

In the Central Administrative Tribunal
Principal Bench: New Delhi

1. OA No.2041/89

Date of decision: 13.01.1992.

Shri Y.M. Thakur

...Applicant

Versus

C.S.I.R. & Others

...Respondents

2. OA No.2021/89

Shri S.K. Rahamtullah

...Applicant

Versus

C.S.I.R. & Others

...Respondents

Coram:-

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman(J)
The Hon'ble Mr. I.K. Rasgotra, Member(A)

For the applicants

Shri K.K. Rai, Counsel.

For the respondents

Shri V.K. Rao, Counsel.

Judgement(Oral)
(Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman(J))

The judgement in this O.A. No.2041/89 shall also govern the disposal of OA No.2021/89. The applicants in both the cases were subjected to a departmental enquiry under the provisions of Rule-14 of the CCS (CCA) Rules. An Enquiry Officer was appointed and he submitted his report to the disciplinary authority. The disciplinary authority imposed a punishment of removal from service. On being aggrieved by this order of the disciplinary authority the applicants preferred an appeal to the appellate authority, who set aside the order of removal from service and reduced it to minor penalty of withholding of two increments in their present scale of pay for a period of two years without cumulative effect. This penalty on applicant Shri Rahamtullah was imposed till his retirement from service. Both the applicants were aggrieved by the orders of the appellate authority and they have challenged this order before us in these

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Original Applications, filed under Section 19 of the Administrative Tribunals Act, 1985. The learned counsel for the applicants Shri K.K. Rai drew our attention to the voluminous records of these files and contended that the Enquiry Officer when he submitted his report to the disciplinary authority, the disciplinary authority did not agree with some of the findings of the Enquiry Officer and proceeded to impose the penalty. His contention is that this step of the disciplinary authority was contrary to law and also contrary to the principles of natural justice because the recommendations which were in favour of the applicants were being deferred to by the disciplinary authority and hence it was incumbent upon the disciplinary authority to issue a show cause notice to the applicants and also afford them an opportunity of being heard. The learned counsel for the respondents could not show us from the records as to whether the disciplinary authority issued any such notice or not. The only document on which he has drawn our attention was the voluminous desertion of show cause notice. We place our reliance on the principles laid down by the Apex Court in the case of Narain Misra vs. State of Orissa (1969 (3) SLR SC 657) wherein it has been observed by the Apex Court:-
"Now if the Conservator of Forests intended taking the charges on which he was acquitted into account, it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words, the Conservator of Forests used against him the charges of which he was acquitted without warning him

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that he was going to use them. This is against all principles of fair play and natural justice. If the Conservator of the Forests wanted to use them, he should have apprised him of his own attitude and given him an adequate opportunity. Since that opportunity was not given, the order of the Conservator of Forests modified by the State Government cannot be upheld. We accordingly set aside the order and remit the case to the Conservator of Forests for dealing with it in accordance with law." (Emphasis supplied)

2. The contention of the learned counsel for the respondents is that this point was not raised by the applicants in the memorandum of appeal they filed before the appellate authority. This contention of the learned counsel for the respondents deserves out right rejection. The point of law is not raised before the appellate authority, it is still incumbent upon the appellate authority go examine the case closely and find out as to whether the principles of natural justice were followed or not by the disciplinary authority.

3. We are, therefore, of the view that the appellate authority has not applied its mind to this aspect of the matter. We, therefore, quash the order of the appellate authority and remit the case to the appellate authority for passing an order according to law. However, in the interest of justice we also allow the applicants to file within a period of 15 days from the communication of this order a fresh memorandum of appeal, raising therein all these grounds which he has not raised in the memorandum of appeal, which strongly have roots in the principles of natural justice. The appellate

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authority on receipt of these grounds of appeal shall proceed to decide the appeal in accordance with law, after affording an opportunity to the applicants for being heard within a period of three months from the date of filing of said appeal. These O.As thus stand finally disposed of, with no order as to costs.

4. We make it clear that if the applicants are still aggrieved by the orders of the appellate authority all these grounds which they have taken in these O.As shall remain open to them. We make it further clear that the orders of the disciplinary authority shall remain in abeyance till the appeal is finally disposed of.

(I.K. RASGOTRA)
MEMBER(A)

(RAM PAL SINGH)
VICE-CHAIRMAN(J)

*True copy
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