

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 953/88
T.A. No.

199

DATE OF DECISION 1st June 1993

Shri M.K.Gupta **Petitioner**

Shri V.V.Bagga **Advocate for the Petitioner(s)**

Versus

Union of India & Ors. **Respondent**

Shri P.P.Khurana. **Advocate for the Respondent(s)**

CORAM

The Hon'ble Mr. N.V.Krishnan, Vice Chairman (A)

The Hon'ble Mr. B.S.Begde, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT (ORAL)

(Hon'ble Shri N.V.Krishnan, Vice Chairman (A))

The applicant was working as a lower division clerk in the Department of Statistics, Ministry of Planning under respondent No.3. A departmental enquiry against him was initiated by a memorandum dated 28-4-1981 (An.I) and not on 28-4-87 as wrongly typed. The Enquiry Officer appointed to enquire into the charges sent his report (An.II) dated 27-7-85 exonerating the applicant of the charges and held that the applicant was not guilty of any of the charges.

2. However, the Disciplinary Authority, namely the Director General, Central Statistical Organisation, respondent No.2 disagreed with the findings of the Enquiry Officer and passed an order on 9-11-1987 (A.IV) holding the applicant guilty of the charges and accordingly, he imposed on him the penalty of compulsory retirement. The copy of the enquiry report is stated

to have been received by the applicant alongwith this impugned order (An.A-IV). An appeal was preferred before the Appellate Authority who dismissed it by the order dated 7-7-88 which has also been marked as An.A-1. In these circumstances, the applicant has challenged the orders of the Disciplinary and Appellate Authorities.

3. When the matter came for final hearing today, we noticed that the procedure followed by the Disciplinary Authority is not apparently in accordance with law and therefore, we requested the learned counsel for respondents to argue why the Disciplinary Authority's order should not be set aside. The learned counsel for the respondents was fair enough to admit that in such circumstance, the Disciplinary Authority was bound, in law, to at least inform the government servant that he proposed to disagree with the finding of Enquiry Officer and give an opportunity to the delinquent to make any representation as to why the findings given in the report should be accepted.

4. The law on this subject has been decided long back by the Supreme Court in the case of Narayan Misra vs. State of Orissa 1969 3LR 657 SC. Para 6 of that judgement is reproduced below:-

"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 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. If the Conservator of Forests wants to take into account the other two charges, he shall give proper notice to the appellant intimating to him that those charges would also be considered and afford him an opportunity of explaining them."

(10)

5. In the circumstances mentioned above, we are satisfied that without giving the applicant an opportunity to make a representation, the Disciplinary Authority should not have passed the impugned order. The impugned order is therefore, illegal.

6. In the circumstances, we allow this application without going into the merits on other grounds and set aside the impugned order dated 9-11-1987 of the Disciplinary Authority and consequently the order of Appellate Authority dated 7-7-88 is also set aside. This order will not, however, prevent the Disciplinary Authority from continuing the proceedings, if he so desires, from the stage of his having received the report of the Enquiry Officer. A copy of the report has already been given to the applicant. In case the Disciplinary Authority decides to proceed further in the matter, he should inform the applicant accordingly within a period of three months from the date of receipt of this order and give an opportunity to the applicant to represent against his decision to disagree with the Enquiry Report and find him guilty and thereafter after considering the applicant's representation he may conclude the proceedings in accordance with law, within a reasonable time thereafter.

7. The learned counsel for the applicant submits that the applicant is around 55 of age at present and has still three years to serve before superannuation. In the circumstances, we direct that the applicant should be reinstated within one month from the date of receipt of this judgement. The period from the date of compulsory retirement to the date of reinstatement shall be dealt with in accordance with law.


(B.S. HEGDE)
Member (J)


16.6.88
(N.V. KRISHNAN)
Vice Chairman (A)