RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

ORIGINAL APPLICATION NO.193 OF 2001

ALLAHABAD THIS THE 30th DAY OF November 2006

HON'BLE MR. JUSTICE KHEM KARAN, VICE-CHAIRMAN
HON'BLE MR. M. JAYARAMAN, MEMBER-A

Sri Mohd. Samun S/o Sri Khaliq, R/o H. NO.92 Sujat Ganj, Chandari Kanpur.

.....Applicant

(By Advocates: Sri R.S. Yadav/Sri L.M. Singh/Sri B.N Singh)

Versus.

1. Union of India through the Secretary Department of Defence, Government of India, New Delhi.
2. The Director General, Ordinance Services, Government of India, Ministry of Defence, Army Head Quarter, New Delhi.
3. Commandant Central Ordinance Depot Kanpur 208013.

.....Respondents

(By Advocate: Sri S. Singh)

O R D E R

BY MR. JUSTICE KHEM KARAN, VICE-CHAIRMAN

By way of this Original Application, the applicant is challenging the orders dated 24.7.1995, 22.7.1999 and 12.10.2000 passed by respective respondents and seeking a direction to the effect that respondents be directed to reinstate him in service with all consequential benefits and backwages etc.

2. While working as Mazdoor with Ticket No.T/No.2165/CIO-I under the respondent No.3, the applicant was served with a chargesheet dated 16.4.1994 (Annexure A-4) and thereafter was subjected to formal disciplinary proceedings. A perusal of this

chargesheet reveals that charge against him was that on 31.3.1994 at the time of mustering out, he was found attempting to steal from the store, three jarsies (OG) and one khaki necker. These were allegedly found tied to his waist, in a way not to be seen by persons concerned. The matter was also reported to police. After the necessary enquiry, a report was submitted, holding him guilty and in turn a penalty of compulsory retirement was imposed upon him by Brigadier Commandant. His appeal as well as review/revision were also dismissed vide orders dated 18.3.1999 and 12.10.2000 respectively.

3. The main grounds, taken by him for assailing the impugned orders are:-

(i) *That he was not allowed to examine Major H.S. Chauhan, the Security Officer who had reported the incident dated 31.3.1994*

(ii) *That it was not proved that three jarsies and one necker were Govt. property as these bore no mark on them indicating that the same belonged to Govt.*

(iii) *That Mohan Sahai against whom there were similar charges, was exonerated.*

(iv) *That an identical charges, he was tried in the Court of 3rd Additional Chief Metropolitan Magistrate, Kanpur Nagar but was acquitted for want of evidence (Annexure A-6).*

(v) *That his appeal and review/revision have been dismissed by non-speaking orders and without application of mind.*

4. The respondents have tried to say in the reply that the enquiry was held in accordance with Rules and applicant was afforded reasonable opportunity of hearing and only thereafter impugned orders of punishment were passed. It is stated in para 9 that the applicant had confessed his guilt and copy of the confession is Annexure CA-1. They say that the finding of the Enquiry Officer that the applicant was found with three Jarsies and one necker tied to his waist, is not in dispute and so inference has rightly been drawn that he was trying to commit the theft of Government property. They say that appeal and review were duly considered and rejected.

5. Sri B.N Singh, learned counsel for the applicant has argued that there was no material before the Enquiry Officer to prove that three jarsies and one necker found on the person of the applicant, had been taken away from the Stores, or was Govt. property. Learned counsel for the applicant says that it is clear from the evidence received during the course of enquiry that none of these four articles, bore the mark of being the Govt. property. He goes on to argue that if these articles did not bear the mark or emblem of being the Govt. property, no charge could be levelled against the applicant that he was trying to commit theft of Govt. property. Learned counsel says that such type of articles are easily available in the open market and can be

purchased by anybody and if it is so, then how a legitimate inference could be drawn that he was attempting to commit theft of the same. Learned counsel for the applicant submits that finding of guilt is not based on any acceptable material and so the impugned order of punishment deserves to be quashed.

6. Sri S. Singh, learned counsel for the respondents has tried to say that in exercise of power of judicial review, this Tribunal cannot judge the sufficiency of material on which finding of guilt is based. According to him, this Tribunal will not be justified in re-evaluating the material for deciding as to whether finding of guilt is correct or incorrect.

7. It stands well settled after catena of decisions of Apex Court (*see B.C. Chaturvedi Vs. Union of India, 1996 SCC (L&S) SC 80, High Court of Judicature at Bombay Vs. Shashi Kant S. Patil (AIR 2000 Supreme Court 22), Colour Chemical Limited Vs. A.L. Alaspurkar [(1998) 3 SCC 192, U.P State Road Transport Corporation and others Vs. Mahesh Kumar Mishra and others (2000 SCC (L&S) 356, Apparel Export Promotion Vs. A.K. Chopra [1999 (2) AWC 1114 (SC) and Yoginath D. Bagde Vs. State of Maharashtra (J.T. 1999 6 SC 62)* that Court or Tribunal can interfere only if the proceedings were held in violation of principles of natural justice or in violation of statutory Rules prescribing the mode of enquiry or where the conclusion of finding reached by the Disciplinary Authority is based on no evidence, or no reasonable person would have reached that conclusion. It has been said in paras 12 and 13 of B.C.

*Chaturvedi's case (supra)* that Judicial Review is not an appeal from a decision but a review of the manner, in which the decision is made and power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the Authority reaches, is necessarily correct in the eyes of the Court. It has also been said that the Disciplinary Authority is the sole judge of fact and where the appeal is filed, the Appellate Authority has co-extensive power to reappreciate the evidence or nature of punishment.

8. So it appears to be difficult for this Tribunal to enter into the discussion as to whether the applicant was found, attempting to commit theft of the Govt. property. It is not a case where it can be said that the finding is based on no evidence. Whether the evidence led during the course of enquiry, was adequate enough to reach that conclusion, was to be seen by the disciplinary authority and in appeal, by the appellate authority. The applicant has himself reproduced the relevant portion of the impugned order of punishment where Disciplinary Authority gives reasons for coming to the conclusion that applicant was attempting to commit theft of Govt. property. We cannot enter into the exercise as to whether the reasons given by the Disciplinary Authority, are correct or incorrect as it does not fall in the scope of judicial review. It can hardly be argued that the view taken by the Disciplinary Authority is absurd and no reasonable person could come to that conclusion.

9. The next submission of Sri B.N Singh is that the applicant requested the enquiry officer to summon Major H.S. Chauhan the then Security Officer, who had reported the incident dated 31.3.1994 but the enquiry officer turned down that request, vide order dated 9.8.1994. Relevant portion of this order has been reproduced in para 12 of the original application. According to it, since Major Chauhan was cited as a prosecution witness and since the purpose of the applicant for summoning him as a defence witness was with a view to delay the proceeding, so the request for summoning is being turned down. Shri Singh says that the rejection of request of the applicant for summoning and examining Major H.S Chauhan amounted to denial of opportunity. He has tried to support his arguments by referring *to U.P. State Road Transport Corporation Vs. State of U.P [1991 (62) FLR page 263].* We think it all depends upon the facts and circumstances of a particular case, whether the non-examination of any one witness or non summoning of any defence witness would amount to denial of opportunity. If there are more than one witnesses, of a fact, all of them need not be examined. Major H.S Chauhan cited as a prosecution witness, was expected to appear in support of the charges and not as a defence witness. If the Enquiry Officer refused to summon him as a defence witness, it is difficult to say that he committed any wrong. It has been held by the Constitution Bench of the Apex Court in *Managing Director ECIL Vs. B. Karunakar [1993 4 SCC 727* that each and every infraction of rules will not vitiate the order of punishment. The applicant himself states in his confessional statement that he was checked by Constable Surendra Kumar

and Nayab Narsingh (Security Staff), who prevented him from examining any one of them. It is nowhere stated in it that Major H.S Chauhan was an eye witness to that incident. He might have reported. We take the view that it is difficult to say that the applicant was denied to lead evidence in defence.

10. Sri B.N Singh has also stated that on the same charge the applicant and two others were tried in the Court of 3rd Additional Chief Metropolitan Magistrate, Kanpur Nagar and in absence of evidence, they were acquitted. Copy of this decision dated 26.2.1999 is Annexure A-6. Sri B.N. Singh says that after acquittal, by the Criminal Court, finding of guilt recorded in the Disciplinary proceedings is not sustainable in law and deserves to be quashed. A perusal of acquittal dated 26.2.1999 reveals that the Court recorded that acquittal, without recording evidence of even a single prosecution witness. It was done, on the basis of decision dated 8.10.98 in Raj Dev Sharma Vs. State of Bihar in Criminal Appeal NO.1045/98. In other words prosecution wanted to lead evidence in support of the charges but the same was closed in view of the decision in Raj Dev Sharma's (supra). We do not think the punishment order can be set at naught on the basis of such acquittal, which is not on merits or which is not an honourable one.

11. The attack of Shri B.N Singh, against appellate order dated 22.7.1999 (A-2), appears to be well-founded. The appellate order does not exhibit application of mind to the facts of the case and the grounds taken in appeal. It is true that we do not expect that

appellate authority will pass orders like a judicial officer but that does not mean that he should act mechanically. A bare perusal of this order would show that the authority was under the impression as if he had to confine himself to the purport and effect of acquittal and had no concern with other grounds taken in appeal. We agree with Shri B.N Singh, that no application of mind to the facts in issue or to the evidence led during the course of enquiry or to the grounds taken in appeal, is exhibited in this appellate order. So, this appellate order deserves to be quashed for the reasons stated above. Order dated 12.10.2000, passed in review/revision, has to go alongwith appellate order, as review/revision, was against the appellate order.

12. So in view of what we have stated above, the appellate and revisional orders 22nd July 1999 and 12th October 2000 (Annexure A-2 and A-3) are quashed. The Appellate Authority will consider the appeal afresh, in accordance with law and decide the same within a period of 4 months from the date a certified copy of the order is produced before him. In case the applicant remains dissatisfied even after appellate order (to be passed) he may prefer review/revision as may be prescribed under the Rules.

No costs.

30.11.02

Member-A

Vice-Chairman.

Manish/-