

Central Administrative Tribunal, Lucknow Bench, Lucknow
Original Application No.30/2008

Reserved on 7.8.2014

Pronounced on 28/08/2014

Hon'ble Sri Navneet Kumar , Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

R.K. Dhingra aged about 62 years son of Sri Sant Lal resident of House No. D-1/181, Sector H, LDA Colony, Kanpur Road, Lucknow.

By Advocate: Sri B.P.Singh

Applicant

Versus

1. Union of India through the Secretary, Railway Board, Rail Bhawan, New Delhi.
2. Director General, Research Design and Standard Organisation, Manak Nagar, Lucknow.
3. The Senior Executive Director/ Signal, Research Design and Standard Organisation, Manak Nagar, Lucknow.
4. Joint Director/ Signal VII, Research Design and Standard Organisation, Manak Nagar, Lucknow.

By Advocate: Sri Praveen Kumar for Sri M.K.Singh

Respondents

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

i) Issue an order or direction commanding opposite parties to quash punishment order dated 30.11.2005 and appellate order dated 13.2.2007 contained in Annexure No. 1 and 2 respectively to this Original Application and may further be pleased to direct opposite parties to treat the applicant in continuous service on the post of JRE till 31.01.2006 (date of superannuation) and to refix the pension and pensionary benefits and to pay consequential arrears arising out of salary, pensionary and other service benefit with 18% interest from due dates.

ii) Issue an order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case including an order of awarding cost of the instant application in favour of the applicant and against the respondents, hereto.

2. The brief facts of the case are that the applicant was appointed on the post of Laboratory Assistant in 1969 and subsequently given promotions to the post of Senior Research Assistant, redesignated as Junior Research Engineer –I (JRE), was served with the major penalty charge sheet on 4.3.2004 and an

enquiry was held but the applicant was not provided the relevant documents as claimed by him. Subsequently, the enquiry officer has submitted the report and the disciplinary authority passed an order of punishment of compulsory retirement. The applicant preferred the appeal against the punishment order and the said appeal was decided by the authorities whereby the appeal of the applicant was rejected. The applicant feeling aggrieved by the said orders, preferred the present O.A. During the course of arguments, learned counsel for the applicant has categorically pointed out that the entire enquiry is held in violation of provisions of Article 311 (2) of Constitution of India and the applicant was not provided the relevant documents as asked for and the relevant witnesses were also not examined. Not only this, it is also indicated by the learned counsel for the applicant that the applicant has raised number of grounds in the appeal but the appellate authority without due application of mind and in a mechanical manner, passed the order against the provisions of rule and constitution of India. Apart from this, on behalf of the applicant, it is also alleged that the orders were passed by the authority who is not competent to do so, as the applicant was promoted to the post of Senior Research Assistant which was re-designated as JRE for and on behalf of the Director (Signal) whereas the impugned punishment order was passed by the Joint Director (Signal) being a disciplinary authority and the appeal was decided by the Senior Executive Director (Signal) who is not competent to decide the appeal of the applicant. Learned counsel for the applicant has also pointed out that in the absence of proper opportunity, the entire proceedings is bad in the eyes of law and is liable to be quashed.

3. Learned counsel for respondents filed their reply as well as Supple. Reply to the O.A. and pointed out that the O.A. is preferred mainly on the ground that the root register was not provided to him

during the course of enquiry and presence of Director /S&T and Executive Director/S&T as defence witness was not ensured . Apart from this, it is also pointed out by the learned counsel for the applicant that the Joint Director /Signal -7 was not competent disciplinary authority to issue the impugned punishment upon the applicant and senior Executive Director /S&T who decided the appeal is also not competent to do so. In reply to the said issue, the respondents have categorically pointed out that the enquiry was conducted in accordance with the Railway Servants (Disciplinary and Appeal) Rules, 1968 and by following principle of natural justice, reasonable opportunity was given to the applicant to prove his innocence at the enquiry stage. The charges were proved in the enquiry. As regards the grounds raised by the applicant for not supplying the documents of root register, it is categorically mentioned by the respondents that the same was not available at that time. As regards the presence of Director /S&T or Executive Director /S&T to attend the enquiry, they were allowed as defence witnesses on the request of charged officer, as such, it was incumbent upon him to ensure their presence in the enquiry. Learned counsel for respondents has also relied upon master circular No. 67 issued by the Railway Board on 20.10.2002 and pointed out that as per para 15(i) of the said circular, it is stated that "in the case of outside witnesses cited by the charged official, the responsibility is on him to ensure his presence during the enquiry. Apart from this, it is also argued by the learned counsel for the respondents that the charged officer was provided copy of the enquiry officer's report and the applicant also submitted his reply on 24.11.2005 and in the reply, he has mentioned about the root register and about the presence of Director /S&T and Executive Director /S&T as defence witness. The respondents have also relied upon the Schedule I of the Railway Servants (D&A)Rules which

provides that the Joint Director /Signal-7 was the competent authority to issue punishment order dated 30.11.2005 by way of which penalty of Compulsory Retirement with immediate effect was imposed upon the applicant. Apart from this, on behalf of respondents, number of decisions of the Hon'ble Apex Court has been relied upon and mentioned in the C.A. itself.

4. Sri Praveen Kumar brief holder for Sri M.K. Singh, appearing on behalf of the respondents has also categorically pointed out that the entire enquiry was proceeded in accordance with rules. The applicant has associated in the enquiry and he was also given full opportunity to participate in the enquiry, as such no interference is required in the present O.A. and the O.A. is liable to be dismissed.

5. Through, Supple. Counter reply, the respondents have once again reiterated the averments made in the counter reply and denied the contents of the rejoinder reply. No new facts are brought on record by the respondents through the Supple. Counter reply.

6. On behalf of applicant, Rejoinder reply is filed and through Rejoinder reply, mostly the averments made in the O.A. are reiterated and contents of Counter Reply are denied. It is also indicated by the learned counsel for the applicant that the charged official through his application dated 26.2.2005 had requested I.O. to call Director Tele, Executive Director /Tele, PW-I and Director /Inspection /S&T/ RDSO/New Delhi and also requested to I.O. on 10.5.2005 to provide copy of the root register which was not denied by the Presenting Officer. The learned counsel for the applicant has also relied upon a decision of Hon'ble Apex Court in the case of State of Punjab Vs. Diwan Chuni Lal reported in AIR 1970 SC 2086 and pointed out that the burden cannot be shifted to the charged official to secure presence of his defence witness. Apart from this, it is once again submitted by the learned counsel for the applicant that punishment order of compulsory retirement is not only violative of

Article 311 (2) of the Constitution of India but also violative of Article 311(1) of the Constitution of India, in as much as the applicant was promoted to Senior Research Assistant which was subsequently re-designated as Junior Research Engineer-I and as per promotion order, the charged officer was promoted with the approval of Executive Director/Signal but the impugned order of compulsory retirement has been passed by the Joint Director who is only a Junior Administrative Grade Officer. As such, the impugned order is not passed by the competent authority. Not only this, it is also argued by the learned counsel for applicant that the enquiry officer has not afforded any opportunity to the applicant to cross examination which caused serious prejudice to the applicant. The applicant has also filed supple. Rejoinder Reply and through Supple. Rejoinder Reply, once again the applicant denied the averments made in the counter reply and reiterated the averments made in the Rejoinder reply as well as in the Original Application.

7. Heard the learned counsel for the parties and perused the records.

8. The applicant was initially appointed in the respondents organization on the post of laboratory Assistant in 1969 and was subsequently promoted on the post of Senior Research Assistant which was subsequently re-designated as Junior Research Engineer -I. While the applicant was working as Junior Research Engineer-I, was served with the major penalty charge sheet dated 4.3.2004 wherein two charges are leveled against the applicant which reads as under:-

Article of Charge I


With an ulterior motive of extending undue benefit to M/s Evershine Electrical Works (I), New Delhi, Sri R.K.Dhingra connived with the above firm and without conducting various type tests as stipulated, he signed concocted test reports and recommended the case of JF fable (30/97) of above firm for approval based on these concocted test report.



Article of Charge II

Sri R.K. Dhingra tried to cover up his above misconduct and attempted to mislead the administration by not stating the truth.

9. Along with the charge sheet, the statement of imputation of misconduct or misbehavior was also mentioned wherein it is categorically mentioned that in the year 2001-2002, Sri R.K. Dhingra while working as JRE (I)/S&T in Telecom Directorate was responsible for type testing of prototype samples of Dry and Jelly filled QUAD Cables and processing the cases for initial and maintenance type approvals of vendors for these items. Along with charge sheet, list of witnesses and list of documents were also mentioned. This charge sheet was issued to the applicant by the Director Signal -IV. It is also to be pointed out that the applicant was promoted to the post of Junior Research Engineer-I and the orders to that effect was issued by the Section Officer. After service of the charge sheet, the enquiry officer was appointed and the enquiry officer submitted his report on 21.10.2005. While submitting the report, the enquiry officer indicated that the applicant suggested the name of Sri I.D. Sood, Retd. SSRE/B&S/RDSO which was accepted and Joint Director /Signal VII and DA nominated Sri I.D. Sood as Defence Counsel of Sri R.K. Dhingra vide memorandum dated 20.6.2005. Apart from this, it is also indicted by the enquiry officer that Sri Dhingra also requested on 22.6.2005 to call the Director/Tele, Executive Director/Tele, PW-I, Vigilance Inspector who seized the case file and Director/Inspection/S&T/RDSO/NDLS as Defence witness. Accordingly, a letter was sent on 29.6.2005 to attend the enquiry on 25.7.2005, 26.7.2005 and 27.7.2005. However, neither the officer has turned up or they responded towards letter though the sufficient time was given to these officers to attend the enquiry. It is also indicated by the enquiry officer that the charged officer was examined by the enquiry officer and final



hearing of enquiry completed on 23.8.2005. After completion of the hearing, P.O. was advised to submit the brief and after receipt of the P.O.'s brief, the charged officer was advised to submit his defence brief. It is also indicated by the enquiry officer in his enquiry report that request of the charged officer to provide copy of the root register was also allowed by the enquiry officer and P.O. was asked to provide root register but as per daily order sheet No. 9 dated 19.5.2005, it is clearly stated that as per P.O. no such register is available. Finally, the enquiry officer came to the conclusion that the charged officer was allowed to make correction on the test report by Executive Director/Tele and Director/Telecom when C.O. requested for the same. Obviously, it means that the Executive Director/ Telecom and Director/ Telecom were aware of the corrections made by C.O. in the test report but the said statement could not be verified during the course of enquiry due to non-presence of the then Executive Director/Telecom and the then Director/Telecom. The copy of the enquiry officer's report was duly communicated to the applicant and Disciplinary Authority i.e. Joint Director (Signal VII) passed a speaking order on 30.11.2005 imposing the punishment of compulsory retirement with immediate effect upon the applicant.

10. Disciplinary Authority while passing the order has categorically pointed out that in almost all the test carried out by the applicant regarding type test approval of jelly filed quad cable of M/s Evershine Electrical Works (I) Delhi, there are alterations in almost all test results/ readings. These alternations were carried out as an after thought after the completion of all the tests and at the time of acceptance of test report and these alterations were carried out when the controlling officer of the applicant notices the discrepancies. It is also pointed out by the disciplinary authority that applicant had not visited M/s Evershine factory at the time of

either starting or closing of the test. This is also confirmed through the Tour register placed before the enquiry officer. The applicant feeling aggrieved by the said order of the disciplinary authority, preferred the appeal and the appellate authority also passed the detailed order on 13.2.2014 discussing all the paras mentioned in the appeal.

11. The issue raised by the applicant in regard to the opportunity not given to the applicant is answered to the extent that the bare perusal of the enquiry officer's report clearly shows that full opportunity was given to the applicant to participate in the enquiry and he was provided copy of the enquiry officer's report as well. As regards the witness and material documents which has been alleged by the applicant was not produced during the course of enquiry. The enquiry officer has categorically mentioned this fact in his enquiry report about the reasons for their non presence and has also indicted that the charged officer has also not taken any steps to make the presence of those officers as their defence witness. As regards the root register is concerned, it is also mentioned by the enquiry officer that no such root register is available, as per the statement given by the P.O. and the enquiry officer has also indicated this fact that there is no violation of principle of natural justice and full care has been taken in this matter.

12. Now , the issue let to be determined is in regard to competence of the authority who has passed the orders as a Disciplinary Authority and Appeal so decided by the Appellate Authority . The Schedule-I of the Railway Servants (Disciplinary and Appeal) Rules is explicitly clear in this respect which reads as under:-

Sl.No.	Authority empowered to place a Railway servant under suspension or to impose	Class of Railway servants over whom disciplinary powers can	Nature of penalties mentioned in rule 6 which the authorities	Appellate Authority
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	penalties	be exercised	specified in column 2 are empowered to impose on Railway servants mentioned in corresponding entries in column 3 and powers of that authority to place them under suspension	
1	2	3	5	6

RESEARCH, DESIGN AND STANDARDS ORGANISATIN

1	2	3	4	5
1	Junior Administrative Grade/Selection Grade Officers or Senior Administrative Grade Officers or Additional Director General or Director General	All classes of non-gazetted Railway servants including Group B non-gazetted staff	All penalties and suspension	Next higher authority to whom the authority in column 2 is immediately subordinate

13. Not only this, as per the Railway Board circular No. 67 dated 20th October, 2002, it is clear that "in the case of outside witnesses cited by the charged official, the responsibility is on him to ensure his presence during the enquiry. As the applicant has failed to bring out as to how the non-availability of the Root register or Director /S&T and Executive Director /S&T as defence witnesses has prejudiced his case. The bare perusal of the entire pleadings shows that as per Schedule I of Railway Servants (D&A) Rules, 1968, Joint Director is the competent authority to impose all the penalties specified in Rule 6 of Railway Servants (D&A) Rules on all classes of non-gazetted Railway servants including Group B non-gazetted staff. It is also admitted fact that the applicant is a Group 'B' non-gazetted staff. Thus, the Joint Director (Signal) is the competent disciplinary authority who has passed the penalty order and since


the applicant himself has submitted the appeal to the Senior Executive Director (Signal) who is the appellate authority has decided the appeal of the applicant after discussing each and every points raised in the appeal.

14. As observed by the Hon'ble Apex Court in the case of **Govt. of Tamil Nadu Vs. N.Ramamurthy reported in AIR 1997 SC 3571**, "the Tribunal has no jurisdiction to go into the correctness of truth of the charges and the Tribunal cannot take over the functions of the disciplinary authority.

15. In the case of **R.S.Saini Vs. State of Punjab and Others reported in JTI 1999 (6) SC 507**, the Hon'ble Apex Court has observed that "while exercising writ jurisdiction cannot reserve the findings of inquiry authority that the evidences adduced before it is insufficient. If there is some evidence on record or the reasonable conclusion of inquiry authority, it is not the function of Authority to review the evidence and to arrive at own independent findings.

16. In the case of **Bank of India Vs. Digale Suryanarayanan reported in 1999 (5) Supreme Court Cases, 762**, the Hon'ble Apex Court pleased to observe that the strict rules of evidences are not applicable to departmental enquiry proceedings. The only requirement of law is that allegations against the delinquent must be established by such evidences acting upon which a reasonable persons acting reasonably and with objectively may arrive at a findings.

17. Be that as it may, it is now well settled that the scope of judicial review in disciplinary matters is very limited. The court or Tribunal can interfere only if there is violation of principles of natural justice and only if there is violation of statutory rules or it is a case of no evidence. It is also settled that the Court or Tribunal cannot sit in appeal over the decision of the disciplinary authority nor can it substitute its view in place of said authority, this Tribunal



can only look into that to what extent it can go into the scope of judicial review in the matter of disciplinary proceedings. The Tribunal or the Court cannot sit as an Appellate authority as observed by the Hon'ble Apex Court in the case of **State of Uttar Pradesh Vs. Raj Kishore Yadav reported in 2006 (5) SCC 673**. The Hon'ble Apex Court has been pleased to observe as under:-

“4. On a consideration of the entire materials placed before the authorities, they came to the conclusion that the order of dismissal would meet the ends of justice. When a Writ Petition was filed challenging the correctness of the order of dismissal, the High Court interfered with the order of dismissal on the ground that the acts complained of were sheer mistakes or errors on the part of the respondent herein and for that no punishment could be attributed to the respondent. In our opinion, the order passed by the High Court quashing the order of dismissal is nothing but the error of judgment. In our opinion, the High Court was not justified in allowing the Writ Petition and quashing the order of dismissal and granting continuity of service with all pecuniary and consequential service benefits. It is a settled law that the High Court has limited scope of interference in the administrative action of the State in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India and, therefore, the findings recorded by the Enquiry Officer and the consequent order of punishment of dismissal from service should not be disturbed. As already noticed, the charges are very serious in nature and the same have been proved beyond any doubt. We have also carefully gone through the Enquiry Report and the order of the Disciplinary Authority and of the Tribunal and we are unable to agree with the reasons given by the High Court in modifying the punishment imposed by the Disciplinary Authority. In short, the judgment of the High Court is nothing but perverse. We, therefore, have no other option except to set aside the order passed by the High Court and restore the order passed by the Disciplinary Authority ordering dismissal of the respondent herein from service.”

18. The Hon'ble Apex Court in the case of **B.C.Chaturvedi v. Union of India & Ors. Reported in 1995 (6) SCC 749** again has been pleased to observe that the scope of judicial review in disciplinary proceedings the Court are not competent and cannot appreciate the evidence. In this regard, the Hon'ble Apex Court has been pleased to observe as under:-

“The Enquiry Officer submitted his report holding the charges against the appellant to have been proved. After consultation with the UPSC, the appellant was dismissed from service by an order dated 29.10.1986. The Tribunal after appreciating the evidence, upheld all the charges as having been proved but converted the order of dismissal into one of compulsory retirement. The delinquent filed an appeal challenging the finding on merits, and the Union filed an appeal canvassing the jurisdiction of the Tribunal to interfere with the punishment imposed by it. Allowing the appeal of the Union of India and dismissing that of the delinquent.

Per Ramaswamy and Jeevan Reddy, JJ

„Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own WP (C) 3381/2012 Page 12 of 13 independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

19. In another case the Hon'ble Apex Court in the case of Union of India Vs. Upendra Singh reported in 1994(3) SCC 357 has

been pleased to observe that the scope of judicial review in

disciplinary enquiry is very limited. The Hon'ble Apex Court has been pleased to observe as under:-

"In the case of charges framed in a disciplinary inquiry, the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or irregularity alleged can be said to have been made out, or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. It cannot take over the function of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be."

20. Not only this the Hon'ble Apex Court has even pleased to observe in regard to scope of judicial review as well as in regard to the quantum of punishment and in the case of **State of Rajasthan Vs. Md. Ayub Naaz reported in 2006 (1) SCC 589.** The Hon'ble Apex Court has been pleased to observe as under:-

10. This Court in Om Kumar and Others vs. Union of India, (2001) 2 SCC 386 while considering the quantum of punishment / proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor any irrelevant fact taken into account nor any illegality committed by the authority nor the punishment awarded was shockingly disproportionate. The punishment was awarded in the instant case, after considering all the relevant materials and, therefore, in our view, the interference by the High Court on reduction of punishment of removal is not called for."

12. In this context, we can usefully refer to B.C. Chaturvedi vs. Union of India and others, (3 Judges) wherein this Court held thus: (AIR p.484)

"Ramaswamy, J for himself and B.P. Reddy, J. - Disciplinary authority and on appeals, appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court / Tribunal, while exercising the power of

judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court / Tribunal; it would appropriately mould the relief, either directing the disciplinary / appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

14. This Court in *B.C. Chaturvedi vs. Union of India* and others (*supra*) further held that the Court / Tribunal cannot interfere with the findings of fact based on evidence and substitute its own independent findings and that where findings of disciplinary authority or appellate authority are based on some evidence Court / Tribunal cannot re-appreciate the evidence and substitute its own findings. Observing further, this Court held that judicial review is not an appeal from a decision but a review of the manner in which the decision is made and that power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. This Court further held as follows:

When an inquiry is conducted on charges of misconduct by a public servant, the Court / Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court / Tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court / Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court / Tribunal may interfere where the authority held that the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would

have ever reached, the Court / Tribunal may interfere with the conclusion or the finding and mould the relief so as to make it appropriate to the facts of that case."

15. V. Ramana vs. A.P. SRTC and others (2005) 7 SCC 338(Arijit Pasayat and H.K. Sema, JJ.) the challenge in the above matter is to the legality of the judgment rendered by a Full Bench of the Andhra Pradesh High Court holding that the order of termination passed in the departmental proceedings against the appellant was justified. This Court in para 11 has observed thus:

11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury* case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

21. The Hon'ble Apex Court in another case of *State of Uttar Pradesh v. Saroj Kumar Sinha, (2010) 2 SCC 772*, has been pleased to observe that the employee should be treated fairly in any proceedings which may culminate in punishment being imposed on him. In the instant case the entire proceedings were carefully considered by the disciplinary authority and full opportunity was given to the applicant in conducting the enquiry and applicant also taken his full defence. The Hon'ble Apex Court has been pleased to observe as under:-

"An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

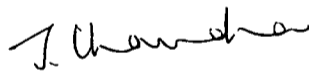
Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to

be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

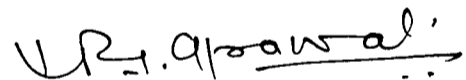
When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

22. Considering the averments made above and on the basis of the observations of the Hon'ble Apex Court and the facts of the case since the entire Disciplinary proceeding was conducted as per rules and there is no procedural lapse is indicated in the entire proceedings, we are not inclined to interfere in the present original application.

23. Accordingly, O.A. is dismissed. No costs.



(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

HLS/-