CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 17th DAY OF APRIL 1997

Original Application No. 662 of 1992

HON.MR.JUSTICE B.C.SAKSENA, V.C.

HON.MR.S.DAS GUPTA, MEMBER(A)

P.N. Gaur, s/o Late Shri Ram Kishore Gaur
R/o Village: Nibi Kalan, Post Jhusi
District Allahabad.

... Applicant

(By Advocate Shri Arvind Kumar)

Versus

1. Union of India through the Secretary
   Ministry of Defence, New Delhi

2. Director General of Ordnance Services
   D.G.O.S, Army H. Qs, D.H.Q.P.O. New Delhi

3. The Commandant, Ordnance Depot
   Allahabad.

....Respondents

O R D E R (Reserved)

JUSTICE B.C.SAKSENA, V.C.

The applicant who was a store keeper in the Ordnance depot Allahabad was served with a chargesheet dated 3.8.89. The allegation against him in the chargesheet was of carrying 14 polyster shirts in the dikki of his TVS Moped. The applicant submitted his defence statement denying the charges and pleaded that his dikki was not closed and he has been falsely implicated He further put up the defence that he was forced to sign the confessional statement under duress and threat of assault. An Enquiry officer was appointed and he submitted a report holding the charges to be proved. The Disciplinary Authority agreeing with the findings of the Enquiry officer imposed a penalty of removal from service on the applicant vide order dated 21.11.90.

2. The applicant challenges the order of punishment as also an order dated 30.11.91 passed by the Appellate Authority rejecting his appeal against the order of punishment. The applicant has

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also prayed for a direction to be issued to the respondents to reinstate him with full backwages and all consequential benefits including arrears of salary and allowances.

3. The respondents had filed a counter to which the applicant filed a rejoinder. We will advert to the pleadings while considering the submissions made on behalf of the parties.

4. We have heard the learned counsels for the parties. The learned counsel for the applicant submitted that the Enquiry officer in his 20 page report has merely recorded the evidence put before him. He has not assessed the evidence and only in four paragraphs has given assessment of the charge. We have been taken through the Enquiry officer;s report. No doubt the Enquiry officer in his report has reproduced the statement made by the departmental witnesses including their crossexamination and without analysing the evidence in detail has given assessment of the charge in four paragraphs. The conclusion of the Enquiry officer about the charge having been proved is based on the circumstances of the recovery of 14 polyster shirts on the dikki of the TVS Moped belonging to the applicant at the time he was mustering out from the gate. He had also held that the 14 shirts in question were confisticated at the gate while the applicant was mustering out on 29.4.89. The Enquiry officer in his report has based his conclusion also on the admission of guilt by the applicant in his written statement given on 29.4.89. Though it would have been desirable that the Enquiry officer had weighed the evidence and then recorded his findings but in the facts and circumstances proved in the present case it is difficult to hold that the findings by the Enquiry officer are in any manner perverse or based on inadmissibility evidence or no evidence. This is the limited scope of judicial review in respect of punishment imposed after disciplinary proceedings. In a recent decision the Hon'ble Supreme court after analysing and referring to a few earlier decisions stated the settled legal position in a case reported in 1996 SCC (L&S) 627 State of Tamil Nadu Vs.

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S. Subramaniam. The Hon'ble Supreme Court in the said case made the following observation:

" The Tribunal is not a court of appeal. The power of judicial review of the High court under Art. 226 of the Constitution of India was taken away by the power under Article 323-A and invested in the Tribunal by the Administrative Tribunals Act 1985. It is settled law that the Tribunal has only power of judicial review of the Administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application to the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made.... when the conclusion reached by the authority is based on evidence, the Tribunal is devoid of power to reappreciate the evidence and come to its own conclusion on the proof of the charge. The only consideration the court/ Tribunal has in its judicial review is whether the conclusion is based on evidence on

record and supports the finding or whether the conclusion is based on no evidence."

5. In view of the above no case for interference with the order of punishment as also the order passed by the Appellate Authority is made out. The O.A. accordingly fails and is dismissed . Parties to bear their own costs.

MEMBER(A) VICE CHAIRMAN

Dated: April. 17. 1997

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