

Central Administrative Tribunal
Principal Bench

New Delhi, dated this the 20th December, 1999

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

1. O.A. No. 2412 of 1998

Shri Bhoop Singh
U.D.C.
From 2 Army HQ Sig. Regt., Meerut Cantt.
R/o 946, Gali No.1, G Block,
Sangam Vihar,
New Delhi.

... Applicant

Versus

1. Union of India through
the Secretary,
Ministry of Defence,
New Delhi.
2. The Director General of Signals,
Signals 4 (c), GS Branch,
Army Headquarters, DHQ P.O.,
New Delhi.
3. The Commandant,
Army HQ, Signals,
Signals Enclave, New Delhi.
4. The Commanding Officer,
2 Army HQ Signals Regiment
Meerut.

... Respondents

2. O.A. No. 1668 of 1998

Shri Bhoop Singh ... Applicant

Versus

Union of India & Others

3. M.A. No. 368 of 1999 C.P.No. 222 of 1997
O.A. No. 1326 of 1996

Shri Bhoop Singh ... Applicant

Versus

Union of India & Others ... Respondents

By Advocates: Shri V.P.S. Tyagi for applicant
Shri Gajender Giri for Respondents

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ORDER (Oral)BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)O.A. NO. 2412 OF 1998

In this O.A. applicant impugns the Disciplinary Authority's order dated 2.1.98 (Annexure A-1) Page No. 30 of the O.A.) dismissing him from service and Appellate Authority's order dated 12.6.98 (Annexure A-1) Page 28 of the O.A.) rejecting the appeal.

2. Applicant was proceeded against departmentally on the charge of

- (a) accepting money/gratification from civilian employees of the unit for preparing/processing their Pay Bills, etc.
- (b) borrowing money from the civilian employees of the unit using his official position.

3. The Enquiry Officer in his report dated 9.9.97 (Annexure A-7) held applicant guilty of misconduct in as much as he had accepted money/gratification from some of the civilian members of the unit and also borrowed money from some of the civilian employees of the unit using his official position. A copy of the E.O's report was furnished to applicant for representation if any. Upon receipt of the applicant's representation, the Disciplinary Authority, by impugned order dated 2.1.98, after accepting the E.O's report, imposed the penalty of dismissal from service which has been sustained in appeal vide impugned order dated 12.6.98.

4. We have heard applicant's counsel Shri Tyagi and Respondents' counsel Shri Giri.

5. One of the grounds taken by Shri Tyagi/that despite a request for personal hearing as contained in applicant's appeal dated 23.1.98, the same was not ~~been~~ granted to him, and hence there has been a denial of natural justice as applicant was not able to put forward his defence properly.

6. Shri Giri has contended that the CCS (CCA) Rules do not contain any provision for grant of personal hearing during appeal and under the circumstances there is no infirmity in the appellate order.

7. Shri Tyagi has invited our attention to the Government of India decision No.5 under Rule 27 CCS (CCA) Rules, Swamy's Compilation, 23rd Edition, 1997 wherein DP&AR's O.M. dated 28.10.85 has been referred to. In that O.M. it has been stated that where the appeal is against an order imposing a major penalty and the appellant makes a specific request for a personal hearing, the appellate authority may after considering all relevant circumstances of the case, allow the appellant, at its discretion, ^{a,} the personal hearing.

8. Shri Tyagi has also invited our attention to the Full Bench judgment of the Punjab & Haryana High Court dated 22.5.98 Ram Niwas Bansal Vs. State Bank of Patiala & Anr. ATJ 1998 (3) Vol. 26 Page 1 wherein it has been held that the right of personal hearing before the Appellate Authority cannot be denied unless the said right is specifically excluded by use of unambiguous language or such inference is inevitable on the principle of necessary implication, while viewed from any settled principles of interpretation of statutes. Shri Tyagi contends that rules governing Disciplinary Enquiries of officers in the State Bank of Patiala are similar to CCS (CCA) Rules read with the relevant instructions on the subject.

9. In the light of what has been stated above, we are of the view as the applicant had specifically sought for a personal hearing in his appeal petition, the appellate authority should have granted the same before disposing of the appeal, more particularly applicant was appealing against an order of dismissal which is the severest punishment known to service jurisprudence.

10. In the result the O.A. is partly allowed to the extent that without interfering with the order of the Disciplinary Authority dated 2.1.98 at this stage, we quash the appellate authority's order dated 12.6.98 and the matter is remanded back to the appellate authority who will dispose of the applicant's appeal in accordance with rules and instructions after giving him a reasonable opportunity of being heard in person. No costs.

O.A. No. 1668/98

11. In so far as the applicant's claim for payment of subsistence allowance for the period from 2.1.98 to 13.1.98, ^{is concerned} Respondents will examine the same ^{in the} and pass appropriate orders while disposing of applicant's appeal. O.A. No. 1668/98 stands disposed of accordingly. No costs.

M.A. No. 368/99 C.P. No. 222/97
O.A. No. 1326/96

12. In so far as C.P. No. 222/97 is concerned, we note that ~~when~~ Delhi High Court vide its order dated 11.3.98 has held that there ~~is~~ was no justification for continuance of the same. Under the circumstances

M.A. No. 368/99 praying for revival of the C.P. is rejected. It will be open to applicant to invoke such remedies as are available to him in accordance with law, if so advised. Subje

13. Subject to above, M.A. No. 368/99 is dismissed.

14. Let a copy of the order be placed in each case record.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)

Member (J)

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

/GK/