

Central Administrative Tribunal
Principal Bench

R.A.No.26/2002 in
O.A.No.3130/2001

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 5th day of March, 2003

Jagdish Prasad Gupta
s/o Shri Mauji Ram Bansal
C-303, Sector-1, Avantika
Rohini, Delhi
Air Force Station
Palam, New Delhi.

.. Applicant

(Applicant in person)

Vs.

1. Air Officer
Incharge Personnel (AOP)
Vayu Bhawan
New Delhi.

2. Defence Secretary
Ministry of Defence
Govt. of India
New Delhi.

.. Respondents

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Despite several opportunities respondents have failed to file reply. Today also none has appeared on behalf of respondents. Accordingly, I proceed to dispose of the RA and OA in terms of Rule 16 of the CAT (Procedure) Rules, 1987.

2. Being aggrieved by a minor penalty imposed upon applicant on 22.3.1999 whereby his one increment has been withheld for a period of three years without having any future effect. An appeal filed against which has been rejected by an order dated 29.11.1999. OA has been preferred on the ground that whereas the disciplinary authority issued a show cause notice to him in reply to that the applicant has requested to hold an inquiry in terms of Rule 16(1) of the CCS (CCA) Rules, 1965 but the disciplinary authority

without recording reasons as required vide DoPT's OM dated 28.10.1985 imposed upon a ^h minor punishment which is not sustainable and is violative of principles of natural justice.

3. Applicant has also impugned the punishment on the ground that the disciplinary authority while imposing upon him a minor penalty relied upon the circumstantial evidence as well as the statements of the witnesses recorded, whereas these statements have not been provided to him which constitutes denial of a reasonable opportunity, vitiates^u the punishment. The OA was heard by a Co-ordinate Bench at the admission which was dismissed in limine vide order dated 20.11.2001 as it has been found that the applicant had failed to establish a prima-facie case, and while deliberating upon the provisions of Rule 16 which mandates recording of reasons, in the event a request for holding the inquiry in a minor penalty has been rejected, this Court observed that as the disciplinary authority has decided not to hold an inquiry, there is no infirmity in the order passed.

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4. The MA ~~2655~~²⁶⁵⁵/2001 filed by applicant has been treated as an RA No.26/2002 and on demitting office by Hon^uble Shri S.A.T.Rizvi, Member(A), the aforesaid RA has been listed before me.

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5. Heard. Applicant, who is present in person, contended that if a request is made for holding an inquiry in minor penalty proceedings, it is incumbent upon the disciplinary authority, in consonance with the DoPTs OM dated 28.10.1985, to

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record reasons. As no reasons have been recorded, despite his request for holding the inquiry, observation in the order passed by the Tribunal is unfounded and there exists an error apparent on the face of record and without observations have been made, the disciplinary authority in his own wisdom took it appropriate to hold an inquiry.

6. It is further contended that once the disciplinary authority, while imposing a minor penalty, relied upon the material which has not been put to the notice of the delinquent along with the show cause notice, punishment is to be vitiated for violation of principles of natural justice and fair play.

7. I have carefully considered the rival contentions of the parties.

8. I have also perused the order dated 9.10.2002 passed in OA-75/2002 wherein applicant has put a challenge not only to the minor penalty but also to his promotion. Court has taken cognizance of the fact that the review is already pending in OA-3130/2001. In the light of this, OA was allowed to be withdrawn with liberty to applicant to proceed as per law, if any grievance survives. In this view of the matter present RA is not hit by the doctrine of res-judicata.

9. Having regard to the fact that there was no finding or reasons recorded by the disciplinary authority in its order while dealing with the request

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for holding an enquiry and also on the ground that certain documents though have been relied upon by the disciplinary authority but have not been served upon him the penalty is not in consonance with Rule 16 of the CCS (CCA) Rules, 1965. In the order passed by this Tribunal, inadvertently it has been recorded that the if the disciplinary authority has decided not to hold a detailed enquiry would not constitute denial of reasonable opportunity and moreover not taking into cognizance the issue of non-supply of the material relied upon behind the back of delinquent employee vitiates the penalty order not only unfair but also not in consonance with the principles of natural justice. In this regard, I am fortified by the decisions of the Apex Court in Sh. S. Rang Rajan v. State of Karnataka & Others, JT 1993(5) SC 27 and Sh. Surjit Singh v. Union of India & Others, 1997(10) SCC 592. In this view of the matter and having regard to the aforesaid decisions of the Apex Court where it is held that not only on technical ground but also in the interest of justice OA is to be allowed to prevent miscarriage of justice.

10. Accordingly, the present RA is allowed. The order dated 20.11.2001. is recalled.

O.A.No.3130/2001:-

11. As the respondents despite service have not turned up and have not filed any reply, considering the facts of the case on merits as well I find that in violation of Rule 16 (1) (b) of CCS (CCA) Rules, 1965 and also non-furnishing of the relevant

documents to applicant he has been greatly prejudiced which cannot be countenanced in view of the principles of natural justice and fair play. Accordingly the punishment order as affirmed by the appellate authority ~~are~~^{is} quashed and set aside.

12. However, respondents are at liberty to act in accordance with Rule 16 (1)(b) of CCA (CCA) Rules, 1965, particularly request of applicant for holding a detailed enquiry as well as furnishing him the material which has been relied upon to arrive at a finding of guilt against him and to punish him in a minor penalty.

13. With these observations the OA is disposed of accordingly. No costs.

S. Raju
(Shanker Raju)
Member (J)

san/rao