in the evidence and gave his findings. The findings are well-reasoned and as argued by the learned counsel, is not projection of the brief

of the Presenting Officer. Thus, the findings cannot be said to be, in any way, perverse, nor can it be said to be a case of no evidence. Moreover, this Tribunal cannot sit as an appellate authority to reappreciate the oral or documentary evidence in the departmental proceedings and the law is well settled on that point.

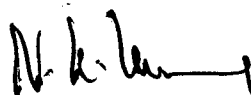
11. The learned counsel for the applicant also argued about the quantum of sentence imposed on the applicant. Passing of a punishment in departmental proceedings, cannot be the subject of judicial review, particularly in the case of the present nature, when it has been established that the applicant repeatedly refused to perform the duties assigned to him in the course of his employment and also incited other Malis to create indiscipline. It is the sole prerogative of the disciplinary authority to determine the quantum of punishment in the circumstances of the case.


12. The learned counsel for the applicant also argued that the enquiry against the applicant is vitiated on the ground that there are no recruitment rules to provide an administrative appeal against the order of the disciplinary authority. The applicant was informed at the time of initiation of the departmental enquiry that the enquiry

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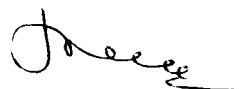
shall proceed on the analogy of CCS(CCA) Rules, 1965 as there are no separate rules to initiate disciplinary proceedings for the work charged employee in the President's Garden. CPWD Manual, Vol.III contains the Disciplinary Proceedings Rules for the work-charged employees and lays down that such employees should be tried on the analogy of CCS(CCA) Rules, 1965 without quoting any reference to these rules. It is, therefore, clear that the applicant can prefer an appeal to the Secretary to the President, who is the Head of the Department, for the appropriate relief. In any case, the applicant was not denied and, in fact, had a remedy of preferring a representation against the order by which he is aggrieved. It is evident from the averment in the application itself that the applicant had preferred an appeal against his suspension order. So, he could have also preferred an appeal to the Secretary to the President. If he ~~is~~ has not done so, he cannot complain that there was no departmental remedy or appeal, although it is not expressly provided anywhere. Thus, the contention of the learned counsel that the disciplinary enquiry is vitiated on account of the absence of the provision of appeal against the punishment order, has no substance.

13. Having given a careful consideration to the various averments made in the application and arguments advanced during the course of the hearing, keeping in view the circumstances of the case, the impugned order of punishment does not call for any interference and the original application is, therefore, dismissed, leaving the parties to bear their own costs. The interim order dated 21.10.92 regarding non-vacation of the Quarter No.12/35, Schedule 'B', President's Estate, is hereby vacated. No cost.


(N.K. Verma)
Member (A)


30.8.92
(J.P. Sharma)
Member (J)

Pronounced by me.


(J.P. Sharma)
Member (J).