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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2917/2002

New Delhi this the 20th day of June, 2003.

Hon'ble Sh. Justice V.S. Aggarwal, Chairman
Hon'ble Sh. S.K. Naik, Member(A)

Shri Pankaj Kumar,
PIS No.16900107,
R/o N-2/3, PS Model Town,
Delhi-9.

..... Applicant

(Through Sh. Anil Singal, Advocate)

Versus

1. Commissioner of Police,
Police Head Quarters,
IP Estate, New Delhi.
2. Jt. Commissioner of Police,
(Operations), PHQ,
IP Estate, New Delhi.
3. Sh. P.K. Bhardwaj
Then DCP FRRO
Presently Dy. Director(Immigration)
Bureau of Immigration,
Intelligence Bureau,
R.K. Puram, New Delhi.
4. Deepak Purohit(Enquiry Officer)
Then ACP Head Quarter/FRRO
Presently ACP, PS Kotwali, Delhi.
5. Sh. M.S. Prakash(AFRRO)
(Immigration) IGI Airport,
New Delhi.

..... Respondents

(through Sh. Rishi Prakash, Advocate)

ORDER

Justice V.S. Aggarwal, Chairman

Applicant (Pankaj Kumar) faced departmental action on the allegation that while posted in Shift 'A' Immigration at Indira Gandhi International Airport, he tried to pursue the immigration clearance of a passenger, namely Arvind Kumar Sharma who was intending to travel to

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Vancouver on 1.7.2000 from Departure Right Wing. Later on, it was established that the cover/photo page of the passport was replaced and immigrant visa had been tampered. A criminal case was registered against the said person. The act on the part of the applicant facilitating the pax Arvind Kumar Sharma for immigration clearance on basis of forged documents led to the departmental action. The proceedings had been initiated and the report of the inquiry officer had been received. The disciplinary authority imposed the following penalty on the applicant:-

"I order to forfeit his two years approved service permanently for a period of three years entailing reduction in his pay from Rs.6900/-P.M. to Rs.6550/-P.M. in the time scale of pay. He will not earn increment of pay during the period of reduction and on the expiry of this period reduction will have the effect of postponing his future increments of pay.

His suspension period from 4.7.2000 to the date of issue of this order is also treated as period not spent on duty for all intents and purposes. He is hereby re-instated from suspension with immediate effect."

The applicant preferred an appeal which was dismissed. By virtue of the present application, the applicant assails the orders passed by the disciplinary as well as the appellate authority.

2. During the course of submissions, the learned counsel for the applicant raised certain facts

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and it was contended that the applicant had prayed for supply of the preliminary enquiry report. The same had not been given and, therefore, it had caused prejudice to the applicant. During the course of submissions, it was not disputed that the report of the preliminary enquiry had not been supplied to the applicant, but according to the respondents' learned counsel, on this count, the orders as such cannot be set aside.

3. The principle of law in this regard is well-settled that a reasonable opportunity has to be granted to a person to show cause against the proposed action to be taken against him. In the case of the State of Punjab v. Bhagat Ram, AIR 1974 SC 2335, certain witnesses had been examined during the previous enquiry. The copies of their statements were not supplied and the Supreme Court held that reasonable opportunity to contest in this regard had been denied. The Delhi High Court in the case of Ex Constable Randhir Singh v. Union of India and others, 1991 (5) SLR 731 had also considered the same controversy. It was held that the report of the preliminary enquiry preceding the commencement of the departmental enquiry when asked for should be furnished and failure to furnish the same would vitiate the enquiry and it can well be termed that a fair opportunity to contest had not been granted. Similarly in the case of State of U.P. v. Shatrughan Lal and Another, (1998) 6 SCC 651, the Supreme Court held:-


"Now, one of the principles of

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natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence. In departmental proceedings where charge-sheet is issued and the documents which are proposed to be utilised against that person are indicated in the charge-sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him. (See: Chandrama Tewari V. Union of India, AIR 1988 SC 117; Kashinath Dikshita V. Union of India (1986) 3 SCC 229; State of U.P. V. Mohd. Sharif, AIR 1982 SC 937)"

4. In the present case in hand admittedly, there was a preliminary enquiry and certain witnesses had been examined. In that back-drop, it was necessary, therefore, to have supplied the same to the applicant so as to permit him to effectively contest the matter. It is not one of those cases from where it can be inferred that non-supply of the preliminary enquiry report would not cause any prejudice. Thus on this short ground, the present application is liable to be allowed.

5. For these reasons, the application is allowed and the impugned orders are set aside and it is directed that if deemed appropriate the disciplinary authority may, from the stage the preliminary enquiry report was prayed after supplying a copy of the same, proceed afresh with the departmental action. No costs.


(S.K. Naik)
Member (A)


(V.S. Aggarwal)
Chairman

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