

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2093/98

New Delhi this the 24th day of July, 2001.

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

Mrs. Surjeewani Kapoor wife of  
Shri Subhash Chander Kapoor,  
R/o Quarter No.230, Lodhi Road Complex,  
New Delhi-110003.

...Applicant

(By Advocate Shri G.D. Gupta)

-Versus-

1. Union of India through the  
Secretary to the Govt. of India,  
Ministry of Finance, North Block,  
New Delhi.
2. The Financial Adviser, Ministry of  
Finance (Dept. of Expenditure),  
North Block, New Delhi.
3. The Chief Controller of Accounts,  
Dept. of Economic Affairs,  
Ministry of Finance, North Block,  
New Delhi.

...Respondents

(By Advocate Shri K.C.D. Gangwani)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant, a Senior Accountant with the respondents, has assailed an order whereby after holding an enquiry by an order dated 6.2.95 under Rule 14 of the CCS (CCA) Rules, 1965 a minor penalty of reduction of pay by one stage for a period of one year without cumulative effect under Rule 12 (2) of the aforesaid Rules has been inflicted upon her and the period of absence w.e.f. 22.5.92 to 27.9.92 has been treated as leave of the kind due as admissible. The aforesaid order of punishment was maintained by the appellate authority by an order dated 1.10.97, which is also impugned herein. Briefly stated the applicant has been proceeded against for a major penalty on the charges of remaining unauthorizedly absent from duty, without intimation and proper application w.e.f. 22.5.92

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to 27.9.92, imputing motives to the action of the superiors and use of intemperate language in official correspondence as well as withholding original medical certificate as well as using outside influence by making representation without official channel to a political authority in violation of Rule 20 of the CCS (Conduct) Rules. The enquiry officer proved Article I partly, exonerating the applicant for habitual absenteeism and proved Article IV of the charge of representing beyond the official channel. The applicant was held guilty of alleging baseless allegations as well as absenting unauthorizedly and withholding medical certificates. On reply to the findings a minor punishment was inflicted which was maintained in appeal.

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2. The learned counsel for the applicant though taken several contentions to assail the impugned orders, including the case of 'no evidence' and non-consideration of her defence by the enquiry officer by demonstrating that the enquiry officer in his findings has already observed that the postal communications and the photo copy of the medical record has already been sent by her to the respondents and the copies of the original medical record were submitted to the respondents at the time of joining duties. It is also stated that under Rule 19 (1) and (2) of the CCS (Leave) Rules, 1972 there is no requirement for submission of original medical certificates and the applicant has not wilfully absented her from duty but was constrained on account of her illness which has subsequently been certified on second medical examination at Ram Manohar Lohia Hospital. It is also contended that due to the harassment by the officers of the respondents the applicant has developed a psychiatric problem for which

she was treated in the hospital. The main plank of the submission of the learned counsel of the applicant is that whereas she preferred a detailed reply to the findings of the enquiry officer where the conclusion has been drawn against the existing facts and against the record by taking several contentions but the disciplinary authority while passing an order of punishment has violated the statutory rules and has not recorded any reasons in support of the finding and has not at all gone into the contentions of the applicant taken in defence against the report of the enquiry officer and without passing a speaking order imposed upon her a minor penalty and treated the period of absence as leave of the kind due despite the fact that she was entitled for accord of leave on medical grounds. It is in this background stated that the applicant in the absence of a reasoned order passed by the disciplinary authority has been deprived of an opportunity to file an effective appeal before the appellate authority which has greatly prejudiced her right and contravenes the principles of natural justice and fair play. The learned counsel of the applicant has drawn our attention to Rule 11 of the Rules ibid. As per this Rule it is incumbent upon the disciplinary authority before imposing a minor penalty to have recorded good and sufficient reasons. The applicant has also drawn our attention to Rule 15 of the Rules ibid as well the Govt. of India's instructions contained in OMs dated 13.7.81 and 5.11.85 to contend that while passing the final order in the disciplinary case it is an essential requirement being a quasi judicial authority to have recorded reasons in support. Placing reliance on the ratio of the Constitutional Bench of Apex Court in P.S.N. Mukherjee v. Union of India, 1990 (5) SLR page 8 as well

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as on Mahavir Prasad v. Union of India, AIR 1970 SC 1302, contended that except cases where the requirement of recording reasons is dispensed with expressly or by necessary implication an administrative authority exercising quasi judicial functions is required to record reasons for its decision to support the finding. In this background drawing our attention to the order passed by the disciplinary authority it is stated that neither the contentions of the applicant have been highlighted nor the same have been dealt with by the disciplinary authority. No reasons have been recorded by the disciplinary authority to support its order passed on 6.2.95. Further, it is contended that merely because the appellate authority has passed a detailed order would not cure the defects already cropped in the order of the disciplinary authority as the appellate authority too has not at all gone into the contentions taken by the applicant in the appeal as well as in the representation against the finding and has misconstrued the facts of the case.

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3. The learned counsel of the respondents strongly rebutting the contentions of the applicant stated that the order passed by the disciplinary authority is within the parameters of the rules prescribed for on the subject and is a speaking one. The contention of the applicant have been taken care of and the reasons have been recorded on the file. It is also stated that once the appellate order is passed the order of the disciplinary authority merges into it and in the event the appellate order is speaking one the requirements of the rules are

complied with. Apart from it, on merits it is stated that the applicant against whom the charge has been proved has been let off with a minor punishment.

4. The applicant has reiterated her pleas taken in the OA by filing a rejoinder.

5. We have carefully considered the rival contentions and perused the material on record. We agree with the contention of the applicant that in the present case the order passed by the disciplinary authority does not confirm to the rules and is absolutely bald and mechanical order passed without according any reasons. As held in the Constitutional Bench of the Apex Court in Managing Director, E.C.I.L. v. B. Karunakar & Others, JT 1993 (6) SC 1 that the findings of the enquiry officer is an additional material which is taken into account by the disciplinary authority and as such the copy of the same should be served upon the delinquent official. In this conspectus it is stated that once the applicant is given an opportunity to represent against the findings, she, by way of making a detailed representation to the disciplinary authority attempts to contradict the conclusion arrived at by the enquiry officer and makes an attempt before the disciplinary authority to take a different view which has been propagated by way of the defence produced by the delinquent official in the disciplinary proceedings. The necessity of recording reasons has arisen not by way of principles of natural justice and fair play but on account of the statutory rules on this subject. Rule 11 of the CCS (CCA) Rules ibid provides for recording good and sufficient reasons before imposition of a punishment upon a Government

servant. The Govt. of India keeping in view the ratio of Apex Court in Mahavir Prasad's case (supra) has issued the guidelines for passing a self contained speaking and reasoned orders by the disciplinary authority as well as appellate authority on the corollary that being a quasi judicial authority the recording of reasons in support of a decision is obligatory, which ensures that the decision is reached according to law and not as a result of caprice, whim or fancy of the authority concerned. The necessity to record reasons is also occasioned and is greater because the order is subjected to an appeal. In the event a non-speaking order without reasons is passed the delinquent official is deprived of an officer to challenge the same before the appellate authority and his defence is adversely affected without knowing reasons on which the disciplinary authority has come to the conclusion of imposing a punishment upon the Government servant. It would be very difficult for the Government servant to assail the same in an appeal. Furthermore, according to Rule 15 the disciplinary authority is bound to record its own reasons on the findings before arriving at a decision. Mere recording of the reasons on the files and not communicating to the delinquent official would serve no purpose and would not be a compliance of the Govt. of India's instructions and principles of natural justice and fair play. The contention of the learned counsel of the respondents that in the present case the order has been passed after considering the contentions of the applicant and is a reasoned order is not well founded. From the perusal of the order of the disciplinary authority we find that except stating the articles of charge and the outcome thereon arrived at by the enquiry officer neither the contentions

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of the applicants have been taken into consideration nor any reasons have been recorded for arriving at a decision to impose punishment upon the applicant. We also find from the record that the applicant has raised his grievance of non-speaking orders by the disciplinary authority in his appeal to the appellate authority. The appellate authority in its order has not at all considered this contention of the applicant and has rejected it without application of mind.

6. In this view of the matter and for the reasons recorded above and keeping in view the decision of the Constitutional Bench of the Apex Court we are satisfied and are of the firm view that the order passed by the disciplinary authority is not a speaking order and the same is liable to be set aside. The appellate order too suffers from the same infirmity. We accordingly partly allow this OA and set aside the order of punishment as well as the appellate order. The matter is remanded back to the disciplinary authority to pass a detailed and speaking order, dealing with the contentions of the applicant within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)  
Member(J)

'San.'

(Govindan S. Tampi  
Member(A))