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Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.187/94

New Delhi this the 15th Day of March, 1994.

Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman
Hon'ble Mr. B.N. Dhoundiyal, Member(A)

Sh. Anil Kumar Bhambri,
S/o Sh. B.P. Bhambri,
R/o C-61, Fateh Nagar,
New Delhi-18.

Applicant

(By advocate Sh. R. Dayal)

versus

1. Union of India
through the Secretary,
Ministry of Communication,
Dak Tar Bhawan,
Parliament Street,
New Delhi.

2. Sr. Supdt. R.M.S.,
New Delhi Sorting Division,
New Delhi.

Respondents

(Represented through Sh. R.B. Sharma, ASPO)

ORDER (ORAL)
delivered by Hon'ble Mr. Justice S.K.Dhaon, Vice-Chairman

Disciplinary proceedings were initiated against the applicant. An enquiry officer was appointed. The enquiry officer submitted his report to the disciplinary authority. The disciplinary authority passed an order of punishment. The applicant preferred an appeal, which has been dismissed. The orders passed by the disciplinary authority as well as the appellate authority are being impugned in the present application.

On 27.1.1994, we issued notices to the respondents directing them to file a short affidavit as to whether the disciplinary authority before passing

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the order of punishment gave any opportunity to the applicant to show cause as to why he (Disciplinary Authority) contemplated to disagree with the findings recorded by the enquiry officer.

A short counter-affidavit has been filed on behalf of the respondents in pursuance of the order dt. 27.1.1994.

Admittedly, the disciplinary authority disagreed with the recommendations of the enquiry officer exonerating the applicant in the disciplinary proceedings. In the short counter-affidavit filed on behalf of the respondents, it is averred that in Rule 15(2) of CCS(CCA) Rules, 1965 there is no provision to give another opportunity to the charged official except forwarding a copy of the inquiry report. However, the disagreement of the disciplinary authority is vividly described in the punishment order and the official gets a chance to prefer an appeal against the punishment order. In Narayan Misra versus State of Orissa (1969 SLR P. 657), the Hon'ble Supreme Court has held that in a situation where the disciplinary authority disagrees with the findings/recommendations of the enquiry officer, he (disciplinary authority) should conform^{to} the minimum of the natural justice, ^{i.e.} namely, he should give an opportunity to the delinquent government servant to explain as to why the disciplinary authority should not differ from the findings of the enquiry officer. In view of this decision of the Hon'ble Supreme Court, the order passed by the disciplinary

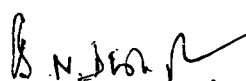
authority is ^{not} sustainable.

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We make it clear that it will be open to the disciplinary authority to give an opportunity now to the applicant asking him to explain as to why he (disciplinary authority) should not disagree with the findings recorded by the enquiry officer.

This application succeeds and allowed. The orders passed by the disciplinary authority and the appellate authority are quashed.

No costs.


(B.N. DHOUNDIYAL)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN

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