

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1781/1996

New Delhi this the 2nd day of August, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Chandra Mohan Sareen
R/O BM-61 (West)
Shalimar Bagh
Delhi-110052.

... Applicant

(By Shri V.S.R.Krishna, Advocate)

-versus-

1. Govt.of N.C.T.of Delhi through
Chief Secretary,
5, Sham Nath Marg,
Delhi-54.
2. Principal Secretary (House),
Govt.of N.C.T.of Delhi,
5, Sham Nath Marg,
Delhi-54.
3. Commandant General,
Home Guards-cum-Director,
Civil Defence, Nishkam Sewa Bhawan,
New Delhi.

... Respondents

(None present)

O R D E R (ORAL)

Shri Justice Ashok Agarwal:-

We have heard Shri V.S.R.Krishna, advocate in support of the OA. Respondents and their advocate are not present. We proceed to dispose of the OA on merits in their absence in terms of Rule 16 of the Central Administrative Tribunal (Procedue) Rules, 1987.

2. In disciplinary proceedings initiated against the applicant, a penalty of dismissal from service was imposed upon him by the disciplinary authority by an order passed on 7.3.1995 at Annexure A2. The aforesaid order of the disciplinary authority was carried by the applicant in appeal and the

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appellate authority by his order of 31.1.1996 at Annexure A3 had maintained the aforesaid order of penalty and rejected the appeal. Aforesaid orders are impugned by the applicant in the present OA. 21

3. Present OA had earlier been heard and disposed of in the absence of the contending parties and their advocates by an order passed on 29.2.2000 whereby the same had been dismissed. Applicant had thereafter filed Review Application No.152/2001 for review. By an order passed on 20.7.2001, aforesaid order of 29.2.2000 was recalled and the present OA was directed to be placed on board for a fresh hearing on merits and in accordance with law.

4. Present disciplinary proceedings carried the charge of unauthorised absence against the applicant. Inquiry officer had found the aforesaid charge of unauthorised absence as proved against him. Based on the enquiry report, the disciplinary authority by his earlier order of 4.3.1992 had accepted the finding of guilt recorded by the enquiry officer and had proceeded to impose a penalty of dismissal from service upon the applicant. Applicant had carried the said order in an appeal to the appellate authority who in turn by his order of 9.8.1994 remanded the matter back to the disciplinary authority on the ground of non-furnishing of a copy of the enquiry report to the applicant before passing the orders as the same violated the principles of natural justice.

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5. On remand, applicant was furnished a copy of the enquiry report on 8.12.1994 offering him an

✓ opportunity to make his representation against the same. Applicant by his communication of 28.12.1994 sought time for submitting his reply. Applicant thereafter by his communication of 29.12.1994 submitted a copy of his appeal dated 22.5.1992 made to the appellate authority and requested that the same may be considered as his representation against the enquiry report. The disciplinary authority considered his request for additional time as contained in his letter dated 28.12.1994 and granted him extension of time upto 20.1.1995 for submitting his reply. Applicant sent yet one more copy of the appeal to the disciplinary authority. The disciplinary authority had thereafter proceeded to pass the impugned order of penalty on the basis that the applicant had not submitted any representation against the enquiry report. The disciplinary authority in this context had observed as follows:-

18. And whereas the said official has not submitted any representation on the inquiry report in spite of the extension of time but has submitted the copy of the appeal which he preferred before the Appellate Authority against the impugned orders dated 4.3.1992.

19. Now, therefore, after considering the report of the Inquiry Officer and the gravity of the charges, I, by virtue of powers conferred on me under Rule 12(3) read with Rule 11(9) of CCS (CCA) Rules, 1965 impose on Shri Chander Mohan Sareen, LDC of this Directorate of Home Guards and Civil Defence a penalty of dismissal from service with immediate effect i.e. from the date of issue of this order."

6. Aforesaid observations make it clear that the disciplinary authority has not considered the appeal of the applicant as his representation against the enquiry report. All that the applicant had

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desired of the disciplinary authority was to consider his appeal as his representation against the enquiry report. He had sent a copy of the appeal on two occasions to the disciplinary authority. It is difficult to fathom why the disciplinary authority was not persuaded to consider the appeal as his representation against the enquiry report and ~~had~~ thereafter proceeded to pass appropriate orders in accordance with law. Non-consideration of the aforesaid appeal as his representation by the disciplinary authority, in our view, has resulted in breach of the principles of natural justice and has thereby caused failure of justice.

7. Shri V.S.R. Krishna, learned counsel for the applicant has sought to draw our attention to a copy of the enquiry report for assailing the same at this stage itself. He has pointed out the following averments to be found in the enquiry report:-

"ARTICLE-III.

In this article it has been alleged against Sh. Chander Mohan Sareen that while joining his duty on 31.8.90, he was to submit medical/fitness certificate from G.B.P. Hospital and submitted medical/fitness certificates from a Regd. Medical Practitioner that too w.e.f. 26.7.90 to 22.8.90 in violation of CCS (CCA) Leave Rules 1972 (Rule 19(3)).

During the course of enquiry, no medical/fitness certificate from G.B.P. Hospital or a Regd. Medical Practitioner has been brought on record by the either side. The charged official in his defence has simply stated that he had submitted Medical Certificates for the period 26.7.90 to 22.8.90 but did not make any effort to substantiate his version. The charge relating to violation of CCS (CCA) Leave Rules 1972 U/R 19(3) stands substantiated."

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According to Shri Krishna whereas the enquiry officer has found that the applicant has submitted medical certificates from a Registered Medical Practitioner in para 1 above, he has proceeded to record that the applicant has not submitted the same in the second para. ^{In addition} He has sought to point out further lacunae in the enquiry report. We are, however, not inclined to go into the merits of the enquiry report at this stage. We take it that all these contentions which the learned counsel is seeking to raise before us find place in the appeal of the applicant before the appellate authority which appeal he had forwarded to the disciplinary authority for consideration as his representation against the report of the enquiry officer.

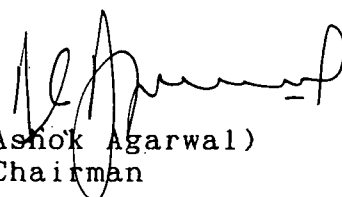
8. In the circumstances, we find that interest of justice will be met by quashing the impugned orders dated 7.3.1995 at Annexure A2 and dated 31.1.1996 at Annexure A3 passed by the disciplinary authority and the appellate authority respectively and ~~by~~ remitting the matter back to the disciplinary authority with a direction to consider the aforesaid appeal of the applicant as his representation against the enquiry report and thereafter proceed to pass appropriate orders in accordance with law. We direct accordingly.

9. Present OA is allowed in the aforesaid terms with no order as to costs.



(S.A.T. Rizvi)
Member (A)

/sns/



(Ashok Agarwal)
Chairman