IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.408/95 Date of order: 28/2/2000

Prem Prakash Tiwari, S/o Shri Gajanand Tiwari, R/o A-28, Sen Colony, Jaipur.

...Applicant.

Vs.

1. Union of India through the Secretary to the Govt. Mini. of Communication, Deptt. of Posts, Dak Tar Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Director Postal Services, Jaipur Region, Jaipur.
4. Sr.Supdt. of Post Offices, Jaipur City Division, Jaipur.

...Respondents.

Mr.P.V.Calla - Counsel for the applicant

Mr.V.S.Gurjar - 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 under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer:

(i) to declare the charges framed and the proceedings taken against the applicant for imposing major punishment, being without any basis be declared as illegal,

(ii) to set aside and quash the impugned orders at Annx.A1 dated 24.12.92 read with communication dated 7.4.95 (Annx.A2) by which the appeal of the applicant was rejected and communicated.

2. In brief facts of the case as stated by the applicant are that while he was working on the post of SPM at Vishwakarma Industrial Area Post Office, a memorandum dated 11.10.91 containing the charges and statement of allegations was served upon him. The allegations against the applicant are that he refused to handover the charge of SPM, Vishwakarma Industrial Area Post Office, Jaipur to Shri Bhanwar Singh Nirvan on 20.9.91 in the presence of DSPO, ASP(C) and SDI(P) West and staff of VKI Post Office and also refused to take the order of suspension. After issuance of charge sheet the applicant did not like to file the statement of defence. Thereafter the Enquiry Officer was appointed who after enquiry submitted the enquiry report dated 25.11.92, copies of which were also sent to the applicant but he did not submit any representation and thereafter the disciplinary authority imposed the penalty of dismissal from service of the applicant vide impugned order dated 24.12.92. It is stated that the appeal filed by the applicant was rejected vide communication dated 7.4.95. It is stated that copy of the punishment order dated 24.12.92 was served upon the applicant

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on 27.5.94, after the directions given by this Tribunal in O.A No.556/93 which was decided on 17.5.94. Therefore, the applicant cannot be treated as dismissed from service before 27.5.94. It is further stated that the order of dismissal based upon the report of the Enquiry Officer and the order of the appellate authority are purverse as charges framed against the applicant cannot be said to have been proved against him, therefore, the impugned order of dismissal and order passed by the appellate authority rejecting the appeal are liable to be quashed and set aside. Therefore, the applicant filed this O.A for the relief as mentioned above.

3. Reply was filed. It is stated in the reply that the enquiry proceedings initiated against the applicant, the charges levelled against him were fully proved and the order of dismissal issued by the disciplinary authority based on the enquiry report is also perfectly legal and valid. It is also stated that while conducting the enquiry, rules/procedure have been followed and the principles of natural justice are not violated. Therefore, the enquiry was conducted against the applicant in accordance with the Rules/procedure and the order of the disciplinary authority/ appellate authority was also on the basis of the enquiry report and in accordance with the rules and procedure. Therefore, this O.A having no merits is liable to be dismissed.

4. Rejoinder has also been filed, which is on record.

5. The learned counsel for the respondents has made a preliminary objection to the effect that this O.A is barred by limitation and the applicant challenged the order of dismissal dated 24.12.92 in the year 1995 and the applicant filed the appeal beyond the period of limitation. On the other hand the learned counsel for the applicant has argued that this O.A was filed within the period of limitation as defined under Sec.21 of the Administrative Tribunals Act.

6. It is an admitted fact that the applicant filed O.A No.556/93 which was disposed of by this Tribunal vide order dated 17.5.94 by which directions were issued to the respondents to furnish a copy of the enquiry report to the applicant and in pursuance of that direction, a copy of the enquiry report was furnished and the applicant thereafter filed an appeal before the appellate authority who rejected the same and communicated to the applicant vide letter dated 7.4.95. In view of the facts and circumstances mentioned above, we are of the opinion that this Application is within limitation.

7. The learned counsel for the applicant has also argued that in the enquiry proceedings the Enquiry Officer gave a finding that

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the charges are proved against the applicant which is based upon no evidence, therefore, on the basis of a finding based upon no evidence, the order of disciplinary authority for dismissal of the applicant from service is also perverse and bad in law and the same is liable to be quashed and set aside.

8. On the other hand, the learned counsel for the respondents has submitted that the enquiry officer has rightly held the applicant guilty of the charges levelled against him and it is wrong to say that the findings of the enquiry officer are perverse based on no evidence. He has also argued that High Courts or Tribunal cannot appreciate or reappreciate the evidence in the departmental proceedings, therefore, the contention of the learned counsel for the applicant is not sustainable in law.

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

10. 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 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 would 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 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.'

12. 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 perverse and or legally untenable. The adequacy or

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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 is either impermissible or such that it shocks the conscience of the High Court.'

13. Hon'ble Supreme Court has taken a view that while exercising judicial review the Tribunal cannot act as an appellate court and reappricate the evidence and take another view even if another view is possible. The Tribunal has no right to reappreciate the evidence while exercising the powers of judicial review, the Tribunal can only see whether the enquiry has been done according to rules, whether principles of natural justice have been observed and whether the enquiry is not vitiated due to any infirmities as it has been held in UOI & Ors Vs. B.K.Srivastav, 1998 SCC(L&S) 363; in UOI & Ors Vs. A Nagamalleshwar Rao, 1998 SCC(L&S) 1493 and State of T.N Vs. Tiru K.V.Perumal & Ors, 1996 SCC(L&S) 1280.

14. In the instant case, after going through the material on record, we are convinced that the applicant has no case as prosecution has successfully proved his case before the enquiry officer, therefore, the finding of the Enquiry Officer in the departmental proceedings cannot be said to be perverse and the contention of the learned counsel for the applicant does not have any substance. No other point was raised at the time of arguments.

15. On the basis of the foregoing discussions, we are of the considered view that this O.A is without any merits.

16. We, therefore, dismiss this O.A as having no merits. No order as to costs.

(N.P.Nawani)
Member (Adm.).

(S.K.Agarwal)
Member(Judl).