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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.963/2001

New Delhi, this the 6th day of November, 2001

C.P.Katyal
Section Officer
Ministry of Home Affairs
Rehabilitation Division
New Delhi.

... Applicant

(Applicant in person)

Vs.

Union of India through
The Secretary
Ministry of Home Affairs
North Block
New Delhi.

.... Respondents

(By Advocate: Shri R.V.Sinha, through Shri R.N.Singh)

O R D E R (Oral)

By Shanker Raju, Member (J):

The applicant, who is working as Section Officer with the respondents has been ordered to be dealt in Fact Finding Enquiry where his version was taken and the witnesses were examined. Thereafter, on the basis of the fact find enquiry, the memorandum has been served upon the applicant on 24.6.1999 wherein he has been charged for lack of devotion of duty on the following allegations:

"Shri C.P.Katyal, Section Officer, Ministry of Home Affairs, while posted in the Rehabilitation Division, was appointed as Managing Officer vide Rehabilitation Division's notification No.1(2)/93-Settlement dated 11.8.95 in terms of Section-3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954). In this capacity, Shri Katyal also managed the affairs of the Rehabilitation Ministry Employees' House Building Society. Shri Katyal was replaced as Managing Officer by Shri Surjeet Singh, Under Secretary in the Rehabilitation Division vide Rehabilitation Division's Notification No.1(2)/93-Settlement dated 25.7.97. Shri Katyal had thus functioned as Managing Officer in terms of the provisions of the aforesaid Act for the period from 11.8.95 to 24.7.97.

2. During his tenure as Managing Officer as stated above, the said Shri Katyal had processed an application for allotment of site for a school in the Rehabilitation Ministry Employees' House Building Society, submitted by M/s Holy Welfare Trust. There had been cases on behalf of the said Trust before the Hon'ble High Court of Delhi on the subject of allotment of site for a school in the said Society, which were processed by Shri Katyal in the Rehabilitation Division's File No.15/1/96-SS. He continued handling the subject of allotment of a school site in favour of M/s Holy Welfare Trust as also defending the case before the Hon'ble High Court of Delhi in the C.C.P. No.365 of 1996-C.W.No.1286/96 in the matter of Holy Welfare Trust Vs. Union of India and others until the end of his tenure as Managing Officer.

3. With his replacement as Managing Officer by Shri Surjeet Singh, Under Secretary, Shri Katyal was expected to hand over all records relevant to his said charge including the Rehabilitation Division's File No.15/1/96-SS, to his successor against proper receipt. It was in any case for him to ensure that all such records were properly handed over to his successor and the responsibility squarely lay on him in this regard.

4. Rehabilitation Division's File No.15/1/96-SS is no longer traceable. Shri Katyal has not been able to inform the successor Managing Officer regarding the whereabouts of the said file. Shri Katyal has neither handed over the said file to Shri Surjeet Singh, Under Secretary, nor has he been able to trace the same in spite of the fact that it was the only who has to be responsible for making available the said important file of the Rehabilitation Division to the successor Managing Officer.

5. Rehabilitation Division's File No.15/1/96-SS is an important one. In the said file, various directions communicated to the Government by Hon'ble High Court of Delhi in the cases referred to above, have been dealt with. Keeping in view the important contents of the said file, it was imperative for Shri Katyal to have ensured that it was appropriately handed over to the successor Managing Officer or to his senior officers in the Rehabilitation Division so that the important issues dealt with in the said file were not lost sight of and the cases were adequately defended before the Hon'ble High Court of Delhi on behalf of the Government. Shri Katyal neither ensured that this was done nor has he been able to say anything in regard to the availability of the file in his custody in spite of the fact that it was his responsibility alone as Managing Officer that such an important file of the Rehabilitation Division was duly handed over to his successor or to his senior officers in Rehabilitation Division after keeping proper record with him. Shri Katyal has miserably failed on this account."

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2. The applicant has filed his reply to the Memorandum to the disciplinary authority thereafter, in consultation with the UPSC, the disciplinary authority has issued an order dated 27.6.2000, wherein a penalty has been imposed upon the applicant by withholding of one increment for a period of two years without cumulative effect in the time scale of pay by placing reliance on the preliminary enquiry report and advice of the UPSC as well as the representation of the applicant.

3. Against the order passed by the disciplinary authority the applicant preferred a revision petition which was rejected as devoid of merit by an order dated 16.1.2001. The applicant has sought quashing of these orders and also for a direction to give in-situ promotion as Under Secretary w.e.f. 20.8.1999, i.e., the day when his juniors have been accorded the same, with all consequential benefits.

4. The applicant has assailed the order of minor penalty on the ground that before serving him a minor penalty of charge sheet he has been accorded an opportunity to put his version in the preliminary enquiry. The report of the enquiry officer was made on the basis of examination of certain witnesses to which the applicant has been deprived an opportunity to cross-examine. It is only on receipt of the order of the disciplinary authority he was apprised that the UPSC while according his advice to the disciplinary authority has taken into consideration the preliminary

enquiry report and the same has also been placed reliance by the disciplinary authority. In this background, it is stated that as the preliminary enquiry report has not been put to him in the Memorandum or not even find with annexures thereof and against which he has not been accorded a reasonable opportunity to defend himself and taking of the preliminary enquiry report into consideration would certainly violates the principles of natural justice which results in denial of a reasonable opportunity.

5. As regards the prejudice is concerned, it is stated that he has been prejudiced in the matter of his defence as the extraneous material which has not been put to him has been considered by the disciplinary authority. The applicant in this background, stated that in the UPSC advice which has been agreed to by the disciplinary authority the fact of examination of three witnesses in the enquiry has been highlighted, whereas the applicant was not allowed an opportunity to cross-examine them which was denied to him during the Fact Finding Enquiry/Preliminary Enquiry. In this view, it is stated that as extraneous matter has been taken into consideration without according him the reasonable opportunity he has been punished and additional material available to the disciplinary authority has not been put to him and against which no reasonable opportunity is accorded which certainly prejudiced him and in violation of principles of natural justice which are to be read as part of any procedural law, the action of the disciplinary authority is not fair but arbitrary. It is also stated that when the matter has been objected

before the revisional authority and having taken a specific plea to that effect the same has not been answered in right perspective and the revision petition has been rejected by a mechanical order. Lastly, the applicant has contended in his reply to the Memorandum regarding loss of file he has not admitted the charges but he has on the contention that the file has already been handed over to the competent authority has simply requested the authority to take a lenient view, this would not amount to an admission which has to be in absolute terms and also unequivocal.

6. On the other hand, strongly rebutting the contentions of the applicant, the learned counsel for the respondents has vehemently contended by placing reliance on a decision of the Apex Court in State of U.P. Vs. Harendra Arora, AIR 2001 SC 2319 that in absence of any prejudice even non-supply of enquiry report would not have vitiated the enquiry. It is also stated that the memorandum issued to the applicant was only for a minor penalty where there is no scope of holding a detailed enquiry and accordingly the preliminary enquiry report has not been given to him, as the detailed procedure which is meant for a major penalty has not been adopted. It is also contended that the applicant is estopped from raising the plea of preliminary enquiry and had acquiesced his right on the ground that as he had participated in the enquiry and was aware of his existence later on when the same has been placed reliance by the disciplinary authority would not make an additional material or extraneous because the applicant was given an

opportunity to place his version in the Fact Finding Enquiry. It is also stated that in pursuance of the memorandum the applicant has filed his statement where he has clearly stated that there could not be any mala fide intention on his part, which is nothing but a clear admission of the charges therein and in that event the question of violation of principles of natural justice would have no application. Lastly, it is contended that the applicant has prayed for multiple reliefs as such under Rule 10 of the CAT (Procedure) Rules, 1987 plural remedies are not sustainable, for example, in this case the applicant has sought for quashing and the minor penalty but simultaneously he has asked for in-situ promotion with all consequential benefits which are two distinct remedies and have a separate cause of action. In this view, he submits that the OA is not maintainable.

7. Having regard to the rival contentions of the parties and perused the material on record, I am of the considered view that the orders passed by the disciplinary authority and further passed by the revisional authority are not legally sustainable. The concept of principle of natural justice is to be read into any part of the procedure rules which do not specifically incorporate the same. In this view of the matter, I am fortified by the ratio of a Constitutional Bench decision in National Bank and Others Vs. Kunj Bihari Mishra, (1998) 7 SCC 84. Having regard to the violation of principles of natural justice and denial of reasonable opportunity the observation of the disciplinary authority in the order passed where he has taken into consideration

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apart from the the advice of UPSC the preliminary enquiry report is sufficient to indicate that the material which was not formed as part and parcel of the imputation, has been taken into consideration by the disciplinary authority. The advice of the UPSC served along with the final order clearly shows that the preliminary enquiry and the proceedings taken thereof were the main consideration for the UPSC to have come to their decision to recommend the punishment of the applicant. It is not in dispute that the disciplinary authority has agreed to the advice of the UPSC. Having conducted a preliminary enquiry and participation by the applicant would not preclude him from getting the copy of the same because the version of the applicant is different from what has been subsequently adopted and the conclusions arrived at. If the preliminary enquiry report has been relied upon it includes not only the testimony of witnesses the version of the disciplinary authority but also the conclusion arrived at on the basis of the material produced in the preliminary enquiry which admittedly has not been made applicable to the applicant and he was not at all aware of the said material. Having participated in preliminary enquiry has not even accorded a reasonable opportunity to cross-examine the witnesses whose testimony has been relied upon by the UPSC to conclude their finding of punishment against him which were further relied upon by the disciplinary authority. In nutshell, if a preliminary enquiry report has been placed reliance, a copy of the same is to be given to the applicant. The prejudice apparent on the face of the record as the material which has been withheld from applicant has

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weighed and vague in the mind of the disciplinary authority to take a decision to impose the penalty is not only the advise of the UPSC but also on the basis of the preliminary enquiry report. Copy of the preliminary enquiry has not been made basis of the memorandum issued to the applicant. Applicant has become aware of the same only for the first time when he was served with the order of the disciplinary authority along with the UPSC advice. Having taken an objection immediately in the revision petition, he cannot be estopped from challenging the same. Also having regard to the revision order where this plea of the applicant has not at all been gone into right perspective and proper context, the revisional authority has avoided to answer the grievance of the applicant and his legal plea. In my considered view, order of the revisional authority is either valid nor legally sustainable.

8. Having regard to the discussion made above, I am of the considered view that the applicant has been prejudiced in the matter of his defence by non-supply of the preliminary enquiry report which formed part of the order of the disciplinary authority. In the Constitutional Bench of the Union of India & Others Vs. T.R.Verma, AIR 1957 SC 882, it has been held that the documents and the material which is to be placed reliance by the disciplinary authority shall be served upon the delinquent official, failing which this would constitutes violation of principles of natural justice.

9. As regards the plea of admission of the charge is concerned, from the perusal of the reply to the Memorandum it is not made out that the admission is absolute, unequivocal or complete. Merely stating even if the file was not handed over the same is not malafide and seeking lenient view despite taking the plea having handed over the file would not be an admission of charges. Apart from it this admission has not been reeferred to by the disciplinary authority anywhere in his order passed as such the same has not been relied or acted upon.

10. As regards the objection of plural remedies is concerned if the proceedings being setaside by this Court the applicant shall be entitled for in-situ promotion which has been denied to him on the ground of the minor penalty of charge-sheet as such the aforesaid relief is consequential to the main relief of quashing the impugned charge-sheet.

11. In the result and having regard to the above reasons, I find that the orders passed by the disciplinary authority and the revisional authority are not valid and legally sustainable and the same are quashed. Matter is remanded back to the disciplinary authority to accord a reasonable opportunity to the applicant including his representation by furnishing the report of the preliminary enquiry and thereafter to take a final decision and pass a detailed and speaking order within three months from the date of receipt of a copy of this order. The OA is disposed of with the above directions. No costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/