

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,**

**ALLAHABAD**

**ORIGINAL APPLICATION NO. 884/1998**

THIS THE 25<sup>th</sup> DAY OF APRIL, 2006

**HON'BLE JUSTICE SHRI KHEM KARAN, VICE CHAIRMAN**  
**HON'BLE SHRI A.K. SINGH, MEMBER (A)**

G.P. Yadav a/a 45 years son of Sri Rameshwar Prasad Yadav  
posted in Store Section Field Gun Factory, Kanpur.

...Applicant

By Advocate: Shri Amit Shukla

**Versus**

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Dy. Director General, Ordnance Factory Board, 10-A, Shahid K. Bose Road, Calcutta.
3. The General Manager, Field Gun Factory, Kanpur.
4. The Ordnance Factory Board, 10-A Shaheed K. Bose Road, Calcutta through its Chairman.
5. The Director General, Ordnance Factories Board, 10-A Shaheed K. Bose Road, Calcutta.

...Respondents

By Advocate: Shri A. Mohiley

**ORDER**

**BY HON'BLE SHRI A.K. SINGH, MEMBER (A)**

O.A. No. 884 of 1998 has been filed by the applicant G.P. Yadav (of the address given in the O.A.) against the order No.1591 /2857/A/ BIG dated 19<sup>th</sup> June, 1998 passed by Dy. Director General, Ordnance Factory Board (who is respondent No.2 in the O.A.) upholding punishment of withholding three increments of the applicant for three years with cumulative effect.

2. Brief facts of the case are that applicant joined service as a Supervisor Grade 'A' as Direct recruit on 2.1.1976 in Small Arms Factory, Kanpur. He was subsequently promoted as Chargeman Grade II in 1980 and Chargeman Grade 'I' -cum -Assistant Store Holder in 1984 in the same factory at Kanpur. During his posing as

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Asstt. Store Holder in this factory, a theft of some goods was detected in Tool 'A' go down of the factory located in GS/II.

3. The Management of the factory immediately constituted a board of Inquiry consisting of Shri Rajeev Agarwal, Works Manager and Shri B.K. Gayen Foreman GS/I. The Board of Enquiry submitted their report in the matter which, according to the applicant, did not contain anything adverse against him. As the Ordnance Factory Board was not satisfied with the inquiry report in question, they appointed another high powered Board of enquiry by an order dated 11.11.1988 with Shri A.K. Rastogi as Joint General Manager, Shri A.K. Sodhi, Joint General and Shri A.N. Singh, Accounts officer as members of the same.

4. The Board of Enquiry submitted their report in the matter in which they held one Shri Sainger, Supervisor B/Store along with store holder responsible for the loss of goods in question. It also ratified the findings of the earlier Board of enquiry appointed by the General Manager. However, it also held the applicant guilty of lapses in as much as he failed to carry out the stock verification of the goods lost as a result of theft.

5. As per findings of the aforesaid Board of Enquiry, a Memorandum of charges dated 19.7.1989 was issued to the applicant containing, in brief, the following charges:-

" i) **Articles of Charge I**

Gross misconduct, negligent in proper discharge of duty.

ii) **Article of charge II**

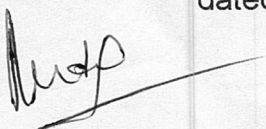
Conduct unbecoming of a Government servant and failure to maintain devotion to duty in violation of Rule 3 (i) (ii) of CCS (Conduct) Rules 1964 ..."

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The applicant was also placed under suspension vide order dated 17.12.1988.

6. On denial of charges by the applicant, Shri A.K.Singh, Dy. General Manager, Field Gun Factory, Kanpur was appointed as Enquiry officer. On conclusion of enquiry proceedings, the enquiry officer submitted his report dated 29.8.1990 to the disciplinary authority. But according to the applicant, the Disciplinary Authority chose to issue an order dated 28.1.1991 in contravention of Rule 15 of the CS (CCA) Rules wherein he directed the enquiry officer to conduct Denovo enquiry in the same matter. Accordingly, General Manager, Field Gun Factory, Kanpur, who is respondent No.3 in the O.A., issued a letter to the applicant informing him of the decision of the Disciplinary Authority that a Denovo enquiry by Shri A.K.Singh, Enquiry Officer shall be conducted again. On demand from Respondent No.3 for a copy of the order, issued by the Board directing the aforesaid Denovo Enquiry, the same was denied to the applicant on the ground that order, in question, was strictly confidential and hence could not be supplied to him. On conclusion of the denovo enquiry, the two charges levelled against the applicant as referred to above, were also held as proved by the Enquiry officer. A copy of the aforesaid enquiry report was also furnished to the applicant by the Disciplinary Authority for submission of his written representation in defence. The applicant accordingly submitted his objections against the enquiry report in question. But the Disciplinary Authority namely Respondent No.2, did not consider his objection and agreed with the findings of the enquiry Officer and after a lapse of four years, decided to impose the penalty of withholding three increments of the applicant for three years with cumulative effect vide order No.1591/2857/A/BIG dated 19<sup>th</sup> June, 1998.

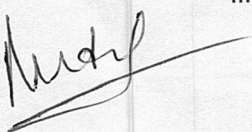


7. Being aggrieved by the aforesaid order of penalty, the applicant has filed the O.A., in question, before us, under Section 19 of the Administrative Tribunals Act, 1985, on the following main grounds:-

- a) That order dated 28.1.1991 of Disciplinary Authority for denovo proceedings after receipt of the first enquiry report of the Enquiry Officer, is clearly malafide and illegal and is also not permissible under Rule 15 (1) of the CCA (CCS) Rules 1965;
- (b) That the case of the applicant was highly prejudiced on account of non furnishing of Board of Inquiry report dated 25.5.1998 which was an important document relied upon in support of the charges;
- c) The view taken by the Disciplinary Authority while recording his note of dissent dated 11.12.1997 is perverse and hence an order passed on that basis is clearly untenable in law;
- d) That the order in question is also based on conjectures and surmises and that no person of ordinary prudence could have ever come to the conclusion that the applicant was in any way guilty of any misconduct.
- e) There is nothing on record to suggest that the applicant was guilty of any misconduct. The entire proceedings as well as the impugned order of punishment, on conclusion of the proceedings, deserves to be quashed and set aside.

On the basis of the above, applicant prays for the following relief(s) in the O.A.:-

- i) To quash the impugned order of punishment dated 19.6.1998 as well as entire enquiry proceedings as wholly illegal and contrary to law laid down in this behalf

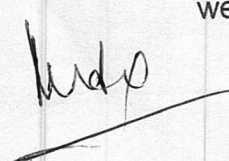




- ii) To quash the entire proceedings as well as the order dated 28.1.1991 and 26.3.1991 passed by the Disciplinary Authority directing denovo enquiry after receiving the first enquiry report;
- iii) To issue Memorandum to the Respondents with direction to give all consequential benefits;
- iv) To issue any other order or direction which the Tribunal deemed fit and proper in the circumstances of the case.

8. Respondents have opposed the Original Application in question on the following grounds:-

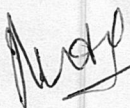
- i) The applicant while working as Assistant Store Holder in Stores Section of the Factory was responsible as one of Supervisory Officers Incharge of 5 go downs viz Tool 'A', Tool 'B', M/c Spares, OPC and component, as per duty chart vide SH (Stores) Note No. SH/S/06/86 dated 23.10.1986 and AWM's R. Note No. 1/86 dated 21.10.1986. It was clearly mentioned in the note that the applicant will be directly responsible for clearance of receipt/issue vouchers, D/R notes, and all correspondences pertaining to the above go downs, 'submission of increase/ decrease of items to SV group, economy report and P&P and E.O.. He was also supposed to perform other duties entrusted to him by his superiors. He was also supposed to man the above go downs with the help of Shri Jangoo Prasad, Supervisor 'A'.
- ii) That the Tool 'A' go down of Stores Section was being looked after by Sri R.V. S. Sengar, Supervisor 'B' (Stores) under the direct control of the applicant.
- iii) That on 23.5.1988, a theft was detected in Tool 'A' go down of the factory located in Gun shop II wherein i) 80 items were found short, (ii) 15 items were found in excess, (iii) 14



items were found without folio numbers and (iv) Bin Cards in respect of 10 items were found missing.

- iv) The applicant was accordingly responsible for proper functioning of the Tool 'A' go down and to ensure that there was no irregularity in the matters connected with documentation or physical availability of goods in question in the aforesaid godown.
- v) A Board of Enquiry was constituted by the General Manager, Field Gun Factory, Kanpur vide order No.1563/20/88/BOI/VIG dated 25.5.1998 to enquire into the aforesaid incident of theft in Tool 'A' go down. The applicant deposed before the Board of Enquiry, as per his statement dated 14.6.1988, that he had checked the documentation etc. in the above go down during the period from February, 1988 to May, 1988 and had found the same in order. The Store Holder (Stores) Shri R.V.S. Sengar had also stated before the Board of Inquiry, as per his statement dated 14.6.1988 that verification of stock of the goods in the go down was to be carried out by the Superior Officers from time to time. The applicant also stated before the Board of Inquiry that after he went on leave he had handed over the charge of Tool 'A' go down to Shri R.V.S. Sengar, Supervisor 'B' (Stores) in February, 1988 and thereafter no verification of stock was done in Tool 'A' go down.

9. The Board of enquiry appointed on 25.5.1988 also found a number of discrepancies in the items physically available and the quantity shown in the Bin Cards. This was clearly suggestive of the fact that documentation in respect of aforesaid goods in the godown was not being properly maintained. Deficiency in the quantity of goods could have been found out if the documents were



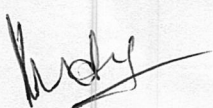


kept in order as it was only on this basis that entries in the record could be cross verified with the actual presence of the goods in a godown.

10. Subsequently when another Board of Enquiry was appointed by Respondent No. 2, the Second Board of Inquiry ratified all the findings of the Board of the earlier Board of Inquiry. However, in their final enquiry report the second Board of Enquiry recorded certain lapses on the part of the applicant also. The same are reproduced below:-

- (i) The applicant failed to carry out the departmental stock verification of the attractive and pilferable items of the godown.
- (ii) He also failed in exercising proper control over the functioning of Tool 'A' godown
- (iii) He also failed, along with others, to get a surprise check conducted in the aforesaid godown during the month of February, 1988.

11. The collective value of the goods lost, as a result of theft in the godown was estimated at Rs. 7 lakhs by both the Boards of Enquiry. In view of these serious irregularities and that the applicant was clearly negligent in proper discharge of his duties, in as much as he failed to carry out verification and check of the goods deposited in the godown vis-a vis the entries made in the relevant records, for a period of these months, the applicant was suspended from duty w.e.f. 17.12.1988 by the Respondent No.3 i.e. General Manager, Field Gun Factory Kanpur as per order No.1562/200/88/GPY dated 17.12.1988 and a memorandum of charge sheet, based on the findings of the aforesaid Boards of Enquiry, was issued to the applicant vide 1562/200/88/GPY VIG dated 19.7.1989 under orders from the Disciplinary Authority i.e.



Dy. Director General Ordnance Factory Board, Calcutta. The applicant denied the charges levelled against him in the charge sheet as per his written defence statement dated 28.7.1989. Hence a Court of Enquiry consisting of Shri A.K.Singh, the then Dy. General Manager of the factory was appointed, Dy. Director General, Ordnance Factories Board, Calcutta a per his order No. 1562/200/88/GPY/ Vig. dated 13.9.1989 who was the Disciplinary Authority of the applicant in this case.

12. On conclusion of the enquiry proceedings, as per prescribed procedure, the enquiry officer submitted his report vide DGM (Maint) /FGK/90-91/COI / dated 22.5.1990 in which he held both the charges levelled against the applicant, in the charge sheet, as proved.

13. On examination of the report in question, the Disciplinary Authority noticed a lacuna in this report. The enquiry Officer was required to obtain a final defence statement from the applicant. The rules provides that in case the applicant did not want to examine himself as a witness, the enquiry officer was legally bound to question the applicant on the facts and circumstances of the case, which were appearing against the applicant on record before arriving at a just and proper finding in the matter. As this had not been done and instead a brief was obtained directly from the presenting officer, the enquiry officer was directed to conduct a denovo enquiry from that stage in order to correct the legal lacunae in the enquiry report. The enquiry officer accordingly conducted the denovo inquiry proceedings and submitted a report dated 22.5.1990 to respondent No. 4 namely the Dy. Director General Ordnance Factory Board at Calcutta, i.e. disciplinary authority in this case. Respondent No. 4 on careful consideration of the enquiry report in question remitted the enquiry report back to the Inquiry

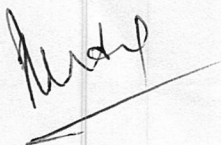
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Officer for conducting denovo proceedings and also to assess all documentary as well as oral evidences relevant to Memorandum of charges and to render his findings afresh.

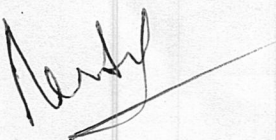
14. On completion of the proceedings, the inquiry Officer submitted his inquiry report a fresh vide his reference No. 1512/ASS dated 19.6.1992 wherein he held that none of the charges levelled in the Memorandum of charge sheet against the applicant were proved during the proceedings. The representation of the applicant, on the aforesaid enquiry report, was also sent to Disciplinary authority along with the Inquiry Report in question. The order of suspension of the applicant was accordingly revoked as per order No. 1562/200/88/GPY/VIG dated 12.11.1993 w.e.f.10.11.1993. The Disciplinary Authority however, did not agree with the findings of the Inquiry Officer on the ground that Inquiry Officer had solely relied on the statement of Shri R.M.Tewari, Store Holder and had accepted his version as gospel Truth that he and his subordinates were not aware of the departmental instructions issued in the year 1986 deferring their duties as in Charge of the aforesaid godown.

15. Disciplinary Authority did not accept this finding as the instructions in question were issued early as 1986 and copy of the same were directly endorsed by the Divisional Officer to Store holder as well as other supervisory officer in charge of the godown in question. As the applicant was working directly under the head of the godown section, namely Shri R.M. Tewari, he was also responsible for periodical stock verification of the goods in Tool 'A' godown along with Shri Tiwari who was his superior and Shri Jangoo Prasad and Shri R.V.S. Sengar who were directly working under him.



16. The Disciplinary Authority also noted that the enquiry officer had also not taken the statement of Shri Jangoo Prasad into consideration in making his report wherein he has stated that no verification of staff in Tool 'A' godown was done by the applicant. This contradicts the say of Shri R. M. Tewari that he along with the applicant had conducted random checks of the goods in the Tool 'A' go down between February 1988 to 18.4.88. Accordingly, disciplinary authority rejected the findings of the enquiry officer exonerating the applicant from all the charges levelled against him in the memorandum of the charge sheet dated 19.7.89 on the basis of the findings arrived at by him on independent appraisal of evidences on record. The applicant was served with a copy of the dissenting note of the disciplinary authority and was also directed to submit his representation against the same within 15 days of receipt of the aforesaid communication dated 29.12.1997. The applicant submitted his representation dated 13.1.1998 which was considered by the disciplinary authority i.e. the Ordnance Factories Board at Calcutta. The Disciplinary Authority on finding the applicant guilty of lapses recorded in memorandum of charges decided to impose the penalty of withholding of three increments of the applicant for three years with cumulative effect, when next due, with the stipulation that the petitioner will not earn any increments during the period of penalty and on expiry of the period, the penalty in question will also have the effect of postponing his future increments of pay vide order No. 1591/2857/A/VIG dated 19.6.1998. The order of the disciplinary authority was accordingly served on the applicant.

17. Respondents also submit that applicant without exhausting the departmental remedies available to him by way of appeal /revision etc. has chosen to file the present O.A. Hence the same is also liable





to be dismissed as per Section 20 (1) of the Administrative Tribunal Act 1985.

18. As the applicant consequently has no case on merits. Respondent pray for dismissal of the O.A. in question.

19. Applicants and respondents were also heard in person through their respective counsel on <sup>28<sup>th</sup></sup> 03.2006. In their oral submissions both sides reiterated the same arguments and submissions as discussed above.

20. We have given our anxious consideration to the submissions made by the learned counsels, on behalf of both, the applicants as well as respondents and have also perused the records. We find that as per law enunciated by the apex Court, the jurisdiction of the Tribunal to interfere with the Disciplinary matters of punishment cannot be equated with an appellate jurisdiction. In the case of **Shri Parma Nanda vs. State of Haryana and others (Reported in 1989 (2) SCC 177)** the apex court held that Tribunal could exercise only such powers which the Civil Courts or the High Courts could have exercised by way of judicial review. The apex court also held that the Tribunal cannot interfere with the findings of the Inquiry Officer or the competent authority where they are not arbitrary or utterly perverse. The adequacy of penalty, unless it is malafide, is certainly not a matter for the Tribunal to concern itself 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. In the case of **State Bank of India Vs. Somanendra Kishore Endow (Reported in 1994 (1) SLR 516)**, the Supreme Court held that a High Court or Tribunal has no power

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to substitute its own discretion for that of the authority. However, in the case of **Union Bank of India Vs. Tulsiram Patel (reported in AIR 1585 SC 1416)** , the Apex Court , held that the Court can interfere where penalty imposed is "arbitrary, or grossly excessive or out of all proportions to the offence committed or not warranted by the facts and circumstances of the case, or the requirements of that particular government service."

21. Through a series of pronouncement ,the apex court has laid down these important principles on the basis of which an administrative action can be brought within the purview of judicial review:-

- 1) That the, order in question, has not been passed in accordance with law enacted by the legislature or as laid down by a competent court;
- 2) That the order in question is unreasonable i.e. to a decision taken is so outrageous in its defence of logic or of accepted moral standards that no sensible person, who had applied his mind to the question to be decided, could have arrived at the same conclusion. In the case of **Associated Provincial Picture Houses Limited Versus Wednesbury Corporation (Reported as per (948) 1 KB 223)**, the Kings bench had observed that judicial review is permissible only where the court finds that no authority acting reasonably could have arrived at such an administrative decision on the basis of facts and the circumstances of a particular case i.e. today if the authority takes a decision on the basis of some materials which a reasonable person could have taken for consideration in that case, judicial review is not permissible . On the other hand if the decision is based on legitimate reasons and is actuated by bad faith observed the Kings

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bench, then judicial interference would be the proper remedy to undo the wrong. Sir William Wade in his book Administrative Law (Seventh Edition at page 339) sapiently observed that :

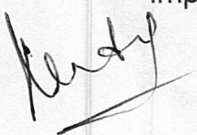
"The doctrine that powers must be exercised reasonably has to be reconciled with no less important doctrine that the court must not usurp the discretion of the Public Authority which Parliament appointed to take decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion . If it surpasses those bounds, it acts ultra-vires. The Court must, therefore, resist the temptation to draw the bounds too tightly merely according to its own opinion.

.....If the decision is within the confines of reasonableness, it is no part of the court's functions to look further into its merits.

The same principles have been initiated by the Hon'ble Supreme Court in the case of **G.B. Mahajan Vs. Jalgaon Municipal Council (reported in AIR 1991 SC 15153 and Tata Cellular Vs. Union of India (reported in AIR 1996 SC 11)**

- (iii) The third ground on the basis of which an administrative decision can be brought within the preview of judicial review is 'Procedural Impropriety' i.e. if the findings or decision arrived at is in violation of the procedural requirements i.e. to say the proceedings are conducted in violation of the prescribed procedure.

22. If we apply; the above dictum to the facts of the present case , we find that it is not the case of the applicant that the order of punishment passed in the case is not in accordance with the provisions of law. Applicant has not raised any objection on this point i.e. tht the impugned order of punishment has not been passed by an authority



who is not competent to do so. There is also no dispute on the point that the impugned order is covered by the statute provisions.

23. However, the applicant has made the allegation of unreasonableness in passing the impugned order. He also alleged procedural impropriety in doing so.

24. The fundamental principles of holding an enquiry under rule (1) of CCS (CCA) rules 1965 as well as the dictum enunciated by the Apex Court can be reproduced as under:-

1. The enquiry in its true nature is quasi judicial. It is manifest from the very nature of the enquiry that the approached to the material placed before the enquiring body should be judicial.

**(Jaganath Prasad Sharma Vs. State of U.P. (1962) 1 SLR 151)**

2. Principles of natural justice shall be fully followed. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of individual against the arbitrary procedure that may be adopted by a Judicial, Quasi-Judicial and administrative authority while making an order affecting those rights. These rules are intended to protect such authority from doing injustice.

**(Canara Bank Vs. Debasis Das (2003) 4 SCC 557 at page 570.**

3. "..... In the departmental proceedings the standard of proof is one of the preponderance of probabilities"

**(Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. (1999) 3 SC 679)**

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4. The Inquiry Authority shall not take into consideration any extraneous matters (not relevant to the proceedings in question) in arriving at the findings.

5. The Tribunal or the court will not interfere with the decision of the Disciplinary Authority if the punishment imposed is neither unreasonable nor shockingly disproportionate to the gravity of charges held as proved.

25. If we apply the above dictum to the facts of the present case, we find that none of the objections raised by the applicant stand the test of Judicial Scrutiny. Now we will like to deal with the individual objections raised by applicant one by one.

26. The first objection raised by the applicant is that order dated 28.1.91 of Disciplinary Authority for conducting denovo proceedings, after the receipt of the first enquiry report is malafide, and illegal and is not covered under Rule 15 (1) of CCS (CCA) Rules 1965.

27. We find that this objection is clearly untenable as per Rule 15 (1) of CCS (CCA) Rules 1965. Sub rule (1) of Rule 15 reads as under:-

“(1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiry Authority for further enquiry and report and the Inquiring Authority shall thereupon proceed to hold further enquiry according to the provisions of Rule 14, as the case may be.”

28. In view of crystal clear provisions of Rule 15(1), the argument advanced by the applicant that order of the Disciplinary Authority for conducting denovo enquiry is malafide and illegal ,

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does not hold water. According to Rule 15(1) of CCS (CCA) Rules, 1965, Disciplinary Authority could order denovo enquiry on grounds or reasons to be recorded in writing. In the present case, it is on record that the Disciplinary Authority, on examination of the enquiry report noticed lacunae in the enquiry report. As per Sub rule (17) of the CCS (CCA) Rules, 1965, before close of the proceedings, the delinquent public servant could examine himself as a witness On his own behalf if he so preferred and Enquiry officer was duty bound to allow him to do so. As per sub Rule (18) of Rule 14, if the delinquent employee has not preferred to examine himself as a witness, the enquiry officer was duty bound to generally question him on the circumstances appearing against him in the evidence for the purpose of enabling him to explain any circumstances appearing in the evidence against him. As this was not done and instead a brief was obtained directly from the presenting officer, the enquiry officer was correctly directed to conduct denovo enquiry proceeding in compliance to the above mentioned provisions of sub rule (17) and (18) of rule 14 of CCS (CCA) rules 1965 which is in accordance with the provisions of law as discussed above.

29. Sub rule (23) of Rule 14 also lays down certain requirements on the part of the enquiry officer before making his final report. It reads as under:

" After the conclusion of the enquiry., a report shall be prepared by the enquiry officer and it shall contain-

- a) The Articles of charge and the statements of the imputation of misconduct or misbehavior
- b) The defence of the Government Servant in respect of each article of charge
- c) An assessment of the evidence in respect of each article of charge.

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d) Findings on each article of charge and reasons therefore,"

30. It is on record, that on receipt of the final enquiry report, the deisciplinary authority noticed that enquiry officer had not complied with the requirements of sub rule (23) of Rule 14 of CCS (CCA) Rules 1965 in as much as he had not properly assessed and evaluated all the documentary and oral evidences relevant to the proceedings. Hence, Disciplinary Authority had no option except to remit the enquiry report for denovo appraisal of evidences, as required under the rules. There is consequently no illegality involved in ordering denovo enquiry stipulated in sub rule (1) of Rule 15. Moreover, the apex court in the case of K.R. Deb Vs. Collector of Central Excise Shillong (reported in 1971 SC 1447) has held that if there is some defect in the enquiry conducted by the enquiry officer, the disciplinary authority can direct the enquiry officer to conduct further enquiries in respect of that matter." To quote relevant extract of Para 13 of the aforesaid judgment.

"It seems to us that rule 15 , on the face of it really provides for one enquiry but it may be possible, if, in a particular case there has been no proper enquiry because some serious defect has kept into the enquiry or some important witnesses were not available at the time of enquiry or were not examined for some or other reason, the disciplinary authority may ask the enquiry officer to record further evidence. In the case of **Union of India and Others Vs. P. Thayagarajan (Reported in (1999) 2 SLJ 72** the Apex court held as under

"In the present case, the basis on which the disciplinary authority has set aside the enquiry is that the procedure adopted by the enquiry officer which

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was contrary to relevant rules and affects the rights of the parties and not that the report does not appeal to him when important evidence, either to be relied upon by the department or by the delinquent officer, is shut out. This would not result in advancement of any justice but on the other hand the result in a miscarriage thereof. Therefore, we are of the view that Rule 27 (C) enables the disciplinary authority to record his findings on the report and to pass an appropriate order including ordering a de novo enquiry, in a case of present nature.

31. The second objection raised by the applicant relates to non furnishing of the report of Board of enquiry to him which according to the applicant seriously prejudiced his defence as the same was relied upon in the inquiry proceedings held against him.

32. In the first place we find that respondents, in their counter affidavit, have affirmed that the relevant extract of the report of the board of enquiry was in fact made available to the applicant.

33. In the second place, the applicant has confused the distinction between the preliminary investigation conducted by the board of enquiry and the open enquiry conducted after the issue of memorandum of charge sheet. In the case of **Narayan Dattatraya Ramteerthakar Vs State of Maharashtra and Others (reported in 1997 (1) SCC 299)**, the Apex Court held:

" The preliminary enquiry has nothing to do with the enquiry conducted after issue of the charge sheet. The former action could be to find whether disciplinary enquiry should be initiated against the delinquent.

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After fullfledged enquiry was held the preliminary enquiry had lost its importance. SLP dismissed."

The Apex Court reiterated the same principles in **Vijay Kumar Nigam Vs State of Madhya Pradesh (reported in 1996 (11) SCC 599)**. In the aforesaid case Hon'ble Supreme Court held (as per para 5.11 of the judgment)

" Preliminary report is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent officer and it does not form any foundation for passing the order of dismissal against the employee." Hence non supply of the report of preliminary enquiry conducted against the delinquent officer does not violate the Principles of natural justice, as per the above dictum of the Hon'ble Supreme Court of India. On this basis, the second objection of the applicant also does not stand the test of judicial scrutiny.

The third objection raised by the applicant relates to delay in completion of disciplinary proceedings. Delay or abnormal time taken in completion of disciplinary proceedings, in itself, does not vitiate the proceedings. **In State of Punjab and Others Vs Chaman Lal Goyal (reported on 1995(2) SLJ 126 SC )** the apex court held that "quashing of proceedings on account of delay is not the only course open to the court and that in a given case, the nature of offence and other circumstances may be such that quashing of proceedings may not be in the

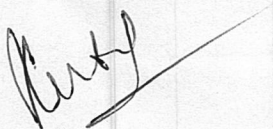
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interest of justice. In such a case ..... it is open to the court to make such other appropriate order as it finds just and equitable in the circumstances of the case...."

In the case of **B.C. Chaturvedi Vs./ Union of India (reported in JT 1995 (8) SC 65 )** the apex Court further held that delay by itself cannot be regarded as violative of article 14 or 21 of the constitution of India. To quote the relevant extract of the aforesaid judgment.

" ....In Normal circumstances and investigation would be under taken by the police to collect the entire evidence establishing the entire links between the public servants and the property or pecuniary resources. Snap of any link may prove fatal to the enquiry. Exercise of care and dexterity are necessary. Therefore, delay in itself is not fatal in these types of cases. "

34. In the present case delay has occurred as the two boards of enquiry had to be appointed for in depth of investigation of the circumstances leading to the theft of goods in such sizable quantity and value, from Tool godown I . In addition to it, Respondents were also required to fix responsibilities on the employee or employees who were responsible for the loss of goods in the godown. Disciplinary authority also noticed certain deficiencies in the enquiry report and hence he had to remit the same back to enquiry officer for conducting denovo enquiry which was, no doubt, in accordance with rules. if he had not ordered a denovo inquiry in the matter, it would have obviously resultant to miscarriage



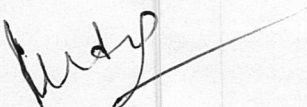


of justice to both sides. Hence the delay involved in finalization of the disciplinary proceedings cannot be said to be fatal in view of the facts, discussed above.

35. The forth objection of the applicant relates to note of dissent recorded by the disciplinary authority on the final report of the enquiry officer. In this report the enquiry officer had exonerated the applicant from both the charges levelled against him in the memorandum of charge sheet dated 19.7.1989. The applicant also alleges that even the final order of imposing penalty of withholding three increment of the applicant for three years with cumulative effect, when next due, with the stipulation that the petitioner will not earn increments during the period of penalty and on expiry of the period, the penalty will have the effect of postponing his future increments of pay, is based on surmises and conjectures and no person of ordinary prudence could have ever come to this conclusion, as has been arrived in the case of the applicant by the Disciplinary Authority.

36. If we examine the objections of the petitioner, we find that even these objections also do not stand the test of judicial scrutiny. In the first instance, we find that a copy of the enquiry report was provided to the applicant and he was asked to submit his representation, if any, against the same. In the second place, he was also communicated the grounds on which disciplinary authority disagreed with the enquiry report of the enquiry officer as per office letter No 1562/200/88/GPY/ VIG dated 7.6.1990.

37. The Disciplinary Authority i.e. Respondent No.4 was competent to disagree with the enquiry report as per Sub Rule (2) of Rule (15) of CCS (CCA) Rules, 1965 which is reproduced here below:-



"The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the enquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the enquiry authority, a copy of the report of the enquiry authority together with its own tentative reasons for disagreement, if any, with the findings of the enquiry authority on any Article of the Charge to the Govt. Servant, who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within 15 days irrespective of whether the report is favorable or not to the Govt. Servant."

38. In the case of **K.R. Deb Vs. Collector of Central Excise, Shillong (ref: para 13 of the judgment) (Reported in AIR 1971 SC 1447)**, the Apex Court held that ".....The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion...." In **State of Rajasthan Vs. M.C. Saxena (Reported in 1998 SCC (L&S) 875**, the apex court observed as under:-

"The Disciplinary Authority can disagree with the findings arrived at by the Enquiry Officer and act upon his own conclusion. The only requirement is that the Disciplinary Authority must record reasons for disagreement if any with the findings of the enquiry officer. If the Disciplinary Authority gives reasons for disagreeing with the findings of the enquiry officer, the court cannot interfere with those findings unless it comes to the conclusion that no reasonable man can come to the said findings. The Disciplinary Authority was well within its powers to award punishment on the basis of findings arrived at by him."

39. In the case of **Bank of India and another Vs. Degala Suryanarayana (Reported in JT 1999 (4) SC 489)** the apex court

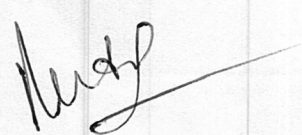




reiterated the same principles and held (as per para 6.7 of the judgment).

"The law is well settled. The disciplinary authority on receiving the report of the Inquiry Officer may or may not agree with the findings recorded by the letter. In case of disagreement, the Disciplinary Authority has to record the reasons for disagreement and then to record his own findings if the evidence available on record be sufficient for such exercises or else to remit the case to the enquiry officer for further enquiry and report."

40. It is clear on record that Disciplinary Authority had disagreed with the report of the Enquiry Officer on the ground that the latter had wholly relied upon the statement of Shri R.M. Tewari, Store Holder (who himself was an accused in this case, and had accepted his version without proper scrutiny and appraisal that he and his subordinates were not aware of the departmental instructions issued in the year 1986, defining the Schedule of their duties. Disciplinary Authority consequently rejected the testimony of Shri R.M. Tewari that he had not received the instructions in question issued very back in the year 1986 as the same were directly endorsed by the Divisional Officer to him and through him to his subordinates. As the applicant was working directly under the control of Head of the Godown Tool I, there was no unreasonableness on the part of the Disciplinary Authority in arriving at the conclusion that the applicant who was equally responsible for proper accountal and maintenance on record in respect of the goods deposited in Tool 'A' godown as well as for periodical verification of stock lying therein along with Shri Tewari, his superior and Shri Jangoo Prasad and Shri R.V.S. Sengar, his subordinates was equally guilty of lapses as pointed out in



Memorandum of charges dated 19.7.1989, issued to him which are as under:-

**"Article of Charge I**

Gross- Misconduct – Negligent in proper discharge of duty

**Article of charge II**

Conduct unbecoming of a Government servant and failure to maintain devotion to duty in violation of Rule 3 91) and 9ii) of CCS (CCA) Rules, 1965."

The second reason for disagreement recorded by the Disciplinary Authority is that the inquiry office had also not taken the statement of Shri Jangoo Prasad into consideration in making his inquiry report that no verification of stock in Tool 'A' godown was made by the applicant, which virtually demolished the defence of the applicant completely. Since the Disciplinary Authority has recorded cogent reasons for his findings hence his findings can neither said to be arbitrary, nor malafide nor perverse.

41. In the case of **Rajarathinam Vs. State of Tamilnadu (reported in 1997 (1) SLJ 10 SC)**, the apex court had held that standard of proof in a departmental proceedings is one of Preponderance of Probabilities. It also held that court is not a fact finding body and since there was a preponderance of probability even on the basis of one witness, the court could not interfere with the findings of the Disciplinary Authority. Apex Court further held that even in regard to penalty imposed on the delinquent employee, the court shall exercise restraint in interference (1997 (1) SLJ 10 (SC))

42. It is a matter of common sense that a Government does not offer such huge emolument of salary and other allowances to a Government servant for sitting idle in his office. If the applicant,

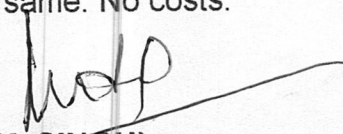
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was appointed as Chargeman Grade I cum Assistant Store Holder in respect of the aforesaid godowns including Tool 'A' godown, it was inherent in the schedule of his duties to maintain proper accountal, upkeep and safe custody of the goods deposited therein as per his supervisory responsibility for the same. The applicant should have come to know nature of his duties immediately on his joining the post. Hence Disciplinary authority was well within his rights the applicant was aware about to arrive at the aforesaid conclusion, the instructions, defining his schedule of duties which were issued as early as in the year 1986 itself. Moreover, it is an accepted principle that ignorance of law is no excuse. The first thing which an employee is required to know, on joining a post is the nature and schedule of his duties. He is not supposed to sit idle in the office and draw his salary, on the first of every month.

43. On the basis of the above, we hold that both the lapses as per Memorandum of charge sheet are clearly established on record. Hence the decisions of the Disciplinary Authority in holding the applicant guilty of charges levelled against him as established and accordingly imposing penalty on him on that basis is clearly maintainable in law. Moreover, the penalty imposed is not at all disproportionate to the gravity of the two charges, held as proved.

44. On the basis of the above, we find that none of the objections raised by the applicant stand the test of judicial scrutiny and are accordingly rejected. The O.A. in question is clearly devoid of merits and hence deserves to be dismissed. Accordingly we dismiss the same. No costs.

  
(A.K. SINGH)  
MEMBER (A)

  
(KHEM KARAN)  
VICE CHAIRMAN

HLS/-