IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 16th day of March, 2010

OA No.542/2005

CORAM:

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

Rampal Verma
s/o Maliram Verma,
r/o 2866, Bagruwalo Ka Rasta,
Chandpol Bazar,
Jaipur, earlier working as
Manager, ESIC, Udaipur.

.. Applicant

(By Advocate: Shri Amit Mathur)

Versus

1. Union of India
through Director General,
Employees' State Insurance Corporation,
Panchdeep Bhavan,
Kotla Road,
New Delhi.

2. Regional Director,
E.S.I.C.,
Panchdeep Bhawan,
Jaipur

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

ORDER

Per Hon'ble Mr.M.L.Chauhan, M(J)

The applicant has filed this OA against the order dated 16.12.2002 whereby the applicant was compulsorily retired from service and the period of suspension form 11.10.2000 till the date of compulsory retirement was treated as non-duty for all purposes. The applicant has also challenged the order dated 16.8.2005 whereby representation of the applicant dated 8.6.2005 was rejected which representation was based upon acquittal of the applicant by the Criminal Court vide judgment dated 21.5.2005. It is these orders which are under challenge before this Tribunal and the applicant has prayed for quashing the aforesaid orders.

2. Briefly stated, facts of the case are that the applicant was issued a chargesheet containing three charges. In fact, the charge against the applicant was that he demanded bribe money form one Shri Ratan Lal Teli in lieu of his benefit due to him for medical leave for the period from 12.1.2000 to 28.1.2000 and for that purpose he sent Shri Subhash Chand Sharma, UDC who was caught red handed while receiving Rs. 500/- for Manager and Rs. 100/- for himself on 24.5.2000. The second charge is that he instigated his subordinate Shri Subhash Chand Sharma, UDC to accept the bribe and third charge is that he referred the matter to the Regional Office although he was competent to settle the claim of the complainant. Based on these allegations, Enquiry Officer was appointed and the Enquiry Officer vide his report dated 23.8.2002 held the charges as proved. Copy of the enquiry report was supplied to the applicant who made

a representation to the Disciplinary Authority. The Disciplinary Authority after discussing the evidence, however, taking lenient view in the matter, imposed penalty of compulsory retirement with immediate effect vide impugned order Ann.A/1. The period of suspension from 11.10.2000 till the date of compulsory retirement was treated as non-duty for all purposes.

It may be stated here that the applicant did not make grievance regarding this order by filing statutory appeal, which was permissible to him under statutory rules. It is also admitted fact that the applicant made a representation dated 8.6.2005 which was rejected vide order dated 16.8.2000. As can be seen from para 3 of this order, the competent authority has categorically recorded that disciplinary proceedings were conducted on different footings and requirement of proof under disciplinary proceedings is not that of a proof beyond reasonable doubt but is that of preponderance of probability. The principles of criminal proceedings are therefore, not applicable to the disciplinary proceedings. Thus, the decision of the Criminal Court shall not affect the case of disciplinary proceedings

3. The respondents by filing reply have justified the action of the authorities.

4. We have heard the learned counsel for the parties and gone through the material placed on record. When the attention of the learned counsel for the applicant was drawn to the Constitution Bench decision of the Hon'ble Apex Court in the case of S.S.Rathore vs. State of MP, AIR 1990 SC 10 whereby the Constitution Bench has

stated that the OA is not maintainable unless statutory remedy by way of appeal is not exhausted, the learned counsel for the applicant submitted that opportunity may be given to the applicant to file statutory appeal in terms of the law laid down by the Apex Court. On merits, the learned counsel for the applicant submits that findings recorded by the Disciplinary Authority is based on punch witnesses who are employees of the department/raiding party and no independent witness was associated, as such, no credence can be found on the testimony of the punch witnesses as well as other officials of the raiding party. It is further argued that in this case raid was conducted by the police whereas the applicant being the employee of the Central Government, the raid/trap has to be laid by the Central Bureau of Investigation (CBI) and not by the local police. The learned counsel for the applicant has further argued that the said raid was outcome of the complaint made by Shri Subhash Chand Sharma, UDC against son of Shri Azad Kumar Sharma, Additional Superintendent of Police, as such, false case has been filed against the applicant.

5. We have given due consideration to the submissions made by the learned counsel for the applicant. The fact that findings recorded by the Disciplinary Authority is based upon the statement recorded during the course of investigation which statement has further been proved in the regular enquiry, as such, it cannot be said to be case of no evidence. The Disciplinary Authority has meticulously discussed the documents which have been exhibited and which have been proved by the relevant witnesses in the

impugned order Ann.A/1. It is based on this appreciation of evidence that finding has been recorded by the Disciplinary Authority, as such, it cannot be said to be case of no evidence. The contention raised by the learned counsel for the applicant that because Shri Azad Kumar Sharma was biased against Shri Subhash Chand Sharma, as such, trap was laid does not improve case of the applicant, as the learned counsel for the applicant could not explain as to why the applicant has been implicated as there was no enmity against him so far as Azad Kumar Sharma is concerned. We have gone through the judgment rendered by the Trial Court. The Trial Court has held that the prosecution has failed to prove the case beyond reasonable doubt. For the purpose of arriving that conclusion, the learned Judge has relied upon some discrepancies in the statement of the complainant as well as the fact that colour of hand wash of Shri Subhash Chand Sharma was pink, does not prove that he has taken the bribe money.

6. Be that as it may, since the applicant has been acquitted on the ground that the prosecution has failed to establish his case against the accused beyond reasonable doubt, ipso facto, cannot be a ground to come to the conclusion that the findings recorded by the Disciplinary Authority based upon evidence collected during the course of enquiry has to be quashed. As can be noticed from the facts as stated above, the applicant has accepted the order passed by the Disciplinary Authority. He did not avail the opportunity by way of appeal. It is only after acquittal by the Trial

Court that the applicant made a representation. This is one of the circumstances that the applicant has accepted findings recorded during the course of disciplinary proceedings and punishment which was awarded to him by the Disciplinary Authority. However, we see no infirmity in the action of the respondents that the standard of proof in criminal and departmental proceedings is different and on that sole ground findings in the disciplinary proceedings cannot be set aside. The learned counsel for the applicant has drawn our attention to the judgment of the Apex Court in the case of G.M.Tank vs. state of Gujarat and Ors., (2006) 5 SCC 446 where the appellant therein has exhausted the statutory remedy available under the discipline and appeal rules by filing appeal and representation. It was in peculiar facts and circumstances of the case after appreciating the evidence the Apex Court has held that there was no evidence to hold the appellant guilty for the charges framed against him in the departmental enquiry and the High Court has not taken into notice the acquittal of the appellant by the Criminal Court and the same was required to be taken note of. As already stated above, in this case the competent authority has already taken note of the judgment rendered by the Trial Court and after taking into consideration the judgment, representation of the applicant has been rejected. Thus, in exercise of judicial power, it is not permissible for us to interfere in such matters especially when it cannot be said to be a case of no evidence.

7. 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 can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."(emphasis supplied)

8. 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.
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> 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."

9. 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) (M.L.CHAUHAN)

Admv. Member Judl. Member

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