17.1.07 Mr N.K. Gautam, counsel for applicant
Mr. R.G. Gupta, counsel for respdts.

Heard the learned counsel for the parties.

Order reserved.

(J.P. Shukla)
M(A)

(M.L. Chauhan)
M(J)

19/1/07

Order has been pronounced today in the open court.

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.472/2003.

Jaipur, this the 19th day of January, 2007.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. J. P. Shukla, Administrative Member.

Ashok Kumar
S/o Shri Mangu Mal,
Aged about 48 years,
R/o 1/27 (70866/33), Housing Board,
Ajay Nagar, Ajmer.

... Applicant.

By Advocate : Mr. N. K. Gautam.

Vs.

1. Union of India
Through its General Manager,
North West Railway,
Jaipur.

2. Chief Works Manager
North West Railway,
Ajmer.

... Respondents.

By Advocate : Mr. R. G. Gupta.

: O R D E R (ORAL) :

The applicant has filed this OA thereby praying for the following reliefs :-

"(a) the S.F.5 dated 30/1/92 (Annexure A/2) may be declared defective and be cancelled.

(b) the orders dated 16/8/94 (Annexure A/4), 2/9/95 (Annexure A/5) and 24/9/02 may be declared wrongful, unconstitutional, void and inoperative and may be quashed.

(c) direct the respondents to reinstate the applicant and take him on duty.

(d) direct the respondents to arrange the arrear payment of salary and allowances of applicant from the date of his removal (16/8/94) along with interest.

(e) cost of application may be awarded to the applicant.

(f) Any other relief just and proper in the facts and circumstances of the case, the Hon'ble Tribunal consider just and reasonable."

2. Briefly stated, the facts of the case are that the applicant while working as Feeder Grade-II was issued charge sheet under Rule 9 of Railway Servant (Discipline and Appeal Rules 1968) vide impugned charge sheet dated 30.01.1992 (Annexure A/2). The charge against the applicant was that on 25.01.1992 he assaulted one Shri Ram Lal Selval, Chargeman, T.No.68470/34. Thus, he had exhibited lack in devotion to duty and acted in a manner unbecoming of Railway servant and thereby violated Rule (3) (ii) and (iii) of Railway Service (Conduct) Rule, 1966. The charge was sought to be proved on the basis of the complaint of Shri Ram Lal Selval dated 25.01.1992 and on the basis of the statement of Shri Yad Ram Meena, Chargeman 'B' and in the list of witnesses only two witnesses were cited as witnesses to prove the charge, namely Shri Ram Lal Selval, complainant and Shri Yad Ram Meena. It may be stated that before the issuance of charge sheet a preliminary fact finding enquiry was conducted. The applicant submitted reply to the charge sheet. The competent authority being not satisfied appointed one Shri N. L. Jain, Shop Supdt, as Inquiry

Officer, who on the basis of the statement made by Shri Yad Ram and on the basis of the statement of the complainant held the applicant guilty of the charge leveled against him. The Disciplinary Authority after considering the entire matter imposed the penalty of removal from service vide order dated 16.08.1994 (Annexure A/4). Thereafter the applicant filed appeal before the Appellate Authority and the Appellate Authority after taking into consideration the fact held that the charge of assaulting the co-worker on duty, leveled against him, have been established beyond doubt and the gravity thereof does not warrant any leniency. Further after considering the family condition and taking purely a humanitarian consideration, the penalty of removal from service was converted to that of compulsory retirement vide order dated 2.09.1995 (Annexure A/5). The Revision Petition filed by the applicant was also dismissed by the Revisional Authority vide order dated 24.09.2002 which order was conveyed to the applicant vide order dated 16.10.2002 (Annexure A/1). It is these orders which are under challenge in this OA.

3. Notice of this application was given to the respondents. Respondents have filed reply thereby opposing the claim of the applicant.

4. We have heard the Learned Counsel for the parties and gone through the material placed on record. The

contention put forth by the Learned Counsel for the applicant is the same which has been considered in the Enquiry Report namely that there is a contradiction between the statement made by the complainant and the so called eye witness, Shri Yad Ram Meena during the course of the regular inquiry as well as during the course of fact finding enquiry. It is further argued that the department has not produced the wooden plank on the basis of which the so called beating was given by the applicant to the complainant. It is further argued that Shri Yad Ram Meena cannot be said to be an eye witness to the occurrence and the statement made by him before the Enquiry Officer is not reliable. It is further stated that the complainant has not been examined by the Doctors, nor the medical evidence was produced during the course of enquiry to show the factum of injury on account of so called blow given by the wooden plank. As such, this is a case of no evidence and the punishment awarded by the authorities was not warranted in the facts and circumstances of this case.

5. We have heard the Learned Counsel for the applicant and we are not at all convinced with the submission so made by him. It is not in dispute that the complainant Shri Ram Lal Selval has made a complaint to the authorities regarding beating given to him by the applicant. It is also clear from the evidence of Shri Yad Ram Meena that at the relevant time when the incident

took place on 25.01.1992 at 10.20hrs, he was checking the work at Machine NO.210/33, when he suddenly heard the sound of wooden plank and he saw that the applicant was beating Shri Ram Lal Selval with a wooden plank. He has further submits that the complainant was running towards Machine No.210/33 and he too ran to save Shri Ram Lal Selval and on seeing him the applicant returned. Thus, on the face of such evidence given by the independent witnesses coupled with the version given by the complainant regarding giving blow with a wooden plank to him, fully corroborates the case against the applicant. Thus, it cannot be said to a case of no evidence. Further it has also come on record that on one day prior to the date of incidence i.e. 24.1.1992, the matter was also reported against the applicant by the complainant and it may be on that account that the applicant has assaulted the applicant on 25.1.1992. Thus, the incidence of 25.01.1992 cannot be ruled out. The contention of the applicant that since in the departmental enquiry the prosecution has not produced wooden plank and there are discrepancies and there are some contradiction in the statement, these fact ipso facto cannot be a ground to hold that the charge against the applicant has not been proved; as the standard of proof in the domestic inquiry before the Tribunal are not the same as prosecution in a criminal case. The scope of interference of the Tribunal in Departmental Inquiry very limited and the Court has to consider whether the inquiry

is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are not violated. Further where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the Court to review the evidence and to arrive at an independent finding on the evidence. The Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived to that conclusion. On such matter, the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the Court. At this stage, it will be useful to quote the decision of the Apex Court in the case of State of

Andhra Pradesh and others v. Chitra Venkata Rao, 1976 (1) SCR 521, wherein the Apex court has held as under :-

"The High Court was not correct in holding that the domestice enquiry before the Tribunal was the same as prosecution I a criminal case."

It was further held:

The scope of Article 226 in dealing with departmental inquires has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao. First, there is no warrant fro the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived to that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted

to be canvassed before the High Court in a proceeding for all writ under Article 226."

6. Thus, viewing the matter on the basis of law laid down by the Apex Court and in view of what has been stated above, we are of the view that the applicant has not made out any case for our interference. Accordingly the OA is dismissed with no order as to costs.

(J. P. SHUKLA)
ADMINISTRATIVE MEMBER

(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./