

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-646/94

(7)

New Delhi this the 26th day of July, 1999.

Hon'ble Shri A.V. Haridasan, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri Mohinder Dev Sharma,
S/o Sh. Dhooni Ram Sharma,
R/o WZ-1527 (Near Shiv Mandir),
Nangal Raya, Delhi Cantt-110010. Applicant

Δ. (through Sh. Ro Doraiswamy with Sh. Sant Singh, advocate)

versus

1. Union of India through
Secretary,
Ministry of Defence,
South Block,
New Delhi-11.
2. QMG Army Hq.,
DHQ P.O. New Delhi-11.
3. DDGMF,
QMG's Branch,
Army Hq. West Block No. III,
Ramakrishna Puram,
New Delhi-66.
4. DDMF Hq.,
Central Command,
Lucknow(UP).
5. Officer-Incharge,
Military Farm,
Bareilly(UP). Respondents

(through Shri K.R. Sachdeva, advocate)

ORDER(ORAL)

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

The applicant while serving as Office Supdt.
Grade-II in the office of the Military Farms, Bareilly
was compulsorily retired w.e.f. 12.10.92 vide order

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dated 30.9.92 (Annexure A-1) by the 3rd respondent after holding an enquiry under Rule 14 of the CCS (CCA) Rules, 1965 for the alleged misconduct of failure to maintain proper devotion to duties with regard to suring proper maintenance of documents/books connected with procurement/bailment/despatch of fodder, resulting in huge shortage of fodder and extra expenditure on account of bailing wires and baling charges when there was shortage of baled fodder, caused loss to the State to the extent of approximately Rs.15 lakhs. Part of the enquiry was held ex-parte as the applicant could not or did not attend but the rest of the enquiry was held in the presence of the applicant. By the impugned order not only the applicant was compulsorily retired but the Disciplinary Authority also ordered that there would be reduction in pension and gratuity of the applicant to the maximum permissible limit under the existing rules. Aggrieved by this order, the applicant preferred an appeal to Respondent No.2. Respondent No.2 on consideration of the appeal confirmed the penalty of compulsory retirement but set aside the reduction in pension and gratuity to the maximum permissible limit under the existing rules by the order dated 12.8.93 (Annexure A-1(ii)). Aggrieved by these two orders, the applicant has filed this application assailing the orders on various grounds. It has been alleged by the applicant that as the two boards constituted to go into the background of the loss sustained did not indict the applicant and as the applicant has not

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been found guilty of any failure to maintain proper devotion to duty, there was no reason at all to order an enquiry against the applicant. The applicant further contend that the holding of a joint enquiry in case of the applicant alongwith Sh. Tilak Raj who had already retired was improper and that the enquiry held has been vitiated for not giving the applicant reasonable opportunity to defend himself. It has been further alleged that though the applicant for unavoidable reasons, remained absent during part of the enquiry, when he appeared to participate in the enquiry as promised by the Enquiry Officer, the Enquiry Officer was bound to give him a copy of statement of deposition of witnesses to enable him to effectively conduct his case. The Enquiry Officer refused to give the testimonies of witnesses by his order dt. 29.8.91 and that this has resulted in a serious prejudice to the applicant contended the applicant. The applicant has also alleged that the order of the Disciplinary Authority is totally bereft of application of mind which would be evident on a mere reading of it.

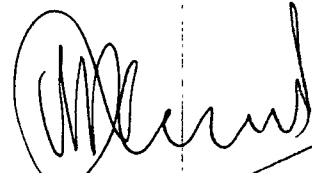
2. It is a fact beyond dispute that the applicant being absent during the part of enquiry, certain witnesses were examined and the statement of witnesses were not given to him when he reported for taking part in enquiry on 6.6.91. While the enquiry officer had in his communication A-10 dated 6.5.91 stated that copies of statements of the witnesses would be supplied to him on his joining the enquiry, it is seen that the request of the applicant for copies of the statements of the witnesses examined in his absence was rejected by the enquiry officer. This action of the Enquiry Officer in denying the

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applicant the benefit of having the statement of witnesses examined in his absence has undoubtedly caused great prejudice to the applicant in making his defence. This amounts to denial of fair and reasonable opportunity to defend.

3. In view of what has been stated above and in the interest of justice, we set aside the impugned order and remand back to the Appellate Authority to take a fresh decision with a direction that the authority shall consider the appeal of the applicant and dispose it of giving good reasons for its finding on the important points raised by the applicant in the appeal memorandum. If the Appellate Authority finds that the enquiry has not been held in conformity with rules and principles of natural justice, he may order for the enquiry as per rules. In any case, a speaking order shall be communicated to the applicant within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.


(S.P. Biswas)
Member(A)


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