

Central Administrative Tribunal
Principal Bench

O.A. No. 22/1997

New Delhi this the 3rd Day of January 1997

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)
Hon'ble Shri K. Muthukumar, Member (A)

Shri O.S. Chauhan, IAS (AGMU-1967),
Presently Home Commissioner,
Government of Mizoram,
Aizawl-786001.

R/o B-17, Ramprastha,
Post Office Chandra Nagar,
Delhi U.P. Border,
Ghaziabad - 201 011.

Applicant

(By Advocate: Mrs. Avnish Ahlawat)

Vs

1. Union of India through
Secretary, Ministry of Personnel,
Department of Public Grievances and Pensions,
Government of India,
Central Secretariat, North Block,
New Delhi - 110001.
2. Secretary,
Ministry of Home Affairs,
Government of India,
Central Secretariat, North Block,
New Delhi-110 001.
3. Shri S.K. Roy, IAS,
Enquiry Officer to be
Reserved through Respondent No. 2

Respondents.

O R D E R (Oral)

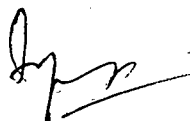
Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

The applicant was suspended from service in March 1986. Disciplinary proceedings had been initiated against him in the year 1989. The enquiry was proceeded with. The applicant protested against the conduct of the enquiry on the ground that he was not paid subsistence allowance but ~~on the same~~ the Enquiry Officer proceeded with the enquiry and submitted his report on 30.9.1992. A copy of the enquiry report with the findings of the Enquiry Officer holding the charge proved was given to the applicant on 2.6.1993 giving him an opportunity to make his representation. The applicant made his representation.

In the meanwhile a prosecution was launched against the applicant basically on the same allegations for which he was proceeded with departmentally. On 24.8.1995, the applicant was reinstated in service and then made a representation claiming that the ex-parte enquiry report may not be accepted and the enquiry be held then after giving a reasonable opportunity to defend him. No order on this has been passed. Coming to know that the disciplinary authority on 6.12.1996 has passed an order dismissing the applicant from service but without obtaining and producing a copy of the order, the applicant had filed this application seeking to have the ex-parte finding of the Enquiry Officer dated 23.11.1992 as also the order of the disciplinary authority dated 6.12.1996 quashed on the ground that the findings arrived at by the Enquiry Officer without affording the applicant to defend himself against the charge is vitiated and therefore without legal consequences.

2. Having perused the application and the other materials placed on record, we are of the considered view that this application is pre-mature in nature. The learned counsel for the applicant referred us to the ruling of the Hon'ble Supreme Court in Ghanshyam Vs. State of Madhya Pradesh reported in 1973 SLJ P 356 wherein it was not being paid subsistence allowance was vitiated as would not be at that time in a position to defend himself. Seeking support from the above ruling the learned counsel argued that the situation in this case is identical and therefore this Tribunal will be justified in interfering with the finding of the enquiry authority and the consequential order passed by the disciplinary authority. We are unable to accept this argument of the counsel. The report of the Enquiry Authority containing the impugned findings was

admittedly supplied to the applicant in June 1993. The applicant did not assail the findings till date if the finding is assailable. Now that admittedly the disciplinary authority has already passed an order accepting the findings of the Enquiry Authority what is to be assailed is not the finding of the Enquiry Authority but the findings of the disciplinary authority. The applicant has stated that the Disciplinary Authority has passed an order dated 6.12.1996, but a copy of the order has not been produced. Apart from the allegation there is nothing before us to show that the Disciplinary Authority has passed an order. Even if the disciplinary authority has passed the final order, the applicant has to exhaust the statutory remedy of appeal and then only he can approach the Tribunal in the normal course. We do not find any abnormal situation in this case. Therefore, we are of the considered view that the application is pre-mature. Therefore, the application is rejected under Section 19(3) of the Administrative Tribunals Act, 1985.



(K. Muthukumar)
Member (A)



(A.V. Haridasan)
Vice Chairman (J)

Mittal