CENTRAL ADMINISTRATIVE TRIBUNAL
Circuit Bench at LUCKNOW

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Registration No.O.A. No. 459 of 1987

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Kashi Prasad .... Applicant

Vs.

Union of India and ors .. Respondents

~~APRIL 12, 1989~~

Hon' Mr. Ajay Johri, A.M.
Hon' Mr. D.K. Agrawal, J.M.

(By Hon' Mr. Ajay Johri, A.M.)

This is an application filed under section 19 of the ~~Central~~ Administrative Tribunal Act. 1985. The applicant was working as Telephone Operator in the Telephone Exchange at Sitapur and was compulsorily retired from service by an order issued by the Divisional Engineer, Telegraphs, Sitapur (Respondent No. 2) on 30-5-1986. His appeal against the impugned order was rejected by the Director, Telecom. Lucknow on 4-5-1987. By this application, he is seeking relief that the impugned order of punishment, as well as the appellate order, be declared illegal, in operative, null and void, and he should be deemed to be in continuous employment of the respondents and entitled to all usual service benefits. He has also prayed for awarding of the cost of the application.

2. The applicant who had joined service in the Posts and Telegraphs Department as Telephone Operator on 1-3-1963, was issued a charge sheet on 8-11-1971 while he was working at Sultanpur, under Rule 14 of the Central Civil Services (C.C.& A.) Rules, 1965. The allegation

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against him was that while he was working at Allahabad, during December, 1967 to June, 1968, he had submitted 8 false medical bills in the office of D.E.T. Allahabad totalling to an amount of Rs.637/-. The charge against him was that by this action, he has acted in violation of Rule 3(i)(i) of Central Civil Services (Conduct Rules), 1964. He denied the allegations on 17-11-1971. According to the applicant, before the charges were framed against him, the matter was investigated by the Central Bureau of Investigation, who, recommended departmental action against him. During the period from 17-11-1971 to 3-1-1981, the case did not progress at all and no inquiry was initiated, and the applicant continued to perform his duties normally. On 3-1-1981 he was advised of the appointment of a Presenting Officer in his case. On 6-3-1981 he appeared before an Inquiry Officer at Lucknow, where he pleaded not guilty to the charge. Thereafter, the inquiry was held, witnesses were called and ultimately, he was served with an order on 31-5-1981, imposing the punishment of compulsory retirement from service.

3. The applicant has challenged the punishment and the appellate order on the grounds that the competent authority, while issuing charge sheet has acted on the recommendation of the Central Bureau of Investigation, and the charge sheet has not been issued after the free application of the mind. The essential ingredients in imparting misconduct against the individual, of any ill-motive, were not present in the allegations. The impugned punishment had been passed, disregarding the Principle of Natural Justice, in as much as, he was denied, the opportunity of production of his evidence, and help of a representative. The charge only related to

alleged submission of false bills and not any irresponsible attitute of the applicant, so as to make him unworthy of confidence of the employer. There was no evidence on record to show that the bills were ever submitted in the office, nor there was any proceeding or containing conduct of the applicant regarding presentation of the bills. The defence witnesses cited by him were not called. The disciplinary proceedings have been unduly prolonged for more than 15 years and he has already been punished with regard to his crossing of efficiency bar in the year, 1982 and denial of increments and promotions, as a result of the pendency of this proceeding. The punishment of compulsory retirement, over looks the provisions of Fundamental Rules 56(j), because, he has only completed 23 years of service and cannot be retired under Rule 11 of C.C.S.(C.C.A.) Rules or Fundamental Rules. The disciplinary proceedings were, as a result of malafide and prejudice on the part of the Divisional Engineer, Shri P.N. Srivastava. Shri H.S. Tuteja had been mentioned as witness and copy of his report was not supplied to the applicant. Only attested copies of his statements were supplied lateron. The punishment order is a non speaking order. The appellate order is also not a speaking order, because, no reason has been recorded for not allowing the applicant for producing his defence witness, handwriting expert of his own choice. The copies of the inquiry proceedings were not supplied to him day by day.

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4. In their reply to the application, the respondents have said that the submission of medical reimbursement claim supported by false cash memos implied that the applicant had attempted to get money deceitfully from the Department. According to the respondents, the matter was got investigated through the Central Bureau of Investigation, but they have rejected the contention of the applicant that the case was recommended for departmental action by the C.B.I. merely on account of lack of evidence. In regard to the Government Examiner of questioned document, whose name was not included in the list of witnesses, the respondents stated that the report(opinion) of the Examiner was relied on documents and it was amongst the list of documents which were relied for the issue of the charge sheet. Subsequently, during the course of inquiry, the Inquiry Officer had felt it necessary to record the evidence of Shri H.S. Tuteja, the Examiner of the questioned documents, but no objection was raised by the applicant. The applicant had requested for inspection of the documents on 14-7-82 and had also submitted a list of documents and witnesses, which he wished to produce and he was allowed the same on 29.4.83. In March, 1985, the applicant submitted two names of Handwriting and finger print experts, whom, he wanted to produce, but his request for producing of his witnesses was not agreed to. In regard to delay in completion of disciplinary proceedings, the respondents stand is that though, there were some administrative delays, there was also delay on account of the applicant, who had requested for adjournment on six occasions. On account of the pendency of the disciplinary proceedings against him, the applicant was also not considered for any promotion.

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The respondents have also said that the applicant was subsequently asked, whether, he would like to cross examine any of the witnesses, but, he refused to examine any of them. even his request to cross examine Shri Tuteja was also allowed, but, thereafter no specific request was received from him. According to the respondents, the report of Shri Tuteja was very clear and was not at all doubtful and therefore, there was no need of any second opinion and that was also one of the grounds that the applicant's request for producing a second handwriting expert of his own choice was rejected. It is also their case that in view of the applicant's statement on 29-1-1986, wherein, he had clearly mentioned that he did not wish to produce any document or witness in defence or to cross examine any witness (Annexure-CA-3 of the reply), it was not felt necessary to summon any other witnesses. It is also the respondents case that the charge sheet issued by the disciplinary authorities, was after giving due consideration to the report submitted by the C.B.I., but the final decision was arrived at only after the inquiry was completed, and the contention of the applicant that the final decision was influenced by the recommendation of the C.B.I. is baseless. The allegations made by the applicant that there have been, illmotive is also not correct. The fact remains that the applicant submitted false medical bills totalling to an amount of Rs. 637/- with forged prescription and essentiality certificates and cash memos, which were 32 in number. According to the respondents, the applicant was given

full opportunity and he was allowed assistance of defence counsel and the charge was proved against him. The respondents have further maintained that the order of the appellate authority has been given after due consideration. It is also the respondents case that the copies of daily proceedings were supplied to the applicant either on the same day or in some cases lateron, but, before the next date of hearing. According to them, the departmental inquiries are quasi-judicial in nature and the standard of proof of charges is only on preponderance of probability of guilt. Adequate opportunity was given to the applicant and his defence counsel and the type of punishment awarded, is the decision of the disciplinary authority which is based on the seriousness of the charge and the other relevant factors. The appellate authority has also agreed to the quantum of this punishment. Therefore, the applicant is not entitled to any relief.

5. We have heard the learned counsel for the parties and seen the records and the other documents. On behalf of the applicant the contentions raised before us were that the action was taken under the direction of the C.B.I., therefore, according to the learned counsel for the applicant, the entire inquiry proceedings were influenced by this report. It was also contended by the learned counsel that Shri Tuteja was not mentioned as a witness and a copy of the opinion given by him in regard to the signatures on the bills was not given to the applicant. He was also denied the right to examine Shri Tuteja, and he was denied production of the witnesses which he had named in regard to the question of his signatures. It was also one of the contentions that the applicant

had been denied access to the records and justice had already suffered because of the long prolongation of the inquiry proceedings, where the charge sheet was given in 1971 and the proceedings were completed in 1986. On the other hand the submissions made by the learned counsel for the respondents, were that there has been no denial of opportunity to the applicant and the malafide alleged by the applicant against Shri Srivastava, the Divisional Engineer, have not been proved, and that the entire proceedings are based on evidence which have been adduced during the course of inquiry and with the help of the relied on documents. It was further submitted that the Tribunal could only go into the illegality of the proceedings, but could not apraise evidence which was produced before the Inquiry Officer. According to the learned counsel for the respondents, no high degree of proof is required in a departmental inquiry and the degree of proof cannot be equated to the proof required in the criminal case. In view of the fact that adequate opportunity has been given to the applicant, there was nothing wrong in the orders. On behalf of the applicant a request was also made by the learned counsel, that the punishment imposed on the applicant was too excessive, specially in the background that he has denied the fact that he ever submitted the bills and the fact of the submission of the bill has not been proved by any documentary evidence.

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6. Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules lays down the procedure for imposing major penalty. In para 14(3) it is said that "where it is proposed to hold an enquiry against a Government servant under this rule and Rule 15, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputations of misconduct or misbehaviour, a statement of the imputation of misconduct or misbehaviour in support of a charge which shall contain a statement of relevant facts and a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained." The government servant is thereafter required to submit within such time, as may be specified, a written statement of defence. In this case we do not find that there has been any violation of these rules in the issue of the charge-sheet. The applicant was also allowed the assistance of his defence counsel. We also find that he was allowed inspection of the relied on documents and there is nothing indicated any where that this opportunity was denied to him. As far as the list of witnesses to be examined on behalf of the applicant is concerned, the applicant's case is that the Finger Print Experts, whom he wanted to bring as witnesses, were not allowed by the Enquiry Officer to be summoned. There is no provision in the rules by which the Enquiry Officer can deny the permission to the delinquent in regard to production of the witnesses that he may like to be heard on his behalf. In our opinion the advice tendered by the examiner of questioned documents, Sri Tuteja was in the nature of an expert advice because he belonged to the organisation which advises on the subject and such advice cannot be subjected to re-appraisal by another person belonging to some other organisation. It is not the applicant's case that in this case where an opinion was given by an expert, what he wanted was a review

of the opinion by a larger body of experts. The opinion expressed by one expert cannot be a subject of appeal to be decided by another expert. In this background the rejection of the request of the applicant to summon his witnesses, who were finger print experts cannot be said to be denial of an opportunity to the applicant. There would have been a case had the request been for a review of the opinion by a larger body, but this he had evidently not done.

7. The contention raised before us by the learned counsel for the applicant that the enquiry proceedings were influenced by the report of CBI, does also, in our opinion, not sustain. In matters in which a Department has no control and in which it cannot summon private witnesses the investigations are normally handed over to CBI and there are two courses open when such investigations are done by CBI, one is that they may prosecute the delinquent themselves and the other that they may submit the report to the Department for taking action departmentally. It has been seen that generally cases prosecuted in courts take a longer time for settlement than cases which are dealt with departmentally and which can be decided in a shorter time, though in the applicant's case it was only after nearly 10 years after the issue of charge-sheet in 1971 that the enquiry actually started. In the enquiry proceedings witnesses were examined departmentally, though the presenting officer was from CBI and there was nothing wrong in this process.

8. We have also seen in the reply submitted by the respondents as well as in his own admission that the applicant was allowed to cross examine Sri Tuteja, but on the day Sri Tuteja's evidence was taken the applicant was represented by his defence counsel & he was not present, who did not cross-examine Sri Tuteja and later on when the applicant's request was allowed no further specific request was received. It

is evident that the applicant had after raising the issue of cross-examining Sri Tuteja not followed it up to its ligical conclusion. As a matter of fact on 29.4.1983 the Enquiry Officer had permitted the applicant the production of the additional witnesses and the request for inspection of certain documents listed in his letter of 14.7.1982. The applicant had also submitted his own documents on 25.7.1985 and he was permitted to submit the remaining defence documents by 9.8.1985.

9. We have also seen the order dated 30.5.1986 which is the punishment order as well as the findings of the Enquiry Officer dated 15.4.1986, though there is a reference to the fact that this case was handed over to CBI for investigation which were completed on 31.8.1971 there is nothing to indicate that there was any influence in arriving at the findings on account of the report submitted by CBI. In the assessment of evidence a reliance was placed on the report submitted by the Assistant Government Examiner of questioned documents, Calcutta. The enquiry officer had also considered the documents submitted by the applicant and the allegation made by the applicant against P.M. Srivastava in regard to manipulation of the case.

10. In the appeal filed by the applicant the main contention raised by him before the appellate authority were that the delay in holding of the enquiry on the fact that he never submitted the bills to the office as it was not supported by any receipt, registers, etc. The applicant had also raised the issue that the date on the bills was 10.6.1968 while the case was handed over to CBI in April, 1970 after a lapse of about two years without making payment against the claims. By this the applicant had tried to support his case that the bills were never submitted by

him. He had also raised the issue that even then DET, Sri Srivastava, could not prove how he came to possess these bills. He had also raised the issue of AGEQD, Calcutta, Sri Tuteja, and various other issues which have been now raised before us. The appeal was considered by the appellate authority and he has given his opinion on the various aspects raised in the appeal and thereafter he rejected the appeal. In our opinion it cannot be said that the punishment order or the appellate order are non-speaking orders as all the questions raised have been considered by the concerned authorities. In view of this we feel that the applicant has not been able to establish a case of denial or resonable opportunities to him in conducting his case.

12. Reliance has been placed by the learned counsel for the applicant on the following cases :

(a) Ananda Bazar Patrika (P) Ltd. v. Their Employees (AIR 1964 SC 339) in regard to the refusal to examine a witness and its effect. In this case the Hon'ble Supreme Court had observed that there was no doubt that at a domestic enquiry it is competent to the enquiry officer to refuse to examine a witness if he bona fide comes to the conclusion that the said witness would be irrelevant or immaterial. But if the refusal appears to be the result of the desire on the part of the enquiry officer to deprive the charged person of an opportunity to establish innocence that of course would be a serious matter. We have already said that one expert cannot be pitted against another and so the request of the applicant to call another finger print expert was illconceived. This ratio, therefore, does not help the applicant.

(b) Jagdish Prasad Saxena v. State of Madhya Bharat (AIR 1961 SC 1070) in regard to the importance

of a departmental enquiry. In this case the Hon'ble Supreme Court have observed that a departmental enquiry is not an empty formality. It is a serious proceeding intended to give the officer concerned a change to meet the charge. How these observations help the applicant is not clear to us ? In his case, there is no doubt that preliminary investigations were entrusted to CBI but thereafter a regular independent enquiry was held & he was given adequate opportunity to defend himself.

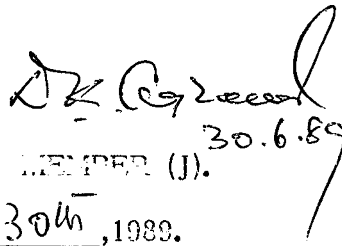
12. The learned counsel for the respondents has relied xa on a catena of judgments to support his points. They are on the points whether E.O. can refuse to call a particular witness, reappraisal of evidence by Tribunals, degree of proof required in a departmental enquiry, opportunity for examination given or not, powers of disciplinary authority, allegations of mala fides, etc., non-supply of copy of documents having no bearing on charges or which is not relied upon by the inquiry officer to support charges (AIR 1988 SC 117, C. Tewari v. Union of India); reasonable opportunity of showing cause against dismissal - Enquiry Officer, disciplinary authority, & appellate authority independently considering the material and holding a person guilty - No principle of natural justice violated (AIR 1970 SC 1255, State of Assam v. Mahendra Kumar); statement of Presiding Officer to be taken as correct and attempt of delinquent officer to frustrate enquiry by raising technical objections - documents summoned during the enquiry but not inspected - no denial of natural justice (1976 (1) SLR 143, Inspecting Assistant Commissioner of Income Tax and others v. Somendra Kumar Gupta); in a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The departmental authorities and administrataive tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not

relevant under the Evidence Act. The sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. (AIR 1977 SC 1512, State of Haryana & another v. Rattan Singh); The Enquiry Officer in a domestic enquiry can put questions to the witnesses for clarification wherever necessary and if he allows the witnesses to be cross-examined thereafter, the enquiry proceeding cannot be impeached as unfair. (AIR 1975 SC 2125, Mulchandani Electrical and Radio Industries Ltd. v. The Workmen); If the termination of an industrial employee's services has been preceded by a proper domestic enquiry which has been held in accordance with the rules of natural justice and the conclusions reached at the said enquiry are not perverse, the Tribunal is not entitled to consider the propriety or the correctness of the said conclusions. (AIR 1964 SC 339, Ananda Bazar Patrika (P) Ltd. v. Their Employees). We have considered these ratios and we do feel that they have relevance in the present case.

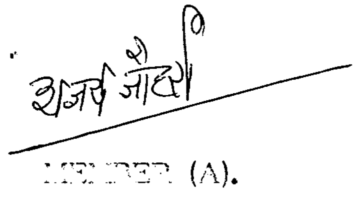
13. Having considered the above, the only question which now remains is in regard to the quantum of punishment. This question was not raised by the applicant in his appeal but has been raised before us by the learned counsel for the applicant. There is no doubt that in the reply filed by the respondents there is no indication that the applicant was involved in any similar misconduct at any stage earlier in his career and that the entire case of the prosecution is on the basis of the opinion of the finger print expert. However, the applicant has failed to prove that there was any mala fide in the punishment imposed on him by the respondents. In the absence of any mala fide, according to the dicta laid down by the Hon'ble Supreme Court in Union of India v. Parma Nand (1989 (10) ATC 30), this Tribunal cannot interfere with a penalty if the conclusion of the Enquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous

to the matter. The adequacy of penalty unless it is mala fide is also, as laid down by the Hon'ble Supreme Court, not a matter for the Tribunal to concern itself with. Under the circumstances, this application has to fail.

14. In the result we dismiss this application with costs on parties.



MEMBER (J).



MEMBER (A).

Dated: June 30th, 1989.

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