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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.284/93 Date of order: 26-10-99.

Babu Lal Vyas, S/o Shri Gyasi Ram, R/o 93/30, Agarwal Farm, Mansarover, Jaipur.

...Applicant.

Vs.

1. Union of India through the Secretary to the Govt. of India, Ministry of Communication, New Delhi.
2. Chief Postmaster General Rajasthan Circle, Jaipur.
3. Director Postal Services, Jaipur Region, Jaipur.
4. Senior Supdt. of Post Offices, Alwar Division, Alwar.

...Respondents.

Mr.K.L.Thawani - Counsel for applicant
Mr.U.D.Sharma - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member
Hon'ble Mr.N.P.Nawani, 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 the order dated25.6.92 and order dated 29.3.93 passed by the Senior Superintendent of Post Offices, Alwar Division, Alwar and to direct the respondents to reinstate the applicant in service with all consequential benefits.

2. Facts of the case as stated by the applicant are that he while working as Postal Assistant at Head Post Office, Alwar, was served with a charge sheet dated 4.9.73. An enquiry was conducted against the applicant and one Shri Krishna Chandra. The Enquiry Officer submitted the enquiry report on 23.12.81 to the disciplinary authority who imposed the punishment of compulsory retirement of the applicant. The applicant filed an appeal to the Director Postal Services, who rejected the same. Thereafter the applicant submitted a petition to the Member, Postal Board, which was also rejected vide order dated 26.10.83. It is stated that aggrieved by these orders, the applicant filed a writ petition in the High Court at Jaipur which was transferred to the Tribunal at Jodhpur. The Tribunal set aside the order of compulsory retirement dated 21.6.82 vide its order dated 19.12.91. Thereafter the proceedings were again revived and the applicant was supplied with a copy of the enquiry report. The applicant submitted his representation by way of reply to show cause and ultimately the disciplinary

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authority again passed the compulsory retirement to the applicant vide order dated 25.6.92. The applicant challenged this order in appeal which was also rejected by the Director Postal Services by a nonspeaking and unconstitutional order dated 23.3.93. It is stated that the enquiry was not conducted in accordance with the rules and there has been a gross violation of the principles of natural justice while conducting the enquiry against the applicant, therefore, the order of the Enquiry Officer is not sustainable in law. It is also stated that the appellate authority has also disposed of the appeal by a nonspeaking order, therefore, the applicant makes a prayer by this O.A to quash the above mentioned orders and request the Tribunal to feinstate the applicant in service with all consequential benefits.

2. Reply was filed. In the reply it is stated that an enquiry was conducted by following the procedure/rules and there has not been any violation of the principles of natural justice. The applicant's request for legal practioner was rejected as he was properly represented by a competent Defence Assistant. The applicant has changed the Defence Assistant four times, therefore, it is wrong to say that he was not allowed to have the representation of Defence Assistant. It is also stated that the applicant has not indicated as to which documents have not been furnished and what prejudice has been caused. The statement recorded during the preliminary enquiry were taken on record and the applicant was given an opportunity to cross examine those witnesses, therefore, no prejudice has been caused to the applicant. It has also been stated that the enquiry was conducted in accordance with the relevant rules and the disciplinary authority, after application of mind, has passed the impugned order of compulsory retirement of the applicant in full conformity with the provisions of CCS(CCA) Rules and the Constitution of India so also the appellate authority has also rejected the appeal by a speaking and reasoned order. Therefore, this O.A is devoid of any merit and liable to be rejected.

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

4. The learned counsel for the applicant has vehemantly argued that while conducting the enquiry there has been a gross violation of Rule 14(8) of the CCS(CCA) Rules and principles of natural justice have been grossly violated. He further submitted that the applicant was not allowed the assistance of a legal practitioner whereas the presenting officer was a Law

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Graduate and CBI Officer. In support of his contention, he has referred the following judgments:

i) (1991) 16 ATC 480 (SC), J.K.Aggarwal Vs. Haryana Seeds Development Corpn. Ltd. & Ors.

ii) (1989) 9 ATC 222 (CAT) T.Kanni Vs. Supdt. of Post Offices Arakonam & Anr.

iii) ATR 1988(2) CAT 370 C.K.Sunder Vs. Union of India

iv) SLJ 1992(3) CAT 372 Dr.Raghunathaman Opeh Vs. UOI & Anr.

5. On the other hand the learned counsel for the respondents has argued that the applicant has no right to get assistance of an Advocate in the departmental proceedings and his prayer has rightly been rejected by the respondents as per the facts and circumstances of this case. In support of his contention, he has referred the following:

(i) 1993(6) SLR 610 Krishan Lal Vs. Union of India & Anr.

(ii) 1997 SCC (L&S) 965 Harinarayan Srivastav Vs. UCO Bank & Anr.

6. We have given thoughtful consideration to the rival contentions of both the parties and also perused the whole record.

7. In Bharat Petroleum Corpn. Ltd Vs. Maharashtra General Kamgar Union & Ors, 1999 (1) SCC 626, Hon'ble the Supreme Court held that a delinquent employee has no right to be represented by an Advocate in the departmental proceedings. Therefore, the departmental proceedings would not be bad only for the reason that the assistance of an Advocate was not provided to him. This view also gets support from the Apex Court judgment delivered in Cipla Ltd. & Ors. Vs. Repu Daman Bhanot & Ors, 1999 (2) SLR (SC) 727.

8. In view of the above legal position and facts and circumstances of this case, the arguments of the learned counsel for the applicant has no force at all and the legal citations as referred by the learned counsel for the applicant do not help the applicant in any way.

9. The learned counsel for the applicant has also argued that Inquiry Officer did not follow the rules in providing defence assistance to the applicant but this contention of the learned counsel for the applicant is also not tenable as the reply filed by the respondents makes it abundantly clear that the applicant had changed his defence Assistant as much as four times during the course of enquiry, which is sufficient to controvert the fact that the applicant was not allowed to engage the Defence Assistant of his choice. Therefore, this argument of the learned counsel for the applicant also does not support the applicant in any way.

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10. The learned counsel for the applicant has also argued that the applicant was not furnished the copy of the documents as required by him during the course of enquiry, therefore, there has been a gross violation of the principles of natural justice. Therefore the enquiry and the punishment imposed upon such an enquiry be quashed. This argument was objected by the learned counsel for the respondents and has argued that the applicant failed to establish the fact as to what prejudice was caused to him by nonsupply of the documents, therefore, the contention of the learned counsel for the applicant is baseless.

11. We have given thoughtful consideration to the rival contentions of both the parties.

12. In Food Corporation of India Vs. Padma Kumar Bhuvan, 1999 SCC (L&S) 620, it was held by Hon'ble the Supreme Court that on account of non supply of documents applicant has to establish that what prejudice has been caused to him on account of non supply of documents. Since the applicant failed to establish the fact as to what prejudice has caused to him because of non supply of the documents. Therefore, this argument of the learned counsel for the applicant also does not help the applicant in any way.

13. The learned counsel for the applicant has also argued that witnesses were examined before the written statement of defence was filed and the statement of witnesses examined during the investigation, were used in the departmental enquiry. The learned counsel for the respondents has objected to this argument and submitted that witnesses were examined simultaneouly after giving an opportunity to the applicant to produce the written statement of defence and the same was filed by the applicant. No prejudice was caused to the applicant because of the simultaneous proceedings, therefore this argument of the learned counsel for the applicant does not help the applicant in any way and there is no bar to use the statement of witnesses recorded during the investigation in the departmental proceedings. In 1996 SCC (L&S) 1464, State Bank of Bikaner & Jaipur Vs. Srinath Gupta & Anr. it was held that strict rules of evidence are not applicable in the domestic enquiry. What has to be ensured is that the principles of natural justice are complied with and the delinquent workman has the opportunity of defending himself. There is no such case of the applicant that he was not afforded an opportunity of defending himself and he also failed to explain as to what prejudice has caused to him, therefore, this argument of the learned counsel for the applicant also does not support the applicant at all.

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14. It has also been argued by the learned counsel for the applicant that the Inquiry Officer was changed again and again. The learned counsel for the respondents while objecting this argument has submitted that Inquiry Officer was changed either at the request of the delinquent or due to administrative grounds.

15. We have considered the rival contentions of the parties. In our considered view, the applicant failed to explain as to what prejudice has caused to him by changing the Inquiry Officer again and again. Therefore, the arguments of the learned counsel for the applicant is not sustainable.

16. The learned counsel for the applicant has also argued that it is a case of incompetence. The findings of the Inquiry Officer and the disciplinary authority are perverse and liable to be quashed. He has also argued that the order of the appellate authority is non-speaking order which should also be quashed.

17. On the other hand the learned counsel for the respondents has argued that the Inquiry officer found the charges proved against the applicant. His appeal was also dismissed by a reasoned and speaking order after application of mind. Therefore, the findings of the Inquiry Officer/Disciplinary Authority/ Appellate Authority, cannot be quashed.

18. In B.C.Chaturvedi Vs. UOI, 1995(6) SSC 749(3) the Apex Court held that the High Court or Tribunal while exercising the power of judicial review cannot 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 charge 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.

19. 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 finding 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."

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20. In Apparel Export Promotion Council Vs. A.K.Chopra, 1999 (2) ATJ SC 227 Hon'ble Dr.A.S.Anand, Chief Justice, has observed that "Once the finding of fact based on appreciation of evidence are recorded - 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 purverse and or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court - High Court can not substitute its own conclusion with regard to the guilt of the delinquent for that of departmental authorities unless the punishment imposed by the authorities id either impermissible or such that it shocks the conscience of the High Court."

21. On the basis of the foregoing discussions, we are of the considered opinion that the applicant failed to establish a gross violation of the Rules and principles of natural justice while conducting the enquiry and before imposing penalty upon the applicant. The order of the appellate authority appears to be a speaking order and the same cannot be quashed only on the ground that the impugned order is not a speaking or reasoned order. It also appears that the disciplinary authority after application of mind has passed the impugned order of imposing penalty and punishment so imposed does not appear to be disproportionate looking to the gravity of the charges proved against the applicant.

22. We are, therefore, of the opinion that there is no force in the contentions raised by the learned counsel for the applicant during the course of his argument and this O.A is devoid of any merit.

23. We, therefore, dismiss this O.A with no order as to costs.

(N.P.Nawani)
Member (A).

(S.K.Agarwal)
Member (J).