CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

O.A.No.237/2012

Dated this Monday the 24th day of April, 2017.

Coram: Hon'ble Shri Arvind J. Rohee, Member (J)
Hon'ble Ms.B. Bhamathi, Member (A).

Shri Ajay Kumar Walia,
Highly skilled (Ex.T.No.10135N),
Centre No.39,MBEF Dept.,
Naval Dockyard,
Mumbai and presently residing at
A-401,New Sew View,New Raviray
Complex,Jesal Park,Bhayander(E),
Thane 401 105. .. **Applicant.**

(By Advocate Ms.Manda Loke)

Versus

1. The Union of India, through
its Secretary,
Ministry of Defence,
South Block,
New Delhi – 110 011.

2. The Chief of the Naval Staff,
Integrated Headquarters,
Ministry of Defence(Navy),
New Delhi-110 105.

3. The Flag Officer Commanding in Chief,
Headquarter, Western Naval Command,
Shahid Bhagat Singh Road,
Mumbai-400 001.

4. The Admiral Superintendent,
S.B.S. Road,Lion Gate,
Naval Dockyard,
Mumbai-400 023.

5. The Staff Officer(Civilian Personnel)-II,
For Flag Officer Commanding-in-Chief,
Headquarters,Western Naval Command,
Shahid Bhagat Singh Road,
Mumbai-400 001. .. **Respondents.**

(By Advocate Shri. V.S. Masurkar)

Order reserved on : 20.02.2017
Order delivered on : 24.04.2017

O R D E R
Per: Arvind J. Rohee, Member (J)

The applicant has grievance regarding the impugned order of punishment of removal from service passed in a disciplinary proceedings and hence he approached this Tribunal under Section 19 of the Administrative Tribunal's Act, 1985, seeking for the following reliefs:-

> "8.1 That this Hon'ble Tribunal be pleased to call for the record and proceedings from the Respondents and further to recall/set aside the 'Removal from Service' order dated 20th Jan 2010 and final order of rejection of appeal dated 26th August 2010 issued by the Respondent No. 5 on behalf of Respondent No. 4 and further direct the Respondents to reinstate the Applicant with immediate effect with all consequential benefits.
>
> 8.2 That this Hon'ble Tribunal be pleased to order the Respondents to reinstate the Applicant in their service under the provisions of law and Rules made thereunder;
>
> 8.3 Any other just and equitable order in the interest of justice, equity and good conscience may be passed;
>
> 8.4 Cost of the present Application."

2. The applicant was initially appointed as Boiler Maker (Highly Skilled II) in BEF Department of the respondents at Mumbai vide order dated 18.05.1994 (Annexure A-3). The applicant was

classified as industrial employee and was governed by such conditions of service as incorporated in his appointment order. He was thus a civilian employee in Defence Services.

3. The applicant rendered services sincerely, honestly and was having satisfactory record. However, On 12.05.2008, the Additional General Manager, Naval Dockyard, Mumbai served a Memorandum of Charge-sheet (Annexure A-4) on the applicant, on the allegations that he obtained a Passport without permission of the Competent Authority and travelled abroad without prior permission or approval of the Competent Authority and thus violated provisions of Rule 3 of CCS (Conduct) Rules, 1967 and thus committed misconduct. This was a major penalty charge-sheet under Rule 14 of the Central Civil Services (Classification, Control And Appeal) Rules 1965 (hereinafter referred to as CCS(CCA) Rules).

4. The applicant submitted reply (Annexure A-5) to the charge-sheet on 20.05.2008 denying the allegations made against him, which according to him were fabricated, malafide, vague and frivolous. However, the respondent No.4 vide order dated 18.06.2008 (Annexure A-6) appointed Inquiry Officer to proceed with the inquiry. The applicant attended the Inquiry in pursuance of the notice dated

08.12.2008 (Annexure A-7). However, subsequently, the respondent No.4 replaced the previous Inquiry Officer and appointed one Shri K.A.Salvi vide order dated 15.06.2009 (Annexure A-8). The applicant participated in the inquiry. The Inquiry Officer, on conclusion of the enquiry, forwarded a Report to the Disciplinary Authority (Respondent No.4). The Inquiry Report was then served on the applicant vide communication dated 03.11.2009 [Annexure A-9(VIII)] and he was called upon to make his submissions on it, if any. In pursuance thereof, the applicant denied the finding recorded by the Inquiry Officer vide reply dated 03.11.2009 (Annexure A-10).

5. After considering material on record, the Disciplinary Authority accepted the findings recorded by Inquiry Officer and rejected applicant's contentions. The impugned order dated 20.01.2010 (Annexure A-1) was then passed by Disciplinary Authority, imposing punishment of removal from service. This led the applicant to approach the Appellate Authority (Respondent No.3) in Appeal dated 26.02.2010 (Annexure A-11), challenging the order passed by the Disciplinary Authority raising some grounds mentioned therein. However, by the impugned order dated 26.08.2010 (Annexure 2(I)), the Appellate Authority dismissed the appeal and

confirmed the punishment of removal from service imposed by the Disciplinary Authority. The applicant was served with the copy of appellate order on 27.08.2010 vide forwarding letter [Annexure A-2(II)].

6. The applicant then took recourse to the provisions of Right to Information Act regarding the consequences of imposition of punishment of removal from service and of compulsory retirement vide communication dated 22.07.2010 (Annexure A-12). However, details of employees to whom benefit on imposition of punishment of compulsory retirement was granted, was not disclosed to the applicant.

7. The applicant then approached this Tribunal in the present O.A. on 07.02.2012, challenging both the orders of Disciplinary Authority and Appellate Authority.

8. Along with O.A., M.P.264/2012 for condonation of delay in approaching this Tribunal is filed on the ground that the impugned order of removal from service has caused heavy financial burden upon the applicant and since he was the only earning member of the family, consisting of his old parents, younger brother and sister in law, his wife and two daughters, he could not seek legal advice to take appropriate steps. It is also stated that his

parents were residing in Himachal Pradesh and on account of ill health of his father, he brought his parents to Mumbai for necessary treatment. Hence, on account of father's ill health, and financial crisis, he could not file the present O.A., within prescribed time limit. The delay caused is, therefore, liable to be condoned in the interest of justice.

9. The reliefs sought in the O.A. are based on the following grounds as mentioned in Para 5 of the O.A. The same are reproduced here in verbatim for ready reference:-

> "5.1 The Applicant is being discriminated and is being treated unjustly.
>
> 5.2 The Respondents are bound by the provisions of Articles 14,16,19,20 and 21 of the Constitution of India and the other respondents are bound to act as per the above Articles of the Constitution of India.
>
> 5.3 While rejecting the representation by the Respondent no. 3, the Respondent No. 3 has not been given any clarification regarding rejection of the applicants appeal. Explanation given by the Applicant has not been properly considered by the appellate authority caused injustice to the Applicant.
>
> 5.4 The Applicant is the only earning member of his family comprising of his old aged parents, wife, two daughters, brother and sister in law and same is not considered by the concerned authority while awarding

penalty caused injustice to the Applicant. Further passport number shown in proceedings at Art.I and para(d) is not tallied with the charge-sheet which shows non application of mind of Disc. Authority and Inquiry Officer.

5.5 The Respondents have failed to investigate the matter properly which caused grave injustice to the Applicant.

5.6 If the Applicant is not granted reliefs grave and irreparable loss and injustice would be caused to the Applicant which cannot be compensated in terms of money as the Applicant is the only sole earning member of his family. Considering the said facts and circumstances the Applicants representation would have been considered by the appointing authority as well as appellate authority sympathetically which they failed hence interference is required.

5.7 The Respondents are also bound by the Principles laid down by the Hon'ble Supreme Court in the Doctrine of Legitimate Expectation.

5.8 The Applicants states that where there is arbitrariness in Action Article 14 springs in and judicial review strikes down such action, every action of the executive authority as well as superior authority must be informed by reason and it should meet the rest of Article 14.

5.9 The Applicants states that public authorities cannot play fast and loose powers vested in them and the persons in whose detriment order are made are entitled to know the exactness of the order and the reasons for making the order.

5.10 While awarding punishment the concerned authority would have considered the service record of the Applicant. In such circumstances assuming but not admitting the punishment awarded by the concerned authority, the appointing authority would have given him some minor punishment and would have given one chance and opportunity. Because if the authority shall play such fast role then it definitely caused loss, prejudice and

injustice to the applicant who was working as Highly skilled labour and his performance is always satisfactory which is reflected in evidence also.

5.11 The Appellate authority passed the order without application of mind and merely repeating order of the disciplinary authority cannot be sustained as the Appellate authority should have applied his mind independently which he failed hence inference is required.

5.12 The disciplinary authority is neither an appellate nor a revisional body over the inquiry's report and they should come to its own conclusion of course bearing in mind the views expressed by the inquiry officer which they failed caused injustice to the applicant.

5.13 While awarding penalty the concerned authority was required to pass speaking order by giving reasons for imposing the penalty after considered the inquiry report representation of the applicant and other material concerning disciplinary proceedings on record which they failed hence interference is required by this Hon'ble Tribunal.

5.14 Where the disciplinary authority failed to apply its mind to the report and record of the inquiry before inflicting the punishment to the prejudice of the applicant which shows that he failed to act justly and fairly but acted capriciously. Hence order of removal has to be quashed.

5.15 The disciplinary authority must consider every allegation in the charge and the detailed explanation thereto. Merely saying that the matter has been considered is not enough. It shows non application of mind.

5.16 Two Government Servants were chargesheeted for the same charges

arising not of the same incident. It was not open to the disciplinary authority to allow one to join his duties and or pay all the benefits and or to remove other from service which is done by the disciplinary authority in present case as the Government employee namely Sunil Malik, C. no. 67, MYAS(10years service) was also undergoing same charges but the disciplinary authority had given him compulsory retirement whereas the applicant(15years service) was awarded removal from service. It is not open for the disciplinary authority to impose different punishment for same charges. Said act of the respondent authority amounts to discrimination hence interference is required.

5.17 That the evidence recorded at para d in the proceedings by the inquiry officer, he has not given specific reason in respect of said paras while recording findings. Inquiry officer had not stated as to what administrative reasons the case not forwarded to intelligence department. Further during cross examination question was put up by the Defence officer to PW 4 regarding verification of passport for which answer was negative and for question no. 46 the answer was on presumption. Further on what basis Satish Kumar PW 4 stated about absentism from 1992 onwards which is not true and without any authority had verified about identification of the applicant, said question was specifically put up by the Defence Assistance to Police Officer, PW 2 at question no. 32 and 34 for which answer was negative. While recording the findings no reasoning was given by the inquiry officer and without looking into this the disciplinary authority had awarded penalty without application of mind hence that has to be quashed and set aside.

5.18 That the Appellate authority while hearing the appeal against imposition of penalty imposed as a result of disciplinary proceedings is under obligation to pass a speaking order while dismissing the appeal. Failure to do so makes the order illegal(J C Mehta Supdt. Engg., PGI, Chandigarh v Post Chandigarh Institute of Medical Education and Research Chandigarh 1988(4) SLR 768(P&H). It is the duty of the appellate authority to discuss thoroughly the procedural aspects as well as the justness of the findings of the disciplinary authority with reference to the admissible evidence, to discuss the point raised in the appeal and to give a definitive conclusion that(i) the charge levelled against the employee has been established and (ii) that the penalty is appropriate and does not require enhancement or interference. But same had not been done by the appellate authority hence the order is illegal and liable to be quashed and set aside.

5.19 That the appellate authority failed to give reasons when it is obligatory upon the appellate authority for not only give hearing to the Government but must also give reason.

5.20 Sub-clause (c) of cl(2) of Rule 27 requires expressly the appellate authority to consider ....''whether the penalty is adequate, inadequate, severe'' étc. And pass order....''which was not done in present case and hence the order is liable to be quashed and set aside.

5.21 The Applicant state that he seek leave to amend alter and/or add all or any averments in this application and further to file Affidavits and/or Rejoinders as and if so required.”

10. On notice, the respondents appeared and by a common reply dated 11.09.2012, resisted the O.A. and M.P. by denying all the adverse averments, contentions and grounds raised therein.

11. It is stated that the O.A. is barred by time since it is filed beyond the period of one year from the date of appellate order. Reasons given in the M.P. for condonation of delay are not convincing or satisfactory. Number of decisions rendered on the issue of limitation are relied upon by the respondents, as mentioned in paragraph No.3 of the reply.

12. It is stated that a misconduct report was received from C.No.39 in respect of the applicant to the effect that he obtained a civil passport bearing No.E4058716 without permission of the Competent Authority and travelled abroad without prior permission/approval of the Competent Authority, namely, Commander Shri K.Satish Kumar,Senior Manager,(TC), Naval Dockyard, Mumbai. The Competent Authority vide communication dated 18.01.2008, addressed to the Senior Inspector of Police, Airport Branch, SB-II, C.I.D., Mumbai, sought information regarding arrival and departure of the applicant from/to abroad. In response to it, the said authority vide its letter No. **DYP/SD/C.39/10135**

dated 18.01.2006, 481/AP/SB-II/CID/2008 dated 04.02.2008, confirmed that the applicant travelled abroad on following dates.

Arrival		Departure	
Date	Flight No.	Date	Flight No.
26.01.06	AI-854	22.01.06	EK-503
02.02.07	AI-874	17.07.06	EK-503
30.05.07	EK-502	18.02.07	AI-875

13. It was confirmed from official record that the applicant had not obtained permission for getting a passport or to go abroad. Hence a major penalty charge-sheet under Rule 14 of CCS(CCA) Rules was issued to him for committing a gross misconduct. Detailed inquiry was held in which full opportunity was given to the applicant to participate and defend him. The previous inquiry officer was required to be replaced since he left and did not report back on duty. Shri Balagangadhar K. Nair(TA)[PLG] was also appointed as presenting officer. The applicant was also permitted to seek defence assistance from Shri D.P. Mohanthi C.MAN-II INS Shivaji. On inquiry, the charges were found to have been proved and the said findings is accepted by the Disciplinary Authority and considering the nature and gravity of the charges levelled against the applicant, punishment of removal from service was rightly imposed on

applicant after following due procedure.

14. It is stated that the applicant while working as Group C employee, in past was awarded the following penalties.

> "(a) Withholding of increment for a period of six months with cumulative effect' w.e.f. 07.06.05 for habitual absence w.e.f. 01.12.03 to 24.01.05 in different spells for a total no. Of 141 days.
>
> (b) Reduction of pay by one state for a period of one year with cumulative effect' w.e.f. 14.03.08 for unauthorised absence w.e.f. 20.08.06 to 19.06.07."

15. Considering the gravity of offence and the past record of the applicant, the Disciplinary Authority has rightly imposed the punishment of removal from service. No grounds are made out by the applicant to challenge the said finding which was rightly confirmed by the Appellate Authority. The provisions of CCS(CCA) rules are strictly followed while conducting the inquiry and imposing punishment on the applicant. There is no procedural flaw nor violation of any statutory rules and the applicant was granted sufficient opportunity to defend him. In such circumstances of the case, the punishment imposed on the applicant commensurates with the gravity of the misconduct. The O.A. is, therefore, devoid of merit and is liable to be

dismissed. Number of decisions explaining the scope and power of judicial review vested in this Tribunal in the matter of disciplinary proceedings are relied upon.

16. It is stated that the Appellate Authority has elaborately considered the appeal and the grounds raised by the applicant and found that the punishment imposed by the Disciplinary Authority is justified and hence it was confirmed. As such, there is no scope for interference with the said finding by this Tribunal, since there is no illegality or impropriety in the order passed by both the authorities. The applicant was also granted personal hearing on 17.08.2010 at 3.30pm by the Appellate Authority before order was passed on his appeal. Hence, it cannot be said to be arbitrary or illegal. It is stated that the punishment imposed commensurates with the gravity of the charge and hence the same is perfectly legal and rational. Since the punishment imposed is based on sufficient evidence in the matter and the action taken is strictly in accordance with law, interference by this Tribunal is not warranted.

17. In this respect, reliance was placed on the decision rendered by Hon'ble Supreme Court in **State of Tamilnadu Vs S.Subramaniam, AIR 1996 SC 1232**, in

which it has been held that when a conclusion is reached by the authority in a disciplinary proceeding based on evidence, the Tribunal is devoid of power to re-appreciate evidence and to come to its own conclusion. Further reliance was placed on another decision rendered by Hon'ble Supreme Court in **Government of Tamilnadu Vs K.N. Ramamurthy 1998(1)SLJSC63,** in which it has been held that in the matter of quantum of penalty imposed by authorities, the Tribunal cannot interfere, if there is no flaw in the procedure. The applicant, therefore, is not entitled to any relief and the O.A. is liable to be dismissed.

18. The applicant, then filed rejoinder to the reply on 06.12.2012 and denied all the adverse averments, contentions and grounds raised in the reply. The grounds stated in the O.A. were reiterated. To justify the reliefs sought, it is also stated that the Office of the respondents vide communication dated 30.04.2010 (Annexure A-13) addressed to the Regional Passport Office, Bhayander(East), Thane (Annexure A-13) tried to secure the details of the application submitted for issuance of Civil Passport by Shri Ajay Kumar Walia. However, nothing was heard from the said authority.

19. The respondents again submitted a reply to

the rejoinder on 27.06.2013, denying the averments made in the rejoinder and reiterated the grounds stated in the reply to the O.A.

20. The applicant again filed reply to sur-rejoinder on 19.08.2013, denying the averments made therein and reiterated the grounds stated in the O.A., in support of his claim. It is stated that the letter addressed by the office of the respondent to the Regional Passport office contains incorrect postal address of Passport office, which infact is applicant's native address and not of the passport authority. This shows casualness on the part of the Disciplinary Authority in conducting the inquiry and on this ground alone, the O.A. is liable to be allowed. It is stated that in other matter involving similar charge, lesser punishment was imposed on the delinquent, which fact came to the knowledge of the applicant on the information received/supplied by Shri B.B. Mohanthi, his Defence Assistant who defended the other delinquent employee too. Hence the punishment of removal from service is liable to be set aside.

21. On 20.02.2017, when the matter was called out for final hearing, we have heard the submissions of Smt.Manda Loke, learned Advocate for the applicant and reply arguments of Shri V.S. Masurkar,

learned Advocate for the respondents. We have also considered and perused the original record of inquiry produced by the respondents.

22. We have carefully gone through the pleadings of the parties and various documents relied upon by them including the citations of decisions rendered by the Hon'ble Supreme Court and Hon'ble High Courts in support of their rival contentions.

23. We have also given our thoughtful consideration to the submissions advanced before us by both the learned Advocates for parties.

FINDINGS

24. The only controversy involved in this O.A. for decision of this Tribunal is whether the impugned order passed by the Disciplinary Authority and confirmed by the Appellate Authority imposing the punishment of removal from service on the applicant in a disciplinary proceedings is liable to be quashed as illegal, improper or incorrect on the grounds raised by the applicant.

25. Before proceeding to consider the merits of the case, we would like to give our ruling on M.P.No.264/2012 for condonation of delay in approaching this Tribunal. So far as this aspect of the case is concerned, the cause of action to

approach this Tribunal arose on decision of appeal preferred by the applicant against the order of the Disciplinary Authority, which is dated 26.08.2010. The applicant has not preferred any revision or mercy/Review Petition against the order of the Appellate Authority. As such the said order is final. As per the provisions of Section 21 of the Administrative Tribunals Act, 1985, period of one year is prescribed from the date of accrual of cause of action to approach this Tribunal. The said period admittedly expired on 26.08.2011 and since the O.A. having been filed on 09.02.2012 there is delay of about six months in approaching this Tribunal.

26. Perusal of the affidavit filed by the applicant in support of the M.P. for condonation of delay and the medical treatment case papers submitted by him on 20.12.2016 regarding his self illness, it is obvious that the applicant was prevented for sufficient reasons to approach this Tribunal within one year from the date of the Appellate Order. It is obvious from the medical case papers that the applicant was suffering from Lumber Spondilitis for which he was taking the treatment in INHS Asvini Hospital during relevant period.

27. Further considering the fact that major penalty of removal from service was imposed on the applicant, it will be just and proper to serve ends of justice in a better manner, to condone the delay of few months in approaching this Tribunal. In view of this the said M.P.264/2012 is allowed and delay in approaching this Tribunal in the present O.A. is condoned.

28. Turning to the merits of the case, it is the settled legal position established through catena of judicial pronouncements by the Apex Court that so far as power of judicial review vested in this Tribunal while considering challenge to the orders passed by the authorities in disciplinary proceedings is concerned the said power cannot be equated with or considered to be power exercised by Appellate Courts, so that there can be reappreciation of the entire evidence and material brought on record during inquiry to come to its own conclusion. It is obvious that it is only required to be seen if the prescribed procedure under Discipline & Appeal Rules has been properly followed by the Inquiry Officer and higher authorities before holding the delinquent employee guilty of charge and imposing punishment. Further, preponderance of probability plays an important role in arriving at a

decision by this Tribunal and it is to consider if there is some element of evidence on record from which inference can be drawn that the finding recorded by the Disciplinary Authority and higher authorities holding the delinquent employee guilty is correct.

29. Further there is scope for interference by the Tribunal if reasonable opportunity is not granted to the delinquent employee to defend him in inquiry proceedings. In other words it is to be considered if the principles of natural justice are observed by the authorities or not. Further the competence of the Disciplinary Authority to issue Memorandum of Charges, if disputed also needs to be considered, since in case it is found that the charge-sheet has been issued by the incompetent authority, then the entire inquiry would stand vitiated.

30. Keeping in mind the above referred settled legal position, we shall now turn to examine the applicant's contention on merit.

31. It is not disputed that at the relevant time the applicant was working as Boiler Maker (Highly Skilled-II) with the respondents. Two charges as per statement of Article of Charge are levelled against the applicant. The same are

reproduced here in verbatim for ready reference:-

> "**ARTICLE I**: Shri AK Walia, HSK, T.No.10135, C.No.39 committed a gross misconduct in that he got a civil passport bearing No.E 4058716 without prior permission of the Competent Authority and hence he has not maintained devotion to his duty and acted in a manner which is unbecoming of a Govt. Servant and thereby violated Rule 3(1)(ii)(iii) of CCS (Conduct) Rules, 1964.
>
> **ARTICLE II:** Shri AK Walia, HSK, T.No.10135, C.No.39 committed a gross misconduct in that he travelled abroad without prior permission/approval of the Competent Authority and hence he has not maintained devotion to his duty and acted in a manner which is unbecoming of a Govt. Servant and thereby violated Rule 3(1) (ii) (iii) of CCS (Conduct) Rules, 1964."

32. Statement of imputation of misconduct in support of the Articles of Charge, gives details regarding the dates and the flight numbers of departure from India and arrival back to India during the period from 22.01.2006 to 30.05.2007 on three different occasions and for different period as mentioned therein. This pertains to Article II of the charge. The same is reproduced here for ready reference:-

"Arrival		Departure	
Date	Flight No.	Date	Flight No.
26.01.06	AI-854	22.01.06	EK-503

02.02.07	AI-874	17.07.06	EK-503
30.05.07	EK-502	18.02.07	AI-875"

33. The documentary evidence on the basis of which the above two Articles of Charge are proposed to be proved against the applicant and the names of the departmental witnesses are also given in Annexure-3 and Annexure-4 of the Memorandum respectively.

34. The applicant denied the above charges by short reply dated 28.05.2008 (Annexure A-5) addressed to respondent No.4. The same reads as under:-

> "1. The charges are fabricated, malafide vague & frivolus with a ulterior motive. I denied these pre-judice charges in tot and desire to be heard in person.
>
> 2. Kindly hold the enquiry.
>
> 3. In this regard it is requested that kind withdraw the said memorandum.
>
> Thanking you
>
> Yours faithfully,
>
> Signature
> (Ajay Walia)"

35. It is thus obvious from perusal of the above referred short and cryptic reply submitted by the applicant that he has nowhere specifically denied the fact that he had ever applied to the

authority for obtaining the passport or travelled abroad on the dates mentioned in the charge-sheet. Since specific charges are levelled against the applicant it was expected of him to give a specific and detail reply to it. However, he failed to do so had given very evasive and vague reply without specific denial giving all material details. The Inquiry Officer has considered this aspect and the other relevant record and came to the conclusion that the charges levelled against the applicant stand proved. The inquiry report [Exhibit A-9(v)] clearly reveals that all the aspects of the case brought on record of inquiry proceedings during course of the inquiry through evidence of departmental witnesses have been elaborately considered before recording a finding that both the charges levelled against the applicant are proved. It is not applicant's case that he was denied any opportunity to defend him or that prescribed procedure was not followed by the Inquiry Officer and the Disciplinary Authority. He has also not disputed competence of the Disciplinary Authority to issue Memorandum of Charges against him. It further shows that at the instance of the applicant Senior Police Inspector was also examined and full opportunity was granted to him to cross examine the

departmental witnesses. Under the caption of recording of evidence, evidence adduced by all the four witnesses, viz. Commander Rajaneesh Sharma, Sr. Manager, C.No.39, (PW.No.1), Shri S.A. Raut, Police Inspector, Airport Branch, SB II, CID, Mumbai (PW-2), Smt.S.S. Prabhu, UDC (PW-3) and Cdr.K. Satish Kumar (PW-4) the Investigating Officer is elaborately considered and discussed. The Inquiry Officer has come to a conclusion that the Passport Office issued a Passport bearing No.E4058716 to Shri A.K. Walia, i.e. the delinquent and on its basis he travelled abroad on three occasions. Perusal of the original inquiry proceeding reveals that the prescribed procedure has been followed by the Inquiry Officer while conducting the inquiry and full opportunity was granted to the applicant to defend him.

36. In this respect, learned Advocate for applicant submitted that there is no conclusive proof that A.K. Walia holder of Passport is none else than applicant since there may be number of persons having similar name like A.K. Walia, who are recipient of Passports. In this respect it has come in the evidence of PW-3 Shri S.A. Raut, Police Inspector that on receiving communication from PW-4 to submit particulars of the journey abroad in

respect of Charge No.II, he sought particulars of full name of the applicant and then alone issued the information regarding A.K. Walia, hence there cannot be a doubt that particulars submitted relate to applicant only, although PW-4 it is stated in his evidence that he cannot identified the holder of Passport which is quite natural.

37. The representation made by the applicant to the Inquiry Officer's report served on him (Annexure A-10) is also vague and cryptic, since findings recorded on the basis of the evidence has not been specifically refuted by the applicant. It will be beneficial to reproduce the submissions made against the Inquiry Officer's report by the applicant for ready reference:-

> "Sub: Submission against Inquiry report.
>
> Ref.:DYP/SD/C-39/10135N dated 03 Nov. 2009.
>
> With reference to the above quoted Inquiry report I request your honour with folded hands to kindly do justice with me by exonerating me from the charges vide DYP/SD/C.39/10135-N dated 12 May 2008.
>
> Thanking you
>
> Yours faithfully,"

38. During the course of arguments the learned Advocate for the applicant submitted that the inquiry report is malafide and vitiated since on page 53 thereof a different Passport No. is

mentioned as 50455716 and not 4058716. However, it appears to be a typographical mistake from which it cannot be said that the entire departmental proceedings is false and concocted, especially when at many other places in report and in impugned orders correct Passport no. is mentioned.

39. Further the order passed by the Disciplinary Authority clearly shows that inquiry report alongwith all other record of proceedings submitted by the Inquiry Officer has been considered before accepting the findings recorded by the Inquiry Officer. As such it cannot be said that there was no application of mind by the Disciplinary Authority to the material brought on record and while imposing the major penalty of removal from service by holding that applicant indulged in commission of gross misconduct, since he obtained the Passport without prior permission of the Competent Authority and even travelled abroad without permission and he failed to maintain devotion to duty and acted in a manner which is unbecoming of a Government Servant and thereby violated the provisions of CCS (Conduct) Rules, 1964.

40. During the course of arguments, the learned Advocate for the applicant submitted that in spite

of specific request made by the applicant during the course of inquiry to summon and examine the Passport Officer, Thane to confirm the fact that the Passport in question was in fact issued to the applicant, however, the Passport Officer had not been examined. In this respect perusal of the original record of the inquiry shows that by communication dated 21.08.2009 by the Inquiry Officer addressed to the Passport Office, A-401, New Seva View, Sector 'D', Jesal Park, Bhayandar (East), Thane reveals that the Passport Office, Worli, Mumbai vide letter No.CT(5)08/3460/05/P000101 dated 16.01.2008 informed the Inquiry Officer that the applicant was issued Passport No.E-4058716 by Passport Office Thane and its particulars are also informed by Worli Office as under:-

"Name : A.K. Walia

Passport Number : E-4058716

Date of Issue : 04/02/2003

Date of Expiry : 03/02/2013

Place of Issue : Passport Office, Thane".

41. By the aforesaid communication, the Passport Authority, Thane was also requested to forward Xerox copy of the application submitted by the individual and also requested to ascertain if

the individual has disclosed that he is a Government servant. It is obvious that the said information could not be provided for the simple reason as stated by the applicant that the postal address on which the said communication was issued, in fact, is the residential address of applicant. It appears that no further steps were taken by the Inquiry Officer in this behalf. However, the fact remains that through official communication, it was transpired that the applicant has sought Passport. For this reason, although Passport Officer, Thane is not examined, no adverse inference can be drawn against the respondents for the reason that there is sufficient evidence on record through official correspondence to show that the applicant secured Passport and travelled abroad between 22.01.2006 to 30.05.2007 as stated earlier.

42. The applicant preferred appeal against the order of Disciplinary Authority. The order of punishment has been challenged in the appeal dated 26.02.2010 (Annexure A-11) on the following grounds:-

> "The inquiry officer had relied on the Letter by the Regional Passport Officer without examining nor giving a chance to me to cross examine him which is against the principles of natural justice and against the established procedure

of Law.

The Admiral Superintendent, ND (Mumbai) had imposed the penalty of (Removal from Service) for holding and travelling with Passport No-E4058716 which is different from the one said, in the charge sheet vide DYP/SD/C.39/10135N, Dated: 12th May 2008, and the punishment is very harsh and disproportionate to the charges.

Notwithstanding the above, I beg to State that I had served in Naval Dockyard, Mumbai from 15 yrs. I have my old aged parents, younger brother with his wife, my wife and two daughters who are fully dependent on me.

I, therefore request your honor to consider my case sympathetically, give me a personal hearing show mercy on me and my family and reduced / modify the punishment of "Removal from service" awarded by the admiral Superintendent, Naval Dockyard, Mumbai for which act of kindness, I and my family shall as duty bound ever pray.

Thanking you,

Yours faithfully,

(A.K. Walia)".

43. The Appellate Order dated 26.08.2010 [Annexure A-2(ii)] clearly reveals that the Appellate Authority has framed issues/points for determination and has considered the grounds raised by the applicant. The applicant was also granted personal hearing on 17.08.2010 in which he claimed

leniency on the ground that he has to maintain his old parents, wife, two daughters, younger brother and his wife. It, therefore, cannot be said from perusal of the impugned orders passed by both the authorities that there was no application of mind by them to the evidence and material brought on record during inquiry, before holding the applicant guilty of the charges levelled against him. It, therefore, cannot be said from perusal of the record that both the authorities were wrong in holding applicant guilty of charges levelled against him and they failed to consider material on record in a proper perspective and came to a wrong conclusion that the applicant is guilty of both the charges levelled against him.

44. During the course of arguments, it was pointed out by the learned Advocate for the applicant that the Disciplinary Authority was negligent in issuing letter to the Passport Authority seeking information regarding the Passport, since the said letter was in fact issued on the residential address of the applicant. It is true that thereafter there is nothing on record to show that any steps were taken by the Disciplinary Authority for seeking the necessary information from the Passport Authority. However, considering the

fact that there is no specific denial from the side of the applicant in the reply to the charge-sheet or in the evidence or in the submission made against the Inquiry Officer's report that he had not obtained the Passport and no specific ground was raised in the appeal, it can safely be said that the Disciplinary Authority and the Appellate Authority were right in holding the applicant guilty of both the charges.

45. It is true that during the course of arguments, learned Advocate for the applicant submitted that the Passport Officer has not been examined nor any information was collected by the Disciplinary Authority from the Emigration Department of Mumbai Airport in order to establish both the charges. However, it is obvious from record that there is sufficient evidence to hold that both the charges levelled against the applicant are proved and to hold him guilty thereof. By exercising the power of judicial review it will not be appropriate to interfere since it is to be considered if there is some evidence on record to establish the charges against the applicant and we are of the considered view that both the Disciplinary and Appellate Authorities have not failed in discharging this duty in passing the

impugned orders on the basis of the material on record.

46. So far as objection regarding penalty imposed being harsh or disproportionate in relation to nature of charges levelled against the applicant, the learned Advocate for the applicant relied upon the decision rendered by Hon'ble High Court of Allahabad in **Gyanendra Bahadur Singh Kushwaha Vs. State of U.P. and others, Civil Misc. Writ Petition No.57393/2013 decided on 07.10.2015,** in which it has been held that if the punishment imposed is grossly disproportionate to the offence, which shocks conscience of Court, it has power and jurisdiction to interfere with punishment imposed. It is stated that in the present case also considering the charges levelled against the applicant, the major penalty of removal from service imposed upon him is grossly disproportionate since on the ground of absentism, the applicant had already undergone punishment. However, punishment imposed for unauthorised absence relates to different period, which is not covered under Article of Charge II. In this respect it is also stated that the past service record of the applicant was satisfactory and his performance was also good as stated by PW-4 in his evidence, and hence lesser punishment should

have been imposed upon him. It is also stated that one Shri Sunil Malik who was also working with the respondents and was chargesheeted on similar charge of misconduct, the punishment of compulsory retirement was imposed upon him and on the contrary the applicant was discriminated by imposing punishment of removal from service and hence he is entitled to lesser punishment, without prejudice to his right to challenge the impugned order as illegal and improper.

47. The learned Advocate for the applicant further placed reliance on the decision rendered by Hon'ble High Court of Madras in **Mrs.Kathija Beevi Vs. The Dean in Charge Govt. Rajaji Hospital, Madurai and another, W.P.No.5810/2007 (O.A.No.3486/2002) decided on 04.09.2013.** He referred para 6 of the said order which reads as under:-

> "6. We are conscious of the position of law that ordinarily the discretion of the departmental authorities relating to impositon of punishment should not be interfered with by the court of law unles such punishment is grossly disproportionate. We are also conscious of the position that ordinarily while interfering in such matter, the matter is required to be remanded to the departmental authority for imposing any adequate punishment. However in the peculiar facts and circumstances of this case, particularly, when we find that the order of the removal had been passed in the year

> 1999, in order to avoid any further delay, we feel it would be more appropriate to finalise the matter in this Court. Accordingly while setting aside the order of removal from service, we direct the Petitioner shall be reinstated in service."

48. The learned Advocate for the applicant relying on the aforesaid decision claims similar relief to the applicant on the same ground that punishment imposed is harsh and it results in causing discrimination to him. Hence this Tribunal can interfere and instead of remanding the matter to the Disciplinary Authority for imposition of lesser punishment, may award any other punishment as deem fit. It is obvious that the facts of the case relied upon by the applicant are totally different although the law laid down therein cannot be disputed. As such ratio laid down is not squarely applicable to the present case and hence we reject the contention of the applicant that the applicant is entitled to lesser punishment and hence instead of remanding the matter to the Disciplinary Authority this Tribunal itself at the most should award the punishment of compulsory retirement, with pensionary benefits, which was awarded to Shri Sunil Malick.

49. The learned Advocate for the applicant further placed reliance on the decision rendered by

Hon'ble High Court of Jammu and Kashmir in **Gorakh Nath Vs. State of J & K & Ors., 2006 1 JKJ 192, decided on 19.04.2004.** The following portion of the order is referred by her:-

> "...The Court however held that the Petitioner had served twenty two and half year and during the long period there was no complaint from any quarter regarding his behaviour, conduct, performance or integrity, the omission to consider the unblemished service record of the Petitioner is sufficient to record the conclusion that the punishment is vitiated due to non application of mind. The effect of imposing punishment has effect of depriving the petitioner of pension and other benefits which is wholly arbitrary and as such shock conscience of the Court Order of dismissal quashed."

50. On its basis the learned Advocate for the applicant submitted that since behaviour, conduct, performance and integrity of the applicant was beyond doubt, both the authorities committed an error in imposing major punishment of removal from service. However, it is obvious from record that the applicant was already awarded punishment on earlier two occasions for unauthorised absence from duty. As such although his performance during period while he attended duty may have been good, still considering the nature of the charge levelled against the applicant, and two instances of imposition of punishment of withholding increments,

it cannot be said that both the authorities have committed an error in imposing the major penalty of removal from service. As such it cannot be said to be harsh, disproportionate or unwarranted on the basis of material on records.

51. Lastly, the learned Advocate for the applicant placed reliance on the decision rendered by the Hon'ble High Court of Telangana and Andhra Pradesh in **K. Srinivasulu Reddy Vs. State of Andhra Pradesh, rep. by its Principal Secretary, Tourism, Hyderabad & another, 2016(6) SLR 347 decided on 13.10.2015** and submitted that different punishment cannot be imposed when two persons are tried for same misconduct. As such when Shri Sunil Malik was awarded with the punishment of compulsory retirement with pensionary benefits, the applicant at the most may be held liable for the same punishment, if not exonerated of the charge by setting aside the impugned orders. However, perusal of the aforesaid decision clearly shows that serious charge of mis-appropriation of cash calculation was made against the applicant in that case and he was terminated from service on proof of the said charge, whereas the punishment of withholding of benefit of equal work for equal pay for a period of two years was imposed upon another employee who was also involved

in it. However it is obvious that although the charge of misappropriation of Government fund was involved in that case, the responsibility cast on the applicant therein and the other fellow official was different and hence lesser punishment was imposed upon later. In the peculiar facts and circumstances of that case, it was held that there cannot be disparity in punishment imposed on employees for same charge and the order of termination passed against the petitioner in that case was set aside and lesser punishment which was imposed on the fellow official was imposed on the petitioner with a direction to reinstate him in service.

52. As stated earlier although the applicant claims parity in punishment with that of Shri Sunil Malik, he has not produced on record the Memorandum of Charge levelled against him or the order of Disciplinary Authority imposing punishment of compulsory retirement on him. In the present case so far as Charge No.I is concerned it can safely be said to be of less gravity since Passport alone has been obtained without permission. However, if the said Passport is used for going abroad without permission or without seeking prior leave the said charge is definitely serious in nature which would

render the delinquent to be unbecoming of a Government servant, if proved. For these reasons punishment of removal from service imposed on the applicant cannot be said to be harsh or unjustified in the facts and circumstances of the present case.

53. During the course of arguments the learned Advocate for the respondents did not dispute the law laid down in the aforesaid cases referred by the learned Advocate for the applicant. However, he placed reliance on the decision rendered by the Hon'ble Supreme Court in the case of **Ex-Constable Ramvir Singh Vs. Union of India and others, (2009) 3 SCC 97,** in which the doctrine of proportionality of punishment was expounded. It was a case in which the punishment of removal from service was imposed against the Armed Forces Personnel for refusal to take food and failing to report on duty on availing leave. While confirming punishment for second charge, it was held that refusal to take food is by way of protest only and hence cannot be liable for punishment. In that case, the appellant was Constable of Border Security Force and was removed from service on proof of the other charge of failure to return to place of duty despite instructions being given to him. However, on the aforesaid charge for failing to return on duty inspite of

instructions, the punishment of dismissal from service imposed by the Summary Security Force Court was confirmed by the Hon'ble High Court by dismissing the Writ Petition filed by petitioner. In that case it has been held that the doctrine of proportionality of punishment may be invoked by the superior Courts in exercise of its jurisdiction under Article 226. However, in the peculiar facts of the aforesaid case it was further held that it does not warrant the invocation of the doctrine of proportionality of punishment of simplicitor dismissal from service and in a situation of this nature, cannot be held to be disproportionate to the gravity of misconduct.

54. In the present case also considering the nature of charge levelled against the applicant and the fact that he has not specifically denied the charge in the reply to charge-sheet or in evidence or in representation made against the report of Inquiry Officer nor before the Appellate Authority, it can safely be said that the said doctrine of proportionality can be invoked in the present case by this Tribunal.

55. During the course of arguments, learned Advocate for the respondents also placed reliance on the decision rendered by the Hon'ble Supreme Court

in **Union of India and others Vs. P. Gunasekaran, (2015) 2 SCC 610,** in which the scope and extent of power of judicial review to interfere with punishment imposed in service matters in a disciplinary proceedings was considered. It is held that only in the case of perversity, interference with the punishment imposed is permissible. It is further held that the High Court in exercise of its power under Articles 226 and 227 (the power vested in this Tribunal is akin to the said power of judicial review vested in High Courts) cannot venture into reappreciation of evidence or interfere with conclusions drawn in inquiry proceedings, if it is conducted in accordance with law or go into the reliability / adequacy of evidence or interfere if there is some legal evidence on which the findings are based or correct error of fact however grave it may be, or go into proportionality of punishment unless it shocks conscience of Court.

56. It is further held in above mentioned case that High Court can only consider whether the inquiry held by the Competent Authority was in accordance with procedure established by law and principles of natural justice, whether followed or whether irrelevant extraneous considerations and/or exclusion of admissible or material evidence or

admission of inadmissible evidence have influenced decision rendering it vulnerable. It is further held that it can interfere where findings is wholly arbitrary and capricious based on no evidence which no reasonable man could ever arrive at.

57. In the present case, applying the aforesaid principles laid down, as stated earlier, there is sufficient evidence on the record to hold the applicant guilty of the charge, although it may be said that further particulars regarding the journey undertaken by the applicant to foreign countries could have been secured by seeking information from the Emigration Department of the Airport. However, in any case, since there is no specific denial of the charge nor any cogent and reliable explanation is offered by the applicant quoting the specific period of charge No.II regarding his absence during that period, it is obvious that he was not then on duty and hence inference drawn by the authorities that he must have gone abroad during that period, especially when he has also not secured any kind of leave for that period, can safely be stated to be logically correct. It is, therefore, not possible or permissible to interfere with the such finding recorded by both the authorities.

58. During the course of arguments, the learned

Advocate for the respondents also rightly submitted that the punishment imposed is fully proportionate to the nature and gravity of the charges proved against the applicant and it does not shocks conscience of this Tribunal. We find substantial force in this contention. It was also submitted by learned Advocate for the respondents that the applicant has not raised the plea of discrimination against him in the light of the punishment of compulsory retirement imposed upon the fellow official Shri Sunil Malik either during inquiry or before the Disciplinary Authority or the Appellate Authority and it was raised for the first time before this Tribunal. In such circumstances of the case he cannot be allowed to raise the said plea for the first time in this O.A. In this respect, the learned Advocate for the respondents again placed reliance on the decision in **Ram Vir Singh's** case (referred supra), in which it has been held that plea not raised in departmental inquiry cannot be allowed to raise before the High Court. On the same analogy, the applicant cannot be allowed to raise the said plea before this Tribunal. Hence it is disallowed.

59. From the above discussion it is obvious from rival contentions of both the learned Advocates

for the parties, coupled with perusal of the record of the O.A., as well as the original record pertaining to disciplinary inquiry, it can safely be said that both the authorities have rightly come to a rationale conclusion for imposition of punishment of removal from service. It cannot be said to be disproportionate nor improper or illegal especially considering gravity and nature of the charges. We hold that finding recorded by both the authorities is fully supported by the evidence brought on record, especially considering the fact that the applicant has not specifically denied the charge at the first instance while filing reply to the Memorandum of Charge and there is evasive denial of charge only as stated earlier. Further, he could have said that the Passport in question referred by the Department does not belong to him nor he has at any time applied to the Passport Authority for issuance of Passport to him. In absence of it, he is not legally justified to claim any relief.

60. It is also obvious from record that the applicant has not secured previous permission of the Competent Authority for getting the Passport. He could have also stated that during the period mentioned in the Charge No.II he had not travelled abroad to any country and was very well in Mumbai or

elsewhere in India and could have attributed the reason for his absence during the said period, which he failed to do so. In such circumstances of the case, it cannot be said that the impugned orders passed by both the authorities are arbitrary, perverse, illegal, improper or incorrect, which require interference by this Tribunal either to set aside the same or to impose the lesser punishment on the applicant as alleged by him. Not only this the applicant had prayed leniency before the Disciplinary Authority as well as Appellate Authority thereby indirectly admitted his guilt although alternatively.

61. In the result, we do not find any merit in the present OA. The OA, therefore, stands dismissed. The parties are however, directed to bear their respective cost of this O.A.

(Ms.B. Bhamathi)
Member (A)

(Arvind J. Rohee)
Member (J).

Ram/H.