CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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ORDERS OF THE BENCH

Date of Order: 14.02.2013

OA No. 527/2009

Mr. S. Shrivastava, counsel for applicant.
Mr. Anupam Agarwal, counsel for respondents.

Written submission on behalf of the applicant has been filed. Put up the matter on 21.02.2013 for dictation of orders. In the meantime, the respondents may file their written submission.

Written submission filed on behalf of respondents

(JUSTICE K.S. RATHORE)
JUDICIAL MEMBER

Kumawat

21/02/2013

OA No. 527/2009

Mr. S. Shrivastava, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

Heard.

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

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

THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

Thursday, this the 21st day of February, 2013

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)

ORIGINAL APPLICATION No.527/2009

D.K.Shrivastava
a/a 44 years,
s/o Shri J.P.Shrivastava
r/o Flat No.12 A 1/A, JJCR,
Rail Minor, Alipore, Kolkata
Presently posted in Store Department of
Eastern Railway.

.. Applicant

(By Advocate : Shri S.Shrivastava)

Versus

1. Union of India
   Through the General Manager,
   West Central Railway,
   Indira Market, Jabalpur, M.P.

2. Union Public Service Commission,
   Through its Secretary,
   Dholpur House,
   Shahjahan Road,
   New Delhi.

3. V.Ramchandran,
   the then Executive Director Vigilance (Store)
   at present posted as Chief Technical Examiner
   in Central Vigilance Commission,
   G.P.O. Complex INA,
   New Delhi.

.. Respondents

(By Advocate: Shri Anupam Agarwal)

ORIGINAL APPLICATION No.528/2009

D.K.Shrivastava
a/a 44 years,
s/o Shri J.P.Shrivastava
r/o Flat No.12 A 1/A, JJCR,
Rail Minor, Alipore, Kolkata
Presently posted in Store Department of
Eastern Railway.

.. Applicant

(By Advocate : Shri S.Shrivastava)

Versus

1. Union of India
   Through Secretary,
   Railway Board,
   Rail Bhawan,
   New Delhi.

2. General Manager,
   West Central Railway,
   Indira Market,
   Jabalpur, M.P.

3. Secretary,
   Union Public Service Commission,
   Dholpur House,
   Shahjahan Road,
   New Delhi.

4. V.Ramchandran,
   the then Executive Director Vigilance (Store)
   at present posted as Chief Technical Examiner
   in Central Vigilance Commission,
   G.P.O. Complex INA,
   New Delhi.

.. Respondents

(By Advocate: Shri Anupam Agarwal)

ORDER (ORAL)

Both the OAs, filed by applicant D.K.Shrivastava were heard together due to similar facts and the law involved and are being disposed of by this common order.

2. OA No. 527/2009 is directed against the impugned order dated 1.11.2001 by which the Disciplinary Authority has imposed a minor penalty of 'Censure' upon the applicant, against which the applicant preferred appeal and the Appellate Authority vide order dated 21.2.2003 rejected the appeal filed by the applicant. After rejection of appeal, the applicant also filed review petition and the same was also rejected by the Reviewing Authority. Aggrieved with the aforesaid orders, the applicant has filed the present OA praying that these orders may be quashed and set-aside.

3. Brief facts of the case are that the applicant was served with a chargesheet for minor penalty dated 31.5.2001 while he was working as Divisional Controller of Stores based on allegation of lack of devotion to duties discharged in the capacity of ACOS/PL. The applicant submitted reply to the chargesheet. The Disciplinary Authority having considered the defence of the applicant drawn provisional decision which was forwarded to

the Chief Vigilance Commission (CVC) for its views. Since there was variance with the views of the Disciplinary Authority, the same was forwarded to the Railway Board. Ultimately, the Disciplinary Authority imposed punishment of 'Censure' on the applicant. The applicant not satisfying with the penalty imposed preferred appeal dated 21.12.2001 against the order passed by the Disciplinary Authority. The Appellate Authority after careful consideration of the averments made in the appeal and all other relevant records/aspects in consultation with the UPSC upheld the penalty imposed by the Disciplinary Authority. Thereafter the applicant filed review petition and the Reviewing Authority vide order dated 9.11.2004 rejected the review petition of the applicant. Hence the present OA has been filed.

4. The applicant has challenged the penalty order mainly on the ground that respondent No.4 (after amendment No.3) has mala-fide intention against the applicant and therefore, he has made plan to get the applicant punished. Further challenged on the ground that it was imperative upon the respondents to send the matter for second stage advice of the CVC.

5. Per contra, the respondents have raised preliminary objection with regard to limitation and submitted that Section 21

of the Administrative Tribunals Act prescribes one year limitation from the date on which final order has been made. The applicant preferred earlier OA after expiry of limitation, therefore, the present OA cannot be treated within limitation.

6. On merit, the respondents have stated that the applicant has tried to cook-up a story on the basis of surmises and conjectures to allege malafide to challenge the outcome of enquiry. It being a speculative/afterthought cannot be considered in the manner stated. In fact, it is duty of the vigilance department to have preventive check to check the corruption and the applicant was found guilty during such check. Further stated that disciplinary proceedings were initiated against the applicant in three different cases wherein penalty of 'Censure' was imposed in two minor penalty cases. In one major penalty case, penalty of 'Censure' was imposed but subsequently, the applicant was exonerated by the Appellate Authority. Further submitted that the Disciplinary Authority after independent application of mind imposed the lowest penalty of 'Censure', hence consultation with CVC for second stage advice was not necessary as per procedure and also opined by the UPSC. The Appellate Authority considered the appeal and passed a speaking order. The Appellate Authority has come to

the conclusion to reject the appeal on merits in consultation with the UPSC in accordance with statutory procedure and it is not required for the Appellate Authority to separately record the reasons which are already covered by the UPSC advice enclosed along with the speaking order. The same is part and parcel of the speaking order needs no repetition by the Appellate Authority. The review petition was considered by the Reviewing Authority and after applying its mind, the same was rejected because the applicant failed to bring any new fact, material or evidence which has the effect of changing the nature of the case meriting review. Further submitted that the respondents have acted as per rules and there is no arbitrariness, malafide against the applicant. The applicant was taken up for disciplinary proceedings for the lapses committed by him and the authorities have acted as per the procedure and had passed reasoned and speaking order reflecting their bonafides and the penalty is commensurate with the gravity of the offence therefore, the same deserves to be upheld. The respondents have relied upon the judgment of the Apex Court in the case of Union of India vs. Alok Kumar [2010 (5) SCC 349] wherein it was held that unless any de-facto prejudice is proved, the court/tribunal cannot re-appreciate the evidence to come to a different conclusion to that of competent authority. Further, the

scope of judicial review in the case of departmental enquiry is very limited and relied upon the cases of Mohan Lal Verma vs. District Cooperative Central Bank Ltd. [2008 (14) SCC 445]; State of UP vs. Manmohan Nath Sinha [2009 (8) SCC 310; Punjab and Sind Bank vs. Daya Singh [2010 (11) SCC 233] and Surendra Kumar vs. UOI [2010 (1) SCC 158. The respondents have also stated that the applicant has tried to mislead the Tribunal by taking use of documents procured by him by placing the same in distorted manner and failed to demonstrate any procedural lapse causing prejudice to the applicant so as to vitiate the impugned orders.

7. OA No. 528/2009 is also directed against the impugned order dated 17.2.2002 whereby penalty of 'Censure' has been imposed upon the applicant and also against the order dated 3.3.2003 and 19.10.2004 passed by the Appellate Authority and Reviewing Authority on the ground that respondent No.4 has kept all the concerned authorities in dark to procure punishment for the applicant. Further, the Appellate Authority has failed to satisfy the requirement of dealing with all factual and legal aspects decisive in nature raised by the appellant in his appeal and the Reviewing Authority has deliberately ignored the error and infirmities which are apparent on the face of record and

was wrongly expecting for new material on the part of the applicant for reviewing the matter.

8. Per contra, the respondents have submitted that charges of applicant with regard to respondent No.4 are totally false. Applicant has referred unconcerned and unwarranted incident concerning to respondent No.4 with ulterior motive. In fact, the Disciplinary Authority accepted the applicant's defence. Thus, any submissions based upon the note put up by respondent No.4 alleging malafide of him, since not considered by the competent authority, cannot be made basis to challenge the impugned orders. With regard to the CVC advice, it is stated that CVC advice since procedural formality having no statutory force, which did not vitiate the action of the competent authority. Further, the Disciplinary Authority after independent application of mind decided to impose minimum punishment of 'Censure' and mere seeking approval did not vitiate or said to be the dictates of higher authority.

9. I have heard the learned counsel appearing for the respective parties and carefully perused the material available on record as well as the judgments relied upon by the respective parties. So far as the preliminary objection raised by the

respondents is concerned, I have considered the matter on the point of limitation, but I am of the view that in the interest of justice, the matter requires consideration on merit also. The applicant has alleged malafides against respondent No.4 without any foundation or basis. Upon perusal of entire record and the note put up by respondent No.4 it does not reveal that note has been prepared with malafide intention as the higher authority has not accepted the same. Thus, the malafide alleged against respondent No.4 does not prove and the applicant utterly failed to establish malafide against respondent No.4. Further, it is evident that on account of negligence on the part of the applicant, the minimum penalty of 'Censure' has been awarded which cannot be said to be disproportionate to the gravity of the charges. The respondents have acted in accordance with the provisions of law after obtaining the opinion of the UPSC. The applicant was provided proper opportunity to defend his case and the principles of natural justice have been complied with.

10. That apart, the law on this point is already settled and the Hon'ble Supreme Court in the case of Government of Tamilnadu and another vs. A.Rajapandian reported in JT 1994 (7) SC 492, in para 10 held as under:-

> "We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matter or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."

11. Further, it is settled law that the Tribunal has no jurisdiction to go into truth of allegation but the Tribunal having power of judicial review can examine the procedural correctness of the decision making process. In this case, I do not find any procedural lacunae or any error committed by the respondents. The respondents have given ample opportunity to the applicant to represent his case.

12. Thus, no illegality can be found in the findings given by the Disciplinary Authority, Appellate Authority and Reviewing Authority and in view of the ratio decided by the Hon'ble

Supreme Court, as referred hereinabove, I do not find any illegality in the aforesaid orders.

13. Lastly, after considering the request made on behalf of the applicant that penalty awarded vide order dated 1.11.2001 & 17.02.2002 shall not come in the way for routine promotion and other purpose except promotion where entire service record has to be examined and promotion is only on merit basis, I am of the view that the respondents shall not take into consideration the penalty of 'Censure' awarded vide order dated 1.11.2001 and 17.2.2002 at the time of routine promotions and for other benefits except for promotions where entire service record has to be examined and promotion is totally on merit basis.

14. With these observations and directions, both the OAs stand disposed of. No costs.

K. S. Rathore

(JUSTICE K.S.RATHORE)
Judl. Member

R/