

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 3037/2002

New Delhi, this the 22nd day of October, 2003

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri R.K.Upadhyaya, Member (A)

Shri M.T.J. Chisthi,
S/o late J.A. Chisthi,
425, Sector A, Pocket C,
Vasant Kunj,
New Delhi - 110 070.

.....Applicant

(By Advocate: Shri George Parackin)

Versus

1. Union of India
through the Secretary,
Department of Culture,
Shastri Bhawan,
New Delhi - 110 011.

2. The Secretary,
Govt. of India,
Department of Culture,
Shastri Bhawan,
New Delhi - 110 011.

3. The Director General of Archives,
Government of India,
National Archive of India,
Janpath,
New Delhi - 110 001.Respondents

(By Advocate: Shri R.N. Sinha, Advocate)

ORDER (ORAL)

Order delivered by Shri Shanker Raju, Member (J)

Applicant impugns respondents' removal order dated 18.2.2000 as well as appellate order dated 18.6.2002 modifying the punishment to compulsory retirement.

2. Applicant, an Assistant Archivist, is a divorcee and his children are residing in U.S.A. for which he has been regularly visiting his children after taking appropriate no objection certificate on

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every occasion. The last visit was in 1995 when No Objection Certificate was granted vide Memo dated 28.4.1995. Applicant also visited USA in 1996 as well as 1997. Applicant was issued vide Memo under Rule 14 of the CCS(CCA) Rules, 1965 alleging the following charges:-

"Article-1:

That the said Shri M.T.J. Chisthi, while functioning as Assistant Archivist left the country on 25th July, 1996 without obtaining the permission of the competent authority and getting the leave sanctioned. Further, the said Shri M.T.J. Chisthi also ignored the directives issued by the Department vide Memo dated 28.8.1996 directing him to report for duty immediately but he did not turn up.

Article-2:

That Shri M.T.J. Chisthi did not inform the Department in time regarding his divorce to his second wife Smt. Nuzhat Subuhi Chisthi and remarrying third time Mrs. Reshma Tariq Chisthi.

Article-3:

That Shri M.T.J. Chisthi did not inform the Department about his arrest on 12th March, 1996 against the FIR No. 123/96 lodged by his third wife Smt. Reshma Tariq Chisthi in the Vasant Kunj Police Station for criminally assaulting her and subsequently being released on furnishing bail.

Shri M.T.J. Chisthi thus acted in a manner unbecoming of a Government Servant thereby violating Rule 3(1), (I) (ii) and (iii) and Rule 21 of CCS(Conduct) Rules, 1965."

3. Enquiry was proceeded and was over on 12.6.1997. Neither the enquiry report was supplied to the applicant for making representation nor the orders have been passed by the disciplinary authority on the

enquiry report.

4.. Applicant applied for 85 days leave from 7.7.1997 to 29.9.1997 and sought permission to visit USA. As the vigilance enquiry was pending, a prior approval of the competent authority was required. When the enquiry was complete, applicant left for USA. Thereafter vide Memo dated 11.6.1998 issued under Rule 14 of the rules ibid following allegations were levelled:

"That the said Shri M.T.J. Chishti, while functioning as Assistant Archivist left the country on 17.7.1997 without the prior permission of the competent authority and getting the leave sanctioned. Further, the said Shri M.T.J. Chishti also ignored the directives issued by National Archives of India vide Memo No. B-21-4(56)92-Estt.II dated 4.7.1997 directing him not to proceed to USA but he ignored the said directives and left for USA on 17.7.1997."

5.. In the enquiry report applicant was held guilty and on representation the disciplinary authority passed the following orders:

"Whereas Shri M.T.J. Chishti, while functioning as an Assistant Archivist in National Archives of India, Janpath, New Delhi, was chargesheeted as under:-

Charge-1:

That the said Shri M.T.J. Chishti, while functioning as Assistant Archivist left the country on 25th July, 1996 without obtaining the permission of the competent authority and getting the leave sanctioned. Further, the said Shri M.T.J. Chishti also ignored the directives issued by the Department vide Memo dated 28.8.1996 directing him to

report for duty immediately but he did not turn up.

Charge-2:

That Shri M.T.J. Chisthi did not inform the Department in time regarding his divorce to his second wife Smt. Nuzhat Subuhi Chisthi and remarrying third time Mrs. Reshma Tariq Chisthi.

Charge-3:

That Shri M.T.J. Chisthi did not inform the Department about his arrest on 12th March, 1996 against the FIR No. 123/96 lodged by his third wife Smt. Reshma Tariq Chisthi in the Vasant Kunj Police Station for criminally assaulting her and subsequently being released on furnishing bail.

Charge-4:

That the said Shri M.T.J. Chisthi, while functioning as Assistant Archivist left the country on 17.7.1997 without the prior permission of the competent authority and getting the leave sanctioned. Further, the said Shri M.T.J. Chisthi also ignored the directives issued by National Archives of India vide Memo No. B-21-4(56)92-Estt.II dated 4.7.1997 directing him not to proceed to USA but he ignored the said directives and left for USA on 17.7.1997.

Shri M.T.J. Chisthi has thus acted in a manner unbecoming of a Government Servant and thereby violated Rule 3(i)(ii) and (iii) of the Central Civil Services (Classification Control and Appeal) Rules, 1965 (Govt. of India).

AND WHEREAS after due enquiry into the charge in accordance with the Central Civil Services (Classification Control and Appeal) Rules, 1965, and after taking into account the report of the Inquiry Officer appointed to enquire into the charges framed against the said Shri M.T.J. Chisthi, the undersigned has come to the conclusion that the charges framed against him have been fully established and that good and sufficient reasons exist to impose upon the said Shri M.T.J. Chishti the penalty of removal from service and he is accordingly removed from service (National Archives of India) with effect from 16th February, 2000 (F.N.). This removal from service shall not be a disqualification for future employment under the Government."

6. An appeal, preferred against the removal order, culminated into a modified punishment of compulsory retirement, giving rise to the present OA.

7. Learned counsel for the applicant, Shri George Parackin, though taken several contentions to assail the impugned orders but at the outset it is contended that the earlier enquiry, which pertained to three articles of charge, was completed but without supplying the copy of the enquiry report. The disciplinary authority, relying upon the same charges and depriving the applicant a reasonable opportunity, imposed upon him an extreme punishment. It is contended that though the plea of non-supply of the enquiry report was taken before the disciplinary authority but the same has not been dealt with. Relying upon the Constitutional Bench's decision of the Apex Court in **Manaqina Director, ECIL, Hyderabad vs. B.Karunakaran**, 1993 (6) JT 1, it is contended that non-supply of the enquiry report has greatly prejudiced his case as he has been punished not only on the charge on which the enquiry was completed and he was deprived of a reasonable opportunity for making a representation but also on three articles of charge on which the conclusion arrived at by the enquiry officer in the form of his report has been withheld. As such the disciplinary authority mechanically passed the order. This, according to the applicant, not only violates the principles of natural justice but is also against fair play, which is required *of from* respondents while acting as a quasi judicial authority.

8.. On the other hand respondents' counsel Shri R.N. Singh vehemently opposed the contentions but in his reply to para 5(A-N) of the OA, it is admitted that the earlier enquiry was under process when the applicant left the country on 17.7.1997. As such, the enquiry report was not served upon him.

9.. It is also stated by Shri Singh that keeping the decision of the Apex Court in **S.K.Sharma vs. State Bank of Patiala**, 1996 (2) SLR 631, on non-supply of the enquiry report, the order would not be quashed mechanically unless the applicant establishes that a prejudice has been caused to him. In absence of it, it is a mere procedural irregularity.

10.. We have considered the rival contentions of the parties and perused the material on records.

11.. In the Constitution Bench's decision of the Apex Court in **Managing Director, ECIL (Supra)**, following observations have been made:

"31. Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If, after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the

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Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to shortcuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment. (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal set aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the enquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position of law."

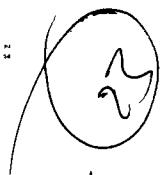
12. Having regard to the above, the prejudice caused to the applicant is apparent on the face of it

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as though the applicant has been chargedheeted for three allegations on which an enquiry is concluded and the report has been submitted but the same has been withheld from the applicant. In the order passed by the disciplinary authority, not only the charge for which a separate enquiry has been held but these three charges have also been considered and weighed in the mind of the disciplinary authority to impose upon the applicant an extreme punishment.

13. The enquiry report and the conclusion arrived at by the enquiry officer ~~acts~~^{is} an additional material which weighs in the mind of the disciplinary authority to take a decision to impose penalty upon the Government Servant. While the applicant has not been confronted with the aforesaid conclusion by non-accord of an opportunity to represent his rebuttal as he has been denied an opportunity to represent the same or to establish his defence to the conclusions arrived at by the enquiry officer when an extreme punishment is imposed, it has to be safeguarded that the Government Servant not only is dealt with in accordance with the procedural rules but also should not be deprived of a reasonable opportunity which would be an anti thesis to fair play. Being a quasi judicial authority, it is expected of the disciplinary authority to have conducted the proceedings and passed the orders strictly in accordance with law.



14. As per the order passed by the disciplinary authority, the charges cannot be segregated to hold that the punishment of removal is sufficient on Article 4 of the charge which has been dealt with in a separate proceedings. It is established that cumulatively all the charges led to imposition of punishment of removal from service and cannot be segregated.

15. As admitted, the applicant has been deprived of an opportunity to have been served with a copy of the enquiry report though there is no reference to this report in the order passed by the disciplinary authority which shows non-application of mind, a grave prejudice has been caused to the applicant and the action of the respondents cannot be sustained in the eyes of law.

16. In the result, for the foregoing reasons, OA is partly allowed. Impugned orders are quashed and set aside. The respondents are directed to reinstate the applicant forthwith with liberty to the respondents to proceed with the enquiry from the stage of supplying a copy of the enquiry report submitted by the enquiry officer and thereafter to pass a final order. The period for which the applicant had remained out of service shall be decided by the authority concerned according to law after the culmination of the proceedings. The aforesaid

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directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

R.K.Upadhyaya

(R.K.Upadhyaya)
Member (A)

S.Raju

(Shanker Raju)
Member (J)

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