IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

DATE OF ORDER: 23/10/2001

OA No. 199/2000

Naman Singh Shekhawat son of Shri Narain Singh Shekhawat, resident of Village Kaladera, District Jaipur.

.... Applicant.

VERSUS

1. Union of India through its Secretary, Ministry of Home Affairs, Government of india, Shastri Bhawean, New Delhi.

2. Joint Director, Sunsidiary Intelligence Bureau (Appellate Authority), Ministry of Home Affairs, Government of India, Jhalana Doongari, Jaipur.

....Resondents.

Mr. Mahendra Shah, Counsel for the applicant.
Mr. D.K. Swamy, Proxy counsel for
Mr. Bhanwar Bagri, counsel for the respondents.

CORAM

Hon'ble Mr. S.K. Agarwal, Member (Judicial)
Hon'ble Mr. A.P. Nagrath, Member (Administrative)

ORDER

PER HON'BLE MR. S.K. AGARWAL, MEMBER (JUDICIAL)

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In this OA u/s 19 of the Administrative Tribunal's Act, applicant makes the following prayers :-

(i) to declare the initiation of disciplinary proceedings against the applicant after his acquittal under criminal case as invalid and in violation of Article 14 & 16 of Constitution of India.

(ii) To quash and set aside the impugned order of termination dated 2.2.93, based upon inquiry, by which applicant was dismissed from service and order dated 17.4.2000 passed by Appellate Authority, rejecting the appeal filed by the applicant.

(iii) To direct the respondents to reinstate the applicant forthwith in service with all consequential benefits.

2. The applicant earlier filed OA to quash and set aside the impugned order of termination and reinstatement of service with all consequential benefits. This OA was disposed of by this Tribunal by giving directions to respondent Department to decide the appeal, filed by the applicant, and after rejecting the appeal by the Department vide order dated 17.4.2000, the applicant again has filed this OA for the relief, as above.

3. In brief, the facts of the case as stated by the applicant are that while working on the post of Assistant Central Vigilance Officer, he was served with a charge sheet dated 1.5.92, the following charges were framed against the applicant:-

ARTICLE I

Shri N.S. Shekhawat, ACIO II (under suspension) during his posting at Barmer undertook a tour of the area falling under P.S. Ramsar, District Barmer during the night of August 5, 1983. As per record available, no operation was going on or planned in this area during the above period which necessitated the ACIO-II to undertake the tour in odd hours in mid-night. The record further shows that the ACIO-II or the unit did not have any source or contact in the said area whom he was required to contact at mid-night

near the International Border. Further, plan of the ACIO-II to undertake this tour during odd hours was not in the knowledge of ACIO-II's superior officers nor did he feel it necessary to take any of his superior into confidence before undertaking this tour/operation. Even after the tour, no follow-up report has been sent by the ACIO-II. Under the circumstances, the above tour was an unauthorised venture on the part of the ACIO-II in furtherance of his selfish interest in which he also used Govt. Vehicle and revolver. He, thus, not only acted in definance of normal set official practice but also used government machinery in pursuit of his private personal interest in which no public interest was involved.

ARTICLE II

During the unauthorised tour, Shri N.S. Shekhawat on the night of 5th August, 1983 unauthorisedly collected and carried smuggled articles in the Govt. jeep beyond any conceivable call of his legitimate duties. This act on his part brought avoidable embarrassment to the Department and put the whole organisation in disrepute. The act of Shri Shekhawat was highly unbecoming of an Intelligence Officer and constitutes gross processional misconduct.

4. Inquiry was conducted and the disciplinary authority vide the impugned order dated 2.2.93 imposed the penalty of dismissal of the applicant from service. It is stated that the initiation of disciplinary proceedings against the applicant on the same charge after the acquittal of the applicant in the criminal case is ivalid and in violation of Articles 14 and 16 of Constitution It is further stated that while conducting the enquiry, the Inquiry officer contravened the mandatory provisions of Rule 14(3), (5), (11), (14) and (15) and Rule 15 of the CCS(CCA) Rules. Therefore, the punishment based on such an enquiry is in violation of Articles 14 and 16 of the Constitution and liable to be quashed. It is also stated applicant filed an appeal, challenging the order of dismissal but the same was dismissed without proper application of mind. Therefore, the applicant filed this OA for the relief , as mentioned above.

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5. Reply was filed. In the reply, the respondents have denied all the allegations levelled against them in connection with the conducting of the inquiry and it is stated that there has not been any contravention of any Rules and proper procedure has been followed while conducting the enquiry against the applicant. It is further stated that the enquiry was conducted in accordance with the rules and procedure and there has not been violation of the principles of natural justice. Therefore, the imposition of penalty of such an enquiry was perfectly legal. It is also stated that appeal was decided after proper application of mind and this OA is devoid of any merit is liable to be dismissed.

6. Heard the learned counsel for the parties and also perused the whole record, including the written submissions filed by the learned counsel for the respondents.

7. The learned counsel for the applicant vehemently argued that on the same charge sheet no departmental inquiry should have been initiated when the applicant was acquitted from the charges by the Criminal Court. The learned counsel for the applicant has referred to Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Another, 1992(2) LLN 640.

8. On the other hand, the learned counsel for the respondents has argued that there is no bar to initiate departmental enquiry when the applicant was acquitted by the Criminal Court on the same charges.

9. No doubt there is no bar after acquittal by the Criminal court to initiate the departmental enquiry against the applicant. But Hon'ble Supreme Court has made the following observations in the case of Capt. M. Paul Anthony, supra.

(i) Departmental proceedings and proceedings in a criminal case can be proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grade nature which involves complicated questions of law and facts, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

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(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the facts that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case is found guilty, administration may get rid of him at the earliest.

10. In the instant case, the applicant was acquitted alongwith others. There was no evidence of criminal misappropriation against the applicant and other accused. No preliminary inquiry has been conducted by the department in this case before initiation of the departmental inquiry. Therefore, after clear cut acquittal of the applicant by the criminal Court, there was nothing against the applicant which warranted the departmental authorities to initiate an inquiry against the applicant.

11. The learned counsel for the applicant has also argued that copies of the documents as mentioned in the OA have not been supplied to the applicant, therefore, there has been a violation of Rule 14(3) of the CCS(CCA) Rules which results to declare the enquiry proceedings as illegal. In support of his contentions, he has rerred to State of U.P. vs. Shatrughan Lal & Another, 1998(6) Supreme 587. He has also referred to Kuldeep Singh Vs. The Commissioner of Police & Others 1998(9) Supreme 452.

12. On the other hand, the learned counsel for the respondents while objecting the above arguments has submitted that the applicant was furnished some copies of the documents and for others he was permitted to inspect the record. Therefore, no prejudic was caused to the applicant. No doubt the applicant was also directed to inspect the documents which could not be supplied to the applicant.

13. 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 on account of non supply of documents. Since the applicant failed to establish the fact as to what prejudice has cause to him because of non supply of the documents. Therefore, this arguments of the learned counsel for the applicant also does not help the applicant in any way.

14. The learned counsel for the applicanthas further argued that the applicant was denied opportunity for providing defence assistance. he was not allowed to engage the legal practitioner as is evident from Annexure A-5. On the other hand learned counsel for the respondents has submitted that the applicant has no right to get the assistance of the Advocate in departmental proceedings and the respondent department has rightly refused the request of providing legal practitioner. In support of his contentions, he has referred to:-

> Bharat Petroleum Corporation Ltd. Vs. Maharastra General Kamgar Union & Others, 1999(1) SCC 626, Hon'ble 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 judgement delivered in Cipla Ltd. & Others Vs. Repu Daman Bhanot & Others, 1992(2) SLR (SC) 727.

15. 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.

16. The learned counsel for the applicant has also argued that the conduct of the Inquiry officer in this case has been through out biased and based on his pre-determined notions. He has refered

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(i) Shri Mool Singh was examined without his name was mentioned in the list of witnesses.
(ii) Shri Jamma was not called as defence witness.
(iii) The applicant was not given proper opportunity to take the assistance of his defence assistance Shri Madhukar Sharma.
(iv) No opportunity to cross examined Shri Mool Singh was given to applicant inspite of the fact that the Controlling department did not relieve Shri Madhukar Sharma on that date.
(v) The delinquent was cross examined by the Inquiry officer himself and not by the departmental representative.

17. It is undisputed fact that Shri Mool Singh was examined although his name was not in the list of witnesses. The applicant's request to call Shri Jammua as defence witness was not allowed. Not only this but in the absence of the departmental representative Shri Madhukar Sharma, the applicant was compelled to cross examine Shri Mool Singh who was cited as main witness in this case. It is also not disputed that the inquiry officer himself has cross examined the applicant which was the duty of the departmental representatives. It appears that the conduct of the Inquiry Officer in this case has been throughout biassed and it appears that he has acted with predetermined notions which should have caused prejudice to the applicant.

18. The learned counsel for the applicant argued that in spite of the fact that principles of natural justice have not been followed by the Inquiry Officer while conducting the enquiry in this case, there is no evidence on record to corroborate the charges against the applicant. The learned counsel for the respondents has objected to this argument and submitted that the Tribunal or the High Court should not act as apppellate authority therefore they are not allowed to appreciate on reappreciate the evidence.

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

20. 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 conclusions on penalty and impose some 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.

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20. In Kuldeep Singh Vs. Commissioner of Police & Others, 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."

21. 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 intenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court - High Court cannot 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 concience of the High Court."

23. In the instant case, there is no evidence to corroborate the charge against the applicant. The case of the applicant is solely or mainly depend on the statement of Shri Mool Chand, who does not support the charges at all. Criminal Court has already acquitted the accused on the basis of no evidence. In support of the allegations against the applicant. no preliminary enquiry was conducted in this case. Therefore, we are of the considered opinion that there is no evidence on record to sustain the charges against the applicant and it is a case of no evidence. Therefore, the finding of the Inquiry Officer can be characterised as perverse.

24. The learned counsel for the applicant has argued that the order of the appellate authority is a non speaking order and was passed without application of mind as the impugned order of termination has been not sustainable in law as the same was passed upon the perverse findings of the Inquiry officer.

Therefore, order passed by the Appellate Authority is also not sustainable in law and liable to be dismissed.

25. We, therefore, allow this OA and quash and set aside the impugned order of termination dated 2.2.93 and appellate order dated 17.4.2000 and direct the respondents to reinstate the applicant forthwith in service. Applicant is also ~~to be~~ entitled for all consequential benefits thereof.

26. No order as to costs.

(A.P. NAGRATH)
MEMBER (A)

(S.K. AGARWAL)
MEMBER (J)