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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 798 of 2000.

New Delhi, this the 18th day of September, 2001

HON'BLE MR.V.K.MAJOTRA, MEMBER (ADMN)
HON'BLE MR.KULDIP SINGH, MEMBER (JUDL)

K.S.Pathania S/o Late Shri Kartar Pathania,
No.32B, New Layalpur Extension,
Krishna Nagar,
Delhi-110051.

-APPLICANT

(By Advocate: Shri S.M.Ratanpaul)

Versus

- 1.. Union of India, through
The Secretary to the Government of India
Department of Defence (Deptt. of Defence)
South Block,
New Delhi.
2. The Quartermaster General
Army Headquarters and ex-officio
Chairman, Governing Body,
Army HQs Canteen,
Sena Bhavan,
New Delhi.
- 3.. The Additional Director General,
Operational Logistics (QMG's Branch),
& ex-officio Chairman
Management Committee, Army Headquarters Canteen,
Sena Bhawan, New Delhi.
4. The Manager
Army Headquarters Canteen,
"Q" Block, Rajaji Marg,
New Delhi.

-RESPONDENTS

(By Advocate: Shri G.K.Sharma)

O R D E R (ORAL)

By Hon'ble Mr.V.K.Majotra, Member(A)

The applicant has challenged the punishment of dismissal from service awarded by Chairman, Management Committee, Army Headquarters, Canteen, New Delhi vide order (Annexure A-4) dated 3rd June, 1998 as also rejection of his appeal against the aforesaid order vide Annexure A-6 dated 14th July, 1998. The applicant had earlier filed an OA 1640/1998 on 31.8.1998 against his dismissal which was dismissed vide order dated 13th April, 1999 (Annexure A-12) on the ground of lack of jurisdiction. In the light of the judgement of Hon'ble Supreme Court delivered on 4.1.2001 in the case of Union

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of India and Ors. Vs. M. Aslam and Ors. (AIR 2001 SC 526) (Annexure A-7), the applicant has filed the present OA against the same punishment of dismissal from service. In the said judgement of the Supreme Court, it was held that employees in the Unit Run Canteens are Government employees and consequently the Central Administrative Tribunal has jurisdiction to entertain applications by such employees under the provisions of Administrative Tribunals Act, 1985. The applicant had been proceeded against vide Annexure A-1 dated 13th February, 1998, on the following charges:-

FIRST CHARGE

NEGLIGENCE IN PERFORMANCE OF DUTY

In that he during September 1997, while being Senior Sales Clerk of the JCOs/OR General Counter, at the time of handing over charge of the above extension counter to Smt. Neerja Sharma failed to inform her about damaged items valued at Rs.1264.50 as per list attached as Appendix "A" resulting in non-production of these items before the Damage Board, thereby displayed negligence in performance of his duty.

SECOND CHARGE

WILLFUL DISOBEDIENCE OF ORDERS OF SUPERIOR OFFICE

In that he between 31st Oct. 1997. and 23 Jan 1998, while being senior Sales Clerk of above Extn Counter, willfully failed to sent attendance register for perusal of Manager Army HQ Canteen, in compliance of his order contained in para 3 of Army HQ Canteen letter No.247621/AHQ/CAN/P/F dated 28 Oct 97, duly acknowledged by him (Shri K.S.Pathania) willfully disobeyed the orders of the Manager, Army HQ Canteen, his superior officer.

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2. It has been averred that the respondents have not disclosed the provisions of law/rules, under which the departmental enquiry had been initiated against the applicant. It has also been alleged that the principles of natural justice were violated in holding enquiry against the applicant inasmuch as no statement of imputations of misconduct or misbehaviour, no list of documents in support of charges, no list no list of witnesses to be examined in support of charges was enclosed with the charge-sheet and that the mandatory requirement of requiring the applicant to submit his defence statement was also not stated in the charge-sheet. By violating these procedural requirements, according to the applicant, the respondents have caused great prejudice to the applicant's defence. The applicant has also stated that there are contradictions in the charge-sheet as the charges state that the applicant did not report the damaged items to the Damage Board, while the Annexure A enumerating such items describes them as deficiency and not damaged items during Sept. 1997 which is a contradiction in itself. It is further stated that the list of damaged items at Annexure A included replaceable items as well. It is also alleged that whereas the enquiry officer had not held the charges against the applicant as proved, the Chairman of the Management Committee of Army Headquarters Canteen as disciplinary authority had held the charges as proved. The applicant has also maintained that the appellate authority has passed a non-speaking order.

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3. In their counter, respondents have contended that decision in the case of M.Asalam(supra) has prospective application, therefore, this Court does not have jurisdiction in the matter. The respondents have further stated that charge-sheet was issued in accordance with the provisions of Standing Orders of Army Headquarters Canteen and that provisions of CCA(CCS) Rules, 1965 are not applicable to the enquiry held against the applicant. According to the respondents, the orders passed by the disciplinary authority and appellate authority are reasoned and speaking orders.


4. We have heard both learned counsel and considered the material on record.

5. As to the point of jurisdiction, the learned counsel of the applicant contended that judgement in the matter of M.Asalam(supra) is applicable to the present case and this Tribunal does have jurisdiction in the present matter. In support he referred the order dated 12th September, 2001 in OA 381/2001, Shri Mani Ram Vs. Union of India & Others in which case applicant's services were terminated and it was held on the basis of Hon'ble Supreme Court's judgement that CAT would have jurisdiction to entertain applications by employees working in Unit-Run Canteens. It was held that Tribunal's jurisdiction to entertain such OAs is beyond doubt. Thus the objection of the respondents regarding the jurisdiction of this Court is rejected.



6. The learned counsel of the applicant stated that there is no practice of handing over and taking over charge of Senior Sales Clerk. He further stated that whereas in the first charge relating to negligence in performance of duties, it is alleged that the applicant had at the time of handing over of charge to Smt. Nirja Sharma failed to inform her about damaged items valued at Rs. 1264.50, but the list attached as Appendix "A" describes deficiency in items and not as damaged items. He stated that items 5, 10 & 12 relating to R/oil Flore, Ghee Gagan and Drum milton are replaceable item. Thus there is no question of any loss to the respondents. Learned counsel stated that damaged items are later on put up before the Damage Board for Board's decision and when Board declares the damaged items such stocks are stated to have caused loss to the respondents. In the present case, Annexure A-1 relates to deficient items only and three of them which are costly items as well are described as replaceable items, so there is no question of any loss at the hands of the applicant, and as such these items could not been said to be damaged.

7. With regard to the averment that there is no practice of handing over and taking over of charge the Learned counsel drew our attention to the statement of Smt. Nirja Sharma, who had taken over from the applicant as Senior Sales Clerk and who had stated that procedure of handing over and taking over is not present in the canteen. Learned counsel also referred the opinion of enquiry officer in the enquiry report in which it is stated "there is cause of feel that Shri K.S.Pathania has



not performed his duty fully". There is no positive finding that Charge No.1 has been fully proved. Similarly as regards Charge No.2 the enquiry officer has given his "opinion" as follows:-

"I am of the opinion that Shri KS Pathania has failed to prove that he had produced/sent the attendance register of CSD staff posted at RK Puram extn counter to the Manager Army HQ Canteen which suggests that he has disobeyed the orders of superior officer."

8. Instead of giving a finding on the second charge relating to willful disobedience of the orders of the superior officer, the enquiry officer has expressed his opinion and transferred the onus of proof to the applicant that he had produced/sent the attendance register to the Manager, Army Headquarters Canteen. As a matter of fact, it was the responsibility of the respondents to prove that the applicant had not produced/sent attendance register to the Manager Army Headquarter, Canteen. The disciplinary authority vide the impugned order has stated that after considering the report of the enquiry officer the evidence on record and applicant's reply to Show Cause Notice, he had come to the conclusion that the charges framed against him stand proved. As a matter of fact, when the enquiry officer himself in the enquiry report has not conclusively held that the charges have been fully proved, without disagreeing with findings of the enquiry officer and without supplying reasons of such disagreement to the applicant and without recording any detailed discussion, the disciplinary authority does not have powers to arbitrarily conclude that the charges against the applicant stand proved.


9. Whereas the learned counsel of the applicant has stated that the respondents have not followed the principles of natural justice and had not supplied the applicant the statement of imputations of misconduct or misbehaviour, list of documents in support of the charges, list of witnesses to be examined in support of the charges along with the charge-sheet and also not satisfied the requirement of informing the applicant to submit his defence statement and thereby adversely prejudicing his defence, on the other hand, the learned counsel of the respondents stated that the applicant is not governed by the provisions of CCA(CCS) Rules, 1965 and that in his case only the Standing Orders of Army Headquarters Canteen(AHq) are applicable.

10. Learned counsel of the respondents laboured very hard and referring to the judgement in the matter of M.Asalam(supra) stated that whereas the employees of Unit-Run Canteens were held to have status of Government servants, it was also observed that ipso facto that does not entitle them to get all the service benefits as available to the regular Government servants or even their counter parts serving in the CSD Canteens. The benefits referred therein are basically the benefits relating to pay and allowances, retiral benefits and not the inherent fundamental right available to the Government servants for protection against arbitrary action in disciplinary matters. The principles of natural justice in any case have to be followed in disciplinary proceedings. While we had a look at the Standing Order 178 relating to procedure for

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dismissal/discharge on account of misconduct/indiscipline. It has to be emphasised that principles of natural justice have to be followed in disciplinary matters. Whether or not CCA(CCS) Rules are applicable in the present case, principles of natural justice necessitate supply of statement of imputations of misconduct and misbehaviour, list of documents to be relied upon as also list of witnesses to be examined in support of charges along with the charge-sheet. As per the Standing Orders the charged officer can utilise the services of a colleague to present his case before enquiry officer. No such offer for engaging his colleague as defence assistant had been made by the respondents to the applicant. Mere statement in the Standing order 178 that principles of natural justice have to be followed is just not enough. The principles of natural justice have to be followed not in words alone but by conduct such as by providing statements/documents lists etc. to the delinquent as stated above. We find that the respondents have failed in supplying the applicant the above documents. Thus in our considered view, principles of natural justice have not been followed in holding disciplinary proceedings against the applicant.

11. So far as Annexur A-6 dated 14th July, 1998, i.e. the appellate order is concerned, we find that without any discussion it has been stated that applicant's "appeal has not been accepted by the Chairman, Management Committee. The principles of natural justice mandate that the appellate authority should examine whether provisions of related laws and

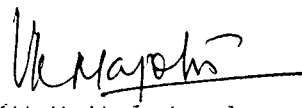


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rules have been followed in the proceedings^{and} whether or not there are any procedural infirmities. The appellate authority is also supposed to discuss and deal with the various grounds and points explored by the appellant. Applicant's appeal is available at Annexure A-11. From the appeal order, we find that none of the requirements as described have been met with by the appellate authority. He has just declined to accept the appeal of the applicant in an extremely sketchy manner which cannot be countenanced.

12. Having regard to the reasons recorded and discussion made above, we allow the OA and quash and set aside the impugned orders of dismissal from service of the applicant. The respondents are directed to reinstate the applicant in service with all consequential benefits. These directions should be implemented by respondents within a period of one month from the date of receipt of a copy of this order. No costs.


(Kuldip Singh)
Member(J)


(V.K. Majotra)
Member(A)

18.9.2001

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