RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD

ORIGINAL APPLICATION NO.510 OF 2000

ALLAHABAD THIS THE 16th DAY OF Nov. 2005

HON'BLE MR. K.B.S. RAJAN, MEMBER-J
HON'BLE MR. A.K. SINGH, MEMBER-A

D.N. Pandey, S/o Sri Ram Jiavan Pandey, 453-A, New Model Railway Colony, Izzatnagar.

.....Petitioner

(By Advocate Shri A. Rajendra (Absent)

V E R S U S

1. Union of India, through General Manager, N. E. R., Gorakhpur.
2. General Manager, N.E. Railway, Gorakhpur.
3. Controller of Stores N.E. Railway, Gorakhpur.
4. Chief Material Manager, N.E. Railway, Gorakhpur.

.....Respondents

(By Advocate: Sri A.K. Gaur.)

O R D E R

BY K.B.S. RAJAN, MEMBER-J

This is the second round of litigation. Earlier, an order of removal from service and the appellate order thereto were under challenge in OA 1541 of 1994, wherein the facts of the case which apply to this OA also has been given and the order of penalty of removal had been quashed and set aside and the authorities were given liberty to proceed further from

the stage of consideration of the inquiry report. Para 2 and part of para 7 of the order dated 30-10-1996 are extracted below:-

> "**2.** The brief facts of the case that the applicant was served with a Chargesheet dated 16.9.99 for misplacing money valued document which were in his custody as Local Purchase Clerk. He was further charged for having arranged payment of Rs. 18650/- fraudulently to a non-existent firm. The applicant denied the charges and thus enquiry proceeded with. The charges were found established. Therefore, the impugned order annexure-1 removing the applicant was passed. The order was appealed against on several grounds including the ground that he was appointed by the Chief Engineer while order of penalty was passed by District Controller of Stores - a junior officer. The appeal too was dismissed. Hence this O.A. with aforesaid reliefs. Since the applicant was directed to vacate the official accommodation , he had sought continuance in possession and stay was granted on 13.10.2004.
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> 7. .....Consequently the orders of removal passed by the respondent No. 2 and passed in appeal by the respondent No. 3 are illegal and set aside. If the competent disciplinary authority so chooses, it may pass the necessary orders on the report of the Inquiry Officer, who had already submitted the same."

2. The disciplinary authority proceeded against the applicant in pursuance of the order of the Tribunal and the respondents considered the Chief Material Manager as the competent authority and agreeing with the findings of the I.O. the disciplinary authority had passed the order of removal and in appeal, the Controller of Stores had upheld the same. Revision by

the G.M. also endorsed the disciplinary authority's order of removal from service as a penalty. It is against the aforesaid orders that the applicant has moved this O.A. on various grounds, the spines of which are as under:-

(a) That the competent authority to impose penalty is the Controller of Stores and not the Chief Material Manager.

(b) Even if it is assumed that the CMM is the disciplinary authority, he was expected to analyse the evidence and come to a conclusion of his own, instead of blindly following the conclusion arrived at by the Inquiry Officer. Thus, non application of mind by the D.A. is manifest.

(c) The main witnesses (Shri R.N. Chaturvedi) was not examined and his statement had been heavily relied upon by the I.O. Also the applicant was not allowed to cross examine those who were examined and the same vitiates the penalty proceedings.

3. The respondents have contested the O.A. According to them, the Chief Material Manager is the competent authority, in view of the fact that the lien of the applicant was fixed in the Department of Controller of Stores and the Chief Material Manager who is of the rank of Chief Engineer becomes the HOD.

4. The applicant has filed the rejoinder reiterating his stand taken in the O.A.

5. Arguments were heard and the parties were permitted to file written submission, in response to

which the applicant had filed the written submission, substantially relying upon his pleadings and adding one more ground that the penalty is disproportionate.

6. We have considered the pleadings, written submissions and also the arguments advanced by the parties.

7. The legal issue involved is (a) as to who is the competent authority in this case, (b) whether the proceedings were vitiated on account of non examination of material witness (according to the applicant) and (c) whether the mere acceptance by the D.A. of the I.O's report would be sufficient to show that he had applied his mind before imposing his penalty. These are discussed as hereunder:-

(a) Competent authority: When the applicant has been posted in the Department of Controller of Stores, he comes under the said department **for all purposes including disciplinary proceedings.** As such, the authority competent in the Department of Controller of Stores is the Chief Material Manager who is equal in status to the Chief Engineer. As such, there is no illegality in the Chief Material Manager passing the order or penalty. In fact, the disciplinary authority first reflected the observation of

the Tribunal in the earlier order and specifically stated that he being the competent authority was passing the impugned order of penalty. It is worth referring to the case of ***Major General Inder Jit Kumar v. Union of India, (1997) 9 SCC 1***, wherein the Apex Court has held as under-:

> ***12.*** *The appellant's contention that the Commanding Officer, Central Command had no jurisdiction in this regard must also be rejected since he was attached to the Central Command for the purpose of the disciplinary inquiry which related to his conduct during the period when he was posted at Agra.*

Hence, the plea that the authority imposed the penalty is not competent does not stand judicial scrutiny.

(b) Non examination of material witness: While the law point is clear that "When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him; and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him (***Kesoram Cotton Mills Ltd. v. Gangadhar,(1964) 2 SCR 809***) . In the instant case however, a perusal of the entire inquiry report shows that the IO has taken into account only those aspects in respect of which the defence has given its

version and on consideration of both the findings have been arrived at. As such, the I.O's report cannot be faulted with on the ground of material witnesses not being examined at all. If the applicant felt that material witnesses are to be examined, he should have arranged for the same as defence witnesses but the applicant has chosen not to do so. The next ground that the inquiry is vitiated on account of non examination of witnesses also does not survive.

(c) D.A's reasoning to arrive at the conclusion: The law is settled that when the findings of the inquiry authority are accepted in toto by the disciplinary authority, there is no need to give elaborate reason for accepting the Report and the Disciplinary Authority can well pass the penalty order stating that he agrees with the findings of the Inquiry Authority. The Constitution Bench in the case of ***State of Madras v. A.R. Srinivasan,AIR 1966 SC 1827*** had held as under:-

> ***14.*** *Mr Setalvad for the respondent attempted the argue that the impugned order gives no reasons why the appellant accepted the findings of the Tribunal. Disciplinary proceedings taken against the respondent, says Mr Setalvad, are in the nature of quasi-judicial proceedings and when the appellant passed the impugned order against the respondent, it was acting in a quasi-judicial character. That being so, the appellant should have indicated some reasons as to why it accepted the findings of the Tribunal; and since no reasons are given, the order should be struck down on that ground alone.*

> ***15.*** *We are not prepared to accept this argument.* ***In dealing with the question as to whether it is obligatory on the State Government to give reasons in support of the order imposing a penalty on the delinquent officer, we cannot overlook the fact that the disciplinary proceedings against such a delinquent officer begin with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by a report and the Public Service Commission is consulted where necessary. Having regard to the material which is thus made available to the State Government and which is made available to the delinquent officer also, it seems to us somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal****. It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusions of the Tribunal, though even in such a case, it is not necessary that the reasons should be detailed or elaborate. But where the State Government agrees with the findings of the Tribunal which are against the delinquent officer, we do not think as a matter of law, it could be said that the State Government cannot impose the penalty against the delinquent officer in accordance with the findings of the Tribunal unless it gives reasons to show why the said findings were accepted by it. The proceedings are, no doubt, quasi-judicial; but having regard to the manner in which these enquiries are conducted, we do not think an obligation can be imposed on the State Government to record reasons in every case.*
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> (Emphasis supplied)

8. The applicant has also taken up a ground that the penalty imposed is excessive. We are afraid that it is so. The charges would go to show that there has been a fraudulent payment of government money to a non-existent firm. As such, the penalty cannot be said to be excessive. The Apex Court has held in many cases that it is not for the Court to consider the quantum of penalty save when the penalty is "shockingly

disproportionate". In this regard the decision of the Apex Court in the case of ***Mithilesh Singh v. Union of India,(2003) 3 SCC 309***, applies and the same reads as under:-

> *As has been observed in a series of cases, the scope of interference with punishment awarded by a disciplinary authority is very limited and unless the punishment appears to be shockingly disproportionate, the court cannot interfere with the same. Reference may be made to a few of them. (See: B.C. Chaturvedi v. Union of India* (1995) 6 SCC 749, *State of U.P. v. Ashok Kumar Singh*(1996) 1 SCC 302 *Union of India v. G. Ganayutham* (1997) 7 SCC 463 *Union of India v. J.R. Dhiman*(1999) 6 SCC 403 *and Om Kumar v. Union of India*(2001) 2 SCC 386

9. The applicant has claimed pay and allowances for the period between his reinstatement in service pursuant to the judgment dated 30-10-1996 passed in OA No. 1541 of 1994 i.e. from 01-06-1994 to 28-02-1997. Though the respondents have, vide paragraph 25 of the counter, the same does not have any supporting documents. The respondents are directed to verify the payment and if any amount is due to the applicant the same shall be paid within six months from the date of communication of this order.

10. In the end, the OA is partly allowed; i.e. it is dismissed in so far as challenge to the penalty orders is concerned and in respect of non payment of salary, it is disposed of with the above directions .No cost.

MEMBER-A MEMBER-J

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