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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-1637/89

Date of decision: 8.5.1992.

Shri N.C. Sharma .... Applicant

Versus

Union of India & Ors. .... Respondents

For the Applicant .... Shri B.K. Aggarwal, Advocate

For the Respondents .... Shri M.L. Verma, Advocate

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. I.K. Rasgotra, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*

2. To be referred to the Reporters or not? *Yes*

(Judgement of the Bench delivered by Hon'ble  
Mr. P.K. Kartha, Vice-Chairman)

This is the second round of litigation before the Tribunal by the applicant who had filed a writ petition in the Delhi High Court which stood transferred to this Tribunal and was disposed of by judgement dated 24.4.1987 (TA-854/85). He had prayed that the impugned order dated 24.4.1982 passed by the President of India as the Disciplinary Authority stopping his three increments and the disciplinary proceedings resulting in the impugned order, be set aside. By

judgement dated 24.4.1987, the Tribunal allowed the petition, set aside the impugned order and directed the respondents to pass final orders in the disciplinary proceedings based on the report of the Enquiry Officer, after obtaining fresh comments of the U.P.S.C. and considering various averments made by the petitioner in the petition. The disciplinary authority was also directed to give a personal hearing to him before passing the final order. He was also given the liberty to file a fresh application in accordance with law.

2. Thereafter on 26.4.1988, the President of India passed an order imposing on the applicant the penalty of reduction from the stage of Rs.4075 to Rs.3700 in the time-scale of pay of Rs.3700-125-4700-150-5000w.e.f. 26.4.1988 till the date of his retirement on 31.7.1988 with the further direction that during the period of reduction, he would not earn his increments of pay. On 11/12.8.1988, the President passed a modified order whereby the penalty of reduction of pay from the stage of Rs.4200 to 3825 in the time-scale of pay of Rs.3700-5000 w.e.f. 26.4.1988 till 31.7.1988 with the further direction that during the period of reduction he would not earn his increments of pay, was imposed on him.

3. In the present application, the applicant has

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prayed for the following reliefs:-

- (i) the impugned order dated 26.4.1988 and 12.8.1988 be quashed, declaring these to be void, illegal, ineffective and infructuous;
- (ii) to hold the entire enquiry proceedings illegal, arbitrary, in violation of the principles of natural justice and Article 311 of the Constitution of India with further directions to give all consequential benefits;
- (iii) to quash the impugned orders declaring the punishment harsh and excessive than that already passed vide order No. 14015/2(1)/78 dated 24.4.82 against which the applicant had filed the Civil Writ Petition No. 3/83 transferred to this Tribunal who quashed the said order on the ground of its being a non-speaking order dated 28.4.1987;
- (iv) to allow interest at the rate of 12% per annum on the amount due to the applicant from the date of his retirement till the date of payment;
- (v) cost of the application; and
- (vi) any other relief which the Tribunal may deem fit in the circumstances of the case.

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4. We have gone through the records of the case and have heard the learned counsel for both the parties. The learned counsel for the respondents cited before us \* decisions of Courts in support of his contentions and we have duly considered them.

5. On 27.10.1988, the respondents passed an order granting Selection Grade (Rs.4500-5700) to the applicant w.e.f. 1.1.1986. This was after he had retired from service. In view of this, the modified penalty order dated 12.8.1988 imposing on the applicant the penalty of reduction of pay from the stage of Rs.4200 to Rs.3825 in the time-scale of pay of Rs.3700-5000 was rendered inoperative. In view of this, the penalty was further modified by order dated 31.10.1989 whereby the President imposed on the applicant the penalty of reduction of pay from the stage of Rs.4800 to 4500 in the time-scale of pay of Rs.4500-5700 w.e.f. 26.4.1988 with a further direction that during the period of reduction, he would not have earned his increments of pay.

6. The aforesaid order was passed after the applicant filed the present application on 7.8.1989.

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\*Case law cited by the learned counsel for the respondents:  
A.I.R. 1989 S.C. 1185; A.I.R. 1963 S.C. 404;  
1991 (1) S.L.J. (SC) 164; 1988 (6) A.T.C. 254;  
1989 (2) A.T.R. 608.

7. The applicant has raised several contentions in support of his prayer for quashing the impugned orders dated 26.4.1988 and 12.8.1988, mentioned above. One of the contentions raised by the learned counsel for the applicant is that the applicant sent a representation to the respondents on 7.4.1988, but the Disciplinary Authority passed the impugned order dated 12.8.1988 enhancing the penalty without giving a show-cause notice to him. In other words, had he not challenged the impugned order passed initially on 24.2.1982 in the Delhi High Court and the Tribunal in TA-854/85, he would have suffered only lesser punishment compared to the penalty order dated 12.8.1988.

8. In a case where the punishing authority revises the penalty order and decides to enhance the penalty, it must give a reasonable opportunity to the person concerned to show cause against the proposed enhancement. Otherwise, it would result in violation of the principles of natural justice. No such show-cause notice was issued before the impugned orders dated 26.4.1988 and 12.8.88 were passed in the instant case.

9. Another lacuna in the proceedings is that the disciplinary authority has not given any reasons to disagree with the Enquiry Officer on Article III of the

Articles of Charge framed against the applicant.

10. There were the following three Articles of Charge framed against the applicant pursuant to the Memorandum dated 29.8.1978:-

"ARTICLE I"

Shri N.C. Sharma, while working as Station Engineer, at All India Radio, Chhatarpur, during the year 1977-78, failed to exercise his responsibility and judgement and left the matter of grant of leave to one, Shri R.C. Agarwal, Engineering Assistant, to be handled by Shri G.C. Gupta, Assistant Station Engineer. This enabled Shri Gupta, to harass Shri Agarwal who ended his life by committing suicide on 28th February, 1978.

By his above act, Shri Sharma exhibited lack of devotion to duty and contravened rule 3(1) (ii) of C.C.S. (Conduct) Rules, 1964.

ARTICLE II

Shri N.C. Sharma, during the aforesaid period, failed to take necessary action on the representation dated 27.2.1978 submitted by Shri R.C. Agarwal wherein he had pointed out the harassment being caused to him by Shri G.C. Gupta by making some unwarranted changes in the duties of Shri Agarwal for the week ending 4.3.78.

The above act constitutes serious negligence on the part of Shri Sharma in contravention of rule 3(1) (ii) of CCS (Conduct) Rules, 1964.

ARTICLE III

Shri Sharma, during the aforesaid period, committed a professional and technical misconduct in making an entry in the Communication Log Book

at the Transmitter on 26.2.78 to the effect that Indore Medium Wave could be relayed by Chhatarpur, without making a personal verification. Further, he failed to correct his observations and inform all concerned, namely, the Station Director, Assistant Station Engineer and Shri R.C. Agarwal that when he personally verified the matter on 27.2.78, the Indore Medium Wave could not be relayed.

The above actions of Shri Sharma constitute carelessness and indifference and he, thereby, violated rule 3(1) (ii) of CCS(Conduct) Rules, 1964."

11. In this report dated 19.4.1979, the Enquiry Officer found that charges I and II were proved but that Charge III was not proved. In the impugned order dated 26.4.1988, the President has referred to the inquiry report and the advice tendered by the U.P.S.C. in their letter dated 30.3.1981 and 26.2.1988 and has stated that he "agrees with the advice of the U.P.S.C. for the reasons mentioned in their letters referred to above and holds all the three Articles of Charge against Shri Sharma as proved". The U.P.S.C. appears to have held all the charges as proved in their letter dated 30.3.1981. Though a reference to this is contained in their letter dated 26.2.1988, a copy of the letter dated 30.3.1981 is not available in the case records. The U.P.S.C. has not spelt out the reasons in their letter dated 26.2.1988. So is the case with the impugned order dated 26.4.1988 passed by the President.

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12. In Narayan Misra Vs. State of Orissa, 1969 SLR 657, the Supreme Court has held that if the punishing authority differed from the findings of the Enquiry Officer and held the official guilty of the charges from which he was acquitted by the Enquiry Officer and no notice or opportunity was given to the delinquent official about the attitude of the punishing authority, the order would be against all the principles of fairplay and natural justice and would be liable to be set aside. We, therefore, set aside and quash the impugned order dated 26.4.1988 to the extent that the President "holds all the three Articles of Charge against Shri Sharma as proved". In the facts and circumstances of the case and having regard to the fact that the charge-sheet had been issued as early as in 1978 and in the interest of justice, the case is remanded to the disciplinary authority to review the quantum of punishment imposed on the applicant only on the basis of Articles of Charge I and II and not on the basis that all the charges have been proved against the applicant. The disciplinary authority shall reconsider the question of quantum of penalty and pass appropriate orders as expeditiously as possible and preferably within four months from the date of receipt of this order.

13. The application is disposed of on the above lines. The parties will bear their own costs.

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(I.K. Rasgotra)  
Administrative Member  
8/9/92

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8/5/92  
(P.K. Kartha)  
Vice-Chairman(Judl.)