IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 07/97 and 199
T.A. No. 209/98

DATE OF DECISION 19.04.2002

P.C. William .. Petitioner

Mr. P.V. Calla .. Advocate for the Petitioner (s)

Versus

Union of India & Ors. .. Respondents

Mr. U.D. Sharma .. Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice O.P. Garg, Vice Chairman

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

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
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 ? Yes

(A.P. Nagrath)
Adm. Member

(Justice O.P. Garg)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 19-04-02

1. OA 7/97

P.C.William, Welder Gr.II, Ticket No.25471, 25 Section, C&W Workshop, Ajmer.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Secretary, Govt. of India, Min. of Railways, Rail Bhawan, New Delhi.
3. Dy.Chief Engineer, C&W Workshop, W/Rly, Ajmer.

... Respondents

2. OA 209/98

P.C.William, Welder Gr.I, Ticket No.25471, Illaqa No.25, Department of C&W, W/Rly, Ajmer.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Divisional Rly Manager (E), W/Rly, Ajmer.
3. Dy.Chief Engineer, C&W Workshop, W/Rly, Ajmer.
4. Dy.Chief Mechanical Engineer (C&W), W/Rly, Ajmer.

... Respondents

CORAM:

HON'BLE MR.JUSTICE O.P.GARG, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

For the Applicant ... Mr.P.V.Calla

For the Respondents ... Mr.U.D.Sharma

O R D E R

PER HON'BLE MR.JUSTICE O.P.GARG, VICE CHAIRMAN

These are two connected OAs which can conveniently be decided together as the relief sought in the second OA is dependent on the fate of the first OA (No.7/97).

2. Briefly stated the facts of the case are that the applicant was working on the post of Welder. On

7.11.90, a memo (SF-5) was issued, initiating an inquiry under Rule-9 of the Railway Servants (Discipline & Appeal) Rules, 1969 (for short, the Rules, 1968). The gravamen of the charge against the applicant, as contained in the memorandum of charge-sheet, is as follows :

" श्री. पी. सी. विलियम, वैल्डर, टि. न. 25471/25 जो दिनांक 22.2.90 को अपनी ड्यूटी पर आये थे, ने प्रातः लगभग 6.30 बजे 25 विभाग के वरिष्ठ चार्जमैन श्री कैलाश चन्द को 25 विभाग के जी. ए. कार्ड का बोर्ड खोलने से रोका एवं बोर्ड नहीं खोलने दिया तथा यह भी कहा कि बोर्ड खोलने का उन्हें अधिकार नहीं है । उक्त श्री पी. सी. विलियम ने कर्मचारियों की भीड़ एकत्रित कर उत्पात मचाया जिसके फलस्वरूप अनेक कर्मचारियों के जी. ए. कार्ड पंच होने से रह गये ।

उक्त श्री पी. सी. विलियम प्रतिदिन अपनी गैंग में न जाकर 7.30 बजे तक वहीं घड़ी के आसपास रहकर अपना समय व्यर्थ में बरबाद करते हैं तथा अन्य कर्मचारियों को भड़काते रहते हैं । अतः उक्त श्री पी. सी. विलियम का उपरोक्त कृत्य गम्भीर कदाचार का द्योतक है, जिसके लिए उन्हें रेल कर्मचारी आचरण नियम 1966 के नियम 3 के उपनियम II व III का उल्लंघन है, के लिए उत्तरदायी समझा जाता है ।"

An inquiry was conducted and after taking into consideration the report of inquiry and other circumstances attending the case, the disciplinary authority by order dated 3.8.92 inflicted the punishment of reduction to the minimum of the pay scale of Rs.1200-1800 for a period of two years affecting the future. The applicant preferred a departmental appeal, which was dismissed on 13.11.92. To challenge the orders passed by the disciplinary authority and that of the appellate authority, the applicant filed OA 183/93, which was decided by order dated 8.5.95. Without disturbing the findings of the disciplinary authority, the order passed by the

appellate authority dated 13.11.92 was set aside and it was directed that the appeal of the applicant shall be decided afresh in the light of the observations made in the body of the judgement. Pursuant to the said order passed by this Tribunal, the appeal of the applicant has again been dismissed by order dated 14.11.95. Aggrieved by the order passed by the appellate authority as well as the initial order dated 3.8.92, passed by the disciplinary authority, the applicant has filed the present OA (No.7/97) with the prayer that the orders aforesaid be set aside and the order of punishment passed against the applicant be annulled.

3. A detailed reply has been filed on behalf of the respondents.

4. In the second OA (No.209/98) the applicant has prayed for a direction to the respondents to consider his candidature for the promotional post of Master Craftsman in the scale of Rs.1400-2300 in the ensuing selection. It was further prayed that the respondents be directed to treat the applicant eligible for the post of Master Craftsman and the impugned communication dated 15.5.98 (Ann.A/2) be declared illegal and the same may be quashed. A detailed reply has also been filed in this OA.

5. Heard the learned counsel for the parties at considerable length.

6. To begin with, it will be proper to do away with the controversy raised by the learned counsel for the respondents that since in OA 183/93 the order dated 3.8.92, passed by the disciplinary authority, was not disturbed and the case was remitted only for rehearing of the appeal filed by the applicant, the applicant cannot now be permitted to challenge the order passed by the disciplinary authority. In substance, the submission of the learned counsel for the respondents is that the applicant can be heard

only on the limited question whether the order passed by the appellate authority on 14.11.95 is tenable or not. The learned counsel for the applicant repelled this submission. He took us through the order dated 8.9.95, passed in OA 183/93. We find that there is no discussion on merits about the order dated 3.8.92, passed by the disciplinary authority. A passing observation, however, was made that the order of the disciplinary authority is not being disturbed. In our view, since the order passed by the disciplinary authority was not gauged on merits and was never confirmed, it would be open for the applicant to challenge the said order again before us in the present OA. If the contention of the learned counsel for the respondents is accepted, in that event the whole exercise would be futile. We, therefore, propose to consider the merits of the order passed by the disciplinary authority, besides the order passed afresh in appeal.

7. It is an indubitable fact that the disciplinary proceedings against the applicant were validly initiated under Rule-9 of the Rules, 1968. The proceedings were initiated by the competent authority and the order of punishment has also been passed by the disciplinary authority, who was competent to inflict the punishment. The legal competency of the authority which decided the appeal of the applicnat is also not under challenge.

8. The order of punishment passed by the disciplinary authority has been challenged by the applicant primarily on the ground that the applicant has not been meted out fair treatment in the inquiry with the result, the entire inquiry stands vitiated and, therefore, the order of punishment cannot be allowed to stand. The learned counsel for the applicant pointed out that the inquiry officer has fixed 10.1.91, 17.1.91 and 24.1.91 for the purpose of inquiry

but on those dates no effective proceedings were taken and on 30.1.91, on which the applicant appeared before the inquiry officer and sought adjournment on valid ground, it was refused and statements of the witnesses were recorded. From the above facts it was inferred on behalf of the applicant that the inquiry officer has not been fair to the applicant. This submission has been stated simply to be rejected. As a matter of fact, the attitude of the applicant from the very begining has been that of non-participation and non-cooperation in the inquiry. He did not file a reply to the charge-sheet. It was the applicant himself who did not appear on the various dates fixed by the inquiry officer. On the fourth date i.e. 30.1.91 when the applicant sought adjournment on flimsy grounds, the inquiry officer had no option but to reject his prayer and to proceed with the inquiry. He examined a number of witnesses such as S.K.Pillai, Narain Singh-complainant, Kailash Chand-Sr.Chargeman, R.D.Kashyap and Girja Vallabh, whose statements have been annexed with the OA. All these witnesses, admittedly, were examined in the presence of the applicant himself. The learned counsel for the applicant criticised the recording of the evidence by the inquiry officer in absence of the defence assistant/ representative of the applicant and, according to him, absence of the defence assistant of the applicant has seriously and materially prejudiced the applicant in making out his defence. It was also urged that Shri S.K.Pillai was not mentioned in the list of the witnesses and his examination came as a surprise to the applicant. He further pointed out that hearsay evidence of R.D.Kashyap had been relied upon by the inquiry officer. It is true that the name of S.K.Pillai was not mentioned in the list of witnesses supplied to the applicant. Even if the testimony of S.K.Pillai is excluded, in that event there were a number of other witnesses whose testimony

was sufficient to held the applicant guilty of the charges against him. It may be mentioned that it is well settled preposition of law that rules of evidence are not required to be applied strictly in domestic inquiries so long as broad rules of fairness are observed. Hearsay evidence, per se is not required to be excluded although it is required to be evaluated with great care. Hon'ble the Supreme Court in the cases of State of Haryana v. Rattan Singh, AIR 1977 SC 1512 and Central Bank of India v. P.C. Jain, AIR 1969 SC 983 has held that such hearsay evidence can be relied upon at the enquiry. A Division Bench of the Madras High Court in the case of A.Alagusundaram v. State of Tamil Nadu, 2001 (1) SCT 434 has taken the view that hearsay evidence per se though is not required to be excluded, it is to be evaluated with great care. We have perused the statement of R.D.Kashyap, whose testimony is said to be hearsay. A reading of his statement would indicate that he has spoken of the facts which were well within his direct knowledge. As a matter of fact, this Tribunal is not required to sift the evidence of the witnesses. This Tribunal cannot reapraise, evaluate or create evidence led during the course of inquiry to substitute its conclusion different from that of the disciplinary authority. It is within the exclusive domain of the inquiry officer/disciplinary authority to rely upon the evidence of the witnesses looking to their credibility. The inquiry officer in the present case has given reasons as to why he has accepted the evidence of the witnesses examined before him. We do not find anything which would warrant a finding other than that arrived at by the disciplinary authority.

9. The fact remains that the witnesses were examined by the inquiry officer in the presence of the applicant. If the applicant failed to avail of the services of his defence assistant or representative, he himself is responsible for bringing about such a situation as on all the earlier dates fixed by the inquiry officer, the applicant on one excuse or the

other sought
adjournments. Not only this, the applicant was afforded due opportunity by the inquiry officer to lead evidence in defence. Initially, after recording the evidence of the departmental witnesses, the inquiry officer fixed the date as 27.3.91 for defence evidence of the applicant. The applicant did not appear on that date. The inquiry officer again fixed 22.7.92 for the defence evidence. On that date too, no evidence was led by the applicant. From the above facts it is evident that the inquiry officer has been more than liberal in granting adjournments on the asking of the applicant. The applicant cannot be heard to say that a fair treatment was not extended to him by the inquiry officer. The various submissions made by the learned counsel for the applicant to assail the inquiry proceedings are devoid of any merit and substance.

10. Another submission made on behalf of the applicant was that the additional documents, which the applicant required the respondent department to supply, were not made available. All these documents related to the fact finding inquiry i.e. before initiation of the formal inquiry against the applicant. The document No.1 and 2 were supplied to the applicant. The applicant was extended an offer to inspect the documents. The additional documents No.3, 4 and 5 were found to be irrelevant and not germane to the inquiry. Therefore, they were not supplied. The learned counsel for the respondents pointed out that the additional docucments, which were not supplied to the applicant, were not in any manner necessary to be supplied to the applicant and in any case the applicant had no right to require the department to supply the documents which were irrelevant for the purpose of inquiry. This submission is not without force. As a matter of fact, the report of the preliminary inquiry, the orders passed thereon or other related documents are not required to be supplied to the delinquent

employee if they have no bearing on the regular inquiry. We have perused the application moved by the applicant for the additional documents and have examined the nature and relevance of the documents demanded by the applicant and find that the documents No.3,4 & 5, as demanded by the applicant, were wholly irrelevant to the inquiry. The real purpose of the applicant was to gain time and to purforth an excuse for not filing the reply to the charge-sheet. The relevant documents were supplied to the applicant. No prejudice was caused to the applicant by not supplying the documents prayed for by him.

11. We have scanned the report of inquiry, order passed by the disciplinary authority as well as that of the appellate authority. The report of inquiry is based on tangible facts which were sufficient to establish the misconduct on the part of the applicant. The disciplinary authority has taken into consideration the report of inquiry as well as the circumstances attending the case. He has rightly come to the conclusion that the applicant was guilty of the misconduct which stood proved after inquiry. The order of punishment passed by the disciplinary authority, which is quite proportionate and commensurate to the etablished guilt of the applicant, cannot be faulted on any ground whatsoever.

12. The appellate authority by order dated 14.11.95 has given a fresh look to the appeal of the applicant and has decided the same by a speaking order. He has agreed with the conclusions arrived at by the disciplinary authority and has rightly affirmed the order of punishment. A bare reading of the order of the appellate authority indicates that he has applied his mind to the facts of the case. An appellate authority or for that matter a disciplinary authority

is not expected to write a detailed and elaborate order like judgement of a court. What this Tribunal has to see is whether there has been application of judicial mind to the matter. After having gone through the orders passed by the disciplinary authority as well as the appellate authority, we find that there has been application of mind by both the authorities and a conscious decision to punish the applicant has been taken with due regard to the established misconduct on his part. It would not be out of place to mention that the scope of judicial review of the order of punishment of this Tribunal is quite limited. This Tribunal is not supposed to act as an appellate authority to reappraise, reappreciate and create the evidence and substitute its finding to arrive at the conclusion that the charge has not been proved. This firm legal position flows from the various decision of the Apex Court, namely, B.C. Chaturvedi v. Union of India, (1995) 8 JT (SC) 65, State of Tamil Nadu v. T.V. Venugopalan, (1994) 6 SCC 302, Union of India v. Upendra Singh, (1994) 3 SCC 357, Government of Tamil Nadu v. A.Rajapandian, (1995) 1 SCC 216, and Union of India v. B.S.Chaturvedi, (1995) 6 SCC 749, Tamil Nadu and Another v. S. Subramaniam, AIR 1996 SC 1232, Director General of Police and Ors. v. Jani Basha, 1999 AIR SCW 4802, and Syed Rahimuddin v. Director General, CSIR, and Others, 2001 AIR SCW 2388. In the backdrop of the law laid down in the aforesaid decisions, we find that since the charges against the applicant stood duly proved in an inquiry, which was conducted inconformity with the procedure prescribed in the rules, this Tribunal would not interfere with the order of punishment passed against the applicant. The OA No.7/97, therefore, fails as being without any merit and substance.

13. Now we take up the other OA (No.209/98) in which the applicant has prayed for a direction to consider his candidature for the promotional post of Master Craftman in the scale of Rs.1400-2300. It is common

case of the parties that during the currency of the order of punishment passed against the applicant, he was not entitled to the benefit of promotion even though some of his juniors made a march over him. After the period of penalty came to an end on 3.8.94, the applicant was promoted as Welder Gr.I by order dated 13.9.94. The applicant is claiming further promotion to the post of Master Craftman which is given on the basis of the seniority cum suitability (subject to passing of the trade test) from Welder Gr.I with minimum service of three years in the said grade. The applicant became eligible for promotion to the post of Master Craftman on or after 12.9.97 i.e. on completion of three years service as Welder Gr.I, subject to his seniority for being called for the trade test. A notification dated 30.4.98 was issued by the respondent department containing the names of eight eligible incumbents who were called for the trade test. The first four officials were placed in List'A' and the next four officials were placed in List'B' for the post of Master Craftman in the ratio of 1:1. None of these eight officials were junior to the applicant. The applicant did not come within the zone of consideration for the four posts of Master Craftman in the ratio of 1:1 and it was for this reason that his name did not find place in anyone of the lists 'A' & 'B'. The applicant was, therefore, not rightly considered for promotion to the post of Master Craftman as his name was not coming in the field of consideration. The applicant made a representation which was rejected for cogent reasons. Since the case of the applicant has been duly considered and his claim rejected for the valid reasons that his name did not fall within the field of consideration, the relief claimed in the second OA (No.209/98) cannot also be granted.

14. In the result, both the OAs (Nos.7/97 & 209/98) turn out to be meritless. Both of them are dismissed without any order as to costs.

(A.P.NAGRATH)
MEMBER (A)

(JUSTICE O.P.GARG)
VICE CHAIRMAN