RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 16th day of November 2005.

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

Original Application No. **1396** of **2002**

V.V. Tiwari, S/o Sri R.S. Tiwari,
Sri R.S. Tiwari,
R/o 75, Tirveni Nagar,
ALLAHABAD.

.....Applicant

By Adv: Sri S. Mandhyan
Sri P. Srivastava

V E R S U S

1. Union of India,
through the Secretary,
Defence Ministry,
South Block,
NEW DELHI.

2. Vice Chief Army Staff, Army Headquarters,
NEW DELHI.

3. Director General of Ordnance Services,
Directorate General of Ordnance Services,
O.S. BC (ii), Master General of Ordinance
Branch, Army Headquarters, DHQ PO,
NEW DELHI.

4. Officer In-charge, Army Ordinance,
Corps Records,
SECUNDRABAD.

.....Respondents.

By Adv: Sri S. Singh

O R D E R

The applicant is aggrieved by the order of penalty imposed upon him on the ground of proved misconduct. Hence this OA.

2. Briefly the applicant was a member of the Works Committee and on 12th July, 1990 as per the

charge sheet, he entered the office of Col. Srivastava at 0905 hrs, took up the S-37 Register without the permission of the said officer and signed the same to mark his attendance. When questioned as to the said indecent act, the applicant was stated to have retorted not only in a rude way but he had used abusive words as well. It was also alleged that the applicant had wielded his influence and provoked others who had also came late to the office (admittedly on account of the delay in the arrival of the train in which such officials usually travel). A show cause notice was issued followed by a charge sheet (04-05-1991) against the applicant. The applicant did participate in the inquiry proceedings with the help of the Defence Assistant and the inquiry continued on priority basis. However, in the end, for three days of inquiry since neither the applicant nor his defence assistant participated, the inquiry officer had completed the inquiry ex parte from that stage and rendered his report dated 16-10-1991, wherein the finding was that the three charges levelled against the applicant stood proved. Copy of the said inquiry report having been made available, the applicant furnished his reply but the Disciplinary authority, agreeing with the findings of the inquiry authority imposed the penalty of removal from service vide

The inquiry proceedings against the applicant culminated in to the order by the Disciplinary Authority of removal from service vide order dated 15-02-1992. On appeal, the penalty was reduced to reduction of pay by three stages for 3 years with cumulative effect, vide order dated 13-01-1993. After filing the revision, but before its final disposal by the revision authority, the applicant filed OA No. 234 of 1990 and on its having been admitted, provisions of Sec 19(4) incapacitated the revision authority to pass any orders on revision petition. However, by its order dated 11-02-2002 the Tribunal directed that the revision petition be also disposed of. The revision authority rejected the revision petition by order dated 27-08-2002 and the applicant has challenged the entire disciplinary proceedings.

3. The spinal grounds taken by the applicant in the OA are (a) vague and indefinite charges; (b) copies of the relief upon documents have not been made available; I.O. did not wait for disposal of the appeal filed by the applicant during the inquiry stage; (d) witness not mentioned in the list of witnesses annexed to the charge sheet was examined which vitiates the inquiry and (e) the I.O. had concluded the inquiry in a hasty manner. In addition, triviality of the charge, illegal

orders passed by the Appellate and Revision authority etc., were also reflected in the grounds of the OA.

4. The respondents have contested the OA. Their version is that the applicant, being a member of the Works committee, had been arrogant and had used the abusive words, as contained in the charge sheet and that the inquiry had been conducted in the manner as provided for in the Rules and Regulations and as such, the OA be dismissed.

5. Rejoinder had also been filed and thus, the pleadings having been completed, the case was taken up for final hearing. The Counsel for the applicant had sought permission to file written submission while the counsel for respondents relied upon the counter affidavit, which, according to him is comprehensive and nothing more required to be added.

6. In the written submission the applicant reiterated the contention of vagueness of charge and non supply of documents and lack of opportunity to defend his case. He has cited the following decisions in support of his case (It is to be kept in mind that citing the decision is

one thing and the ratio in such cases fitting the facts of the present case is another):-

(a) ***Surat Singh and othersvs S.R. Bakshi and Others AIR 1971 Delhi 133***

(b) ***Surat Chandra Chakravarty vs State of West Bengal (1970) 3 SCC 543***

(c) ***Kashinath Dikshita v. Union of India, (1986) 3 SCC 229***

(d) ***Ram Kishan v. Union of India, (1995) 6 SCC 157***

(e) ***Union of India v. K.A. Kittu,(2001) 1 SCC 65***

(f) ***Dayal Kushwaha vs State of UP and others 2003 ESC (All) 2 649***

(g) ***Gurcharan singh vs NTPC (L) 2004 (1) ESC All 615***

(h) ***Syed Nazir Abbas Naqvi vs State of UP and others 2004(1) UPLBEC 90***

7. The pleadings were perused and the written arguments considered. The inquiry report has been very comprehensive and it is noticed from the same that the inquiry was conducted on a number of days, i.e. on 27-07-1991, 03-08-1991, 10-08-1991, 16-08-1991, 20-08-1991, 24-08-1991, 28-08-1991, 29-08-1991, 03-09-1991, 05-09-1991, 6-09-1991, 07-09-1991, 10-09-91 (adjourned), 11-09-1991 ((adjourned) and 12-09-1991. Adjournment on 10th and 11th September, 1991 was on account of the absence of the applicant and his defence counsel and on 12th September, 1991 the I.O. chose to proceed further in the absence of the

applicant. This goes to show that the I.O. has not rendered his finding in a hasty manner.

8. The applicant has challenged that the charges are vague and as such the proceedings are vitiated. The charge sheet no doubt does not spell out precisely the episode but if the documents relied upon are taken into account, one could easily make out the precise charges True, it is by now well settled that the charges should be unambiguous and should not be vague. In this regard, the decision relied upon by the applicant is worth citing. In the case of *Surath Chandra Chakrabarty v. State of W.B., (1970) 3 SCC 548*, at page 552 the Apex Court has held as under:-

> *"The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him." (Emphasis supplied).*

In the case of Transport Commr. v. A. Radha Krishna Moorthy, (1995) 1 SCC 332, at page 335 :

9. Insofar as the vagueness of the charges is concerned we find that it deserves acceptance. It is asserted by Shri Vaidyanathan, learned counsel for the respondent that except the memo of charges dated 4-6-1989, no other particulars of charges or supporting particulars were supplied. This assertion could not be denied by the learned counsel for the appellant. A reading of charges would show that they are not specific and clear. They do not point out clearly the precise charge against the respondent, which he was expected to meet. One can understand the charges being accompanied by a statement of particulars or other statement furnishing the particulars of the aforesaid charges but that was not done. The charges are general in nature to the effect that the respondent along with eight other officials indulged in misappropriation by falsification of accounts. What part did the respondent play, which account did he falsify or help falsify, which amount did he individually or together with other named persons misappropriate, are not particularised. The charge is a general one. It is significant to notice that respondent has been objecting to the charges on the ground of vagueness from the earliest stage and yet he was not furnished with the particulars. It is brought to our notice that respondent's name was not included in the schedule appended to GOMs 928 dated 25-4-1988 mentioning the names of officials responsible for falsification of accounts and misappropriation and that he is also not made an accused in the criminal proceedings initiated in that behalf.

10. We are, therefore, of the opinion that the judgment of the Tribunal is right insofar as it holds that the charges communicated to the respondent are vague.

9. However, if one has a look at the way the defence assistant put forth the questions to the I.O. as could be seen from the Inqairy Report, the same would goes to show that the applicant has fully understood as to the precise charge. The defence assistant could point out the finer

difference of contents as contained in the show cause notice and in the complaint. And, the complaint (annexed to the OA) gives the full narration of facts. As such, it cannot be said that the applicant could not defend himself on account of vagueness of charge. This ground of the applicant cannot therefore be accepted.

10. Next ground is that the applicant was not given any opportunity to defend his case inasmuch as the documents called for were not supplied to him. In this regards, the decision of the Apex Court relied upon by the applicant in th4e case of *Kashinath Dikshita v. Union of India, (1986) 3 SCC 229* and the relevant portion is as under:-

> *When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question: "What is the harm in making available the material?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being*

wasted if the courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it. It is not even the case of the respondent that there was involved any consideration of security of State or privilege. No doubt the disciplinary authority gave an opportunity to the appellant to inspect the documents and take notes as mentioned earlier. But even in this connection the reasonable request of the appellant to have the relevant portions of the documents extracted with the help of his stenographer was refused. He was told to himself make such notes as he could.

11. Here again, the Inquiry Report would reflect that no document called for by the applicant had been denied to him. In fact, all his questions through his defence assistant, addressed to the Presenting Officer as elaborately discussed in the I.O's report would go to show that the applicant was not lacking in knowing the exact charge and that he had been provided with the requisite documents. The citation in the case of Surat Singh and others vs S.R. Bakshi and Others AIR 1971 Delhi 133 relates to supply of unrelied documents (which would be supporting the C.O) and there is no such ground raised in the OA that the documents not relied upon were requisitioned but the same had not been available.

12. The case of Ram *Kishan v. Union of India, (1995) 6 SCC 157*, deals with the quantum of penalty for a misconduct that abusive language is used against a superior. The relevant portion reads as under:-

> *"When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No strait-jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated.*
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> *12. On the facts and circumstances of the case, we are of the considered view that the imposition of punishment of dismissal from service is harsh and disproportionate to the gravity of charge imputed to the delinquent constable. Accordingly, we set aside the dismissal order. We hold that imposition of stoppage of two increments with cumulative effect would be an appropriate punishment. So, we direct the disciplinary authority to impose that punishment."*

13. In the case of the applicant the appellate authority itself has reduced the quantum of penalty from removal from service to one of reduction in pay by 3 stages for 3 years with cumulative effect. By the above judgment also the Apex Court had converted the penalty of dismissal to one of stoppage of two increments with cumulative effect.

14. The next case relied upon by the applicant is *Union of India v. K.A. Kittu,(2001) 1 SCC 65*, and the relevant portion is as under:-

> *9. The Tribunal before proceeding to examine report of the enquiry officer rightly took note of the fact that the Tribunal cannot review the report of the enquiry officer if there are relevant materials on record and the findings of the enquiry officer are based on such material facts. We further find from the impugned judgment that the Tribunal mainly considered the contradictory findings of the enquiry officer. Therefore, the submission of the learned Senior Counsel for the appellant has no force.*
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> *10. Regarding Charges 1 and 2 the enquiry officer held that the respondent could not be blamed for collection of premium and pattom and for treating Thomas Sebastian and two others as "would-be lessee" but found fault in the action of the delinquent officer in giving sanction as he had no jurisdiction. It was further held that it was motivated and actuated of ulterior motives. According to the Tribunal the above finding regarding motive was based on no evidence and in this connection the Tribunal quoted the following observation of the enquiry officer namely "unfortunately, there are no evidences to show that his action can be directly relatable to any material gains". We have perused the report of the enquiry officer and we find that the Tribunal is right in holding that the above finding regarding motive is based on no evidence.*

15. The above case deals with the power of the Tribunal to deal with the Inquiry Report and quash the same if it is found that the finding was based on no evidence or the same is perverted.. However, in the case of the applicant, it cannot be held that the finding was irregular.

16. The next ground is that witness not detailed in the annexure to the charge sheet has been examined and the same would vitiate the inquiry. It is seen from para 121 of the Inquiry report that the Presenting officer requested permission for producing Shri Amar Chand as a witness as he was stated to be present at the time of incident. Since he was not a listed witness, the Inquiry Officer has permitted this witness to be examined. It would be seen from the complaint that the complainant has specifically stated in his complaint dated 12-07-1990 (on the very day of the alleged incident) about the presence of the said Amar Chand. The inquiry authority is a fact finding authority and is performing a quasi judicial function. As such, in our opinion as in the case of the Court, witness other than those whose names appear in the list could be permitted to be examined. In this regard, it is worth citing the judgment of the Apex Court in the case of Mange *Ram v. Brij Mohan, (1983) 4 SCC 36*, wherein it has been held as under:-

> *(3) The court may, for reasons to be recorded, permit a party to call, whether by summoning through court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.*

17. Thus, viewed from any angle, it is clear that the respondents have conducted the inquiry

in the manner as expected under the provisions of the CCS(CC&A) Rules. No fault could be found against the orders under challenge. The penalty of removal has also been reduced to one of reduction by three stages for a period of three years with cumulative effect. As the applicant could not make out a case whereby it could be held that there has been lacuna in the decision making of the Disciplinary Authority, the OA fails and is therefore, dismissed. However, no order as to cost.

Member (A) Member (J)

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