RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.371 of 1999

Allahabad, this the 9th day of May 2006, ~~2006.~~

Hon'ble Mr. K.B.S. Rajan, Member (J)
Hon'ble Mr. A.K. Singh, Member (A)

Shri G.S. Dhiman s/o late Shri Sangat Ram Dhiman. Superintending Surveyor, Officer Incharge No.2 Drawing Office, Survey of India, Northern Circle, 17 E.C. Road, Dehra Dun-248001 (Resident of E-5, Hathibarkala Estate, Survey of India, Dehra Dun).

...Applicant.

(By Advocate : Shri Ajay Rajendra)

Versus

The Union of India through Secretary to the Govt, of India, Ministry of Science and Technology, Department of Science and Technology, Department of Science and Technology, Technology Bhawan, New Mehrauli Road, NEW DELHI-110 016.

....Respondent.

(By Advocate : Shri S.K. Anwar)

O R D E R

O.A. 371/1999 has been filed by the applicant G.S. Dhiman against order NO.C-13011/03/89-Vig, dated 5th March 1999 passed by respondent namely the Govt. of India, Ministry of Science and Technology, New Delhi.

2. Brief facts of the case are that the applicant, G.S. Dhiman while serving as Superintending Surveyor in Survey of India and employed as Officer-in-Charge no. 58 party (Western Circle) Survey of India, Ajmer is alleged to have tampered the Government record and made irregular purchases of field equipment and is also alleged to have been

involved in fraudulent withdrawal of wages for his Camp orderly.

3. Accordingly the applicant was served with a chargesheet for major penalty for misconduct and was accordingly proceeded against departmentally as per procedures prescribed under CCS (CCA) Rules 1965. On conclusion of the aforesaid proceedings, the applicant was awarded major penalty of reduction in pay by two stages i.e. from Rs.13250/- to Rs.12,600/- (in the time scale of Rs.10,000-325-15200) for a period of 2 years with cumulative effect. The applicant, as per the order would, however, earn the increments of pay during this period of reduction. Being aggrieved by the aforesaid decision of the Disciplinary Authority, the applicant has filed the present O.A before us, under section 19 of the Administrative Tribunals Act 1985, on the following grounds;

(i) No preliminary Enquiry was conducted by the Disciplinary Authority and there was no application of mind, on his part, in passing the above mentioned order of punishment.

(ii) The memorandum of charges against the applicant was issued by a Joint Secretary to Government of India and the final order imposing penalty on the applicant has been signed by an Under Secretary to Govt. of India. These authorities were not competent to do so. Under the Rules as they were not the Disciplinary Authorities in case of the applicant. The same also holds good in case of orders of appointment' of Enquiry Officer as well as the Presenting Officer by these authorities.

(iii) The inquiry procedure laid down under Rule 14 of CCS (CCA) Rules 1965 was not followed by the Inquiry Officer in as much as:

(i) The Presenting Officer was allowed to produce new evidences by the inquiry officer after commencement of the inquiry proceedings. This was done in violation of established rule of procedure laid down for disciplinary proceedings under Rule 14 of CCS (CCA) Rules 1965.

(ii) Defence witnesses of the applicant were not allowed to be examined during the proceedings by the Inquiry Officer. Hence, the proceedings have been conducted in violation of the principles of natural justice.

(iii) Representation of the applicant against the inquiry report was not considered by the Disciplinary Authority in passing the final orders of punishment. Hence there is a non-application of mind on the part of the disciplinary authority in passing the order in question. Hence, the order of punishment in question, is arbitrary and accordingly unsustainable in law.

(iv) The penalty imposed on the applicant is not in the statutory language laid down under the relevant Rules i.e. Rule 11 (v) of CCS (CCA) Rules 1965.

(v) The Disciplinary action was taken against the applicant after a long lapse of time and consequently caused serious prejudice to the applicant in defending his case.

4. On the basis of the above, the applicant prays for the following relief(s):

(1) To quash the impugned order of punishment bearing No. C-13011/03/89 Vig dated 5.3.1999 passed by the Union of India i.e. respondent No.1, awarding

major penalty of reduction in pay by two stages for a period of two years with cumulative effect.

(2) To direct the respondent to open the sealed cover containing recommendations of the DPC which met in June 1993 and to allow consequential benefits to the applicant.

AND

(3) To pass any other order or direction as may deem necessary in view of the circumstances of this case.

5. Respondents, on their part, have contested the O.A. on the following grounds.

(i) The petitioner is not entitled to any relief claimed in the petition because the impugned order of punishment has been passed by the Competent Authority after following the prescribed procedure and after allowing full opportunity to the petitioner to defend his case.

(ii) Punishment awarded to the applicant is in keeping with the gravity of misconduct committed by the applicant. The applicant had played fraud and committed irregularities in purchase of field equipments and was also responsible for fraudulent drawal of wages for his camp orderly during the field season 1985-86.

(iii) All necessary requirements under law were complied with before proceeding against the applicant under CCS (CCA) Rules 1965. When the aforesaid acts of the petitioner came to the notice of higher authorities, investigation was made and in accordance with the findings of the preliminary investigations, a report was submitted by the higher authorities to the

Government. The applicant being a Gr. 'A' officer, the President is the competent Disciplinary Authority in his case. CVC's advice was also taken by the Government on the findings of the aforesaid preliminary investigation and as per advice of the CVC a chargesheet for major penalty under Rule 14 of CCS (CCA) Rule 1965 was issued to the applicant and as the applicant denied the charges levelled against him in the memorandum, an enquiry officer and a Presenting Officer were appointed by the Competent Authority to conduct an open enquiry into the matter.

(iv) On conclusion of the enquiry proceedings and as prescribed under Rule 14 of CCS (CCA) Rules 1965, the Enquiry Officer submitted his report to the Disciplinary Authority and the Disciplinary Authority after following the due procedure and in consultation with Union Public Service Commission and Central Vigilance Commission directed a fresh de-novo enquiry from the stage of general examination of the petitioner as the applicant did not appear as a defence witness in the inquiry as required under Rules.

(v) The De-novo enquiry was accordingly held but the applicant did not participate in the same and hence there was no option left for the Disciplinary Authority except to pass the final orders in the matter.

(vi) The enquiry officer concluded the enquiry after affording full and adequate opportunity to the applicant to defend himself and there has been no denial of natural justice to the applicant in the case.

(vii) In regard to objections raised by the applicant in respect of issue of chargesheet by

unauthorised persons, respondent submits that Articles of charges, the statement of imputations, the list of documents and the statement of witnesses accompanying the chargesheet form a single document called memorandum which was signed by a Joint Secretary who was authorised to authenticate a decision of the President on his behalf. The signature of Shri P.R. Datta, Addl. Surveyor General of India on Annexure (IV) to the chargesheet does not suggest that the chargesheet was issued by him.

(viii) Respondent further submits that as per Rules of Business, in cases where the President is the Disciplinary Authority such as in case of Gr. A Officers, the disciplinary action proposed to be taken is approved by the Minister in charge of the concerned Ministry. It is not important that orders on behalf of the President are issued by a Senior or Junior Officer in the Ministry/Department of the Government as the authorised officer only authenticates and communicates the decision of the President or of the Government. Hence, the objection of the applicant in this regard merit outright rejection.

(ix) Disciplinary Authority had fully applied his mind to the facts of the case as well as evidences on record and on that basis arrived at his finding and passed the impugned order of punishment. Since the Disciplinary Authority had already perused the written defence brief of the applicant, it was not necessary for him to grant any further personal hearing to the applicant before passing the final orders of punishment.

(x) As regards the allegations of the applicant regarding non-supply of additional documents, respondents submit that the enquiry officer did not accept the request of the applicant for the same as these were not at all relevant to the defence of the petitioner.

(xi) As regards the objection of the applicant to grant permission to the Presenting Officer to present new evidences by the Enquiry Officer, respondent submits that the aforesaid permission was granted by the Enquiry Officer after careful consideration of the request of the Presenting Officer. The applicant also did not raise any objection to this effect before the Inquiry Officer during the proceedings.

(xii) Regarding the aspect of delay, respondent submits that the delay involved in the proceedings was due to elaborate procedure followed in case of Gr.'A' officers which involved not only consultation with Central Vigilance Commission but also with Union Public Service Commission and these authorities due to heavy burden of work, naturally take a longer time to furnish their advices.

6. On the basis of the above, respondents argue that none of the points raised by the applicant merit any consideration. Accordingly, they pray for dismissal of the O.A. in question on merits.

7. The applicant as well as the respondent were also heard in person on 2.2.2006 through their respective counsels and were also allowed to file a written brief of arguments. In their oral submission as well as in their written briefs, the two sides only reiterated their submissions, as above.

8. We have given our anxious considerations to submissions made by learned counsels on behalf of the applicant as well as the respondent and have also perused the records. We find that jurisdiction of Tribunal to interfere with the disciplinary matters or punishment, as per principles enunciated by the Apex Court in the case of Shri Parmananda Vs. State of Haryana and others [1989 (2) SCC 177], cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or perverse. In another case of State Bank of India Vs. Samarendra Kishore Endow {1994 (1) SLR 516} the Apex Court held that jurisdiction of Tribunal is similar to the powers of the High Court under Article 226 of the Constitution of India. The power under Article 226 is one of judicial review. Concept of judicial review does not imply an appeal from a decision but review of the manner in which the decision was made.

9. The ground on which an administrative action can be brought within the purview of judicial review, can be stated as under:-

(i) The order in question is not in accordance with law i.e. it has been passed by an authority who is not competent to do so. An order is also illegal, if the same has been passed either without the authority of law or in contravention of law for the time being in force.

(ii) <u>The order in question is unreasonable or irrational:</u> It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standard that no sensible person who had applied his mind to the question to be decided, could have arrived at the same. In other words as

held by the Kings Bench in the case of Associated Provincial Picture Houses Vs. Wednesbury Corporation {(1948) 1 KB 223} Judicial review is permissible where the Court finds that no authority reasonably could have reached such an administrative decision i.e. in other words, if the authority takes a decision on the basis of some materials which a reasonable person could have taken in that case, Judicial Review is not permissible.

(iii) If the order in question suffers from the infirmity of procedural impropriety i.e. to say it has been passed in violation of prescribed procedure and the norms laid down in this behalf. The fundamental principles of holding of Enquiry Officer under the prescribed disciplinary proceedings are as under:

(i) As held by the Apex Court in the case of Jagannath Prasad Sharma Vs. State of U.P {(1962) 1 SC 151}, the Enquiry in its true nature is quasi-judicial. It is manifest from the very nature of the inquiry that the approach to the material placed before the enquiring body should be judicial.

(ii) Principles of natural justice will 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 the 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 prevent such authority from doing injustice.

{CANARA BANK VS DEBASIS DAS (2003) 4 SCC 551 at page 570}

(iii) In the departmental proceedings the standard of proof is one of preponderance of probabilities.

{Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. (1993) 3 SCC 679}

(iv) The enquiry officer shall not take into account any extraneous matters in arriving at any findings.

(v) The penalty imposed by the Disciplinary Authority is not shockingly disproportionate to the gravity of the charges held as proved.

{Om Kumar and others Vs. Union of India, JT 2000 (Suppl. 3), SC 92}

When we apply the principles enunciated by the Apex Court to the facts of the present case, we find that many of the objections raised by the applicant against the conduct of disciplinary proceedings in this case, do not stand the test of judicial scrutiny.

10. The most important objection raised by the applicant relates to delay of 58 months on the part of disciplinary authority in taking decision. The enquiry report was sent to the disciplinary authority vide letter dated 31.3.1994

but the respondent took a long time in taking a decision. He passed the final order of punishment in this case only on 5.3.1999. The respondents have explained the delay by submitting that they were required to obtain a second stage advice from the Central Vigilance Commission in case of Group 'A' officers and U.P.S.C was also required to be consulted thereafter before taking a final decision on the quantum of punishment. Hence, the delay in passing the final order of punishment was natural, in view of procedural requirements involved in the matter. The Union Public Service Commission and the Central Vigilance Commission with a complement of small number of staff has to furnish advices to all the Ministries of the Government of India as well as Public Sector Undertakings [in cases where Group 'A' Officers of the Government of India were involved in disciplinary proceedings]. These authorities naturally took a long time in furnishing their statutory advices without which a decision could not have been taken by the Disciplinary Authority regarding the determination of quantum of punishment in case of a delinquent Group 'A' officer. Moreover, it is a settled law that a mere delay does not vitiate the enquiry unless the same results in any prejudice to the delinquent employee. It is also not within the competence of Tribunal to set aside the entire charges on the ground of mere delay as held by the Apex Court in the case of Secretary to Government, Prohibition and Excise Department Versus L. Srinivasan {1996 SCC (L&S) 686} that in the nature of charges it would take long time to detect embezzlement and fabrication of records which should be done in secrecy." In quashing the suspension and charges on the ground of delay in initiation of disciplinary proceedings, the Administrative Tribunal has committed grossest error in exercise of the Judicial review. The Member of Administrative Tribunal has exercised power as if he were on appellate forum dehors the limitation of judicial review. "Tribunal has exceeded it's power of

judicial review in quashing the suspension order and the charges at the threshold".

(i) In another case i.e. Addl. Superintendent of Police Versus T. Natarajan (1999 SCC (L&S) 646) their Lordships of the Supreme Court in Para 7 of their judgment observed as under:-

"7. In regard to the allegation that the initiation of the disciplinary proceedings was belated, we may state that it is settled law that mere delay in initiating proceedings would not vitiate the enquiry unless the delay results in prejudice to the delinquent officer". Since the delay has been adequately explained by the respondents and the applicant has not been able to prove or establish that delay involved in passing of the impugned order had caused any prejudice to him in the proceedings, the objection of the applicant on this score does not stand the test of judicial scrutiny.

(ii) As regards the second objection of the applicant that memorandum of chargesheet, in the case has not been signed by the President himself but by a Joint Secretary, the Annexures by Addl. Surveyor General and the final order of punishment by an Under Secretary who are not the competent authorities to do so, the law is abundantly clear on this point. As per Government of India, Ministry of Home Affairs, Deptt. Of Personnel and Administrative Reforms, O.M No.134/1/81- AVD 1 dated 13th of July 1991, "where the President is the prescribed Disciplinary/Appellate/Reviewing Authority and where the Minister concerned has considered the case and given his orders that an order may be authenticated by an officer, who is authorised to authenticate the same in the name of the President can sign the chargesheet as well as the order of punishment. All officers of the rank of Under Secretary and above in the

Ministries have been authorised to authenticate and sign the orders of punishment as well as memorandum of charge sheet on behalf of the President. In so doing they will be only communicating the decision of the President and not their own decision.

An identical question of law came up for consideration before the Hon'ble Supreme Court in the case of state of Madhya Pradesh and others Vs. Dr. Yashwant Trimbak [Reported in 1996 (1) SLR 71 SC]. Apex Court held that an order expressed in the name of the Governor and duly authenticated can not be questioned in any court on the ground that it is not made or executed by the Governor. To quote the relevant extract of the decision:-

> "4.8. From a bare look at the order which was served on the respondent, it is implicitly clear that the said order has been executed in the name of Governor and has been duly authenticated by the signature of Under Secretary to the Government and therefore, the bar to judicial enquiry with regard to the validity of such order engrafted in Article 166 (2) of the Constitution will be attracted. The order which is expressed in the name of the Governor and is duly authenticated can not be questioned in any court on the ground that it is not made or executed by the Governor. The signature of the concerned Secretary or Under Secretary, who is authorised under the authentic-action rules to sign the documents, signifies the consent of the Governor as well as the acceptance of the advice rendered by the concerned Minister".

The law as enunciated by the Apex Court, as above, will equally apply to a case where the President is the disciplinary authority. Hence,

the objection raised by the applicant, on this point as discussed above, does not hold water.

(iii) As regards the objection of the applicant that no opportunity of personal hearing was allowed to him by the disciplinary authority before passing the final order of punishment, it is clearly provided under Sub Rule (4) of Rule 15 that "If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge and on the basis of evidence adduced during the enquiry is of the opinion that any of the penalties specified in clauses (V) to (ix) of Rule 11 are to be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give Government servant any opportunity of making representation (i.e. either oral or written) on the penalty proposed to be imposed. Hence, law does not stipulate any further opportunity to delinquent to make any further representation either in writing or oral before, the final decision on punishment is taken by the Disciplinary Authority. Hence, this objection of the applicant also does not succeed in view of clear provisions of law, as aforesaid.

(iv) As regards the argument that penalty imposed on the applicant is not in accordance with the statutory language laid down under the relevant Rule 11 (v) of CCS (CCA) Rules, we find that there is no confusion on the point as the provisions of the aforesaid rule are quite clear

and the impugned order of punishment is not at all in consistent with the Rule.

The order of punishment bearing No. C-13011/03/89 Vig dated 5.3.99 passed by the Disciplinary Authority runs as under:-

"Therefore, the President, being the disciplinary authority, hereby imposes on Shri G.S. Dhiman, Superintending Surveyor the major penalty of reduction in pay by two stages i.e. from Rs.13250/- to 12600/- in the time scale of Rs.10,000-325-15200/- for a period of 2 years with cumulative effect, with further direction that he will earn the increment of pay during period of reduction". If we examine the provisions of Rule 11 (v) of CCS (CCA) Rules 1965, we find that the same reads as under;-

Major penalties

"11 (v) save as provided for in clause III (a) reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of pay".

If we examine the orders of the disciplinary authority we find that it contains two important ingredients i.e.

(i) It imposes the major penalty of reduction in pay by two stages i.e. from 13250 to Rs. 12600/- p.m and that (ii) it also allows earning of increments of pay by applicant during the currency of the punishment in question, which is fully in accordance with the statutory language of Rule 11 (v) of the CCS (CCA) Rules 1962. The objection of the applicant, on this account also cannot be sustained.

(ii) As regards, the allegation of non-application of mind, on the part of the Disciplinary Authority we find from the record that Disciplinary Authority has fully applied his mind to the facts of the case and has also evaluated the evidences on record, and has also taken into consideration the advices tendered by the UPSC and the Central Vigilance Commission and has accordingly passed the final orders of punishment. The plea of the applicant, therefore, even on this point does not succeed.

(iii) As regards the objection that defence witnesses cited by the applicant were not allowed to be examined by the Enquiry Officer it has been

(i) It imposes the major penalty of reduction in pay by two stages i.e. from 13250 to Rs. 12600/- p.m and that (ii) it also allows earning of increments of pay by applicant during the currency of the punishment in question, which is fully in accordance with the statutory language of Rule 11 (v) of the CCS (CCA) Rules 1962. The objection of the applicant, on this account also cannot be sustained.

(ii) As regards, the allegation of non-application of mind, on the part of the Disciplinary Authority we find from the record that Disciplinary Authority has fully applied his mind to the facts of the case and has also evaluated the evidences on record, and has also taken into consideration the advices tendered by the UPSC and the Central Vigilance Commission and has accordingly passed the final orders of punishment. The plea of the applicant, therefore, even on this point does not succeed.

(iii) As regards the objection that defence witnesses cited by the applicant were not allowed to be examined by the Enquiry Officer it has been

clarified by the respondent that Resham Singh and Tularam were, in fact, prosecution witnesses. When the Presenting Officer decided to drop these two witnesses and made a written request to that effect before the inquiry officer, the applicant who was present at the material time and had attended the proceedings on 15.5.1992 could have raised such an objection at the relevant point of time. But he did not do so. If he chose to keep silent on this point before the enquiry officer during the inquiry proceedings, he cannot raise this point before us i.e. at the stage of judicial review. Last of all, the applicant has raised another objection that the enquiry officer allowed the Presenting Officer to produce new evidences and also to produce certain additional documents in support of their cases which was not correct in law.

(iv) Moreover, he was also not provided with other documentary evidences which were required by him in support of his case, which clearly prejudiced his defence in the case. As regards this objection, we find from the Inquiry Officer's report that the applicant could not satisfy the Inquiry Officer on the point as to

now these documents were relevant to his defence in the case as well as to the inquiry proceedings. The Enquiry Officer, after careful consideration rejected the request of the applicant as the documents sought for by the applicant on the ground that the documents sought by the applicant were not at all relevant either to his defence or to inquiry proceedings. Respondent in Para 25 of their counter affidavit have also contested the say of the applicant that some important witnesses, whom the applicant wanted to cross-examine during the proceedings, were also not allowed by the Enquiry Officer. Respondent as per Para 25 of their counter affidavit submits that these witnesses were high ranking officers and the enquiry officer did not find their presence for examination or cross-examination relevant or necessary during the proceedings. Hence he rejected the request of the applicant which clearly falls within the scope of his discretion.

11. As regards the permission for production of new evidences by the Presenting Officer, the provisions of sub-rule 15, of Rule 14 of CCS (CCA) Rules, 1965 read as under:

"If it shall appear necessary before the close of the case on behalf of the Disciplinary Authority, the

Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government Servant or may itself call for new evidence or recall and re-examine any witness and in such case the government Servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The Enquiring Authority shall give the Government Servant an opportunity of inspecting such documents before they are taken on record. The Inquiring Authority may also allow the Government Servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice.

Note : New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally."

12. On the basis of the above, we find that a request for production of any new evidence in support of the allegations levelled in the Memorandum of charges was permissible as per the above rules provided a copy of the same was furnished to the charged officer to file his

defence submissions in this regard. We also find Para 5.18 and Para 5.19 of the inquiry report relevant to this point.

> Para 5.18 :- During the proceedings held on 25 Feb 1992, the Presenting Officer requested for permission, vide his letter No.14/PF (GSD) dated 25 Feb, 1992, to produce new evidence. On going through the letter it was observed by me that some of the documents listed were complete files and registers containing voluminous records. In order to facilitate the Presenting Officer in making out a specific list, the proceedings were adjourned from 12.30 P.M. till 16.30 P.M.
>
> Para 5.19:- the proceedings were resumed at 16.30 p.m. when the Presenting Officer submitted a revised list vide his letter No.15/PF (GSD) dated 25.2.1992. On going through the list I find that only the documents listed at Sl Nos. 1,3,4,7,9,10,14 and 17 were relevant hence these were admitted and a photocopy of Presenting Officer's letter No.15/PF (GSD) dated 25.2.1992 <u>together with the documents admitted were handed over to the charged officer."</u>

13. Since the copy of these additional documents were provided to the applicant for his defence and that the same were admitted by the Inquiry Officer on the ground that the same were relevant to the proceedings and accordingly shall be helpful in dispensation of justice, we find no infirmity in the aforesaid decision the point of observance of the Principles of Natural Justice in the aforesaid disciplinary

proceedings by the Inquiry Officer which are no doubt quasi-judicial in nature.

14. On the basis of above, we find that none of the arguments advanced by the applicant stand the test of judicial scrutiny. Last of all, we also find that the penalty of reduction in pay by two stages with cumulative effect, awarded to the applicant on conclusion of the disciplinary proceeding on serious charges irregularities in purchase of field equipment as well as fraudulent drawal of wages on behalf of camp orderly during the field season 1985-86, is also not shockingly disproportionate to the gravity of charges, held as proved. Accordingly, the OA No.371/1999 is dismissed. No order as to costs.

Member (A) **Member (J)**

Manish/