

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2944/2001

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New Delhi this the 7th day of January, 2003.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)  
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

D.S. Negi,  
Security Assistant 'A',  
DIFR, Delhi-54.

-Applicant

(By Advocate Shri V.K. Sharma)

-Versus-

1. Union of India through  
the Secretary,  
Scientific Adviser to Raksha Mantri,  
Ministry of Defence,  
Dept. of Defence Research & Development  
Organisation, Sena Bhawan,  
New Delhi-110011.

2. The Director,  
DIFR,  
Research and Development Organisation,  
Defence Institution of Fire Research,  
Brig. S.K. Mazammudar Road,  
Delhi-110054.

3. Satya Paul and Co.  
G-24, Bali Nagar,  
New Delhi-110015.

-Respondents

(By Advocate Shri J.B. Mudgil)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 3.3.2000, imposing upon him a major penalty of withholding of one increment for a period of four years with cumulative effect as well as appellate order dated 31.10.2000, upholding the punishment.

2. Applicant, though filed appeal against the order of punishment, approached this Court earlier in OA-520/2001, which was dismissed by an order dated 26.9.2001, as the appellate order was not assailed.

3. Applicant, who was working as Security

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Assistant 'A' and was deputed on duty from 4 p.m. to 8 a.m. in the intervening night of 14/15.3.99 has been proceeded against for an allegation of stealing stores, including two G.I. pipes in connivance with five other employees.

4. During the course of the enquiry, enquiry officer examined four additional witnesses who were alleged to have assisted applicant in theft and were not listed in the list along with memorandum without according an opportunity to applicant to cross-examine them and on the basis of the evidence recorded, including those of additional witnesses, charge has been proved against applicant.

5. He preferred representation against the finding culminated into a major punishment, which, on appeal was upheld, giving rise to the present OA.

6. Though several contentions have been raised to assail the impugned order, but placing reliance on Rule 14 (15) of CCS (CCA) Rules, 1965, which is reproduced below:

"(15) If it shall appear necessary before the close of the case on behalf of the Disciplinary Authority, the Inquiring Authority may, in its discretion allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the enquiry is adjourned. The Inquiring

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Authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The Inquiring Authority may also allow the Government servant to produce new evidence if it is of the opinion that the production of such evidence is necessary in the interest of justice.

NOTE--New evidence shall not be permitted or call for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally."

it is contended that the respondents have called the witnesses which were not included in the list of witnesses, finding that the charge could not be established from the evidence relied upon with a view to fill up the gaps in the evidence and moreover no opportunity of cross-examination was accorded to applicant. According to him, though he has taken this ground before the disciplinary as well as appellate authorities but in response the same was not considered and it is admitted that applicant has been served with the statement of witnesses, which constitutes denial of reasonable opportunity to defend, which is not in consonance with the principles of natural justice and fair play.

7. Respondents' counsel Shri J.B. Mudgil, by referring to enquiry proceedings at Annexure "F" to the counter dated 1.7.99 contended that applicant has been accorded an opportunity to cross-examine the witnesses but he denied it and has not availed it.

8. We have carefully considered the rival contentions of the parties and perused the material on record. What has been transpired from the proceedings of the enquiry of 1.7.99 is that applicant has been asked to

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give his oral submission in defence or to produce defence witnesses. Nothing in this order is indicative of the fact that after examination of additional witnesses any opportunity of cross-examination was afforded to applicant.

9. As crystallised by the Apex Court in various pronouncements, including Union of India v. T.R. Verma, AIR 1957 SC 882 that denial of opportunity to cross-examine the prosecution witnesses is a material illegality of the procedure, which prejudices the delinquent official and the proceedings held are liable to be set aside as violative of principles of natural justice and fair play.

10. Appellate authority while being confronted with this illegality has not stated any thing suggestive of the fact that cross-examination was afforded to applicant and rather it is stated in its order that the statement of additional witnesses were given. This, to our, considered view is not compliance of the principles of natural justice in absence of cross-examination of these additional witnesses by applicant whose testimony has been relied upon by the enquiry officer to hold applicant guilty of the charge certainly caused a grave prejudice to applicant, vitiating the enquiry and consequent order.

11. Moreover, as per Note contained in Rule 14 (15) (supra) new evidence shall not be permitted to be called in the enquiry to fill up the gaps in the evidence. The memorandum issued to applicant under Rule 14 of the Rules does not contain list of witnesses which has been relied upon to establish charge against applicant and as from the evidence the charge could not be made out, the

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department has called the additional witnesses without following the rules, giving list of witnesses to applicant and giving him three clear days to prepare the defence. This also constitutes violation of the procedural rules, vitiating the enquiry.

12. In the result, for the foregoing reasons, OA is allowed. The orders passed by the respondents cannot be sustained in law and are accordingly quashed and set aside. Applicant is entitled to all consequential benefits, which would be disbursed to him within a period of three months from the date of receipt of a copy of this order. No costs.

*S. Raju*  
(Shanker Raju)  
Member (J)

'San.'

*(Govindan S. Tampli)*  
(Govindan S. Tampli)  
Member (A)