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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP (C) No.6959/2016**

+ Reserved on : 20th July, 2017
Date of Decision: 18th August, 2017

ANIL KUMAR DHYANI Petitioner
Through: Ms.Shantha Devi Raman, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr.Arun Bhardwaj, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

1. Challenge in the present Writ Petition is to the Order dated, 12th May, 2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi whereby the Original Application filed by the Petitioner, has been dismissed.

2. The Petitioner's case as set up before the Tribunal, is that he was appointed as a Machinist at Army Base Workshop, Delhi Cantt on 16th July, 1997. Though his appointment was in the nature of a 'civilian industrial personnel' which was a

technical post, but soon after his appointment, he was posted in the finance section for doing clerical work.

3. While the Petitioner was posted in the Finance Section, he was, on the recommendations of Shri K.D. Hasija, Assistant Incharge (Finance Section) and Shri VK Nagpal (Accounts Officer), assigned the task of preparation of check roll nos. XI, XII and XIII. Based on some audit discrepancies in the check roll, a Court of Inquiry was ordered under the Army Act in May, 2001 and relying on the findings of the said Court of Inquiry, individual chargesheets were issued to the Petitioner and both Shri V.K. Nagpal and Shri K.D. Hasija. As per the chargesheet dated 11th January, 2002 issued to the Petitioner, the following two charges were levelled against him:-

“ARTICLE-I

That the said Shri Anil Kumar Dhyani, T. No.4828 Machinist while functioning as Accounts clerk in Finance Section of 505 Army Base Workshop, Delhi Cannt-10 during Jun, 99 to Feb 2001 committed an act of Gross Misconduct, in that he misappropriated the Government money amounting to Rs.1,63,917/- (approx.) by tampering the computer data and generated falsified excess amount in gross total of Check Roll Nos XII and XI from Jun 99 to Feb

2001. He used to draw excess amount from unit cashier through duty officer of pay disbursement of the relevant months on account of pay and allowances in respect of civilian industrial personnel. The above act on the part of Shri Anil Kumar Dhyani is an act of embezzlement of Government money and breach of trust violating the instructions contained in Para 707 of the Unit Standing Orders and the provisions of sub rule (1) (i), (ii) & (iii) of Rule 3 of the CCS (Conduct) Rules, 1964 which is a Gross Misconduct and thereby liable for disciplinary action under CCS (CC&A) Rules, 1965.

ARTICLE-II

That the said Shri Anil Kumar Dhyani, T. No.4828 Machinist while functioning as Accounts clerk in Finance Section of 505 Army Base Workshop, Delhi Cantt-10 during Jan 2000 committed an act of gross Misconduct, in that he misplaced or destroyed a Check Roll No.XII for the month of Jan 2000. The above act on the part of Shri Anil Kumar Dhyani, is an act of breach of trust, fraud, embezzlement of government fund violating the instructions contained in Para 707 of the Unit Standing Orders and the provisions of sub rule (1) (i), (ii) & (iii) of Rule 3 of the CCS (Conduct) Rules, 1964, which is a Gross Misconduct and thereby liable for disciplinary action under CCS (CC&A) Rules, 1965.”

4. It may be relevant to note that though the charge sheet contained a list of documents by which the articles of charges

were proposed to be sustained against the Petitioner but the list of witnesses which was Annexure IV to the chargesheet, clearly stated that no witness was proposed to be examined and the column of list of witnesses states “Nil”.

5. On 31st December, 2008, the disciplinary proceedings against Shri V.K. Nagpal were dropped on the ground that nothing serious had been found in the inquiry and no charges had been substantiated against him. Similarly, disciplinary proceedings against Shri K.D. Hasija were also subsequently dropped on the same ground. In the case of the Petitioner, however, the Enquiry Officer found him guilty of the charges and based on his Enquiry report, the Petitioner was subjected to the penalty of removal from services vide Order dated 31st December, 2002.

6. Aggrieved by the order of his removal from service, on the basis of the findings of the inquiry, which according to him was held in gross violation of the principles of natural justice, the Petitioner approached the Tribunal by way of OA No. 171 of 2010. The OA was allowed by the Tribunal vide its order

dated 1st August, 2011 by holding that the inquiry order proceedings as well as the orders of removal stood vitiated. The Tribunal found that the listed documents had not been admittedly made available to the Petitioner and the principles of natural justice had been violated and prejudice had been caused to the Petitioner. The Tribunal while setting aside the order of removal, had remitted back the matter to the Enquiry Officer to proceed afresh by supplying the copies of the listed documents to the Petitioner.

7. In terms of the directions of the Tribunal given vide its order dated 1st August, 2011, the Respondents appointed another Inquiry Officer. The Petitioner participated in the inquiry on various dates from 31st December, 2011 to 7th March, 2012. It transpires from the record filed before us that on 7th March, 2012 the Petitioner had requested the Inquiry Officer not only for inspection of the original documents, so as to enable him to carry out admission/denial of the documents but also requested for supply of the list of witnesses proposed to be examined by the disciplinary authority. The inquiry proceedings

were accordingly adjourned at the request to the presenting officer for making arrangements for inspection of original documents. The inquiry proceedings were thereafter held on 7th September, 2012, on which date, the Petitioner again reiterated his request for original documents which were not produced and, therefore, he refused to accept the documents or to further participate in the enquiry. The inquiry proceedings were, however, concluded on the very same day in the absence of the Petitioner and only the listed documents were produced by the Presenting Officer himself without examining any witness.

8. The relevant part of the inquiry proceedings on 7th September, 2012 read as under:-

“17. PO to IO – PO submitted that Shri Anil Kumar Dhyani, while working as Accounts clerk in Finance Section of 505 Army Base wksp, has misappropriated the Government money amounting to Rs.1,63,917/- (approx) by tampering the computer data and generated falsified excess amount in gross total of check rolls. CO used to draw excess amount from unit cashier through duty officer of pay disbursement of the relevant months on account of pay and allowances in respect of civilian industrial personnel. A total of 21 check rolls for the period from June, 1999 to February, 2001 were falsified by the CO. As PO, I hereby produce the documentary evidence to prove the

charges framed against Shri Anil Kumar Dhyani i.e. CO as per the details given below:-

- (a) Check Roll No XII of June 1999 (Srl No 01 to 47)
- (b) Check Roll No XII of Jul 1999 (Srl No 01 to 48)
- (c) Check Roll No XII of Aug 1999 (Srl No 01 to 40)
- (d) Check Roll No XII of Sep 1999 (Srl No 01 to 56)
- (E) Check Roll No XII of Oct 1999 (Srl No 01 to 68)
- (f) Check Roll No XII of Nov 1999 (Srl No 01 to 54)
- (g) Check Roll No XII of Dec 1999 (Srl No 01 to 45)
- (h) Check Roll No XI of Feb 2000 (Srl No 01 to 33)
- (j) Check Roll No XI of Mar 2000 (Srl No 01 to 33)
- (k) Check Roll No XI of Apr 2000 (Srl No 01 to 46)
- (l) Check Roll No XI of May 2000 (Srl No 01 to 42)
- (m) Check Roll No XI of June 2000 (Srl No 01 to 40)
- (n) Check Roll No XI of July 2000 (Srl No 01 to 33)
- (o) Check Roll No XI of Aug 2000 (Srl No 01 to 33)
- (p) Check Roll No XI of Sep 2000 (Srl No 01 to 31)
- (q) Check Roll No XI of Oct 2000 (Srl No 01 to 31)
- (r) Check Roll No XI of Nov 2000 (Srl No 01 to 64)
- (s) Check Roll No XI of Dec 2000 (Srl No 01 to 43)
- (t) Check Roll No XI of Jan 2001 (Srl No 01 to 42)
- (u) Check Roll No XI of Feb 2001 (Srl No 01 to 46)
- (v) Check Roll No XII of Jan 2000 misplaced (Srl No 01 to 33) Regenerated

- (w) LAO 505 Army Base Wksp letter No L/WS/53/Obj-CR/Misc dt 23/10/97.
- (x) LAO 505 Army Base Wksp letter No L/WS/C.Roll-93 dt 29 May 2001.
- (y) Para 353 of Unit Standing Orders, giving charter duties of Account Officer.
- (z) Proceedings of a court of inquiry assembled on 18 Jun 2001 and subsequent dates.

9. On the very next day i.e. on 8th September, 2012, the Inquiry Officer submitted his Report holding the Petitioner guilty of both the charges, levelled against him by merely reproducing the articles of charges but without assessing any evidence. The findings given by the Inquiry Officer read as under:-

“8. Assessment of evidence and findings: On the basis of documentary evidence adduced in the case before me, I hold that all the two charges framed against Shri Anil Kumar Dhyani are found established as correct due to the following reasons:-

- (a) Shri Anil Kumar Dhyani was responsible for preparation of check roll No XII and XI for the period from Jun 1999 to Feb 2001.
- (b) Shri Anil Kumar Dhyani was responsible for keeping the check rolls prepared by him under the safe custody.
- (c) Shri Anil Kumar Dhyani never took leave on the day of pay disbursement from Jun 1999 to Feb 2001.

(d) Shri Anil Kumar Dhyani was performing duty as dealing clerk as well as pay assistant.

(e) Shri Anil Kumar Dhyani misplaced/destroyed the check roll No XII of Jan 2000.

(f) Shri Anil Kumar Dhyani deliberately generated excess amount in 'Net Pay' of summery of check rolls.

The details of misappropriation are as under:-

- (i) Check Roll No XII of June 1999 - Rs 3,000/-
- (ii) Check Roll No XII of Jul 1999 - Rs 7,000/-
- (iii) Check Roll No XII of Aug 1999-Rs 24,800/-
- (iv) Check Roll No XII of Sep 1999-Rs 2,500/-
- (v) Check Roll No XII of Oct 1999-Rs 2,500/-
- (vi) Check Roll No XII of Nov 1999-Rs 2,500/-
- (vii) Check Roll No XII of Dec 1999-Rs 13,700/-
- (viii) Check Roll No XI of Feb 2000- Rs 15,400/-
- (ix) Check Roll No XI of Mar 2000-Rs 6,140/-
- (x) Check Roll No XI of Apr 2000-Rs 13,400/-
- (xi) Check Roll No XI of May 2000-Rs 11,000/-
- (xii) Check Roll No XI of June 2000-Rs 4,500/-
- (xiii) Check Roll No XI of Jul 2000-Rs 4,500/-
- (xiv) Check Roll No XI of Aug 2000-Rs 4,500/-
- (xv) Check Roll No XI of Sep 2000-Rs 3,000/-
- (xvi) Check Roll No XI of Oct 2000-Rs 3,400/-

(xvii) Check Roll No XI of Nov 2000-Rs 3,500/-

(xviii) Check Roll No XI of Dec 2000-Rs 13,500/-

(xix) Check Roll No XI of Jan 2001-Rs 10,592/-

(xx) Check Roll No XI of Feb 2001-Rs 10,556/-

(xxi) Check Roll No XII of Jan 2000-Rs 3,934/-

Total amount misappropriated= Rs. 1,63,917/-

(g) Thus Shri Anil Kumar Dhyani is found guilty of charges framed against him vide memorandum No 37215/55/EME Civ-3 dated 11 Jan 2002.

Sd/-

Inquiry Officer

08 Sep 2012”

10. Based on this Inquiry report, the disciplinary authority vide its order dated 16th January, 2013, once again imposed the penalty of removal from service on the Petitioner. The Petitioner, thereafter, preferred an appeal to Respondent No 1 which was dismissed and this led to the filing of the OA No.529/2014 by the Petitioner before the Tribunal.

11. In their reply, the Respondents while submitting that the Petitioner had been found guilty of misconduct based on proper

appreciation of evidence, had also brought to the notice of the Tribunal that a criminal case had been registered against the Petitioner by the CBI in which he stood convicted on 30th May, 2013 by the Special Judge (PC Act), CBI 6, Patiala House Court, New Delhi.

12. The Tribunal, after considering the submissions made by both parties, vide its order dated 12th May, 2016, dismissed the Original Application of the Petitioner, by holding that the principles of natural justice had been observed at every stage of the inquiry and same had been conducted as per the laid down procedure. The Tribunal also held, that since the Petitioner had already been convicted by the Criminal Court, the punishment awarded to the Petitioner did not shock the conscience of the Court and was, thus, not disproportionate.

13. Aggrieved by the rejection of his Original Application, the Petitioner has filed the present petition. Counsel for the Petitioner has submitted that the order passed by the Tribunal is bad in law as it has failed to appreciate that the basic object of holding a departmental enquiry is to give an opportunity to the

delinquent employee to defend himself and controvert the allegations levelled against him. Counsel submits that the Tribunal has failed to take into account the vital fact that not even a single witness was produced by the Respondents before the inquiry officer to prove its case, and copies of the listed documents had been simply produced by the Presenting Officer. She, therefore, contends that the Petitioner could not be held guilty only on the basis of the documents produced by the presenting officer, which aspect has been totally overlooked both by the Inquiry Officer and the Tribunal. It is contended that no reliance could have been placed on the documents as mere production of documents is not enough. The documents have to be proved by examining witnesses who alone could have exhibited the documents before the inquiry officer. Counsel for the Petitioner has relied on the pronouncements of the Apex Court in ***Roop Singh Negi Vs. Punjab National Bank & Ors. (2009) 1 SCC (LS) 398***; ***State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha (2010) 2 SCC 772*** & the pronouncement of this Court in ***A.K. Saxena Vs. Union of***

India & Ors. decided on 10th August, 2016 in WP(C) No.3127/2014, in support of her contention that in an inquiry, unless oral evidence is led to prove the documents relied upon by the management, the said documents cannot be taken as proved and cannot form the basis of holding the employee guilty.

14. The further submission of counsel for the Petitioner is that in a departmental enquiry, the inquiry officer has a duty to arrive at his finding upon taking into consideration the materials produced on record by the parties and the inquiry is not meant to be an empty formality. It is contended that in the present case, a perusal of the Enquiry Report in itself shows that the Enquiry Officer had acted in a most casual and perfunctory manner. He has, without even discussing the evidence, held the Petitioner guilty by merely reproducing the charges along with the list of the documents. It is further submitted that despite the above infirmities, in both the procedure adopted by the Enquiry Officer as well as the very basis of his findings, the Tribunal has not at all deliberated and applied its mind to the contentions

raised before it and, therefore, prays that the impugned order be set aside.

15. Per contra, Mr.Arun Bhardwaj, learned counsel for the Respondents while supporting the impugned order passed by the Tribunal, submits that strict rules of evidence are not applicable or required to be followed in a domestic inquiry. He further submits that the Petitioner was given every opportunity to participate in the departmental inquiry and since he had voluntarily left the inquiry after attending some hearings, he cannot complain that the inquiry proceedings were vitiated in any manner, or principles of natural justice were not followed. His submission is that once the documentary record comes before the inquiry officer, and the said documents are not denied by the employee, no oral evidence is necessary to prove those documents. He has reiterated that the standards of proof envisaged under the Evidence Act, do not apply to departmental proceedings and it is open to the inquiry officer to take on record documents which are produced, though strictly not in conformity with the Evidence Act. Mr.Bhardwaj, learned

counsel has, therefore, contended that once the Petitioner had abandoned the inquiry, no purpose would have been achieved in leading oral evidence, nor any cross-examination would have been required. In support of his contention, reliance is placed on the pronouncement of the Apex Court in *State Bank of India & Ors. Vs. Narendra Kumar Pandey (2013) 2 SCC 740*; pronouncements of this Court in *Union of India & Anr. Vs. Ashok Aggarwal* passed in WP (C) No.1389/2015 & *Amar Singh Verma Vs. Union of India & Ors.* passed in WP (C) No.4813/1998 on 10th July, 2013.

16. We have heard learned counsel for the parties and considered their rival contentions. From the facts noticed hereinabove, it is clear that in the chargesheet itself, the Respondents have clearly stated, that they did not propose to examine any witness. The short question of simple nature, but considerable importance, which arises for our consideration in the present case is as to whether in a domestic inquiry, documents can be relied upon to hold the employee guilty, without producing even a single witness to prove those

documents and that too when the delinquent employee does not admit those documents.

17. Though it is well settled that in a domestic inquiry, strict rules of evidence do not apply and the inquiry officer is not expected to write a judgment like a Judge of a Court but it is also equally a well settled proposition, that the domestic inquiry is a quasi judicial proceeding and the inquiry officer, while performing this quasi judicial function, has a duty to carefully examine the evidence led before him and he cannot merely rely on the documents filed by the Presenting Officer to hold the delinquent employee guilty. Inference on facts by an inquiry officer must be based on some evidence, which is led before the inquiry officer in compliance of the principles of natural justice and he is expected to ensure that at least the evidence presented by the management, is sufficient to hold that the charge is proved.

18. Coming to the facts of the present case, we find that the Petitioner had specifically denied the documents on which reliance had been placed by the Respondents, and he had

repeatedly requested for production of original documents, so as to enable him to carry out admission/denial of the documents relied upon. It is evident that the documentary evidence relied upon in the chargesheet, was not admitted by the Petitioner employee. In such a situation, in our considered view, it was imperative for the Respondents management to, at least, examine some witness to exhibit those documents before the inquiry officer, and only when the documents were exhibited through a witness, before the inquiry officer, and sufficient opportunity granted to the charged officer to cross-examine the witness, that reliance could have been placed on the same to hold the Petitioner guilty.

19. It would be apt to refer to the decision of the Apex Court in ***Roop Singh Negi (Supra)***, the relevant paras 10 & 17 whereof read as follows:-

“10. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported

evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

17. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same

evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the [Evidence Act](#) may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

20. We are also fortified in our aforesaid view by the pronouncement in *State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha (Supra)*, relevant paras whereof read as follows:-

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved,

and could not have been taken into consideration to conclude that the charges have been proved against the Respondents.

27. Apart from the above by virtue of [Article 311\(2\)](#) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.

28. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

21. In *A.K. Saxena (supra)*, in paras 36 & 37, this Court has held as under:-

“36. The Supreme Court has consistently held that a departmental inquiry is akin to a quasi judicial proceeding. It has also been held that mere production of documents is not enough, the contents of the documents have also to be proved by examining the witnesses. This has

been held while taking into consideration the fact that though the W.P.(C) 3127/2014 Page 21 of 22 provisions of the Evidence Act may not be applicable in departmental proceedings, but the principles of natural justice would certainly be applicable.

37. Resultantly, we are of the view that the Tribunal was bound by the decision rendered by the coordinate bench of the Tribunal. The Supreme Court in the case of G. S. Grewal (supra) have expressed its deep displeasure when such judicial propriety is not maintained. We reiterate, that in case for any strong reasons the Tribunal was of the view that the decision rendered by the coordinate bench was not in accordance with law, the only option available was to refer the matter to a larger bench which was not done in this case. Even otherwise, we are of the view that the decision rendered by the Tribunal in the case of J.P.Singh (supra) is good law.”

22. We have also considered the judgments relied upon by the Respondents and are of the view that the said judgments are not at all applicable to the facts of the present case, as in all the cases relied upon by the Respondents, the documentary evidence was uncontroverted, unlike in the present case where the Petitioner had never admitted any of the listed documents and, in fact, had been insisting for production of originals of the

documents relied upon by the Respondents, so as to enable him to decide which of the documents he wanted to admit/deny.

23. In fact, from a perusal of the judgment of the Apex Court in the case of *State Bank of India & Ors. Vs. Narendra Kumar Pandey* (supra), which has been relied upon by the Respondents, it becomes evident that only when the documents are uncontroverted, it is open to the inquiry officer to accept the same, to hold the employee guilty even without examining any witness. In a case where the documents are not admitted by the delinquent employee, the same have to be proved by the management by leading oral evidence and in the absence of any witness, the same cannot be relied upon by the inquiry officer while arriving at his finding in respect of the charges.

24. Having perused the inquiry report, we also find merit in the submission of the learned counsel for the Petitioner, that the inquiry report clearly shows that the inquiry officer has acted in a most mechanical and casual manner and in fact the inferences drawn by the inquiry officer are not at all supported by any legally admissible evidence. The inquiry officer has the duty to

examine the evidence presented by the management, even in the absence of the delinquent employee, so as to ascertain whether there is sufficient evidence to hold the charges as proved. He has a duty to ensure that inferences on facts are based on evidence which probablise the findings. We find that, since no oral evidence had been led by the Respondents in the enquiry, the listed documents could not have been taken as proved. However, the inquiry officer has, by merely reiterating the allegations in the chargesheet and by reproducing the list of documents, come to a conclusion that the charges have been proved against the Petitioner and thus, the Inquiry Report stands vitiated.

25. Accordingly, the impugned orders passed by the Tribunal, the Disciplinary Authority, and; the Appellate Authority are hereby set aside. However, in the facts of the case, we feel that it would be appropriate to remand the matter back to the disciplinary authority to conduct a de novo inquiry against the Petitioner in accordance with law from the stage of issuance of the charge sheet. The respondent may, if it so

chooses, enlist the witnesses that it wishes to examine in the enquiry. The question whether the Petitioner would be entitled to back wages and other benefits from the date of his removal from service up to the date of his reinstatement, if ultimately ordered, would depend on the final outcome of the disciplinary proceedings and will be decided in accordance with law.

26. The writ petition is allowed in the above terms, with no orders as to costs.



(REKHA PALLI)
JUDGE

(VIPIN SANGHI)
JUDGE

AUGUST 18, 2017/aa