IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.111/93 Date of order: 12/12/2000

Rajeev Saxena, S/o Sh.D.K.Saxena, R/o 930/25, Asha Ganj, Ajmer, now a days Sr.Clerk, Loco Smith Shop No.3.

...Applicant.

Vs.

1. Union of India through General Manager, Western Rly, Churchgate, Bombay.
2. Sr.Personnel Officer, Work Shop, W.Rly, Ajmer.
3. Enquiry Officer & Asstt.Personnel Officer (Work Shop) W.Rly, Ajmer.

...Respondents.

Mr.S.K.Jain - Counsel for the applicant.

Mr.S.S.Hasan - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the impugned order at Annx.A1 and to allow all the benefits to the applicant regarding seniority and grade increments, etc.

2. Facts of the case as stated by the applicant are that while working in the Railway Work Shop, the applicant was served with a charge sheet dated 7.4.90 with the allegation that the applicant while on duty on 13.7.88 was deputed to work against Shri Messy, Chief Clerk and while working issued a set of pass dated 13.7.88 from Ajmer to Udaipur and back in the name of Shri and Smt Nathu Singh Fitter with 5 members but in the counter foil there signature of Sh.Net Ram as receiver but counter foil having no signature of any officer but having the seal of Chief Mechanical Engineer, Loco Ajmer and there

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was no person named Nathu Singh. The other allegation was that one Shri Om Prakash, Machinist Gr.II applied for PTO but in the application contained signatures of Shri Durgalal, Sr.Clerk and the applicant has witness and in the forwarding of the PTO to Shop Superintendent, the signatures of Durga Prasad were there. It is also alleged that the petitioner and Shri Durga Prasad tried to give the pass on 13.9.88 after putting false signatures of Omprakash and on its being refused personally the same was sent to Section on 14.9.88. The concerned employee when tendered with the PTO said that he had not applied for PTO thus tried to use the PTO on false pretext in a forged manner. The applicant denied the charges. Enquiry Officer was appointed and after enquiry the punishment of down grading the applicant for two years was imposed. It is stated that while conducting the enquiry, the principles of natural justice are violated. The applicant was not afforded an opportunity to cross examine the witnesses. The Enquiry Officer was changed again and again with a view to harass the applicant and the attitude of the Enquiry Officer was biased against the applicant. It is also stated that there was no evidence on record to sustain the charges against the applicant even then the applicant was held guilty. Therefore, the order of the disciplinary authority passed on such an enquiry is purverse and the same is liable to quashed and set aside.

3. Reply was filed. In the reply the allegation of not following the principles of natural justice while conducting the enquiry were denied. It was also denied that at no stage of enquiry, the Enquiry Officer has been biased against the delinquent. It is also stated that delinquent was given full opportunity to cross examine the witnesses and the Enquiry Officer on the basis of evidence available on record held the

applicant guilty and on the basis of such an enquiry report the disciplinary authority has rightly imposed the punishment of down grading the applicant and no interference is called for and the O.A devoid of any merit is liable to be dismissed.

4. The learned counsel for the applicant argued that (i) while conducting the enquiry, the principles of natural justice have been violated in this case. He argued that the applicant was not afforded proper opportunity of cross examining the departmental witnesses and the Enquiry Officer was always biased with the applicant. (ii) The report of the enquiry officer is perverse as having no evidence to sustain the charges against the applicant, therefore, on such perverse finding, punishment imposed upon the applicant is liable to be set aside. The learned counsel for the respondents opposed the arguments of the learned counsel for the applicant and stated that the punishment imposed upon the applicant is just and proper and has not violated the principles of natural justice.

5. Heard the learned counsel for the parties and also perused the whole record.

6. On a perusal of the whole enquiry proceedings, it appears that there has been a gross violation of the principles of natural justice as the witnesses examined by the prosecution, no opportunity appears to have been given to the applicant for cross examination and no proper explanation could be furnished by the respondents in this regard. Therefore, in our considered view, while conducting the enquiry against the applicant, there have been gross violation of the principles of natural justice and the enquiry proceedings can be vitiated only on this ground.

7. The other contention of the learned counsel for the applicant has been that the report of the enquiry officer is perverse as there is no evidence on record to hold the delinquent guilty of the charges levelled against him. This

argument was opposed by the respondents and submitted that there is sufficient evidence on record to hold the applicant guilty therefore, the applicant was rightly held guilty of the charges by the enquiry officer.

8. It is settled principle of law that normally the High Court/Tribunal would not interfere with the finding of fact as recorded by the Enquiry Officer/disciplinary authority but if it is based on no evidence the finding will be perverse and would be amenable to judicial scrutiny.

9. In Nand Kishore Vs. State of Bihar, AIR 1978 SC 1277, it was held by Hon'ble Supreme Court that if there is no evidence to sustain the charges framed against the delinquent, he cannot be held guilty as in that event the findings recorded by the Enquiry Officer would be perverse.

10. In B.C.Chaturvedi Vs. UOI, 1995(6) SCC 749, the Apex Court held that the High Court or Tribunal while exercising the power of judicial review can not normally substantiate its own conclusion on penalty and impose some more other penalty. If the punishment imposed by the disciplinary authority or the appellate authority appears to be disproportionate to the gravity of charges, for High Court or Tribunal, it would be appropriately mould to resolve by directing the disciplinary authority or appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself impose appropriate punishment with cogent reasons in support thereof.

11. In Indian Oil Corporation Vs. Ashok Kumar Arora (1997) (3) SSC 72, it was held that the High Court in such cases of departmental enquiry and findings recorded therein does not exercise the power of appellate court/authority. The jurisdiction of the High Court in such cases is very limited. For instance, where it is found that domestic enquiry is vitiated by non-observance of the principles of natural

justice, (2) denial of reasonable opportunity, if findings are based on no evidence, (3) punishment is disproportionate to the proved misconduct of the employee.

12. In Kuldeep Singh Vs. Commissioner of Police & Ors, 1999 (1) SLR 283, Hon'ble Supreme Court held that 'normally' the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry, but if the finding of guilt is based on no evidence, it would be perverse finding and would be amenable to judicial scrutiny. The findings recorded in domestic enquiry can be characterised as perverse if it is shown that such a findings is not supported by any evidence on record or is not based on any evidence on record or no reasonable person could have come to such findings on the basis of that evidence. It is further hold that a broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is throughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

13. In Apparel Export Promotion Council Vs. A.K.Chopra, 1999 (2) ATJ SC 227, it was held by Hon'ble Supreme Court that High Court in writ jurisdiction may not normally interfere with those 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.

14. In the instant case, it is apparent that no preliminary enquiry was conducted before the charge sheet was issued to the delinquent, the charges against the applicant appears to be vague and there is nothing on record to prove the

delinquency of the applicant. There is no evidence on record that the applicant was deputed in Pass Section on 13.7.88 in place of Shri Messy, Head Clerk. There is also no evidence on record to reach to the conclusion that the applicant had prepared any pass pertaining to Shri Om Prakash. The allegation of the department that the applicant has signed as witness on the application could not be proved at all as signatures were not sent to the hand-writing expert for comparison. There is no direct as well as indirect evidence to prove the fact on record. On the basis of the evidence on record/before the enquiry Officer, it can be safely said that the findings of the Enquiry Officer are perverse for want of evidence and the disciplinary authority should not have imposed the punishment upon the applicant on such perverse finding. Therefore, the punishment imposed upon the applicant, in our considered view, is liable to be quashed.

16. In view of the foregoing discussions as above and settled legal position, we are of the considered opinion that the Enquiry Officer holding the applicant guilty are without any evidence and therefore, perverse and on the basis of such finding, the punishment imposed upon the applicant is liable to be set aside.

17. We, threfore, allow the O.A and quash and set aside the impugned order Annx.A1 .In the facts and circumstances of this case, the parties shall bear their own costs.

(A.P.Nagrath)
Member (A).

(S.K.Agarwal)
Member (J)