IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 76/93 199
T.A. No.

DATE OF DECISION 11.4.1996

D.L.Yadav Petitioner

Mr.Mahendra Shah Advocate for the Petitioner (s)

Versus

Union of India and others Respondent

Mr.N.K.Jain Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.K.Verma, Member (Administrative)

The Hon'ble Mr. Ratan Prakash, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Ratan Prakash)
Member (H)

(N.K.Verma)
Member (A)

22

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH

J A I P U R.

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OA NO. 76/1993 Date of order: 11.4.96

D.L.Yadav : Applicant

V/s

Union of India and others : Respondents.

Mr. Mahendra Shah, counsel for the applicant
Mr. N.K.Jain, counsel for the respondents

CORAM:

HON'BLE SHRI N.K.VERMA, MEMBER (ADMINISTRATIVE)
HON'BLE SHRI RATTAN PRAKASH, MEMBER (JUDICIAL)

O R D E R
(PER HON'BLE SHRI RATTAN PRAKASH, MEMBER(JUDICIAL)

Applicant herein Shri D.L.Yadav has filed this application under Section 19 of the Administrative Tribunals Act, 1985 to quash the report of the enquiry officer dated 9.8.1995; his order of dismissal from service dated 31.10.1992 issued by the Disciplinary Authority and the order of the appellate authority dated 16.10.1992 (Annx.A-1) rejecting his appeal with a further prayer to reinstate him in service with all consequential benefits.

2. Facts relevant for disposal of this application are that the applicant joined the Income Tax Department on 20.11.1951 as L.D.C., remained Stenographer from 29.3.1956 to 11.2.1959; U.D.C. from 12.2.1959 to 26.7.66, Head Clerk from 27.7.1966 to 5.1.1970 and Inspector from 6.1.1970 to 27.7.1977. He was promoted as Income Tax Officer w.e.f. 28.7.1977. While posted as Tax

../2

Recovery Officer (Income Tax) at Jaipur; which is an equivalent post of Income-tax Officer; a search was conducted against him by the Central Bureau of Investigation in which a Final Report (F.R.) was given on 11.10.1983/19.10.1983 which was accepted by the Judge, CBI on 1.2.1984. It appears that before it the applicant was served with a charge-sheet dated 5.4.1983 and disciplinary proceedings under rule 14 of the C.C.S.(CCA) Rules, 1965 were initiated for being in possession of dis-proportionate assets to his known sources of income. The charges read as under:-

"That Shri D.L.Yadav, while functioning as Head Clerk, Inspector and Income-tax Officer in the Income-tax Department during the period from 11.10.1969 to 3.2.1981 at different places acquired assets which were disproportionate to his known sources of income and on or about 3.2.1981 while serving as Tax Recovery Officer III, Income-tax, Jaipur he has been in possession of property etc. in his name or in his behalf to the tune of Rs.97,559.11 over and above his likely savings which were disproportionate to his known sources of income and whichhe could not satisfactorily account for, such disproportionate assets being out of the total assets of Rs.2,82,867.25 as detailed in statement of imputation giving rise to the legal presumption that the same were acquired by corrupt means during the discharge of duty as public servant which constitute misconduct on his part."

Enquiry Officer was appointed vide order dated 5.8.1983 and after receipt of reply of the applicant, the departmental enquiry was completed. Enquiry Officer gave his first report on 21.2.1985. The disciplinary authority finding that the report of the enquiry officer is not a speaking report and findings arrived at were not backed by proper discussion of evidence on record, remitted the case back to the enquiry officer for giving a fresh report. Accordingly, the enquiry officer gave his second detailed report on 9.8.1985. This report of the enquiry officer was followed by

the order of the disciplinary authority dated 12.3.86 whereby the applicant was dismissed from service. An appeal filed against it by the applicant was rejected by the Appellate Authority vide its order dated 3.5.1988. Applicant feeling aggrieved, filed an earlier OA No.180/88 D.L.Yadav Vs. Union of India and others which was disposed of by order dated 19.1.1990, the operative portion being to the following effect:

"In view of the above discussion, we hereby quash the order dated 12.3.1985 passed by the disciplinary authority and the order dated 3.5.88 passed by the appellate authority and direct the disciplinary authority to furnish copies of the enquiry reports to the applicant and give him a reasonable opportunity and hearing to challenge the reports and make his submissions and only then pass the order. We further direct that the applicant shall be deemed to be under suspension from the date he was dismissed from service till the date the disciplinary authority passes a fresh order in the light of the directions given in this judgment. An order regarding payment of subsistance allowance as admissible under the rules shall also be passed by the competent authority for the period that the applicant remains under suspension. The disciplinary authority shall issue a show cause notice to the applicant as directed above within a period of two months from the date of receipt of a copy of this judgment by the Respondents. It is further made clear that the directions given in this judgment will not preclude the applicant from filing a fresh application, if so advised, after he has exhausted remedies available to him under the service rules. There shall be no order as to costs."

In consequence of the directions given by the Tribunal, the disciplinary authority vide its notice dated 23.3.1990 (Annx.A-9) supplied to the applicant copies of the enquiry reports dated 21.2.1985 and 9.8.1985 and he was given an opportunity for making representation on the reports of the enquiry officer. The applicant replied to this show cause notice vide

../4

his reply dated 4.4.1990(Annx.A-10). The disciplinary authority considering the totality of the facts and circumstances as also the quantum of disproportionate assets acquired by the applicant found him to be totally unfit to hold any responsible post in the Income Tax Department and thereby imposed the penalty upon the applicant of dismissal from service. The applicant filed an appeal on 11.11.1990 vide Annx.A-11 which was rejected by the Appellate Authorityvide its order dated 16.10.1992 (Annx.A-1). The applicant now in this OA has sought the quashing of the report of the enquiry officer as well as the order passed by the disciplinary authority as also the order of the Appellate Authority rejecting his appeal mainly on the grounds of not affording proper opportunities to defend him in the disciplinary proceedings in as much as in non-supplying of the documents and non-examination of material witnesses sought for by him for examination in support of his defence. The applicant has also challenged the aforesaid orders on the basis of non-compliance of the mandatory provision laid down under rule 14 of CCS(CCA)Rules, 1965 as also being violative of the principles of natural justice.

3. The respondents have contested this application by filing a written reply to which the applicant has also filed a rejoinder.

4. We heard the learned counsel for the applicant Shri M.K.Shah as also the learned counsel for the

../5

respondents Shri N.K.Jain at great length and have carefully gone brough the record.

5. The only point for determination in this OA is whether the proceedings conducted by the enquiry officer are vitiated and that the orders of the disciplinary authority as also of the Appellate Authority suffer from any legal infirmity and are in violation of the principles of natural justice?

6. It has been vehemently argued by the learned counsel for the applicant that the applicant was not only denied inspection of documents inspite of repeated requests; in absence of which he could not furnish a detailed reply to the charge-sheet served upon him, but he was also not allowed to cross-examine the prosecution witnesses and the Investigating Officer on material points. He was further not allowed to produce witnesses in his defence and even the affidavits filed by him were not taken into account by the enquiry officer. It has, therefore, been urged that the enquiry conducted by the enquiry officer was highly biased and a great prejudice has occurred to the applicant on this count. The other line of argument has been that the disciplinary authority as also the appellate authority have not applied its mind and that the penalty of removal from service of the applicant has been disproportionate to the charges levelled against him. In support of his arguments, the learned counsel

../6

for the applicant has mainly cited P.L.Agarwal Vs. State of Rajasthan, a judgment of the Rajasthan High Court, 1993 Lab.I.C. 1000; State Bank of India Vs. D.C.Agarwal, AIR 1993 S.C.1197; Mohd. Yusuf Ali Vs. State of Andhra Pradesh, 1973(1)SLR 650(AP); T. Radhakrishna Murthy Vs. D.M.United India Insurance Co.Ltd., 1982 Lab.I.C.1745; Ram Chander Vs. UOI and others, 1986(3)SCC 103; R.P.Bhatt Vs. UOI 1986(2)SCC 6 and Bhagat Ram Vs. State of Himachal Pradesh, 1983 (2)SCC 442.

7. As against this, the argument of the learned counsel for the respondents has been that the applicant has been afforded due opportunity to defend himself in the departmental proceedings, no prejudice whatsoever as alleged has been caused to him; the disciplinary authority has passed the order after applying its mind and that penalty imposed upon the applicant is not disproportionate to the charges levelled against the applicant. It has also been urged that merely because a final report has been given by the C.B.I. in the criminal case registered against the applicant, it does not mean that the charges levelled against the applicant about his being in possession of dis-proportionate assets is not washed out; more so when on departmental enquiry it has been found that the charges levelled against him have been duly substantiated by the evidence tendered before the enquiry officer. It has been denied that the disciplinary authority

../7

has passed the order of removal from service of the applicant on the basis of directions given by the Vigilance Commissioner of the Income Tax Department. It has been urged that the order passed by the disciplinary authority is not only detailed but a speaking order and that it does not suffer from any infirmity. So also the order of the Appellate Authority is in consonance with law and the penalty imposed upon the applicant is not disproportionate to the charges levelledagainst him.

8. We have given anxious thought to the arguments advanced by the learned counsel for both the parties. It is settled law that the jurisdiction of the Tribunal to evaluate the evidence tendered before the enquiry officer and weighed by the disciplinary authority is limited. It is that the Tribunal will not act as an appellate authority over the assessment and evaluation made by the disciplinary authority on the basis of evidence recorded in the disciplinary proceedings. The jurisdiction of the Tribunal in disciplinary proceedings is limited to examine as to whether there has been any procedural illegality and violation of any mandatory rule which would vitiate the disciplinary proceedings. Hon'ble the Supreme Court in the case of B.C.Chaturvedi Vs. Union of India and another, 1996 SCC(L&S)80 has reiterated inpara 12 that:

*12. 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 reappreciate the evidence and to arrive at its own 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."

9. In the instant case although it has been vehemently argued by the learned counsel for the applicant that the applicant was not supplied with the documents and he was not afforded proper opportunity to cross-examine the prosecution witnesses and that one material witness i.e. the Investigating Officer was not examined by the prosecution, yet, perusal of the proceedings conducted by the enquiry officer as also perusal of his reports, it does not appear that the enquiry officer did not afford the applicant proper opportunities to inspect the documents or to cross-examine the prosecution witnesses. The contentionof the learned counsel for the applicant that the prosecution did not examine the material witness i.e. the Investigating Officer and this resulted into non-cross-examination

of this witness and thereby resulting into causing him great prejudice, is also not substantiated on record. The reason is, had the applicant been vigilant he could have insisted for examination of this witness i.e. Investigating Officer. From the perusal of the proceedings of the enquiry officer it is not made out that the applicant asked or insisted for summoning the concerned Investigating Officer and the enquiry officer dis-allowed his request. Moreover, non-examination of defence witness by the applicant in his defence does not appear that it was because of the action of the enquiry officer that these witnesses could not be examined. In fact, the charged officer i.e. the applicant did not give any list of his defence witness and never insisted for production of his defence witnesses before the enquiry officer. In fact, the enquiry officer did not close the evidence of the applicant but it was on account of the failure of the applicant to give the list of his defence witnesses and produce them which resulted in the conclusion of the proceedings before the enquiry officer. Had it been otherwise, in the proceedings dated 17.1.1985 (Annx.A-7) the notings of the enquiry officer would have been different. In the proceedings of 17.1.1985 the enquiry officer has observed that the prosecution witnesses summoned for that day did not turn up and although the P.O.(Presenting Officer) made an oral request for granting adjournment to bring the remaining prosecution witnesses especially the I.O.(Investigating Officer) and Valuer (Serial No.44 & 42 respectively), yet the

../10

enquiry officer did not allow the request for adjournment and after rejecting the request made by the prosecution, the prosecution case was closed. From a perusal of this proceeding, it is further made out that the Charged Officer i.e. the applicant filed his additional statement of defence in duplicate and to the questions put to him his replies were also recorded, so that the parties i.e. the Presenting Officer as well as the C.O. i.e.the applicant filed their written representation and written defence respectively in brief. Had it been the intention of the applicant to insist for the summoning of the Investigating Officer and the Valuer, evidence of whom was closed by the enquiry officer, he could have taken steps to summon these witnesses and a request could have been made to the enquiry officer. It appears that no such request was made by the applicant.It therefore, cannot be said that it was on account of non-production of the investigating officer and the Valuer by the department that a defence of the applicant has been greatly prejudiced in the departmental proceedings.

10. Another argument which has been raised on behalf of the learned counsel for the applicant has been that although the departmental proceedings were pending since 2 years but the enquiry officer completed the enquiry in one day and in haste and this has resulted in causing great prejudice to him. We are not impressed by this line of argument of the learned counsel for the applicant; more so when on 17.1.1985 virtually recording of the evidence

../11

etc. have been completed it was only on 21.2.1985 and thereafter after remission by the disciplinary authority, on 9.8.1985 that the enquiry officer gave his detailed report. It shows that there was a period of almost seven months before the enquiry officer gave his report and if the applicant felt that he has not been afforded due opportunity in not summoning the Investigating Officer or for that matter the Valuer, he could have very well made a request to this effect before the enquiry officer. From the record, it appears that no such request has been made by the applicant to the enquiry officer. We, therefore, do not find any substance in the allegation of prejudice against the applicant or bias of the enquiry officer against the applicant as argued by the learned counsel for the applicant. The enquiry officer has dealt with every aspect of the charge in detail and has come to its finding. Regarding the argument advanced on behalf of the applicant that in the earlier report dated 21.2.1985 the enquiry officer has quantified the amount of disproportionate assets as Rs.37,877/- and in the second report i.e. on 9.8.1985 at Rs.60,069/- and this shows that the findings of the enquiry officer are not based on records, also does not carry any weight because it is after remission by the disciplinary authoritythat the enquiry officer after detailed examination has come to the finding that the amount of disproportionate assets comes to Rs.60,069/- but this difference in the quantification of the dispoportionate assets in possession of the applicant does not negate the finding of the enquiry officer that the applicant was in possession of disproportionate assets.

11. Another argument of the learned counsel for the applicant has been that the disciplinary authority has not evaluated the evidence tendered before the enquiry officer properly and that it has not applied its mind but has virtually acted on the advice of the Vigilance Commissioner of the respondent department to impose the penalty of dismissal from service of the applicant and thus the order of the disciplinary authority is liable to be set-aside. As against this, it has been contended on behalf of the respondents that the disciplinary authority has acted independently and has not imposed the penalty upon the applicant merely on the advice of the Vigilance Commissioner. On this point, it is suffice to mention that there has been an internal correspondence between the Vigilance Commissioner and the disciplinary authority but that by itself cannot be said that it was on account of the advice given by the Vigilance Commissioner that the penalty of dismissal from service upon the applicant was imposed by the disciplinary authority. From a perusal of the report of the disciplinary authority dated 31.10.1992 (Annx.A-2) it is clear that the disciplinary authority has not taken into consideration the advice given by the Vigilance Wing of the respondent department, nor has made it the sole basis of imposition of penalty of dismissal of the applicant from service. It may not be out of place to mention here that in a department like Income Tax, Vigilance Wing is an important wing which works independently. Merely because the Vigilence wing keeps a strict watch on the conduct of the employees of the department within its own jurisdiction and reports or advises the departmental authority about the conduct of its employee it does not mean that the departmental

authority is bound to accept its recommendations. In any view of the matter the disciplinary authority has to take a decision on the basis of evidence which is tendered before the enquiry officer by the departmental representative as well as the charged officer. From perusal of the report of the disciplinary authority, it is not made out that the disciplinary authority has made the advice of the vigilance wing as the sole basis for imposing the penalty of dismisal from service of the applicant. We, therefore, are unable to accept the arguments advanced by the learned counsel for the applicant to the contrary.

12. Coming now to the order passed by the appellate authority, it is suffice to mention that the appellate authority has duly considered the appeal filed by the applicant and has come to an independent appraisal of the evidence led before the enquiry officer and the conclusion arrived at by the disciplinary authority. Not only the disciplinary authority but also the appellate authority has found that the applicant has been afforded proper opportunities to defend himself during the disciplinary proceedings and that his grievance to this effect is uncalled for.

13. For all what has been said and discussed above, we are of the considered opinion that there is no illegality in the conduct of the disciplinary enquiry by the Enquiry Officer and that neither the order of the disciplinary authority, nor the order of the Appellate Authority rejecting the appeal of the

../14

applicant suffers from any infirmity or illegality which vitiate the departmental proceedings. Moreover as laid down by Hon'ble the Supreme Court in the case of B.C.Chaturvedi (supra) it is not the function of the Court/Tribunal to re-appreciate the evidence tendered before the Enquiry Officer and findings of fact arrived at by the enquiry officer as also by the disciplinary authority. If any effort is made to re-appreciate and re-evaluate the evidence tendered before the enquiry officer and findings of fact arrived at by the enquiry officer as well as the conclusions arrived at and penalty imposed by the disciplinary authority, it would amount to over-stepping the jurisdiction of the Tribunal. The Tribunal has not to act as a Court of appeal on the findings given by the enquiry officer and conclusions arrived at by the disciplinary authority and the appellate authority. It has also been laid down by Hon'ble the Supreme Court in the case of B.C.Chaturvedi in para 13 that:

> "13.The disciplinary authority is the sole judge of facts.Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v.H.C.Goel this Court held at p.728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

In the instant case, neither findings of the enquiry officer, nor conclusions arrived at by the disciplinary authority and the appellate authority can be said to

../15

15

suffer from any patent error on the face of the record or can be said to be based on no evidence at all. In view of this explicit law laid down by Hon'ble the Supreme Court in B.C.Chaturvedi's case (supra), all the citations relied upon by the learned counsel for the applicant, wherein the principles of law laid down are undisputed but being not applicable to the facts of the instant case, are of no assistance.

14. Consequently, the OA is dismissed with no order as to costs.

11.4.96.

(RATTANPRAKASH)
MEMBER(J)

(N.K. VERMA)
MEMBER(A)