CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1930/2003

New Delhi, this the 26th day of March, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K.NAIK, MEMBER (A)

Sh. S.D.Mishra
s/o Late Sh. H.R.Mishra
r/o G-7/9, DDA Flats
Sector-15, Rohini, Delhi
last employed as Inspector, CBI, SCB,
Kolkata. ... Applicant

(By Advocate: Sh. D.S.Chaudhary)

Versus

1. Union of India
through Secretary
Ministry of Personnel, Pension and
Public Grievances
South Block
New Delhi.

2. The Director
Central Bureau of Investigation
Block No.3, C.G.O.Complex
Lodhi Road, New Delhi.

3. Joint Director
Special Crimes-II
CBI, Block No.3
C.G.O.Complex

4. Deputy Inspector General of Police
CBI, Special Crimes Division
Delhi. .... Respondents

(By Advocate: Sh. N.K.Aggarwal)

O R D E R

Justice V.S. Aggarwal:-

Applicant Shri S.D.Mishra was Inspector, Central Bureau of Investigation (for short 'CBI'). He served with the following articles of charge:

"**Article of Charge No.(i):**

That said Shri S.D.Mishra, while functioning as Inspector in CBI, M.D.M.A., New Delhi, during the period 1996, onwards failed to maintain absolute integrity and exhibited a conduct, unbecoming of a Government Servant in as much as he accepted a loan of Rs.1 lakh without intimation to the department vide

cheque No.971220 of Canara Bank, Bahadurshah Zafar Marg, from one M/s Nishant Associates, which was credited in his account No.9162, SBI, Jawahar Vyapar Bhawan.

Article of Charge No.(ii):

That Shri S.D.Mishra, while working as public servant failed to maintain absolute integrity and purchased cash receipts of more than Rs.10,000/- on a single day from M/s Kuber Finance (India) Ltd., Kuber Mutual Benefits Ltd. and Kuber Planters without intimation to the department.

Article of Charge No.(iii):

That Shri S.D.Mishra, while working as Inspector, CBI conducted himself in a manner unbecoming of a government servant and was found in possession of letter pads of senior CBI officer (Shri D.R.Karthikeyan, the then Jt. Director (CBI).

Article of Charge No.(iv):

That Shri S.D.Mishra, while working as public servant, was found in possession of visiting cards showing himself as Sr. Inspector of Police though there is no such rank/post in CBI, for the purpose of misusing the same, and thus conducted himself in a manner, unbecoming of a government servant."

2. The inquiry report dated 30.4.2003 held that the charges stood proved. Agreeing with the report of the inquiry officer, the disciplinary authority imposed the penalty of dismissal from service which ordinarily shall be a disqualification for future employment. The applicant preferred an appeal which was dismissed.

3. By virtue of the present application, he seeks setting aside of the orders so passed, and for reinstatement with consequential benefits.

4. The application has been contested. It has been pointed that the applicant has not come with clean hands. There were four charges levelled against him, out of which two were admitted by the applicant and the inquiry was conducted only with respect to the remaining two charges, namely, charges No.(ii) and (iii). It has been asserted that the inquiry had been conducted in accordance with law, following the procedure and the penalty imposed also is not disproportionate to the alleged dereliction of duty.

5. We have heard the parties' counsel.

6. Learned counsel for the applicant urged that Articles of Charge No.(i) and (iv) were admitted. The applicant had, at the earliest opportunity, requested that procedure may be conducted for minor penalties. He also contended that some documents which were relevant for the defence of the applicant had not been supplied. The rules under which the inquiry held are also not valid. Lastly, it is stated that the penalty awarded is totally disproportionate to the alleged dereliction of duty on the part of the applicant.

7. As against this, respondents' learned counsel did not dispute that the applicant had applied and wanted that the proceedings for minor penalties should be initiated. The plea that documents claimed were not supplied was controverted and it was further alleged that rules under which the inquiry was conducted was valid and penalty imposed was as per the misconduct established against the applicant.

8. Taking up the first plea that documents claimed were not supplied, we do not dispute the proposition that ordinarily the documents which are relevant even for the defence of the alleged delinquent should be supplied. But in the present case, the controversy is as to whether the documents had been supplied to the applicant or not? In the present case, though the applicant contended that he had not been supplied the documents but the record reveals that what is being pleaded cannot be accepted. On 27.2.2002, the Deputy Inspector General of Police had addressed reply to the applicant which reads:

> "Please refer to your reply dated 14.1.2002 in response to Memorandum No.13/3/2001/SCD/DLI/1218 dated 20.11.2001. In this connection you may also refer to your letter dated 26.11.2001 wherein you had requested that you may be permitted to appear before the undersigned and also for supply of copies of statements of relied upon witnesses as well as copies of relied upon documents.
>
> 2. Your request to be heard personally has already been acceded to and in that context you had met me on 15.2.2002 and explained your position.
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> 3. As requested by you copies of relied upon statements and documents are enclosed herewith. With reference to these documents and statements if you would like to change/add/substract from your reply dated 14.1.2002 you may do so within 15 days from the receipt of this letter. If no reply is received from you within 15 days of the receipt of this letter it would be presumed that your reply dated 14.1.2002 stands and that you have nothing further to say in the matter."

9. It clearly shows that it refers to the fact that the documents and statements relied upon, as claimed by the applicant, have been given to him.

Thereafter, the applicant had sent his statement of defence which was forwarded by the Superintendent of Police, CBI to DIG, CBI on 22.3.2002.

10. Reply of the applicant reads:

Sir,

Kindly refer to your letter no.13/3/2001/SCD/DLI/0211 Dt.27th Feb. 2002 received by me through the S.P.CBI/SCB/Kolkata on 19.03.2002 only on return from leave.

In this regard, I beg to submit that I would not like to change/add/substract from my reply dt. 14.01.2002 already submitted to your goodself as my statement of defence and as such it is humbly prayed that the final decision may kindly be taken on the basis of the same sympathetically and impartially which would be in the interest of natural justice with me, at the earliest for which I shall feel highly obliged.

Thanking you in anticipation.

Yours faithfully

Sd/-
(S.D.Mishra)
Inspector of Police
CBI SCB Kolkata"

It clearly shows that the applicant did not raise any defence that some of the documents had not been supplied. It only shows what was stated in the letter of 22.2.2002 and the documents sent were correct. Consequently, we have no hesitation in rejecting this particular contention of the learned counsel.

11. The other plea raised was pertaining to the procedure adopted and it was asserted that the Delhi Special Police Establishment (Subordinate Ranks) (Discipline and Appeal) Rules, 1961 are not valid. The rules had been framed in exercise of powers under

Article 309 of the Constitution. The brief resume of the said rules would precipitate the controversy. Under Rule 4, which pertains to appointment, all the appointments to the ranks or posts contained in column No.1 of the schedule had to be made by the authorities mentioned in Column No.2. Rule 5 deals with the powers to suspend while Rule 6 mentions the nature of penalties. Rule 7 tells us as to who are the disciplinary authorities and Rule 8 prescribes the procedure for imposing major penalties. No argument had been addressed as to which part of the Rules specifically would be invalid.

12. The broad principle is that Rule would be illegal if ~~a part of~~ it violates the principles of equality, is contrary to the provisions of Constitution or any other similar provision. In the present case, the rules provide reasonable procedure for the delinquent to defend and in the absence of any other fact alleged, we have no hesitation in concluding that the rules so framed cannot be stated to be invalid.

13. The only other plea raised was that the penalty imposed is totally disproportionate to the alleged dereliction of duty on the part of the applicant.

14. It is settled principle in law that question of imposing penalty is a fact which falls within the domain of the disciplinary authority. In a judicial review, this Tribunal would not ordinarily interfere unless the conscience of the Tribunal is shocked.

15. The Supreme Court in the case of **State Bank of India & Ors.** v. **Samarendra Kishore Endow & Anr.**, JT 1994 (1) SC 217 has gone into this controversy. It was held that the Tribunal or the High Courts are not constituted as a Court of Appeal over the decision of the authorities. The Tribunal has no power to substitute of its own discretion to that of the disciplinary authority or even to impose the penalty. The Supreme Court held:

> "It is significant to mention that the learned Judge also referred to the decision of this Court in Bhagat Ram v. State of Himachal Pradesh and Others (AIR 1983 SC 454) and held, on a consideration of the facts and principle thereof, that "this decision is therefore no authority for the proposition that the High Court or the Tribunal has jurisdiction to impose any punishment to meet the end of justice". And then added significantly "it may be noted that this Court exercise the equitable jurisdiction under Article 136 (in Bhagat Ram) and the High Court and Tribunal has no such power or jurisdiction". The learned Judge also quoted with approval the observations of Mathew J. In Union of India v. Sardar Bahadur (1972(2) SCR 218) to the following effect:
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> "Now it is settled by the decision of this Court in State of Orissa v. Bidyabhushan Mohapatra (AIR 1963 SC 779) that if the order of a punishing authority can be supported on any finding as to substantial misdemeanour for which the punishment can be imposed, it is not for the Court to consider whether the charge proved alone would have weighed with the authority in imposing the punishment. The Court is not concerned to decide whether the punishment imposed, provided it is justified by the rules, is appropriate having regard to the misdemeanour established."
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> 15. It would perhaps be appropriate to mention at this stage that there are certain observations in Union of India v. Tulsiram Patel (AIR 1985 SC 1416) which, at first look appear to say that the Court can interfere where the penalty imposed is "arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the

facts and circumstances of the case or the requirements of that particular government service." It must however be remembered that Tulsiram Patel dealt with cases arising under proviso (a) to Article 311(2) of the Constitution. Tulsiram Patel overruled the earlier decision of this Court in Challappan (AIR 1975 SC 2216). While holding that no notice need be given before imposing the penalty in a case dealt with under the said proviso, the Court held that if a disproportionate or harsh punishment is imposed by the disciplinary authority, it can be corrected either by the Appellate Court or by the High Court. These observations are not relevant to cases of penalty imposed after regular inquiry. Indeed this is how the said observations have been understood in Parma Nanda referred to above vide para 29. The same comment holds with respect to the decision in Shankar Das v. Union of India (1985 (2) SCC 358) which too was a case arising the proviso (a) to Article 311 (2)."

16. Similarly in the case of **B.C.Chaturvedi** v. **Union of India & Others**, JT 1995 (8) SC 65, the same question again come up for consideration before the Apex Court and the answer was the same and if held that only if the conscience of the Tribunal is shocked, the Tribunal would interfere in the order imposing the penalty. The findings read:

"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."

17. Lastly, we refer to the decision of the Supreme Court in the case of **Kailash Nath Gupta** v. **Enquiry Officer, (R.K.Rai), Allahabad Bank & Ors.**, JT 2003 (3) SC 322. The earlier decision in the case of **Samarendra Kishore Endow (supra)** was referred to and it was held that it is not for the Tribunal or the High Court to substitute its own opinion pertaining to the penalty.

18. It is true that in the present case applicant had served the department for many years. Learned counsel contended that there are malafides and that those visiting cards have never been misused.

19. It appears that the disciplinary authority took note of the fact that the applicant was supposed to maintain absolute integrity. He accepted the loan of Rs.1 lakh without intimation to the department. He also failed to maintain absolute integrity and purchased cash receipts of more than Rs.10,000/- on a single day from M/s Kuber Finance (India) Ltd., etc.; that he was having letter pads of senior CBI officer with him and that he was having visiting cards showing himself as Senior Inspector of Police.

20. The learned counsel for the respondents rightly pointed that in the facts, the logical conclusions were obvious and consequently penalty of dismissal cannot be taken to be disproportionate to the alleged misconduct. In the facts of the case and

taking note of the position in law, we find that it is not a fit case to conclude that the conscience of the Tribunal is shocked. Resultantly, we find no ground to interfere in the penalty awarded.

21. For these reasons, the OA being without merit must fail and is dismissed.

(S.K.Naik)
Member (A)

(V.S. Aggarwal)
Chairman

/NSN/