

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH: MUMBAI

ORIGINAL APPLICATION NO. 612/2000

THIS THE 30<sup>th</sup> DAY OF SEPTEMBER, 2004

CORAM: HON'BLE SHRI A.K. AGARWAL. VICE CHAIRMAN  
HON'BLE SHRI MUZAFFAR HUSAIN .. MEMBER (J)

B.M. Mittal  
(MES 263296)  
Supreintending Engineer,  
Poona Zone, Pune-411 001. ... Applicant

By Advocate Shri S.P. Saxena

Versus

1. The Unionof India  
through the Secretary,  
Ministry of Defence,  
DHQ, PO, New Delhi-110 011.
2. Engineer-in-Chief,  
Army Headquarters,  
DHQ PO, New Delhi-110 011.
3. The Secretary, UPSC,  
Shahjahan Road,  
New Delhi-110 001.
4. The Secretary,  
Ministry of Information  
and Broadcasting.  
New Delhi. ... Respondents

By Advocate Shri R.K. Shetty.

O R D E R  
Hon'ble Shri Muzaffar Husain. Member (J)

The applicant in this OA is challenging the order dated 18.6.1999 passed by the Disciplinary Authority imposing the reduction by one stage from Rs.16700 to Rs.16300 for a period of one year with cumulative effect. He is also challenging the order dated 09.11.2000 passed by Respondent No.1 rejecting review petition of the applicatnt. The applicant has sought the following reliefs:

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- a) to quash and set aside the impugned order dated 18.6.1999 and 09.11.2000.
- b) to direct the respondents to open the sealed covers of DPC held in April, 1995 and April, 1998, in respect of the applicant and to promote the applicant from the date any of his junior in MES is promoted to the posts of S.E. (SG) and Additional Chief Engineer.
- c) to grant all consequential benefits including arrears of pay and allowances if applicant is promoted on opening the sealed cover;
- d) to pass any other orders which may be considered necessary in the facts and circumstances of the case;
- e) to award the cost of application.

2. The facts leading to filing of this OA as stated by applicant are that he was civilian officer presently working in the post of Superintending Engineer in MES posted at Pune. He was posted as Assistant Executive Engineer on 01.11.1972 in MES and continues in MES Department till now. He was promoted to the next higher post of Executive Engineer in MES in 1982 and then he was sent on deputation in All India Radio / Doordarshan Civil Construction Wing as Executive Engineer and joined there on 04th July, 1984. While he was on deputation, he was assigned many important work. He was repatriated to his parent department MES in November, 1991. He was served with charge sheet on 09.9.1993 by Respondents on the following articles of charge:

- i) He did not sign the justification statement and analysis of rates and submitted highly inflated market rate justification without verifying the rates of labour and materials.

- ii) He recommended that the rates of Ms. Dewan Chand were unworkable, which were actually not unworkable.
- iii) He stated on his own that Mandi House, Phase-I was a time bound project.

Thereafter, Respondent No.1 and 2 conducted departmental inquiry against the applicant and the said inquiry could not be completed till 1998 although the applicant was co-operating with the inquiry. The applicant was thereafter forced to file OA 872/PB/98 before CAT Chandigarh Bench for quashing the aforesaid charge sheet on the ground of delay. The Tribunal while observing that since the greater part of the inquiry was already over and the report of the Inquiry Officer was also submitted, it directed the respondents to take final decision on the report within a period of 45 days. The applicant was given a copy of the report of the Inquiry Officer. The applicant submitted his submission dated 10.02.1998. The Disciplinary Authority, thereafter, issued the impugned order dated 18.6.1999 imposing the penalty of reducing the pay of the applicant by one stage from Rs.16700 to 16300 in the time scale of Rs.14300-400-18300 for a period of one year with immediate effect with further direction the applicant will not earn increments of pay during the period of reduction of pay and that on expiry of the period, the reduction will have the effect of postponing future increment of pay. The Disciplinary Authority for him is the President of India and therefore, no appeal lies against the order dated 18. 6. 1999, accordingly, the



applicant submitted a review petition on 28.6.1999 to the President of India through proper channel praying for reviewing of the penalty and for exoneration. The review petition was rejected by order dated 09.11.2000. The applicant has also stated that after the charge sheet dated 09.9.93 was issued to the applicant, during the inquiry proceedings, DPC held in April 1995 to consider the eligible officers to the post of Superintending Engineer (SG) and as the applicant was within the zone of consideration, his case for promotion to the said post was kept in the sealed cover by the DPC. During the pendency of the inquiry proceedings, a further DPC for filling the post of Additional chief Engineer was held in April, 1998 and the applicant's case for the said post was again kept in sealed cover. Many of the juniors of the applicant were promoted to the post of Superintending Engineer (SG). Thus, the applicant, due to on going inquiry from September, 1993 till 1999, did not get promotion either Superintending Engineer (SG) or Additional Chief Engineer. It is further stated that the applicant during his period of deputation from 1984 to 1991 and due to his good work, which was appreciated by the controlling authorities of Respondent No.4 at that time some of the officers of the parent department of the Ministry of Information and Broadcasting and Doordarshan were jealous and were at loggerheads with the applicant.

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3. Aggrieved by the impugned orders, the applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985.

4. The respondents have filed their reply supporting the action taken by the administration in holding the departmental inquiry and imposing the penalty mentioned above. They have stated that penalty was imposed after holding a proper inquiry wherein principles of natural justice had been followed, as can be seen from the order of the Disciplinary Authority at page 20 of the paper book which will satisfy this Tribunal that no stone was kept unturned to give an opportunity to the applicant to defend himself. This Tribunal will therefore, appreciate that the case of the applicant does not warrant any interference and the penalty needs to be upheld and the OA dismissed with costs. The respondents further submitted that the alleged cause of action of the applicant arose on 18.6.1999 and hence the period of limitation started working against him from 18.6.1999 and expires on 18.6.2000, whereas the applicant has approached this Tribunal on 07.7.2000. Therefore, the OA deserves to be dismissed as being barred by limitation, also as there is no appeal against an order passed by the President, which means that the period of limitation for approaching this Tribunal expires within one year of the said order. The OA, therefore, deserves to be dismissed

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as being barred by limitation also. It is also stated that most of the submissions made by the applicant as well as grounds raised by him in this OA take the Tribunal into the realm of reappreciating of evidence to come to a conclusion other than one come to by the Disciplinary Authority, which is not permissible. It is further stated that in this case, one officer from telecommunication, one from CPWD and one i.e. applicant from different department of Government of India were involved and CBI investigated the whole issue. Due to involvement of a number of departments some delay has taken place for finalisation of the disciplinary proceedings against the applicant. Hon'ble Tribunal Chandigarh Bench considered this aspect and directed the respondents to finalise the disciplinary proceedings vide its order dated 05.5.1999. The respondents in compliance of said CAT order finalised the disciplinary proceedings and no injustice has been caused to the applicant. It is further stated that the applicant was considered by DPC for promotion to the post of ACE in April, 1998. Since the applicant was involved in disciplinary case, the recommendation of the DPC were kept in sealed cover. The next DPC for promotion to the grade of ACE was held on 08.4.1999. The applicant was considered and recommendations of the DPC were kept in sealed cover due to involvement of the applicant in disciplinary case. No injustice has been caused to the applicant.

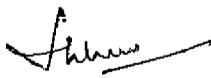
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5. We have heard learned counsel for the applicant as well as learned counsel for the respondents and perused the material placed on record.

6. Learned counsel for the applicant has put forth the following major points.

- a) The charge sheet dated 09.9.1993 was issued two years after the applicant was repatriated to his parent department in the year 1991 in malafide manner, which vitiates the whole proceedings.
- b) The first charge against the applicant that he did not sign the justification statement and analysis rate is false and factually incorrect and cannot be sustained.
- c) The second charge against the applicant that he recommended that the rates of M/s. Dewan Chand were unworkable, which were actually not unworkable, is not true.
- d) The third charge against the applicant that he stated on his own that Mandi House Phase-I was a time bound project is against the record.
- e) The applicant was not supplied the documents of analysis of rates of item on the basis of which Mr. Malhaan Technical examiner prepared his report, but this document was not produced or made available to him.
- f) The Inquiry Officer has not complied with Rule 14 (18) of CCS (CCA) Rules, 1965. According to which it is mandate upon the Inquiry Officer to have asked the circumstances appearing against him in the evidence for the purpose of enabling the government servant to explain any circumstances appearing in the evidence against him.

7. Learned counsel for the applicant contended that the charge sheet dated 09.9.1993 alleges misconduct of the applicant in respect of his work while he was on



deputation under the other Ministry of Information and Broadcasting during the year 1989-1990. The charge sheet was issued only in 1993 i.e. two year after the applicant was repatriated to his parent department of M.E.S. in October, 1991 in a malafide manner and to stall his next promotion. Learned counsel for the respondents on the other hand contended that the charge sheet was issued by competent authority after preliminary investigation. On perusal of the inquiry proceedings and relevant record, we find that the charge sheet in question was issued by competent authority after detail preliminary investigation which took considerable time to arrive at certain conclusion. There is no evidence of malice by any of the officers against the applicant. No such plea has been raised by applicant during inquiry. Therefore, the contention raised by learned counsel for the applicant has no substance.

8. Learned counsel for the applicant contended that one of the charge against the applicant that he did not sign the justification statement and analysis rates, and submitted highly inflated market rates justification without verifying the rates of labour and material, whereas the evidence available on records and proceedings of the inquiry, prove the above charge cannot be sustained. Exhibit A7 shows the rate which is

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duly signed by the applicant. This is further corroborated by the reply of Shri A.K. Sharma, AE(C) who has stated that the applicant has signed the rate list. Thus, there is total non-application of mind in framing the above said charge against the applicant. Learned counsel has also contended that the applicant submitted letter dated 17.11.1989 to SE (C), All India Radio wherein the position of each tender the time of opening was informed to SE (C), AIR. The applicant had also analysed various quotation of tenders and had submitted his recommendations of above letter, duly signed by him. In the enclosed proforma to the above letters, it is clearly stated by applicant that his justification is based on prevailing market analysis, and the applicant has also signed the proforma as well. Thus, the charge that the applicant did not sign the justification statement and analysis, is again false and factually incorrect. He has also referred letter dated 17.11.1989 at page 309 of paper book written by applicant himself to SE (C), AIR Mandi House, New Delhi. He has further contended that the decision of Shri R.K. Dua, ASW also reveals that the charge of submitting highly inflated market rates justification without verifying the rates of labour and material is not sustainable. No inflated rates were even justified by the applicant. On the contrary, the applicant and his subordinate staff had checked, verified and compared the rates of labour and material and then recommended the

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same, and it was for the committee to accept these recommendations or not. Learned counsel for the respondents on the other hand contended that the charges against the applicant that he did not sign the justification statement was sustained as he had only signed the market rates list which does not serve the purpose of approving the justification statement as per Appendix 28, CPWD Manual Volume-II para 20.11.2 and 20.12.2. He has also referred rate analysis at pages 360 to 370 of the paper book which is not signed by the applicant, whereas he was duty bound to sign the market rate justification as per CPWD Manual. We would like to refer relevant para 20.11.2 and 20.12.2 of CPWD Manual which stipulates that the Executive Engineer shall on receipt of the approved NIT by C.E., E.E. submits the following details to SE/SSW.

- i) Details of material stipulated for issue, quantity, issue rate and place of issue.
- ii) Market rates of specified items of non-stipulated materials (i.e. other than cement and steel, which are stipulated materials) and lead involved.
- iii) Market rates of specified categories of labour.
- iv) The detailed justification statement shall be prepared by Executive Engineer (EE) for examination of tender.
- v) The market rates of labour and material as supplied by the EE will, however, be subject to scrutiny and moderation by SE and SSW in the light of the available data obtained by them from other organisations like Bureau of Economics and Statistics, Delhi Admn. (for works in Delhi) etc. and in the light of rates collected by other Divisions in the same area to avoid wide disparity or major discrepancies.

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The inquiry officer in his report in para 3.5 observed as follows:

"Therefore, depositions of SW7, SW9 and SW11 who prepared and checked MRJ establish that MRJ is not based on authentic information/data and therefore, it cannot be said as genuine MRJ. Therefore, there is no strength in the contention of CO. CO did not adduce any evidence to prove that he collected rates himself. Certificate given at page 44 of Ex. S7 contains element of falsity as the same certificate cannot be attributed to all the three officers including CO who signed it; JE(C) SW-7 has denied verification of last three items (Ex.S28). Ex.D-13 and 9 (a) unambiguously stipulate that EE shall prepare the justification statement. Use of word shall mean that EE will only be responsible for preparation of the justification statement on the basis of market rates of labour and material supplied by him. therefore, justification statement (referred to as Market Rate Justification -MRJ) at p.46 of Ex.S7 will have to be signed by the CO, which he has not done. Therefore, there is no strength in any of the contentions of CO as arguments of PO are supported by evidence on record."

In para 3.10 further observed as under:

"Assessment of evidence above established that the CO who was required to sign justification statement and analysis of rates in Ex.S7 has not signed except page 44 which is also false. It is also established that he did not/did not get verified rates of labour and material as analysed above. He also submitted inflated MRJ as explained above. Therefore article of charge is held as proved."

Thus, it appears that all the points have been taken care of by the Inquiry Officer. The Disciplinary Authority has also considered these points in his order dated 18.6.1999. It is seen from the record that the applicant has signed the market rate list but it does not serve the purpose of approving justification statement as required by Appendix 28. It stipulates that justification of rates must be submitted by

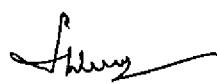
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Assistant Engineer within two days of receipt of tenders and it should be approved by Executive Engineer within one day of its receipt. Instructions contained in para No. 20.10.10 to 20.14.3 must be complied. It further stipulates that Executive Engineer must ensure proper arrangements for computations and checking of tenders as per para 20.1.13. Thus it appears that the applicant did not comply with the provisions of CPWD manual. Hence there is some evidence against him in respect of Charge-I.

9. Learned counsel for the applicant contended, the second charge against the applicant that he recommended that the rates of M/s. Dewan Chand were unworkable which were actually not unworkable. This charge is also not supported by evidence on record of inquiry proceedings. On the contrary as per CPWD Manual, the Executive Engineer is required to submit the market rates of material and labour to SSW who is then required to scrutinise and moderate the rates submitted by Executive Engineer in the light of available dates and rates collected from other Divisions. It however does not mean that the rates are to be personally collected by Executive Engineer. The rates are usually collected by Junior Engineer / Assistant Engineer under the over all guidance of EE. Therefore, there was no lapse or misconduct on the part of the applicant in respect of the above said second charge against him. He

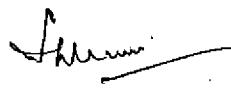
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has also contended "that as per para 3.2 of the CPWD Manual the market rate of labour and material are supplied by the Executive Engineer should be adopted for works in Delhi as well as for outside Delhi. These rates will however be subject to scrutiny and moderation by the Superintending Engineer and SSW in the light of available data obtained by them from organisation like Bureau of Economics and Statistics, Delhi Administration and in the light of rates collected by other Divisions in the same area to avoid wide disparity or major discrepancies". The applicant had acted according to the above said CPWD manual provisions, and has thus not committed any illegality or irregularity amounting to misconduct under CCS (CCA) Rules. He has further contended that in his examination-in-chief deposition of Shri R.K. Jain Executive Engineer (SW14) Telecommunication, given on 25.01.1997, it is stated by him that market rate justification was checked and corrected in his office and he was satisfied with it and there was no inflation in that justification. This also proves that the relevant charge against the applicant is not based on merit but is imputed with malafide intention and for harassment purposes. He has also contended that state witness Shri Malhan (SW13) in his deposition in the inquiry, when asked as to what was the basis of the justified rate of Rs.30.21 taken by him in respect of item No.4 has categorically stated that in the absence of analysis documents of various rates



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mentioned by him, he was unable to give reply to above question. The investigation officer of CBI (SW12) was also cross examined on this point and he too replied that he did not examine Shri Malhan About the analysis of various rates arrived at by him in his report and that he did not consider it necessary to collect the same also during his investigation. Thus, the conclusion that higher rates were recommended is not based on any scientific or databased or rational method. He has further contended that in the agenda note dated January 90 for consideration works Advisory Board for tenders of Construction of Doordarshan Bhawan, the senior officer Shri P.K. Gupta working as Superintending Surveyor or works and who was advisor to the Chief Engineer (C) on contract matters has also held that the rats of Dewan Chand seem to be prima facie unworkable. Learned counsel for the respondents on the other hand contended that since justification statement was not approved by the Executive Engineer (C) hence the comment unworkable rates does not hold good. He has also contended that the applicant has failed to comply with para 2.2 of the CPWD manual and hence para 3.2 is irrelevant. He has also contended that the applicant has not followed the code provisions ~~provisions~~ as per para 2.2 of CPWD Manual Volume II and charges are based on facts finding investigation and the points raised by the applicant have been discussed in the inquiry report and considered by the competent authority



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before imposition of the penalty. In the inquiry report we find that the inquiry officer in para 3.21 observed as under:

Evidence on record establish that ASW, SW, SE(C) SSW-1 categorically declared that rates of the first lowest tenderer were workable. Even FO also did not say that rates were unworkable. CO himself was not of the firm view that rates were unworkable. Change in his stand on 03.01.1990 is not supported by evidence and it also not above board. Lowest tenderer was identified by a pre-qualification committee out of 22 applicants and this contractor completed Mandi House Phase-I work satisfactorily. it is difficult to agree that such a firm will give unworkable rates. No negotiations were held to clarify low rates in respect of same items with the firm. Therefore, article of charge is held as proved.

The Disciplinary Authority in his order dated 18.6.1999 while dealing this point observed in para (iv) as follows:

"As regards ingredient (ii) of the article of charge the contention of Shri Mital for recommending the rates of the lowest tenderer M/s. Diwan Chand, as unworkable is based on the fact whether justification for the said work was inflated. The impact of the justification is based on the rates adopted for labour and material involved in individual items of work. The rates were collected / ascertained by the AE and JE working under Shri Mittal. In view of the aversion made by AE that he was not given sufficient time to verify the rates from the market and also failed to tell the source from where the rates were collected for adopting the same unjustification, made the proposal ineffective and led to believe that the justification was inflated."

The Revisional authority has also dealt with the matter and observed in order dated 09.11.2000 as under:

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As regards Shri Mittal's contention that he had only opened the tenders and forwarded to the next superior authority, it may be stated that he cannot be absolved of the responsibility since he was holding the charge of Executive Engineer (C) and was conferred with the responsibility for dealing with tenders with respect to various aspects about competitiveness and reasonability of rates."

Therefore, we find that all these points have been considered and discussed by the Inquiry Officer, Disciplinary Authority and Reviewing Authority in detail. The Tribunal in its judicial review has no power to reappreciate the evidence.

10. Learned counsel for the applicant has contended that the Joint Secretary to Government of India in his note dated 07.3.1990 had stressed that the proposed TV studio complex in Mandi House site is not only a highly prestigious project to which the Government attaches the highest importance but it is vital and indispensable for efficient functioning of Doordarshan Kendra at Delhi. This proves that the Mandi House was a time bound project. The General Manager Shri L.N. Suri (SW-4) of Kendriya Bhandar, New Delhi 62 in his statement has also admitted that the Mandi House Project was considered prestigious because among the major T.V. Centres in India, Delhi was the only centre which was not having its own studio set up. The time frame for this project was indicated in the Expenditure Finance Committee / Public Information Board and the progress of this project was being monitored by the Ministry. The Director in Central Vigilance Commission Shri P.K.

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Jalali in his statement recorded on 27.3.1992 before the Inspector CBI, ACB New Delhi in para 10 has also categorically stated that the Mandi House Phase II was a time bound and prestigious project. The minutes of the meeting of works Advisory Board held on 20.02.1990 (Exhibit A13) regarding construction of Doordarshan Bhavan Phase II at Mandi House, New Delhi has also concluded that the Mandi House Project was a time bound project. This works advisory Board consisted of very senior officers like Engineer-in-Chief AIR, Engineer-in-Chief TV, Director (Finance), DS(TV), CE(C) CCW and SSW I, CCW. Thus, the finding of Inquiry Officer contrary to above documentary proof is perverse. Learned counsel for the respondents on the other hand contended that it is not necessary for the project to be time bound even if it is prestigious project and there is no legal evidence on record that the project was time bound. We find that the Inquiry Officer in his report in para 3.24, 3.25 and 3.26 has observed as follows:

"CO has contended in para 4 of his brief that the Ministry considered the project as a prestigious project as deposed by SW4 the time frame was indicated in the expert Finance Committee/Public Information Board and progress was monitored by the Ministry. SW6 has also described the project as prestigious WAB meeting minutes at CP 60 of Ex. S.2(6) mentioned that the project was time bound and a prestigious one. Ex.D4 mentioned that his project was highly prestigious and important.

Date of commencement and completion were 12.4.90 and 11.4.90 respectively with 12 months as the permitted completed permission period. Ex. S17(b) show that project was in progress as on 14.5.92 i.e. it spilled over nearly 13

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months and the project was going on. This corroborates deposition of SW5.

Prestigious project does not mean time bound. Therefore, there is no strength in the statement of SW4 and SW6. Ex.D4 speaks about prestigiousness and importance of the project. No formal written evidence on record indicating time boundness of the project is available on the basis of which mention in WAB meeting minutes has been made evidence on record establish that the project was prestigious, but not time bound. Non-completion of the project as scheduled does not support the contention of the CO that it was time bound. Therefore, article of charge is held as proved."

The Disciplinary Authority has also considered this point in para (v) as follows:

"So far as ingredient (iii) of the article of charge is concerned, as per codal provisions, time period is mentioned in the estimate, based on which the project is required to be completed. There is no provision for consideration of the project being "Time bound" unless mentioned specifically in the Notice Inviting Tender papers. The Inquiry Officer has relied upon the fact that the project was prestigious but not 'Time bound' as stated by Shri Mittal."

Reviewing Authority in its order dated 09.11.2000 also observed on this point as under:

..... "The contention of Shri Mittal that he was chargesheeted despite the fact that the disciplinary authority had the documentary evidence to the effect that the project was Time Bound is not tenable because there is no provision for consideration of a project being Time Bound unless mentioned specifically in the Notice Inviting Tenders."

All these points have been elaborately discussed by the Inquiry Officer and considered by the Disciplinary Authority and Reviewing Authority as well.

11. We have gone through the inquiry proceedings in judicial review, we are conscious of the limitation of the Tribunal that we cannot go into the sufficiency or

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insufficiency of the evidence and we cannot reappreciate the evidence adduced in the inquiry. The Apex Court in Union of India Vs. B.K. Srivastava 1998 SCSLJ 74 held that Tribunal cannot sit in appeal against the order of Disciplinary Authority and Appellate Authority in exercise of powers of judicial review. In case of Union of India Vs. Nagamaleswar Rao 1998 (1) SCSLJ 78 Hon'ble Supreme Court held that "It is really surprising that inspite of clear position of law in this behalf and as regards the jurisdiction of the Tribunal in such cases, the Tribunal thought it fit to examine the evidence produced before the enquiry officer as if it was a court of appeal." In the case of Apparel Export Promotion Council Vs. A.K. Chopra AIR 1999 SC 625 Hon'ble Apex court held -

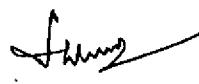
In departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in Writ Jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and / or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities.

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12. In the case of Syyed Rahimuddin Vs. Director General, CSIR & Others 2001 (2) SCSLJ 132 it was held by the Apex Court that Findings of facts arrived at in a disciplinary enquiry - Interference by the Court is permissible only when there is no material for the said findings or conclusion or on the materials available no reasonable man can reach to such conclusion. In case of N. Rajarathinam Vs. State of Tamil Nadu 1997 (1) AISLJ 10 the Apex Court held standard of proof in domestic inquiry is only preponderance of probability. Court cannot act as fact finding forum. If there is some evidence on record the decision of disciplinary authority cannot be faulted. In case of Government of Tamil Nadu & Ors Vs. S. Vel Raj 1997 (2) AISLJ 32 the Apex Court held that standard of proof in DAR action is not a proof beyond doubt. In case of Government of Tamil Nadu Vs. N. Ramamurthy AIR 1997 SC 3571 the Apex court held - The Tribunal has no jurisdiction to go into the correctness or truth of the charges and the Tribunal cannot take over the functions of the disciplinary authority. In case of Transport Commissioner, Madras Vs. A. Radha Krishna Moorthy 1995 (1) ATJ 299 the Apex Court held - Administrative Tribunal has no jurisdiction to go into the truth of the allegations / Charges particularly at a stage prior to the conclusion of the disciplinary enquiry. In case of High Court of Judicature at Bombay Vs. Sashikant S. Patil & anr 2000 (1) 171 it was held that if there is some legal evidence

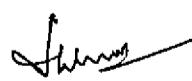
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on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition under article 226 of the Constitution. In the case of Government of Tamil Nadu & anr. Vs. A. Rajapandian AIR 1995 SC 561 the Apex Court held that it has been authoritatively settled by string of authorities of this Court that the Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably support the conclusion reached by the disciplinary, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority. In case of R.S. Saini Vs. State of Punjab & Ors. 1999 (2) SCSLJ 213 the Apex Court held "If there is some evidence to reasonably support the conclusion of the enquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The enquiring authority is the sole Judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings.



13. In our view the scope of judicial review is limited so far as the merits of the case are concerned as rightly argued on behalf of the Respondents. This Tribunal cannot exercise appellate powers for deciding a matter like this. We are not sitting in appeal over the decision of the disciplinary authority or other competent authority who has passed the order in appeal or revision. Time and again the Apex Court has observed that the High Court or the Tribunals cannot reappreciate evidence and come to an independent conclusion in a matter like this. The scope of judicial review is very limited so far as the merits of the case are concerned. Therefore we cannot go into the question whether the appreciation of evidence by the competent authority is correct or not, whether the finding of fact recorded by the competent authority is justified or not. But in a given case if the order of disciplinary authority is perverse being passed on no evidence or the proceedings are vitiated on the violation of principles of natural justice or there are legal infirmities like the competence of the authority or any other violation of legal formalities, then this Tribunal can interfere with the findings recorded by the Disciplinary Authority.

14. In view of the decisions of the Apex Court, we cannot go into the question whether appreciation of the evidence by the competent authority is correct or not. Whether the finding of fact reached by competent



authority is justified or not. We cannot reappreciate the evidence and substitute our own finding in place of finding of the competent authority. We find that there is sufficient evidence on record to support the findings of the Inquiry Officer. Therefore, there is no force in the contention of the learned counsel for applicant that findings of guilt recorded by the Inquiry Officer is against the evidence.

15. The next contention raised by learned counsel for applicant is that the document of analysis of rates of item on the basis of which Mr. Malhaan prepared his report, but this document was not produced or made available to him despite the inquiry officer giving specific direction to the Presenting Officer and to the disciplinary authority on 20.9.96 to make above document available. Since the very basis of the justified rates mentioned by Technical Examiner (Mr. Malhan) in his report was not available, the so called justified rates mentioned by Mr. Malhan have to be treated as purely hypothetical and arbitrary with no evidential value. Learned counsel for the respondents on the other hand stated that the point raised by the applicant has been discussed in the inquiry report, which has been considered by the competent authority before imposition of penalty. The Disciplinary Authority vide order dated 18.6.99 in para (ii) observed as follows:



"All the above points have been taken care of by the Inquiry Officer during the inquiry proceedings. Shri Mittal himself has pointed out in his representation that "The IO has correctly held that the justified amount percentage of MRJ calculated by TE in his support cannot be accepted as he could not sustain/affirm his calculations during his deposition in the inquiry."

Since the report of the Technical Examiner Mr. Malhan has not been accepted by the Inquiry Officer, no prejudice has been caused to the applicant by not supplying the document of analysis of rates on the basis of which Mr. Malhan prepared his report. Hon'ble Apex Court in U.P. State Transport Corporation Vs. Musairam & Others 1999 SCC (L&S) 686: 1999(2) SCSLJ 110 in para 9 has held that -

"The question whether the authority can act upon the reports filed by the Assistant Traffic Inspector or not and whether these reports should be accepted or not is a matter which has to be examined by the enquiry officer. The Court does not sit in appeal over the findings of the inquiry officer. If the findings are based on uncontroverted material placed before the enquiry officer, it cannot be said that these findings are perverse"

Therefore, the contention raised by learned counsel for the applicant has no merit.

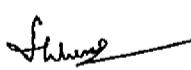
16. The last contention raised by learned counsel for applicant is that the Inquiry Officer has not complied with Rule 14 (18) of CCS (CCA) Rules, 1965. According to which it is mandated upon the Inquiry Officer to have asked the circumstances appearing

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against him in the evidence for the purpose of enabling the government servant to explain any circumstances appearing in the evidence against him. We have gone through the inquiry proceedings. the applicant was aware of the charges levelled against him. therefore, no prejudice has been caused to him. In view of the decision of Apex Court in Sunil Kumar Banerjee Vs. State of West Bengal AIR 1980 SC 1170 that failure to comply with Rule 14 (18) of CCS (CCA) Rules does not vitiate the proceedings, unless the delinquent employee establishes the prejudice. The applicant cross examined the witness, submitted defence in writing and was fully alive of the allegations against him. We do not find that the applicant was prejudiced by the failure of Inquiry Officer to question him according to Rule 14 (18) of the CCS (CCA) Rules, 1965. Hence the contention raised by learned counsel for applicant has no force.

17. For the reasons discussed above, the OA being devoid of merit fails, dismissed accordingly. In the circumstances, there is no order as to costs.

  
(MUZAFFAR HUSAIN)  
MEMBER (A)

  
(A.K. AGARWAL)  
VICE CHAIRMAN

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