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Central Administrative Tribunal, Principal Bench

O.A. No. 2201 of 1995

New Delhi this the 21st day of September, 1999

Hon'ble Shri S.R. Adige, Vice Chairman(A)
Hon'ble Shri Kuldip Singh, Member (J)

Shri Mahinder Kumar Gupta
R/o C-11/82, Sector-3, Rohini,
Delhi-110 085 .. Applicant

(By Advocate: Shri S.M. Garg)

Versus

1. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. The Secretary,
Ministry of Planning,
Programme Implementation
(Department of Statistics)
Sardar Patel Bhawan,
Sansad Marg,
New Delhi.
3. The Director General,
Central Statistical Organisation,
Sardar Patel Bhawan,
Sansad marg.
New Delhi. .. Respondents

(By Advocate: Shri P.H. Ramchandani)

ORDER (ORAL)

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

Applicant impugns respondents order dated
7.3.1994 (Annexure - A) and order dated 23.3.1995
(Annexure -B) and prays for re-instatement in service
with all consequential benefits.

2. Applicant was working as L.D.C. in the
Department of Statistics under respondent no. 3. A
departmental enquiry was initiated against him vide
Memo dated 28.4.1981. The Enquiry officer in his
report dated 27.7.1985 exonerated the applicant of
each of the charges levelled against him. However,

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the disciplinary authority, namely, Director General (CSO) disagreed with the findings of the Enquiry Officer and passed an order on 9.11.1987 holding the applicant guilty of the charges and accordingly imposed upon him the penalty of compulsory retirement. A copy of the enquiry report is stated to have been received by the applicant along with the order dated 9.11.1987. An appeal was preferred by him before the appellate authority, who dismissed the same by order dated 7.7.1988.

3. Applicant filed OA No. 953/88 impugning the aforesaid orders of the disciplinary authority as well as appellate authority. That O.A. was disposed of by order dated 1.6.1993 (Annexure 7) by which the OA was allowed and the disciplinary authority's order dated 9.11.1987 as well as the appellate authority's order dated 7.7.1988 were set aside. Liberty was given to respondents to continue the proceedings from the stage of receipt of the enquiry officer's report. Meanwhile applicant was also directed to be re-instated within one month from the date of receipt of a copy of the order dated 1.6.1993, and the period from the date of compulsory retirement to the date of re-instatement was ordered to be dealt with in accordance with law.

4. On 15.12.1993 the disciplinary authority informed the applicant that he proposed to hold further enquiry. That order was challenged by applicant in OA 264/94, in which, inter-alia certain other points, including payment of subsistence allowances etc. were also raised. However, the

Tribunal in its order dated 24.8.1994 found no illegality in the initiation of the disciplinary proceedings against applicant by order dated 15.12.1993.

5. Eventually the disciplinary authority (Director General-CSO) in his impugned Memo dated 7.3.1994 recorded his disagreement with the findings of the enquiry officer and gave liberty to applicant to make a representation, if any, within a period of 20 days from the receipt of the aforesaid Memo.

6. Applicant submitted his representation on 1.11.1994 (Annexure - 15), on receipt of which the Secretary, Department of Statistics, acting as the disciplinary authority, owing to the prolonged absence of the regular incumbent, issued the impugned order dated 23.3.1995 compulsorily retiring applicant from service.

7. We have heard applicant's counsel Shri S.M. Garg and respondents' counsel Shri P.H. Ramchandani.

8. Shri Garg has assailed the impugned orders on various grounds. One of the important grounds taken by him is that the Secretary, Department of Statistics, who ordinarily would have been the appellate authority, where the disciplinary authority was the Director General (CSO), having himself acted as the disciplinary authority in this particular case, applicant was deprived of his right of appeal, which itself was sufficient to warrant judicial

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interference in the matter. In this connection he relied upon the Hon'ble Supreme Court's judgement in Surjit Ghosh vs. Chairman and Managing Director, United Commercial Bank (1995(2)SCC 474.

9. Respondents' counsel Shri Ramchandani, however, contended that Rule 12 [3(a)] of CCS (CCA) Rules itself provides for the Secretary in the Ministry to act as the disciplinary authority in the case of non-Central Secretariat Clerical Service employee such as the present applicant, and if he imposes any penalty under law in such circumstances it was open to applicant to have filed an appeal against that order before the President which he did no do, and under the circumstances, it must be held that the orders of the disciplinary authority had become final.

10. We have given our careful consideration to the rival contentions.

11. The applicant is a low paid government employee, and in the normal course would have been aware that the Director General,CSO was his disciplinary authority and the Secretary, Department of Statistics, the appellate authority. In the facts and circumstances noticed above, and particularly the fact that the post of Director General,CSO remaining vacant for a long time, the Secretary of the Department himself acted as the disciplinary authority, it cannot be said with certainty, that

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applicant was aware that an appeal against the Secretary's order was still available to him before the President. It also cannot be said that the period since the passing of the impugned order dated 23.3.1995 is so long that it cannot be condoned.

12. Under the circumstances, in the interest of justice, we hold it to be fair and proper to permit applicant to prefer an appeal against the impugned orders even at this stage to the President. Shri Garg stated that applicant would file the appeal within 30 days. If applicant prefers such an appeal within 30 days from today, respondents are called upon to place the same before the President after condoning the delay in filing the same which should thereafter be disposed of in accordance with law by a reasoned order as early as possible and preferably within four months from the date of receipt of an appeal.

13. The O.A. is disposed of accordingly. No costs..

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(KULDIP SINGH)
MEMBER (J)

Adige 20.9.99
(S.R. ADIGE)
VICE CHAIRMAN (A)

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