(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No.119/94
in
Misc. Petition No.736/93
in
Original Application No.636/92

H.K.Pardeshi .. Applicant

-versus-

Commandant,CAFVD Kirkee,Pune .. Respondents

Coram: Hon'ble Shri M.R.Kolhatkar,
Member(A)

Hon'ble Smt.Lakshmi Swaminathan
Member(J)

Tribunal's Order on Review
Petition by circulation
(Per M.R.Kolhatkar,Member(A))

Date: 23-11-94

In this review petition the prayer is for review of our order dated 17-2-94 which was passed in M.P.No.736/93 in this O.A. That M.P. which was dated 14th September,93 and contained the following prayer:

> "Direct the respondent to pay subsistance allowance from 26-4-79 to 5-5-92 with interest under Section 34 of the Civil Procedure Code at 24% p.a."

Our order was passed on 17-2-94. It has been brought to our notice that shortly after the filing of the M.P. viz. on 25-9-93 the applicant had given a declaration acknowledging payment towards subsistance allowance of a sum of Rs.35,046/- and stating that the advocate's notice along with Misc. Petition on the subject and the hearing scheduled for 27-9-93 should be treated as

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cancelled and that the concerned agency will be informed by the applicant.

2. Although the case had come up before the Tribunal on 18-10-93 and 20-12-93 this declaration did not appear to have been brought to the notice of the Tribunal. There is, therefore, a case for review of our order dated 17-2-94 and to re-hear the M.P. In view of this material development, prior to the passing of the order of the Tribunal not having been brought to ~~its~~ their notice we therefore pass the following order:

> The order of the Tribunal dated 17-2-94 in M.P.No.736/93 in O.A. No.636/92 is hereby set aside and it is directed that the M.P. along with O.A. may be re-heard.

(Smt.Lakshmi Swaminathan)
Member(J)

(M.R.Kolhatkar)
Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 696/92.

Dated the 13th day of August, 1999.

H. K. Pardeshi. Applicant.

Shri D. V. Gangal. Advocate for the applicant.

VERSUS

Commandant, Central AFV Depot,
Kirkee, Pune. Respondent.

Shri V. D. Vadhavkar for
Shri M.I. Sethna. Advocate for the Respondent.

CORAM: Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

(i) To be referred to the Reporter or not ? NO

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? NO

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 696 of 1992.

Dated the 13th day of August, 1999.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

H. K. Pardeshi,
T. No. 3005 Maz,
31, Chikalwadi,
Kirkee,
Pune - 411 003. ... Applicant.

(By Advocate Shri D. V. Gangal)

VERSUS

Commandant,
Central AFV Depot
(Armed Forces Vehicle Depot),
Kirkee, Pune - 411 003. ... Respondents.

(By Advocate Shri V. D. Vadhavkar for
Shri M. I. Sethna).

O R D E R

PER.: Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed under Section 19 of the Administrative Tribunals Act. Respondent has filed reply. We have heard the learned counsel appearing on both sides. The applicant was working as a Mazdoor in the office of respondent. It appears on 27.10.1978 was a pay day. The applicant went to the Cash Branch and he was paid his salary on the basis of the pay slip issued by the Time-Keeper. It appears, On the next day Mr. D. R. Masurkar, the Paying-Out Officer, noticed that there was shortage of cash of Rs. 100/-. Then it came to light that applicant had been paid Rs. 100/- excess. Then the applicant was

questioned and he admitted the receipt of excess amount and he paid back that amount. Then some preliminary enquiry was held by the administration which disclosed that the pay slip of the applicant has been tampered with by showing the net amount due as Rs. 258.10ps. instead of Rs. 158.10ps. In other words, the figure "1" in 158 had been altered to "2" to show that the total amount due to be paid was Rs. 258.10ps. On the basis of this preliminary enquiry, a charge-sheet was issued to the applicant on 15.02.1979 and an Inquiry Officer was appointed. On the basis of the enquiry, the Disciplinary Authority passed an order dated 24.04.1979 by holding that the applicant is guilty of tampering the pay slip and as a result, received excess amount of Rs. 100/- and then imposed the penalty of removal from service. The applicant filed an appeal before the Appellate Authority. The appellate authority noticed certain defects in the disciplinary enquiry. Therefore, by order dated 06.11.1979 he pointed out the defects and remanded the matter to the Disciplinary Authority for a de novo enquiry and to submit the findings so that the appellate authority can pass the final order. That means, the Appellate Authority kept the appeal on his file but only called for findings after the de novo enquiry. In pursuance of this direction by the Appellate Authority, the Disciplinary Authority appointed another inquiry officer. The applicant appeared before the Inquiry Officer alongwith his defence assistant Mr. M. S. Mudaliyar. Then two prosecution witnesses were examined. The applicant examined four witnesses. Both, the Presenting Officer and the applicant filed their written briefs. Then on the basis

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of the evidences, the inquiry officer submitted a report holding that the charge is proved. The report was submitted to the Appellate Authority since appeal was pending before him. Then the Appellate Authority considered the entire materials on record and disposed of the appeal by order dated 24.02.1981 by confirming the order of removal from service earlier passed by the Disciplinary Authority. Being aggrieved by these orders, the applicant filed a suit in the Civil Court at Pune in R.C.S. No. 1358 of 1981. After trial, the Civil Court dismissed the suit. The applicant carried the matter in appeal before the District Judge, Pune. While the appeal was pending, the Administrative Tribunals Act came into force. Then the appeal came to be transfered to this Tribunal and numbered as Transfer Application No. 414/87. This Tribunal by order dated 08.08.1991 quashed the order dated 24.02.1981 on the ground of non-supply of enquiry report and remitted the matter to the Disciplinary Authority to proceed from the stage of furnishing a copy of the enquiry report to the applicant. In accordance with this direction, a copy of the enquiry report was furnished to the applicant. Though opportunities were given to the applicant, he did not send reply to the Disciplinary Authority on the ground that he has not been paid subsistence allowance. After waiting for some time, the Disciplinary Authority proceeded to pass a fresh order dated 04.08.1992 holding that the charge is proved against the applicant and again imposed the penalty of removal from service.

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We may place it on record that even before the Disciplinary Authority passed the second order dated 04.08.1992, the applicant had filed this O.A. challenging the action of the administration in proceeding with the enquiry without giving him salary and allowances, etc. After receiving the impugned order dated 04.08.1992, the applicant amended the O.A. to challenge that order.

2. That is how the applicant is challenging the order dated 04.08.1992. It is alleged that applicant has not been paid the subsistence allowance for the deemed suspension period and thereby, he was prevented from sending replies to the show cause notice sent alongwith the enquiry report and thereby the order of the Disciplinary Authority is vitiated. The applicant was not reinstated in service and he was not paid salary and allowances and therefore, continuing the disciplinary enquiry was illegal. Then it is alleged that it is a case of no evidence and therefore, the finding of guilt recorded by the Inquiry Officer and the Disciplinary Authority are liable to be quashed. That the documents sought for by the applicant were not furnished. It is, therefore, stated that the impugned order be quashed and the applicant be reinstated in service with all consequential monetary benefits.

3. The respondents in their reply have explained the circumstances under which the applicant was proceeded with the

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disciplinary enquiry. They have mentioned the facts which led to the issuance of the charge-sheet. It is stated that enquiry was held as per rules and applicant has produced his witnesses and after regular enquiry the applicant has been proved guilty both by the Inquiry Officer and the Disciplinary Authority and no ground made out for interference. That the applicant did not challenge his non-reinstatement after the order of the Appellate Authority. That the applicant never raised the question of non-payment of subsistence allowance when he participated in the disciplinary enquiry. The plea now raised is belated and cannot be entertained. There is sufficient material to show that the applicant had tampered with the pay slip with an intention of getting Rs. 100/- more and this has been proved in the enquiry and hence the applicant is not entitled to any of the reliefs.

4. The first submission of the Learned Counsel for the applicant is that the enquiry is vitiated due to non payment of subsistence allowance. It is not necessary to refer to the earlier decisions since in the latest judgement of the Supreme Court it is held that non payment of subsistence allowance will vitiate the disciplinary enquiry, provided ofcourse, the delinquent official has been prejudiced or he had no opportunity to defend himself for want of funds, which is in a case reported in 1999 SCC (L&S) 810 (Capt. M. Paul Anthony V/s. Bharat Gold Mines Ltd.). A perusal of the facts of the case show that Mr. Paul Anthony was kept under suspension. He was working in the

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Kolar Gold field in the district of Kolar in the State of Karnataka but due to his suspension, he went back to Kerala. When he received the notice in disciplinary enquiry case, he sent a representation stating that he cannot come all the way from Kerala to Kolar unless he is paid the subsistence allowance. But however, the Inquiry Officer proceeded with the enquiry. Mr. Anthony was dismissed from service after the enquiry. He approached the High Court unsuccessfully, hence he filed the appeal in the Supreme Court. The argument before the Supreme Court was that due to non-payment of subsistence allowance, the applicant could not undertake journey from his home-town Kerala to Kolar Gold Field at Karnataka where the enquiry was held (vide para 24 of the reported judgement). Then reference was made to earlier decision on this point and in particular, in para 31 of the judgement there is reference to an earlier judgement of the Supreme Court and the observations of that judgement is mentioned

> ".....it was held in that case that if an employee could not attend the departmental proceedings on account of financial stringencies caused by non-payment of subsistence allowance, and thereby could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated." (Underlining is ours).

Again in para 33 the Supreme Court has observed as follows :

> "Moreover, as pleaded by the appellant before the High Court as also before us that on account of his penury occasioned by non-payment of

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> subsistence allowance, he could not undertake a journey to attend the disciplinary proceedings, the findings recorded by the enquiry officer at such proceedings, which were held ex parte, stand vitiated."
>
> (Underlining is ours).

Therefore, the stress by the Supreme Court is that not attending the enquiry or inability to attend enquiry due to non-payment of subsistence allowance vitiates the enquiry since it amounts to denial of fair opportunity to defend onself in disciplinary proceedings.

5. Now let us apply the above test to the facts of the present case.

In the present case, the applicant has attended the disciplinary enquiry, fully participated in the enquiry alongwith his defence assistant and what is more, he examined four witnesses on his behalf and, therefore, the question of non-payment of subsistence allowance is wholly irrelevant in this case. If due to non-payment of subsistence allowance the applicant had not attended the enquiry or did not produce defence witness, then the above decision would have applied to his case. But when the applicant has fully participated in the enquiry, the question of non-payment of subsistence allowance is wholly irrelevant and hence the question of vitiating the enquiry does not arise..

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6. Now let us look this from another angle. We have already seen that after getting the record of the case after de novo enquiry, the appellate authority passed the order in the appeal on 22.04.1991 confirming the order of the Disciplinary Authority dismissing the applicant from service. Being aggrieved by this order, the applicant filed a Civil Suit in R.C.S. No. 1358/81. The suit came to be dismissed on merits. Then he filed an appeal before the District Judge and it was transfered to this Tribunal and renumbered as Transfer Application No. 414/87. Since the applicant has made reference to the previous order in T.A. No. 414/87, we secured the entire record from our Record Branch. A perusal of the record shows that in that suit the applicant made no grievance about non-payment of subsistence allowance or any prejudice caused to him in defending himself in the enquiry case. Even after he filed an appeal in the District Court which was transfered and renumbered as T.A. No. 414/87, he made no grievance about non-payment of subsistence allowance or about consequent failure of justice or prejudice caused to him. That transfer application was disposed of by order dated 08.08.1991. The present O.A. is filed in 1992. The enquiry was held in 1980. When the applicant did not challenge the disciplinary enquiry on the ground of non-payment of subsistence allowance when he filed the previous suit or previous appeal, it is too late in the day for him to press that plea in the present case.

7. Another contention of the applicant is that he made a specific demand for payment of subsistence allowance to enable him to file a reply to the enquiry report. We have already seen that this Tribunal in previous case, namely - Transfer Application No. 414/87 by order dated 08.08.1991 set aside the impugned order dated 24.02.1981 in which there is a direction to the Inquiring Authority to furnish a copy to the applicant and from that stage he could proceed further. Admittedly, a copy of the enquiry report was furnished to the applicant. For giving reply to that enquiry report, the applicant no doubt demanded payment of subsistence allowance. We have already seen the observations of the Supreme Court in Paul Anthony's case and other cases that if as a result of non-payment of subsistence allowance, a delinquent official is put to difficulty in contesting the proceedings or in attending the enquiry, then the enquiry is vitiated. The question is, whether non-payment of subsistence allowance for giving a reply to the enquiry report in the circumstances of the case vitiates the order of the Disciplinary Authority ? In our view, the answer must be certainly in the negative in the present case.

When the disciplinary authority furnished a copy of the enquiry report, the applicant sent a letter dated 18.05.1992 seeking payment of subsistence allowance and some documents to enable him to give a reply. He sent one more letter on same lines dated 27.06.1992. Both these letters are at pages 36 and

38 of the paper book. A perusal of the letter shows that it refers to some decisions of the Supreme Court and further, they are not written by an ordinary layman. When we put a specific question to the Learned Counsel for the applicant as to how could the applicant send such letters, he fairly submitted that he himself drafted those letters, got them typed and the applicant signed it. Therefore, if the applicant can take the services of a senior advocate like Mr. Gangal to send these two letters, he could have sent reply to the enquiry report itself without insisting on payment of subsistence allowance. Want of funds cannot be a ground for not sending reply to the enquiry report if he could engage an advocate to send interim reply like these two letters. Then another clinching circumstance is that, after the second letter dated 27.06.1992, within two weeks thereafter he files the present O.A. on 14.07.1992. If he could engage an advocate to file an O.A.in this Tribunal, then want of funds should not come in the way of ~~filing~~ sending a reply to the enquiry report. Certainly, want of funds would not have been a ground for not sending reply to the enquiry report. Therefore, in the facts and circumstances of the case, we hold that non-payment of subsistence allowance was not at all a hindrance for the applicant to send a reply to the enquiry report. Though he had asked for some documents, some of the documents have been furnished to him and some documents were stated to be not relevant at that stage. Further, furnishing a document at the stage of giving reply to enquiry report does not arise.

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The observations of the Supreme Court that non-payment of subsistence allowance has some merit or force when due to that an official is unable to participate in the enquiry or unable to defend himself effectively. But in the present case, when the applicant participated in the proceedings without murmur and produced four witnesses and took the help of the defence assistant, it is now no longer open to him to question to legality of the proceedings on the ground of non-payment of subsistence allowance. In the facts and circumstances of the case and particularly, in view of the applicant's participation in the enquiry without any objection and taking full effective part in the enquiry and not having challenged the same in the previous suit or appeal, he cannot now be permitted to raise that plea and at any rate, no prejudice is caused to him since he has fully participated in the enquiry. Therefore, we find no merit in the first contention urged by the Learned Counsel for the applicant.

8. The second submission is that after the order of the Appellate Authority, de novo enquiry has been held without actually reinstating the applicant in service and, therefore, the enquiry is bad in law. That means, the applicant is challenging the correctness and legality of the appellate order dated 24.02.1981 on the ground that the direction given for de novo enquiry without reinstating the applicant and subsequent de novo

enquiry without reinstating the applicant is bad in law. Here again we may point out that when appellate authority passed the final order dated 24.02.1981 after de novo enquiry and when applicant challenged that order by filing a civil suit in 1981, he never took such a ground. When he filed the appeal in the District Court which came to be transfered in this Tribunal in 1987, no ground had been taken that the whole de novo enquiry proceedings are vitiated due to non-reinstatement of the applicant in service. What is more, after the appellate order and Inquiry Officer was appointed and the applicant participated in the enquiry but he raised no such objection. He had the benefit of the Defence Assistant to defend him. That was the earlierst possible opportunity for the applicant to take objection to the de novo enquiry on the ground that the enquiry cannot be proceeded without reinstating him. No such objection was taken by the applicant but on the other hand, he and his Defence Assistant fully participated in the enquiry including examination of four witnesses and submission of defence brief and he took a chance of succeeding in the enquiry. If ultimately he fails, he cannot now turn around after ten years to contend in the present O.A. filed in 1992 that the enquiry is vitiated since it was held without reinstating him. The applicant has fully accepted the order of the Appellate Authority and fully participated in the enquiry and that is why he did not challenge the de novo enquiry on those grounds in the suit filed in 1981 or

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in the appeal filed thereafter. He is estopped by his conduct from questioning the validity and legality of the de novo enquiry. The reason is this, if at the earliest point of time he had objected to the continuing of enquiry or de novo enquiry without reinstatement, the disciplinary authority either would have dropped the proceedings or he would have reinstated him and then proceeded with the enquiry. Having not taken such a stand during the de novo enquiry and not challenging the order of penalty on that ground in the Civil Suit or appeal, he cannot now turn around and question the order of the appellate authority dated 24.02.1981 ordering de novo enquiry without reinstatement. What is more, the order dated 24.02.1981 is no longer in existence, since it has been set aside in previous T.A. No. 414/87 on a technical ground that enquiry report was not furnished to the applicant.

9. After having pointed out that due to applicant's conduct in not challenging that order earlier and in fully participating in the enquiry, he is now precluded from questioning the legality or validity of the de novo enquiry. We now point out that even on merits, the argument has no legs to stand.

The powers of appellate authority are found in Rule 22(2)(c) of the Railway Servants (Discipline & Appeal) Rules, 1968, which reads as follows :

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(i) confirming, enhancing, reducing, or setting aside the penalty;

or

(ii) remitting the case to the Authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of these cases:"

Thereby, the Appellate Authority has wide powers of either confirming, enhancing or setting aside the order or remitting the case to the Disciplinary Authority with such directions as it may deem fit in the circumstances of the case.

Now in the present case, the appellate authority found that the enquiry had not been conducted properly and there were some defects. He therefore directed the disciplinary authority to conduct de novo enquiry and submit the papers to it for passing final orders. Therefore, this is not a case of remanding the case in entirety to the Disciplinary Authority. On the other hand, the appellate authority kept the appeal on his file, remitted the matter to the disciplinary authority to record the evidence afresh and to submit. Therefore, in our view, the order of remitting the case for recording evidence and to submit the papers is fully governed by Clause (ii) of Rule 22(2)(c) mentioned above. That means, the appellate authority can give such directions as he may deem fit as provided in the Rules. In

the present case, the appellate authority directed that without setting aside the order of the disciplinary authority, he wanted evidences to be recorded and to submit the papers so that he can pass an order.

In this connection we may also refer to the powers of the Appellate Authority in civil matters provided in Order 41 of the Code of Civil Procedure.

Even the appellate authority under Order 41 can confirm or set aside or modify the orders of the Disciplinary Authority. Then under Order 41 Rule 23 can remand the case to the Trial Court for fresh disposal as per its direction. Then the appellate authority has one more power under order ~~24~~ 41 Rule 25 of the C.P.C. where if it finds certain illegality or irregularity or it finds that additional issues should have been framed or additional evidences should have been taken, it can keep the appeal on its file and direct the Trial Court to record additional evidences and then submit the papers and after receipt of additional findings, it can dispose of the appeal.

Similarly, under Clause (ii) of Rule 22(2)(c) mentioned above, the Appellate Authority has rights and powers to remit the case, thereby giving certain direction in this case instead of setting aside the order of the disciplinary authority and remanding the case once and for all, the appellate authority had

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kept the appeal for itself and gave direction for recording the evidence and after getting the fresh enquiry report, it proceeded to pass the final order. In our view, the order is purely within the powers of the appellate authority and Rule 22(2)(c) of the Railway Servants (Discipline & Appeal) Rules, 1968. Hence, the argument that without reinstatement de novo enquiry could not have been held has no merit. This is particularly so when the applicant has by his conduct precluded from raising that plea after having fully participated in the enquiry and never challenging the same in the previous round of litigation.

If the applicant was aggrieved by the order of the Appellate Authority dated 24.04.1979, he could have filed an appeal to the higher authority or he could have challenged that order by approaching a Civil Court but he never challenged the order of remand dated 24.04.1979 at all. He fully participated in the enquiry. It was only when the order went against him, he filed the previous suit. There also he did not challenge the legality and validity of the de novo enquiry on the ground that he had not been reinstated. Hence, taking any view of the matter, we find no merit in the contention now raised by the Learned Counsel for the applicant and accordingly we reject it.

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10. The next and the last submission is about the merits of the case. It was argued that it is a case of no evidence and the order of the competent authority is a perverse order and therefore, the order is liable to be quashed.

It is now fairly well settled by number of recent decisions of the Supreme Court that the scope of judicial review is very limited. While exercising judicial review, a Court or Tribunal cannot act as an appellate court. It cannot re-appreciate the evidences and take a different view, even if another view is possible. The Tribunal is only concerned with legality of the decision making process and not about the legality of the actual decision. It is not necessary to refer to all the decisions except to refer to one of the latest judgements reported in AIR 1999 SC 625 (Apparel Export Promotion Council V/s. A. K. Chopra) where the Supreme Court has clearly held that Court or Tribunal cannot re-appreciate the evidences and again go to the question of adequacy or inadequacy of evidences.

The Learned Counsel for the applicant is right in his submission that if it is a case of no evidence or if the order of the competent authority is perverse, then the Tribunal can ~~sit~~ step in ~~appeal~~ and quash the order. After hearing the learned counsel for the applicant at length and after going through the entire materials on record, including the enquiry file submitted by the respondents' counsel, we do not find that this is a case of no evidence or this is a case of the order of the competent authority being perverse.

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11. The charge framed against the applicant in the disciplinary case is as follows :

> "On 27 Oct 78 Mazdoor Shri H. K. Pardeshi while drawing his pay for Oct 78, tampered with the figure Rs. 158.10 into Rs. 258.10 in the pay slip with a view to derive unintended benefit thereby exhibiting lack of integrity and conduct unbecoming of a Government Servant thus violating Rule 3 (i) of CCS (Conduct) Rules, 1964."

To prove the charge, the prosecution examined two witnesses, namely - D. R. Masurkar, the Paying-Out officer, and A. Susainathan, Time-Keeper. It is the duty of the Time-Keeper to prepare the pay slip and on that basis the Paying-Out officer pays the salary. The allegation against the applicant is that he has tampered with the entry in the pay slip by inflating the net salary by Rs. 100/- and thereby received Rs. 100/- excess of pay from the cashier. The applicant should have got net amount of Rs. 158.10ps. but by altering figure "1" into "2", he got Rs. 258.10ps. The fact that the applicant received the excess amount of Rs. 100.00 is not disputed and on the very next day when the cashier told that he received Rs. 100/- in excess, the applicant promptly refunded that amount. The applicant through his Defence Assistant, Shri Mudiliar, cross examined the witnesses. Then the applicant examined four witnesses - N. V. Shapure, P. N. Ranavare, B. R. Tuprundre and M. S. Gaikwad. The defence witnesses only stated that they did not come across any

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such tampering and they spoke about the general practice as to how the pay slip is taken and the amount is paid. Their evidence will not help us to decide wether the applicant tampered with the figure in the pay slip or not.

As pointed out by the Inquiry Officer, the figure 158 has been altered to 258. One and only beneficiary due to the tampering of the figure is the applicant himself. Nobody is going to get benefit if in the pay slip of the applicant the amount of the pay is altered from 158 to 258. Therefore, the competent authority has drawn an inference from the proved and admitted fact that applicant has manipulated the figure to draw excess amount of Rs. 100/- on the salary day. It is purely a question of appreciation of admitted and proved fact. We have already pointed out that this Tribunal cannot re-appreciate the evidence and take a different view even if another view is possible. The Learned Counsel for the applicant extensively commented on the evidence of the two prosecution witnesses but we are not persuaded to take a different view. As already stated, even if we are inclined to take another view, we cannot do that since the scope of judicial review is very limited. In this connection, we may refer to another recent judgement of the Supreme Court in the case of Dr. Anil Kapoor V/s. Union Of India & Another reported in AIR 1999 SC 1528 where the Supreme Court even mentioned that though it is possible to take another view in the matter, it will not be a ground for interfering with the order passed in the disciplinary proceedings. Therefore, we cannot go into the arena of re-appreciation of evidence at all.

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12. In addition to the evidences referred to above, there is one more clinching evidence relied on during the enquiry proceedings and it is the applicant's statement on 08.01.1979. In this statement the applicant has clearly admitted that on 27.10.1978 the Time-Keeper, A. Susainathan, told him that he will get Rs. 100/- extra as per the pay slip and it should be shared equally between him (A. Susainathan) and the applicant at Rs. 50/- each. He further says that after collecting his pay on 27.10.1998, Mr. Susainathan signalled him from inside the office. Therefore, the applicant new fully well on 27.10.1978 that he is going to get Rs. 100/- extra and this has to be shared between him and Susainathan. Now the applicant denies this portion of the statement itself. This statement clearly shows the guilty mind of the applicant and that he was a party to the fraud of taking Rs. 100/- excess from the administration. Therefore, it is a case of applicant knowing that there is such an alteration in the pay slip though in this statement he is puting the blame on the Time-Keeper. But in the disciplinary enquiry, his defence was one of total denial. As already stated, the applicant is the one and only person to benefit from the alteration of this amount, hence a reasonable inference can be drawn that he is the author of the mischief. If in the circumstances the inquiry officer has held that the charge is proved, it cannot be a case of no evidence or a case of perverse order.

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Though we have referred to the argument of non-payment of subsistence allowance, etc. it has now been admitted before us that the applicant has been subsequently paid whatever amount was due to him.

After going through the materials on record, we do not find any illegality or infirmity in the findings recorded by the Inquiry Officer and confirmed by the Disciplinary Authority and the Appellate Authority and on merits, we do not find any merit in any of the contentions of the applicant's counsel. Hence, the application has to fail.

13. In the result, the application is dismissed. No order as to costs.

(B. N. BAHADUR)
MEMBER (A)

13.8.99
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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