IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH: JODHPUR

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ORIGINAL APPLICATION NO: 322/2002.
And Misc. Application No.150/2002

Date of decision: 26.10.2004

U N Purohit ... ...**Applicant**

Mr. J K Mishra & Mr. B Khan ... ...**Advocate for the Applicant**

VERSUS

UOI and ors ... ...**Respondents.**

Mr. Kuldeep Mathur ... ...**Advocate for Respondents.**

CORAM:

Hon'ble M. J.K. Kaushik : Judicial Member.

Hon'ble Mr. G.R. Patwardhan : Administrative Member.

1. **Whether Reporters of local papers may be allowed to see the judgement?** yes
2. **To be referred to the Reporter or not?** yes
3. **Whether their Lordships wish to see the fair copy of the Judgement?** yes
4. **Whether it needs to be circulated to other Benches of the Tribunal?** yes

(G.R.Patwardhan) **(J K Kaushik)**

Administrative Member **Judicial Member.**

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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR

Original Application No. 322/2002
And Misc. Application No. 150/2002

Date of decision 26.10.2004

Hon'ble Mr. J K Kaushik, Judicial Member.

Hon'ble Mr. G R Patwardhan, Administrative Member.

U.N. Purohit, S/o Shri Narain Puruhit aged about 42 years resident of, Muthon Ki Gali Ke Samne Nauchaukia Mohalla, Jodhpur last employed on the post of Senior Salesman cum clerk in the office of Air Force Canteen, Airforce Station, Jodhpur.

: Applicant.

Rep. By Mr. J.K. Mishra, Mr. B Khan: Counsel for the applicant.

VERSUS

1. Union of India through Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Air Officer Commanding, Air Force Station, Jodhpur.
3. Chief Administrative Officer, Air Force Station, Jodhpur.

: Respondents.

Rep. By Mr. Kuldeep Mathur: Counsel for the respondents.

ORDER

Per Mr. J K Kaushik, Judicial Member.

Shri U N Purohit has filed this Original Application under section 19 of Administrative Tribunals Act, 1985 and has inter alia sought for the following relief:

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" 8.1. That the impugned order dated 26.05.95 Annex. A/1m Charge sheet, penalty order dated 08.11.96 Annex. A/2 inflicting the penalty of removal from service issued by 3rd respondent and appellate order dated 29.05.2001 Annex. A/3 rejecting the appeal passed by Wing Commander (C.Adm O)may be declared illegal and the same may be quashed and the applicant allowed all consequential benefits."

2. We have heard the elaborate arguments advanced by leaned counsel for both the parties and have earnestly considered the pleadings and records of this case.

3. The factual background of this case as may be succinctly put is that the applicant came to be initially as Salesman-cum Clerk on dated 24.5.84 in the Air Force Canteen at Jodhpur. He was appointed after due selection by the Air Commodore, Air Officer Commanding i.e. the second respondent. The copy of his appointment letter has been kept in his service file. He discharged his duties satisfactorily till he was inflicted with the penalty of removal from service vide letter dated 8.11.2001(A/1) as mentioned in the following paras.

4. The further facts of the case are that the applicant was issued with a charge sheet vide memo dated 26.5.95 (A/1), containing a set of three imputation of misconduct with no specific charges. The charge sheet did not contain any list of witnesses or the list documents to substantiate the charges. An inquiry was conducted into the allegation by a Board of Inquiry. The copy of handing over/taking over certificate and the relevant stock sheets by which the applicant was given the charge of

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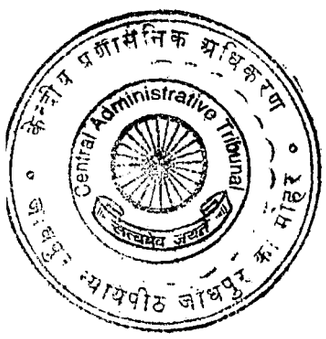
stores alleged to have been handled by him during the period in question i.e. from 1.7.93 to 31.12.93. The documents made available were not true copies from their original and were not proved by their authors. Certain lists were prepared without any authenticity. The inquiry was closed without taking the defence evidence. He has been inflicted with the penalty of removal from service vide letter dated 8.11.96, holding the charge No. 1 and 3 as proved. The copy of inquiry report was also supplied to him along with the removal order, and no opportunity for making representation against the findings of Board of Inquiry was given to him. He preferred an appeal on dated 16.1.97, which has also been rejected without application of mind and considering the points, mentioned therein.



5. Certain factual aspect relating to the charges has been elaborated. It has been averred that recommendations of a Court of Inquiry was given on dated 10.4.95 whereas the notice of deficiency was issued to the applicant on 5.4.95 itself and that too when the deficiency had already been written off as reflected in the P & L A/C and Balance Sheet for the period ending 31.3.1994. No loss of stock has been reflected and the applicant was never give the charge of bulk stock. It was also averred that the so-called proceedings of Court of inquiry, which have no application to the civilians in defence who are not subject to the provisions of Air Force Act, has not been signed by the members

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thereof and only the presiding officer has signed the same, for the reason of disagreement. The applicant also requested for appointment of ad hoc disciplinary authority since all the member of the court of Inquiry were witness in the instant case and were senior in rank to the disciplinary authority.

6. The salient grounds on which this Original Application has been filed are numerous; the significant being that the 3rd respondent who is of Group Captain Rank is junior to the actual appointing authority, and was not competent to act as disciplinary/or punishing authority, it is a case of no evidence and the applicant has been held guilty of the charges on the basis of inadmissible evidences, he has been denied reasonable opportunity to defend his case since no witness was produced by the prosecution and he was not given the details of deficiency, the Inquiry report was not supplied to him prior to imposition of penalty and he was not given due opportunity to make representation against the findings of the Board of Inquiry, which has prejudiced his case as per the verdict of Apex Court in **Mohd Raman Khan's** case, the appellate authority has rejected the appeal in a mechanical manner and that too by a lower authority, etc.

7. A separate Misc. Application for condonation of delay has been filed wherein it has been averred that removal order is

dated 8.11.96 and appellate order is dated 29.5.2001. The Original Application ought to have been filed by 25.5.2002 and there is delay of about 5 months and 25 days. The reason for the delay adduced is that the applicant has no source of income; being out of employment and could not meet the expenses of litigation. It is averred that he has a meritorious case for adjudication and justice-oriented approach may be applied.

8. The respondents have contested the case and have filed a detailed and exhaustive reply to the Original Application. It has been averred that application is time barred and they have not received a copy of MA. On facts it has been averred that the second respondent appointed applicant and it is wrong to content that he was not given the appointment letter. The P & L A/C is prepared in accordance with accepted and prevailing procedure and may not include the loss of stock. The applicant was first placed under suspension and was given opportunity to submit his statement of defence. The due procedure and principles of natural justice was followed and he was found guilty of the charges by the Board of Inquiry. The court of Inquiry was ordered on 11.4.94 and the notice was given on 5.4.95 during the course of investigation. The presenting officer produced documentary evidences to the Board of Inquiry. The applicant admitted that in the court of Inquiry but denied in the Board of Inquiry that he was in-charge of store at the relevant time.

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9. The further defence of the respondents as set out in the reply is that the court of inquiry was not ordered against an individual but to find out the persons responsible for misappropriation and was duly constituted by Hqrs. SWAC. The audit summary of surplus/deficiency as worked out by special Board of Officers and the presenting officer produced revised summary of surplus deficiency in respect of main/retail shop before the Board of Inquiry. The appeal was never submitted to the competent authority and the manager of the canteen was not competent to receive to receive the appeal. The reply was given to one of his representation.

10. Specific reply to the grounds has been given. It has been averred that as per the Terms and Conditions of Unit Run Canteen dated 31.1.84, the Chief Administrative (sic Executive) officer/Sr. Administrative Officer shall be the appointing authority of a canteen employee. The Court of Inquiry was held as per A F Rules and Regulation requiring no orders from the Government of India. The applicant was afforded full opportunity to defend his case. The respondents did not receive the appeal of the applicant and the letter-dated 25.5.2001 is self-explanatory in this respect. The Original Application is also time barred and deserved to be dismissed.

11. Both the learned counsel have reiterated the facts and grounds enunciated in their respective pleadings as noticed above in detail. The learned counsel for the applicant has cited the judgement of this bench of the Tribunal in case of **Jogdan Charan V. Union of India and others OA. No. 46/99** decided on dated 2.4.2002 and upheld by **Hon'ble High Court of Rajasthan in DB Civil Writ Petition No. 4272/2002 Union of India & ors V. Jogdan Charan and Anr** decided on dated 13.3.2003 and has submitted that the issue relating to the appointing authority is settled holding that the penalty order therein was bad in law. On the other hand the learned counsel for the respondents has submitted that in case the Tribunal come to the conclusion that the removal order is also bad in law, the respondents may be given liberty to initiate the fresh inquiry according to law.

12. We would first of all dispose of the MA for condonation of delay. The learned counsel for the applicant has reiterated the facts mentioned in the MA. The respondents have not filed any reply to MA. At one place it has been pleaded in the Original Application that the copy of MA was not furnished to them. It is seen from the notices sent to each of respondents that the copy of MA was specifically sent to them along with OA. At no occasion, any such objection was taken on behalf of the respondents despite being represented through their counsel.

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Thus the said plea is factually incorrect. However, we have gathered certain details from the reply. It has been averred that the Manager of the canteen, who has acknowledged the receipt of appeal, was not competent to accept the appeal and thus the same was no appeal in the eye of law. We are unable to persuade ourselves with such contention; the manager being a responsible officer and controlling authority in respect of the applicant. In any case, we resort to apply a liberal approach by applying the dictum of Apex Court in case of **Collector Land Acquisition Anantnag and another vs. Mst. Katijhi and others** [AIR 1987 SC 1353] and are satisfied that there is good and sufficient reason for condoning the delay. Therefore, we hereby condone the delay and shall be deciding this case on merits. The MA for condonation of the delay stands accepted, accordingly.

13. We have considered the rival submission made on behalf of both the parties. Before proceeding further in the matter we would like to ascertain the scope of judicial review by this Tribunal. It is settled legal position that strict rules of evidences are not applicable to the departmental inquiries and every violation of procedure does not vitiate the inquiry. See **R.S.Saini vs. State of Punjab [1999** SCC (L&S) **1424] K.L. Shinde vs. State of Mysore [AIR 1976 SC 1080]; Rae Bareli Kshetriya Gramin Bank vs. Bhola Nath Singh and**

However at the time of pronouncement of this Order Ld. Counsel for Respondents admitted that a copy of MA was supplied to him by the Ld counsel for applicant on his request.

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others [AIR 1997 SC 1908]; Bank of India and another vs. Degala Suryanarayana [1999 SCC (L&S) 1036]; Inspector General of Police vs. Thavasiappan [JT 1996 (6) SC 450]. The Apex Court in case of **Kuldeep Singh Vs Commissioner of Police; [AIR 1999 SC 677]** has lucidly illustrated the scope of judicial review. The following paras are relevant observations: -

> "It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority. In Nand Kishore vs. State of Bihar, AIR 1978 SC 1277 = (1978) 3 SCC 366 = 1978 (3) SCR 708, it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which, and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse.

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Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

A broad distinction has, therefore, to be maintained between the decisions, which are perverse, and those, which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be the conclusions would not be treated as perverse and the findings would not be interfered with."

14. Now adverting to question of seminal significance in regard to the ground that the order of removal cannot be sustained as a subordinate authority has issued the same to the appointing authority. There is no dispute (rather it is admitted in reply) on the factual aspect that the applicant was appointed by the Air Commodore rank officer but the punishment order has been passed by Group Captain rank officer who is admittedly of lower rank than Air Commodore. We notice that as per the Rule 18(1) of the Terms and Conditions of Canteen Employees (A/5), the appointing authority shall also be the disciplinary authority. Thus in the case of applicant the officer of the rank of Air Commodore only could act as disciplinary authority. The same proposition has been laid down but in a bit different way by this bench of the Tribunal in case of **Jogdan Charan as Hon'ble High Court in case of D.B. Civil Writ Petition No. 4272/2002 Union of India & Ors. Vs. Jogdan Charan &**

Anr., decided on dated 13.3.2003, supra. The Tribunal held as under (para 8 and 9): -

> "8. In the instant case, it is accepted at all hands that the Appointing Authority of the applicants was Air Commodore. The applicants have been removed from service by Chief Administrative Officer, a person of the rank of Group Captain. He undoubtedly is inferior in rank and subordinate to the Appointing Authority i.e., the Air commodore. The order of removal is, therefore, in patent violation of the provisions of Article 311(1) of the Constitution of India. If any authority on the point is required, we would do better to make a reference to a decision of Hon'ble the supreme Court in the case of Krishna Kumar vs. Divisional Assistant Electrical Engineer, Central Railways and Others, AIR 1979 SC 1912, in which the order of removal from service was held to be illegal as it was passed by an officer who was subordinate in rank to the Appointing Authority.
>
> 9. The orders of removal of the applicants from service passed by the Chief Administrative Officer are not only bad in law but for the reasons stated above have to be treated as non est."

15. The impugned orders deserve to be quashed on the aforesaid ground alone and in normal course there would not have been any need for further discussion since the very initial order itself is without jurisdiction and non est in the eye of law. But for more than one reasons, we would like to adjudicate on other vital issues so as to put quietus to the litigation.

16. Now adverting to the other aspects of this case, the perusal of inquiry report as well the penalty order reveal that the charges No. 1 and 3 against the applicant have been held as

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proved on the basis of statements of the applicant in the Court of Inquiry, findings of a Special Board of officers and revised summary of surplus/deficiency, salary register where he is indicated as in charge of main counter etc. The contention of the learned counsel has been none of these documents was marked as exhibit. These have also not been proved by their author and the same could not have been read as admissible evidence. There is no other evidence in support of the charges in as much as no witness was examined on behalf of the respondents. Even no witness has been listed with the charge sheet and similar is the fate of documents. We find that this version is factually true. As far as the legal position is concerned, no doubt the standard of proof in the departmental proceedings is different from the one required in criminal proceedings but the document to be relied upon in the disciplinary proceedings is required to be exhibited after proving the same by their author. This being not done, such documents cannot be construed as admissible evidence and form the basis of finding of guilt. We are fortified of this proposition of law as laid down by the Apex Curt in case of **Min. of Finance V. S B Ramesh AIR 1998 SC 853**, wherein their Lordships have held that Documents which have not been exhibited can not be used; on the basis of a comparison of handwriting or signature are only guess work which do not amount to a proof even in a disciplinary proceedings; Suspicion however strong, can not be substituted

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for proof even in a departmental proceeding. In this view of matter the findings of inquiry officer are perverse since based on no evidence and the penalty order cannot be sustained.

17. It will not be out of place to mention here that the Court of Inquiry is provided as per the Army rule corresponding to Air Force Rule 154(1) which has also been provided under Section 107 of the Air Force Act and the corresponding Army Act. The civilians in Army are not subjected to Army Act as per Section 2 of the Army Act, 1950. Thus, the recommendations of the Court of Inquiry have no applicability to the case of the applicant, who is admittedly a civilian Government Servant in Defence. This bench of the Tribunal has exhaustively dealt with the nature of Court of Inquiry vide its decision dated 9.7.2002 in O A No. 24/2001 Bheek Singh Rathore Vs. Union of India and ors and observed as under:

> "16. Now we proceed to deal with the next question. The position regarding the court of inquiry has been mentioned in annexure A/17 of the paper book. The purpose of the Court of Inquiry has been mentioned in para 6 of the said annexure and the contents thereof are extracted as under:-
>
> "6. A court of inquiry is assembled to help a CO or superior authority to reach a correct conclusion on any matter upon which it may be expedient for him to be informed. It is an administrative procedure by which any unusual occurrence is investigated. The purpose is merely to help the authorities to come to a definite conclusion regarding any matter requiring investigation. The court is appointed merely to find out facts and make recommendations if so required to. The

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assembling authority may or may not accept the Court's conclusions. A court of Inquiry is not a 'Court of law".

The court of inquiry could be aptly said to be a preliminary inquiry whose function is only decide and assess whether it would be necessary to take any disciplinary action against the delinquent officer and it does not form any foundation for passing the order of dismissal against the employee. Thus any admission or so-called confession by the applicant in Court of Inquiry is of no consequence; especially when all the members of the court of inquiry did not agree with the findings and have not signed the proceedings of the same.

18. As a general rule the store items are required to be handed over to the in charge through hading/taking over certificate bases on the stock taking sheets reflecting the details of each items and until the entrustment is proved, one can not be said to held as responsible for any loss of deficiency. In the instant case we find that no handing/taking over certificate has been produced during the inquiry and in such situation the applicant cannot be held responsible for any deficiency or loss. Had the respondents been fair enough they would have disclosed such certificate to substantiate the allegation, having not been done so, the very foundation link is missing and thus it would lead to an inescapable conclusion that it is a case no evidence.

19. We cannot loose sight of the fact that there is a provision of stock taking for the canteen and a foolproof procedure is

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provided for working of the canteens. One of us has (J K Kaushik) incidentally has intimate knowledge of the same being an ex-serviceman. There is provision of monthly stock taking and settling of the surplus/deficiencies every month. Chapter 6 of IAP 3503 envisages for the same. Para 81 and 82 of the same makes a provision in this respect which reads as under:

> " 81.Stock taking is to be done preferably at the end of every month or any other convenient day in the last week by a Board of officers, comprising of one or more Commissioned Officers, Two MWO/WO/JWOS. For the month of March, stocktaking is to be carried on the last day only.
>
> 82.Every item of stock held in the Canteen is to be counted and entered in the stock schedule (See example 76 of Appendix). After completing the stocktaking, the stock schedules are to be compared with the stock book and stock book figures noted by the Board. The surpluses and deficiencies, if any, are then to be noted in the appropriate column and the board is then to certify the stock schedules.

The mere perusal of the aforesaid goes to show that the deficiencies could have been evident at the end of every month. It is not very clear as to what necessitated ascertaining the deficiencies after a lapse of after over a year. The other mystery is as to how the losses have been written off by 31.3.94 once the loss could bee ascertained only on 10.4.95. In normal course, the loss is written off only when it is ascertained that the same cannot be recouped. Even the requirement of the so-called special board of officers over other board is not understood. We have to make these observations since we are concerned with the decision making process. The procedure followed for sales of items from the canteen is also foolproof and

no item can go out of the canteen without proper checking. The security cover proved to the canteen is admirable.

20. Now we would advert to the other significant facet of the controversy i.e. regarding supply of inquiry report prior to passing of the penalty order. The question regarding the significance of furnishing a copy of inquiry report has been lucidly discussed and set at rest by the Apex Court in case of **State Of U. P. V. Harendra Arora And Another** decided on dated 02-05-2001 reported in 2002-(003)-LLJ -1124 -SC, wherein their Lordships have been pleased to hold as under: -

> "Thus, from a conspectus of the aforesaid decisions and different provisions of law noticed, we hold that provision in Rule 55-A of the Rules for furnishing copy of enquiry report is procedural one and of a mandatory character, but even then a delinquent has to show that he has been prejudiced by its non-observance and consequently the law laid down by the Constitution Bench in the case of ECIL (supra), to the effect that an order passed in a disciplinary proceeding cannot ipso facto be quashed merely because a copy of the enquiry report has not been furnished to the delinquent officer, but he is obliged to show that by non-furnishing of such a report he has been prejudiced, would apply even to cases where there is requirement of furnishing copy of enquiry report under the statutory provisions and/or service rules. "

In the instant case, the applicant was not given an opportunity to represent against the findings if Board of Inquiry, having furnished a copy of it along with penalty order, the question would arise as to whether the non-furnishing of the

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copy of said report prior to passing of the penalty order has prejudiced the case of the applicant; by testing the facts of this case on the touch stone of the aforesaid legal position. We are of the opinion that this question can be skipped of, having lost its significance in view of our positive finding that it is a case of no evidence and we do so.

21. The law, in cases of no evidence, is also settled by the Apex Court in case of **H. C. Goel Vs. Union of India** AIR 1964 SC 364 =1964 SCR (4) 718 wherein their Lordships of Supreme Court has held as under:

"In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract Art. 311 (2), the High Court under Art. 226 has Jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charge framed against him are in the nature of quasi judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings which is the basis of his dismissal is based on no evidence."

22. Applying the aforesaid principles of law to the instant case, none of the impugned orders can be sustained in law.

Keeping in view the entire facts and circumstances of this case, we are of the firm opinion that there is no necessity of giving any liberty to respondents to initiate fresh disciplinary proceedings in this matter.

23. The upshot of the aforesaid discussion is that there is ample merits and substance in this Original Application and the same stands allowed accordingly. The impugned orders Memo dated 26.5.95 Annex. A/1, penalty order dated 8.11.96 Annex. A/2 and appellate order dated 29.5.2001 Annex. A/3, are hereby quashed. The applicant shall be entitled for all consequential benefits, with the restriction that the actual monetary benefits shall be payable from the date of filing of this Original Application. This order shall be complied with within a period of three months from the date of its communication. Costs made easy.

[G.R.Patwardhan]
Admv. Member

[J.K.Kaushik]
Judl.Member

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