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CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH.

O.A. NO. 1747/89

New Delhi this the 26th day of April, 1994.

Shri Justice V.S. Malimath, Chairman.

Shri P.T. Thiruvengadam, Member(A).

Shri J.K. Jain,
S/o late Shri J.D. Jain,
R/o Qr. No.1, Anand Puri,
Railway Road,
Meerut City(UP).

...Petitioner.

By Advocate Shri B.S. Charya.

Versus

1. Union of India,
Ministry of Defence,
Government of India,
South Block,
New Delhi.

2. The Engineer-in-Chief,
Engineer-in-Chief's Branch/EID,
Army Headquarters, DHQ PO,
New Delhi.

3. The Chief Engineer,
Central Command,
Engineers Branch,
Hqrs Central Command,
Lucknow.

4. The Chief Engineer, MES,
Bareilly Zone,
Bareilly.

...Respondents.

By Advocate Shri M.L. Verma.
ORDER(ORAL)

Shri Justice V.S. Malimath.

The petitioner, Shri J.K. Jain, was Superintendent Grade-II. In due course, he earned promotion as Surveyor Assistant Grade-I and he was holding that post. A disciplinary inquiry was held against him. The Inquiry Officer held Charge-I proved and Charges 2 and 3 partly proved. Accepting those findings, the disciplinary authority made an order on 11.11.1987 as per Annexure P-I imposing the penalty of compulsory retirement. The appeal against the said order was rejected on 29.9.1988, Annexure P-2. It is the

said order that has been challenged by the petitioner in this case.

2. The first contention of the learned counsel for the petitioner is that the petitioner was denied reasonable opportunity of defending himself as the Defence Assistant for his defence was unreasonably denied to him. This is not the case in which the authorities felt that the petitioner is not entitled to any assistant. They have proceeded on the basis that the petitioner has to be provided assistant and that the petitioner can select a proper official for that purpose. The petitioner first nominated one Shri H.S. Singh, but he was not provided on the ground that he was not available. Thereafter, the petitioner nominated one Shri N.P. Singh. The authorities said that he cannot be spared and that the petitioner should, therefore, nominate another person. The petitioner thereafter nominated Hardam Lal. The request of the petitioner was rejected on the ground that Hardam Lal is a legal practitioner. The petitioner was, however, told that he could nominate another person. The petitioner received the intimation about this on 15.6.1987 but the inquiry was fixed before the Inquiry Officer on 3.6.1987. He informed the Inquiry Officer that he would like to have the defence assistant and that, therefore, the case should be adjourned. The Inquiry Officer declined the request on the ground that the petitioner has resorted to dilatory tactics. Shri Charya, learned counsel for the petitioner, contended that the materials placed do not justify such an inference. He urged that it is a perverse finding of the Inquiry Officer to say that he has been resorting to delaying tactics. It is necessary to point out that the

first nominee of the petitioner could not be secured because the authorities said that he is not available. So far as the second nominee is concerned, the authorities declined his request on the ground that he cannot be spared and that he should nominate another person. When third nominee was suggested, his request was rejected on the plea that he is a legal practitioner. All this would show that the petitioner has made earnest efforts to suggest about the Defence Assistant. The authorities could not provide Defence Assistant for one reason or the other. Hence, the petitioner cannot be blamed as being guilty of not availing of Defence Assistant. So far as the nominee Hardam Lal is concerned, the request of the petitioner was rejected on the ground that he is a legal practitioner and he cannot avail his services. Before he could suggest someone-else for his defence, the Inquiry Officer completed his report on 15.6.1987. and submitted the same to the disciplinary authority. In the state of such materials, we have no hesitation in holding that the Inquiry Officer acted most arbitrarily in proceeding with the inquiry without enabling the petitioner to have the services of another Defence Assistant. This infirmity by itself is sufficient, in our opinion, having regard to the circumstances of the case, to vitiate the entire inquiry. Shri Charya is also right in pointing out that so far as the charges 2 and 3 are concerned, even on the materials placed before the Inquiry Officer, it is impossible to sustain the findings of the Inquiry Officer. The charges 2 and 3 pertain to the conduct of the petitioner in another inquiry. It is stated that he did not depose fully before that inquiry and that he behaved in a derogatory manner to the

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Inquiry Officer. In the report of the Inquiry Officer in this case, he has stated that no evidence has been produced by the department in support of these charges except the note of the Inquiry Officer. After noticing all this, the Inquiry Officer simply states that the charges are partly proved. He does not say which part of the charge has been proved and which part of the charge has not been proved. The finding on the face of it is vague and, in our opinion, is also perverse. In the light of our above finding, it is obvious that the inquiry is vitiated and the orders of the disciplinary authority and the appellate authority are liable to be quashed. As the proper and satisfactory inquiry has not been held and the petitioner has been denied Defence Assistant, Shri Verma submitted that this is a case in which we should direct proper inquiry being held after providing the necessary Defence Assistant to the petitioner. But having regard to the circumstances of the case, we are not inclined to take the view that the just course to be adopted is not to continue the disciplinary inquiry at this stage but to dispose of the entire matter with just and equitable directions. The penalty was imposed on the petitioner on 11.11.1987 and nearly seven years elapsed by now. If the further inquiry is to be held, it is obvious that it would entail quite some time and if the decision is adverse may lead to further litigation. The petitioner, we are informed, has ~~left~~ less than $3\frac{1}{2}$ years of service. Having regard to these circumstances and the nature of the allegations levelled against the petitioner, we consider it just and proper to dispose of the ✓ case with the following directions:

1. The order of the disciplinary authority, Annexure P-I, dated 11.11.1987 imposing the penalty of compulsory retirement and the order of the appellate authority affirming the same dated 29.9.1988 are hereby quashed.
2. The respondents shall reinstate the petitioner in service in the post he held before the imposition of the penalty within a period of three months from the date of receipt of this order.
3. The petitioner shall not be entitled to difference in the arrears of the emoluments flowing from the quashing of the impugned orders.
4. The period from the date of imposition of the ^{reinstatement} penalty till the date of/ shall be treated as on duty for the purpose of awarding notional increments to the petitioner. On reinstatement, the petitioner shall be fixed in the pay which he would have got had he not been inflicted with the punishment though he would not be entitled to the difference in emoluments as directed earlier.
5. The promotions of the juniors, if any, which have taken place during the interregnum shall not be disturbed.
6. If any of the juniors have been promoted during the interregnum, the case of the petitioner shall be considered for promotion in the first available vacancy from this date onwards and if he is found fit and suitable accorded promotion to the next higher grade.
7. The petitioner shall not be liable to refund /the pensionary benefits such as gratuity, commutation of pension as also leave encashment which he has received from the date of imposition of the penalty. The same shall be adjusted on ^{immediately}

his retirement on superannuation.

8. The respondents shall not claim any interest on the said amount and the only actual amount paid shall be deducted. No directions are called for so far as withdrawal of Provident Fund is concerned.
9. Let this order be communicated to the respondents **forthwith** for compliance within a period of three months from the date of receipt of a copy of this order.

P. T. Thiruvengadam

(P.T. Thiruvengadam)
Member(A)

V. S. Malimath

(V.S. Malimath)
Chairman

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