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Central Administrative Tribunal
Principal Bench

O.A. 390/97

New Delhi this the 27th day of June, 2000

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

Shri S.C. Sharma,
S/o Shri S.S. Sharma,
R/o Shanti Vihar 150,
Govindgarh, Dehradun. ... Applicant.

(By Advocate Mrs. Meera Chhibber)

Versus

1. Union of India, through
Financial Advisor,
Ministry of Defence (Finance),
South Block,
New Delhi-110011.

2. Controller General of Defence Accounts,
West Block V,
R.K. Puram,
New Delhi-110066.

3. Controller of Defence Accounts (R&O),
L. Block, New Delhi-110011. ... Respondents.

(By Advocate Shri R.P. Aggarwal)

O R D E R (ORAL)

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

The applicant is aggrieved by the orders passed by the respondents dated 12.1.1996 compulsorily retiring him from service and rejection of his appeal by the appellate authority by order dated 30.10.1996 (Annexures P-I and P-II).

2. The applicant, while serving with the respondents as Senior Accounts Officer (SAO), had been issued a memorandum of charge-sheet on 28.8.1993 under Rule 14 of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'the Rules'). The aforesaid impugned penalty orders had been issued by the respondents after holding a disciplinary

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proceeding against him. A copy of the charge-sheet has been annexed at Annexure P-VIII from which it is seen that the charges were divided into four parts which read as under:

> "Article No.I: That the said Shri S.C. Sharma, Sr. AO while serving in the office of Dy. CDA (R&D) Dehradun prepared an LP Bill in the name of non-existent firm M/s Beena Shoppies and planted the same with other bills for issue of cheque.
>
> Article No.II: After causing issue of cheque No.AX-305405 dt. 19.8.91 for Rs.1,63,920/- in favour of the firm removed the cheque as well as the supporting LP Bill.
>
> Article No.III: Destroyed the LP Bill and informed the Section that the cheque had been personally handed over to the representative of the firm; and
>
> Article No. IV: Returned the cheque to the Section after defacing it on realising that the Section had disowned having seen or having processed the bill. Shri Sharma also planted a letter purported to have emanated from M/s Beena Shoppies with ulterior motive to create confusion".

The Inquiry Officer in his report has given his findings on each of the articles of charge as follows:

> "On the basis of the documentary and oral evidence adduced in the case before me and in view of the analysis of evidence/reasons given above I hold as follows:
>
> "Charge I: Not proved.
>
> Charge II: Partially proved. Only the part of the Charge 'removed the cheque as well as the supporting LP bill' is proved.
>
> Charge III: Partially proved. Only the part of the Charge "informed the Section that the cheque had been personally handed over to the representative" has been proved. It was established during the inquiry that instead of the cheque being handed over to the Rep. of the 'firm', the CO had informed that the cheque had been handed over to the Rep. of the 'Unit'".

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3. Admittedly, a copy of the Inquiry Officer's report was sent to the applicant for his comments which he has also furnished to the respondents. Thereafter, the disciplinary authority vide his order dated 12.1.1996 came to the conclusion, after taking into account the evidence on record and perusal of the Inquiry Officer's report, that a penalty order of compulsory retirement should be imposed on the applicant.

4. On appeal being filed by the applicant against the penalty order, the appellate authority has passed a detailed and speaking order on 30.10.1996, in which he has referred to the various points taken by the applicant and dealt with ~~by~~ them in a chronological order. The appellate authority has confirmed the decision of the disciplinary authority in imposing a penalty of compulsory retirement and has allowed the appeal dated 23.2.1996, by restoration of the 10% cut in the pension.

5. We have heard Mrs. Meera Chhibber, learned counsel for the applicant and Shri R.P. Aggarwal, learned counsel for the respondents and carefully considered the pleadings and the documents on record.

6. Learned counsel for the applicant has taken a number of grounds in assailing the validity of the aforesaid penalty orders. One of the main grounds taken by Mrs. Meera Chhibber, learned counsel, is that while the Inquiry Officer in his report had, as mentioned above, held that ~~the~~ Charge I was not proved, Charges II and III partly proved, and only Charge IV as proved, in paragraph 4 of the disciplinary authority's order, the Officer states that he

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does not agree with the findings of the Inquiry Officer, but has not issued any show cause notice or called for the applicant's comments or given sufficient reasons for his disagreement in his order. This has been stoutly denied by the learned counsel for the respondents. According to the learned counsel for the respondents, he has submitted that looking into the memorandum of charge, it has to be read as one charge, which, according to him, is also evident from the way the disciplinary authority has stated in paragraph 4 of his order read with paragraph 2. Shri Aggarwal, learned counsel has submitted that the disciplinary authority has given sufficient reasons for his disagreement with the conclusions arrived at by the Inquiry Officer which he has discussed in paragraph 4. He has also submitted that there is actually one charge against the applicant which has been spread into various components and, therefore, there is no arbitrariness or illegality in the conclusions arrived at by the disciplinary authority in his order, which is correctly based on the principles of probability in such matters.

7. Mrs. Meera Chhibber, learned counsel, on the other hand, has relied on the judgement of the Supreme Court in **Punjab National Bank Vs. Kunj Behari** (JT 1998(5) SC 548). Her contention is that the action of the respondents clearly shows that the principles of natural justice have been completely violated, as the Inquiry Officer's report has been given a go-bye by the disciplinary authority, which he could do only after giving a show cause notice to the applicant and giving him a reasonable opportunity to make a representation. Learned counsel for the respondents, however, submits that this was

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not required to be done because the disciplinary authority was only disagreeing partly with the Inquiry Officer's report and not the whole. We are not able to agree with this plea because whichever ~~the~~ way we look at the findings of the Inquiry Officer and the disciplinary authority's order, there is no doubt that the disciplinary authority has indeed disagreed with the findings of the Inquiry Officer for which he ought to have given an opportunity to the applicant to show cause and give a representation. In paragraph 4 of the disciplinary authority's order dated 12.1.1996, he has clearly stated that he has perused the report of the Inquiry Officer, but he does not agree with the findings of the Inquiry Officer on component No.(i) of the charge and holds the same as proved whereas the Inquiry Officer had held it as not proved, treating that as a component of charge No.(iv). We are fortified in our view by the decision of the Supreme Court in **Kunj Behari's case** (supra) in which their Lordships have held as follows:

> "Principles of natural justice have to be read into Regulation 7(2). Whenever the disciplinary authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer".

8. In the present case, admittedly no such show cause notice or opportunity was afforded to the applicant by the disciplinary authority while disagreeing with the Inquiry Officer, which he called as a component of certain charges. The appellate authority in his order, has on this point, come to the finding that there was no necessity to remit the case to the disciplinary authority and,

therefore, the disciplinary authority had correctly adopted the procedure prescribed in Rule 15 of the Rules. The reasons recorded by the disciplinary authority on the four charges or four components of the single charge, as seen from the order dated 12.1.1996, are not sufficient as he has ~~neither~~ referred to any evidence on record, for example, the evidence of the witnesses but has merely come to the conclusions, differing from the conclusions arrived at by the Inquiry Officer, that component No.(i) of the charge is part of the component No. (iv) of the charge with reference also to parts of the charges (ii) and (iii) which have been held proved. Whatever the conclusion of the disciplinary authority might have been, when he has categorically stated that he is differing with the conclusions arrived at by the Inquiry Officer, we are in respectful agreement with the decision of the Supreme Court in **Kunj Behari's case** (supra), that an opportunity should have been given to the applicant to make his submissions and he should not have been "condemned ~~and~~ unheard".

9. Rule 15(2) of the Rules provides that the disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such dis-agreement and record its own findings on such charge if the evidence on record is sufficient for the purpose. Learned counsel for the respondents has submitted that the disciplinary authority, while disagreeing with the findings of the Inquiry Officer, on the articles of charge has given the reasons and, therefore, there was no question of remitting the case ~~which~~ as also held by the appellate authority. While that may be so, nevertheless we are of the view that as the

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disciplinary authority was clearly disagreeing with the findings of the Inquiry Officer in some parts of the charges, he ought to have complied with the principles of natural justice. The observations of the Supreme Court in the above case are fully applicable to the facts of the present case. It is relevant to mention that a number of other issues and infirmities have been pleaded by the applicant, while challenging the aforesaid penalty orders, which in the view we have taken, we do not consider it necessary to deal with here. In other words, we have not dealt with the case on merits but on the aforesaid procedural infirmity.

10. In the result, for the reasons given above, O.A. succeeds and is allowed with the following directions:

(i) The impugned penalty orders dated 12.1.1996 and 30.10.1996 are quashed and set aside;

(ii) If the applicant has not reached the age of superannuation from service, the respondents shall reinstate him, and liberty is granted to them to proceed with the disciplinary proceedings against him in accordance with law and regulations within 2 months from the date of receipt of a copy of this order;

(iii) Thereafter, the competent authorities shall pass necessary orders regarding the intervening period from the date of compulsory retirement to the date of retirement in accordance with the rules. No order as to costs.

(Smt. Shanta Shastry)
Member(A)

(Smt. Lakshmi Swaminathan)
Member(J)

SSRD