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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH,  
NEW DELHI.

O.A. No. 1497 of 1989

New Delhi this 29th April, 1994.

CORAM:

Hon'ble Mr. J.P.Sharma, Member(A)

Hon'ble Mr. S.R.Adige, Member(A).

Shri M.M.Sharma,  
son of Shri S.C.Sharma,  
r/o 204, Sector VII,  
Mehrauli Badarpur Road,  
New Delhi 110 030  
By Advocate Shri B.B.Sharma .....Applicant.  
Versus

Delhi Administration,  
through

Chief Secretary,  
Delhi Administration Secretariat,  
5, Shamnath Marg,  
Delhi 110054.

2. Director of Education,  
Directorate of Education,  
Old Secretariate,  
Delhi 110054
3. Commissioner-cum-Secretary (Education)  
Directorate of Education,  
Old Secretariate,  
Delhi 110 054.
4. Joint Secretary (Education),  
Directorate of Education,  
Old Secretariate,  
Delhi 110 054

By Advocate Mrs. Avnish Ahlawat

.....Respondents.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member(A)

In this application, Shri M.M.Sharma, a Life  
Guard, Directorate of Education, Delhi Administration  
has impugned the order dated 8.8.88 passed by the  
Commissioner-cum-Secretary (Education), Delhi

Administration in a departmental proceeding and the memorandum dated 13.2.89 issued by the Joint Secretary (Education) communicating the Commissioner-cum-Secretary's order.

2. The applicant, who was holding the post of Life Guard since 1973, claims that on 9.2.82, he was sanctioned five days' leave with promotion to leave the station to attend certain family matters at Ganganagar. While on leave, he fell ill and communicated this fact telegraphically to the Vice-Principal of the School where he was working and requested for extension of leave on medical ground. Due to complications in his illness, the applicant had to extend his leave from time to time and eventually returned to join duties on 25.1.85, but was not allowed to join his duties. On 31.1.85, he received O.M. dated 22.12.84 informing him that an enquiry was proposed to be held under rule 14 of CCS (CCA) Rules, 1965 on the charge of wilful and unauthorised absence from duties since 14.2.82. He states that he filed his written defence dated 7.4.86 denying the charges. An Enquiry Officer was appointed. No witness was examined by the Presenting Officer in the enquiry which, according to the applicant was nothing but an argumentative discussion between the Presenting Officer and the defence Assistant in the presence of the Enquiry Officer. The Enquiry Officer submitted his findings, in which he had held that the charges had been established, upon which the Disciplinary Authority after accepting the findings of the Enquiry Officer, issued an order dated 5.1.87 (Annexure-A) imposing a penalty

of withholding increments for two years with cumulative effect treating the period of unauthorised absence as *dies-non*. The applicant appealed against that order and the appellate authority i.e. the Commissioner-cum-Secretary, Education Department, vide order dated 8.8.88(Annexure-B) modified the penalty to 'withholding the increments for two years without cumulative effect.' Nothing was stated in this order as regards the manner in which the period of absence was to be treated. On 13.2.89, a memorandum was issued(Annexure-C) informing the applicant that the appellate authority had modified the penalty to withholding the increments for two years without cumulative effect, treating the period of his unauthorised absence as *dies-non*. It is the said appellate order dated 8.8.88 and the memorandum dated 13.2.89 that have been impugned.

3. We have heard Shri B.B.Sharma, learned counsel for the applicant and Mrs. Ahlawat, learned counsel for the respondents at considerable length.

4. Shri Sharma has argued firstly that the procedure for enquiry applicable in this case as laid down in Rule 14 of the CCS(CCA) Rules, 1965 has not been complied with rendering the Disciplinary Authority's order illegal and unsustainable. In this connection, he has relied on a number of rulings including 1990(1) Supplementary SCR 426 'K.S.Gill Vs. State of Punjab', 1990(1) Supplementary SCR 44 'S.N.Mukherjee Vs. Union of India' and AIR 1986 SC 1040 'R.P.Bhatt Vs. Union of India'. We find that there is some merit in this contention.

The Govt. employee who brought the record relied upon by the respondents to establish the charges, was not himself examined; the documents relied upon in the enquiry were not proved, and no evidence was recorded. Mrs. Ahlawat, on behalf of the respondents has contended that it was not mandatory for the Presenting Officer to produce any evidence because the charges could be proved on the basis of documentary evidence alone and in any case the factum of absence was not in dispute. The documents produced before the Enquiry Officer should have been proved which was not done. In fact, the entire proceedings seem to have <sup>been in</sup> ~~been~~ <sup>not in</sup> conducted as a dialogue <sup>between</sup> before the Presenting Officer and the Defence Asstt. in the presence of the Enquiry Officer.

5. Secondly, Shri Sharma has argued that the Disciplinary Authority was required to <sup>re</sup> ~~accord~~ its reasons before imposing the penalty which was not done and, therefore, the Disciplinary Authority's order is liable to be set aside. He has drawn attention to the contents of the Disciplinary Authority's order and states that the first paragraph is merely a repetition of the charge; the second paragraph states that Shri Juneja was appointed as an Enquiry Officer; the third paragraph states that the Enquiry Officer had submitted the report; and the fourth paragraph summarily concludes that the charges stand established against the applicant. There is no independent discussion in the order as to how the Disciplinary Authority has reached this conclusion. There is some merit in this contention, and we feel that the Disciplinary Authority's order should have been <sup>a m</sup> reasoned one.

6. The third arguement aken by Shri Sharma is that the appellate authority did not comply with Rule 27(2) of the CCS(CCA) Rules, 1965 in as much as he did not consider whether the procedure laid down had been fully complied with and whether the findings of the Disciplinary Authority were warranted by the evidence on record. In view of the defects in procedure that we have noticed, it must be held that there was <sup>an</sup> inadequate compliance of Rule 27(2) of the CCS(CCA) Rules, 1965.

7. Lastly Shri Sharma has argued that the <sup>the Joint</sup> penalty has been imposed in the garb of <sup>clarification by</sup> Secretary(Education) who was not competent to do so. While the appellate authority had reduced the penalty of withholding of increments for two years with cumulative effect, to a penalty which would operate without cumulative effect. The appellate authority was silent on the point of treatment of unauthorised absence, which the Disciplinary Authority had treated as dies-non. However, in the memorandum dated 13.2.89, it was stated that the period of unauthorised absence as dies-non would be kept intact. Mrs. Ahlawat has contended that the appellate authority's order only modified the punishment with cumulative effect to that of being without cumulative effect and <sup>the</sup> rest of the punishment as mentioned in the initial order <sup>it would therefore</sup> ~~will~~ continue. We are of the view that there was no need to issue a clarification on the Disciplinary Authority's order and this clarification was uncalled for. The orders in departmental proceedings are quasi-judicial in nature and any clarification, if any, can be issued only by the concerned authority who passed the initial order.

8. Under the circumstances, we hold that in view of the defects noticed above, the orders of the Disciplinary Authority <sup>and the</sup> appellate authority as well as the clarification issued cannot be sustained and, are, therefore, quashed and set aside. The case is remanded to the Disciplinary Authority for conducting the departmental proceedings a fresh in accordance with law. No costs.

*Adige*  
(S.R.ADIGE)  
MEMBER(A)

*Sharma*  
(J.P.SHARMA)  
MEMBER(J)

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