

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 09.11.2011

OA No. 385/2008

Mr. P.N. Jatti, along with Mr. Amit Mathur, counsel for applicant.
Mr. Anupam Agarwal, counsel for respondents.

Arguments heard.

The O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)

MEMBER (A)

J. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 385/2008

DATE OF ORDER: 09.11.2011

CORAM

**HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

R.P. Meena S/o Shri S.L. Meena, by caste Meena, aged about 39 years, R/o Railway Officer Rest House No. 1, Arawali Club Ganpati Nagar, presently working as Divisional Safety Officer O/o D.R.M. Office, Jaipur.

...Applicant

Mr. P.N. Jatti along with Mr. Amit Mathur, counsel for applicant.

VERSUS

1. Union of India through the Secretary to the Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
2. General Manager, North Western Railway, Jaipur.

...Respondents

Mr. Anupam Agarwal, counsel for respondents.

ORDER (ORAL)

The applicant, Shri R.P. Meena, was issued memorandum of charges on 31.07.2001 (Annex. A/2) containing the following articles of charges:

"Article of charge-I

Shri R.P. Meena deliberately and with malafide intention negated the order of his superior, DCM/BSL by regretting an application for waiver of demurrage charges on consignments received under RR No. 017735, 017738 & 017741 dated 20/4/99 Ex. MGCG to Nasik Road station although it was in his knowledge that his superior DCM/BSL had already granted 65% waiver in the same case.

Article of charge-II

During the recording of his clarification on 1/9/99 by the Vigilance Branch, he made a physical alteration in Office Note No. BSL/Comml./CLP/Nasik/54/99 dated 21/6/99 on which he had passed irregular orders with a view to diminish his liability.

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Article of charge-III

Shri R.P. Meena deliberately and with malafide intention assessed the damages of consignment received at Nasik Road station under RR No. 014171 dated 15/1/99 in an irregular manner with a view to extend undue benefit to the consignee/agent.

Article of charge-IV

During the recording of his clarification on 27/7/99, Shri R.P. Meena misled the Vigilance Branch by giving factually incorrect statements and submitting a manipulated document."

The statement of imputations of misconduct / misbehaviour in support of each article of charges was enclosed as Annexure-II. A list of documents and also a list of witnesses by whom the articles of charge framed against the applicant were proposed to be sustained were enclosed as Annexure-III & IV, respectively. An opportunity was given to the charged officer / applicant to submit his statement of defence. The applicant submitted his defence statement on 29.11.2001. After considering the defence statement of the applicant, the disciplinary authority decided to initiate an enquiry against the charged-officer/applicant and an Inquiry Officer was appointed to conduct the enquiry. The Inquiry Officer vide his report dated 29.06.2004 held articles of charges-I, III and IV as proved, and article of charge-II as not proved against the charged officer. Copy of the Inquiry Officer's report was forwarded to the charged officer / applicant vide memo dated 14.08.2004 (Annex. A/3) for submitting his representation. The applicant submitted his representation dated 25.08.2004. Thereafter, the Disciplinary Authority, after considering the report of the Inquiry Officer and the representation of the charged officer / applicant, vide order dated 03.09.2007

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(Annex. A/1) imposed a penalty of "reduction of two stages in time scale for a period of two years with future effect (i.e. which will have the effect of postponing his future increments of pay)." The charged officer / applicant, aggrieved by the said penalty order imposed on him, preferred an appeal before the appellate authority on 05.10.2007 (Annex. A/4). The appellate authority sought the advice of Union Public Service Commission (UPSC), and after considering all the facts and circumstances of the case upheld the orders of the disciplinary authority and rejected the appeal of the applicant vide order dated 21.08.2008 (Annex. A/8). Aggrieved by these orders, the applicant has filed the present Original Application claiming for the following reliefs: -

"8.1 That by a suitable writ / order or the direction, impugned order dated 3.9.07 vide Annexure A/1, Charge memo dated 31.7.01, order dated vide Annexure A/8 (21/8/08) with the advice of UPSC dated 5.8.08 be quashed and set aside.

8.2 That by a suitable writ / order or the directions the humble applicant be promoted in J.A.G. by scale with effect from 25.9.02 where his junior varinder kumar was promoted as in J.A.G. pay scale and further in selection pay scale. This benefit be allowed to the applicant with all the consequential benefits with arrears with a justified interest.

8.3 Any other relief which the Hon'ble Bench deems fit."

2. The applicant has stated that during the course of enquiry, no charge was proved, as no ground has been given by the Inquiry Officer but the charges have been proved by the inquiry officer on extraneous matters. Though the applicant has mentioned in his reply that the article of charge-I has no base but no authority has paid any attention towards the mentioning of the applicant. The applicant's duty was only to

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sign the letter and he did so and after signing the letter sent it to the section. Further, it was the duty of the clerk concern of the section to dispatch the letter, therefore, there is no question arises of delaying the letter or withholding it deliberately by the applicant. He has further stated that the letter of 65% wiaval of demurrage was prepared vide order dated 15.06.1999 of the Divisional Commercial Manager and it was signed by the applicant on 16.06.1999 and it was sent back to the section, therefore, it cannot be said that the applicant deliberately delayed the sending of letter. The contents of the letter dated 15.06.1999 and the contents of the letter dated 21.06.1999 are quite different, and to prove his point, he has given details of the facts of these two letters as under: -

"15.6.99:

1. R.R. No. 017135 and others.
2. Wagon No. CR 28544 and others
3. XMGCG to NA Road.
4. Wagon unloaded time 10.30

Where the facts of the letter dated 21.6.99 are quite different as below:

1. R.R. No. 17734.
2. Wagon No. SE 25554 and others.
3. X-Manikgarh to N.A. road.
4. Wagon unloaded time 11.00

It is prayed that by the above facts it clearly reveals that the note sheet of 21.6.99 is quite different from the note sheet dated 15.6.99. It is further prayed that the note sheet dated 21.6.99 had been regretted in view of the decision circulated vide inspection note dated 15.6.1999."

Therefore, it is wrong to say that the applicant deliberately and with malafide intention negated the orders of his superior, DCM/BSL by regretting an application for waival of demurrage

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charges on consignments received under RR No. 017735, 017738 & 017741 dated 20/4/99 Ex. MGCG to Nasik Road station although it was in his knowledge that his superior DCM/BSL had already granted 65% waival in the same case.

3. With regard to article of charge-III, the applicant has stated that when the consignee did not agree with the assessment of Chief Goods Supervisor of 168 bags at 1528 Kg. (i.e. 1910 Kg. assessed damage less 20% salvage). This disagreement was reported to the divisional office. On receiving the report of this disagreement, the authorities took the action as per para 1843 of IRCM Vol. 2. The applicant being ACM goods was ordered by the competent authority for the reassessment in the matter of wagon No. NR 63624. The applicant thereafter acted as per para 1846 of IRCM Vol.-II and took two independent witnesses to assess the real damage and the opinion of the other witnesses was taken separately and after the position of damage was assessed by 22,500 Kg. and 20% salvage that net 18,000 Kg. All the act of the applicant, therefore, was as per rules. It was the opinion of two independent witnesses that all 588 bags were in damage condition and the same opinion was of the Section Engineer Nasik. Therefore, the applicant has prayed that even this article of charge-III is not proved against the applicant and any conclusion to the contrary is against the provisions of IREM Vol.-II and are misconceived against the applicant.

4. The applicant has also denied article of charge-IV. According to him, he has not stated any incorrect statement on

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whatever questions were asked by the Deputy Chief Vigilance Officer (T). The statements given by the applicant on 27.07.1999 were quite correct and factual. He has denied that any document was manipulated by the applicant. The applicant submitted the certified copy with the signatures as the original was sent to claim office on 02.07.1999 and the certified copy of the original was kept in record, as the original copy requires only the signatures of two independent witnesses not of the officer who was deputed by the competent authority to assess the damage, therefore, any conclusion to the contrary is incorrect and misconceived. Therefore, all the acts of the applicant were as per rules.

5. The applicant has further stated that the remission memo was prepared on the basis of the letter dated 16.06.1999. It was prepared on 04.07.2002, whereas the applicant was transferred from the post of ACM Bhusawal on 13.06.2000, therefore, the charge against the applicant is quite incorrect and baseless. He has further stated that the letter dated 16.06.1999 and the file of the concerning letter was in the custody of the respondents and therefore the applicant is not responsible for the late remission memo on 04.07.2002 and therefore the applicant has prayed that the charge memo dated 31.07.2001 (Annexure A/2), the order passed by the disciplinary authority dated 03.09.2007 (Annexure A/1) and the order passed by the appellate authority dated 21.08.2008 (Annexure A/8) be quashed and set aside and the Original Application be allowed, and further that he may be promoted in J.A.G. scale with effect from

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25.09.2002 the date from which his junior Varinder Kumar was promoted in the J.A.G. pay scale.

6. The respondents have filed their reply. The respondents have stated that this Original Application is not maintainable as it is based on conjectures, surmises and inferences of the applicant. They have further stated that the present OA is not maintainable in law as the same urges upon this Hon'ble Tribunal to re-assess the evidence on record and to come to a different conclusion which is not permissible in law as the power of judicial review of this Tribunal cannot be invoked to re-assess the evidence as held b the Hon'ble Supreme Court in a catena of cases including the case of **Transport Commissioner s. A. Radhakrishnan**. The Tribunal's powers of judicial review do not take into its ambit the exercise of going into the truthfulness and correctness of the charges and the findings as held by the Hon'ble Supreme Court in the case of **Transport Commissioner vs. K. Ramamurthy** and in the case of **Registrar, High Court of Bombay vs. S.S. Patil and Ors.** The Tribunal cannot be approached to act as a court of appeal so as to go into the facts of the case to arrive at a different conclusion.

7. The disciplinary proceedings against Shri R.P. Meena were initiated according to the rules. The applicant was accused of negating the order of his superiors with malafide intention, physically altering the records, wrong assessment of damages with malafide intention and misleading the Vigilance Branch by giving manipulated documents. To this effect, he

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was issued a charge memo dated 31.07.2001 (Annex. A/2). Out of four charges, three were held as proved in the departmental enquiry. The procedure prescribed under the statutory rules was duly observed providing the applicant with whatever documents required at whatever stage to be served. Principles of natural justice were duly observed affording him opportunity to defend his position.

8. After grant of personal hearing and inspection of the documents, he submitted his statement of defence on 29.11.2001. The General Manager, Central Railway, after considering the aforesaid statement of defence submitted by Shri R.P. Meena, remitted the case to inquiry. Later on the basis of representation dated 22.10.2002 for change of inquiry officer, Shri S.K. Jagdhari, retired CRS was appointed as new inquiry officer, who held charges-I, III and IV as proved while holding charge-II as not proved against Shri Meena. As required, a copy of the IO's report was served on the CO and his representation obtained on the inquiry officer's report. Shri R.P. Meena submitted a representation dated 25.08.2004. In the said representation, Shri Meena informed that the Hon'ble High Court Bench vide their order dated 16.08.2004 had stayed the matter regarding his disciplinary case till further orders and, therefore, informed that his representation on IO's report would be submitted subject to outcome of the case pending before the Hon'ble High Court at Jaipur. In view of the above order of the Hon'ble High Court further action in the matter was kept pending. Later, Shri R.P. Meena submitted another representation dated 29.07.2006 in which he, inter



alia, informed that he had already submitted his representation dated 26.11.2005 though the Hon'ble High Court, Jaipur had stayed the proceedings at the relevant time. In the said representation, the applicant further informed that the Hon'ble High Court of Rajasthan at Jaipur vide their orders dated 25.07.2006 in D.B. CWP No. 4313/2004 filed by him have directed that final decision on the report of the IO shall be taken without any further delay.

9. The General Manager, NWR, after considering the case including the charged officer's representations, as aforesaid and other relevant records of the case, finally forwarded the case to the Railway Board as the penalty intended to be imposed by the said General Manager on Shri K.P. Meena was not within his competence to impose.

10. The Railway Board after carefully considering the relevant record of the disciplinary case against the applicant imposed the penalty of reduction of two stages in time scale for a period of two years with future effect (i.e. which will have the effect of postponing his future increments of pay).

11. The applicant assailed the above penalty order and preferred an appeal dated 05.10.2007 to the President (Appellate Authority). The appellate authority in consultation with the Union Public Service Commission rejected the said appeal on the ground that there is no merit in the appeal of the applicant vide their order No. E(O)1-2008/AE-3/NWR/05 dated 21.08.2008. Aggrieved by the rejection of the

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applicant's appeal by the appellate authority, the applicant has filed the present Original Application. Thus, it will be clear from the facts of the case that there is no legal infirmity or lapse in the disciplinary proceedings in this case, therefore, the Original Application has no merit and it should be dismissed.

12. Heard learned counsel for the parties and perused the relevant documents on file. Learned counsel for the applicant argued the facts which he has stated in his OA. He argued that the framing of the charges was malafide and, therefore, the charge memo dated 31.07.2001 (Annexure A/2) may be quashed. Even on merit, he denied all the charges. On charge no. 1, it has been stated that the applicant deliberately and with malafide intention negated the orders of his superiors but no witness has said that the action of the applicant was malafide or he deliberately negated the orders of his superiors and, therefore, this charge is bad and is liable to be quashed. He further stated that it was not the job of the applicant to dispatch the letters signed by him. It was the duty of the office to dispatch the letters. Even otherwise also, one-third of the remaining penalty was deposited by the party and, therefore no charge was made out against him. He argued that Exhibit D44 should have been relied upon by the Inquiry Officer but he has not done so. He further argued that in the list of witnesses, there were 10 witnesses named but the Inquiry Officer had examined only 5 witnesses and on this ground inquiry is itself vitiated. In this connection, he referred to the judgment of the Hon'ble Supreme Court in the case of **State of U.P. & Others vs. Saroj Kumar Sinha**, AIR 2010 SCC

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3131. He also argued that in the list of witnesses, the name of Shri H.N. Shinde has been mentioned but he has not been examined and one Shri V.N. Shinde has been examined, who is not in the list of witnesses supplied to the applicant. With reference to this, he referred to a judgment of the Hon'ble Supreme Court in the case of **M.V. Bijlani vs. Union of India & Others**, 2006 (5) SCC 88, decided on 05.04.2006.

13. He further stated that the copy of advice of the CVC has not been given to the applicant. In this regard, he referred the judgment of the Hon'ble Supreme Court in the case of **State Bank of India & Others vs. D.C. Aggarwal & Another**, decided on 13.10.1992, AIR 1993 SC 197. He further argued that the advice of the UPSC is not based on facts and, therefore, the inquiry proceedings may be quashed on this ground.

14. Learned counsel for the applicant further argued that charge no. 1 is not proved against the applicant because he did not negated the orders of his superiors. The letter dated 21.06.1999 was quite different to the facts of the letters dated 15.06.1999 and 16.06.1999.

15. With regard to charge no. III, he argued that the applicant has been charged for violating the provisions of IRCM Vol. II Para nos. 1843 to 1846 but they were not discussed by the Inquiry Officer/Disciplinary Authority/Appellate Authority. He followed the due procedure prescribed for assessment of the damage for consignment received at Nasick Road.

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Therefore, this charge is not proved against him and the conclusion of the Inquiry Officer to prove this charge is not based on the facts and on the legal provisions provided in IRCM Vol. II.

16. With regard to charge no. IV, the learned counsel for the applicant argued that the material witness was not produced by the respondents. The evidence placed cannot prove the charge because the statement of Amit Choudhary was not taken into account. He never submitted incorrect statement or submitted manipulated documents and, therefore, he is not guilty of charge no. IV and the conclusion of the Inquiry Officer to the contrary is not based on the facts.

17. Therefore, learned counsel for the applicant argued that charge sheet, report of the Inquiry Officer, order of the Disciplinary Authority and order of the Appellate Authority be quashed.

18. Learned counsel for the respondents argued that charge memo dated 31.07.2001 (Annexure A/2) has been issued according to the provisions of law and rules on the subject. There is no illegality in issuing the charge sheet and in this connection, he has referred to the case of the Hon'ble Supreme Court in the case of **Union of India & Others vs. Upendra Singh**, 1994 SCC (L&S) 768, in which in Para No. 6, the Hon'ble Supreme Court has held as under:-

"6. In the case of charges framed in a disciplinary inquiry the Tribunal or court can interfere only if on the charges framed (read with imputation or particulars of

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the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this state, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the function of the disciplinary authority. The truth or otherwise of the charges is a mater for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the mater comes to court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/Tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court."

19. Learned counsel for the respondents further argued that even for the sake of arguments if it is agreed that it was not the duty of the applicant to issue the letters signed by him dated 16.06.1999, even then it is not disputed that he has not signed the letter. Therefore, the contents of that letter were in the knowledge of the applicant while issuing another letter dated 21.06.1999 by which he had negated the orders of his superiors. The Inquiry Officer has discussed this charge and evidence produced before him by the applicant as well as by the Department in detail and had come to the conclusion that this charge is proved against the applicant.

20. Similarly, with regard to charge no. III and charge no. IV, he argued that both these charges were proved by the Inquiry Officer after going into every detail, every aspect of the matter, defence taken by the applicant and documents submitted by the parties and material available on record. He further argued that the inquiry cannot be vitiated only on the ground that 5 witnesses were examined instead of 10 witnesses. The Inquiry officer has come to the conclusion that

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the charges were proved on the basis of evidence given by 5 witnesses.

21. Learned counsel for the respondents further submitted that the ratio laid down Hon'ble Supreme Court in the cases, referred to by the applicant, **M.V. Bijlani vs. Union of India & Others** (supra) and **State Bank of India & Others vs. D.C. Aggarwal & Another** (supra) is not applicable to the facts & circumstances of this case.

22. He further argued that the advice rendered by the CVC is only an opinion and it not a material. The charges are proved in disciplinary proceedings on the basis of evidence and not on the basis of opinion. It is not an opinion which proves the charge but it is a material and evidence which proves the charge. Therefore, non supply of CVC's advice by itself does not amount to violation of the principles of natural justice. In this connection, he referred to the judgment of the Hon'ble Supreme Court in the case of **Sunil Kumar Banerjee vs. State of West Bengal and Others** [Civil Appeal No. 1277 of 1957 – AIR 1980 SC 1170] in which the Hon'ble Supreme Court has held as under:-

"It was wholly unnecessary for the disciplinary authority to furnish the appellant with a copy of the report of Vigilance Commissioner when the findings communicated of the appellant are those of the disciplinary authority and not of the Vigilance Commission. That the preliminary findings of the disciplinary authority happened to coincide with the view of the Vigilance Commission is neither here nor there."

23. The applicant has tried to mislead the Tribunal by making a statement that the advice of the UPSC was baseless.

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A copy of the advice was served to the applicant alongwith the appellate order as required under the statutory rules. The name of H.N. Shinde was typographical error. The correct name of the witness was V.N. Shinde. Therefore, the evidence of V.N. Shinde cannot be negated. He argued that the inquiry was conducted in an impartial and fair manner and according to the provisions of rules and charges were proved on the basis of the oral and documentary evidence without any malafide intention. He denied that the charges were proved on extraneous matter, surmises and conjectures. The applicant filed the representation to the appropriate reviewing authority as specified under Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 for considering the application and passing appropriate orders thereon. The Inquiry Officer was changed by the competent reviewing authority on the basis of premises raised in the application which itself shows the adherence of the principles of natural justice. He further argued that the order of penalty dated 03.09.2007 has been rightly passed by the Disciplinary Authority and the contents thereof are self explanatory and it is a speaking order. The Disciplinary Authority had taken into account all documents in evidence before reaching the conclusion of imposing the penalty. No infirmity exists in the said order. The applicant has challenged the punishment order in his appeal and the same has also been decided vide order dated 21.08.2008 by a well and reasoned and speaking order and the appeal has been rejected and the order of the Disciplinary Authority has been upheld. The Appellate Authority while deciding the appeal had consulted the UPSC as required under the rules. He further

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argued that the power of judicial review in the disciplinary case is very limited. The court/Tribunal cannot re-appreciate the evidence to come to a different conclusion. He referred to an order of this Tribunal passed in OA No. 153/2007 in the case of **P.D. Chanchlani vs. Union of India & Others** decided on 19.10.2011. He also referred to a case **Union of India vs. Alok Kumar** reported in 2010 (5) SCC 349 wherein the Hon'ble Apex Court observed that unless defacto prejudice is proved, the court/Tribunal cannot reappreciate the evidence to come to a different conclusion than that of the competent authority. Further he referred to the following cases in which it has been held that scope of judicial review in the case of departmental inquiry is very limited:-

- i) Mohan Lal Verma vs. District Cooperative Central Bank Ltd., 2008 (14) SCC 445.
- ii) State of UP vs. Manmohan Nath Sinha 2009 (8) SCC 310.
- iii) Punjab and Sindh Bank vs. Daya Singh 2010 (11) SCC 233.
- iv) Surendra Kumar vs. Union of India 2010 (1) SCC 158.

Therefore, he stated that based on the facts, material on record, documents and the legal position, the OA has no merit and, therefore, it should be dismissed.

24. Having heard the rival submissions of the respective parties and after perusal of material available on record as well as relevant provisions of law/rules and the judgment referred to by the respective parties, we have come to the conclusion that there is no need to interference either with the issuance of the charge sheet or the inquiry report or the penalty order or

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the appellate order passed by the appellate authority. The applicant has not been able to prove that the charge sheet has been issued with malafide intention. The ratio laid down by the Hon'ble Supreme Court in the case of **Union of India & Others vs. Upendra Singh** (supra) is squarely applicable in this case. In the present case, the charges are of such nature that if proved, they amount to misconduct. The Inquiry Officer has proved the charges. There is no irregularity in framing of the charge memo. Neither they are framed contrary to any law. At this stage the Tribunal has no jurisdiction to go into the correctness of the charges. Therefore, we are not inclined to quash the charge sheet.

24. Learned counsel for the applicant has argued that the Inquiry officer should have relied into Exhibit D44 but he has not done so. We have gone through the Inquiry report. He has discussed Exhibit D-44 and has giving the following conclusion.

"It is an uncertified Xerox copy of some document not having any heading or indication of source. Besides, this document was having some entries with ink. During the Regular Hearing the Presenting Officer objected to this exhibit. As the authenticity of this document has not been established during the Regular Hearing, the contents of this Exhibit haven't been relied upon in these proceedings."

25. Thus the Inquiry Officer has given a clear finding about Exhibit D-44. Further the learned counsel for the applicant argued that instead of 10 witnesses only 5 witnesses were examined and on this ground inquiry is vitiated. In this context, he referred to the judgment of the Hon'ble Supreme Court in the case of **State of U.P. & Others vs. Saroj Kumar Sinha** (supra). We have carefully gone through the case

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referred by him. We are of the opinion that the facts & circumstances of the case referred to by the learned counsel for the applicant are different to the facts & circumstances of the present OA and, therefore, the ratio laid down by the Hon'ble Supreme Court in the above case is not applicable in the present case. In the present OA 5 witnesses have been examined and on the basis of their evidence, the Inquiry officer has proved the charges.

26. Learned counsel for the applicant also stated that the evidence of Shri V.N. Shinde should not have been taken into account as his name was not in the list of witnesses supplied to the applicant and in this context, he referred to the judgment of the Hon'ble Supreme Court in the case of **M.V. Bijlani vs. Union of India & Others** (supra). The facts & circumstances of the above judgment of the Hon'ble Supreme Court are different than the present OA. It has been clearly stated by the Inquiry officer that the name of H.N. Shinde was typographical error. The correct name of the witness is V.N. Shinde and, therefore, on this ground also, the inquiry report cannot be said to be vitiated.

27. Learned counsel for the applicant has further argued that the advice of the CVC was not supplied to the applicant and, therefore, the inquiry report and subsequent proceedings are vitiated on this ground. In this context, he referred to the judgment of the Hon'ble Supreme Court in the case of **State Bank of India & Others vs. D.C. Aggarwal & Another** (supra). In our opinion ratio laid down by the Hon'ble Apex

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Court in this case is not applicable in the facts & circumstances of the present OA. Learned counsel for the respondents referred to the judgment of the Hon'ble Supreme Court in the case of **Sunil Kumar Banerjee vs. State of West Bengal and Others**. In our opinion, the ratio laid down by the Hon'ble Supreme Court in this case is applicable in this present case. Merely non supply of the CVC advice, inquiry cannot be vitiated. As argued by the learned counsel for the respondents, the charges in a disciplinary proceeding are proved on the basis of evidence and not on the basis of opinion. The advice of the CVC is only an opinion and it is not a material. In our opinion even if the advice of the CVC was supplied to the applicant, that would not have made any difference in the outcome of the departmental proceedings against the applicant. Therefore, in our opinion non supply of the CVC advice by itself does not amount to violation of principles of natural justice in this case.

28. Learned counsel for the applicant has also argued that advice of the UPSC is not based on facts and, therefore, inquiry proceedings may be quashed on this ground. We have carefully gone through the advice of the UPSC and we do not find any illegality or infirmity in the advice rendered by the UPSC. It is a detailed advice given by the UPSC on all relevant points.

29. Learned counsel for the respondents argued that the power of judicial review in a disciplinary case is very limited. The Court/Tribunal cannot reappreciate the evidence to come

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to a different conclusion and in this context, he referred to the order of this Tribunal in the case of **P.D. Chanchlani vs. Union of India & Others** [OA No. 153/2007 decided on 19.10.2011] (supra) and he also referred to the case of **Union of India vs. Alok Kumar** (supra). He also referred the following judgments of the Hon'ble Supreme Court in this regard:-

- i) Mohan Lal Verma vs. District Cooperative Central Bank Ltd., 2008 (14) SCC 445.
- ii) State of UP vs. Manmohan Nath Sinha 2009 (8) SCC 310.
- iii) Punjab and Sindh Bank vs. Daya Singh 2010 (11) SCC 233.
- iv) Surendra Kumar vs. Union of India 2010 (1) SCC 158.

The ratio laid down by the Hon'ble Supreme Court in **Union of India vs. Alok Kumar** (supra) and these four cases are squarely applicable in this case. The view taken by this Tribunal in the order passed in OA No. 153/2007 decided on 19.10.2011 in the case of **P.D. Chanchlani vs. Union of India & others (supra)** is also applicable in the facts & circumstances of present case. In the present case, the charge memo was issued to the applicant stating that the statement of imputations of misconduct or misbehaviour in support of each articles of charge was enclosed and the list of documents by which and a list of witnesses by whom the articles of charges were proposed to be sustained were enclosed. An opportunity was given to the applicant to submit his statement of defence. The applicant submitted his reply on 29.11.2001. After considering the reply of the applicant, the Disciplinary Authority remitted the case to inquiry. The Inquiry Officer vide

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his inquiry dated 29.06.2004 held the Articles I, II and IV of the charges as proved and Article II of the charge as not proved against the applicant. We have gone through the inquiry report. It is a very detailed and well reasoned report by the Inquiry Officer. A copy of the inquiry report was forwarded to the applicant vide Memo dated 14.08.2004 for submitting his representation. Thereafter, the Disciplinary Authority vide order dated 03.09.2007 imposed the penalty of "reduction of two stages in time scale for a period of two years with future effect (i.e. which will have the effect of postponing his future increments of pay)". We have carefully gone through the order of penalty and we find no illegality/infirmity in the order. In fact the Disciplinary Authority has considered all the relevant facts and material available and then passed the order of penalty and, therefore, we are of the opinion that there is no need to interfere with the order of penalty. Aggrieved by the penalty imposed against him, the applicant preferred an appeal on 05.10.2007. The Disciplinary Authority alongwith its comments on the appeal forwarded the case records to the Union Public Service Commission (UPSC) for their consideration and advice on the appeal. The UPSC have gone through the case record and have given their opinion, which we have already stated that there is no illegality or infirmity in the advice of the UPSC. The Appellate Authority after taking into consideration the points raised by the applicant in his appeal and advice of the UPSC and other material on record passed a well reasoned and speaking order. Thus there is no illegality/infirmity/ irregularity in the order passed by the Appellate Authority dated 05.10.2007.

Anil Kumar

30. Thus we are of the opinion that this OA has no merit and, therefore, it is dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

J.S.Rathore
(Justice K.S.Rathore)
Member (J)

AHQ