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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2466/97

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 21st day of July, 2000

S.S.Yadav
s/o Sh. Kurda Ram
r/o Vill. & P.O. Bharawas
Distt. Rewari (Haryana). ... Applicant

(By Shri Yogesh Sharma, proxy of Shri V.P.Sharma,
Advocate)

Vs.

1. Union of India through
The Secretary
Govt. of India,
Cabinet Secretariate
New Delhi.
2. The Special Secretary
Govt. of India
Cabinet Secretariate
New Delhi.
3. Joint Secretary (Pers.)
Govt. of India
Cabinet Secretariat
Room No.7, Bikaner House
Shahjhan Road
New Delhi.

(By Shri Madhav Panikar, Advocate)

O R D E R (Oral)

By Justice Rajagopala Reddy:

A departmental enquiry under Rule 14 of CCS (CCA) Rules, 1965 was initiated against the applicant, Caretaker in the Cabinet Secretariat vide Memo dated 7.4.1995. It was alleged that during 1993-94, he habitually committed acts of indiscipline and misbehaviour and though he was warned he did not mend his ways. And that on 15.2.1995 he approached Under Secretary(Admn.) with the attendance register in his hand questioning the authority of Under Secretary (Admn.) to mark absent in the attendance register. He

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has thrown the identity card and attendance register on the face of the Under Secretary. After enquiry, the enquiry officer found that three incidents out of five mentioned in Article of Charge-I were proved. Regarding Charge II, it was held as proved. The disciplinary authority, however, disagreeing with the findings of the enquiry officer, has concluded in respect to the Charge-I that there was sufficient proof that the applicant was an indisciplined worker and has indulged in action of indiscipline. As regards the second charge is concerned, he agreed with the enquiry officer. In view of the above findings a penalty of compulsory retirement by the impugned order dated 19.3.1997 was imposed. The appeal was rejected on 12.8.1997. The OA was filed challenging the order of above orders of disciplinary authority and as confirmed by the appellate authority.

2. The learned counsel for the applicant advanced the main argument that the disciplinary authority having disagreed with the findings of the enquiry officer in respect of Charge No.I, should have recorded the reasons for disagreement and should have issued notice to the applicant calling upon his explanation as to the disagreement with the enquiry officer. The disciplinary authority has passed the impugned order holding that both the charges were proved. The learned counsel submits that this constitutes serious prejudice to the applicant and hence the impugned order has to be set-aside.

[Signature]

3. The learned counsel for the respondents however submits that this lacuna is a procedural lapse and as the applicant ^bwas given an opportunity to make the representation before the appellate authority, it cannot be said that the applicant has suffered any prejudice in his defence. Since no prejudice was shown the enquiry need not be quashed.

4. We have considered this aspect and the contentions raised by both the counsel.

5. It is not in dispute that the disciplinary authority has disagreed with the findings of the enquiry officer in respect of the first charge and that the disciplinary authority has not given any notice to the applicant as regards his disagreement of the enquiry officer's finding. In Punjab National Bank & Others Vs. Sh. Kunj Behari Mishra, JT 1998(5) SC 548, it was held that whenever the disciplinary authority disagrees with the findings of the enquiry officer on any article of charge, it is required to record its own reason for such disagreement and also to record its own finding on such charge and it is required to give a hearing to the delinquent officer, before it records its findings.

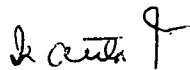
6. The contention that the applicant has not suffered any prejudice on account of non-supply of the reasoning is unacceptable. The principles of natural justice require the authority which is to take final decision and impose the penalty, to give an opportunity to answer the charge for misconduct and to

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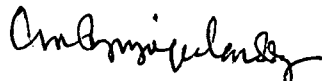
file the representation on the charges framed against officer before passing any order by the disciplinary authority.

7. In the circumstances, we are of the view that the impugned order is liable to be vitiated. The impugned order of the disciplinary authority as well as the appellate authority are quashed.

8. We however direct the disciplinary authority to record the reasons of disagreement and give an opportunity to the applicant to make representation against those reasons and after considering the representation made by the applicant, if any, pass a final order in the enquiry. This should be done within a period of three months from the date of a receipt copy of this order. The OA is accordingly allowed. No costs.



(SMT. SHANTA SHASTRY)
MEMBER(A)



(V. RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

/RAO/s