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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR**

Date of Decision : 28.5.2003

O.A. No. 44/2002.

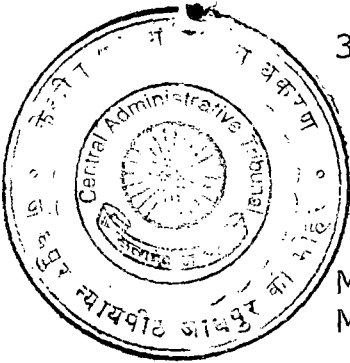
Raj Kumar Swami s/o Shri Narain Das Swami aged 38 years, resident of Hanuman Hatha, Behind Rashtradoot Press, Bikaner, Ex Cable Jointer No. 370028 HS-2 in the office of Garrison Engineer, Air Force, Nal, Bikaner.

... APPLICANT.

V e r s u s

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, South Block, New Delhi.
2. The Commander works Engineer, Air Force, Bikaner.
3. The Chief Engineer, Head Quarter, Air Force (WAC), Palam, Delhi Cantt. New Delhi.

... RESPONDENTS.



Mr. R. S. Saluja counsel for the applicant.
Mr. Kuldeep Mathur, counsel for the respondents.

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Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.
Hon'ble Mr. G. C. Srivastava, Administrative Member.

: O R D E R :

(per Hon'ble Mr. G. C. Srivastava)

This is the third round of litigation.

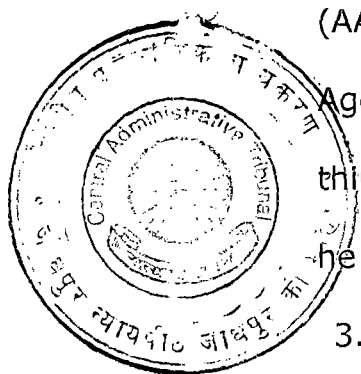
2. The applicant who was working as a Cable Jointer H.S.2 under the respondents have approached this Tribunal through OA No. 98/1996 in the first round challenging his dismissal from service ordered vide order dated 7/27.03.1996. The Tribunal allowed the OA vide judgment dated 22.09.1998 and the civil writ

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petition No. 4816/1989 against the said judgment was partly allowed giving liberty to the respondents to conduct inquiry in accordance with law. Thereafter inquiry proceedings were started afresh but when he was not permitted to engage another employee as Defence Assistant he filed OA No. 77/201 in the second round. While dismissing the said OA in limine, the Tribunal gave him an opportunity of participating in the inquiry with his defence assistant on the next date of hearing. The inquiry was concluded and the Disciplinary Authority (DA, for short) imposed on him the punishment of dismissal from service vide order dated 18.08.2001 (Annexure A-1). He preferred an appeal against the said punishment which was rejected by the Appellate Authority (AA, for short) vide order dated 22.12.2001 (Annexure A-2).

Aggrieved by the above orders, he has filed the present OA in the third round praying that the same be quashed and set aside and he be reinstated in service with all consequential benefits.

3. The facts in brief are as under. While working as Cable Jointer HS-2, the applicant was served with a charge sheet vide Memo dated 27.12.1995 (Annexure A-4) and 25.02.1996 (Annexure A-6). Simultaneously criminal cases were also filed against him for the same charges where he was acquitted by the trial court (Annexure A-5). He submitted reply to the charge sheet and without holding any inquiry, he was dismissed from service vide order dated 7/27.03.1996. In pursuance of the orders passed by the Hon'ble High Court in Writ Petition filed against the order of the Tribunal in OA No. 98/1996 the inquiry was continued and finally the impugned order of punishment of dismissal from service was passed by the DA which was upheld by the AA.



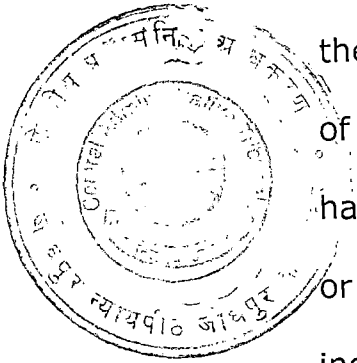
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4. The respondents have contested the OA and have filed detailed reply.
5. We have heard Mr. R. S. Saluja and Mr. Kuldeep mathur, learned counsel for the applicant and the respondents respectively and have carefully examined the pleadings and the material placed on record. We have also seen the departmental inquiry file made available by Mr. Mathur for the respondents at our instance.
6. The first ground advanced by Mr. Saluja for the applicant is that the inquiry has been held in whole sale breach of principles of natural justice inasmuch as despite his best efforts to avail of the services of a defence assistant, the applicant was not permitted to do so. According to him though he sought Hindi version of the documents furnished to him, the same was not made available to him. He has also contended that the respondents passed an order banning his entry in the premises of the Department due to which he was denied opportunity of defence. On the contrary, the respondents have stated that the applicant was given full opportunity to take service of defence assistant and though he took more than five months fro engaging one, he could not produce the defence assistant during the inquiry proceedings. According to them while deciding his OA No. 77/2001 filed by him on this account the Tribunal found him responsible for delaying the finalization of the inquiry proceedings and directed him to appear along with his defence assistant on the next date. However, he failed to do so and hence the inquiry was proceeded and he defended his case himself on the subsequent dates. As regards the Hindi version, they have stated that day to day inquiry proceedings were first

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discussed in Hindi and then recorded by the I.O in English. According to them the applicant has himself endorsed on the order sheet that the same has been explained to him in Hindi by the I.O. As regards findings of the trial courts, they have stated that standard of proof in departmental cases is different and the authorities have followed the procedure as given in the CCS (CCA) Rules.

7. We have considered the rival contentions. In this connection, we would like to refer to the order passed by this Tribunal in his earlier OA 77/2001 which clearly cover the above contentions. While dismissing the above OA filed by him against rejection of his request for change of I.O. on the ground of bias the Tribunal had discussed inter alia the question of engagement of defence assistant and had come to a finding that the applicant had been delaying finalization of the proceedings on one pretext or the other and the Tribunal was not inclined to give any kind of indulgence in this regard. Accordingly the Tribunal had directed the applicant to appear before the I.O. with his defence assistant on the next date but he had failed to do so and accordingly he defended his case himself on the subsequent dates. Regarding his demand for Hindi version, the Tribunal had directed that the English proceedings may be explained to him by translating it in Hindi. This direction has been followed in the instant case which is confirmed by the notings of the I.O. in the departmental file. Hence it does not lie in themouth of the applicant to raise the same plea now at this stage. As regards ban on his entry in the department we do not find any relevance of the same to his defence and also no prejudice is shown to have been caused to



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him on this account in regard to conduct of the inquiry. Hence the first ground fails.

8. Another ground taken by Mr. Saluja is that since the applicant has been acquitted in the criminal case for the same charges he cannot be proceeded against in a departmental proceedings for the same charges. He has in this regard relied upon the case of Capt. Paul reported in 1999 SCC (L&S) 810. Mr. Mathur for the respondents has stated that there is no bar for proceeding with the departmental action even where a criminal case is pending or there is acquittal. We have examined the rival contentions and find ourselves in agreement with the respondents. In the case of **Secretary, Ministry of Home**

Affairs and Anr. V. Tahir Ali Khan Tyagi JT 2002 (Suppl.1)

SC 520, the Hon'ble Supreme Court has held that there is no prohibition for continuation of criminal proceedings and departmental proceedings can run simultaneously and departmental proceeding can also be initiated even after acquittal in a criminal proceeding particularly when the standard of proof in a criminal proceeding is completely different from the standard of proof that is required to prove the delinquency of a government servant in a departmental proceeding, the former being one of proof beyond reasonable doubt, whereas the latter being one of preponderance of probability. Thus this ground does not hold good and is rejected.

9. The next ground advanced by Mr. Saluja for the applicant is that this is a case of no evidence as the charges have been held to be proved on the ipsi dixit of the departmental authorities relying on the documents but without producing any oral witness to substantiate them. In this regard Mr. Saluja has relied upon



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the judgment of the Hon'ble supreme court in the case of M/s Bareilly Electricity Supply Company Ltd. Vs. the Workmen and others (AIR 1972 SC 330). He has contended that as per the above judgment mere production of documents during course of departmental inquiry without producing any oral witness to substantiate the charges means that no material can be relied upon to establish a contested fact which are not spoken to by the persons who are competent to speak about them and are subjected to cross examination by the party against whom they are sought to be used. He, has complained that if a letter or other document is being produced to establish some fact relevant to the inquiry the writer must be produced or its affidavit in respect thereof be filed and opportunity be afforded to the opposite party who challenges this fact. Mr. Saluja has argued that the inquiry in the instant case has been held without producing any oral evidence to substantiate the charges which is illegal and arbitrary. The respondents have however pleaded that what the Hon'ble Supreme Court said in the above case was that where the genuineness of the documents produced during inquiry is under challenge by the delinquent employee, it is necessary to produce the persons who are writers of the documents in oral evidence but since in the instant case no documents were challenged no such requirement was warranted.

10. We have considered the rival contentions and have examined the judgement of the Hon'ble Supreme Court in the case of M/s Bareilli Electricity supply Co. v. The Workmen and others 330 SC AIR 1972 relied upon by Mr. Saluja for the applicant. In this connection we reproduce the relevant portion of the aforesaid judgement.



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"When a document is produced in a court or a Tribunal the question that naturally arises is, is it a genuine document, what are its contents and are the statements contained therein true. When the Appellant produced the balance-sheet and profit and loss account of the Company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be reduced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact."

From the above, it would be seen that what is required in the departmental enquiry is that wherever the documents relied upon are challenged or disputed by the delinquent employee, the persons or the authors of those documents must be produced in order to prove that the document are genuine and the statements contained therein are true. In the instant case however, we find from the departmental file reproduced before us that when the listed documents were produced by the presenting officer, the applicant did not raise any objection about them nor questioned their genuineness or authenticity even during the course of the enquiry. He also did not make any demand or request to call any of the persons who had prepared the documents. It is also seen from the departmental file that during the entire disciplinary proceedings he did not make any request to the Inquiry officer (IO, for short) to produce any of the above persons as witnesses in order to question the authenticity of these documents and, therefore, it does not lie in the mouth of the applicant now to raise this question. Although he has stated in his written brief that the disciplinary authority all along knew that *there is no evidence to*



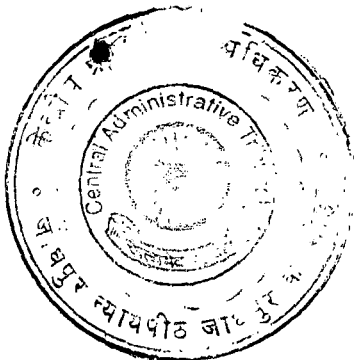
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prove the charges, he never demanded production of any of the persons who had written the listed documents. In view of this the ratio of judgement in the case referred to above is of no application in the present case and accordingly the above contention is fails.

11. As per the charge sheet, the charges leveled against him were as follows :-

"Statement of imputation of misconduct or misbehavior in support of each article and charge.

ARTICLE I



That the said MES-370028 Sh Raj Kumar, Cable Jointer while functioning as Cable Jointer during the period on 13 Sep 95 at 1130 Hrs un-authorisedly entered the office room of Steno of CWE (AF) Bikaner and by threatening him forcefully misused the telephone by making a trunk call to GE (AF) suratgarh for speaking with GE(AF) Suratgarh for his personal interest.

In that the said MES=370028 Shri Raj Kumar, Cable Jointer has acted in a manner amounting to gross misbehavior unbecoming of a Govt. Servant thus violating the provision of Rule 3 (1) (iii) of CCs (Conduct) Rules 1964 and is charged with gross misconduct.

ARTICLE II

That the said MES -370028 Sh. Raj Kumar, Cable Jointer while functioning as Cable Jointer during the period, has been engaging himself in activities prejudicial to the interest and the security of the State and has thus failed to maintain absolute integrity hence violating the provision of Rule 3(1) (i) of CCs (Conduct) Rules 1964.

ARTICLE III

That the said MES - 370028 Sh Raj Kumar while functioning as Cable Jointer during the period has been engaging himself in cheating and impersonation of way of publishing and writing on a Union Letter pad namely MES Employees Union (INTUC) GE (AF) NAL Bikaner office, indicating the

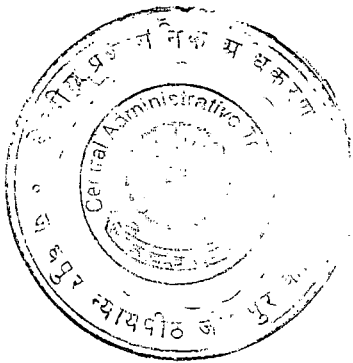
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name of Hon'ble Sh. Manphool Singh Bhadoo, Member of Parliament as SANRAKSHAK and by writing his own name as ADHYAKSH obviously attempting to bring political or other influence to bear upon the superior authy for furtherance of his interest under the Govt and to achieve his ulterior motives.

In that the said MES -370028 Sh. Raj Kumar, Cable Jointer is charged with "Gross conduct" violating the provision of Rule 3(1) (i) of CCS (Conduct) Rules 1964.

ARTICLE IV

In that the said MES -370028 Sh. Raj Kumar, Cable Jointer while under suspension during the period on 25 Jan 96 coaxed JC-179886 Nb/Sub Subhash Chand, Supdt. B/R II to his resident at Hanuman Hatha, Bikaner threatened, manhandled and beat him up with the aim to harass and intimidate the JCO i.e Nb/Sub Subhash Chand and subsequently obtained under duress a written undertaking from the above said JCO pertaining to the theft case lodged in the Civil Police vide FIR No. 64 dated 22.3.95 under Section 379 TPC thus exhibiting gross misconduct violating the provision of Rule 3(1) (i) of CCs (Conduct) Rules 1964".



12. As per the report of the I.O., Article No.1 is not proved.

As far as the other charges are concerned they stand proved as per his report. Article II consists of three charges which are as under :

1. Theft of 05 Ltr Petrol.
2. Theft of 3 pin socket combination.
3. theft of 6 Nos new GI pipes 22mm dia.

As regards (a) above, the applicant was caught red handed at Security Gate by Security staff of AF stn. NAL while leaving the Air Force complex. The petrol was hidden inside the box of his

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moped and he could not produce at the time of checking any receipt of the purchase of 5 ltr petrol. IO has stated in his findings that from the receipt produced by the applicant on 29.05.1991 it appears that petrol has been put in a vehicle and not given in a tin. Further, as per rules no item can be taken out from AF Complex without proper authority. He has accordingly concluded that the petrol has been stolen from inside AF complex only and as such the charge of the theft of 5 ltr petrol stand proved based on documentary evidence.

13. The next charge in Article II is regarding theft of 3 pin socket combination. The IO has stated that if the item was surplus or could not be used in the work it was the applicant's duty to deposit the same in store. The contention of the applicant is that the store was closed is not agreeable and he should have handed over the item to MES Store Chowkidar or to any individual of MES Department who are staying inside the complex. The other option with the applicant was to deposit the item at gate of his own. He has not done any of these things and has also apologized for the misconduct. The IO has, therefore concluded the charge of 3 pin socket combination is proved.

14. The third charge in Article II relates to the theft of 06 Nos GI pipe where the applicant was caught red handed by Military CMP and handed over to Air Force security for investigation and the applicant produced a medical certificate wherein 4 days rest from 22.3.95 was recommended by the medical authority. IO has

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stated that the perusal of the certificate shows the time of 9:00am as mentioned below the date 22.03.1995 which is normally not a practice. He has further stated that the theft of the GI pipe also took place around the same time and moreover the medical authority has recommended 4 days rest and he was not admitted in Hospital. Accordingly he has concluded that this charge is proved.

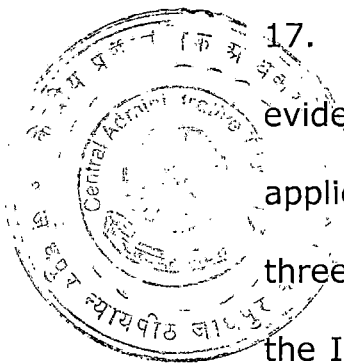
15. Article III pertains to engaging himself in cheating and impersonation by way of publishing and writing on Union Letter pad namely MES Employee Union (INTUC) GEAF NAL indicating the name of Sh. Manphool Singh Bhadoo MP as SANAKSHAK and writing his own name as ADHYAKSH, thereby bringing political influence for furtherance of his interest. The IO has observed that as per MES Employees Union, Bikaner letter dated 18.01.1995 Sh. Assoo Singh Badgujar is President of Union and not the applicant and further Shri Manphool Singh MP vide his letter dated 3.10.95 addressed to CWE AF Bikaner has stated that he is not SANRAKSHAK of any MES employee union and does not know Shri Raj Kumar Employee. The applicant had produced another letter No. Nil dated Nil written by the same Shri Manphool Singh showing him as the president of the MES Employee Union and asking for a change in his posting. In the same letter he has also stated that his earlier letter dated 03.10.1995 be treated as cancelled but no reasons have been given for cancellation. The IO has observed that the contents of the letter are totally contradictory and cannot be relied upon.

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Based on these observations, the IO has come to the conclusion that the charge is proved.

16. Article IV pertains to the Coaxing, Shri Subhash Chand, Supdt. B/R II at his residence Hanuman Hatha Bikaner with a view to obtain a written undertaking from him pertaining to the theft of 6 Nos GI Pipe as above in Article II. The JCO reported the mater to the Police Supdt. Vide his application dated 22.2.1996 and an FIR was lodged by Police. The matter was investigated by police and the FIR was declared as FR for want of witnesses. The IO has stated that the facts brought out by a responsible man in uniform (JCO) cannot be overlooked and thus the charge stands proved.

17. We found from the records that the IO has considered the evidence produced during inquiry, the written brief of the applicant and has come to a finding that out of four charges three charges stand proved. The DA has considered the report of the IO and keeping in view the reply of the applicant has agreed with the finding of the IO and imposed the impugned punishment. It is a settled position of law that in disciplinary matters, the powers of judicial review are extremely limited. It has been held in the case of **Government of Tamilnadu vs. Rajapandian 1995 (1) SCC 216** that the Administrative Tribunals cannot sit as a Court of appeal over a decision based on evidence of the IO in disciplinary proceedings. Where there is some relevant material which the DA has accepted and which material reasonably supports the conclusion reached by the DA, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the DA. In another case



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of **B.C. Chaturvedi vs. UOI 1995 (6) SCC 749** it has been held that the DA is the sole judge of facts where appeal is presented. The AA has extensive power of re appreciate the punishment or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court or Tribunal. In another case of **Syed Rahimuddin vs. Director General CSIR and others 2002 SCC (L&S) 251**, it has been held by the Hon'ble supreme Court that the conclusion or finding of fact arrived at in a departmental inquiry can be interfered with by Court only when there are no materials for the conclusions or where on the materials the conclusions could not be that of a reasonable man.

18. In the instant case, there has been an inquiry into the charges leveled against the applicant in terms of provisions contained in CCS (CCA) Rules and the applicant had been given sufficient opportunity to engage defence assistant of his choice but he finally failed to engage any defence assistant. In his earlier OA No.98/1996 he had approached this Tribunal and the Tribunal had occasion to arrive at a conclusion that the applicant has been trying to delay the entire proceedings on one pretext or the other and, therefore he had been given the last opportunity to engage a defence assistant on the next date of hearing. Finally the applicant himself defended his case. From the departmental files it is very clear that the IO has given liberty in granting adjournment at the request of the applicant and as also reasonable opportunities to the applicant to put up his defence. He has also been given an opportunity to submit his written brief

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after the conclusion of the inquiry. He was supplied with a copy of the IO, report and the disciplinary authority has imposed the penalty of dismissal from service vide order dated 18.08.2001 after considering the report of the IO. His appeal has also been considered by the AA and after examining the various points raised in the appeal filed by the applicant the AA has come to the conclusion that the appeal has no merit and, therefore, the same has been rejected and the penalty of dismissal from service was upheld.

19. In the facts and circumstances of the case, we do not find any ground to interfere with the impugned punishment imposed on the applicant after due process of enquiry and providing reasonable opportunity to the applicant to defend himself and supplying a copy of the report of the IO. We are unable to find any violation of either the provisions of the CCS (CCA) Rules or the principles of natural justice. The report of the IO is based on the evidence recorded during the course of enquiry and his findings are supported by material on record. The contention of the applicant that this is a case of no evidence as already discussed in Para 10 (Supra) has no legs to stand. Hence, in our considered view, no interference by way of judicial review in the present matter is called for.

20. In the light of the foregoing discussions we are of the considered opinion that the OA has no merit and deserves to be dismissed.

21. In the result, the OA is dismissed with no order as to costs.

Certified
as correct

(G. C. SRIVASTAVA)
MEMBER (A)

(G. L GUPTA)
VICE CHAIRMAN

19.9.03

19.9.03

[Signature]
29/9/03

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24/9/03
R.S. Subijaya

PIC
Rumi Kurni
24/9/03
for - Kulkop Murnu
R.S.

copy of order dated 28/8/03 sent
to the applicant Sh. Raj Kumar
via memo 264
dt 25/9/03

AD Read with Rgn
Me
8/10/03