

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 29.01.2013

OA No. 474/2009

Mr. Manish Kumar Sharma, proxy counsel for
Mr. S.P. Sharma, counsel for applicant.
Mr. T.P. Sharma, counsel for respondents.

Heard learned counsel for the parties.

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

Anil Kumar
(ANIL KUMAR)

MEMBER (A)

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

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 474/2009

Jaipur, the 29th day of January, 2013

CORAM :

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

Atar Singh, aged about 63 years, son of Shri Dharam Singh, Assistant Engineer (Dismissed), Department of Telecom, presently residing at B-104, Nandpuri, Hawa Sarak, Jaipur.

... Applicant

(By Advocate: Mr. Manish Kumar proxy to Mr. S.P. Sharma)

Versus

1. Union of India through Secretary, Ministry of Telecommunication, Department of Telecommunication, New Delhi.
2. Telecom, Department of Tele Communication, Government of India, New Delhi through its Member Services, West Block-1, Wing 2, Ground Floor, R.K.Puram, New Delhi.
3. Chief General Manager (Maintenance), Northern Telecom Region, New Delhi.
4. Deputy Secretary (Vigilance Third), Ministry of Communications & IT, Department of Telecommunications, Government of India, Room No. 903, Sanchar Bhawan, 20 Ashoka Road, New Delhi.

... Respondents

(By Advocate : Mr. T.P. Sharma)

ORDER (ORAL)

This is the second round of litigation. Earlier the applicant had filed OA No. 366/2003 before this Tribunal being aggrieved by the penalty order of dismissal passed by the respondents on 04.09.2002. This OA was decided by this Tribunal vide order dated 24.01.2008 (Annexure A/19). Para 6 & 7 of the order are quoted below:-

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"6. Accordingly, without entering into merits and in the facts and circumstances of the case, we are of the view that the applicant shall file an appeal before the appropriate authority alongwith copy of this order within 15 days from the date of receipt of copy of this order thereby raising all permissible pleas. The Appellate Authority is directed to dispose of the same by passing speaking and reasoned order as far as possible within a period of two months from the date of receipt of such appeal.

7. At this stage we wish to observe that when the impugned order dated 4.9.2002 was passed, the applicant was about 57 years of age and even if the relief is granted to the applicant, he cannot be reinstated in service. Since the applicant had rendered a long service with the department and the fact that the applicant has been convicted by the Special Judgment for the offence regarding indulging in forgery by interpolation and falsification of vouchers and misappropriation of government money, as such, it may not be desirable for the respondents to reinstate the applicant, so long as the said finding is not set aside by the higher Court, but certainly the punishment of dismissal from service is harsh penalty and the applicant and his family will be deprived of the pensionary benefits. It is borne out from the record that the loss caused to the department has also been recovered by the respondents. Under these circumstances, the appropriate authority may consider awarding a lesser penalty by substituting the penalty of dismissal from service to that of compulsory retirement so that the applicant can get pensionary benefits. The Appellate authority may also take this fact into consideration while disposing appeal of the applicant.

2. In pursuance of this order, the applicant filed an appeal before the respondents. The respondents have decided the appeal. Vide order dated 29.07.2009 (Annexure A/2), the appeal of the applicant has been rejected. Now the applicant has filed this OA praying for the following reliefs:-

"It is, therefore, prayed that this Hon'ble Tribunal may call for the entire record relating to the aforesaid case and by examining the same:-

(i) quash and set aside the order dated 04.09.2002 (Annexure A/1), and the consequential recovery order dated 24.11.1992 as well as the order dated 29.07.2009 (Annexure A/2), passed by the

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respondent No. 4 by which the departmental appeal of the applicant has been rejected.

- (ii) to direct the respondents to reinstate the applicant in service with all consequential benefits as if no such termination order had ever been passed against him.
- (iii) to further direct to the respondents to make the payment of all the arrears of salary and allowances with interest at the rate of 18% per annum.
- (iv) any other suitable direction, which the Hon'ble Tribunal deems fit and proper in the circumstances of the case mentioned hereinabove may be passed in favour of the humble applicant.
- (v) the cost of this OA may also be granted to the applicant."

3. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was posted as Assistant Engineer (Micro-Wave) at Sikar. For the purpose of maintenance of Micro Wave media network, certain purchases were made from local market for contingent work. As an Assistant Engineer and being the over all Incharge of the Sub-Division, all the bills had to be routed through him and in the normal course, the applicant signed on those bills.

4. The applicant was unfortunately roped in criminal case on account of personal enmity and antagonism of the Director (Telecom Maintenance) Shri C.L. Manchanda and an FIR was recorded by the CBI at the instance of a complaint made by the Divisional Engineer, Telecoms (DET), Jaipur wherein it was alleged that the applicant had interpolated vouchers and had misappropriated Government money.

5. Learned counsel for the applicant further stated that the applicant was served with a letter dated 24.11.1992 by which

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the respondents proceeded to make recoveries from the applicant's salary. Even the amount which was alleged to be recovered was not mentioned in the letter. The so called imprest bills mentioned in the letter also did not state the amount. The applicant submitted the reply to the aforesaid letter stating that recoveries could not be made against him. However, without considering the applicant's reply, the respondents proceeded to recover the said amount from the applicant's salary.

6. That after having recovered the amount of Rs.75,537/- from the applicant, the applicant was served with a charge sheet under Rule 14 of the CCA Rules, 1965 (Annexure A/8) alleging misconduct and thereby alleging with a sum of Rs.30,865/- had been pocketed by the applicant whereas the respondents had already recovered an amount of more than Rs.75,537/- from the applicant.

7. That on receipt of the aforesaid charge sheet, the applicant submitted an application requesting that a copy of the statements and documents, which were relied upon in support of the charges may be made available to him so that he may submit his proper defense vide his letter dated 08.03.1996 (Annexure A/9). However, the same was not made available to him.

8. That without waiting for the reply to the charge sheet, the respondents proceeded to appoint an Inquiry Officer vide their order dated 24.05.1996. The applicant again submitted an

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application to the Inquiry Officer for making available the documents so that he may submit his defense properly, but the same was not made available. However, the applicant was facing the departmental inquiry and has participated in the inquiry proceedings.

9. In the meanwhile, a criminal case, which was registered against the applicant has been decided and the applicant who was charged with offence under Section 209, 468, 471, 477(a) IPC and under Section 13(2) read with Section 13(1)(c) of the Prevention of Corruption Act, 1988 was convicted of offence under Section 409 and 471 IPC read with Section 13(2) and 13(1)(c) of the ACT of 1988 while he was acquitted of charges under Section 468, 477 (a) IPC and punished with 2 years R.I. and fine of Rs.5000/-.

10. The applicant filed an appeal against the order before the Hon'ble High Court which is registered as S.B. Criminal Appeal No. 152/2000 wherein the sentence was suspended by Hon'ble High Court. The Hon'ble High court had also stayed the conviction vide order dated 11.08.2000. However, the Supreme Court set aside the order of the Hon'ble High Court and thus maintaining the sentence.

11. That the applicant was served with notice dated 24.07.2000 under Rule 19 of the Rules of 1965 and the applicant submitted his reply to the same vide letter dated 26.12.2001 (Annexure A/14). The applicant stated in his letter dated

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26.12.2001 that the charges leveled against him were wholly frivolous and false and that the amount alleged in the allegation had already been recovered from his salary. There was no case of acceptance of bribe and the case was made out only on the basis of supervisory negligence which could not be said to be a crime committed by him personally. However, the respondents vide Memorandum dated 21.02.2002 (Annexure A/15) conveyed to the applicant on the advice given by the Central Vigilance Commission dated 08.02.2002 whereby it advised to dismiss the applicant from service, based on the recommendations of the Director of Telecom. The applicant submitted a representation dated 17.07.2002 (Annexure A/16). However, the applicant was served with an order dated 04.09.2004 (Annexure A/1) vide which the applicant was dismissed from service. While passing this order, the respondents did not give any finding/conclusion on the representation made by the applicant.

12. Learned counsel for the applicant submitted that after passing the order of termination dated 04.09.2002, the disciplinary proceedings initiated against the applicant under Rule 14 are still continuing. Thus on one hand, the applicant has been dismissed from service while on the other hand, the applicant is being asked to participate in the departmental proceedings also. The departmental proceedings against a dismissed employee cannot be continued in any manner.

13. That the applicant challenged the order of dismissal dated 04.09.2002 by filing OA No. 366/2003 (Atar Singh vs. Union of

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India) in which Hon'ble Tribunal vide order dated 24.01.2008 directed the applicant to file an appeal before the respondents. The respondents were directed to consider the case of the applicant for awarding the lesser penalty by substituting the penalty of dismissal from service to that of compulsory retirement so that the applicant can get the pensionary benefits (Annexure A/19). That in pursuance of the order of the Hon'ble Tribunal, the applicant submitted an appeal before the respondents stating all the fact & circumstances of the case.

14. The respondents dismissed the appeal vide order dated 29.07.2009 (Annexure A/2) without application of mind. While rejecting the appeal, the respondents have not correctly appreciated the order of the Tribunal. They have not taken into consideration the observation of the learned Tribunal of reducing the penalty of dismissal to that of compulsory retirement.

15. The learned counsel for the applicant submitted that the impugned order dated 04.09.2002 (Annexure A/1) is wholly illegal and arbitrary because under Rule 19 of the CCS (CCA) Rules, 1965, it is not binding upon the respondents to take up proceedings once they have already taken decision under Rule 14 of the CCS Rules, 1965 and parallel proceedings under the two rules cannot be allowed to be continued. Therefore, the order passed under Rule 19 of the CCA Rules dated 04.09.2002 deserves to be set aside as the proceedings under Rule 14 of the Rules of 1965 are still continuing.

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16. Learned counsel for the applicant further argued that a bare perusal of the order dated 04.09.2002 would show that the applicant has been dismissed from service merely because he has been convicted in the criminal case. The respondents should have examined the case independently before passing any order under Rule 19 of the Rules of 1965. The respondents have not taken into consideration the representation made by the applicant.

17. Learned counsel for the applicant further argued that the respondents while passing the order dated 04.09.2002 have not taken into consideration the fact that the appeal is pending before the Hon'ble High court and an amount of Rs.75,537/- has already been recovered by the respondents. Therefore, the charge of the applicant having mis-appropriated the amount cannot be said to be correct. Further the applicant had already been acquitted of the charges of interpolation and under Section 468 and 471 IPC. Thus the punishment of dismissal was not warranted at all.

18. Learned counsel for the applicant further submitted that the punishment awarded to the applicant does not commensurate with the allegation which have to be held in the criminal case. Therefore, the penalty of dismissal is too harsh considering the fact that the applicant had put in 30 years of unblemished service. The applicant was not in fit state of mind during that period because he had lost his wife and a teen aged son in a road accident. The respondents ought to have

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considered the practical aspect of the matter before passing the impugned order.

19. Learned counsel for the applicant also argued that the order of recovery of Rs. 75,537/- from the salary of the applicant without conducting a departmental inquiry in the matter is wholly bad in law. He further submitted that continuation of the departmental inquiry after the applicant had already been dismissed from service based on an order under Rule 19 of Rules of 1965 is wholly perverse and illegal. The respondents cannot continue with departmental inquiry under Rule 14 of the CCS (CCA) Rules. Learned counsel for the applicant submitted that the order dated 29.07.2009 (Annexure A/2) passed by the Appellate Authority is without due application of mind and departmental appeal of the applicant has been rejected in wholly mechanical manner without taking into consideration the spirit of the order dated 24.01.2008 passed by this Tribunal (Annexure A/19). The Tribunal while passing the order dated 24.01.2008 observed that the departmental appeal of the applicant may be decided keeping in view the penalty of dismissal may be converted into compulsory retirement so that the applicant may be able to get the pensionary benefits. The Appellate Authority has not even made a reference to this observation of the Tribunal in its order dated 29.07.2009 (Annexure A/2). Moreover, he further submitted that the order of the Appellate Authority is not a speaking order and, therefore, it deserves to be quashed and set aside. In support of his arguments, the

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learned counsel for the applicant referred to the following orders/judgment:-

- (i) Narinder Mohan Arya vs. United India Insurance Co. Ltd. and Others, 2006 (4) SCC 713
- (ii) Nepal Singh vs. Union of India & others Western Law Cases (Raj.) 2008 (5) 315
- (iii) Union of India & Others vs. Ummed Singh & Others 2001 (3) RLR 316
- (iv) B.C. Chaturvedi vs. Union of India & Others 1995 (6) SCC 749

Therefore, he argued that the OA be allowed.

20. On the contrary, learned counsel for the respondents argued that the applicant was served with Charge-Memo dated 09.01.1996 (Annexure A/8) under Section 14 of the CCS (CCA) Rules, 1965 for the following charges:-

Article I He inflated, fabricated and manipulated amounts in concerned cash of items purchased locally and thus misappropriated government money and thereby pocketed a sum of Rs.30865.10.

Article-2 He manipulated quantities in concerned cash memos, falsified stocks register by sharing receipt and issue of inflated quantities of items in respect of bills regarding local purchases.

21. Learned counsel for the respondents submitted that an FIR was registered against the applicant as CBI booked a case against the applicant for the alleged offence. The prosecution case was finalized by the Hon'ble Special Judge CBI cases. The Disciplinary proceedings against the applicant was kept in abeyance by the Inquiry Officer. In the criminal case, the

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applicant was convicted of the offence under Section 409 and 471 IPC and under Section 13(2) of the Corruption Act, 1988.

22. Learned counsel for the respondents submitted that the penalty order against the applicant has been passed under Rule 19 of the CCS (CCA) Rules, 1965 consequent upon the conviction of the applicant by the Hon'ble Court. While, the action of the Disciplinary proceedings was passed on the mis-conduct covered under Rule 14 of the CCS (CCA) Rules, 1965.

23. The learned counsel for the respondents argued that the Disciplinary Authority has acted according to the provisions of Rule 19(1) of the CCS (CCA) Rules, 1965. He was given an opportunity to file a representation as provided under the Rules. He was also given a copy of the CVC advice for making representation thereon. The CVC had advised to dismiss the applicant from service. The Disciplinary Authority examined the representation of the applicant and he found not merit in the representation submitted by the applicant. The Disciplinary Authority had thereafter passed the order dated 04.09.2002 dismissing the applicant from service (Annexure A/1).

24. With regard to the averment made by the learned counsel for the applicant that the Appellate Authority while deciding the appeal of the applicant did not consider the observation made by this Tribunal passed in OA No. 366/2003 decided on 24.01.2008 [Atar Singh vs. Union of India & Others] (Annexure A/19), the learned counsel for the respondents argued that while deciding

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the appeal, the Appellate Authority has duly considered the observations made by this Tribunal. The appeal of the applicant was examined in the light of the direction made by this Tribunal but no merit was found in the appeal and, therefore, it was rejected. He referred to Para 2.3 of the Appellate order passed in appeal, which is reproduced below:-

"2.3 Against the above mentioned penalty, the CO filed OA No. 366/03 before CAT, Jaipur which was disposed of by Tribunal vide order dated 24.1.2008. The appeal against the penalty imposed has been filed by CO and considered by Appellate Authority, in pursuance of Tribunal's directions."

He argued that this shows that the appeal was considered by the Appellate Authority in pursuance of the Tribunal's direction. He further referred to Para 4 of the Appellate order, which is quoted below:-

"4. In view of its analysis, the UPSC has observed that there is no merit in the appeal filed by Sh. Atar Singh and the penalty of dismissal from service earlier imposed on him is not excessive. The Commission has accordingly advised to reject the appeal."

In this it has been clearly mentioned that the penalty of dismissal from service earlier imposed on him is not excessive. The appeal of the applicant was duly considered by the Appellate Authority following the due procedure. The advice of the UPSC was also obtained prior to the decision on the appeal. He further submitted that the order on appeal is a speaking and reasoned order and there is no illegality or irregularity in the order of appeal.

25. With regard to the observation of the learned counsel for the applicant that the Appellate Authority did not consider the

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direction issued by this Tribunal to consider awarding of lesser penalty of compulsory retirement to the applicant, the learned counsel for the respondents submitted that there was no direction to award a lesser penalty but it was only an observation to the Appropriate Authority that it may consider awarding a lesser penalty by substituting the penalty of dismissal from service to that of compulsory retirement so that the applicant can get pensionary benefits. The Appellate Authority has considered this observation of the Tribunal but no merit was found in the appeal and, therefore, it was rejected. Thus the Appellate Authority has not ignored the observation made by this Tribunal.

26. The learned counsel for the respondents admitted that the applicant has filed a criminal appeal against his conviction before the Hon'ble High Court of Rajasthan. The Hon'ble High Court of Rajasthan vide its judgment dated 11.08.2000 had suspended/stayed the judgment of the Special Judge, CBI Cases dated 04.04.2000. However a SLP was filed before the Hon'ble Supreme Court of India against the order dated 11.08.2000 passed by the Hon'ble High Court of Rajasthan (Jaipur Bench). The Hon'ble Supreme Court in its order in Criminal Appeal No. 1086/2001 (arising from SLP NO. 3009/2001) has set aside the order of the Hon'ble High Court suspending the conviction. Therefore, there appears no irregularity in the proceedings against the applicant under Rule 19 of the CCS (CCA) Rules, 1965.

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27. With regard to the submission of the learned counsel for the applicant that a recovery of Rs.75,537/- was made without any disciplinary proceedings, the learned counsel for the respondents submitted that the said amount was recovered from the applicant for the loss caused to the Government. Therefore, there is no illegality/irregularity in the recovery made from the applicant for the loss caused to the Government Exchequer. Thus there is no merit in the OA and it should be dismissed with costs.

28. Heard the learned counsel for the parties, perused the documents on record and the case law submitted by the learned counsel for the applicant. It is not disputed between the parties that the applicant was convicted under Section 409 and 471 IPC. That he was also awarded imprisonment under Section 13(2) under the Corruption Act, 1988 alongwith fine. Because of his conviction, the respondent department proceeded against the applicant under Rule 19 of the CCS (CCA) Rules, 1965. Rule 19 of the CCS (CCA) is quoted below:-

"19. Special procedure in certain cases

Notwithstanding anything contained in Rule 14 to Rule 18-

- (i) Whereby any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or
- (ii)
- (iii)

[Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause(i):

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule]."

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The bare perusal of the rule makes it clear that the action of the respondents to proceed against the applicant under Rule 19 of the CCS (CCA) Rules, 1965 is in accordance with the provisions of this Rule and there is no illegality/infirmity in the action of the respondents in proceeding against the applicant under Rule 19 of the CCS (CCA) Rules, 1965.

29. As per the provisions of Rule 19 of the CCS (CCA) Rules, 1965, the applicant was given an opportunity to submit his representation. The applicant submitted his representation dated 14.08.2000. He also submitted another representation dated 26.12.2001 stating that the total value in allegation amounts to Rs.31,015.60 and this amount has been recovered from his salary. All the facts stated in his representations were duly considered by the Disciplinary Authority while passing the order dated 04.09.2002 (Annexure A/1).

30. The CVC was consulted and the copy of the CVC advice dated 08.02.2002 was furnished to the applicant. Thus the Disciplinary Authority while passing the order dated 04.09.2002 (Annexure A/1) has followed the procedure as laid down under the Rules. It is a speaking and reasoned order. We are of the considered opinion that there is no ground to interfere with the order passed by the Disciplinary Authority dated 04.09.2002 (Annexure A/1).

31. With regard to the submission of the learned counsel for the applicant that while deciding the appeal of the applicant, the

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Appellate Authority has not considered the observations and directions of this Hon'ble Tribunal in OA No. 366/2003 decided on 24.01.2008 (Atar Singh vs. Union of India & Others), we have carefully gone through the order passed in appeal dated 29.07.2009 (Annexure A/2) passed by the Appellate Authority. As stated by the learned counsel for the respondents in Para No. 2.3 of the order dated 29.07.2009, it has been specifically written that the appeal against the penalty imposed has been filed by the CO and considered by the Appellate Authority, in pursuance of Tribunal's direction vide order dated 24.01.2008. Thus in our view, the Appellate Authority has considered the observation made by this Tribunal in their order dated 24.01.2008 passed in OA No. 366/2003 (Annexure A/19). We are inclined to agree with the averment made by the learned counsel for the respondents that the Tribunal had only directed the Appellate Authority to consider awarding a lesser penalty but there was no specific direction to the Appellate Authority to award a lesser penalty. The direction of the Tribunal have been taken into consideration by the Appellate Authority at the time of deciding the appeal.

32. In Para No. 4 of the order passed by the Appellate Authority dated 29.07.2009, it has been specifically mentioned that the penalty of dismissal from service earlier imposed on the applicant is not excessive. In our considered view, it was for the Appellate Authority to decide upon the quantum of punishment awarded to the applicant after the objective assessment of the facts & circumstances of the case.

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33. The order of the Appellate Authority dated 29.07.2009 is a speaking & reasoned order. The advice of the UPSC is also obtained. The Appellate Authority has taken into consideration the facts & circumstances of the fact of conviction of the applicant by the Special Judge, CBI under Section 409 and 471 of the IPC and under Section 13(2) of the Anti Corruption Act, 1988. Therefore, we are of the considered view that there is no illegality/infirmity/irregularity in the order passed by the Appellate Authority dated 29.07.2009.

34. We have perused the case law referred to by the learned counsel for the applicant. In the case of **Narinder Mohan Arya vs. United India Insurance Co. Ltd. and Others**, 2006 (4) SCC 713, the Hon'ble Supreme has held that the Appellate order has to be a reasoned and speaking order. In this case, the Hon'ble Supreme Court held that the order of the Appellate Authority demonstrate total non application of mind. However, in the present OA, perusal of the Appellate order passed by the Appellate Authority (Annexure A/2) clearly shows that it is a reasoned and speaking order and that the Appellate Authority has applied his mind before passing this order. Therefore, the ratio laid down by the Hon'ble Supreme Court in the case of Narinder Mohan Arya (supra) is not applicable under the facts & circumstances of the present case.

35. In the case of **Nepal Singh vs. Union of India & Others, Western Law Cases (Raj.)** 2008 (5) WLC 315, the

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Hon'ble High Court (Jaipur Bench) were of the opinion that 7 charges of misconduct leveled against the appellant were trifling in nature and, therefore, the penalty of removal from service imposed on the appellant shocks judicial conscience and, therefore, the Hon'ble High Court substituted the penalty of removal from service to that of penalty of compulsory retirement.

Whereas in the present case, the applicant has been convicted under Section 409 and 471 of the IPC and under Section 13(2) of the Corruption Act, 1988. It cannot be said to be trifling in nature. Therefore, the ratio decided by the Hon'ble High Court in the case of *Nepal Singh vs. Union of India & Others* (Supra) is not applicable under the facts & circumstances of the present case.

36. In the case of **Union of India & Others vs. Ummed Singh** 2001 (3) RLR 316, the Hon'ble High Court of Rajasthan reduced the punishment of removal to that of compulsory retirement. In that case, the order of punishment was passed on the charge of employee being absent from service. Therefore, the Hon'ble High held that the punishment of removal is excessive and disproportionate to the charge leveled against the employee whereas in this case, the order of dismissal has been passed by the respondent department because the applicant has been convicted by the Court of Special Judge, CBI cases, Jaipur under Section 409 and 471 IPC and also under Section 13(2) of the Anti Corruption Act, 1988. Therefore, the gravity of the charge in the present case cannot be compared to the gravity of

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the charge of an employee who has been absent from duty. Therefore, in our opinion, the ratio decided by the Hon'ble High Court in the case of **Union of India & Others vs. Ummed Singh** (supra) is not applicable under the fact & circumstances of the present case.

37. We have perused the judgment of the Hon'ble Supreme Court of India in the case of **B.C. Chaturvedi vs. Union of India & Others**, 1995 (6) SCC 749. In Para No. 12 of the judgment, the Hon'ble Supreme Court has held that:-

“12.The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence.....”

In Para No. 19 of the judgment, the Hon'ble Supreme Court has held that:-

“19 The Tribunal in this case held that the appellant had put in 30 years of service. He had a brilliant academic record. He was successful in the competitive examination and was selected as a Class I Officer. He earned promotion after the disciplinary proceeding was initiated. It would be difficult to get a new job or to take a new profession after 50 years and he is “no longer fit to continue in government service”. Accordingly, it substituted the punishment of dismissal from service to one of compulsory retirement imposed by the disciplinary authority. We find that the reasoning is wholly unsupportable. The reasons are not relevant nor germane to modify the punishment. In view of the gravity of the misconduct, namely, the appellant having been found to be in possession of assets disproportionate to the known source of his income, the interference with the imposition of punishment was wholly unwarranted. We find no merit in the main appeal which is accordingly dismissed with no order as to costs.”

In the present OA, we find that the respondents have followed the rules of natural justice. The proceedings against the

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applicant have been conducted according to the rules. The applicant has been convicted by the Special Judge CBI Cases, Jaipur. Therefore, the ratio decided by the Hon'ble Supreme Court in Para No. 12 of the judgment is not applicable in the facts & circumstances of the present case.

The facts as stated in Para No. 19 of the judgment are quite similar to the facts of the present case. In the case of **B.C. Chaturvedi vs. Union of India & Others** (supra), the employee was found to be in possession of assets disproportionate to the known source of income and in this OA, the applicant has also been punished under Section 409 & 471 of IPC and also under 13(2) of the Anti Corruption Act, 1988. The applicant has been sentenced to undergo imprisonment and fine as mentioned below:-

- a) 2 (two) years rigorous imprisonment (RI and fine of Rs.5000/-, in default of payment of fine, further RI for 6 months, under Section 409 of IPC;
- b) 1 (one) year RI and fine of Rs.1000/-, in default of payment of fine, further RI for one month, under Section 471 of IPC;
- c) 2 (two) years RI and fine of Rs.1000/-, in default of payment of fine, further RI for one month, under Section 13(2) of Anti Corruption Act' 1988.

All the sentences were to run concurrently.

Therefore, we are of the view that it is not a case where the Tribunal should interfere with the penalty order passed by the Disciplinary Authority as well as by the Appellate Authority.

38. With regard to the submissions made by the learned counsel for the applicant that the recovery of Rs.75,537/- has

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been made without conducting the departmental inquiry, we are inclined to agree with the averments made by the learned counsel for the respondents that this amount has been recovered from the applicant as it was loss to the Government Exchequer and there is no illegality/irregularity in the recovery of this amount from the applicant.

39. Thus we are of the view that the applicant is not entitled for any relief in the present OA and the OA has no merit.

40. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

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(Anil Kumar)
Member (A)

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

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