IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

Jaipur, this the 25th day of February, 2010

OA No.192/2005

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMV.)

Ghanshyam Das Rajput,
s/o Shri Sohan Lal Rajpur,
aged about 56 years, by caste Rajput,
r/o 64/454, Pratap Nagar Housing Board Colony,
Sanganer, Jaipur, Ex-P.A.
Office of G.P.O., Jaipur.

.. Applicant

(By Advocate: Shri S.K.Jain)

Versus

1. The Union of India through the Secretary to the Government of India, Department of Posts, New Delhi.
2. Principal Chief Postmaster General, Rajasthana Circle, Jaipur.
3. The Director, Postal Services, O/o the Principal CPMG, Rajasthan Circle, Jaipur.
4. Senior Supdt. of Post Offices, Ajmer.
5. Senior Supdt. of Post Offices, Jaipur.
6. Shri Birbal Meena, Supdt. of Postal Stores Department, Jaipur.

.. Respondents

(By Advocate: Shri V.S.Gurjar)

ORDER

Per M.L.Chauhan, M(J).

The applicant has filed this OA thereby challenging the order dated 2.7.2001 passed by the Disciplinary Authority whereby the applicant was dismissed from service and order dated 31.1.2003 (Ann.A/2) passed by the Appellate Authority whereby penalty of dismissal from service was substituted to that of compulsory retirement and the order dated 23.4.2004 (Ann.A/1) passed by the Revising Authority whereby the order of the Appellate Authority has been upheld.

2. Briefly stated, facts of the case are that the applicant while working as Office Assistant (Computer) was served a chargesheet under Rule 14 of the CCS (CCA) Rules, 1965 vide Senior Superintendent of Post Offices, Jaipur City Division memo dated 14.9.1998 alleging that while working as Office Assistant (Computer), PSD, Jaipur on 17.10.1996 he misbehaved and manhandled Shri B.S.Gangal, the then Superintendent, PSD, Jaipur which caused serious injury on lips resulting into bleeding. The applicant denied the charges levelled against him and accordingly Enquiry Officer was appointed. The Enquiry Officer after conducting the enquiry submitted his enquiry report dated 24.2.2000 wherein the allegations levelled against the applicant was proved in toto. The Disciplinary Authority however remitted the same to the Enquiry Officer as according to the Disciplinary Authority requirement of Rule 14(18) of CCS (CCA) Rules, was not followed. Thereafter the applicant was

examined by the Enquiry Officer in compliance of the provisions contained in Rule 14(18) of the CCS (CCA) Rules. Ultimately, the Enquiry Officer resubmitted the enquiry report, copy of which was sent to the applicant for making representation to the Disciplinary Authority. Thereafter the Disciplinary Authority imposed punishment of dismissal from service vide Ann.A/3. As already stated above, the said order was modified to that of compulsory retirement in appeal which order of the Appellate Authority has been maintained by the Revising Authority. It is on the basis of these facts that the applicant has filed this OA thereby praying for quashing the aforesaid orders including the chargesheet dated 14.9.1998 (Ann.A/5) and the order dated 29.11.2000 whereby ad-hoc Disciplinary Authority was appointed in the case of the applicant. In the alternative, the applicant has prayed that lenient view ought to have been taken in the matter and penalty of compulsory retirement is disproportionate to his guilt.

3. Notice of this application was given to the respondents. The respondents have filed reply thereby justifying their action on the basis of the findings recorded as well as the reasoning given by the Disciplinary Authority based on the evidence led before the Enquiry Officer and also reasoning given by the Appellate Authority and Revising Authority.

4. The applicant has filed rejoinder thereby reiterating the grounds taken in the OA.

5. We have heard the learned counsel for the parties and gone through the material placed on record. The learned counsel for the

applicant while drawing our attention to Ann.A/13 and A/14 has contended that the Enquiry Officer was under pressure from the authority to complete the enquiry and submit final report by 31.12.99, as such, the Enquiry Officer was biased and entire enquiry report stands vitiated on this ground alone. At this stage, we wish to reproduce para 4(x) of the OA, in which such ground has been taken and thus reads:-

> "(x) That on 13.12.1999 the applicant filed an application before the enquiry officer alleging that the enquiry officer is under pressure as admitted by him on 10.12.1999 and that the final report is to be submitted by 31.12.1999. The above application dated 13.12.1999 is annexed with the OA as Annexure-A/13. The above fact that the Circle Office has given a target date was admitted by the enquiry officer in very clear words in the proceedings on 15.12.1999 and the same is annexed as Annexure-A/14."

According to us, the contention raised by the applicant, as noticed above, that the Enquiry Officer was biased as he was given target to complete the enquiry proceedings by 31.12.1999 is no ground to hold that the Enquiry Officer was biased, even if such allegation is taken to be correct on its face value. Further, admittedly, the applicant has not raised any allegation regarding bias attitude of the Enquiry Officer during the entire enquiry proceedings before any authority. Thus, such vague contention of the applicant that the Enquiry Officer was biased on account of the aforesaid aspect deserved out right rejection. Facts remain that the applicant participated in the enquiry proceedings throughout. He was given the defence assistant. Not only that, out of 20 documents asked by the applicant as additional documents, which were not part of the chargesheet, even then, the Enquiry Officer permitted

the applicant to have assess to the documents as asked by him except two documents. This fact itself shows that the Enquiry Officer has proceeded with the matter as per rules. That apart, it is not permissible for us to entertain such plea at this stage especially when the applicant has failed to raise these contentions before the appellate as well as revising authority.

6. The second contention put forth by the learned counsel for the applicant is that there is non compliance of Rule 14 (18) of the CCS (CCA) Rules and in fact the applicant was not examined in terms of the provisions contained in the aforesaid rules but the Enquiry Officer crossed examined the applicant on 3.5.2000 as is evident from Ann.A/20. This is one of the contentions in support of the allegation levelled against the Enquiry Officer regarding biasness of the Enquiry Officer. According to us, such contention of the learned counsel for the applicant cannot be accepted. At the outset, it may be stated that the aforesaid provisions is akin to sub-rule (19) of Rule 8 of All India Service Disciplinary Rules, 1969 and Section 313 of the Criminal Procedure Code of 1973. Rule 8 of All India Service Disciplinary Rules was considered by the three Judges Bench of the Apex Court in the case of Sunil Kumar Banerjee vs. State of West Bengal and Anr., 1980 SCC (L&S) 369 and it was held that failure to comply with the requirement of the said rule does not vitiate the enquiry unless the delinquent officer is able to establish the prejudice. In the instant case, the Disciplinary Authority finding that there is non-compliance of Rule 14(18) of the CCS (CCA) Rules remitted the case to the Enquiry Officer to put incriminating material

to the applicant and to examine in terms of the aforesaid rule. The applicant was examined in compliance of Rule 14(18) of CCS (CCA) Rules and it was thereafter that the Enquiry Officer has submitted fresh report. Thus, in the instant case, provisions of Rule 14(18) of CCS (CCA) Rules have been followed. The applicant has not pleaded as to how prejudice has been caused to him by putting a question to him which according to him amounts to cross examining the applicant. Suffice it to say that the report submitted by the Enquiry Officer is not based upon the so called clarification/answer given by the applicant before the Enquiry Officer when he was examined under Rule 14(18) of CCS (CCA) Rules. The enquiry report is based on the basis of the statement made by the witnesses during the course of enquiry as well as documents tendered during the course of enquiry. Thus, this vague contention of the learned counsel for the applicant deserves out right rejection.

7. The learned counsel for the applicant further argued that examination of the applicant by the Enquiry Officer under Rule 14(18) of CCS (CCA) Rules is not examination in the eyes of law and the question put to him and the answer given by him has to be ignored in toto and, if so, non examination of the applicant under Rule 14(18) of CCS (CCA) Rules will vitiate the entire enquiry proceedings as held by the Principal Bench in the case of Lalit Kumar vs. Union of India, 2005 (1) ATJ 592 and Sohanbir and ors. vs. Govt. of NCT of Delhi and ors., 2006 (2) ATJ 106. The contention so raised by the applicant cannot be accepted for more than one

reason. Firstly, the applicant was examined under Rule 14(18) of CCS (CCA) Rules, as such, reliance placed by the applicant on the judgment rendered by the Principal Bench in the aforesaid cases is of no assistant to the applicant. Further, the judgment rendered by the Principal Bench in the aforesaid cases cannot be said to be a good law in view of the decision of the Apex Court in the case of Sunil Kumar Banerjee (supra) whereby the Apex Court has held that non-examination of the delinquent official by the Enquiry Officer, ipso facto, is not fatal and prejudice has to be established. In this case, the applicant has not uttered a single word as to how prejudice has been caused to the applicant except bald allegation that the applicant was cross examined by the Enquiry Officer. In the present case, the findings given by the Enquiry Officer is based upon the evidence tendered and collected during the course of enquiry. It is on the basis of these evidence that findings against the applicant were recorded. Even the Disciplinary Authority, Appellate Authority and Revising Authority have meticulously noticed the contention of the applicant and has passed speaking and reasoned order as to how the contention so raised by the applicant cannot be accepted. Discussing the evidence and further giving reasons on the basis of the findings recorded by the authorities will amount to repeating the same reasoning which has been given by the various authorities and as such it will not serve any purpose to endorse the same view. Suffice it to say that the findings recorded by the Enquiry Officer is based upon the evidence tendered during the course of enquiry and it cannot be said to be cause of no evidence.

8. Further, the learned counsel for the applicant argued that out of 20 additional documents asked by the applicant, some of them were not made available to the applicant by the Enquiry Officer, as such, the enquiry is vitiated, cannot be accepted. It is admitted fact that the documents sought by the applicant are neither basis for framing the charges nor those on which the Disciplinary Authority has placed reliance to prove the charges against the delinquent officer. Thus, under these circumstances, non-supply of additional documents sought by the delinquent official thereby vitiating the proceeding and prejudice caused, cannot be accepted.

9. Law on this point is well settled. The Hon'ble Apex Court in the case of Syndicate Bank and Others vs. Venkatesh Gururao Kurati, 2006 SCC (L&S) 487 while setting aside the judgment of the High Court has held that non-supply of the documents neither forming part of the charges nor relied upon by the prosecution is not prejudicial so as to violate the process of natural justice. In this case the Apex Court in para-18 observed as under:-

> "18. In our view, non-supply of documents on which the enquiry officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the enquiry officer to arrive at his conclusion, the non-supply of which would cause prejudice, being violative of principles of natural justice. Even then, non-supply of those documents prejudice the case of the delinquent officer must be established by the delinquent officer. It is well-settled law that the doctrine of principles of natural justice are not embodied rules. IT cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice."

The aforesaid view was taken by the Apex Court on the basis of its earlier judgment in the case of Krishna Chandra Tandon vs. Union of India, 1974 SCC (L&S) 329 and Chandrama Tewari vs. Union of India, 1988 SCC (L&S) 226, relevant portion of which has been noticed in para 16 and 17 of the judgment.

10. Lastly, the learned counsel for the applicant has drawn our attention to the Govt. of India instructions contained in DGP&T letter No. 6/19/92-Disc.I dated 29.11.1972 under Rule 14 of the CCS (CCA) Rules to contend that as per annexure a major penalty can be imposed in the cases mentioned therein. It is not a case of such nature, as such, major penalty could not have been imposed in his case. According to us, the contention raised by the learned counsel for the applicant is wholly misconceived. As can be seen from the aforesaid instructions, the said instructions have been issued by the Government of India when it was frequently noticed that the Disciplinary Authority do not appreciate properly the misdemeanour committed by the officiald and the delinquent officials are let off with mere warning. It was in that context that in the annexure type of cases involving moral turpitude and failure to maintain integrity were indicated. Para 2 of the said instructions clearly stipulates that the list is only illustrative and not exhaustive and is intended to serve as a guide. At this stage, it will be useful to quota para-2, which thus reads:-

> "The type of cases involving moral turpitude and failure to maintain integrity are indicated in the Annexure. The list is only illustrative and not exhaustive and is intended to serve as

a guide. In all such cases, proceedings for imposing one of he major penalties would be justified."

Thus, contention of the learned counsel for the applicant based on the aforesaid instructions is of no consequence and deserves out right rejection. In this case, the applicant is guilty of causing injury to his superior. Not only that, FIR was also lodged. The Apex Court has viewed the matter seriously in such cases. At this stage, we wish to refer to the decision of the Apex Court in the case of Kendriya Vidyalaya Sangathan and Anr. vs. Satbir Singh Mahla, (2008) 4 SCC 445. That was a case where respondent before the Apex Court was working as TGT (Maths) while working as such, he physically assaulted the Principal of the school in his office room which caused serious injury on his right eye. He was removed from service. The order of removal was set-aside by the Central Administrative Tribunal and reduced the punishment to that of withholding increment for a period of 5 years with cumulative effect. The Tribunal was of the view that the applicant committed the act of misconduct under mental tension and he had submitted his written apology as such the punishment of removal from service was disproportionate. The Apex Court set-aside the judgment rendered by the Tribunal and held that there was no good ground for the Tribunal to interfere with the punishment awarded to the respondent therein as a person who physically assaulted the Principal of the institution is, not fit to be a teacher.

11. Further, the Apex Court in the case of Usha Breco Mazdoor Sangh vs. Management of M/s. Usha Breco Ltd. and Anr. JT 2008 (6)

SC 427 has held that the workman abusing and picking up iron rods and even if no injury was caused to anyone and threats were given was a clear case of misconduct. At this stage, we wish to reproduce para 33 of the judgment which thus reads:-

> "33. Assault, intimidation are penal offences. A workman indulging in commission of a criminal offence should not be spared only because he happens to be a Union leader. That Act does not encourage indiscipline. It will be a matter of some concern if the opinion of the Enquiry Officer can be totally ignored despite the fact that the Management is precluded from adducing any fresh evidence before the Labour Court. A Union leader does not enjoy immunity from being proceeded with in a case of misconduct."

12. Further, it is settled position in law that judicial review cannot be permitted against the decision but has to be confined to the decision making process. It is equally well settled that neither court can sit in judgment on merit of the decision nor it is open to the court to re-appreciate and re-apprise the evidence led before the Enquiry Officer and examine the findings recorded by the Enquiry Officer as a court of appeal and reach its own conclusion. In case, if there is some evidence which the authority entrusted with duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of charge, it is not the function of the court to review the evidence and arrive at an independent finding on the evidence. At this stage, it will be useful to notice few decisions of the Apex Court regarding scope of judicial review in dealing with the departmental enquiries.

In State of Orissa vs. Muldidhar Jena, AIR 1963 SC 404, the Constitution Bench of the Apex Court in para 14 has held as under:-

"14. there are two other considerations to which reference must be made. In its judgment the High Court has observed that the oral evidence admittedly did not support the case against the respondent. The use of word 'admittedly', in our opinion, amounts somewhat to an overstatement; and the discussion that follows this overstatement in the judgment indicates an attempt to appreciate the evidence which it would ordinarily not be open to the High Court to do in writ proceedings. The same comment falls to be made in regard to the discussion in the judgment of the High Court where it considered the question about the interpretation of the words 'Chatrapur Saheb'. The High Court has observed that 'in the absence of a clear evidence on the point the inference dran by the Tribunal that Chatrapur Saheb meant the respondent would not be justified'. This observation clearly indicates that the high Court was attempting to appreciate evidence. The judgment of the Tribunal shows that it considered several facts and circumstances in dealing with the question about the identity of the individual indicated by the expression 'Chatrapur Saheb'. Whether or not the evidence on which the Tribunal relied was satisfactory and sufficient for justifying its conclusion would not fall to be considered in a writ petition. That in effect is the approach initially adopted by the High Court at the beginning of its judgment. However, in the subsequent part of the judgment, the High Court appear to have been persuaded to appreciate the evidence for itself, and that, in our opinion, is not reasonable or legitimate." (emphasis supplied)

In State of A.P. vs. S.Sree Rama Rao, AIR 1963 SC 1723, a three Judge Bench of the Hon'ble Apex Court in para-7 has held as under:-

"7..... The High Court is not constituted in a proceeding during Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it 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. 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 in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly 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 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 even have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which cah be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."(emphasis supplied)

13. The scope of judicial review in dealing with departmental enquiries came up for consideration before the Apex Court in State of A.P. vs. Chitra Venkata Rao, 1975 SCC (L&S) 369 and the Apex Court in para 21 and 23-24 held at under:-

"21. 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 diabled 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 at that

conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judge of facts and if there is some legal evidence on which their findings can be based, the aqequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Apex Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain the finding. The adequacy or sufficiency of evidence led on a point and the interference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal.

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

14. Thus, viewing the matter in the light of the law laid down by the Hon'ble Apex Court, as reproduced above, it is not permissible

for us to interfere in the matter, for the reasons as noticed in the earlier part of the judgment, and to appreciate the matter again and substitute our decision to that of the authorities. Accordingly, the OA being bereft of merit is dismissed with no order as to costs.

(B.L.KHATRI)
Admv. Member

(M.L.CHAUHAN)
Judl. Member

R/