IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 13th day of January, 2011

Original Application No. 441/2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Vishwanath Kashyap
s/o Shri Tej Kishore Kashyap,
r/o H.No.113, Saraykayasthan Kota,
presently posted as Junior Engineer-I,
West Central Railway, Workshop,
West Central Railway,
Kota.

..Applicant

(By Advocate: Shri R.N.Mathur)

Versus

1. Union of India
   through General Manager,
   West Central Railway,
   Jabalpur (M.P.)

2. Chief Workshop Manager,
   Wagon Repair Shop,
   West Central Railway,
   Kota.

3. Deputy Chief Mechanical Engineer,
   Wagon Repair Shop,
   West Central Railway,
   Kota.

... Respondents

(By Advocate: Shri Anupam Agarwal)

ORDER

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

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

a) That the impugned order dated 17/5/2006 (Annexure.A/1) passed by the Chief Workshop Manager, Wagon Repair Shop, West Central Railway, Kota directed to be modified and the same may be directed to be substituted by exonerating the applicant in the Departmental Enquiry.

b) That the findings given by the Disciplinary Authority in order dated 17/12/2005 (Annexure.A/2) may be set-aside and quashed and it may be held that the applicant is not guilty of committing misconduct alleged in the Memorandum of Charge-sheet dated 24/2/2000 (Annexure.A/4).

2. Briefly stated, facts of the case are that the applicant while working on the post of Section Engineer was selected for appointment in the Vigilance Department on a tenure posting under overall control of S.D.G.M. It may be stated that the applicant was posted as Inspector (Vigilance) at Ajmer/Kota from March, 1993 to October, 1994. During the above period, the applicant conducted preventive check of supply of Ferrosilicon. In respect of above act, a memorandum of chargesheet was issued to the applicant after a lapse of 6 years on 24.2.2000 under Rule 9 of the Railway Service (Discipline and Appeal) Rules, 1968 for major penalty. At this stage, it will be useful to quote article of charges, which thus reads:-

> "Shri V.N.Kashyap, SE (WRS), kota, while working as Vigilance Inspector/Ajmer during Mar.93 to Oct.'94 found committed gross misconduct in as much that:-

1. He, while conducting a preventive check of supply of Ferrosilicon against purchase order No.18-93-003-3-02045 dt. 7.4.93 at ACOS/Loco Ajmer from 26.5.93 to 20.8.93 had observed by visual inspection that material supplied was not in size mentioned in purchase order (Spot Note dt. 26.5.93 marked Ann.'B'). He not only failed to seize the documentary evidence but gave vague direction to suspected officials by recommending that sample be sent to CMT for chemical analysis, thus he helped the suspects to accept substandard supply.

By the above act of omission and/or commission Shri V.N.Kashyap exhibited lack of devotion to duties and acted in a manner of unbecoming of a Railway servant and thereby violated Rule 3.1(ii) & (iii) of the Railway Service (Conduct) Rules, 1966."

Alongwith the article of charges, statement of imputation in support of article of charges was also annexed in which it was alleged that :

1) He while conducting the preventive cheks of supply of ferrosilicon against P.O. No.18/93/0003/3/02045 dt 7.4.93 (P.O. at CP-2 of case filed marked Exh.1) at ACOS/L/All on 26.5.93 has found and witnessed by visual inspection that the supply received was of sub-standard and not supplied in size mentioned in the purchase order i.e. lump size of 50 mm. to 150 mm. +1 10% tolerance. Here he noticed and recorded that the major part of supply was under size and less than 50 mm. This was jointly observed by Shri Kashyap and Shri Shailesh Mathur, DSK (R) on 20.5.93 and recorded in spot note marked as Annex.'E'.

2) The material was not in required lumpsize and this was sufficient sound to reject the supply and need not require any expert opinion to determine the lumpsize. The question of sending the sample to CMT for testing should arise only when the material conforms to the requirement of physical and dimensional properties.

Shri Kashap, who had observed that the material was not as per P.O., he instead of seizing the documentary evidence i.e. R/Note No.42/3061 dt. 15.5.93 marked Exh.'A' vide which the material was accepted by ACOS/Loco/All tried to shield the suspects by recommending that the sample be sent to CMT for chemical analysis.

3. In the sport note (Exh.'E') he has recorded that one sample from the supply of 15000 Kgs. Ferrosilicon received from M/S, Nitin Ind.Corp. taken and sealed in present of him and DSK(R), Shri Shailesh Mathur and sent to Sr. CMT/Ajmer for testing. However, neither identification of sample is specified nor any duplicate sample is preserved.

He in his statement dt. 20/2/93 marked as 'Y' stated vice answer to Q.No.11 to 14 that the sample was collected from stores ward and handed over to Sr. CMT in his presence for which he had not kept any documentary evidence. He pleaded ignorance on the matter of recording proper identification of sample and getting the sample tested independently.

The records viz. his Note. No. Nil dt. 26.5.93 addressed and received by ACOS/L/All (at CP-19 of Exh.I) as well as ACOS/L/All's letter No. LS/CRZ/38/93/CMT/223 dt. 26.5.93 addressed to Sr. CMT-All shows that the sample has been drawn and sent to Sr. CMT by ACOS/L....himself and not by Shri Kashyap, VI/All. This is further strengthened by the remarks of Sr. CMT in his test report No. C&M/CH/5 dt. 4.6.93 at CP-24 of Exh.I which read as "It is learnt that the above sample has been sent from Shopfloor to the Lab. It may please be confirmed that in future such store are issued to shopfloor for use after CMT Lab. Testing." Moreoever, on receipt of this report which was also endorsed to Shri Kashyap has not raised any objection on the above remarks and authenticity of the sample.

4. He in his statement stated that he seized the file but same did not contain the R/Note No.42/3061 dt. 15.5.93. However, in answer to Q.No.3 he stated that Vigilance Inspector should seize all possible related documents as soon as possible without giving chance to suspects to temper them. However, he not only failed to seize the

R/Note but also returned the case file on 23.6.93 to ACOS/Loco/All without any further investigation on the case.

5. He had been reminded on 5.1.94 and 22.8.94 to give further information and report on the preventive check conducted by him on 26.5.93 by Vigilance Office, but he has not taken any action further. For this he has explained in his statement that he visited Ajmer 3/4 times to collect necessary information but ACOS/Loco and DSK/R were not available and so he could not furnish further information required by Vigilance Organisation. He left Vigilance Organisation in Oct.94. It is inconceivable that these two officials were not available at their respective workplaces for more than an year.

6. By his above act, Shri Kashyap has provided ample opportunity to the suspected officials i.e. Sh. Mukesh Rajawat ACOS/L and Shri Sailesh Mathur, DSK(R) to destroy evidences like R/Note No.42/3061 dt. 22.4.94 including the record copy on master folder vide which once a substandard supply was accepted and also allowed to get a questionable sample tested through Sr. CMT/All on their own and then accepting the same substandard material and thereby favouring the supplier.

By the above act of commission and/or omission, Shri V.N.Kashyap exhibited lack of devotion to duty and acted in a manner of unbecoming of a Rly. servant and thereby violated rule 3.1(ii) & (iii) of Rly. Service (Conduct) Rules-1966.

The charges were denied by the applicant. On 24.7.2000, the enquiry officer was appointed and the Enquiry Officer vide enquiry report dated 26.1.2005 (Ann.A/3) exonerated the applicant from the charges but the Disciplinary Authority, the Deputy Chief Mechanical Engineer who issued the chargesheet to the applicant disagreed with the findings given by the Enquiry Officer. The disagreement of the Disciplinary Authority with the Enquiry Officer was on the following grounds:-

(i) That there was no need of sending 'Ferrosilicon' for chemical analysis because on usual examination of the substance it was not in the lump size.

(ii) That the sample which was sent for chemical examination was not marked for identification and a duplicate sample was not preserved by counter check, if require at later stage and, therefore, the chemical which was examined was not same which was said to have been seized.

(iii) That the charged officer did not submit his report on the preventive check on 26.5.1993 and 22.8.1994. The charged officer left the vigilance organization in October, 1994.

(iv) That the material though finally consumed did not cause loss to the Railways but the material consumed was sub-standard material and the private party manipulated the system with the help of charged official.

The Disciplinary Authority thereafter imposed penalty of dismissal vide order dated 17.12.2005. The order of the Disciplinary Authority was challenged before the Appellate Euthority and the Appellate Authority vide impugned order Ann.A/1 imposed the following punishment.

> "Reversion from present post of Section Engineer Grade 6500-10500 to the post of JE-I grade 5500-9000 at a basic pay of Rs. 5500 for two years with future effect. Intervening period, period from dismissal to joining back, shall be treated as "dies non"

The case as projected by the applicant is that contract was entered between the railway and the contractor to supply ferrosilicon and he was posted as Vigilance Inspector and in that capacity he made preventive check of the supply of the ferrosilicon. During visual inspection, the applicant found that ferrosilicon supply is not in the prescribed lump size, hence he took a sample of ferrosilicon and immediately after inspection of the

ferrosilicon he prepared a spot note on 26.5.1993 which was duly signed by him and Shri Shailesh Mathur, Ward In-charge DASK-III, Loco Store. The sample was sealed and sent for chemical examination through ACOS. As such, according to the applicant, he has followed the prescribed procedure and under these circumstances, charge against the applicant does not prove. It is on the basis of these facts the applicant has filed this OA thereby praying for the aforesaid reliefs.

The applicant has also framed the following questions of law for our consideration:-

a) Whether Deputy Chief Mechanical Engineer who is an authority lower than the post of Chief Works Manager who is the appointing authority, has jurisdiction to issue memorandum of charge-sheet to applicant ?

b) Whether a delinquent should not be provided an opportunity of rebuttal in his defence in departmental proceedings by way of furnishing him the relevant and vital documents?

c) Whether applicant has committed any misconduct while sending the sample of "Ferrosilicon" for its chemical examination to the Laboratory as per the Bureau of Indian Standards published standard and specification for Ferrosilicon ?

d) Whether prosecution witness can be termed as "interested witness" who also belongs to the Vigilance Department in which applicant was working and as such, reliance can be placed on such "interested witness" ?

e) Whether delayed initiation of departmental enquiry related to the period March, 1993 to October, 1994 on 24.2.2000 by issuing a memorandum of charge-sheet, does not suffer from unexplained delay and laches ?

3. Notice of this application was given to the respondents. The respondents have filed reply thereby justifying their action.

4. The applicant has filed rejoinder.

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 the articles of charge as well as imputation of misconduct argued that even if the allegation as levelled in the articles of charge read with statement of imputation is accepted on its face value, no misconduct is made out warranting imposition of penalty. The learned counsel for the applicant further argued that in sum and substance the allegations levelled against the applicant is that- i) he should not have sent the sample for chemical examination and ii) relevant record was not seized and this act of the applicant has provided opportunity to the suspected officials Shri Mukesh Rajawat and Shailesh Mathur to destroy the evidence and also that on the sample collected identification was not specified and duplicate sample was not preserved. In other words, the applicant committed misconduct by sending sample of Ferrosilicon to chemical examiner whereas non-adherence to the size was sufficient for rejecting the supply. The learned counsel for the applicant has also drawn our attention to the Spot Note prepared on the same date i.e. on 26.5.1993 (Ann.A/13) and dated 26.5.93 (Ann.A14), which thus reads:-

" SPOT NOTE (Ann.A/13)
LOCO STORE LOCO WORKSHOP-Ajmer

The material Ferror-Silicon, PL-No.90.79.3109 supplied by M/s Hitin Industrial Corporation Kandivali, Bombay (quantity received 15000 Kg. (15 MT) checked.

By visual inspection the material to be sub-standard and not supplied in size mentioned in description of Purchase order, the material should be in lump size of 50 mm to 150 mm + 10% tolerance, while the major part of supply is under size less than 50 mm.

One sample from above said supply taken and sealed in presence of undersigned and DSK III Shri Bhailesh Mathur (sic) and sent to Sr. CMT Ajmer for testing.

Sd/- V.N.Kashyp.
Sd/-SHAILESH MATHUR VI-Ajmer
WARD INCHARGE SSK III
LOCO STORE LOCO WORKSHOP/Ajmer."

Note (Ann.A/14)
"
Date: 26.5.93

Kindly arrange to send sample for chemical analysis of Ferro Silicon received from M/s Nitin Industrial Corporation Kandivali Baombay to Sr. CMT-Ajmer-supplied against P.O.No.18.93.0003.3.02045 dt.7.4.93. Entire supply by the same firm should kept separately.

Sd/- V.N.Kashyap.
VI Ajmer.

DSK/R
For n/a
Sd/-"

6. If one has regard to these two documents, it is evident that on inspection, the applicant found the material to be sub-standard and not of requisite description, as such, one sample of the material was taken and sealed in the presence of one independent witness i.e. DSK-III Shri Shailesh Mathur. It is also not in dispute that sample was sent to the chemical examiner on the same date through the office of ACOS/L and not dispatched by the applicant himself. The fact that it was dispatched by the office of ACOS and not by the applicant himself is immaterial, as it is not the case of the

respondents that the sample so seized was tempered with or no sample was sent. On chemical analysis, the sample was found to be in order. The plea taken by the respondents that the applicant has only collected one sample; on the sample collected identification was not specified and sample was not preserved is of no consequence. However, the stand taken by the respondents that the sample was not required to be sent to the chemical examiner and the same could have been rejected on the basis of the findings recorded in the seizure report to the effect that on visual inspection the material appear to be sub-standard and not supplied in the size mentioned in description of purchase order, requires out right rejection in view of the instructions issued by the department dated 27.6.1994 which has been placed on record as Ann.A/20. Para 3.7.1 (II) of the said instructions stipulates that where prima-facie some mischief is felt, material must be subjected to detailed check in terms of specification/Drg. as laid down in 3.7.2. Para 3.7.2 (C) stipulates that the material should be subjected to the chemical test to find out chemical composition. Thus on the face of these instructions and the fact that if the applicant has felt desirability of sending the material for chemical examination to the chemical examiner, it cannot be said that action of the applicant is against the rules/procedure as laid down by the department, thus amounting to misconduct. Rather by sending the sample to the chemical examiner for its chemical examination, the applicant has ensured that the material is not of inferior quality besides the fact that prima-facie the applicant was also of the view that the

material does not conforms to the physical standards also. Not only that, as can be seen from Ann.A/14, relevant portion of which has been reproduced hereinabove, the applicant has also advised that entire supply by the same firm should be kept separately till the sample is not got tested by the chemical examiner. The respondents have never disputed that the document Ann.A/14 dated 26.5.93 prepared on the same date i.e. it is not a genuine document. On own showing of the department, as is evident from disagreement of the Disciplinary Authority, the material finally consumed did not cause loss to the railways. Thus, it cannot be said that the applicant has committed any illegality by sending the sample to the chemical examiner rather than rejecting the same, as the same was not in the lump size. We have reproduced the findings of the Disciplinary Authority in the form of disagreement note to the enquiry report in the earlier part of the judgment. But for the descending note to the effect that the sample should not be send for chemical examination and sample so sent for chemical examination was not marked for identification and duplicate sample was not preserved and also that the applicant has not sent report of preventive check on 26.5.93, nothing has been stated how the charges against the applicant stood proved on the basis of evidence led during the course of enquiry. According to us, recording of such finding in the form of disagreement note without any evidence whereby article of charges were proposed to be sustained, is not sufficient to hold that the applicant is guilty of misconduct when viewed in the light of the instructions regarding

inspection of stores dated 27.6.1994 (Ann.A/20) read with spot inspection held on the same date i.e. on 26.5.93 (Ann.A/13) and further note of the same date Ann.A/14, relevant portion of which has been reproduced hereinabove. It may be stated here that supply of the Ferrosilicon was received by the Assistant Controller of Stores, Loco, Ajmer vide its receipt dated 15.5.1993. In case the material was not in conformity with the standards prescribed in the supply order, the Assistant Controller of Stores should not have accepted such material. That apart, before accepting the supply, it is also incumbent upon the respondents to got the sample checked from the laboratory whether the sample conforms the specification. Having not done so, it appears that the applicant has been made scapegoat in the matter.

7. Be that as it may, we are of the view that it cannot be said to be a case where the charges against the applicant have been substantiated warranting imposition of major penalty. It was for that reason that the Enquiry Officer has also held the charges as not proved. The only witness produced by the respondents i.e. Shri K.K.Sharma has also stated in reply to question No.8 that in the situation as in this case where the material is suspected not as per the requirements of the purchase order, at least a detailed test analysis is required on the doubts raised on the material. Further in reply to question No.13, the said witness has also stated in respect of letter dated 26.5.93 (Ann.A/14) wherein it has been clearly mentioned that entire supply by the same firm should be kept separately, this witness has stated that he agree with this letter of

26.5.93 as it is on record. Thus, if the matter is viewed in its entirety in the light of the Spot Note dated 26.5.93 (Ann.A/13) and another letter of the same date Ann.A/14 where the applicant has observed that the entire supply of the Ferrosilicon be kept separate till the same is not examined by the chemical examiner, which document form part of the enquiry proceedings, the case against the applicant does not stand proved. Thus, ipse-dixit of the Disciplinary as well as the Appellate Authority that the applicant has committed procedural lapse by sending the sample for chemical examination and not rejected the same, cannot be accepted. The factum of observation made by the applicant in the aforesaid two documents was in the notice of the department. It was not within the scope and duty of the applicant to seize the entire material and cancel the contract. Thus, according to us, the action of the respondents in imposing the punishment on the applicant on the facts as noticed above when no financial loss has been caused to the department is unwarranted and deserves to be quashed.

The matter can be looked from another angle also. As already stated above, the allegation against the applicant, as can be seen from article of charges, which have been reproduced in the earlier part of the judgment, were that as per the spot note dated 26.5.1993 whereby it was observed by the visual inspection that the material supplied was not in size mentioned in the purchase order, he did not seize the documentary evidence but gave a vague direction by recommending that sample be sent to CMI for chemical analysis, thus he has helped the suspects to accept the

sub-standard supply. When the applicant was exonerated by the Enquiry Officer, the Disciplinary Authority while disagreeing with the findings given by the Enquiry Officer recorded the finding in the form of disagreement note on three counts namely- i) there was no need of sending ferrosilicon for chemical analysis, ii) the sample was not marked for identification and duplicate sample was not preserved and iii) that the charged officer has not sent report of preventive check on 26.5.93 and 22.5.94 and it has also been stated in the disagreement note that the material finally consumed did not cause loss to the railways. The applicant was required to file objection to the disagreement note to the aforesaid extent. The Disciplinary Authority has given contrary finding which was neither relate to the charges levelled against the applicant nor the said finding relate to the grounds raised in the disagreement note, relevant portion of which has been reproduced in the earlier part of the judgment. At this stage, it will be relevant to quote following findings, which thus reads:-

> "On the basis of facts available on record, it is concluded that:-
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> 1. It is an undisputed fact that the material was substandard with regard to lump size. The financial implication for such deviation is enormous. Those who deal with ferro silicon are very well aware that higher the lumps size higher is the rate and rates are lower for lower lump size.
> 2. As regard chemical suitability of the material by the CMT, I have already mentioned that gunuity of the sample itself is questionable on account of improper sampling of the sample by the CO. Moreover, when the material was found substandard with regard to physical parameter, chemical suitability does not dilute the fact that material was substandard with regard to an important physical parameter having enormous financial implication. As regards the so called practical

suitability of the material, I may only mention that "confirming to a specification" and "practical suitability" both are entirely different things and stands on the different footing. Both aspects should not be linked together with a view to justify the acceptance of substandard material.

3. The plea that material was finally consumed, and therefore, was no loss to the Railway is grossly misplaced. The fact that substandard material was consumed and beneficiary was a private party who could manipulate the system to his advantage with the help of CO and other suspected officials.

4. In fact, the concerned official accepted the substandard material. However, bore it could be consumed it was detected by the CO in the capacity of vigilance inspector but instead of taking right course of action to ensure that substandard material is not injected into the railway system, he made a deliberate attempt at different stage to help the firm as well as to the suspected officials to their advantages. In fact, it was an act of abatement of crime on part of CO.

....."

Thus, in the conclusion drawn by the Disciplinary Authority as reproduced above, the finding recorded at item no.1 was not part of the chargesheet as the charge levelled against the applicant was not in relation to the financial implication, rather the Disciplinary Authority in his disagreement note has specifically stated that no financial loss was caused to the department. Further, the finding recorded at item no.2 also does not form part of the chargesheet as the charge levelled against the applicant was not relating to improper sampling of the sample. The charge is that the applicant was not required to send the sample to the chemical examiner at all. The fact remains that the sample so taken by the applicant was sent to the chemical examiner and on chemical analysis the sample conforms to the prescribed standard. Whether the sample was not marked for identification and duplicate sample was not

preserved is of no consequence, inasmuch as, the sample so taken and sealed in the presence of witness was found intact by the chemical examiner. The requirement of preserving the duplicate sample is in case the first sample does not conforms to the required standards and in that eventuality the parties whose sample has failed has a right to ask for re-examination of the sample. This is not the case of such nature. Further, the respondents have failed to establish how prejudice has been caused to the department on that account. The finding recorded against item No.3 is contradictory. On one hand the Disciplinary Authority has itself stated that no financial loss has been caused to the department and on the other hand finding has been given that substandard material was consumed and beneficiary was a private party. It is not understood on what basis this part of finding has been recorded by the Disciplinary Authority. The chemical report reveals that material was not substandard. However, as can be seen from Ann.A/14, advice was given by the applicant not to use the said material, despite that, the material was used by the department. To the similar effect is also the finding recorded at item No.4. Thus, from whatever stated above, it is evident that finding recorded by the Disciplinary Authority is neither based on any evidence nor relates to the charges levelled against the applicant and the objection raised in the disagreement note, hence perverse. At the sake of repetition, it may be stated that the charge levelled against the applicant was required to be substantiated on the basis of expert evidence of only one witness namely Shri K.K.Sharma, ex-

Chief Vigilance Inspector. This witness in his statement dated 31.1.2004 (Ann.A/7) in reply to question No.8 and question No.13 has specifically stated that the sample was further required to be pre-tested from the chemical examiner and also that the advice given by the applicant in his letter Ann.A/14 to the effect that entire supply by the same firm should be kept separately is correct. Thus, on the face of this evidence of only witness cited on ~~behalf of~~ behalf of the prosecution, the charge against the applicant that sample was not required to be tested from chemical examiner has not been substantiated by the prosecution. Thus, the finding recorded to the contrary without there being any legal evidence is perverse and cannot be accepted. It was for the prosecution to prove the charge against the applicant on the basis of documentary evidence as well as on the basis of evidence led by the witness relied upon by them but they have failed to discharge their duty and the findings recorded by the Disciplinary Authority as reproduced above are perverse and based on no evidence and thus cannot be accepted. The applicant acted within the sphere of his duty and as per the instructions of the department by sending sample to the chemical examiner and at the same time advised the department that the said material may not be used. Thus, it cannot be said that the applicant has committed any misconduct while performing his duty. Once the applicant vide his note dated 26.5.93 has advised the department not to use the material which advice was given by the applicant in consonance with the departmental procedure as deposed by the expert witness

produced by the prosecution himself, the applicant cannot be held liable for the inaction and lapse on the part of other authorities who despite his specific advice has used the material. Thus, rather than the applicant, it is the other functionaries of the department, who can be said to be guilty of misconduct.

8. That apart, in this case the incident relates to 26.5.93 whereas the chargesheet was issued to the applicant on 24.2.2000, after a lapse of more than six years. In between the applicant was granted promotion on 24.4.1996 and was also appointed on the post of Junior Engineer Grade-II on 18.8.1996. The Hon'ble Apex Court in the case of M.V.Bijlani vs. Union of India and Ors., (2006) 5 SCC 88 relying upon its earlier judgment in State of M.P. vs. Bani Singh, 1991 SCC (L&S) 638 has quashed the charge memo on account of delay. At this stage, it will be useful to quote para 17, which thus reads:-

> "17. In State of M.P. v. Bani Singh, this Court has clearly held:-
>
> "The irregularities which were the subject matter of enquiry are said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage."

In the case of M.V.Bijlani (supra) also the disciplinary proceedings were initiated after a lapse of six years and continued

for 7 years. It was held that under such circumstances, prejudice has been caused to the appellant. Even on this ground, the applicant is entitled to relief. In the instant case also, the respondents have not taken any action against the Assistant Controller of Stores, Loco, Ajmer who has accepted the supply of the Ferrosilicon which according to the inspection report was not upto the prescribed standards. Further, the respondents did not take any step to get the sample checked at the initial stage before accepting the supply order. It appears that the applicant has been punished simply on the ground that he has sent the sample for chemical examination in order to verify whether the sample conforms to the prescribed standard though it was not of the size mentioned in the purchase order. If this additional procedure which is in conformity with the procedure, is resorted by the applicant, it cannot be said that the applicant has exceeded his authority or has not acted in accordance with the instructions. Once the defect was noticed, it was for the competent authority to cancel the contract and it was not for the applicant to reject the supply order. Thus, initiating disciplinary proceedings after a lapse of more than six years when the respondents have stated that no financial loss was caused to the department is mala-fide exercise of powers and respondents have not given any satisfactory explanation for such inordinate delay, although the applicant in the OA has raised question of delay in initiating departmental proceedings on which findings of this Tribunal is called for.

9. Further, the contention raised by the learned counsel for the applicant that in this case the order of dismissal was passed by the Disciplinary Authority who is not competent, as in his case the appointing authority is Chief Works Manager, whereas the order of dismissal was passed by the Deputy Chief Mechanical Engineer relying upon the judgment of this Tribunal in OA No. 256/2006, Puranchand Sogra vs. UOi decided on 29.1.2010, as such the findings recorded by the Disciplinary Authority and relied upon by the Appellate Authority is bad, is not required to be gone into as we have categorically held that in the facts and circumstances of this case charges levelled against the applicant have not been proved, and the findings given by the Disciplinary Authority as relied by the Appellate Authority are perverse and not based on any evidence and no explanation has been given for initiating the proceedings after inordinate delay as such, it was not permissible for the respondents to inflict major penalty on the applicant on the basis of the charges levelled against the applicant, more particularly, when the Enquiry Officer has not found the applicant guilty of the charges.

10. For the foregoing reasons, the impugned order dated 17.5.2006 (Ann.A/1) and 17.12.2005 (Ann.A/2) are quashed. The applicant shall be entitled to all consequential benefits. No costs.

Anil Kumar

(ANIL KUMAR)
Admv. Member

(M.L.CHAUHAN)
Judl. Member

R/