

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

DATE OF ORDER: 23.11.2004

ORIGINAL APPLICATION NO. 417/2003

R.D. Dahmiwal son of Late Shri K.R. Dahmiwal aged about 57 years, at present working on the post of Superintendent, Office of Customs Commissionerate, Jaipur. Resident of Quarter No. 11/144, Central Revenue Colony, Jyoti Nagar, Jaipur.

....Applicant

VERSUS

1. The Union of India through Secretary, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, North Block, New Delhi.
2. The Chief Commissioner (Jaipur Zone), Central Excise, New Central Revenue Building, Statue Circle, Jaipur.
3. The Commissioner, Central Excise, Jaipur -I, New Central Revenue Building, Statue Circle, Jaipur.
4. Shri Khem Raj Verma, Assistant Commissioner (Preventive) Central Revenue Building, Mall Road, Amritsar (Punjab).

....Respondents.

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

Mr. Bhanwar Bagri, Counsel for the respondents.

CORAM:

Hon'ble Mr. M.L. Chauhan, Member (Judicial)

Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER

PER HON'BLE MR. A.K. BHANDARI

The applicant u/s 19 of the AT Act has filed this OA to seek the following reliefs:-

It is, therefore, prayed that the Hon'ble Tribunal may kindly call for and examine the entire records relating to this case and by an appropriate order or direction the impugned orders dated 22.12.2000 and 3.1.2003 (Annexure A/1 and A/3) passed by the Disciplinary and Appellate Authority respectively may kindly be quashed and set aside. Further by an appropriate order the advice of the UPSC may also be declared illegal and the finding recorded by the Disciplinary Authority disagreeing with the inquiry report submitted by the Inquiry Officer may also be declared illegal. The applicant may kindly be ordered to be exonerated from the charges levelled against him vide Memo dated 10.2.1998 (Annexure A/9).

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By an appropriate order or direction further direct the official respondents to consider the case of the applicant for promotion(s) to the next higher post (s) and provide all consequential benefits from the date his juniors were so promoted.

Any other relief to which the applicant is found entitled, in the facts and circumstances of the present case, may also be granted in favour of the applicant.

The Original Application may kindly be allowed with costs.

2. The brief facts, as stated in the application, are that the applicant a Superintendent in the Department of Customs and Central Excise and posted at Sikar was deputed with a special secret inquiry to be conducted in Bikaner with the Assistance of Inspectors, S/Shri S.R. Meena and Ashok Dhoper and one Sepoy Lokendra Kumar. The report of the inquiry was to be submitted through Special Messenger, Shri Gula Ram Sepoy, at headquarter office Sikar by Bus at 5.00 AM of 31.5.1997. This was a serious secret inquiry and in case the report was delayed, there could be a loss of revenue to the Govt. Accordingly, the applicant alongwith the party conducted the inquiry at Bikaner from 27.5.1997 to 31.5.1997. In the intervening night of 29-30.5.1997, both the above inspectors did not co-operate in finalising the report and when the applicant asked them about their indifferent attitudes, they left the duty place taking away the Govt. vehicle alongwith the driver leaving the applicant and a Sepoy and secret records at Bikaner. The applicant thereafter was left with no option except to take the record and hire a vehicle and return to Sikar alongwith the Sepoy and the secret report and hand over to the Assistant Commissioner, Central Excise, Sikar. The details of this incident were narrated in detail to Assistant Commissioner Sikar and also narrated in the Daily Diary. The photocopy of the daily diary from 23.5.1997 to 31.5.1997 is marked as Annexure A/4. On the other side, Inspectors S/Shri S.R. Meena and Ashok Dhooper after reaching Sikar on 30.5.1997 held meeting in the office where all Inspectors and other members of Central Excise Executive Officers Association were present and lodged complaint against the applicant. This complaint dated 30.5.1997 is annexed as Annexure A/5. Perusal of this complaint would reveal that it was lodged only with the intention to save the Inspectors. That as per prevailing practice in the



Department, in case any officer is aggrieved by the act or omission of other officer, no complaint can be lodged in the joint capacity because it is not against the entire community of the officers. However, these inspectors had acceded this instruction and lodged complaint against the applicant through the Association. On the basis of this complaint, a preliminary inquiry was conducted by Shri Sansar Chand, Assistant Commissioner, Central Excise, Sikar on 3.6.1997 in which statement of S/Shri Lokendra Kumar Sepoy, Gula Ram Sepoy and Salendra Singh Taxi Driver, Narendra Singh, Manager of the Hotel and Vijay Sethia, Waiter of the Hotel were recorded. Shri Sansar Chand submitted his report to the Deputy Commissioner (P&V), Central Excise, Jaipur. In this inquiry, statements of S/Shri S.R. Meena and Ashok Dhooper were also recorded but the statement of the applicant was not recorded meaning thereby that preliminary inquiry was conducted without asking the version of the applicant. Copy of the preliminary inquiry report dated 12.6.1997 is annexed as Annexure A/6. On the basis of this report, the Disciplinary Authority (in brief, DA) decided to hold departmental inquiry and placed the applicant under suspension vide order dated 16.6.1997 (Annexure A/7). That as per provisions of CCS(CCA) Rules, 1965, DA was required to frame articles of charges and serve the same upon the applicant but instead of doing so, he ordered another preliminary inquiry by Deputy Commissioner (P&V) Central Excise, Jaipur which was conducted on 3.7.1997. IN this, statement of the applicant was recorded besides statement of Shri R.B.S. Kochhar, Inspector. Statement of both the above Inspectors, both Sepoys S/Shri Narendra Singh and Vijay Kumar were, however, not recorded. Though Shri Shalendra Singh was called but nothing was inquired from him. Since this subsequent inquiry was not as per the rules, the applicant submitted a detailed representation to Chairman, Central Board of Excise and Customs, New Delhi alleging deliberate attempt to improve the statement of prosecution witnesses with the sole intention to harm the applicant and save the defaulting inspectors. In this representation, it was also stated that defaulting inspectors and other subordinate officers may be punished to maintain the healthy atmosphere in the office and to maintain the clean image of the department. Copy of this representation dated 5.7.1997 is annexed as Annexure

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A/8. That again a third preliminary inquiry was ordered and this time Shri R.A. Pabri, Assistant Commissioner, Central Excise, Sikar recorded statement of new witness, Dr. Ms. Subh Kochhar on 15.10.1997 in addition to statement of S/Shri S.R. meena, both the seploys and Shri Salendra Singh Driver. It is stated that chain of events clearly shows that DA and others in the Department were acting with illwill against the applicant and by recoding statements of witnesses already recorded were only trying to imporove them to make a tight case against the applicant. Actually there was no substance in the complaint lodged by the officers and the statements recorded after the incidence.

3. Vide Memo dated 10.2.1998, the Chief Commissioner, Central Excise, Jaipur served charge sheet upon the applicant alleging indulgence of act of misconduct and failure to maintain decorum and discipline in his dealings with other officers and acting in a manner unbecoming of a reasonable Govt. servant and thereby violating provisions of Rule 3(1)(iii) read with Rule 20 of the CCS (Conduc) Rules 1964, alongwith statement of articles of charge, imputation of misconduct and misbehavious, list of document and list of witnesses . They are collectively marked as Annexure A/9. The applicant submitted detailed reply dated 18.3.1998 vide Annexure A/10. Shri Bipin Sapra Deputy Commissioner, Central Excise Division Jaipur was appointed as Inquiry Officer (IO). He recorded statements of nine prosecution witnesses and applicant produced two defence witnesses. The applicant filed written statement of defence dated 6.3.2000 (Annexure A/11). The applicant also submitted a detail written brief on 2.5.2000 to the IO explaining that he did not abused or misbehave, threaten, attack or cause any injury to anybody. That he did not bring any political or outside influence within the meaning of Govt. of India's order nor did he make any false and baseless allegations against any superior and as such he has not contravene any provisions of the conduct Rule 1964. Copy of this is filed as Annexure A/15. The IO submitted his report dated 17.10.2000 (Annexure A/16),

4. The DA disagreeing with the IO's report and issued a show cause notice dated 20.11.2000 (Annexure A/11), Perusal of this shows that he desired to take



action under Rule 11 of the CCS(CCA) Rules, 1965 meaning thereby that applicant should reply why fresh inquiry should not be initiated against him as provide under Rule 11 and that this can be done only after taking proper action and adopting the procedure as provided under Rule 14 and 16 of the Rules, 1965, thereby meaning this action of the DA was wrong. However, applicant filed reply dated 11.12.2000 stating therein that there is no reason for DA to disagree with the report of the IO because the same is based on credible hard evidence available on record. The applicant also requested the DA for personal hearing before any further action. Copy of this reply dated 11.12.2000 is marked as Annexure A/18. However, DA while droping charge No. 2 in favour of the applicant held charge no. (i), (iii) and (iv) as proved and imposed thepenalty of withholding of three grade increments with cumulative effect w.e.f. from his next date of increment. Copy of this order dated 22.12.2000 is annexed as Annexure A/1.

5. Aggrieved by this order, applicant filed an apeal before the President of India dated 24.1.2001 (Annexure A/19). Advice of the UPSC was obtained and as per UPSC's advice dated 20.11.2001, appeal filed by the applicant was rejected vide order dated 3.1.2003 (Annexure A/3). It is further stated that the post of Superintendent in Central Excise is a Group 'B' post, for which next promotion is in Group 'A' post on the basis of seniority cum suitability. That the seniority list of Superintendent is prepared on the basis of All India seniority. That in the seniority list (period 1.1.1986 to 31.12.1992), the name of the applicant is at sl. no. 903 and his status is 'SC' is also indicated in it. The name of Shri Khem Raj Verma appeared at sl. no. 3206 who is also a Member of SC. Undisputedly, Shri Khem Raj is much junior to the applicant in the cadre and the applicant has better claim for promotion in Group 'A' post prior to him. How ever, Shri Khem Raj has been promoted to Group 'A' post vide order dated 1.2.2003 and posted at Amritsar (Annexure A/20) and this action of the respondents has caused loss in seniority and promotion to the applicant. Thus that action of the respondents in disciplinary inquiry is wrong and therefore, this OA was filed.

6. In the grounds, it is stated that despite requests, applicant was not granted personal hearing which is in contravention of natural justice, DA acted maliaciously both in fact and in law inasmuch as preliminary inquiry was held three times, and twice after DA had taken a decision to conduct regular inquiry. This shows that DA was not satisfied with the real evidence recorded initially and ordered other officers to conduct further inquiry to procure evidence to frame false charges against the applicant. This action of the DA is arbitrary. Further that IO after consideration of all facts ~~on record~~ found that the charges against the applicant were not proved but although ~~he~~ ^{the} DA is empowered to disagree with the IO, the DA issued a show cause notice wrongly under Rule 11 of Rules 1965. This show cause notice is illegal because under Rule 11, minor as well as major penalties are mentioned and to impose minor penalty, procedure laid down under Rule 16 is to be followed whereas for imposing major penalty, procedure under Rule 14 is to be followed but this has not been ordered by the DA who has straightway imposed major penalty against the applicant. This makes the entire action after show cause notice illegal. Further in his reply to the show cause (Annexure A/17), the applicant categorically requested for personal hearing to DA but DA denied this before issuing penalty order dated 22.12.2000 (Annexure A/1). It is also stated that inquiry was initiated on the basis of complaint lodged by Members of Central Excise Executive Officers Association dated 30.5.1997. IN this complaint, it is stated that Shri Gula Ram Sepoy had snatched the weapon from the hand of the applicant but he continued to calling bad names to the Inspectors such as I shall damage the career of Ashok Dhooper and see that he is not promoted ever to next cadre. In this respect, it is to be noted that before the IO, all independent witnesses deposed that S/Shri Gula Ram and Ashok Dhooper were not present at the time of alleged incident. Therefore, one fails to understand how and on what basis the DA reached to the conclusion that the charges are held to be proved including charge no. (ii). If the DA is disagree with the finding of the IO, he should have ordered for denovo inquiry from the stage of submitting the reply to the charge sheet. Therefore, the action of the respondents is illegal. Further that charge of causing injury

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to Shri S.R. Meena, INspector, is false because after the alleged incident both the inspectors remained at Bikaner for a long period and they also visited the residence of Inspector, Shri R.B. Kochar, who took them to his Aunt, Dr. Ms. Subh Kochar. That they wanted to obtain false certificate of inquiry and lodge a FIR in the Police Station but there was no injury on the jaw of Shri Meena and Dr. Ms. Subh Kochar refused to give false injury certificate and, therefore, FIR could not be filed. It is stated that it is a serious matter that the subordinate officer on the one hand left the place of their work without permission of the superior (applicant) and on the other hand, they cooked up a false and fabricated story which was deliberately and willfully accepted by the Department and on account of which, on honest and disciplined officer is suffering for the last so many year including in the matter of promotion. The charge regarding injury is false is also proved from the fact that in such a matter the code of crminal procedure is attracted and FIR should have been. That in such a case, DA or concerned Authority were bound to asked the complaint to lodge an FIR before the concerned Police Station instead of taking initiative of starting departmental action. These departmental officers exceeded the jurisdiction illegally and their orders deserves to be quashed. During preliminary inquiry, certain witnesses like Salendra Singh was threatened by IO, Shri B. Bansal, which action is illegal. In para No. 67, IO has stated that "In any case the applicant had not been given opportunity to present his case and even the written complaint he filed was not heeded to. The applicant was pronounced guilty simply on the basis of the statements of the Inspectors (interested witnesses)," He also emphasised that no real investigation had been done to ascertain the facts in the preliminary inquiry. That perusal of the report of the IO also shows ulterior motive of the officers against the applicant. Lastly the respondents should not have taken note of the complaint lodged through Association and if this is not noticed, there is no written complaint against the applicant. Thus there is no basis for inquiry and punishment awarded to the applicant.

7. Respondents have submitted detailed reply. In it, while agreeing the

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reasons for applicant's presence in Bikaner, it is stated that in the night of 30.5.1997, the Inspectors sent the report to the applicant through a Sepoy but the applicant desired that the Inspectors should come personally and when the Sepoy reported that the inspectors had gone to sleep the applicant himself went to the Inspectors' room and knocked the door with a 'gupti'. As soon as Inspector Shri S.R. Meena opened the door, the applicant started rebuking the inspector and attacked him with his 'gupti' and caused injury to him. After this incident, Inspector Shri Dhoopar phoned Shri Sansar Chand, ACCE, Sikar at 6.30 AM and told him about the misbehaviour and attacked on Shri S.R. Meena by the applicant. Shri Sansar Chand, ACCE Sikar, directed both the inspectors to return back at Sikar. It is stated that Association of Officers is formed to safeguard the interest of its members and being members of it, Shri Ashok Dhoopare and Shri S.R. Meena reported the incidence of attack to the higher officers through this Association. Regarding allegation of three preliminary inquiry, it is stated that only one preliminary inquiry was conducted by Shri Sansar Chand, ACCE Sikar in which it was concluded that applicant attacked Shri S.R. Meena with his Gupti and abused him and Shri Ashok Dhoopar. ON the basis of this report, the applicant was placed under suspension vide order dated 16.6.1997. Thereafter, the applicant represented vide his application dated 25.6.1997 for revoking his suspension and in his application, he levelled allegation against his subordinates who accompanied him during his above visit.

To find out the truth of this application, inquiry was conducted by Shri B.K. Bansal, the then DC (P&V). During this inquiry, all departmental and outside witnesses of the incident were examined including some who had deposed earlier to Shri Sansar Chand. No third inquiry was conducted. However, statements of Dr. Subh Kochhar were recorded by Shri R.A. Pabri to ascertain as to what type of injuries she had noticed on Shri S.R. Meena. This information was necessary for this inquiry. The allegation of attempts to improve the statement of witnesses to make a water tight case against the applicant is denied. That deposition of witnesses examined by Shri Bansal are same as were made before Shri Sansar Chand, besides applicant has himself admitted in his statement made to Shri Bansal on 3.7.1997 that he was carrying the Gupti with him when he went

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to the inspectors' room and knocked the door with the same and pulled the inspectors up. The fact of his carrying 'Gupti' while on duty was not in the knowledge of ACCE Sikar as the applicant has not taken permission from his superior officers for the same. That he did not report this incident until 11.6.1997 while he should have done so immediately if he had serious complaint of disobedience against Inspectors S/Shri Dhoopar and Meena. Therefore, it was concluded that complaint against the subordinates was nothing but an afterthought to save himself. Regarding allegation of malice against the DA, it is replied that the applicant has not shown any evidence to prove this allegation. Regarding statement of witnesses, it is stated that Shri Sailendra Singh, Vijay Kumar Sethia and Shri Narendra Singh in their statements dated 3.6.1997 and 4.6.1997 have stated before Shri Sansar Chand that the applicant attacked Shri S.R. Meena, Inspector with his Gupti. They have also admitted the presence of Shri Gulla Ram at the time of attack. Shri Sailendra Singh, one of the above witnesses had also confirmed this in his statement made to Shri Sansar Chand. Therefore, his retraction of the earlier statement cannot be relied as the retractions are nothing but an after thought. Moreover, the applicant himself admitted in his statement dated 3.7.1997 that he carried Gupti with him without permission and that he was holding the same when he approached the room occupied by the INspectors and that he knocked the door with Gupti and pulled both the inspectors up. This is a clear admission of the charges by him and the statements of the above witnesses only corroborate the same. It is also stated that there is no illegality in proposing punishment enumerated under Rule 11 of the Rules 1965 in the show cause notice issued by the DA while disagreeing with the findings of the IO.

8. While replying to the grounds, it is stated that since the applicant had been given many opportunities to defend his case during the earlier inquiries, and he defended himself also, there was no need to provide opportunity of personal hearing before passing the punishment order. This is in inconfirmity with order F.No.C-11016/52/2000 Ad-v dated 11.9.2000 of the Ministry of Finance, Department of Revenue, New Delhi. There is also no infirmity in the punishment

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order passed by the DA and the order of Appeal passed by the President of India as the same are in consonance with the rules and since charges levelled against the applicant were proved on the basis of record. It is also stated that the applicant has wrongly stated that three preliminary inquiries were held because only one preliminary inquiry was held by Shri Sansar Chand, the then ACCE Sikar and on the basis of his report dated 20.6.1997, the applicant was placed under suspension. That the inquiry conducted by Shri Bansal was only to find out the truth of allegations levelled by the applicant against his subordinates in which all the eye witnesses of incident were examined. All the witnesses of this inquiry confirmed the statements made to Shri Sansar Chand. The examination of Dr. Ms. Subh Kochhar by Shri R.A. Pabri was recorded only to ascertain the type of injury she had noticed on Shri S.R. Meena and it cannot be construed as a preliminary inquiry. Further that disagreement of DA with inquiry report is admissible under Rule 15 of the CCS(CCA) Rules, 1965 and in compliance of the same, the show cause notice intimating therein the reasons of disagreement with the finding of IO and proposing thereunder the intention to impose penalty as enumerated under Rule 11 of the Rules 1965 was issued. That after careful consideration of applicant's reply to the show cause notice, punishment order was issued which is perfectly legal. That having fully complied with the rules concerning departmental inquiry and having given full opportunity to defend himself, there was no need to give further opportunity of personal hearing. That Shri S.R. Meena and Ashok Dhoopar who were aggrieved by the applicant's action of attacking them and causing injury to S.R. Meena had sent an application through the Association, and there is no illegality in initiating preliminary inquiry on the basis of this complaint. There was no illegality in believing the statement given by Shailendra Singh earlier because he had changed his earlier statement given to Shri Sansar Chand and Bansal. That lodging the FIR by the Inspectors does not reduce the gravity of the misconduct especially when reasons for the same has been explained that lodging the FIR would have tarnished the image of the department. Therefore, complaint was lodged within the department to higher authorities and the ends of justice were accordingly met. It is also stressed that applicant has failed to provide any evidence that



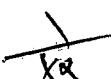
a false/fabricated complaint has been lodged against him therefore, his allegation regarding the same cannot be treated seriously. The applicant has also admitted having submitted his complaint to Shri Hukam Ram (Member of Parliament) and this action is clearly amounts to bringing outside influence to fulfil his interest. Therefore, the charge pertaining to bringing political pressure is also proved.

9. Before the arguments of respective counsel were heard, counsel for the respondents had submitted copy of the written arguments which were taken on record.

10. Counsel for the applicant read through the Annexures concerning charge Memo, advice Memo given by the UPSC, punishment order, order of appeal, as also statements of witnesses recorded during preliminary inquiry and contended that respondents made drastic efforts to make a water tight case against the applicant by bring out false evidence against him in three successive preliminary inquiries, two of which were held after contemplation of holding the departmental inquiry and placing him under suspension. This procedure, according to him, is violation of principles of natural justice. Secondly, the statement of independent witnesses like Manager and Waiter of the Hotel were not concerned by the DA and the Appellate Authority, although on the basis of their ~~third~~ ^{xx} depositions, the Inquiry officer had come to the conclusion of a fit case for exoneration for the main charge of attacking and causing hurt to Inspector Shri S.R. Meena. Thirdly, he contended that if the contradictions in the statements of prosecution witnesses are taken into account and the evidence rendered by non departmental witnesses are considered, it becomes a case of no evidence. The applicant neither attacked or assaulted Shri S.R. Meena as he had no enemocity ^{af} premeditation against him and merely carrying a Gupti and telling the subordinates to cary out orders does not amount to indiscipline. The applicant was admittedly enraged by the ^{harm} subordination and due to the requirement of sending secret report to Sikar urgently, he was upset when the same was not put up by them personally.
 ^{harm} He proceeded to their room and he admits that he spoke loudly but he did not

threaten to ruin the carrier of his subordinate officers as alleged in the charge sheet. On the contrary, Inspectors went to non departmental persons in Bikaner, tried to elicit their advice and tried to obtain fake medical certificate so that they could lodge complaint in the Police Station but due to the fact that Dr. Ms. Subh Kochar declined to oblige them with fabricated injury report, they did not do so. The departmental officers should have rather taken notice of these facts seriously. That stating these facts in a letter written in his own defence to the departmental bosses and elected Member of the Parliament should not be construed as bringing political interference in a departmental matter and maligning senior departmental officers by levelling false and baseless allegation against them. That in this case, the applicant has become a victim of ganging up of subordinate officers, who submitted complaint in a joint ^{capacity} manner through their Association rather than individually which is against the departmental rules. On legal side, he contended that not permitting personal hearing by DA before passing the punishment order, even though he had requested for the same and denial of this facility by the Appellate Authority are clear violation of rules and principles of natural justice. He also raised serious objection regarding delay of one year between placing him under suspension and the issuance of charge sheet. It was also alleged that some statements were recorded under duress but they were considered by the DA while imposing punishment. Lastly, the IO had done full justice inasmuch as his report particularly covers all aspects of the incidence and he decided to exonerate the applicant but DA acted arbitrarily ~~not~~ and had punished even though there were no grounds for it. This punishment has been awarded to him on the verge of his promotion to cause irreparable loss to him and due to these reasons the OA deserves to be allowed. Before parting, he raised issue of disproportion of punishment by stating that attack and causing injury to Shri S.R. Meena is not proved and for the remaining charges of bringing political interference and levelling unwarranted allegation charges against the superior officers do not warrant heavy punishment awarded to him.

10. Per contra, counsel for the respondents reiterated his pleadings mentioned



in the written arguments already brought on record. He, however, added that in view of law and many land mark judgements by the Highest Court, the Courts and Tribunals have only limited scope of interference in departmental inquiries (case laws has already been stated in the reply) and applicant has failed to put forth circumstances which may compell us to take a contrary view. He argued that applicant, a Sr. officer in the department, certainly violated conduct Rule 3(1)(iii) read with Rule 20 of CCS Conduct Rules, 1964 by abusing and threatening and causing injury ~~to his subordinate~~. He also maligned colleagues and seniors through ~~trivial~~ complaints addressed to ^a ~~Senior officers' malafide~~ Politicians. Thirdly even though ~~prejudice~~ has been claimed by the applicant, no evidence has been put forth beyond the facts of this incidence which are certainly not enough to justify this claim. On the contrary, the charges have been found proved. He also contended that the degree of proof required in a departmental action is far less than in a Criminal trial and that in departmental action only preponderance of probability has to be proved by which standard charges are certainly proved in this case. That by making remarks beyond his brief, the IO has conceded his responsibility. Therefore, decision of the DA in issuing of disagreement note alongwith show cause notice are fully justified. Lastly, even though disproportionality of punishment has been claimed in the arguments, this has neither been raised in the application nor pressed in the arguments, due to which reasons, it deserves to be ignored.

11. We have given very careful consideration ~~to~~ the pleadings and the arguments and on the face of it is found that the rules governing Departmental Action have been followed and required opportunity to defend himself has been provided to the applicant due to which the denial of personal hearing by DA and AA cannot be construed as violation of rules. The respondents have very satisfactorily explained that only one preliminary inquiry by Shri Sansar Chand was held and the inquiry by Shri Bansal was a separate probe to ascertain the facts of complaint lodged by the applicant against his subordinates in his representation submitted after he has been placed under suspension. Although the witnesses of the inquiry by both the above officers are the same but by no

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stretch of imagination, subsequent inquiry can be construed as a second preliminary inquiry against the applicant. Though the applicant alleged third inquiry also but it was nothing more than a legitimate action to seek clarification about the injury from a person who had seen it soon after the incident i.e. Dr. Ms. Subh Kochar and it cannot be construed as a third preliminary inquiry. These inquiries cannot be said to have caused any prejudice to the applicant because he has been given access to the statements recorded during these inquiries and the charge sheet was framed only after all these preliminary inquiries were completed. It is undisputed that he was given the opportunity required under the rules to accept or deny the charges after all the above inquiries. Therefore, there is no illegality in conducting these preliminary inquiries. The contention that the show cause notice with disagreement note issued under Rule 11 is illegal also cannot be accepted because the same has been explained by the respondents to have been issued under Rule 15(11) of CCS(CCA) Rules, 1965 and Rule 11 was mentioned as preposition of inflicting punishment in case the explanation was not satisfactory. Since it was a show cause notice, before punishment, it fulfilled the requirement of natural justice, ~~are met~~ ^{fuller} We agree with the counsel for the respondents that the Tribunals and Courts ~~have~~ limited scope for interference in the matter of re-examination or appreciation of facts and evidence in a Departmental action, as the same can be best seen by the officers of the department and we are only required to look ~~in the action is not malicious.~~ into the correct application of rules and that ~~On~~ this yardstick we do not find any ground for our interference, action is not malicious. We feel that by all standards of public administration ~~that~~ the Act of abusing, threatening and causing even minor injury or ~~abuse~~ ^{causing a bruise} to a subordinate is a mis-conduct enough to attract punishment and in this case, the same has been satisfactorily proved. We also agree with the respondents in their decision that applicant tried to bring political interference in a departmental matter and in view of these finding, when all charges are found proved, contention of disproportionately of punishment ~~is also not~~ proved. The disagreement note cum show cause notice and the orders of punishment and Appellate Authority's orders are detailed and speaking, and they cover all points raised by the applicant in his defence in



various representations and replies, and due to this reason they cannot be faulted.

12. In view of what has been stated in the foregoing, we find no ground for our interference and the OA is dismissed with no order as to costs.


(A.K. BHANDARI)

MEMBER (A)


(M.L. CHAUHAN)

MEMBER (J)

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