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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2232/1999

New Delhi, this the 17th day of April, 2001

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. S.A.T.RIZVI, MEMBER (A)

Shri T K Nath
S/o Late Dr. C.N. Nath
R/o 20, Krishna Nagar,
Street No.1, 1st Floor,
Safdarjang Enclave,
New Delhi -110029. Applicant
(By Advocate: Shri George Paracken)

VERSUS

1. Union of India
(Through Secretary)
Ministry of Power
Shram Shakti Bhavan,
New Delhi -110001.
2. Chairman
Central ELECTRICITY AUTHORITY
Sewa Bhavan, R.K. Puram,
New Delhi.
3. Chairman
Union Public Service Commission
Dholpur House, Shahajan Road,
New Delhi-110011. Respondents
(By Advocate: Shri S. Mohd. Arif)

O R D E R (ORAL)

By S.A.T. Rizvi, Member (A):

In the disciplinary proceedings first started in 1986, when he was in active service, the applicant has been finally punished by imposition of a 5% cut in his pension by the disciplinary authority by order passed on 8/9th October, 1998. The same has been impugned by the applicant mainly on the ground that a copy of the advice of the UPSC was not given to him before the aforesaid order was passed and also on the ground that a personal hearing was not granted as provided under the rules.

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2. We have heard the learned counsel on either side and have perused the material placed on record.

3. The learned counsel appearing for the respondents submits that supplying a copy of the UPSC's advice is not a mandatory requirement in terms of the relevant rules and, similarly, it is also not necessary to grant a personal hearing. According to him, the applicant has been correctly punished on the advice of the UPSC and the punishment meted out is wholly in accord with the requirements of the situation.

4. The learned counsel appearing for the applicant has, in support of the aforesaid contentions advanced by the applicant placed reliance on the judgements rendered by the Supreme Court and C.A.T. in (1993) 1 SCC page 13 and 1994 (2) S.L.J. page 360 and the judgement rendered by the High Court in 2000 (1) S.L.J. 359. The first two judgements of the Supreme Court/CAT are on the question of supply of a copy of Commission's advice, whereas the High Court's Judgement refers to the question of grant of personal hearing.

5. We have perused the aforesaid judgements and would, for the sake of convenience, like to reproduce the relevant portions therefrom as follows:

(1993) 1 SCC 13 - State Bank of India and Others Vs. D.C. Aggarwal & Others :

"4. Although correctness of the order passed by the High Court was assailed from various aspects, including the power of the High Court to interfere on quantum of punishment in writ jurisdiction, but we propose to confine ourselves only to the question of effect of

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non-supply of CVC recommendations and if the order was invalid and void on this score only it is not necessary to decide any other issue. Law on natural justice is so well settled from a series of decisions of this Court that it leaves one bewildered at times, that such bodies like State Bank of India, who are assisted by a hierarchy of law officers, commit such basic and fundamental procedural errors that courts are left with no option except to set aside such orders. Imposition of punishment on an employee, on material which is not only not supplied but not disclosed to him, has not been countenanced by this Court. Procedural fairness is as much essence of right and liberty as the substantive law itself."

1994 (2) S.L.J. 360 - Shri Charanjit Singh Khurana Vs. Union of India :

"17. The reasonings given by their lordship of the Supreme Court in the case of Managing Director, ECIL, Hyderabad (supra) for the supply of a copy of a report of the inquiry officer to a delinquent also apply to the advice given by the Commission. The reasonings given by the Commission in support of its advice are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusion. The advice of the Commission constitutes an important material before the disciplinary authority, which is likely to influence its conclusion. We, therefore, take the view that the right to receive a copy of the advice of the Commission is an essential part of the reasonable opportunity at the first stage, as envisaged in Article 311 (2) of the Constitution and also a requirement of the principles of natural justice."

2000 (1) S.L.J. 359 - Shri Dinesh Kumar Vs. Union of India and Others :

"6. This argument of Mr. Jagjit Singh and reliance on sub-rule (5), to our mind, is contrary to the dictate of the Apex Court in the case of Punjab National Bank and Ors. v. Kunj Behari Mishra, JT 1998 (5) SC 548 where it has been held that principle of natural justice demand that the authority which proposes to decide against the delinquent officer any punishment, must give him a hearing. It will be most unfair to deprive the delinquent officer of the right to know what has been held against him by the enquiry officer on the basis of which the Disciplinary Authority wants to take final decision. That is the reason law requires that the Disciplinary Authority before passing of final order should record a finding of guilt and intention i.e. tentative decision to impose punishment on the delinquent officer. Tentative decision may after hearing the

delinquent officer convert into final decision. Delinquent employee has a right of hearing, not only during the enquiry proceedings but also at the stage at which those findings are being considered by the Disciplinary Authority. On the enquiry report being submitted to the Authority, the Authority will then form opinion only tentatively and not a final decision. It is at this stage that the employee must be given an opportunity of hearing." (emphasis supplied)


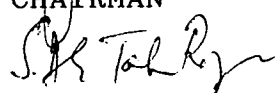
If one has regard to what the Supreme Court, CAT and the High Court have held as above, it is clear to us that supplying of a copy of the UPSC's advice letter to the applicant before the final order was passed by the disciplinary authority, was a must and the failure to do so has resulted in serious prejudice to the defence of the applicant. This is more so because in the present case the President himself being the Disciplinary Authority, the opportunity to go in appeal is also not available to the applicant. On the question of personal hearing, the views rendered by the High Court are in terms clear and we would only like to add that since the applicant in the present OA had specifically asked for the opportunity of being heard, the same should have been given. The failure to do so, according to us, has again resulted in further prejudice to the genuine cause of the applicant. The resultant position is that by denying the opportunity of personal hearing as also by not supplying a copy of the UPSC's advice letter in good time, the respondents have disregarded the principles of natural justice which lie at the root of Article 311 (2) of the Constitution. In view of these considerations, we are unable to agree with the submissions made by the learned counsel for the respondents.

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6. In the circumstances, we find sufficient merit in the OA and the same is, therefore, allowed. The impugned order dated 8/9th October, 1998 is quashed and set aside. The applicant will be entitled to all the consequential benefits.

7. No costs.


(ASHOK AGARWAL)
CHAIRMAN


(S.A.T. RIZVI))
MEMBER (A)

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