

Central Administrative Tribunal
Principal Bench

O.A. 1101/97

New Delhi this the 1st day of January, 1998.

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

Shri H.S. Rawat,
S/o late Shri B.S. Rawat,
R/o 38, Type-IV, Schedule "B",
President's Estate,
New Delhi. Applicant.

By Advocate Shri K. Venkatraman.

Versus

President's Secretariat
through its Secretary,
to the President,
Rashtrapati Bhawan,
New Delhi. Respondent.

By Advocate Shri K.C.D. Gangwani, Sr. Counsel.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has impugned the order dated 31.12.1996 imposing on him a penalty of censure and the appellate authority's order dated 17.4.1997 dismissing his appeal. He has also alleged that because of the delay on the part of the respondents to pass a final order in the disciplinary proceedings after the submission of the Inquiry Officer's report, it has resulted in denial of promotion to the applicant whereas his two juniors have been promoted as Section Officers in February, 1997.

2. During the hearing Shri K.C.D. Gangwani, learned counsel for the respondents, has taken a preliminary objection that the aforesaid reliefs are not maintainable together in this O.A. as they are multiple reliefs and they are not based upon a single cause of

Y/

18
action. We allow this preliminary objection, having regard to the facts and circumstances of the case read with Rule 10 of the CAT (Procedure) Rules, 1987. In the circumstances of the case the reliefs regarding the penalty orders passed after holding the disciplinary proceedings are only dealt with here, leaving it open to the applicant to pursue his remedies with regard to his promotion to the post of Section Officer by fresh O.A., if he so wishes, in accordance with law.

3. The applicant had been chargesheeted under Rule 14 of the CCS (CCA) Rules, 1965 by memorandum dated 7.10.1991 in which there were four articles of charge. At the conclusion of the inquiry, the Inquiry Officer had submitted his report on 7.6.1993 in which he had held, after analysis of the facts and evidence on record, that none of the four articles of charge was established. The disciplinary authority by order dated 29.11.1996 gave notice to the applicant that on his consideration of the inquiry report, he has provisionally come to the conclusion that the applicant had shown laxity and carelessness in performing his duties for reasons mentioned below and the gravity of the charge is such as to warrant imposition of a minor penalty and accordingly he proposes to impose upon him the penalty of withholding of next increment for a period of two years without cumulative effect. The reasons given in this order are:

"....Being the Assistant Incharge dealing with procurement and issue of office stationery, typewriters and other equipments, Shri H.S. Rawat was responsible for proper maintenance of records. However, he failed to do so as a result of which stationery

82

items worth Rs.1,07,677.64 were found short and some other stationery items worth Rs.1,23,189.16 were found in excess. He also failed to take over the proper charge of the store from his predecessor and once he had taken over the charge of the store and stock all liability of shortage rests with the officer taking over the charge".

The applicant had given a reply on 12.12.1996 requesting that the disciplinary authority should decide his case judicially in view of the overall perspective including the fact that he has an unblemished service career spanning 27 years. He has also submitted that he had worked with full devotion and under the supervision and guidance of his superiors and in accordance with the procedure prevailing at that time and during the course of bonafide discharge of his duties, there may have been some technical errors, omissions and slips for which the entire system prevailing at that time is responsible. He has, therefore, requested that he should be exonerated as held by the Inquiry Officer so that he can earn his due increments and promotion in time. The disciplinary authority has passed the impugned order imposing on him a penalty of censure vide order dated 31.12.1996. The learned counsel for the applicant has submitted that the reasons for disagreement with the Inquiry Officer have not been given by the disciplinary authority nor any reasons given for the penalty imposed by the impugned order. He submits that the appellate authority has also dismissed the appeal without going into the merits of the case on the ground that it is time barred. He has also pointed out that while the Inquiry Officer had given his findings in his report dated 7.6.1993, completely exonerating the applicant, the disciplinary authority

8/

had issued the notice dated 29.11.1996 belatedly after expiry of about 3 1/2 years, in which he had indicated that he proposed to impose a penalty of withholding of increment for two years. He has also submitted that in this order the disciplinary authority has not given the reasons or the evidence he relies upon which has led him to a different conclusion from that of the Inquiry Officer that a penalty is to be imposed. For these reasons, he has submitted that the impugned disciplinary authority's order and the appellate authority's order should be quashed and set aside as it shows lack of application of mind.

4. The respondents have filed their reply and we have also heard Shri K.C.D. Gangwani, learned counsel. He has submitted that the punishment order dated 31.12.1996 read together with the order dated 29.11.1996 in which notice had been given to the applicant that the disciplinary authority proposes to impose a minor penalty on the applicant, gave sufficient reasons for his disagreement with the findings of the Inquiry Officer. He has also submitted that the disciplinary authority's order is a speaking order which shows that he has fully applied his mind, as he has himself reduced the proposed punishment finally, by imposing only the penalty of censure by order dated 31.12.1996. Therefore, he has submitted that this application may be dismissed as there is no infirmity in the proceedings or in the impugned orders.

8/

We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. The Inquiry Officer after analysis of the facts and evidence placed before him in the departmental proceedings held against the applicant came to the conclusion that none of the four articles of charges was established. The disciplinary authority has, in disagreeing with these findings, issued an order dated 29.11.1996 proposing to impose a penalty of withholding of next increment for a period of two years without cumulative effect. From the reasons extracted in paragraph 3 above, it is seen that the particular facts, evidence and findings in respect of each of the charges with which the disciplinary authority is disagreeing with the Inquiry Officer are not mentioned. To this extent, therefore, we find the reasons given by the disciplinary authority to be inadequate and the notice given is vague which will not adequately enable the applicant to effectively file a reply. This defect cannot be cured by looking into the reasons given in the final order of punishment passed by the disciplinary authority, after the applicant has filed his reply, as urged by the learned counsel for the respondents. In **Narayan Misra Vs. Union of India (1969 SLR 567)**, the Supreme Court has held as follows:

"Now if the Conservator of Forests intended taking the charges on which he was acquitted into account, it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words, the Conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fair play and natural justice. If the Conservator of the Forests wanted to

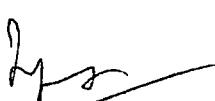
use them, he should have apprised him of his own attitude and given him an adequate opportunity. Since that opportunity was not given, the order of the Conservator of Forests modified by the State Government cannot be upheld. We accordingly set aside the order and remit the case to the Conservator of Forests for dealing with it in accordance with law. If the Conservator of Forests wants to take into account the other two charges, he shall give proper notice to the appellant intimating to him that those charges would also be considered and afford him an opportunity of explaining them".

6. In the facts and circumstances of the case, therefore, we are of the view that the disciplinary authority has not given sufficient reasons as to why he has disagreed with the findings of the Inquiry Officer so as to satisfy the principles of natural justice. In the result, the O.A. succeeds and is allowed as follows:

The disciplinary authority's order dated 29.11.1996 and the appellate authority's order dated 31.12.1996 are quashed and set aside.

The case is remitted to the disciplinary authority with a direction to reconsider the applicant's case after giving him a show cause notice in accordance with law and affording him a reasonable opportunity to reply to the same. He shall also pass a speaking order giving reasons and dispose of the matter expeditiously and in any case within a period of two months from the date of receipt of a copy of this order.

No order as to costs.


(K. Muthukumar)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)