CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT SITTING : BILASPUR

Transferred Application No.70/2013

Jabalpur, this Tuesday, the 27th day of February, 2018

Hon'ble Mr. Navin Tandon, Administrative Member
Hon'ble Mr.Ramesh Singh Thakur, Judicial Member

T.I.Kerwar S/o Late I.M.Kerwar, aged 45 years,
Occupation-Service Senior Manager (Stores)
(since Removed), R/o Street No.5A, Swabhiman Bhawan,
Shakti Vihar, Risali, Bhilai, District-Durg (C.G.) **- Applicant**

(By Advocate – Shri Gagan Tiwari
proxy counsel for Shri Malay Shrivastava)

V e r s u s

1. Steel Authority of India Limited, Through its Chairman
and Appellate Authority, Ispat Bhawan, Lodhi Road,
New Delhi.

2. The Managing Director and Disciplinary Authority,
Bhilai Steel Plant, Bhilai, District Durg (C.G.) **-Respondents**

(By Advocate – Dr.S.K.Pande)

(Date of reserving the order:21.02.12018)

ORDER

By Navin Tandon, AM,-

The applicant had initially filed Writ Petition (S) No.6385/2008 before Hon'ble High Court of Chhattisgarh, Bilaspur. Since during the pendency of said writ petition, by Notification dated 31.03.2010 Steel Authority of India Limited has been covered under the provisions of the Administrative Tribunals Act, 1985, the said writ petition was transferred to this Tribunal in

terms of the orders dated 23.07.2013 passed by the Hon'ble High Court of Chhattisgarh. Accordingly, the same was registered in this Tribunal as Transferred Application No.70 of 2013.

2. The applicant is aggrieved by the order of removal imposed upon him after holding a full-fledged departmental enquiry.

3. The brief facts of the case are that the applicant was working as Senior Manager (Store) Dalli Rajhara under the respondent-department. He was found to be involved in pilferage of 77KL (approx.) of High Speed Diesel (HSD) Oil during its receipts by Tankers of M/s Indian Oil Corporation (IOC) at Metal Mines Store (MMS), Rajhara, during the period March 2006 to January 2007. He was also found to have failed to check working of its subordinate resulting in communication of more quantity of HSD Oil than the actual stocks available at stores and on some occasions even more than the total capacity of the storage tanks at MMS, Rajhara, to DGM (MM-Stores) and AGM (CPS) through 'Daily Stock Position of HSD Oil' document. Accordingly, a charge sheet was issued to him vide memorandum dated 12.09.2007 (Annexure P-3). After holding a full-fledged departmental enquiry, the charges leveled against the applicant were found to be proved and

order of removal was passed by the disciplinary authority which has been upheld by the appellate authority.

4. The applicant has prayed for the following reliefs in this Original Application:-

> *"**10.(1)**The Hon'ble Court may kindly be pleased to call for the entire record leading to passing of the impugned order, for the kind perusal of this Hon'ble Court.*
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> ***10.(2)** The Hon'ble Court may kindly be pleased to issue a writ of certiorari quashing the order No.Vig./RC/09/BSP/07 dated 15/10/2008 (Annexure P/1) passed by respondent No.1 arising out of order No. EE-I/DPLN/2008/1355 dated 09/07/2008 passed by respondent No.2, and declare the same as void and inoperative.*
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> ***10.(3)** Cost of the petition may also be granted to the petitioner.*
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> ***10.(4)** Any other relief which this Hon'ble Court deems fit and proper may also kindly be granted to the petitioner, in the interest of justice."*

5. The main arguments put forth on behalf of the applicant are that the charge sheet is vague inasmuch as in Article 1 no specific allegation has been made against the applicant, and that the measuring dip reading applied by the vigilance department was defective. He has further contended that respondent No.1 has not considered any of the grounds raised by the applicant in his appeal.

5.1 The applicant has also submitted that even for the sake of the argument if it is assumed that applicant is guilty of committing negligence in performing his duties then also major penalty of removal imposed upon him is disproportionate to the charges leveled against him.

6. The respondents have stated that in the instant application the applicant has mainly pleaded disputed questions of facts, which cannot be gone into appropriately in this Tribunal, as the parties would be required to lead evidence in support of their rival claims. In this context they have placed reliance on the decision of Hon'ble High Court of Chhattisgarh in Writ Petition© No.2355/2008 (**M/s Pragati Engineering Works** Vs. **SAIL, BSP & others**) decided on 24.04.2008.

6.1 The respondents have further submitted that the punishment of removal is not disproportionate to the charges leveled against the applicant. They have placed reliance on the decision of Hon'ble Supreme Court in the matters of **Managing Director, Bharat Petroleum Corporation Limited and others** Vs. **T.K.Raju**, JT 2006(2) 624, wherein their lordships have held that as per the Conduct, Discipline and Appeal Rules for the Management Staff of

Bharat Petroleum Corporation Limited, the punishment of dismissal of employee for misconduct of taking deposits from Petroleum Distributors and not returning the same is a serious misconduct and the High Court was not justified in directing the employer to impose lesser punishment other than dismissal.

7. Heard the learned counsel of parties and carefully perused the pleadings of the respective parties and the documents annexed therewith.

8. As regards the contention of the applicant that the charge sheet is vague as in Article 1 no specific allegation has been made against the applicant, we may reproduce herewith both the Articles of charges leveled against the applicant as under:

> ***"Article-1**–Shri TI Kerwar, while working as Sr.Mgr. (Stores), Delhi-Rajhara, during the period March 2006 to Jan 2007 was involved in pilferage of 77KL (approx.) of High Speed Diesel (HSD) Oil during its receipts by Tankers of M/s Indian Oil Corporation (IOC) at Metal Mines Store (MMS), Rajhara",*

8.1 We find that in Article 1 the charge leveled against the applicant is that he was found to be involved in pilferage of 77KL (**approx.**) of High Speed Diesel (HSD) Oil, and the details of which have been given in Annexure-II to the charge memorandum

and the total manipulation comes to 76.69 KL. Therefore while mentioning 77(KL)(Approx) in Article-I of the charge, there was no mistake committed by the competent authority, as contended by the learned counsel for the applicant during the course of arguments. Therefore, the contention of the applicant that Article 1 of the charges is vague cannot be accepted and is, therefore, rejected.

9. Further, on perusal of the impugned orders we find that in its order dated 09.07.2008 (Annexure P-2) the disciplinary authority has held that the issue raised by the applicant regarding evaporation loss and short length of dip rod were illogical and unconvincing and further that alleged connivance of the applicant's subordinates was unconvincing as the procedures explicitly stipulates signing of invoices only when accompanied by unloading checklist signed by the storekeeper, whereas the applicant had signed invoices without checklist signed by storekeeper.

9.1 In the appellate order dated 15.10.2008 (Annexure P-1) we also find that various issues raised by the applicant in his appeal

were properly dealt with by the appellate authority in Para 4 of his order. It would be relevant to produce the same as under:

> *"(4). The relevant issues raised by Shri Kerwar in his appeal dated 7.8.2008 have been examined and the factual position emerging is as follows:-*
> *(i)* ***Issue****: Shri Kerwar has contended that out of the 4 listed prosecution witnesses, Examination-in-Chief was not carried/ evidence was not recorded in respect of 3 of the witnesses but that he was forced to conduct cross examination of these witnesses. Shri Kerwar has contended that this has vitiated the enquiry proceedings.*
> ***Factual Position****: It is observed that the written statements of the three witnesses referred above were taken on record by the IA. Subsequently, Shri Kerwar availed the opportunity to cross-examine all the witnesses. Thus, Shri Kerwar has been afforded opportunity to defend his case and the principles of natural justice has been followed; hence, Shri Kerwar's contention that the enquiry proceedings have been vitiated is not tenable.*
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> *(ii)* ***Issue****: Shri Kerwar has mentioned that he had submitted a list of 12 person to be called as his defence witnesses; however, these witnesses were not called for the enquiry and thus the entire enquiry gets vitiated for not affording proper opportunity of hearing to the CO.*
> ***Factual Position****: It is seen that the IA issued notices twice to all the witnesses listed by Shri Kerwar for his defence and receipt of the notices was acknowledged by all of them; however none of the witnesses deposed as defence witnesses in the departmental enquiry. Producing the Defence Witnesses before the IA in the Departmental Enquiry was also the responsibility of Shri Kerwar. Further, it is also seen that Shri Kerwar was subsequently asked if he would like to produce any other witnesses but he declined the same. Thus, Shri Kerwar's contention that he was not afforded proper opportunity of hearing is not correct.*
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> *(iii)* ***Issue****: Shri Kerwar has contended that manipulations in the 10 indents were made by applying whitener before 16.11.2006 i.e. the date of stock verification, considering the un-posted receipt and issue, which were known only to Shri*

TR Thakur and Shri RP Baghel, Storekeepers, and that this fact was not analyzed by the IA.

***Factual Position**: The contention of Shri Kerwar that un-posted receipt and issue were known only to Shri Thakur and Shri Bhagel is not correct as the figure of daily issues and daily receipts were available in Shri Kerwar's office. Further, on query of the IA, Shri Thakur and Shri Bhagel had stated that Shri Kerwar used to call for the indents to his office and after manipulating them with white fluid, he used to return the same to them. Thus, it is not correct that the IA has not analyzed this issue.*

*(iv) **Issue**: Shri Kerwar has stated that when he was heading the stores of Dalli –Rajhara, HSD was unloaded at 2 points; however, all the irregularities were found in only one group, which was possible with active connivance of Shri Thakur and Shri Baghel who were directly responsible for unloading, issue and accounting of HSD.*

***Factual Position**: Vigilance Department had carried out checks in Rajhara Stores only and highlighted the irregularities observed. It is also noted that Shri Kerwar also never carried out any check at Dalli; hence, his contention that there was no pilferage at Dalli is a hypothetical statement.*

*(v) **Issue**:Shri Kerwar has contended that all the decantation forms of the tankers which were listed in the Charge Memorandum dated 12.09.2007 were signed by Shri TR Thakur. Hence, the charges of not allowing his subordinates to carry out their job properly are not correct. Shri Kerwar has further contended that he had not received any complaint--either verbal or written, regarding short supply of HSD and that any short receipt of material should have been mentioned in the delivery challan/invoice for further action.*

***Factual Position**: It is seen that on various instances, the check list for decantation of HSD oil and invoices did not contain the signatures of the Storekeepers, and yet the same were signed by Shri Kerwar. Further it is also observed that the Storekeepers concerned had submitted written complaints of GM (Mines) and Vigilance Department-apparently due to inaction of Shri Kerwar on their previous*

verbal complaints. Hence, contentions of Shri Kerwar in this regard are unfounded."

9.2 On careful perusal of various issues raised by the applicant in his appeal, we find that the appellate authority has properly dealt with each issue and, therefore, contention of the applicant that appellate authority has not considered any of the grounds raised by the applicant in his appeal is not sustainable and is accordingly rejected.

10. On perusal of all the issues raised by the applicant we find that the applicant has mainly raised disputed questions of facts, which cannot be gone into in this Transferred Application, as both the parties would be required to lead evidence in support of their rival claim.

11. The law relating to scope of judicial review in disciplinary proceedings is well settled by Hon'ble Supreme Court in the matters of **B.C.Chaturvedi** Vs. **Union of India**, (1995) 6 SCC 749, wherein it has been observed 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 the eye of the court.* ***When an inquiry is conducted on charges of 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 are 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 proceedings.*** *Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives supports therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge.* ***The disciplinary authority is the sole judge of facts.*** *Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment.* ***The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence*** *and to arrive at its own independent findings on the evidence….."*

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In 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.

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18…the disciplinary authority and on appeal the appellate authority, being fact finding ***authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct.***

(emphasis supplied by us)

11.1 Since the applicant has failed to point out any procedural illegality or irregularity in conduct of the departmental enquiry held against him, we are of the considered view that there was no violation of principles of natural justice.

12. As regards the quantum of punishment is concerned, we may point out here that the Hon'ble Supreme Court in various matters has time and again held that it is beyond the jurisdiction of the Tribunal to interfere on it. The Hon'ble Supreme Court in the matters of **Rajasthan Tourism Development Corporation Limited and another** Vs. **Jai Raj Singh Chauhan,** (2011) 13 SCC 541: (2012)2 SCC (L&S) 67 has considered various case law on the subject, relevant paragraphs of which are reproduced below:

> "***(19)*** *In* ***Union of India*** *Vs.* ***Parma Nanda*** *(1989) 2 SCC 177 : 1989 SCC (L&S) 303 : (1989) 10 ATC 30, this Court while dealing with the scope of the Tribunal's jurisdiction to interfere with the punishment awarded by the disciplinary authority observed as under:*
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> > *"27.* ***We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction.*** *The Tribunal cannot interfere with the findings of the enquiry 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 principles of natural justice,***

what punishment would meet the ends of 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*."*

(20) *In* ***B.C. Chaturvedi*** *Vs.* ***Union of India,*** *(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44 the Court reviewed some of the earlier judgments and held:*

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal, the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. ***The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty.*** *If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."*

(21) *In* ***Apparel Export Promotion Council*** *Vs.* ***A.K. Chopra*** *(1999) 1 SCC 759: 1999 SCC (L&S) 405 the Court again referred to the earlier judgment and observed:*

*"****(16)****. The High Court appears to have overlooked the settled position that in departmental proceedings,* ***the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded***

findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. *Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities.* ***Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.*** *Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is* ***not*** *concerned with the* ***correctness*** *of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at.* ***Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process.*** *Lord Hailsham in* ***Chief Constable of the North Wales Police*** *v.* ***Evans*** *(1982) 1 WLR 1155:(1982) 3 All ER 141 (HL) observed:*

> *'... The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court.'*

(17)*. Judicial review, not being an appeal from a decision, but a review of the manner in which the*

> *decision was arrived at,* ***the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority.****"*
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> *(emphasis supplied by us)*

13. Thus, it is settled law that jurisdiction of this Tribunal in this regard is very limited; its power to interfere with disciplinary matters is circumscribed by well known factors; and that it cannot set aside a well- reasoned order only on sympathy or sentiments. In the instant case we find that all the procedural requirements have duly been complied with by the respondent-authorities. Major penalty proceedings were initiated against the applicant. Both disciplinary and appellate authorities have found that the applicant was dishonest and acted in a manner prejudicial to the interest of the company and exhibited negligence in performance of duties. The disciplinary authority in its order has concluded that due to acts of omission/commission of the applicant, there was pilferage of approximately 67,000 liters of diesel and the pilferage done with his connivance has resulted in monetary loss of approximately Rs.22.00 lakhs to the Company besides tarnishing the reputation of the Company. Thus, imposition of penalty of removal from service

upon the applicant by the disciplinary authority, which has been upheld by the appellate authority, cannot be said to be disproportionate keeping in view the proved misconduct of the applicant.

14. Accordingly, we do not find any ground to interfere in the orders passed by the disciplinary and appellate authorities and, therefore, the relief sought for by the applicant in this Transferred Application cannot be granted.

15. In the result, the Transferred Application is dismissed, however, without any order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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