

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 614/1998

New Delhi this the 8th day of August, 2001

Hon'ble Smt. Lakshmi Swaminahan, Vice Chairman(J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri A. Rajasekharan Nair,
Ex-Computer Incharge, Air Force
Canteen, Air Force Station,
New Delhi.
Resident of 103-A/1, Gautam Nagar,
New Delhi-110049

..Applicant

(By Advocate Shri E.X. Joseph,
learned Sr. Counsel with Shri
S.S. Sabharwal)

VERSUS

1. Union of India represented by
Secretary to the Government of
India, Ministry of Defence, South
Block, New Delhi-110011
2. The Air Officer-In-Charge (Admn.)
Air Headquarters, Vayu Bhawan,
New Delhi-110011
3. The Air Officer Commanding,
Air Force Station, Race Course
New Delhi-110003
4. The Chief Administrative Officer,
Air Force Station, Race Course
New Delhi-110003

..Respondents

(By Advocate Shri R.P. Aggarwal)

O R D E R (ORAL)

(Hon'ble Shri Govindan S. Tampi, Member (A))

This is an application filed by Ex-Computer Incharge, Air Force Canteen, Air Force Station, New Delhi challenging his dismissal from service by order dated 10.12.1996 and rejection of his appeal dated 19.3.1997.

2. Consideration of this OA had been kept pending as the matter regarding the jurisdiction of the Tribunal to entertain the grievances of the employees of

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Unit-run-Canteens in Defence Force, was not settled and their status as Civil servants was in doubt. Following the judgement of the Hon'ble Apex Court in Union of India and Ors. Vs. M. Aslam and Ors (Civil Appeal Nos. 1041/1999 and 1042-1043/1999) (AISLJ(2001(2)287) declaring that the employees of Unit Run Canteens are civil servants for enabling them to approach this Tribunal, for redressal of their grievances, this case was taken up for decision.

3. We have heard Shri E.X. Joseph, learned Senior Advocate along with Shri S.S. Sabharwal, learned counsel for the applicant and Shri R.P. Aggarwal, learned Senior counsel for the respondents.

4. In this case, the applicant was issued show cause notice on 2.8.1996, alleging that he had committed irregularities of coming late and of using threatening and insulting language, when questioned by his seniors. Following his reply on 9.8.1996 denying the charges, the Departmental Enquiry proceedings were initiated by letter dated 30.8.1996. The Inquiry Officer in his report (without any date) held the charges against the applicant as proved. The disciplinary authority, agreeing with the findings of the Inquiry Officer's report, passed the impugned order dated 10.12.1996, imposing on the applicant the extreme punishment of dismissal from service with immediate effect. Appeal filed by the applicant against the dismissal order, was rejected by the appellate authority by order dated 19.3.1997, holding ^{it} to be devoid of any merit and substance. Hence this OA.

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5. Arguing on behalf of the applicant, Shri E.X. Joseph, learned Senior counsel indicated that in this proceedings from the very beginning to the end was conducted in an illegal and improper manner and in violation of the principles of natural justice as well as of the Article 311(2) of the Constitution of India. He submits that the order of dismissal of the applicant from service was passed by an authority not competent to do so, being lower in rank than the appointing authority. The applicant was originally appointed by the Commanding Officer in charge of the Air Force Station, while the disciplinary authority who passed the order was the Chief Administrative Officer, an authority lower in rank to the Commanding Officer. Besides, no charges had been issued to the applicant but only articles of imputations have been forwarded. Further, Inquiry Officer's report was not given to the applicant for his comments, before the disciplinary authority issued the punishment order. This was in clear violation of the principles of natural justice and CCS(CCA) Rules. The Inquiry itself was conducted in an improper manner, on ex parte basis without giving any opportunity to the applicant to cross examine the witnesses. Interestingly, the charged officer was examined as the first witnesses and after the inquiry was over he was informed that he can cross examine the other witnesses, if he so chose. The appellate authority also did not care to examine the points raised in the appeal and pass a proper and reasoned order. In view of the above, it is contended on behalf of the applicant that the proceedings having been wrongly conducted through out, should be quashed and set aside.

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6. Shri R.P. Aggarwal, learned Senior counsel for the respondents, points out that the proceedings were gone through correctly and therefore, there was no reason to interfere with them. The applicant was originally appointed by an officer of the rank of Wing Commander (in charge of the Stations) disciplinary authority was of the rank of Group Captain (though as Chief Admn. Officer under the Officer in charge) and therefore, violation of Article 311(2) of the Constitution had not taken place. The charged officer was given the opportunity to cross examine the witness though at a later stage, but he chose not to do it. While fairly conceding that the inquiry report was not given to the applicant earlier. Shri Aggarwal avers that the same did not vitiate the proceedings as the same was made available to the applicant when the appeal was under consideration and as the appellate authority had, after due examination passed a reasoned and speaking order. In view of the above the application deserved to be dismissed, pleads the learned counsel for the respondents.

7. We have carefully considered the matter. This is a case of imposition of extreme penalty of dismissal from service on the charges of absence from duty and reprehensible behaviour on the part of the applicant. However, the perusal of the entire proceedings undertaken leaves us with a totally unsatisfactory impression. First, the charge-sheet has been issued by a functionary below the level of appointing authority. The actual appointing authority of the applicant was the Commanding Officer in charge of the Station (though at that time he was of the rank of Wing Commander) while the disciplinary authority is Chief Administrative Officer under him (though at that

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time the post was being held by a Group Captain). Despite the elevation in the ranks of the officers over the years, levels do not change and the applicant could not have been proceeded against by anyone below the level of the Commanding Officer in charge of the Station. Not having done so, article 311(2) has been violated as correctly pointed out by the applicant. Secondly the memorandum [A issued on 30.8.1996, does not mention as to whether the inquiry was for a major penalty or a minor penalty. In fact, it does not propose any penalty at all but only forward the statement of imputations of misconduct. Obviously, therefore, the proceedings are vague and misdirected. Thirdly, the inquiry was held behind the back of the charged officer. He was strangely called as first witness on 6.9.1996 and once his evidence was complete he was asked to leave the room and other witnesses including those who deposed against him were called into record to their evidence. Obviously no chance was given to the charged individual to cross examine the witness. Only on 24.9.1996 when all the deposition were over, the I.O. informed the applicant that he can take note of the evidence till then tendered and cross examine the witnesses or produce witnesses, in his favour. This again is a gross violation of the principles of natural justice. Fourthly, it is evident from the perusal of the disciplinary authority's order that the copy of Inquiry Report was not given to the applicant before the order of the disciplinary authority's was issued. This was conceded by the learned counsel for the respondents, who indicated that the Inquiry Report was supplied to the applicant only in February, 1997, while the order of dismissal was ordered on 10.12.1996. In view of the above patent irregularities committed by the respondents, we are

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unable to agree with the averment made by the appellate authority in his order dated 19.3.1997 that the principles of natural justice have been met and the applicant had been given all possible opportunity to defend himself. The argument of the respondents that they had gone by the Rules dated 31.1.1984 regulating the service conditions of canteen employees is not satisfactory as no rules can give a go-bye to the principles of natural justice or the prescriptions of the Constitutions in article 311. The judgement of the Hon'ble Supreme Court in Union of India Vs. Mohd. Ramzan Khan (JT 1990 (4) SC 456) would, therefore, be fully applicable in the facts and circumstances of this case. In the above facts and circumstances, we have no hesitation in holding that the respondents have failed to act in accordance with law or principle of natural justice or norms of administrative propriety. Their action has been arbitrary, illegal and perverse and would, therefore, have to be quashed and set aside. This does not, however, mean that we express any opinion on the merits of the case or the veracity of the imputation of misconduct. We are in the present circumstances concerned with the legal and procedural aspects of the case where we find, the respondents have proved themselves to be totally wanting.

8. In the result, the application succeeds and is accordingly allowed. The order dated 10.12.1996 dismissing the applicant from service and the appellate order dated 19.3.1997 confirming the punishment are set quashed and set aside, as having been issued in total violation of the principles of natural justice as well as Article 311 of the Constitution of India and following improper procedure. The respondents are also directed to reinstate the applicant on duty with immediate effect.

The applicant will be entitled for all benefits connected with service between the date of his dismissal and that of his reinstatement but without any back wages for the said period. The respondents can, if they are so advised go ahead with the proceedings from the stage of the enquiry proceedings, supply a copy of the report of the Inquiry Officer, to the applicant and take the appropriate decision, after considering his response thereon. We also direct that as the applicant was originally appointed by the Commanding Officer, Air Force Station, New Delhi, the Disciplinary Authority shall also be an officer of the level.

No costs.

(Govindan S. Tampi)
Member (A)

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Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)