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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.219/2002

New Delhi, this 7th day of October, 2002

Hon'ble Shri Justice V.S. Aggarwal, Chairman

Hon'ble Shri M.P. Singh, Member(A)

Nirothi Lal

Taj Phari, Badarpur

New Delhi

.. Applicant

(Shri Yogesh Sharma, Advocate)

versus

Govt. of NCT of Delhi, through

1. Chief Secretary

New Secretariat, New Delhi

2. Lt. Governor

Raj Niwas, Delhi

3. Chief Secretary

New Secretariat, New Delhi

.. Respondents

(Ms. Renu George, Advocate)

ORDER (oral)

Shri M.P. Singh, Member(A)

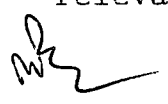
Applicant while working as Dy. Supdt. was issued a charge-sheet under Rule 14 of CCS(CCA) Rules, 1965 vide memo dated 18.11.96 as per details given therein inasmuch as he had failed to discharge his duties effectively. He made a representation on 7.7.97 for supply of relied upon documents but the same was rejected vide order dated 21.7.1997. Applicant also made another request on 5.8.1997 for change of Enquiry Officer (EO) as well as Presenting Officer (PO) on the ground of misbehaviour etc. Despite this, EO continued with the enquiry and submitted his report concluding that the charge against the applicant had been proved. Applicant made a detailed representation on 14.2.2000 against the findings of the EO. But the disciplinary authority passed an order dated

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27.3.2000 imposing the penalty of dismissal from service. Applicant preferred an appeal on 28.4.2000 and the appellate authority vide its order dated 11.4.2001 modified the penalty order of dismissal from service to reduction in pay by four stages in his time scale of pay for three years with cumulative effect and also clarified that during this period the applicant will not earn increments of pay. By the present OA, applicant is seeking directions to quash the impugned orders dated 27.3.2000 and 11.4.2001 and EO's report dated 24.12.99 alongwith charge-sheet dated 18.11.96.

2. We have heard the learned counsel for the parties and perused the records.

3. During the course of the arguments, though the applicant has taken a variety of grounds which include non-supply of copy of preliminary enquiry report, copies of relied upon documents and also change in the EO and PO, in support of the prayer sought for by the applicant, the learned counsel was insisting that non-supply of copy of preliminary enquiry report, in which statements of witnesses were recorded in absence of the applicant, is illegal in the eyes of law and the applicant was not able to make his defence effectively. In this regard, he has relied upon the judgement of apex court in the case of State of UP Vs. Shatrughan Lal JT 1998(6) SC 55, the relevant portion of which is extracted below:



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"Preliminary inquiry which is conducted invariably on the back of the delinquent employee may, often, constitute the whole basis of the charge-sheet. Before a person is, therefore, called upon to submit his reply to the charge sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial".


4. The learned counsel has also drawn our attention to the decision of this Tribunal dated 27.9.2002 by which OA No.1321/2001, filed by the co-accused in the same case as that of the present applicant, was allowed, with the following observations:


"5. The law is well settled that whenever there is a departmental enquiry, concerned official against whom the enquiry is proceeded, must be given a reasonable opportunity to defend himself. When documents are asked for, necessarily the enquiry officer has to see whether the same are relevant or not. Even if the department concerned does not rely upon those documents, relevancy has to be seen from the point of view of the concerned official facing the enquiry. The department may not rely upon the documents but the documents may be necessary for defence of the concerned official. Therefore, the argument of the learned counsel for the respondents to the contrary must fail.

6. Perusal of the documents asked for clearly shows that they were relevant concerning the incident and concerning the dispute whether the applicant was detailed for duty at the relevant time or not. The said application could not, therefore, be set aside simply because on the ground that the department is not relying upon those documents. This clearly leads to the conclusion that a fair opportunity had not been granted to the applicant to defend herself. Consequently, we allow the application and quash the impugned orders. It is directed that a copy of the documents claimed by the applicant should be supplied as mentioned in her application dated 25.7.1997. The enquiry, if deemed appropriate, may be started from the stage when the documents were refused."

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5. We have considered the arguments advanced by the learned counsel for the applicant and we find force in the same. In view of this position and having regard to the judgements referred to above, the present OA is allowed and the impugned orders are quashed and set aside. The respondents are directed to supply copies of the documents as requested by the applicant vide letter dated 7.7.97. The case of the applicant is remitted back to the DA to hold inquiry from the stage the applicant demanded the report of the preliminary enquiry and other relied upon documents. The OA is disposed of in the aforesaid terms. No costs.

  
(M.P. Singh)  
Member(A)

  
(V.S. Aggarwal)  
Chairman

/gtv/