CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

O.A. 256 of 2001

Date of Decision : 14.06.2004

Mr. G.S. Saini : Applicant (s)

Mr. A.S. Raizada : Advocate for the Applicant (s)

Versus

Union of India & Ors. : Respondent (s)

Mr. P. Shankaran : Advocate for the Respondent (s)

CORAM:

THE HON'BLE MR. M.P. SINGH : VICE CHAIRMAN

THE HON'BLE MR. A. S. SANGHVI : MEMBER (J)

ORDER

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

NO

Mr. G. S. Saini,
Son of Shri. S. S. Saini,
Aged about 56 years,
Working as Supervisor (non technical
Stores) in Vehicle Factory,
Jabalpur, M.P. - Applicant -

Advocate : Mr. A. S. Raizada

Versus

1. Union of India, through
Secretary, Ministry of Defence,
New Delhi.

2. Director General/Chairman,
Ordinance Factory Board,
10 A Saheed Khudi Ram Bose Road,
Calcutta.

3. General Manager,
Vehicle Facotory,
Jablapur. - Respondents -

Advocate : Mr. P. Shanbaran

ORDER
O.A. 256 of 2001

Date : 14/06/2004

Hon'ble Shri. A. S. Sanghvi : Member (J).

The applicant was working as Supervisor (Non-Technical Stores) in Vehicle Factory, Jabalpur. He was served with a charge sheet on dated 4.4.97 leveling the charges of accepting

illegal gratification from outsider civilian Driver of Truck No. KA-32-465 for unloading of goods in RBR-I/VFJ and thereby indulging into a conduct unbecoming of the government servant. On the denial of the charges by the applicant, an inquiry was held in the charges and after the conclusion, the inquiry officer held that the charges leveled against the applicant were not proved and exonerated the applicant. The disciplinary authority however disagreeing with findings of the inquiry officer and after furnishing the reasons of disagreement and also inquiry officer's report and obtaining the representation of the applicant thereon vide his order dated 27.10.99 imposed the penalty of reduction in pay by two stages in the grade of Supervisor from Rs.5000/- per month to Rs.4800/- per month in the time scale of the pay scale of Rs.4000-6000/- with cumulative effect for a period of two years. The appeal preferred by the applicant against the order of the disciplinary authority has also come to be rejected by the appellate authority vide order dated 2.8.2000. The applicant has therefore approached this Tribunal seeking to quash and set aside the penalty imposed on him. The main ground on which the inquiry held against him challenged by the applicant is that the complainant himself was not examined in the inquiry proceedings and as such the alleged

transaction of bribe taking is not established at all. It is also contended that the penalty imposed is excessive and harsh and that if the order is allowed to stand, it will result in grave hardship to the applicant.

2. The respondents in their counter have maintained that the inquiry was conducted as per the rules and regulations and that the disciplinary authority has rightly held the applicant guilty of the charges leveled against him. According to them, ample reasons are given by the disciplinary authority for holding the applicant guilty of the charges and therefore there is no reason for interfering with the orders passed by the disciplinary authority. According to them, the order of the penalty passed by the disciplinary authority and upheld by the appellate authority are strictly as per the law after following the due procedure under Rules 14 and 16 of the CCS (CCA) Rules, 1965. The applicant has not brought out anything to substantiate his claim that these orders are contrary to law and facts. The disciplinary authority after applying its mind thoroughly on the evidence produced before the inquiry officer has drawn his own conclusion and accordingly recorded his own finding disagreeing with the findings of the inquiry officer. The inquiry is not vitiated on account of the

non-examination of the complainant who could not be traced. When other sufficient evidence is available the disciplinary authority was justified in placing reliance thereon and holding the charges having been established and punishing the applicant. They have prayed that the O.A. be dismissed with costs.

3. We have heard the learned counsel of both the parties and carefully gone through the disciplinary inquiry file made available to us by the learned counsel for the respondents. We have also carefully gone through the authorities cited at the bar.

4. The only ground on which the penalty order of the disciplinary authority is sought to be assailed is that inspite of the non-examination of the complainant by the inquiry officer the charges leveled against the applicant are held to be proved by the disciplinary authority. Relying on several decisions the learned counsel for the applicant has submitted that when the complainant who lodged the complaint about the delinquent asking for bribe and who is alleged to have paid the bribe to the delinquent is not examined as a witness, there being no

positive evidence to prove the charge of bribe taking by the applicant, the applicant could not have been held guilty by the disciplinary authority. According to the learned counsel for the applicant the conclusion drawn by the disciplinary authority is not based on any evidence but is based on surmises and conjectures and hence the penalty imposed by the disciplinary authority deserves to be quashed and set aside. The learned counsel has relied on the decisions in the case of **Balkishan Vs. Union of India reported in 1986 ATC 405** wherein the Principal Bench of this Tribunal in the case of Departmental inquiry on the charge of bribe taking has held that the statements of complainant recorded behind the back of the charged employee could not have been relied upon by the inquiry officer when no opportunity was given to the employee to cross examine the complainant. In the case **of R. N. Pathak Vs. Union of India (1987) 4 ATC 439**, the Allahabad Bench of this Tribunal has held that when there was no eye witness account before the inquiry officer to prove that the money was accepted as alleged and when there was nothing to show that one of the complainants and her son were dead and could not be produced, the statements made by the complainant before the Vigilance Inspector cannot be looked into and the delinquent could not have been held guilty

of the charges. In another case of **Binoy Paul Vs. Union of India reported in 1986 (2) Service Law Reporter 293** the Calcutta Bench of this Tribunal held that in the case of disciplinary authority dis-agreeing with the report of the inquiry officer and assessing the evidence and taking into account the confessional statement of co-delinquent officer who was not examined and cross examined as a witness in a departmental inquiry had amounted to violation of principles of natural justice. However, in the case of **Kuldeep Singh Vs. Commissioner of Police and Others reported in (1999) 2 SCC 10,** the Supreme Court has held that finding of guilt although would not be normally interfered with, the Court can interfere therewith if the same is based on no evidence or is such as could not be reached by an ordinary prudent man or is perverse or is made at the dictates of a Superior authority. The Supreme Court has further held therein that provision permitting bringing on record statement of a witness without producing him at the domestic inquiry can be invoked only when the presence of the witness cannot be procured without any delay and inconvenience or expense not otherwise.

5. There is no quarrel about the principal laid down in the above referred decisions cited by the learned counsel of the applicant. The only question is whether these decisions apply to the facts of the instant case. It cannot be laid down as a rule that in all proceedings where the complainant is not examined the inquiry officer should hold that the charges leveled against the delinquent are not proved. Merely because the complainant or the main witness is not examined, the case of the prosecution does not fail. The inquiry officer or the disciplinary authority is required to see whether there is adequate or sufficient evidence adduced during the inquiry proceedings pointing to the guilt of the applicant even if the complainant is not examined. It is also to be borne in mind that the charges are not merely proved by oral evidence but they can be held to have been proved by circumstantial evidence also. If there is some evidence led before the inquiry officer connecting delinquent with the main imputations of the charge, then it is always open to the inquiry officer or the disciplinary authority to draw the conclusion based on that circumstantial evidence and the order of the disciplinary authority cannot be said to be perverse or arbitrary on that count. In the instant case, the charge against the applicant and others was that on dated 22.1.97 when a truck bearing

no. KA-32-465 and driven by one Mr. Ahmed was brought inside the factory for unloading, the applicant working as a supervisor (store section) had demanded Rs.50/- from the truck driver i.e., from Ahmed for early unloading of the goods from the truck and on being given Rs.100 note he had returned Rs.50/- to Ahmed. The note of Rs.100 was already photocopied by the security staff on the complaint of Ahmed that illegal gratification was being asked from him and the number of the Rs.100 note was also noted. On the search of the person of the applicant after the transaction in the presence of supervisor of the store by the security staff, the Rs.100 note was found from the pocket of the applicant. The same was matched with the photocopy retained by the security staff and the statement of the applicant was also recorded. It is no doubt true that Ahmed the truck driver who gave Rs.100 note to the applicant and who had lodged the complaint was not examined before the inquiry officer though he was cited as a witness. The inquiry officer has recorded the reason for his non examination pointing out that being a truck driver his whereabouts were not known and his presence in the inquiry could not be procured without sufficient delay and high cost. The inquiry proceedings reveal that Shri. Ashok Pillai, the prosecution witness no. 2 had in

his evidence stated about confiscation of two marked 100/- Rs. notes (one note from Shri. G. S. Saini i.e., the applicant and another Mr. Peter Paul, the co-delinquent) during the search taken by the security staff. The applicant in his statement recorded immediately after the seizure of the Rs.100 note from his pocket has admitted the note having been found from his pocket, but has stated that this Rs.100 note was placed in his pocket forcibly by the truck driver. He has admitted that the truck driver has no enmity with him. The security staff also does not have any enmity with him. When he was asked why he was trapped if there was no enmity, he had replied that he could not give reason. The evidence of the security staff clearly suggests that driver of the truck had complained about illegal gratification being asked for by the applicant and others and that pursuant to that complaint a trap was laid and the driver was supplied with Rs.100 note which was photocopied earlier and when the driver after taking the truck inside the factory and giving the note to the applicant, had signaled them, the security staff had searched the applicant as well as the others and recovered the Rs.100 note given to the applicant by the Driver. This evidence coupled with the statement of the delinquent wherein he has admitted that the Rs.100 note was found from his pocket,

clearly suggests that there was evidence before the disciplinary authority to draw a conclusion regarding the guilt of the applicant. Hence, it cannot be gain said that there was no evidence before the disciplinary authority and the disciplinary authority has based his conclusion on surmises and conjectures. Infact having gone through the findings of the inquiry officer and the conclusion drawn by him, we concur with the observation of the disciplinary authority that the inquiry officer's conclusion on page 6 of the inquiry officer's report is contradictory to the findings given by him.

6. It is a settled legal position that the jurisdiction of this Tribunal to interfere with the disciplinary matters cannot be equated with the appellate jurisdiction and we cannot interfere with the findings of the inquiry officer or disciplinary authority where these findings are not arbitrary or perverse or based on no evidence. If there has been any inquiry conducted as per the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is also the matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.

In case of **B. C. Chaturvedi Vs. Union of India (1995) 6 SCC 749** as well as in the case **of High Court of Judicature Bombay Vs. Shri. Shashikant S. Patil 2000 (1) SCC 416**, the Supreme Court has laid down that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter to be canvassed before the High Court under Article 226. It is further laid down that the decision of the disciplinary authority cannot be interfered with if there is no violation of natural justice or statutory regulations.

7. The findings recorded by the disciplinary authority can be characterized as perverse if it is shown that such findings are not supported by any evidence on record or are not based on any evidence on record or any reasoned person could not have come to this finding on the basis of that evidence in that case. In the instant case, we find that there was sufficient evidence to connect the applicant with the charge of bribery as the Rs.100/- note, which was earlier photocopied was found from his pocket and this evidence itself goes to show that there was some evidence before the disciplinary authority. If there was some evidence before the disciplinary authority then the adequacy or inadequacy of that evidence and the reliability of that evidence are the matter within the exclusive domain of the disciplinary authority and the Tribunal cannot interfere

with the conclusion drawn by the disciplinary authority on that evidence. Merely because complainant was not examined, as he could not be traced does not provide a good ground for holding that the inquiry proceedings are vitiated. So far the inquiry is concerned, it is not the case of the applicant that he was not afforded opportunity to cross-examine the witnesses. In fact, it is not his case at all that the inquiry officer had not observed the rules and regulations or the procedure and that the inquiry was vitiated on account of the violation of the principles of natural justice. Under the circumstances, when the inquiry was not vitiated on the ground of violation of the principal of natural justice and the orders of the disciplinary authority cannot be said to be perverse or illegal or unreasonable, the irresistible conclusion is that there is no merit in this O.A. We also find no reason to interfere with the penalty imposed by the disciplinary authority and confirmed by the appellate authority, as the same cannot be said to be excessive or unreasonably high or disproportionate to the charge. We are of the considered opinion that the O.A being bereft of the merit deserves to be rejected. In the conclusion therefore the O.A. is rejected with no order as to costs.

(A. S. Sanghvi)
Member (J)

(M. P. Singh)
Vice Chairman

MBT.