IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.304/2000 Date of order: 9/8/2001

N.K.Sharma, S/o Sh.M.L.Sharma, Sorting Assistant, R/o House No.68, Nagina Bagh, Ajmer.

...Applicant.

Vs.

1. Union of India through Secretary, Deptt. of Post & Telegraph, New Delhi.
2. Member (Personnel), Postal Services Board, Dak Bhawan, Sansad Marg, New Delni.
3. Director Postal Services, Rajasthan, Eastern Region, Ajmer.
4. Superintendent, RMS (J) Division, Ajmer.

...Respondents.

Mr.Rajesh Kapoor : Counsel for applicant

Mr.Arun Chaturvedi : 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 O.A filed under Sec.19 of tne ATs Act, 1985, the applicant makes a prayer to quash and set aside the enquiry report Annx.A3, order of disciplinary authority retiring the applicant compulsorily from service (Annx.A1) and order of the appellate authority rejecting tne appeal of the applicant (Annx.A2). He has also prayed to direct the respondents to reinstate the applicant on the post of Sorting Assistant with all consequential benefits.

2. In short facts of the case as stated by tne applicant are that while working on the post of Sorting Assistant at Chittorgarh, tne applicant was served with a

charge sheet dated 27/30.5.88 on the charge that while working as Mailman No.2 SRO Chittorgarh on 22.2.88 the applicant misbehaved with Sh.R.L.Jain, Cashier, SRO Chittorgarh at SRO premises and attaked Sh.G.L.Jain, while on duty with knife causing injury and thereby acted in a manner unbecoming of a Govt servant. The applicant denied the charges. Enquiry officer was appointed to conduct the enquiry. The Enquiry Officer conducted enquiry and held the applicant guilty of the charge of misbehaviour with Sh.G.L. Jain and on the basis of Enquiry Report, punishment of compulsory retirement from service of the applicant was imposed vide order dated 31.10.89. Feeling aggrieved the applicant preferred appeal and by an order dated 21.2.90, the appellate authority set aside the order passed by the disciplinary authority and ordered denovo enquiry from the stage of recording evidence and complete the enquiry within 3 months. Thereafter, respondent No.4 proceeded to pass an order under Rule 10(3) of the CCS(CCA) Rules, 1965 for placing the applicant in deemed suspension. Feeling aggrieved, the applicant filed appeal to respondent No.3 and in pursuance of the order passed by respondent No.3 in appeal, the suspension of the applicant was revoked vide order dated 22.5.90. Thereafter, the enquiry was restarted. It is stated that the documents demanded by the applicant were not made available by the disciplinary authority as there was no order to this effect and the defence assistant could not cross examine the witnesses in the absence of these documents thereby he left the venue after obtaining the attendance certificate. Thereafter, the applicant was given an opportunity to produce his defence and enquiry report dated 15.10.92 was submitted to the disciplinary

authority who after considering the representation of the applicant again imposed the penalty of compulsory retirement of the applicant from service. The applicant preferred an appeal against the said order which was also rejected vide order dated 9.7.93. Thereafter, the applicant preferred a petition under Rule 29 of the CCS(CCA) Rules and respondent No.2, dismissed the petition vide order dated 3.6.96. It is stated that the applicant was also prosecuted for the offence under Sec.323, 324 and 332 IPC and Sec.120 of the Indian Railways Act. After trial, the applicant was acquitted from the charges of Sec.323, 324 and 332 IPC and the applicant was only found guilty for the offence under Sec.120 of the Indian Railways Act and was given the benefit of Probation of Offenders Act, 1958. It is stated that the documents as demanded by the applicant were not supplied to him, thereby he could not cross examine the prosecution witnesses and failed to defend his case properly. It is also stated that the Enquiry officer has acted arbitrarily under the influence and guidance of the disciplinary authority. It is further stated that the punishment is arbitrary and disproportionate to the gravity of the charges and in criminal case, the applicant was only held guilty for the offence under Sec.120 of the Indian Railways Act and he was not found guilty of the offences under Sec.323, 324 and 332 of IPC. It is also stated that looking to the facts and circumstances of this case and gravity of the offence which could be established against the applicant, the criminal court took lenient view and instead of sentencing the Court has released the applicant by giving him benefit of Probation of Offenders Act but this view was not followed in the departmental proceedings, therefore, the applicant filed

the O.A for the relief as above.

3. Reply was filed. It is stated in the reply that this O.A is barred by limitation. It is also stated that the disciplinary authority did not agree with the findings of the first Enquiry Officer regarding the alleged attack on Sh.G.L.Jain and passed the order imposing the penalty accordingly. In appeal, the appellate authority set aside the order of the disciplinary authority and ordered denovo enquiry from the stage of recording of evidence of State/ prosecution witnesses. It is stated that the applicant deliberately did not attend the hearing from 7.9.92 to 9.9.92 although he was having the notice of the date fixed and the defence assistant was present who did not sought any adjournment and left the venue after obtaining the attendance certificate. It is further stated that the documents so demanded by the defence assistant were already inspected by the delinquent Govt servant in the previous enquiry. More so, the applicant failed to establish the fact that prejudice has caused to the applicant by nonsupplying the documents, as referred above. The applicant failed to produce any evidence to support his contention. Moreover, the applicant was given an opportunity to submit his written brief but he did not furnish the same. It is also stated that the applicant was convicted by the criminal Court for the offence under Sec.120 of the Indian Railways Act but instead of sentencing him, he was given the benefit of Sec.3 of Probation of offenders Act, 1958. It is stated that after conviction by the criminal Court the Govt servant can be removed from service even after he has given the benefit of Sec.12 of Probation of Offenders Act as it is held in Hari Chand Vs. Director School Education, 1998(1) UJ(SC) 406. It

is evident that the applicant was imposed the punishmen
compulsory retirement on 29.1.93 whereas the judgment of
Criminal Court is dated 3.1.96. It is stated that in
denovo enquiry, findings may be changed on the basis
evidence made available on record so the punishment awa
by the disciplinary authority is not at all disproportio
to the gravity of the charge proved. It is also stated
there has not been any violation of rules/principle
natural justice and the applicant has no case
interference by this Tribunal.

4. Heard the learned counsel for the parties and
perused the whole record.

5. The learned counsel for the applicant has arg
that- (i) the applicant was not pplied with the docume
as demanded by him during the rst enquiry as well as
the second enquiry. (ii) The firenquiry officer has foun
the applicant guilty of the ch of misbehaviour onl
whereas in the second enquiry, t me enquiry officer ha
held the applicant guilty for th le charges, which i
erroneous.(iii) The Criminal Cour d the applicant onl
guilty for the offence under Sec. the Indian Railway
Act and the applicant was given t fit of Probation o
Offenders Act but in the depar proceedings, the
applicant was imposed punishment sory retirement,
therefore, the punishment so impos portionate to
the gravity of the charges. On th the learned
counsel for the respondents has opp ments and
vehemently urged that this Tribu
reappreciate the evidence as furni
officer and in view of the findings
the punishment imposed is not di

gravity of the charges.

6. Regarding the first contention, the respondents have made it very clear in the reply that the applicant inspected the documents as demanded by him at the time of first enquiry. Moreover, the applicant failed to establish the fact as to what prejudice was caused to him by nonsupplying the documents.

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

8. On a perusal of the averments made in the instant case, it appears that the applicant delibrately avoided to attend the enquiry proceedings and in these circumstances, when the applicant has already inspected the documents so referred and failed to establish the fact as to what prejudice was caused to the applicant.

9. Regarding the second argument, it is abundantly clear that in appeal, the appellate authority set aside the order of the disciplinary authority and directed for denovo enquiry from the stage of recording evidence of State/ prosecution witnesses and the enquiry officer after recording the evidence and giving an opportunity to produce defence to the applicant held that the prosecution proved the whole charge against the applicant and imposed the punishment of compulsory retirement. There is no legal bar

that a finding on the basis of evidence made available can be changed in the second departmental enquiry. It is very clear that in the denovo enquiry the finding may be changed on the basis of the finding available on record and punishment can be awarded on the basis of such findings of the enquiry officer. On the basis of evidence produced before the second enquiry, the whole charges were proved, therefore, on the basis of charge proved against the applicant, the disciplinary authority imposed the punishment of compulsory retirement on the applicant and we do not find any infirmity/illegality in the impugned order. The Tribunal cannot appreciate/reappreciate the evidence as recorded.

10. In B.C.Chaturvedi Vs. UOI, 1996(32) ATC 44, Hon'ble Supreme Court inter alia held that the Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive on 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 in consistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion of finding reached by the disciplinary authority is based on no evidence.

11. In Indian Oil Corpn. Vs. Ashok Kumar Arora (1997) 3 SSC 72, it was held by Hon'ble Supreme Court that 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 (1) 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.

13. In Kuldeep Singh V. Commissioner of Police & Ors, 1998(9) Supreme 452, Hon'ble Supreme Court held that the Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the court interfere. The power of judicial review available to the High Court as also to this Court under the constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority.

14. The learned counsel for the applicant has argued that the punishment of compulsory retirement from service of the applicant is disproportionate to the gravity of the charge. The charge against the applicant ~~which~~ was held as proved by the second Enquiry Officer.

14. In Ranjit Thakur's case Hon'ble Supreme Court has interfered with the punishment only after coming to conclusion that the punishment was in outrageous defiance of logic and was shocking.

15. In B.C.Chaturvedi Vs. UOI, 1995(6) SSC 719 it was held by the Apex Court that 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.

16. Similar view was taken in Indian Oil Corporation Vs. Ashok Kumar Arora, (1997) 3 SCC 72, it was held that the court will not interfere unless the punishment is wholly disproportionate.

17. In Apparel Export Promotion Council Vs. A.K.Chopra, 1999(2) ATJ SC 327, Hon'ble Dr.A.S.Anand, Chief Justice, has observed that High Court cannot substitute its own conclusion with record to the guilt of the delinquent for that of departmental authorities unless the punisnment imposed by the authorities is either impermissible or such that it shocks the conscience of the High Court.

18. On the basis of the law laid down by Hon'ble Supreme Court, we can safely say that the Court/Tribunal can interfere with in the quantum of penalty if the same is disproportionate to the gravity of the charge or it shocks the judicial conscience. In the instant case it is very clear that in the denovo enquiry the whole charges were proved, therefore, on the basis of the charge proved against the applicant, the disciplinary authority imposed the punishment of compulsory retirement which is not disproportionate to the gravity of the charges.

19. Looking to the legal position, as referred above and facts and circumstances of this case, we are of tne opinion that the contention of the counsel for the applicant has no force. As the charges proved against the applicant are grave in nature, therefore, the punishment imposed upon tne applicant does not seem to be disproportionate to the gravity of the charges. Therefore, we have no basis to interfere in the impugned order passed by the respondents and this O.A devoid of any merit is liable to be dismissed.

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

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

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