

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

13/03/2014

O.A. No. 478/2008

Dr. Saugath Ray, counsel for the applicant:
Mr. Shashank Sharma, counsel for the respondent No. 1.
Mr. V. D. Sharma, counsel for the respondent No. 2.

Heard the learned counsel for the parties.

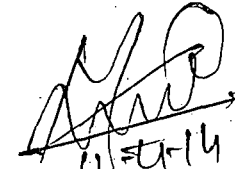
Order Reserved

¹¹⁻⁴⁻¹⁴
(Mr. Nagarajan)
Member (J)

Anil Kumar
(Anil Kumar)
Member (A)

Date 11-4-2014

Order pronounce today in the
open court by the aforesaid
Bench.


11-4-14
For C.O

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Draft / pre-delivery order in O.A. No. 478/2008 (G.S. Narwani vs. Union of India & Ors.) is respectfully submitted for approval.

M. Nagarajan
(M. Nagarajan)
Judicial Member

Hon'ble Mr. Anil Kumar,
Administrative Member

I agree.
Anil Kumar.

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 478/2008

Order reserved on: 13.03.2014

Order pronounced on: 11-04.2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER

G.S. Narwani S/o late Shri Haroo Mal, age about 71 years, retired IAS, R/o 23, Krishna Colony, Naya Khere, Amba Bari, Jaipur.

...Applicant

Dr. Saugath Roy, counsel for applicant.

VERSUS

1. Union of India through Secretary, Ministry of Personnel, Public Grievance and Pension, North Block, Central Secretariat, Vijay Path, New Delhi.
2. The State of Rajasthan through Secretary, Department of Personnel, Secretariat, Jaipur

...Respondents

Mr. Shashank Sharma, counsel for respondent No. 1.
Mr. V.D. Sharma, counsel for respondent No. 2.

ORDER

(Per Mr. M. Nagarajan, Judicial Member)

1. The present O.A. is filed by the applicant with a prayer to set aside the order dated 15th October, 2008, which was communicated to him by a letter dated 11.11.2008 (Annexure A/1). Under the said order dated 15th October, 2008, a penalty of 25% cut in the monthly pension of the applicant was imposed

Mr. V. D. Sharma

on a permanent basis in addition to the penalty already imposed on the applicant.

2. The applicant was a member of Indian Administrative Service borne in the cadre of State of Rajasthan. On his superannuation, he was retired on 31st January, 1995. While he was in service, a departmental enquiry was initiated by issuing Articles of Charges vide Memorandum dated 30.01.1995. Under the said charge memorandum dated 30.01.1995, the applicant was required to answer the following article of charge: -

"That the said Shri G.S. Narwani, I.A.S. was posted as District Collector, Sirohi during the period from May, 1989 to 11.9.1990. He committed irregularities by misusing his official capacity by making the allotment of Government land measuring two Bighas 3 Biswa at village Aasav on 11.9.1990 in favour of Shri Bhallaram, S/o Shri Achalaram Purohit, resident of village Aasav, Tehsil Revdar, Distt. Sirohi in an irregular manner by converting the land with a view to given him (Shri Bhallaram) undue benefit. He did so in spite of the fact that his transfer order had already been issued, for which he is guilty, the details there of have been mentioned in the attached charge sheet."

3. The applicant submitted his reply to the charge made out in the said Memorandum dated 30.01.1995. Though the applicant denied the charge, having not satisfied with the reply of the applicant, the State Government instituted an inquiry to enquire the charge in accordance with the provisions of law. The inquiry was held and the Inquiry Officer submitted his report to the State

H. U. S. -

Government on 27.08.1998. The finding of the Inquiry Officer is that charge against the applicant is not proved.

4. The Disciplinary Authority disagreed with the findings of the Inquiry Officer and consequently a copy of the report of the Inquiry Officer along with the Disciplinary Authority's disagreement note was furnished to the applicant on 16.10.1998 for making his representation. In pursuance of the same, the applicant submitted his representation on 01.02.1999 with a request to close the case against him and also to give a personal hearing on 03.06.1999. After hearing the applicant, with reference to the disagreement note, the 2nd respondent examined the matter further. But in the meanwhile, Special Court (Anti Corruption) Jodhpur had taken cognizance of the similar charge for which he was sought to be prosecuted under the Prevention of Corruption Act, 1988. The Special Court (Anti Corruption), Jodhpur passed an order on 15.09.2006 convicting the applicant under Section 13 (1) (d) (2) of Prevention of Corruption Act, 1988. Thereafter, the Disciplinary Authority took up the matter for consideration and it was decided by the 2nd respondent that the representation of the applicant is not acceptable and the charge should be held as proved. Thus, by taking a decision that the charge against the applicant is proved, the 2nd respondent decided to recommend the case to the 1st respondent for imposition of a penalty under the said Rule. After examination of the recommendation of the Government of Rajasthan (respondent no. 2), the 1st respondent under the impugned order

H. L. Singh

dated 15th October, 2008 imposed a penalty of 25% cut in the monthly pension of the applicant, otherwise admissible to him, on permanent basis. The 1st respondent has imposed the said punishment after consulting the UPSC.

5. Being aggrieved by the said impugned order dated 15th October, 2008, the applicant has presented this O.A. with a prayer to quash the same and for a direction to the respondents not to make any cut in his monthly pension.

6. The applicant attacks the impugned order dated 15th October, 2008 mainly on the following grounds –

"(i) In the full-fledged inquiry, it was held by the Inquiry Officer that there was no financial loss as more revenue could not be fetched under any other revenue laws.

(ii) The issuance of disciplinary proceedings is in violation of Rule 6 (1)(c) of All India Services (Death-cum-Retirement Benefits) Rules, 1958.

(iii) After the disagreement note, a decision was taken for dropping the departmental proceedings on the file and the same was approved by the Chief Secretary and the Hon'ble Chief Minister and, as such, the subsequent decision taken by the respondents is contrary to the principles of natural justice.

न. ल. ए. ए.

(iv) The respondents have failed to appreciate the fact that the order dated 15.09.2006 passed by the Special Court (Anti Corruption), Jodhpur convicting the applicant is sub-judice before the Hon'ble High Court of Rajasthan and, as such, they ought to have awaited the result of appeal pending before the Hon'ble High Court of Rajasthan as against the order dated 15.09.2006 of the Special Court (Anti Corruption) Jodhpur. The applicant was vexed twice for the same set of cause of action.

(v) The recommendation of the 2nd respondent to the 1st respondent is a product of annoyance on the part of the 2nd respondent since the applicant has demanded a copy of the note-sheet of para 140 of the relevant file."

7. The respondents have filed their detailed reply meeting all the grounds and contentions urged by the applicant in his O.A. and prayed for dismissal of the O.A.

8. This Bench of the Tribunal by order dated 20.12.2011 was pleased to dispose of this O.A. The relevant paras 9 & 10 of the order dated 20.12.2011 of the Tribunal reads as -

"9. In view of the observations made hereinabove, we deem it proper to direct the respondents to recover an amount of Rs. 84,280.50 with interest at the prevalent rate out of the pension of the applicant and recovery shall be made in equal monthly installments till the aforesaid amount is fully recovered. With these observations, the

11. 11.11.11

punishment awarded of reduction of 25% pension permanently is accordingly modified.

10. With these observations and directions, the Original Application stands disposed of with no order as to costs."

9. As against the said order dated 20.12.2011, both, the applicant and the respondents approached the Hon'ble High Court of Rajasthan, Jaipur Bench, Jaipur respectively, by filing D.B. Civil Writ Petition No. 13592/2012 & D.B. Civil Writ Petition No. 8939/2012. The Hon'ble High Court of Rajasthan, Jaipur Bench, by its order dated 05.03.2013 was pleased to quash the order of the Tribunal dated 20th December, 2011. The operative portion of the said order dated 05.03.2013 of the Hon'ble High Court of Rajasthan, Jaipur Bench is as –

"Consequently, both the writ petitions succeed and are hereby allowed and the order dt. 20th December, 2011 passed by the Tribunal in Original Application No. 478/2008 stands quash and set aside. The parties are directed to appear before the Central Administrative Tribunal, Jaipur Bench, Jaipur on 8th April, 2013 and it is expected to decide the Original Application expeditiously in accordance with law."

10. The Hon'ble High Court of Rajasthan in the said order dated 05.03.2013 was pleased to observe as follows –

"As reveals from the order of Tribunal, there is no finding as regards the merit of allegations examined by the authority in its order impugned but the punishment which was inflicted of 25% cut in pension permanently was substituted taking note of the alleged pecuniary loss caused to the Government but that was to be supported by law as to whether the punishment could be substituted unless a finding is recorded by the Tribunal of punishment inflicted being grossly disproportionate to it in relation to the charge proved and requires interference."

rr. 4 of 1

11. Thus, in view of the aforesaid observation of the Hon'ble High Court of Rajasthan, Jaipur Bench, we are required to bear in mind the observation of the Hon'ble High Court of Rajasthan, Jaipur Bench.

12. As directed by the Hon'ble Rajasthan High Court, Jaipur Bench, the parties appeared before this Bench of the Tribunal and the matter was finally heard on 13.03.2014.

13. Heard learned counsel for the applicant Dr. Saugath Roy, learned counsel for the respondent No. 1 Mr. Shashank Sharma and learned counsel for the respondent No. 2 Mr. V.D. Sharma. Perused the pleadings and the documents annexed with the pleadings of the respective parties.

14. Learned counsel for the applicant Dr. Saugath Roy submitted that a full-fledged inquiry was conducted and in inquiry report, the Inquiry Officer fully exonerated the applicant. By inviting our attention to the inquiry report at page no. 41 of Annexure A/4, he argued that the Inquiry Officer held that under any revenue law not more than Rs. 33,290/- could be fetched by disposal of this land and as such the question of financial loss to the Government does not arise. He further argued that the initiation of the inquiry is in violation of Rule 6 of All India Services (Death-cum-Retirement Benefits) Rules, 1958. The further contention of the learned counsel for

Mr. L. S. P.

the applicant is that after the disagreement note, a decision was taken to close the matter on the file and the same was approved by the Chief Secretary and the Hon'ble Chief Minister and, as such, the matter cannot be re-opened. He contended that the subsequent decision taken by the respondents is contrary to the principles of natural justice. The further contention of the learned counsel for the applicant is that the respondents ought to have awaited the result of the appeal preferred by the applicant against the order dated 15.09.2006 passed by the Special Court (Anti Corruption), Jodhpur.

15. Per contra, learned counsels for the respondents submitted that none of the grounds urged by the applicant and argued by the learned counsel for the applicant are not at all tenable. They submitted that the impugned order does not suffer from any legal infirmity. Learned counsels for the respondents also pointed that since the applicant did not point out any procedural impropriety, the impugned order does not call for an interference.

16. In so far as the argument of the learned counsel for the applicant that in the full-fledged inquiry, the Inquiry Officer held that there was no financial loss to the Government, we may observe that the specific charge against the applicant is not as to causing financial loss to the Government. On the other hand, the charge is that he committed irregularity by misusing his official capacity by making the allotment of Government land measuring 2 Bighas 3 Biswa at village Aasav in favour of Shri Bhallaram in

17 Sep

an irregular manner by converting the land with a view to give the allottee an undue benefit. As such the impugned order cannot be interfered with on the findings of the Inquiry Officer that there was no financial loss to the Government. The task assigned by the Disciplinary Authority to the Inquiry Officer is to give a finding on the specific charge leveled against the applicant i.e. whether he has committed irregularities by misusing his official capacity or not. It seems that the Inquiry Officer instead of giving a specific finding on the charge leveled against the applicant as to the irregularities committed by him by misusing his official capacity had given a finding as to the consequence of such irregularities committed by the applicant. As such we are not inclined to accept the argument of the applicant that the impugned order is liable to be interfered with on the ground that the Inquiry Officer at para 43 of the inquiry report has held that there is no financial loss to the Government.

17. Since the learned counsel for the applicant by placing reliance upon the Rule 6 (1)(c) of All India Services (Death-cum-Retirement Benefits) Rules, 1958, contended that the initiation of the proceeding is in violation of the said Rules, it is necessary for us to refer to the Rule 6 of All India Services (Death-cum-Retirement Benefits) Rules, 1958. The relevant portion of the said Rule 6 reads as –

"6. Recovery from pension:- 6(1) The Central Government reserves to itself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a

part of it.

specified period, and the right of ordering the recovery from pension of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence, during his service, including service rendered or re-employment after retirement.

Provided that no such order shall be passed without consulting the Union Public Service Commission: -

Provided further that -

- 6(1)(a)
- 6(1)(b)
- (i)
- (ii)
- (iii)

6(1)(c) such judicial proceeding, if not instituted while the pensioner was in service whether before his retirement or during his re-employment, shall not be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution.

Explanation.- For the purpose of this rule: -

- (a) *a departmental proceedings shall be deemed to be instituted when the charges framed against the pensioner are issued to him or, if he has been placed under suspension from an earlier date, on such date and*
- (b) *a judicial proceeding shall be deemed to be instituted*

- R. L. S. P. -

- (i) In the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and*
- (ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court."*

18. A bare reading of the aforesaid Rule makes it crystal clear the bar for Institution of the proceedings mentioned in the said rule is not an absolute one, but, the same is subject to certain conditions. The conditions mentioned therein are –

- "(i) The inquiry is initiated after the retirement of a Government servant.
- (ii) The cause of action for such an inquiry must have arisen more than four years before such institution."

19. In the instant case, the proceedings were initiated while the applicant was in service. In this connection, it is an admitted fact that he retired from service on 31.01.1995 and the charge memorandum is dated 30.01.1995 and the same was served on him while he was in service. As per the explanation to Rule 6(1)(c) of the said Rules, in the case of criminal proceedings, a judicial proceeding shall be deemed to be instituted on the date on which a complaint is made or a charge-sheet is submitted to a criminal court. Admittedly, a complaint was made while the applicant was in service. As such in view of the fact that the article of charges dated 30.01.1995 was served on the applicant while he was in service and in view of the explanation provided under Rule 6(1)(c) of the said Rules and in view of the fact that the complaint was also made against the applicant while he was

U. S. P.

in service, we are not in agreement with the argument of the learned counsel for the applicant that the proceedings initiated against him is in violation of rule 6(1)(c) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958.

20. As regard the other limb of the argument of the learned counsel for the applicant that after the disagreement note, a decision was taken for closing the matter in the relevant file and the same was approved by the Chief Secretary and the Hon'ble Chief Minister, we may observe that admittedly no order was passed based on the decision of the approval made in the relevant file. Learned counsel for the applicant by inviting our attention to the notings at para 139 and 140 of the relevant file contended that since the notings of the department at para 139 and 140 of the relevant file was approved by the Hon'ble Chief Minister on 24.11.1999, the matter cannot be reopened. On hearing this submission of the learned counsel for the applicant, we put a specific query to the learned counsel for the applicant whether the applicant was in receipt of any order on the basis of the notings made at para 139 and 140 of the said file. Learned counsel for the applicant fairly submitted that the applicant was not in receipt of any order in pursuance of the notings made at para 139 and 140 of the said file. With regard to this contention, the learned counsels for the respondents submitted that after giving sufficient opportunity to the applicant for explaining his position with reference to the disagreement note, the competent authority examined the matter further and no final decision was

Handwritten signature

taken or conveyed to the applicant. When things stood thus, the Special Court (Anti Corruption), Jodhpur has taken cognizance for the offences committed by the applicant under the provisions of Prevention of Corruption Act and, as such, it was decided to keep the matter in abeyance. They further argued that the notings in a file of the Government comprises opinions of the officers of the Government at various levels and, hence, the same does not carry the authority of an order.

21. The Hon'ble Supreme Court while dealing with the notings made in the departmental files in the case of **Union of India and Ors. Vs. Vartak Labour Union (2)** [2011 (4) SCC 200] at para 15 held as

"15. It is trite that inter-departmental communications and notings in departmental files do not have the sanction of law, creating a legally enforceable right. In Sethi Auto Service Station vs. DDA, a Division Bench of this Court, in which one of us (D.K. Jain, J.) was a member has observed thus: (SCC pp. 185-86, para 14)

14.Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned."

In view of the above observation made by the Hon'ble Supreme Court in the above case relating to the notings made in the departmental files, we are not persuaded by the argument of the

IT. U. P. —

learned counsel for the applicant that since at para 140 of the relevant file, a decision was taken to close the matter and the same cannot be reopened subsequently.

22. Learned counsel for the applicant by placing reliance upon the judgment of the Hon'ble Supreme Court in the case of **Lav Nigam vs. Chairman & MD, ITI Ltd. and another** [(2006) 9 SCC 440] argued that since the applicant was not given an opportunity, the impugned order is liable to be interfered with. On a perusal of the judgment of the Hon'ble Supreme Court in **Lav Nigam's** case (supra), we find that the facts and circumstances of the case before the Supreme Court was different and distinct from that of the facts and circumstances of the case on hand. The Hon'ble Supreme Court in **Lav Nigam's** case (supra) was pleased to grant the relief to the appellant therein by appreciating the specific issue raised by him that the disciplinary authority was obliged to give a separate show-cause notice if the disciplinary authority differed with the Inquiry Officer. By referring to that contention of the appellant, at para 13 of the said judgment, the Hon'ble Supreme Court has given its finding, which reads -

"13.It is clear that no notice at all was given before the disciplinary authority recorded its final conclusions differing with the finding of fact of the inquiry officer. The notice to show cause was merely a show-cause against the proposed punishment."

Waf

But in the case on hand, the disciplinary authority having found that the findings recorded by the Inquiry Officer were without taking into consideration the relevant material on record, disagreed with the findings of the Inquiry Officer and consequently a copy of the inquiry report along with the disagreement note was sent to the applicant on 16.10.1998 for making his representation, if any, and in pursuance of the same, the applicant submitted his representation on 01.02.1999, which was duly considered and thereafter he was given a personal hearing on 03.06.1999. In view of this factual position, which is not disputed by the applicant, the reliance placed by the applicant upon the said judgment of the Hon'ble Supreme Court in **Lav Nigam's** case (supra) is of not helpful to him. At this juncture we would like to refer to the following principles laid down by the Hon'ble Supreme Court in the case of **Union of India and another vs. Arulmozhi Iniarasu and others** (2011) 2 SCC (L&S) 267 at para 14 reads as –

"14. the well-settled principle of law in the matter of applying precedents that the Court should not place reliance on decisions without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. The observations of the courts are neither to be read as Euclid's theorems nor as provisions of statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases."

Thus in view of the above principle and in view of the fact that a copy of the inquiry report along with the disagreement note was duly served on the applicant and in pursuance of the same,

m. 59-

the applicant made his representation on 01.02.1999 and thereafter a personal hearing was given to the applicant on 03.06.1999, we reject the contention of the learned counsel for the applicant Dr. Saugath Roy that the principles of natural justice has been violated.

23. Coming to the other argument of the learned counsel for the applicant that the respondents ought to have awaited the result of the appeal filed by him against the order dated 15.09.2006 of the Special Court (Anti Corruption), Jodhpur on the file of the Hon'ble High Court of Rajasthan, we may observe that the departmental action and judicial proceedings are two distinct streams with the former taking the course of identifying and penalizing the conduct of the charged officer whereas the judicial process particularly with respect to the criminal matters is for a wrong committed against the society at large classified as an offence. The two processes can run concurrently and have different scopes and parameters regulating the matters under consideration, to eventually lead to distinct outcomes specific to the misconduct or the offence as the case may be. Hence, we reject the contention of the learned counsel for the applicant that the respondents ought to have awaited the result of the appeal filed by him against the order dated 15.09.2006 of the Special Court (Anti Corruption) Jodhpur.

24. In so far as the argument of the learned counsel for the applicant that the applicant has been vexed twice for the same

H. Wep

set of cause of action, we hold that this submission of the learned counsel for the applicant is not at all tenable. No two departmental inquiries were held against the applicant on the same set of cause of action. Hence, this contention of the learned counsel for the applicant is also rejected.

25. We are also not in agreement with the other contention of the learned counsel for the applicant that the impugned order is a product of annoyance on the part of the respondent no. 2. The respondent no. 2 did not accept the report of the Inquiry Officer for the following reasons –

i) The Charged Officer has not clarified the justification for inspection of the site on 16.8.90 itself when the representation for allotment of land for hotel was submitted to Tehsildar, Reodar on 16.8.90.

ii) He did not make any site plan based on inspection.

iii) He did not indicate why he did not find the land suitable for allotment for hotel as requested vide representation dated 16.8.90 and there is also no evidence on record to suggest that Shri Bhalla Ram had given any suggestion to Shri Narwani that in case it is not found appropriate for allotment of hotel, the same may be considered for allotment for construction of huts on the said land for using it for accommodating farm animals.

iv) Rule 3 (4) provides that land can be considered for allotment/regularization/conversion for residential or commercial use only if it was encroached upon prior to 30.6.87. However, neither the file nor in the representation there was any evidence of any encroachment of the land still it was allotted arbitrarily by accepting the claim of encroachment of land prior to this date.

v) The representation dated 20.8.90 submitted by Shri Bhalla Ram for allotment of land for construction of huts etc. was neither submitted nor referred to in the file when Shri Narwani passed an order on 3.9.90.

vi) As regards past encroachment of the land by Shri Bhalla Ram, the Charged Officer himself in another matter (17/89) had passed an order on 25.7.90 rejecting the claim of Shri Bhalla Ram of the land being in possession.

vii) He had cancelled the allotment of land to Shri Rekhabchand without giving him any opportunity as required under the legal

T. W. P.

procedure indicating that he intended to clear the way for allotment of entire land to Shri Shri Bhalla Ram.

viii) The conversion of land was possible only if the occupier was khatedari land holder which is not the case.

ix) Even if the action was taken in terms of rule 3 of Agricultural land (allotment for residential and commercial use) Conversion Rules, 1971, the said rules prohibited conversion of any land above 1000 sq. yd. Only the land on which huts actually existed as at the time of site inspection and not the entire 2.03 bigha land could have been allowed to be converted/allotted.

x) such powers for allotment/conversion are vested in the Sub Divisional officer.

xi) Even in the communication dated 7.9.90 addressed to Shri Bhalla Ram, he was directed to submit proof of occupation of land before 30.6.87. However, while passing final order on 10.9.90, this aspect was ignored. The contention of the Charged Officer that he could have allowed the allotment/conversion free of charge treating the occupation of the land since pre 1981 by the father of Shri Shri Bhalla Ram is also not based on any facts as there is no such evidence of occupation.

xii) The Charged Officer has claimed that the disputed land was surrounded by the land of Shri Bhalla Ram whereas as per report of Tehsildar, Reodar, dated 17.6.89 available on file, Patwari of the area as well as revenue records, this was not correct hence wrong facts were taken into consideration in making allotment in haste.

xiii) The allotment of land treating the same as strip of land was also not permissible as the land was more than two bigha prescribed for being categorized as strip of land and such allotment could be done only by auction amongst all neighbours.

xiv) The said land was less than 50 ft. away from the mid point of the Highway and, therefore, there was ban on conversion of such land. This was also ignored.

xv). if the land had been allotted for the hotel and if the location of the land being close to Highway was taken into consideration, revenue several times more what was charged would have been required. However, even if the aspect of financial loss to the State Exchequer is ignored, it does not affect the gravity of other offences; thereby the said land was allotted in gross violation of rules.

xvi) No firm decision was taken on 3.9.90. Only a tentative decision was taken on that date subject to Shri Bhalla Ram agreeing to pay the said amount and furnishing proof of pre 30.6.87 occupation. Final orders were passed on 10.9.90. Hence, the entire exercise was conducted in a pre determined manner even after receiving transfer order and concluded in haste before his departure."

m w ap -

The reasons assigned by the respondent no. 2 for not accepting the report of the Inquiry Officer is also extracted in the impugned order dated 15th October, 2008 itself. The applicant in his O.A. has not commented anything with respect to any one of the aforesaid reasons assigned by the respondent No. 2. Thus, in view of the aforesaid reasons assigned by the 2nd respondent for not agreeing with the report of the Inquiry Officer, we are not at all prepared to accept the argument of the learned counsel for the applicant that the impugned order is a product of the annoyance of the respondent no. 2 against him.

26. On coming to the aspect whether the punishment of 25% cut in pension permanently can be substituted, we are required to follow the principles laid down by the Hon'ble Supreme Court in this regard. Recently, the Hon'ble Supreme Court while dealing with the power of judicial review of the Court relating to the doctrine of proportionality in the case of **Deputy Commissioner, KVS & Ors. Vs. J. Hussain** [2014 (1) SLJ 226] held as –

"6. When the charge proved, as happened in the instance case, it is the Disciplinary Authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the

R. W. S.

delinquent, previous penalty, if any, and the discipline required to be maintained in the department or establishment where he works, as well as extenuating circumstances, if any, exist. In exercise of power of judicial review, however, the Court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of the Court lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities."

By keeping above principles in mind, the Disciplinary Authority has to impose punishment against a delinquent official when the charges are proved. The operative portion of the impugned order dated 15th October, 2008 reads as –

"18. NOW, THEREFORE the Central Government has decided that a penalty of 25% cut in the monthly pension of Shri G.S. Narwani, IAS (Retd), otherwise admissible to him, be imposed on Shri G.S. Nawani on a permanent basis with immediate effect in agreement with the advice of the UPSC and it orders accordingly. The said penalty will be in addition to the penalty of 25% cut in the monthly pension already imposed on the officer by the Central Government in another case."

The underlined portion of the above extracted operative portion of the impugned order dated 15th October, 2008 mentions that a penalty has already been imposed upon the applicant in another case. Thus, it is clear that the Disciplinary Authority in the process of taking a decision and exercising its discretion to impose penalty had taken into account of several factors mainly

त. ५०९—

the past conduct, previous penalty and the applicant being an All India Service officer, the discipline which is required to be maintained by him in the department.

27. In the facts and circumstances of the case on hand, in view of the above principle laid down by the Hon'ble Supreme Court in the case of **Deputy Commissioner, KVS & Ors. Vs. J. Hussain** (supra) and in view of the observations made by the Hon'ble Rajasthan High Court, Jaipur Bench dated 05.03.2013 in D.B. Civil Writ Petition No. 13592/2012 & D.B. Civil Writ Petition No. 8939/2012 (at paragraph 10 above), we are not inclined to apply the doctrine of proportionality.

28. For the foregoing reasons, we do not find any merit in any of the contentions of the learned counsel for the applicant and, thus, the Original Application deserves to be dismissed. Accordingly, the Original Application is dismissed. Under the circumstances, there shall be no order as to costs.


(M. NAGARAJAN)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

kumawat