CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No.3934/2011

New Delhi this 9th day of May, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr.V.N. Gaur, Member (A)

HC Lal Chand
No.195/A (PIS No.28800873). .. Applicant

(Argued by: Shri Sachin Chauhan, Advocate)

Versus

1. The Commissioner of Police,
PHQ,
I.P. Estate, New Delhi.

2. The Special Commissioner of Police,
Operations, Delhi,
Through Commissioner of Police,
PHQ,
IP Estate, New Delhi.

3. The Dy. Commissioner of Police,
IGI Airport, New Delhi. ..Respondents

(By Advocate: Shri N.K. Singh for Mrs. Avnish Ahlawat)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The challenge in this Original Application (OA), filed by the applicant, Head Constable Lal Chand, is to the impugned enquiry report dated 24.03.2011 (Annexure A-3) and order dated 29.04.2011 (Annexure A-1) whereby a penalty of dismissal from service was imposed on him by the Disciplinary Authority (DA). He has also assailed the impugned order dated 2.8.2011 (Annexure-2) by virtue of

which his appeal was dismissed, as well by the Appellate Authority (AA).

2. The matrix of the facts, which needs a necessary mention for deciding the core controversy involved in the present OA and emanating from the record is that, while posted in vigilance team of Shift-B NITC IGI Air Port, New Delhi, applicant was stated to have committed grave misconduct.

3. As a consequence thereof, he was dealt, departmentally, under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter to be referred to as "D.P.Rules") with the following allegations:-

> "I, Inspector Nirmla Devi inquiry officer, DE Cell, Delhi charge you HC Lal Chand No.195/A (PIS No.28800873) that while posted in vigilance team of Shift-B NITC IGI Air Port, New Delhi, you were apprehended on the night intervening 29/30.6.2000 by the officials of Directorate of Revenue Intelligence, New Delhi for your illegal activities i.e. while carrying 35 (thirty five) Gold Biscuits which were allegedly handed over to you by Pax Ashwani Kumar who had come from Singapore by flight No. SQ-408 at about 10.30 PM. The 35 (thirty five) pieces of Gold Biscuits of foreign origin were seized, you were arrested under custom Act 1962 at 1500 hrs of 30.6.2000. You were produced before duty Magistrate, Patiala House Courts, New Delhi on 30.6.2000 who remanded you to Judicial custody. You were granted bail by the ACMM Patiala House, New Delhi vide order dated 29.8.2000 and released from central jail, Tihar on 1.11.2000. The complaints for offences punishable under sections 13 J (I) (b) of the custom Act 1962 had been filed in the Hon'ble court of Addl. Chief Metro Politian Magistrate, on which adjudication proceedings and prosecution are in progress besides a penalty of Rs.1,00,000/- (one lakh) was imposed upon you by the commissioner of customs (Gen) under Section 192 (a) & (b) of custom act 1962 vide the adjudication order in original No.71/Adj/RKG/2001 dt 28.9.01 and you have filed the custom appeal No.21 of 2002 & 110 of 2006 SM against the order in the custom Excise & Service Tax Appellate Tribunal New Delhi, Principal Bench, New Delhi who imposed the penalty of Rs. 50,000/- (fifty thousand) vide final order No.1459-1460-SM (BR) dated 30.08.06. For the above said case you have been placed under suspension vide Order No.3744-71/HAP/IGI-A/P-1 dt 07.07.2000. You HC Lal Chand No.195/A (PIS No. 2880873) have misused the PIC No. P 31514D issued to you for the purpose of Govt duty."

4. In pursuance thereof, the Enquiry Officer (EO) was appointed to enquire into the charges. The EO came to a conclusion that the charges against the applicant stand proved. The DA (Annexure A-1) imposed the indicated penalty and appeal filed by the applicant was also dismissed by the AA (Annexure A-3).

5. Aggrieved thereby, the applicant has preferred the instant OA, challenging the enquiry report and the impugned orders, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

6. The case set-up by the applicant, in brief, insofar as relevant is that the departmental enquiry (DE) is vitiated because of delay and latches which was initiated on 24.03.2003 and continued till 24.03.2011. It has caused a great prejudice to his case. There is a violation of Rule 15(2) of D.P. Rules. It was alleged that the EO has himself cross-examined the witnesses, i.e., PW-4 and PW-5. He (EO) has wrongly placed reliance on the statements of the PWs and ignored the cross-examination of PW-4 and PW-5. He (EO) has also just ignored the statements of Defence Witnesses, which amounts to violation of principles of natural justice. Since he did not consider the defence evidence, so the enquiry report is vitiated.

7. According to the applicant, Rules 11, 12 and 15 of D.P. Rules provides that if a criminal case is being instituted on

the similar charges, then DE must not be continued. The act of the authorities not stopping the DE despite the fact that on the similar charge criminal trial is going on, is bad in law and amounts to violation of departmental rules. The enquiry report and impugned orders of punishment passed by the Disciplinary and Appellate Authorities were termed to be illegal, non-speaking, result of non-application of mind, arbitrary and against the statutory rule and principles of natural justice. On the basis of the aforesaid grounds, the applicant has sought quashing of the impugned disciplinary proceedings and orders in the manner indicated hereinabove.

8. The contesting respondents refuted the claim of the applicant and filed the reply, wherein it was alleged as under:-

> "1.That brief facts of the case are that a Departmental Enquiry was initiated against HC (Exe) Lal Chand [hereinafter called the applicant] vide this office order dated 24.10.2003 on the allegation that while posted in vigilance team of Shift-B NITC, IGI Air Port, New Delhi, he was apprehended on the night intervening 29/30.6.2000 by the officials of Directorate of Revenue Intelligence, New Delhi for his illegal activities i.e. while carrying 35 Gold Biscuits which were allegedly handed over to him by a pax Ashwanin Kumar who had come from Singapore by flight No.SQ-408 at about 10.30 PM. The 35 pieces of Gold Biscuits of foreign origin were seized and the applicant was arrested under Custom Act, 1962 at 1500 hrs of 30.06.2000. He was produced before the Duty Magistrate, Patiala House Courts, New Delhi on 30.06.2000 who remanded him to Judicial custody. He was granted bail by Ld. A.C.M.M. Patiala House Courts, New Delhi vide order dated 29.08.2000 and released from Central Jail, Tihar on 01.11.2000. The complaint for offences punishable under Section 135(i)(b) of the Custom Act, 1962 has been filed in the Hon'ble Court of Addl Chief Metropolitan Magistrate, New Delhi on which adjudication proceedings and prosecution are in progress. Besides, a penalty of Rs.1,00,000/- had also been imposed upon the applicant by the adjudication order-in-original dated 28.09.2001 and the applicant had not filed any appeal against the said order as intimated by the senior intelligence Officer, Directorate of Intelligence, Delhi Zone Unit, New Delhi vide letter dated 12.08.2002. Copy of the order dated 28.09.2001 is annexed herewith as Annexure R1. For the above said case the applicant was placed under suspension w.e.f. 30.06.2000 vide order dated 07.07.2000."

9. It was also explained that after initiation of the enquiry, the Applicant submitted an application dated 30.10.2003 requesting therein to cancel the DE as he is facing trial in the case under Customs Act. The request of the applicant was considered and rejected by the competent authority. He was accordingly informed vide order dated 11.11.2003 against proper receipt on 05.12.2003. He again filed an application on 08.12.2003 with the similar request to keep the DE in abeyance till the final decision of the criminal case under the Customs Act, 1962. The matter was referred to DCP (Vigilance), vide Office Memo dated 21.01.2004 for necessary clarification in the matter. The DCP (Vigilance), after taking into consideration the legal opinion and Circular dated 13.11.2003, to the effect that departmental proceedings and criminal case can simultaneously continue, directed the EO to complete the enquiry expeditiously vide Office Order dated 13.04.2005. Then in the wake of transfer of the EO, the enquiry was entrusted to Inspector Ram Yadav vide Office Order dated 11.08.2004. On his transfer, the enquiry was again entrusted to Inspector Bir Singh on 28.12.2005 and so on.

10. According to the respondents, the applicant again submitted another application dated 18.07.2006 stating therein that the customs authorities have imposed a penalty of Rs.1 lac. However, in view of the order of the Customs,

Excise and Service Tax, Appellate Tribunal (for short "CESTAT"), he deposited an amount of Rs.30,000/-. He again requested for staying the departmental proceedings. His request was again declined by the competent authority. Instead of reproducing the entire contents of the reply, suffice it to say that the respondents pleaded that the delay has occurred on account of pointed conduct of applicant himself and due to pendency of the case before authorities under the Customs Act.

11. Virtually reiterating the validity of the report of the EO and impugned orders, it was averred that the enquiry was conducted in accordance with the D.P. Rules. The principles of natural justice were duly observed and proper opportunities were granted to the applicant at different stages of the enquiry by the relevant authorities. It will not be out of place to mention here is that the contesting respondents have stoutly denied all other allegations contained in the OA and prayed for its dismissal.

12. Controverting the pleadings in the reply filed by the respondents and reiterating the grounds contained in the OA, the applicant has filed the rejoinder. That is how we are seized of the matter.

13. After hearing the learned counsel for the parties, having gone through the record with their valuable assistance and considering the entire matter, we are of the firm view that

there is no merit and the instant OA deserves to be dismissed for the reasons mentioned herein below.

14. As is evident from the record that the EO recorded and evaluated the evidence of the parties, completed the enquiry and came to the definite conclusions that the charges attributed to the applicant stand proved vide impugned enquiry report dated 24.03.2011 (Annexure A-3).

15. Having completed all the codal formalities and tentatively agreeing with the findings of the EO, a penalty of dismissal from service was imposed on the applicant vide impugned order dated 29.04.2011 (Annexure A-1) by the Disciplinary Authority.

16. Sequelly, the appeal filed by the applicant was also dismissed vide impugned order dated 02.08.2011 (Annexure A-2) by the Appellate Authority.

17. Ex-facie, the argument of the learned counsel that since there is a delay of 8 years to complete the departmental enquiry, which was initiated vide order dated 24.10.2003 and was completed on 29.04.2011, so enquiry report as well as impugned orders are vitiated, is not only devoid of merit but misplaced as well and deserves to be repelled for more than one reason.

18. At the first instance, as indicated hereinabove, it was the applicant himself who has moved many applications on the one pretext or the other in order to delay the

Departmental Enquiry. Indeed it took time to decide his applications in accordance with law by the relevant authorities. Hence the applicant cannot be allowed to take the benefit of his own wrongs, which is not legally permissible.

19. Not only that, the question of explanation of delay and its effect would naturally depend upon variety of factors. Secondly, even it is the case of the applicant that matter remained pending for a long time before the customs authorities where penalty of Rs.1 lac was imposed upon him. He has deposited Rs.30,000/- in pursuance of order of CESTAT. Thus, the authorities under the Customs Act have consumed a considerable time to decide the matter. Besides it, to collect the evidence from different sources is a tardious journey for the departments. As depicted hereinabove, since the applicant has himself delayed the departmental proceedings by moving the indicated applications, the matter remained pending with the customs authorities for a quite long time and sometime was taken by the department to collect the evidence, so the delay by itself is not fatal in this case. The Hon'ble Supreme Court in ***B.C. Chaturvedi Vs. Union of India AIR 1996 SC 484*** has held as under:-

> "11. The next question is whether the delay in initiating disciplinary proceeding is an unfair procedure depriving the livelihood of a public servant offending Article 14 or 21 of the Constitution. Each case depends upon its own facts. In case of the type on hand, it is difficult to have evidence of disproportionate pecuniary resources or assets or property. The public servant, during his tenure, may not be known to be in possession of disproportionate assets or pecuniary

> resources. He may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tardious journey, as the Government has to do a lot to collect necessary material in this regard. In normal circumstances, an investigation would be undertaken by the police under the Code of Criminal Procedure, 1973 to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in this type of cases, it is seen that the C. B. I. has investigated and recommended that the evidence was to strong enough for successful prosecution of the appellant under Section 5 (1) (e) of the Act. It had, however, recommended to take disciplinary action. No doubt, much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of that Constitution."

20. Therefore, the crux of the above said observations are *mutatis mutandis* is fully applicable to the facts of the present case and is the complete answer to the problem in hand. Since the respondents have duly explained the delay, so they cannot be blamed for it in any manner. Hence, it is held that the alleged delay in completing the departmental enquiry proceedings by itself is not at all fatal to the case of the department, as contrary urged on behalf of the applicant.

21. The next contention of the learned counsel for the applicant that since the authorities under the Customs Act has imposed a penalty of Rs.1 lac and applicant has deposited Rs.30,000/- in pursuance of the order of CESTAT, so the departmental enquiry on the same charges was not legally permissible, again has no force. There is no such bar to initiate departmental proceedings simultaneously with the proceedings under the Customs Act, 1962. This matter is no more res integra and is now well settled.

22. An identical question came to be decided by Hon'ble Apex Court in the case of ***State of Rajasthan Vs. B.K. Meena JT 1996 (8) SC 684*** wherein it was ruled that there is no bar for initiation of simultaneous criminal proceedings as well as disciplinary proceedings as the criminal cases are dragged endlessly and unduly delayed and in that event the interest of administration demands expeditious disposal of disciplinary proceedings.

23. Likewise, the same view was again reiterated by Hon'ble Supreme Court in ***Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc. (1997) 2 SCC 699, State Bank of India and Others Vs. R.B. Sharma AIR 2004 SC 4144 and Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another (1999) 3 SCC 679***. On the contrary the imposing of penalty on the applicant by the custom authorities, corroborates the departmental proceedings and punishment orders.

24. The last argument of the learned counsel is that the EO has himself cross-examined the Defence Witnesses which vitiate the enquiry. Similarly, the contention that since the authorities have wrongly placed reliance on interested prosecution witnesses and the statements of Defence Witnesses were not considered, so the impugned disciplinary proceedings and orders are liable to be set aside, are neither

tenable nor the observations of the Hon'ble High Court of Delhi in the case of ***Commissioner of Police Vs. Bikram Singh in Writ Petition (C) No.3466/2010*** decided on 16.07.2010 and of this Tribunal in ***OA No.2827/2003*** titled as ***ASI Sher Singh Vs. Govt. of NCT of Delhi and Others*** decided on 07.07.2004, are at all applicable. The High Court in ***Bikram Singh's case*** (supra) held, that not only the EO cross-examined the witnesses, but **also gave no opportunity to the Charged Official** (CO) to further cross-examine the witnesses. On the peculiar facts and in the special circumstances of that case and while dismissing the appeal of the police department, it was observed that the conduct of the EO has caused a serious prejudice to the case of the CO.

25. Possibly no one can dispute with regard to the aforesaid observations, but same would not come to the rescue of the applicant in the present controversy because at the same time it was held that EO does have a right to ask clarificatory questions and he is not supposed to act as a silent spectator.

26. No doubt, in the present case, the EO has put certain clarificatory questions. The word "cross-examination" appears to have been inadvertently mentioned. The very nature of the questions put to PW-4 and PW-5 with regard to identity of the accused and their (PW-4 and PW-5) signatures on the arrest memo, were essential to clear the doubts and to

reach at a right conclusion. Such clarificatory questions to clear the ambiguities in order to decide the real controversy between the parties, by EO are legally permissible, as envisaged under Rule 16(v) of the D.P. Rules. This rule, inter alia, postulates that the EO shall also frame questions which he may wish to put to the witnesses to clear ambiguities or to test their veracity. Such statement shall be read over to the accused officers and he will be allowed to take notes. Therefore, the applicant cannot take the benefit in any manner, of such clarificatory questions, put by the EO, to clear the ambiguities and to test their veracity, in the garb of one word "**cross-examination**".

27. Likewise, a perusal of the enquiry report would reveal that the EO has evaluated and relied upon the unchallenged statements of PW-1 to PW-6. Full opportunity to cross-examine them was also granted but the applicant did not avail the opportunity of cross-examination of the witnesses. Thus, the statements of PWs remained un-rebutted. Not only that, the EO duly appreciated the prosecution evidence. He has also recorded cogent reasons to discard the statements of DWs, who were arrested by the Custom Officer along with applicant. Their testimony, being the statements of accomplice, was rightly rejected by the EO in his impugned enquiry report dated 24.03.2011 (Annexure A-3), which, in substance, is as under:-

"The undersigned has considered the evolution of deposition of PWs and DWs recorded during the DE proceedings and it has been established that the delinquent HC Lal Chand No. 195/A while posted in Vigilance Team of Shift B (NITC) IGI Airport New Delhi. On the intervening night of 29/30.06.2000 he was apprehended by the officials of Directorate of Revenue Intelligence, New Delhi for his illegal activities while carrying 35 gold biscuits which were handed over to him by a pax Ashwani Kumar who had come from Singapore by Flight No. SQ-408 at about 10.30 PM and 35 biscuits of gold were seized from his possession and thus arrested under Custom Act 1962 at 1500 hours on 30.06.2000 and was sent to judicial custody. The delinquent HC Lal Chand 195/A was marked absent vide DD No. 7 dated 30.06.2000 at IGI Airport Lines vide Ex. PW-1/A. From the deposition of Sh. Kamal Bajaj PW-2 Preventive Officer in Custom Excise Tribunal R.K. Purma, New Delhi it has been established that HC Lal Chand No. 195/A the delinquent was apprehended at Gate No. 2 at IGI Airport on the night of 29/30.06.2000 and 35 gold biscuits amounting to Rs.18,65,017/- were recovered from his possession and the facts that these biscuits were handed over by one pax Ashwani Kumar @ Ashwani Verma who came from Singapore vide Flight No. SQ-408 dated 29.06.2000 at 10.30 PM. The delinquent HC Lal Chand, 195/A was arrested u/s 104 of Custom Act, 1962. The facts have also been corroborated by PW-3 Sh. C. L. Paul Asstt. Commissioner of Excise and the information of HC Lal Chand's arrest was sent to the senior officer of IGI Airport vide Ex. PW-3/A, B & C respectively. PW-4 and PW-5 has confirmed the arrest of one person on that day but have denied to identify him.

Both the DWs produced by the delinquent HC Lal Chand 195/A are the same persons who were arrested by the custom officer with the delinquent and thus it clearly proves the direct involvement of HC Lal Chand No. 195/A in the criminal activities and the depositions of both DWs are appears to be tutored. The defence statement submitted by the delinquent HC Lal Chand 195/A does not inspire any confidence and it is for the disciplinary authority to consider the request made under rule 12 of Delhi Police (Punishment & Appeal) Rules 1980. However the commission of offence by the delinquent HC Lal Chand No. 195/A directly attributed to the nexus with the bad elements misusing his official powers being posted at IGI Airport which is a grave misconduct on his part.

Conclusion

In view of the above said discussion and from the deposition of PWs/DWs and other material adduced on file, the involvement of the delinquent HC Lal Chand No. 195/A in case u/s 104 Custom Act 1962 is direct and the complete charge is proved beyond any doubt."

28. Moreover, it is now well settled principle of law that neither the technical rule of Evidence Act nor of proof of fact or evidence as defined therein apply to the disciplinary proceedings. In departmental enquiry, the authorities are required to decide the real controversy between the parties on the basis of preponderance of probabilities of evidence. Even the applicant has not cross-examined any of the witnesses despite opportunity and their statements remained unchallenged. The mere fact that the EO has put certain clarificatory questions in the garb of cross-examination of PW-5 and PW-6 is not a ground, much less cogent, to ignore the entire oral as well as documentary evidence brought on record by the parties. The Hon'ble Apex Court while considering the jurisdiction of judicial review and rule of evidence in the case of **B.C. Chaturvedi Vs. U.O.I. & Others AIR 1996 SC 484** has ruled as under:-

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. ***Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding.*** When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence

and to arrive at the own independent findings on the evidence. 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 of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H. C. Goel (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued".

29. Similarly, the Hon'ble Apex Court in the case of **K.L. Shinde** v. **State of Mysore**, **(1976) 3 SCC 76**, having considered the scope of jurisdiction of this Tribunal in appreciation of evidence, it was ruled as under:-

"9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that

statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabasappa, (1963) 2 SCR 943 = AIR 1963 SC 375 where it was held as follows:-

> "Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.
>
> 2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him ,and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

30. Above all, the jurisdiction of this Tribunal to interfere with disciplinary matters or punishment awarded in DE proceedings cannot be equated with appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authorities unless they are 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 principles of natural justice, the Tribunal has no power to substitute its own discretion for that of the authority.

31. Meaning thereby, if the epitome of the evidence produced by the parties during the course of enquiry, is put together, then conclusion is inescapable that charges framed against the delinquent stand proved. Moreover, in the present case the EO has discussed the evidence in detail and has appreciated the evidence of the parties in the right perspective as discussed hereinabove.

32. Finally, the Disciplinary Authority has recorded cogent reasons dealing with the relevant evidence of the parties and provided adequate opportunities at appropriate stages to the applicant. The Appellate Authority again considered the matter and confirmed the punishment order.

33. Therefore, we hold that both the Disciplinary Authority as well as Appellate Authority have recorded cogent reasons and examined the matter in the right perspective. We do not find any illegality, irregularity or any perversity in the impugned orders. As such, no interference is warranted by this Tribunal in the obtaining circumstances of the case.

34. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

35. In the light of the aforesaid reason, we find that there is no merit in the OA and it deserves to be and is hereby dismissed, as such. No costs.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh