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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO.919/2002

New Delhi this the 15th day of November, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI A.P. NAGRATH, MEMBER (A)

Shri Stephen George (A/c No.8306990)  
R/o 50-C Bloock DB LIG Flats  
Hari Nagar Tower  
New Delhi-110064.

..... Applicant

( By Shri V.P.S.Tyagi, Advocate)

-versus-

- (1) Union of India (Through Secretary)  
Ministry of Defence  
New Delhi.
  - (2) The Financial Advisor,  
Ministry of Defence  
(Finance Division)  
New Delhi.
  3. The Controller General of Defence Accounts  
West Bloock-V, R.K.Puram  
New Delhi.
  4. The Principal C.D.A.  
G Block Hutments  
K.Kamraj Marg  
New Delhi.
  5. The Dy CDA (AF)  
Subroto Park  
New Delhi.
- .... Respondents

(By Shri R.N.Singh, Advocate)

O R D E R (ORAL)

Justice V.S.Aggarwal:-

Applicant (Stephen George was working in the office of the Defence Accounts Department. He was proceeded with in departmental proceedings for certain lapses committed during the year 1994. An enquiry had been initiated under Rule 14 of the

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Central Civil Services (Classification, Control & Appeal) Rules, 1965, (for short, the "Rules"). He was dismissed from service by the impugned order passed by the Controller of Defence Accounts on 15.9.2000. He preferred an appeal which was dismissed by the Controller General of Defence Accounts on 26.3.2001.

2. By virtue of the present application, the applicant prays for setting aside the abovesaid orders imposing the penalty of dismissal from service and for reinstatement with consequential benefits.

3. The application as such has been contested and the assertions of the applicant in this regard are being controverted.

4. The impugned orders referred to above are being assailed on the grounds:-

- (a) The findings arrived at by the inquiry officer followed by the disciplinary authority are erroneous and based on no material on the record;
- (b) The appellate authority did not give personal hearing and this has caused prejudice to the matter of the applicant; and
- (c) The alleged disciplinary authority who inflicted the punishment of dismissal from service was not the competent person to pass the order.

5. So far as the first submission of the



applicant is concerned, we deem it necessary to state in clear words the well-settled principle in this regard. This Tribunal will not ordinarily sit as a court of appeal and scrutinise the detailed evidence on the subject. In judicial review, the same would not be permissible. The Tribunal would only interfere on facts if there is no material on the record or no reasonable or prudent person would come to such a findings which can be described otherwise to be erroneous.

6. The applicant's learned counsel took pains to read us through the evidence to urge that there was no material on the record to come to such a conclusion. But on appraisal of the facts, we find that the said ground though eloquently put forward cannot be accepted. In departmental proceedings, the proof required is not beyond reasonable doubt like in the criminal <sup>trial On</sup> ~~trial~~ the preponderance of probabilities, the conclusion can be arrived at. We have gone through the evidence and it clearly shows that the material was available on the record to come to such a conclusion. The findings, therefore, against the applicant cannot be termed to be erroneous or based on no evidence.

7. It is the second limb of the argument which was greatly pressed in terms that the

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appellate authority should have given hearing to the applicant and if the hearing is not given, the findings so arrived at must be set aside.

8. Rule 27 of the Rules reads:-

"27. Consideration of appeal

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider;

(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;.....

(iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of Rule 16, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in Rule 23 the appellate

authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable."

9. Perusal of the relevant provisions reproduced above clearly shows that it does not prescribe an opportunity of personal hearing to be given. It only provides for making a representation against an enhanced penalty if it has to be imposed.

10. Our attention had been drawn towards a decision of a Bench of this Tribunal in OA No.448/2000 (Shri J.B.Gupta vs. Union of India & Ors) rendered on 18.5.2001 wherein this Tribunal held:-

"5. In addition to this, the learned counsel for the applicant has placed reliance in the case of Bhoop Singh vs. Union of India & Ors. (OA 2412/1998) with two connected OAs.) decided on 20.12.1999, wherein the Tribunal has also followed the Full Bench order in Ram Niwas Bansal's case (supra) and again upheld the plea of the applicant that the right of personal hearing before the appellate authority cannot be denied unless the said right is specifically excluded by use of unambiguous language or such inference is inevitable on the principle of necessary implication. The Tribunal has also considered the CCS(CCA) Rules read with relevant instructions and came to the conclusion that the denial of right of personal hearing was fatal to the orders passed by the appellate authority. In view of the above, we do not find any reason to defer for the same and in the light of the same, we are also of the view that since the applicant in his appeal had specifically asked for grant of personal hearing, the appellate authority should have granted the same before disposing of the appeal."

Reliance further was being placed on the Full Bench

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decision of the Punjab and Haryana High Court in the case of Ram Niwas Bansal v. State Bank of Patiala and another, 1998 (3) A.T.J. Vol.26 where a similar question had come up for consideration and it was held:-

"25. An objective analysis of the law as declared by the Highest Court of the Land in the aforesaid judgments amply justifies the view that the right of hearing before the Appellate Authority would be an essential feature of principle of natural justice. Unless the right to such hearing is specifically excluded by use of unambiguous language or such inference is inevitable on the principle of necessary implication, while viewed from any settled principles of interpretation of statutes. Either of them are pre-dominantly absent in regulation 70. Denial of such right would obviously affect the result of such proceedings and order passed thereupon. Certainly the extent of such effect and consequences flowing therefrom, would depend upon the facts of each case. This view can be fortified by reference to the judgement of the Supreme Court in the case of Ram Chander (supra). The Court upheld the applicability of maxim audi alteram partem before the Appellate Authority even in the absence of specific rule granting such protection."

In normal circumstances when a Bench of this Tribunal had taken a view, we would have referred it to a Larger Bench but herein our attention was drawn towards a decision of the Supreme Court in the case of State Bank of Patiala v. Mahendra Kumar Singhal, 1994 Supp (2) SCC 463. In the cited case Mahendra Kumar Singhal had been dismissed from service. He preferred an appeal which was dismissed. The High Court had quashed the order of

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the appellate authority on the ground that no personal hearing was given. The Supreme Court had set aside the order of the High Court and held that the rule of natural justice does not necessarily in all cases confer a right of audience at the appellate stage. The findings are:-

"3. No rule has been brought to our attention which requires the appellate authority to grant a personal hearing. The rule of natural justice does not necessarily in all cases confer a right of audience at the appellate stage. That is what this Court observed in F.N.Roy V. Collector of Customs, Calcutta, 1975 SCR 1151-1160. We, therefore, think that the impugned order is not valid. Our attention was, however, drawn to the decision in Mohinder Singh Gill V. Chief Election Commissioner, New Delhi, (1978) 1 SCC 405, 446: (1978) 2 SCR 272, 316 wherein observation is made in regard to the right of hearing. But that was not a case of a departmental inquiry, it was one emanating from Article 324 of the Constitution. In our view, therefore, those observations are not pertinent to the facts of this case."

The decision of the Supreme Court binds being a judicial precedent. Therefore, we hold that when there was no specific provision that in appeal under the Rules the applicant had to be given a personal hearing to urge that because of personal hearing not having been given, the order should be vitiated cuts no ice. We reject the said argument.

11. Reverting back to the last argument, according to the applicant, the penalty of dismissal from service had been imposed by Shri

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B.D. Singh who was designated at that moment was not the CDA but he was promoted to the higher rank of Principal CDA and Chief CDA. He signed the order as CDA in disguise. Shri B.D.Singh, by then, in the capacity of Principal CDA which is the higher rank post was not conferred with the powers of the appointing authority and, therefore, the order is illegal.

12. The said argument, in the facts of the present case, also cannot be appreciate. Annexure A-7 is the copy of the posting orders pertaining to Shri B.D.Singh. It is not disputed that CDA was the competent disciplinary authority. The posting order of Shri B.D.Singh indicates:-

"Refce: In continuation of this office confidential letter of even No. dated 08.10.1998 addressed to Chief CA (Fys), Calcutta with copy to your office amongst others.

It has been decided with the approval of the Competent Authority in the Ministry of Defence that Shri B.D. Singh, IDAS will continue as CDA (Hqrs.), New Delhi by upgrading the post held by him in the pay scale of Rs.22,400-24,500/- and temporary transfer of the post in the same scale from Calcutta and until further orders. He will be designated as Chief Controller, Office of CDA (HQrs).

Sd/  
(Amar Chand)  
Joint Controller of Defence Accounts(AN)

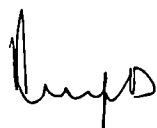




Abovesaid order clearly shows that Shri B.D.Singh was to continue to act as CDA (Headquarters) even despite upgradation that was awarded. Once he continued too be CDA (Headquarters) necessarily, he was the disciplinary authority. There was no change of the disciplinary authority. In that view of the matter, the contention which was highlighted also must be held to be without merit.


For these reasons, the application being without merit must fail and is dismissed. No costs.

Announced.



(A.P. NAGRATH)

Member (A)



(V.S. Aggarwal)

Chairman

/sns/