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32**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR****ORIGINAL APPLICATION NO. 146/2005****Date of Order: 17-8-2010****CORAM:****HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM, JUDICIAL MEMBER
HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER.**

Hameer Singh Rathore S/o Shri Ganga Singh Ji Rathore – Retired Director, Regional Station on Forage Production and Demonstration, Suratgarh, District Sriganaganagar – Resident of House No. E-100, Kanta Khaturia Colony, Near Man Mandir, Bikaner (Rajasthan).

.... Applicant

Mr. R.S. Saluja, counsel for applicant.

VERSUS

1. The Union of India through the Secretary, Ministry of Agriculture, Department of Animal Husbandry and Dairying, Government of India, Krishi Bhawan, New Delhi.
2. Director (Vigilance & IC), Ministry of Agriculture, Department of Animal Husbandry and Dairying, Krishi Bhawan, New Delhi.
3. Union Public Service Commission, through the Secretary, UPSC, Dholpur House, Shahajahan Road, New Delhi.
4. Deputy Secretary, Union Public Service Commission, Dholpur House, Shahajahan Road, New Delhi.
5. The Joint Secretary and Chief Vigilance Officer, Ministry of Agriculture, Department of Animal Husbandry and Dairying, Government of India, Krishi Bhawan, New Delhi.

.... Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

*********ORDER****(Per Mr. V.K. Kapoor, Administrative Member)**

Shri Hameer Singh Rathore, has filed present O.A. in which he has prayed to quash the punishment order dt 12.5.2004 (ann.A-1) & advice of Union Public Service Commission (ann.A-7).

The applicant has sought the reliefs that are as follows:-

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- "(A). That Hon'ble Tribunal may quash punishment order No. C-13011/1/2001-AVU dated 12.5.2004 (Annexure-1) and Union Public Service Commission Advice (Annexure-7) with consequential benefits these orders being illegal, unconstitutional and untenable in view of the facts and circumstances of the case.
- (B). That Hon'ble Tribunal may direct not to cut 30% in pension of the applicant and permanent injunction may be imposed on such an action.
- (C). The Hon'ble Tribunal may direct to treat suspension period of applicant as spent on duty with all consequential benefits and to make payment of arrear of difference of pay and allowances and suspension allowance given to applicant.
- (D). The Hon'ble Tribunal may direct to pay full pension and retirement benefits to the applicant.
- (E). That cost may be awarded in favour of the applicant.
- (F). That for delayed payment of retirement benefits interest at bank rate may be allowed in favour of the applicant.
- (G). Any other relief as may be considered just and proper may be given to the applicant."



2. The factual matrix of the case is that applicant was posted in central govt. mechanized farm, Suratgarh on 04.02.1963, posted as Director, Regional Station Forage Production & Demonstration, GOI, Suratgarh later, got superannuation on 31.7.2001 after serving in respondent-department for a period of 38 years. Before retirement, he was served with a memorandum of charges dt. 22.6.2001 (ann.A-2) under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. In all, four charges were framed against him, for which he submitted reply on 09 July, 2001 (ann A-3). He was served with a show cause notice on 10.4.2003 along with report prepared by the Inquiry Officer (ann. A-5). Pursuant to this show cause notice, he submitted his reply (ann.A-6). An advice of Union Public Service Commission was sought, the UPSC sent their advice vide letter / communication dt. 17.3.2004 (ann A-7). Finally, on the basis of enquiry report &

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UPSC's advice dt. 17.3.2004, the disciplinary authority imposed a penalty of 30% cut in his pension on a permanent basis vide order dt. 12.5.2004 (ann A-1). The applicant has challenged this order dated 12.5.2004 (ann A-1) and UPSC advice dated 17.3.2004 (ann A-7), prayed to declare these as illegal and to quash them.

3. The respondents in reply have narrated that applicant while holding the post as Director, Regional Station, Forage Production & Demonstration, GOI, Suratgarh indulged in some irregularities, after holding enquiry, an order dt 12 May 2004 was passed by respondent-2 who inflicted a punishment of 30% cut in his pension on permanent basis. An opinion of UPSC was sought, their advice dt 17 March 2004 was taken into consideration before passing the impugned order. The UPSC's advice is not subject to challenge, no procedural lapse is pointed out by applicant while challenging this punishment order imposed after lawful enquiry. As per respondents it is only a judicial review of the process and not of decision. The present O.A. is liable to be dismissed on the ground that after a full-fledged enquiry, charges levelled against applicant were proved in disciplinary proceedings, started under rule 14 of CCS (CCA) Rules, 1965. A memorandum dt. 22 June, 2001 was issued to him before his retirement. The applicant submitted reply on 09 July 2001 in which he denied all these four charges levelled against him. A full-fledged enquiry was held in the matter, charges 1 & 2 were found to be proved against him, proper procedure was adopted in the enquiry conducted. The applicant was given a reasonable opportunity to explain his position, the report of inquiry officer was made available to enable him to make submissions.



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Finally, after charge no. 1 & 2 were found to be proved as per enquiry report, the respondent-2 imposed a punishment of 30% cut in pension of the applicant on permanent basis.

4 (a) Learned counsel for applicant in arguments has stated that departmental proceedings were started against applicant; the list of allegations, memorandum dt 22 June, 2001 was served upon him before retirement. The applicant worked in dept for 38 years as Director, retired on 31.7.2001. The charge sheet was served upon him on 22 June, 2001 about 38 days prior to his retirement.

The applicant gave reply to the allegations on 09 July, 2001. The enquiry officer & presenting officer were appointed, on 17 October 2001 the enquiry report was submitted. An advice from UPSC was taken, dt. 17 March 2004 (ann A-7), the disciplinary authority imposed punishment of 30% deduction from applicant's pension vide order 12 May, 2004 (ann A-1). A review petition was filed by applicant, but no action taken (ann A-9). In all, 04 charges were

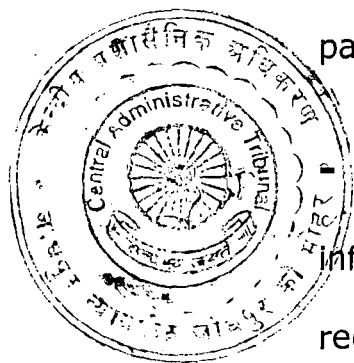
listed against him, charges 1,2 were proved but charges 3,4 were not proved. These charges are dealt with in subheads; wherein the findings are lacking, the enquiry officer gave a faulty report; even charge 1, 2 are not fully proved. Enquiry report is silent in Vijendra Pal Singh (charge-1); findings are given in case of Shri Raghuvar Pal Singh only. As per rule 11 of CCA rules, 1965, the disciplinary authority is supposed to apply his mind; enquiry report is not clear & specific. In support of his contentions, learned counsel for applicant has cited some rulings of apex court, namely 1985 SCC (L&S) 815, 1976 AIR (SC) 1785, (2009) 1 SCC (L&S) 398, 2010 (1) SCC (L&S) 406, 1989 (2) SCC 498, 1995 AIR (SC) 1053, 1985

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AIR (SC) 1121 etc. The applicant has also relied upon (1993) 1 SCC 78; as statutory requirement is not fulfilled, this becomes a matter of prejudice. The applicant has prayed to quash order dt 12.5.2004 (ann A-1) and declare the advice dt. 17.3.2004 of UPSC as illegal. The review in the matter is not entertained (ann A-9).

- The applicant has contended that no relations of applicant were appointed & this relationship is not proved by the latter. The UPSC cannot take up charge as an enquiry officer, the Tribunal is not to re-appreciate evidence, the Tribunal cannot behave as an appellate court. The enquiry officer has not applied his mind, nor given any reasoning; applicant's defence is ignored altogether. The enquiry officer is not supposed to show prejudice; should act in a judicious manner, not to act as an agent of dept: 2010 (1) SCC (L&S) 675. There is a clear case of prejudice, the statutory requirements are not fulfilled: 1993 (1) SCC 78. The disciplinary authority, while passing an order, ought to give clear reasons and apply his mind.

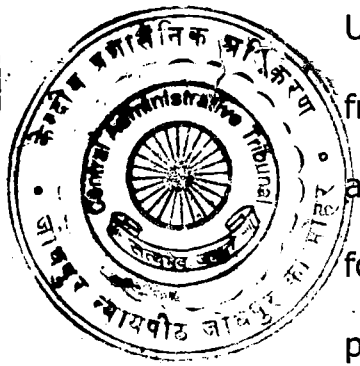


The applicant has not made illegal appointment to any post, information submitted by him to the Ministry of Agriculture in regard to Prithvi Raj is not false. The inquiry report is not speaking one. The punishment is imposed on applicant and order is passed on the name of President of India, there is no appellate forum; punishment cannot be validly final. In absence of an appellate forum for making submission, punishment inflicted upon him cannot attain legal validity. Issuance of show cause notice is not mere empty formality, applicant's defence should be considered.

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4 (b). Learned counsel for respondents in arguments has stated that in all, 04 charges were levelled against applicant; only two charges 1, 2 are proved. The advice from UPSC was obtained; show cause notice given to applicant, a full-fledged enquiry was conducted. The UPSC concurred with 30% cut from applicant's pension; thus as per advice of UPSC, a punishment of 30% cut from applicant's pension on permanent basis was imposed. The applicant was not vested with statutory post of Director; he appointed his close relatives, clear & detailed findings are given by enquiry officer. The applications were not invited from employment exchange; applicant as Director, RSFPD, Suratgarh appointed various persons/relatives on different posts. There is no denial of these acts of commission on applicant's part; illegal appointments are proved in charge-1. As regards charge-2, the applicant granted temporary status to one Shri Prithvi Raj who was not working in the dept. The applicant gave false information as regards charges levelled against him vide letter dated 30.4.2003 (ann A-6). The UPSC enquired into the matter while tendering advice. After advice from UPSC was received, action in regard to charges levelled against applicant was taken; charge 1,2 stood proved. The rules for conduct of enquiry were complied with; two charges 1, 2 proved, punishment was imposed on applicant (ann A-1). There is no prejudice caused to applicant, as there was no procedural lacuna & copy of the enquiry report was supplied to him; the prejudice caused to a person (applicant) has to be established. In support of his contentions, the respondents' counsel has cited the case laws of the apex court, namely (2010) 3 SCC 556, 1990 AIR (SC) 984, 2008 AIR (SC weekly) 6055, (2008) 9 SCC 31.

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5. The applicant was posted on 04.02.1963 in central govt. mechanized farm, Suratgarh. He was posted later as Incharge Director, Regional Station Forage Production and Demonstration, GOI, Suratgarh, retired after serving for a period of 38 years. He was served with a memorandum dt. 22.6.2001 under rule 14 of CCS (CCA) Rules, 1965 (ann A-2); articles of charges (04) were framed against him, which are as follows:

Charge-1: Illegal appointments to the posts of Veterinary Compounder, Junior Mechanic, Tractor Helper, Milker cum cattle attendant and Ad-hoc appointments to the post of U.D.C. and L.D.C. violating official procedures and norms.

Charge-2: Submission of false information to the Ministry of Agriculture resulting in grant of Temporary Status to Shri Prithvi Raj.

Charge-3: Un-authorised travelling by Govt. vehicles without approval of Tour Programme by Competent Authority & expending huge amount towards the cost of fuel and T.A. and D.A. to drivers.

Charge-4: Un-authorised and illegal allotment of Government Quarter higher than the entitlement without any approval of the Competent Authority."

Besides, the statement of imputation of misconduct or misbehaviour in support of the articles of charges were framed against applicant as ex-agriculture officer & incharge Director, central cattle breeding farm, Suratgarh, besides list of witnesses.

The applicant submitted reply / comments vide letter dt 09 July, 2001 addressed to respondent-2. He submitted his comments on departmental enquiry against him as per reference of presenting officer dt. 24.05.2002. The enquiry & presenting officers were appointed to conduct departmental enquiry against applicant as ex-Director, RSFP&D, Suratgarh. The departmental proceedings against applicant were completed after affording sufficient time & opportunity to him. The respondent-2 provided the enquiry report to applicant vide letter dated 10.4.2003 (ann A-5) to submit



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representation within a period of 15 days, applicant submitted his detailed reply. The respondents sought an advice of UPSC on these 04 charges framed against applicant, vide letter dt 17 March, 2004 UPSC gave advice in which charges 1, 2 were said to be proved.

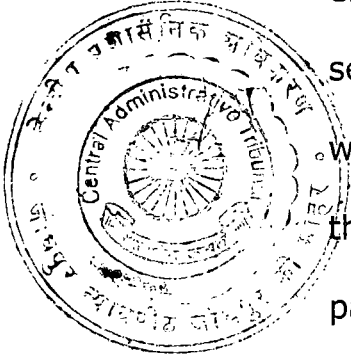
6. The charge-1 deals with the appointments made by him in the capacity as Director, CCBF, Suratgarh. The appointments were made on the posts of Veterinary Compounder, Tractor Helper, Milker cum Cattle Attendant gr. 'D' and Junior Mechanic. Charge 1(A) relates to appointment of Shri Raghuvar Pal Singh on the post of Veterinary Compounder, Shri Viraj Singh on the post of Tractor Helper, Shri Jitendra Kumar Verma on the post of Milker cum Cattle Attendant gr. 'D' and Shri Vijender Pal Singh on the post of Junior Mechanic. Before advertising this post, the non-availability certificate was not obtained from the Central Surplus (Staff) Cell, besides Local Employment Exchange. It is alleged that DPC / selection committee was not constituted as per Govt. norms. Out of candidates who applied for these posts; some of the eligible candidate was not called for interview. It is further alleged that letters of interview were sent by ordinary post in which a very small time was given to be present appear before interview. Moreover, the certificate of training from Uttari Rajasthan Sahakari Dugdh Utpadak Sangh Limited, Bikaner produced by Shri Raghuvar Pal Singh is not from a recognized training institute. After getting comments from the applicant, the column of NAC was not found essential as NAC is valid for 03 months only. As regards fulfilment of the essential qualifications, the training institute as URMUL is not recognized as per para 5.1.3.2 in clause (b). As regards DPC



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formation, para 5.1.3.3. in clause (c) & 5.1.3.5, the formation of DPC / selection committee was not proper. The next senior officer Dr. P.K. Roy was not included in selection committee meeting organized on 16.11.1999, while Dr. P.K. Roy returned from leave on 22.11.1999. Applicant being Chairman of the DPC could have fixed this meeting after 22.11.1999 on the return of Dr. P.K. Roy. There appeared to be no urgency to convene the meeting of the selection committee so as to fill up the posts in a hurried manner. The gazetted officers in respondent-organisation were not included & 03 members were taken from outside, out of which one member is from Bikaner. **The charge relating to improper formation of DPC is partly established.** As regards reservation policy & roster, looking to scheme of things, the charge is not established as per para 5.1.3.6 to para 5.1.3.9. As per para 5.1.3.11, it is apparent that the Ministry declared CO/applicant as Head of Office, CCBF, thus this charge is also not proved. There were many qualified / eligible candidates, whose names were omitted. There was a serious charge that 03 out of 04 candidates selected & appointed were close relatives of applicant which is not proved authentically, though fingers of ire & suspicion were raised at him as discussed in para (f) 5.1.3.12 to 5.1.3.14 of enquiry report. It was also alleged that the qualified & eligible candidates' names were left out & they were not called for interview, as per **para (f) 5.1.3.15 is proved fully. The letters of interview were sent by the ordinary post at a short notice; time given less than one week; charge proved** as per para (g) 5.1.3.17, 5.1.3.18, 5.1.3.19; charge is established. The training certificate from Uttari Raj. Sahakari Dugdh Utpadak Sangh Ltd., Bikaner is not recognized by Rajasthan


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Govt.; certificate produced by selected candidates is not valid, which was wrongly allowed by applicant; thus, **this part of the charge is established. The candidates were allowed to join before submission of medical fitness certificate & character verification etc., the charge is clearly established** as per para 5.1.3.21. As regards **handing over the appointment letter personally instead of sending these through registered post, this charge is established** as per para 5.1.3.24. The allegations as regards the selection of candidates for these posts, rules & procedure not followed; letters/communications sent to candidates by ordinary post, they were given short time even less than one week, some qualified & eligible candidates not called for interview; the formation of selection committee / DPC was wrong basically. The DPC was organized at a short notice in hurried manner so as to avoid some senior faculty members etc. Accordingly, charge-1 levelled against the applicant is proved beyond doubt.

7. The charge-02 relates to the fact that the applicant submitted false information to Ministry due to which Shri Prithvi Raj was granted a temporary status in the CCBF, Suratgarh. The approval was obtained for grant of temporary status w.e.f. 01.9.1993 for Shri Prithvi Raj, later issued a corrigendum for grant of temporary status w.e.f. 01.3.1994. The enquiry officer has discussed this matter in para 5.2.1.1 to 5.2.3.1. This relates to regularization / appointment of Shri Prithvi Raj to the post of Chowkidar (gr. 'D) & Prahlad Dutt as adhoc promotions were given many a times to them. Shri Prithvi Raj was junior-most casual labour was appointed / promoted as LDC adhoc while many senior & secondary passed

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workers were available in CCBF, Suratgarh. Both these persons were quite junior, many senior persons with this qualification were available. This created a lot of bitterness amongst class IV workers / employees who were not made to work on the class III posts on adhoc basis. Therefore, this part of charge-1 is also proved.

8. The date of Shri Prithvi Raj 01.9.1993 for grant of temporary status, but applicant in official capacity changed the date of confirmation of temporary status worker to 01.3.1994 in place of 01.9.1993, without knowledge & concurrence of Ministry. Applicant submitted wrong & false information to the Ministry of Agriculture; thereby received approval for granting temporary status to Shri Prithvi Raj w.e.f. 01.9.1993. Shri Prithvi Raj had not completed the requisite number of days, which was an essential criterion to grant temporary status to daily paid workers. He was not on the rolls of the CCBF upto 28.02.1994. Thus, superseding senior workers caused a great financial loss to Govt., resulting in about 87 workers filing case in the Tribunal. The applicant worked with bad intent so as to give undue favour to Shri Prithvi Raj etc. To reiterate, temporary status could be conferred on casual workers who were in employment on the date of issue of instructions & had rendered continuous service of at least 240 days. As Shri Prithvi Raj joined CCBF on 28.02.1994, the applicant obtained approval for grant of a TSW to Shri Prithvi Raj w.e.f. 01.9.1993; who joined the farm on 28.02.1994. Later, without informing the Ministry, applicant issued a corrigendum changing date of granting TSW to 01.03.1994 in place of 01.9.1993. An all-round mercy was showered upon Shri



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Prithvi Raj to get him firmly entrenched posted in CCBF, Suratgarh. Thus, charge-2 is fully established against applicant beyond doubt.

9. The charge-3 relates to misuse of Govt. vehicle & manpower. This charge is not proved after going through applicant's comments (5.3.1. to 5.3.3.). The charge-4 relates to type-V accommodation; no irregularity was found & license fees were charged from him & charge him amount / rent for higher accommodation; there was no loss to Govt. in financial matters. Thus, charge-4 is not proved.


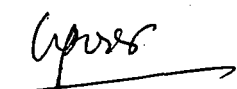
10. An advice from UPSC was sought; they gave their advice / comments vide letter dt 17.3.2004 addressed to the Secretary, Ministry of Agriculture. The UPSC has discussed these 04 charges at length, found charge-1,2 proved against applicant, charge 3,4 are not proved. The disciplinary authority after going through the matter agreed with report of the enquiry officer, found charges 1,2 proved against applicant; thus inflicted a penalty of 30% cut in his pension on a permanent basis. The applicant is given sufficient opportunity to defend his case. After hearing him & going through his representation, final order is passed by respondent-2 vide order dt 12 May 2004 (ann A-1). As most of allegations in charge-1,2 are proved, the punishment imposed is fully commensurable with seriousness of charges. The applicant's contention is that the enquiry report is silent on Vijender Pal Singh. This person was appointed on the post of Junior Mechanic Group 'C'; this matter is discussed exhaustively in para 5.1.1.1, 5.1.2, 5.1.3; these points are discussed in the enquiry report starting from para 5.1.1. The applicant has contended that the enquiry officer & disciplinary authority did not apply their mind & never came out with proper



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reasons. The applicant has quoted the citation of Shri Anil Kumar vs. Presiding Officer & Ors. - AIR (SC) (1985) 1121, Scale 2 (1985) 1365, SCC 3 (1985) 378 - in which in enquiry report - reasoned report is termed as essential & absence of reasons shown non-application of mind. In C.B. Gautam vs. UOI & Ors. - SCC 1 (1993) 78 - it is mentioned that reasons must be recorded in writing & there is no substitution for a provision requiring a reasonable opportunity of being heard before such an order is made. Here, the disciplinary authority has gone through detailed report of the enquiry officer and after affording an opportunity to applicant, passed the order dt 12 May 2004. The representation submitted by the applicant on 30.4.2003 was also gone through; this cannot be said that respondent-2 did not apply his mind. In the Siemens Engineering & Manufacturing Co. of India Ltd. vs. the Union of India & Anr. - AIR (SC) (1976) 1785, it is stated that in exercise of a quasi-judicial function, it must record its reasons: every quasi judicial order must be supported by reasons - Union of India vs. Mohan Lal Kapoor - 1974 AIR (SC) 87 and State of Uttar Pradesh & Ors. vs. Saroj Kumar Sinha (2010) 1 SCC (L&S) 675 / (2010) 2 SCC 772 that highlights principle of natural justice in the conduct of departmental enquiry; Similar is outcome of citation (2009) 1 SCC (L&S) 398 in Roop Singh Negi vs. Punjab National Bank & Ors.; and (2009) 2 Supreme 669 / (2009) 4 SCC 240 - Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank vs. Jagdish Sharan Varshney & others. This is apparent that enquiry officer has given clear findings after hearing the applicant & his defence. The disciplinary authority went through his representation, after peeping into the inquiry report & affording

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a reasonable opportunity to applicant, passed a reasoned order. Therefore, the contentions of applicant on the point of non-compliance of natural justice cannot be agreed upon.

11. The applicant is said to have filed a review petition before His Excellency, the President of India dt 12.6.2004 (ann A-9), but later it was withdrawn. There is no appellate forum as per applicant's version, it is contended that order of punishment cannot be given. Applicant has cited the cases of (i) Virendera Singh vs. General Manager, Lucknow Producers Cooperative Milk Union (1989) 2 SCC 498 (ii) Surjit Ghosh vs. Chairman & Managing Director, United Commercial Bank & Ors. AIR (SC) (1995) 1053 (iii) G. Vallikumari vs. Andhra Education Society & Ors. (2010) 1 SCC (L&S) 406. As per Surjit Ghosh vs. Chairman & Managing Director, United Commercial Bank & Ors. (supra), the exercise of powers by authority higher than disciplinary authority can be discriminatory. In G. Valli-kumari vs. Andhra Education Society & Ors. (supra), it was held that it was disciplinary authority's duty to record reasons. In Virendera Singh vs. General Manager, Lucknow Producers Cooperative Milk Union (supra), the punishment by disciplinary authority, absence of appellate forum is reflected, where an alternative arrangement was made. But, suffice to say that absence of appellate forum would not cause denial of justice to applicant and does not debar him from seeking judicial remedy. On these technical / trivial grounds, the instant case cannot be closed, as charges levelled against applicant are of grave nature.



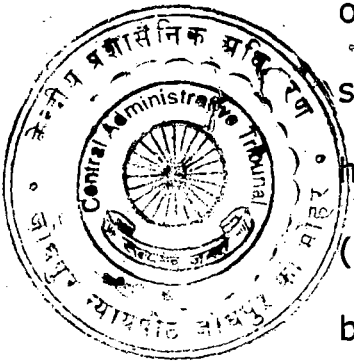
12. The respondents preferred to call for an advice from the UPSC as applicant was senior class-I officer, thus such an advice was

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necessary. The UPSC after going through details of the case, tendered an advice as regards charges levelled against applicant vide letter dt 17 March, 2004. As per UPSC advice, charges 1,2 stood proved against applicant as Director, CCBF, Suratgarh. An advice or opinion given by UPSC is not a regular order, it was a correspondence between UPSC & respondents, an advice of UPSC is not subject to challenge. The respondents acted on the advice of UPSC, who after certain queries, furnished advice on the subject in question. This is wrong to narrate that the UPSC has taken up the charge/role of an enquiry officer. The applicant has raised these malicious points to project his case & provoke the respondents. The applicant has tried to implicate all concerned in the orbit of his attack, being in bad taste. To reiterate, an advice was given to respondent-1 on latter's request as applicant being senior class-I officer, UPSC's advice was obligatory & not subject to scrutiny.

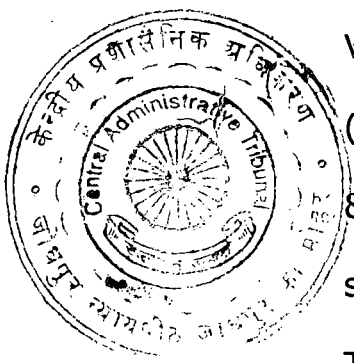
13. It is contended by applicant that the Tribunal has no power or authority to re-appreciate evidence; this was clarified that if some evidence exists, Tribunal should not ignore this. Applicant has cited the case of Union of India vs. T.M. Somarajan & Ors. (2010) 1 SCC (L&S) 129 - it was held that serious charges cannot be proved on mere probabilities, strict adherence to statutory principles & natural justice are essential. Applicant has further relied upon State of Uttar Pradesh & ors. vs. Saroj Kumar Sinha (2010) 2 SCC 772 on right to natural justice which is complied with in applicant's case after affording him an adequate opportunity. After going through record, it is apparent that the enquiry officer acted in a judicious manner & afforded enough opportunity to him.



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The enquiry report reflects a clear transparency & clarity of mind. This cannot be agreed upon that applicant worked as an agent of department as alleged. The role of disciplinary authority or enquiry officer is altogether independent; he is not there to punish a person or staff of the department. The applicant has placed reliance on C.B. Gautam vs. UOI & Others in SCC 1 (1993) 78 that a statutory requirement has to be fulfilled; as these requirements are not met, these have caused prejudice to applicant. The respondents have clarified that proper procedure is followed in departmental enquiry, there is no legal lacuna; copy of enquiry report was supplied to applicant; thus no prejudice is caused to him. As per Sarva Uttar Pradesh Gramin Bank vs. Manoj Kumar Sinha (2010) 3 SCC 556, there is no breach of natural justice, prejudice has to be established. Thus, procedural modalities & legal formalities are completed, sufficient opportunity was afforded to applicant, proper procedure was subtly followed, no bias is caused to him as such. The respondents have also placed reliance upon G. Vallikumari vs. Andhra Education Society & ors. (2010) 1 SCC (L&S) 406 wherein the principle of natural justice is to be followed & recording of reasons are necessary. The reasons are properly & suitably recorded with adequate & suitable latitude given to him. The inquiry officer and disciplinary authority have applied their mind & given proper & suitable reasons. The respondents have placed reliance on Haryana Financial Corporation & another vs. Kailash Chandra Ahuja (2008) 9 SCC 31 in which natural justice is highlighted - no prejudice is caused to applicant looking to charges of grave nature and arduous circumstances. Here no prejudice is caused to applicant as proper opportunity is given to him to defend



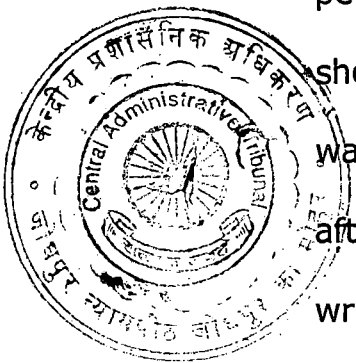
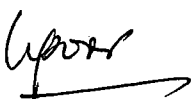
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his case. Therefore, passing aspersions on advice / opinion given by respondent-3 is quite derogatory & in bad taste.

14. The applicant has also tried to chastise the enquiry officer & his role; it is contended that the enquiry officer has acted with a closed mind & has not given the proper reasoning. Looking to the quantum of details in enquiry report; it is apparent that each & every charge is dealt with minutely. The reply & version of defense side is also narrated besides quoting relevant records. The inquiry officer has equally afforded sufficient opportunity to applicant to defend his case. A proper reasoning is also manifest with subtle application of mind, thus inquiry officer has acted with an open mind. The disciplinary authority after going through inquiry officer's detailed report & affording an opportunity of hearing to the applicant & his representations; delivered a clear & reasoned order imposing punishment to withhold 30% pension amount on permanent basis. The applicant has contended that issuance of show cause notice is not merely an empty formality; his defence was not considered. The inquiry officer passed a detailed order after affording an opportunity to him. The disciplinary authority has written to applicant with enquiry report to submit comments. The issuance of show cause notice to applicant cannot be treated as a mere empty formality as alleged. The disciplinary authority has passed a reasoned & speaking order after going through comments of applicant, besides peeping into the case record. The allegations of applicant are unfounded without a sound legal edifice.

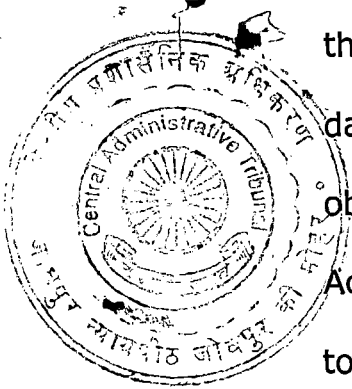
15. It is clarified by the applicant that no deductions are being made from his pension after retirement on 31.7.2001 by the official

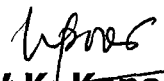


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respondents. The interim relief to this effect was given by this Tribunal on 07.6.2005 by which the respondents were directed to maintain the status quo. Accordingly, from the date of his retirement i.e. 31.7.2001 till date, no deductions as of 30% cut from his pension were said to be made.

16. In the light of observations made above, the charges 1, 2 are proved against applicant beyond doubt; these charges are of grave nature. The applicant is afforded suitable opportunity to defend his case; no prejudice is caused to him. As per deliberations made in the foregoing paras, there is no need to interfere into the order dated 12 May, 2004 (ann A-1) of respondent-2 and no legal obligation persists to intervene into advice given by respondent-3. Accordingly, the present O.A. is hereby dismissed with no order as to costs. The interim relief given by this Tribunal vide order dt 07.6.2005 is vacated.




[V.K. Kapoor]
Administrative Member


[Justice S.M.M. Alam]
Judicial Member

nlk

दिनांक 17/11/18 के आदेशानुसार
मेरी उपस्थिति में दिनांक 11/2/16
को भाग-II व III पर किए गए।

अनुपम अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर

L. V.
25/8/10