IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH,JAIPUR

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Date of Order : 28/8/2001.

O.A.No. 494/1999

Bajrang Lal Bairwa S/o Shri Room Chand Bairwa aged about 50 years, R/o New Grain Mandi, Kota, Ex. LSG, Postal Assistant, Jhalawar Head Post Office (Kota Postal Division)

.....Applicant.

VERSUS

1. Union of India through its Secretary to the Govt. of INdia, Department of Posts, Ministry of Communications, Dak Bhawan, New Delhi 110 001.

2. Post Master General, Rajasthan Southern Region, Ajmer 305 006.

3. Director, Postal Services, Rajasthan Southern Region, Ajmer.

4. Senior Superintendent of Post Offices, Kota Postal Division, Kota.

5. Superintendent of Post Offices, Tonk Postal Division, Tonk.

.....Respondents.

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CORAM :

Hon'ble Shri A.K.Misra, Judicial Member
Hon'ble Shri S.K.Agrawal, Administrative Member

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Mr. C.B.Sharma, counsel for the applicant.
Mr.Hemant Gupta, Advocate,Brief Holder for
Mr.M.Rafiq, Counsel for the respondents.

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PER HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER :

In this application, under section 19 of the Administrative Tribunals Act, 1985, the applicant, Bajrang Lal Bairwa, has prayed for the following reliefs :-

"(i) That order of appellate authority dated 16.10.1998 (Annexure A/1) with the order of disciplinary authority dated 03.11.97 (Annexure A/2) be quashed & set aside with all consequential benefits.

(ii) That the Charge Sheet dated 28.04.1987 (Annexure A/3) with the I.O. report dated 19.04.1989 (Annexure A/14) be quashed and set aside, as the same is based on No Evidence.

(iii) That the respondent No. 3 be directed to decide the suspension period w.e.f. 18.11.1986 to 19.08.1991 as regards to pensionary benefits.

(iv) Any other orders/directions/relief may be passed in favour of the applicant which deemed just and proper under the facts and circumstances of the case even the same has not been specifically prayed for.

(v) That the cost of this appliation may be awarded to the applicant."

2. Notice of the O.A. was given to the respondents who have filed their reply to which no rejoinder was preferred by the applicant.

3. The applicant while working as Sub Post Paster C.T. Tonk Post Office, was served with a chargesheet alleging derelection of duties, breach of rules and acting in a manner unbecoming of a Government servant. An inquiry officer was appointed who after completion of the inquiry submitted his detailed report to the disciplinary authority. The disciplinary authority after examining the inquiry report agreed with the findings of the inquiry officer who had held the charges as proved and found the applicant guilty of the charges and punished him with the penalty of compulsory retirement with immediate effect vide Annex.A/2. The applicant preferred an appeal against the said order

but the appeal was rejected vide Annex.A/1 after holding that no case of interference in the punishment has been made-out by the applicant. Thus, the penalty of compulsory retirement from service has been challenged by the applicant through this O.A. on various grounds. It is stated by the applicant that the order of punishment and rejection of appeal is arbitrary, unjustified and illegal, there is no evidence worth the name against the applicant, the applicant was not provided with an opportunity to cross-examine the material witness who was with-held by the prosecution, the inquiry officer wrongly relied upon the typed copies of the statements of the prosecution witnesses, the demanded documents were not supplied to the applicant, principles of natural justice were violated in asmuch as the applicant was deprived of an opportunity to cross-examine the witnesses, the appellate authority did not apply its mind while deciding the appeal and the punishment awarded to the applicant is dis-proportionate to the guilt. The applicant had prayed for the relief as mentioned earlier.

4. The respondents vide their reply refuted the allegations of the applicant. It is stated by the respondents that the rules of procedure were fully followed during the inquiry proceedings, the demanded documents were supplied to the applicant, the applicant was provided fair opportunity to cross-examine the witnesses, the material witness who inspite of prosecution's best efforts could not be procured and thus not produced, therefore, the question of depriving the applicant of an opportunity to cross-examine the witness does not arise, previous statements were confirmed by the prosecution witnesses and even the typed copies were duly attested copies being departmental documents. No case of prejudice having been caused to the applicant, has been made-out. The disciplinary and the appellate authorities had considered all the relevent facts and material on record before passing the impugned orders and, therefore, the allegation that there was no application of mind, is baseless. Applicant's other

contentions in this regard were also denied by the respondents with the prayer that the O.A. be rejected as it bears no merit.

5. We have heard the learned counsel for the parties and have gone through the case file.

6. Both the learned counsel for the parties elaborated their pleadings in the shape of arguments which we have duly kept in our view while going through the record. It is settled beyond dispute that the Tribunal in such matters, does not sit as an appellate authority to re-appraise the evidence led by the prosecution. The evidence as led by the prosecution can be looked-into only to find out whether the case is a no evidence case or there is some evidence on record in connection with the charges. If the case is a no evidence case then interference by this Tribunal is called for otherwise not. The sufficiency of proof in holding the charges as proved is the sole discretion and jurisdiction of the disciplinary authority, therefore, if after going through the evidence the disciplinary authority has held various charges as proved against the applicant then this is not a fit case to be interfered with by the Tribunal and there is no necessity of evaluating the evidence of the prosecution second time. Needless to say that it is the sole discretion of the prosecution to regulate production of its witnesses and the number thereof, therefore, if for one reason or the other, the prosecution has not been able to produce a witness say a material witness, then it does not lie in the mouth of the applicant to say that he has been deprived of an opportunity to cross-examine the witness. All what in these circumstances can be done is to draw adverse inference against the prosecution for not producing a material witness but that does not mean that it is a no evidence case. If other material witnesses support the charges then non production of one of the material witnesses is of no consequence. In the instant

gone through the record. From the record we find that in the preliminary inquiry, statements of witnesses were recorded by the department. From the record it appears that about the charged incidence two persons i.e. the applicant and one Shri Satya Prakash Gupta, were chargesheeted. The original statements of the departmental witnesses were placed in the inquiry file of Shri Satya Prakash Gupta and attested true typed copies were placed in the file of inquiry against the applicant. The witnesses produced by the prosecution testified that the statements which they had given earlier were true and that they accepted the same. Inspite of this such witnesses were subsequently re-called, the original statements were shown to them who had proved those statements and were then cross- examined in detail by the applicant. Copies of these statements were produced by the respondents in support of their contention, along with their reply. Not only this Shri Ganshyam Sharma, who had recorded the statement of these witnesses in the preliminary inquiry had stated in his statement that he had recorded the statement of such witnesses Ratan Lal Choudhary, SW 3, Radhey Shyam Sharma SW 4, Satya Prakash Gupta SW 5, Banwari Lal Berwa SW 6, Sita Ram Seni, SW 7 and Shankar Lal SW 8, have all proved their original statements and were subjected to a detailed cross examination. In holding the charges as proved against the applicant the statements of these witnesses were considered by the prosecution. All of them have narrated in detail the incidence relating to the charges and, therefore, it cannot be said to be case of no evidence. On the contrary there is sufficient evidence against the applicant in support of the charges. The copies of the pre-recorded statements of such witnesses were supplied to the applicant and, therefore, it cannot be said that the applicant was taken by surprise relating to these statements even though the witnesses have testified on the basis of attested true copies of their statements. The applicant had copies of the statements for cross examining the witnesses in order to ckeck their veracity. Having availed the opportunity of detailed cross examination of these witnesses the applicant cannot be permitted to

argue that deposition of witnesses without the original has resulted into prejudice, although, originals were subsequently brought on record by recalling the departmental witnesses.

9. We have also gone through the appellate order. It is not necessary that only detailed order if passed can be termed as an appropriate legal order. It is also not necessary that each and every point raised in the memo of appeal is required to be decided by detailed reasons. In the instant case, the relevent facts were considered by the appellate authority. The charges being grave against the applicant and were discussed in detail by the inquiry officer and, therefore, reasons were not required to be repeated by the appellate authority while upholding the conclusion of guilt. As mentioned earlier, the applicant has not been able to establish that due to illegal procedure adopted by the inquiry officer and the disciplinary authority or due to non adoption of legal procedure by these authorities, prejudice has been caused to the applicant and, therefore, as argued by the learned counsel for the applicant it cannot be held that the appellate authority had not applied its mind to the various grounds raised by the applicant while disposing of the appeal of the applicant. Needless to say that at this stage also we are not going to re-evaluate the facts of the case vis-a-vis the evidence, therefore, arguments in these regards are liable to be rejected.

10. In the last, it was argued by the learned counsel for the applicant that the punishment is dis-proportionate to the guilt of the applicant but we are of the opinion that as per the settled law punishment awarded to the applicant cannot be interfered with by this Tribunal unless the same is shocking to the conscious. In this case the applicant has been retired compulsorily from service. That means that he has not been deprived of his retiral benefits. All what has

case Smt. Vimla Gupta said to be a material witness, was not produced by the department before the inquiry officer. The applicant alleges that the material witness has been with-held but on the contrary it is stated by the respondents that inspite of their best efforts, the witness could not be produced because inspite of the service of summons the witness did not turn-up to stand in the witness box. In our opinion, in the circumstances when witness has preferred not to attend the proceedings the incident cannot be termed as with-holding the material witness. From the documents produced by the rival parties, we find that the witnesses were cross-examined by the applicant at length and, therefore, it cannot be said that the applicant was deprived of an opportunity to cross-examine the witnesses. If for applicant's own absence any witness has been examined by the prosecution and thus the applicant failed to cross - examine then such incidence cannot be termed as depriving the applicant a fair chance to defend himself. Therefore, the applicant cannot take advantage of such stray occurance during the course of inquiry.

7. There are vague allegations of the application that the relied upon documents were not supplied by the prosecution. No detail has been given by the applicant in respect of such demanded documents and failure of the prosecution to supply the same to the applicant. Even otherwise, the applicant has to make out a case in this regard that non supply of documents has resulted into prejudice to the applicant but no such case has been made-out by the applicant. Therefore, alleging in a bald manner that demanded documents were not supplied by the respondents lends no advantage to the applicants. It has also not been shown as to how during the inquiry the principles of natural justice were violated.

8. Coming to the next point of attack by the applicant, we have

been done is that department has taken leave of his services. While working in the Post Office the applicant was expected to be sincere and trust-worthy worker. If for one reason or the other due to applicant's own conduct unbecoming of a Government servant the department has lost confidence in him then it is not necessary for the department to retain him in service and avail his services. In this regard whether a particular Government servant is trust-worthy and fit to be retained in service, the departmental authorities have to conclude and if after consideration of facts and circumstances of the case they conclude that the services of the applicant are required to be dispensed with then it is not for us to substitute our conclusion in place that of the departmental authorities and ordering re-instatement of the applicant. In our opinion, looking to the facts and circumstances of the case, the punishment awarded to the applicant cannot be said to be severe, therefore, arguments in this regard are rejected.

11. In view of the above conclusion, we are of the opinion that no case of interference in the instant case has been made-out by the applicant. The O.A., in our opinion, is devoid of merits and deserves to be dismissed.

12. The O.A. is, therefore, dismissed. Parties are left to bear their own cost.

28/8/2001

(S.K.Agrawal)
Adm.Member

(A.K.Misra)
Judl.Member

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