

4

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No. 268/1989.

Date of decision: November 23, 1990.

Shri Patrick Xess

...

Applicant.

Vs.

Union of India & Ors.

...

Respondents.

CORAM

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

HON'BLE MR. I.K. RASGOTRA, MEMBER (A).

For the applicant

...

Shri B.S. Mainee,
counsel.

For the respondents

...

Shri P.S. Mahendru,
counsel.

(Judgment of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji, Chairman)

1

This Application has been filed by Shri Patrick Xess praying for quashing and setting aside of the impugned order dated 2.12.1988 (Annexure A-1) and dated 19.1.1989 (Annexure A-2 to the Application). The disciplinary authority agreed with the finding of the Enquiry Officer and held the applicant guilty of the charges levelled against him and imposed upon ^{him} the penalty of reduction to the lowest grade of Goods Guard i.e. 1200-2040(RS) from 1400-2600 (RS) Mail Guard and the pay was fixed at Rs.1200/- in the scale of Rs.1200-2040 until he was found fit by the competent authority to be restored to the higher grade.

We need not go into the various points raised in the O.A. except one which is contained in the paragraph 4.24 of the Application and reads as follows:

ad

" That the Divl. Operating Supdt. did not furnish a copy of the Enquiry report to the applicant and did not invite his comments before considering the case and imposing a penalty on the applicant."

The reply of the respondents is contained in paragraph 4.24 of the written statement which reads as follows:


"Para 4.24 is not admitted as correct. A copy of enquiry proceedings was used to be given to the applicant at the close of each sitting. Further, the copy of the enquiry report was supplied to him along with letter dated 2nd December, 1988."


It is evident from the above that the copy of the inquiry report was not given to the applicant to make representation before the disciplinary authority passed the order inflicting punishment. Handing over of the copy of the enquiry report along with the punishment order is contrary to the law laid down in the Full Bench decision of the Central Administrative Tribunal, New Bombay Bench in the case of PREMNATH K. SHARMA Vs. UNION OF INDIA & ORS. (TA No.2 of 1986) decided on 6.11.1987. The Full Bench held:

" ..we hold that the findings of the Disciplinary Authority are bad in law because the applicant was not given a copy of report of the Enquiry Officer and given an opportunity of making his representation before arriving at the finding."

We have heard learned counsel for the applicant Shri B.S. Mainee and Shri P.S. Mahendru for the respondents. The latter urged that the applicant was being supplied copies of the enquiry proceedings day by day and he could have no grievance. The point is not that he was supplied copies of the day to day proceedings but what was necessary is that he should have been given a copy of the enquiry officer's report so as to enable him to file an effective representation against the findings of the enquiry officer. This has not been done. Consequently, the order issued by the disciplinary authority dated 2.12.1988 (Annexure A-1) and order dated 19.1.1989 passed by the appellate authority (Annexure A-2) are liable to be struck down.

The applicant has also prayed for a direction to the respondents to reinstate him as Guard Gr. 'A' with consequential benefits. This prayer has also to be granted since the orders passed by the disciplinary authority as well as by the appellate authority are being struck down. We, therefore, set aside the impugned orders dated 2.12.1988 (Annexure A-1) and dated 19.1.1989 (Annexure A-2) and further direct the respondents to reinstate the applicant as Guard Gr. A and pay him the consequential monetary benefits. We further order that the respondents will be at liberty to start the proceedings afresh. The O.A. is accordingly allowed. There will be no order as to costs.


(I.K. RASGOTRA)
MEMBER (A)
23.11.1990.


(AMITAV BANERJI)
CHAIRMAN
23.11.1990.