

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A. No. 150/98

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T.A.No.

DATE OF DECISION 20.4.1999

Raj Kumar Sharma

....Petitioner

By Adv Shri M.K. Gupta

....Advocate for the
Petitioner(s)

VERSUS

Union of India & Anr.

....Respondent

By Adv. Shri R.P. Aggarwal.

....Advocate for the
Respondents.

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The Hon'ble Shri S.R. Adige, Vice Chairman(A)

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

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1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other Benches of the Tribunal? No

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 150/98

New Delhi this the 20th day of April, 1999

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Raj Kumar Sharma,
S/o Shri J.L. Sharma,
R/o B-8/561, Lodhi Colony,
New Delhi-110 0003.

Applicant.

By Advocate Shri M.K. Gupta.

Versus

1. Union of India,
through Secretary (Defence),
Ministry of Defence,
Government of India, South Block,
New Delhi.

2. The Chief Administrative Officer,
and Joint Secretary (Trg.),
Ministry of Defence,
C-II, Hutments, Dalhousie Road,
New Delhi.

Respondents.

By Advocate Shri R.P. Aggarwal.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 impugning a number of orders which are set out in Paragraph-I including the rejection of his representation by order dated 30.9.1996 and his review petition by order dated 9.10.1997.

2. The brief facts of the case are that while the applicant was working with the respondents, he was placed under suspension by order dated 12.1.1989 on the ground that disciplinary proceedings were contemplated against him. He was issued charge-sheets on 25.3.1992 and 3.4.1992. The disciplinary authority i.e. the President after taking into account the relevant records in the disciplinary proceedings

imposed a penalty of reduction of applicant's pay by four stages for a period of 5 years by order dated 30.9.1996 and review petition against the same was also dismissed by order dated 9.10.1997.

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3. With the consent of both the parties, this case was taken up for final hearing wherein Shri M.K. Gupta, learned counsel for the applicant, had submitted that he would mainly rely on one ground to impugn the penalty order. This ground was that from the reply filed by the respondents it becomes abundantly clear that the disciplinary authority had relied on the recommendations of the Central Vigilance Commission (CVC) which had rendered the advice on the inquiry report and recommended that the charges framed against the applicant stood established on the basis of preponderance of probabilities and advised modification of findings. In the inquiry report, the Inquiry Officer had held both the charges as not proved. He has submitted that in para 4 of the reply, the respondents have stated that the disciplinary authority after taking into consideration the findings of the Inquiry Officer, and the material facts on record, including the CVC's recommendations, took a tentative view to disagree with the findings of the Inquiring Authority by order dated 9.1.1996. Shri M.K. Gupta, learned counsel, has very vehemently submitted that reliance placed by the disciplinary authority on the recommendations of the CVC at the back of the applicant which has come to his knowledge only after the reply has been filed by the respondents on 21.7.1998 is in violation of the principles of natural justice and on this ground alone he is entitled to succeed. He has submitted that the copies of CVC's recommendations which were material were neither supplied to him nor mentioned in the impugned penalty order. He has, therefore, prayed that the

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impugned penalty order may be quashed and set aside. He relies on the judgements of the Supreme Court in Mohd. Quaramuddin Vs. State of A.P. (1994 (5) SCC 118) and State Bank of India Vs. D.C. Aggarwal & Ors. (1993(1) SCC 13).

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4. We have perused the reply filed by the respondents and heard Shri R.P. Aggarwal, learned counsel for the respondents. He relies on another judgement of the Supreme Court in Sunil Kumar Banerjee Vs. State of West Bengal & Ors. (1980(3) SCC 304) and State Bank of Patiala Vs. S.K. Sharma (JT 1996(3) 722). He has contended that even though the disciplinary authority might have referred to the advice tendered by the CVC, he had taken an independent decision after taking into account the material facts on records while disagreeing with the conclusions of the Inquiry Officer. In the facts and circumstances of the case, he has submitted that there is no infirmity in the impugned penalty order as the applicant has not been able to show any prejudice caused to him by the facts disclosed in the reply, namely, that the CVC's report was also before the disciplinary authority who had seen it along with the other relevant documents while disagreeing with the conclusions of the Inquiry Officer. He has, therefore, submitted that in the circumstances of the case, the disciplinary authority has not acted against the principles of natural justice and he has prayed that the O.A. may be dismissed.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. In Sunil Kumar Banerjee's case (supra) relied on by the respondents, the Supreme Court has held as follows:

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"The conclusion of the disciplinary authority was not based on the advice tendered by the Vigilance Commissioner but was arrived at independently on the basis of the charges, the relevant material placed before the Enquiry Officer in support of the charges, and the defence of the delinquent officer. Therefore, the disciplinary authority's findings and decision cannot be said to be tainted with any illegality merely because the disciplinary authority consulted the Enquiry Officer and obtained his views on the very same material".

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7. From the above observations of the Supreme Court, it is evident that the Court had come to a finding that the disciplinary authority had come to an independent conclusion and not based on the recommendations of the Vigilance Commissioner and, therefore, it was not necessary to supply the copy of his report to the delinquent official. However, that does not appear to be the position in the present case. From the reply filed by the respondents, it is not possible to categorically state that the disciplinary authority has not at all been influenced by the recommendations of the CVC while he took a tentative decision to disagree with the findings of the Inquiry Officer which was conveyed to the applicant. A similar view has been taken by the Supreme Court in the other two cases relied upon by the applicant, namely, Mohd. Quaramuddin and D.C. Aggarwal's case (supra). In Mohd. Quaramuddin's case (supra), the Supreme Court has held that the penalty order of dismissal was vitiated on account of violation of the principles of natural justice for non supply of Vigilance Commission report to the delinquent which had formed part of the record of the enquiry and was taken into consideration by the disciplinary authority. In D.C. Aggarwal's case (supra), it was held that the disciplinary authority, while imposing punishment, major or minor, cannot act on material which is neither supplied nor shown to the delinquent. Imposition of punishment on an employee, on material which is not only not supplied but not

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disclosed to him, cannot be countenanced. Procedural fairness is as much essence or right and liberty as the substantive law itself.

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8. In the facts and circumstances of the case, including the fact that the Inquiry Officer had exonerated the applicant from charges with which recommendations the disciplinary authority disagreed, we are not in a position to hold that no prejudice would be caused to the applicant by non-disclosure of the fact that the disciplinary authority has seen the CVC's report which was also not supplied to the applicant. Therefore, the judgement of the Supreme Court in State Bank of Patiala (supra) relied upon by the respondents would not assist the respondents in the facts of this case. In the facts and circumstances of the case, we are of the view that the respondents should have given a copy of the CVC's report to the applicant at least at the time when the disciplinary authority issued the memo dated 9.1.1996, so as to give reasonable opportunity to the applicant to enable him to make a proper representation. This having not been done, the impugned penalty orders are liable to be quashed and set aside.

9. In the result, the application succeeds and the impugned penalty order dated 30.9.1996 and corrigendum dated 1.8.1997 are quashed and set aside. However, liberty is granted to the respondents to proceed with the disciplinary proceedings from the stage of supplying the applicant a copy of the CVC's report and pass appropriate orders thereon in accordance with the Rules and instructions. In case they propose to do this, the same shall be done within three months from the date of receipt of a copy of this order. No order as to costs...

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)
'SRD'

S.R. Adige
(S.R. Adige)
Vice Chairman (A)