

(18)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN.NO. OA 1296/89

Date of decision: 19.12.91

Shri R.S.Khandwal

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Applicant

Versus

Union of India
through Joint Secretary
(personal)
Cabinet Secretariat

.....

Respondents

CORAM: THE HON'BLE MR.JUSTICE V.S.MALIMATH, CHAIRMAN
THE HON'BLE MR. D.K.CHAKRAVORTY, MEMBER(A)

For the Applicant

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Shri B.B.Raval,
Counsel

For the Respondents

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Shri P.P.Khurana,
Counsel.

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR.JUSTICE V.S.MALIMATH, CHAIRMAN)

The applicant was removed from service by order dated 25.11.1988 by the Disciplinary Authority after holding enquiry in regard to certain charges. The grievance of the applicant is that this is a case in which enquiry was held by an authority other than the Disciplinary Authority, that a copy of the Enquiry Officer's report was not furnished to him and that he was not given an opportunity to show cause before the same was accepted by the Disciplinary Authority and action was taken to remove him from service. Undoubtedly, this is a serious infirmity as it deprived the applicant a reasonable opportunity of showing cause in the matter which is a Constitutional guarantee granted in his favour by Article 311 of the Constitution. The Supreme Court as also this Tribunal have consistently held that any order of removal or termination brought about without giving

a reasonable opportunity to the delinquent official, is not valid. The said infirmity vitiates the direction in this application. The applicant is entitled to succeed on the short ground.

2. The applicant was not under suspension when he was removed from service on 25.11.1988. The consequence of our holding that the order of removal is void for the reasons aforesaid is that the applicant would be entitled to all consequential benefits including the arrears of wages for the period during which he was deprived of the emoluments on account of any ^{illegal} order of the authorities. This is ^a well recognised principle that if the delinquent official was otherwise gainfully employed, it would not be just and proper to grant him back-wages, thus helping ^{unjust} enrichment ^{/him for such}. There is, however, no material before us, at this stage to pronounce on this question. We are ^{not} inclined to postpone the consideration of this aspect for that matter. At the same time, we safeguard the interests of the applicant. Hence, we consider it necessary to direct that the applicant shall make a representation to the Disciplinary Authority supported by an affidavit in regard to his claim for back-wages that he was not gainfully employed during the said period. The Disciplinary Authority shall consider the representation of the applicant and make appropriate order in regard to the payment of back-wages. If the applicant makes his representation supported by an affidavit, the same shall be enquired into and the order thereon shall be passed by the Disciplinary Authority within a period of four months from the date of its receipt.

3. The respondents are ^{at} liberty to proceed with the further inquiry from the stage the infirmity was

noticed. As the applicant has since been furnished a copy of the Enquiry Officer's report, all that is required to be done is to consider the representation of the applicant that he may make in this behalf. The learned counsel for the applicant requests for four weeks' time for making the representation. We grant four weeks' time to the applicant to file his ^{the} reply vis a vis/Enquiry Officer's report. On receipt of the same, the Disciplinary Authority shall proceed to take final decision in the matter with utmost expedition.

Let a copy of this order be sent to the Disciplinary Authority forthwith.

No order as to costs.

D.K. Chakravorty
(D.K.CHAKRAVORTY)
MEMBER(A)

V.S. Malimath
(V.S.MALIMATH)
CHAIRMAN

SMS