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In the Central Administrative Tribunal  
Principal Bench, New Delhi

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Regn. No. DA-1152/88

Date: 9.7.1993.

Shri Lakhpatt Singh<sup>4</sup> ..... Applicant

Versus

C.S.I.R. and Others ..... Respondents

For the Applicant ..... Shri B.B. Raval, Advocate

For the Respondents ..... Shri A.K. Sikri, Advocate

CORAM: Hon'ble Mr. I.K. Rasgotra, Administrative Member  
Hon'ble Mr. J.P. Sharma, Member (Judl.)

1. To be referred to the Reporters or not? *yes.*

(Judgement of the Bench delivered by Hon'ble  
Mr. J.P. Sharma, Member)

The applicant, after release from the Army as Short Service Commissioned Officer, Captain, on 20th July, 1975, joined as a Security Officer after due selection on 12th September, 1980 in the National Physical Laboratory (in short, 'NPL'). On 8th March, 1984, a charge-sheet memo. was served on him with the following charges:-

1. That on 3rd March, 1984, he was found missing without making alternative arrangements or informing Senior Administrative Officer (in short, Sr.A.O.).

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2. That on 4th March, 1984, the Applicant did not ensure that Guards performed their duties properly in spite of repeated instructions on the subject and as a consequence thereof, there was a theft of two newly acquired 10 H.P. mono-block pumps. The applicant submitted his reply on 12th March, 1984,

The applicant submitted his reply on 12th March, 1984, denying the charges levelled against him. Shri K.K. Mahajan was appointed Enquiry Officer and Shri H.M. Mathur, Administrative Officer, N.P.L., was appointed the Presenting Officer for the Administration. The Enquiry Officer submitted his report to the disciplinary authority who passed the order dated 10th June, 1987 imposing the penalty of compulsory retirement from service. Against the same, the applicant preferred an appeal which was rejected by the order dated 30.6.1988 by the Deputy Secretary (Vigilance), C.S.I.R. Aggrieved by the aforesaid orders, the applicant filed the present application on 9.6.1988, which was subsequently got amended and the amended application was filed on 8.9.1988. The applicant has prayed for the grant of the following reliefs:-

- (a) Quash the orders dated 8th March, 1984, issuing the memo. of charges and appointing the Enquiry Officer and Presenting Officer.
- (b) Quash the order dated 10.6.1987 passed by the disciplinary authority imposing the penalty of compulsory retirement on the applicant.

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(c) Quash the order dated 30th June, 1988

rejecting the appeal of the applicant; and

(d) declaring that the applicant is entitled to continue in service with all consequential benefits like arrears of pay, allowances, etc.

2. The facts of the case are that while the applicant was working as Security Officer in the N.P.L., he was found missing from duty on 3.3.1984 and it is alleged that he did not make any alternative arrangement, nor did he inform the Sr. A.O. A fire broke out on that day in the N.P.L. campus and the same had to be tackled by the residents of the colony in the absence of the Security Officer. On the next day, i.e., 4th March, 1984, it is alleged that the applicant had not ensured that the Guards on duty performed their beat duty properly. In spite of repeated instructions, the Guards were found to be sticking to the Main Gate and Gate No.3 and points only, with the result, two newly acquired monoblock Beacon pumps costing about Rs.14,000/- were stolen, causing loss to the Council.

3. The case of the applicant is that 3rd and 4th March, 1984 were non-working days, being Saturday and Sunday, respectively. It is the case of the applicant that he had gone for some personal work temporarily for a few hours on 3rd March, 1984 and the Sr. A.O. was not present in the

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premises in the campus. He has further stated that he had made due alternative arrangement, that he had not committed any dereliction of duty <sup>by</sup> ~~only~~ for being away out of his house for a couple of hours on a holiday. There is an office order No.189 dated 2nd November, 1982 which contains standing orders of the Director, N.P.L. regarding functioning of various services/Units of the Laboratory (Exhibit D-23). For the Security Unit, it has been clearly stated that "In the absence of Security Officer, the next seniormost man, i.e., Watch and Ward Assistant Armed Guard will look after the duties of the Security Officer". Shri Mir Singh, Head Armed Guard, was duly informed about the absence of the applicant from his house for 2-3 hours on 3rd March, 1984 because of urgent work. The F.I.R. about the theft of monoblock pumps was lodged with the Police Station. The Police officers wanted to enquire from the Contractor's men about the alleged theft as they were working on 4th March, 1984 in the Pump House. On 7th March, 1984, at about lunch time, the Contractors men came to the N.P.L. and the applicant asked Security Guard, Shri Ram Singh, to detain those people and went to Police Post, Pusa to inform the Police Officers about the presence of the Contractor's men, so that the Police Officers could make an investigation from

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these people. However, Shri L.M. Saxena, Administrative Officer, asked the Security Guard on telephone to allow the Contractor's men to go. The applicant lodged a protest with the Director, N.P.L. It is because of this annoyance that the false memo. of charges has <sup>allegedly</sup> been framed and served on him. In the meantime, One-Man Fact Finding Enquiry presided over by Dr. S.K. Lahiri, was constituted to go into the theft of the aforesaid mono-block pumps. Dr. Lahiri submitted his report on 18.5.1984 along with four tapes which contained the statements made by various persons. The One-Man Committee also opined, "It was tactically impossible to clearly place the responsibility of theft on any individual or group."

4. The applicant has challenged the findings of the Enquiry Officer, Shri K.K. Mahajan, on a number of grounds, even alleging bias and violation of principles of natural justice in conducting the enquiry against him. The applicant had also moved for the change of the Enquiry Officer upto the highest level, but without success. The applicant also has the grievance that without waiting for his reply to the memo. of charges, simultaneously with the issue of the charge-sheet memo. on 8.3.1984, the Enquiry Officer and the Presenting Officer were ~~simultaneously~~ appointed. The Enquiry Officer has also not furnished the taped statement of the witnesses

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recorded by One-Man Committee of Dr. Lahiri. The grievance of the applicant is also that the statements of some of the prosecution witnesses have been taken in his absence and his request for adjourning the proceedings on that day, which was duly supported by a medical certificate, was rejected without any reason. It is also urged that there is no evidence against the applicant and the conclusions drawn by the Enquiry Officer are only based on surmises and conjectures and the finding is totally perverse. The disciplinary authority has also not given a reasoned order and the appellate authority too, while rejecting the appeal, did not apply its mind to the various grounds taken in the memo. of appeal against the order of punishment. In view of the above, it is said that the enquiry proceedings are vitiated, being in gross violation of the principles of natural justice.

5. The respondents, in their reply, have taken the stand that the disciplinary authority as well as the appellate authority have applied their mind in passing the impugned orders. Regarding the issue of charge-sheet against the applicant simultaneously with the appointment of the Enquiry Officer and the Presenting Officer, it is averred that it is a technical error which has not caused any bias or prejudice to the defence of the applicant. As far as non-supply of



certain documents is concerned, the Enquiry Officer has made adequate efforts in making available all the relevant documents relied upon by either party. <sup>Regarding</sup> the non-supply of the statements (tape-records) taken in the preliminary enquiry by Dr. Lahiri, the respondents urged that Dr. Lahiri's report did not form the basis of arriving at the conclusion by the Enquiry Officer. It was only on the insistence of the applicant that One-Man Committee Report of Dr. Lahiri was furnished to the delinquent. The enquiry report is based on the oral and documentary evidence produced before the Enquiry Officer. The applicant was given adequate opportunity to produce his defence and, in fact, he had produced a number of defence witnesses which have been thoroughly appreciated in the report by the Enquiry Officer. The applicant misconducted himself by remaining missing on 3rd March, 1984, from his residence without making an alternative arrangement or informing the Sr. A.O. As such, he failed to discharge his duty properly in spite of the clear instructions in the O.M. dated 31.1.1984 (exhibit P.3). As regards charge No.2, the Enquiry Officer came to the finding that there was preponderance of probability that the Guards did not perform the duty properly and they stuck to the main gate and Gate No.3 and points only in spite of the instructions given to them. The theft of Monoblock Pumps has been established and the theft occurred due to non-surveillance by the security guards who did not keep a vigil by taking round of the beats.

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Therefore, it is stated that the application is devoid of merit and deserves to be dismissed.

6. The applicant has also filed rejoinder to the counter-affidavit filed by the respondents and reiterated the averments made in the original application. It is further stated that the Enquiry Officer did not give any categorical finding on both the charges No. 1 and 2 that the same have been proved.

7. We have heard the learned counsel for both the parties at length and have perused the records. It is not disputed that the charge-sheet was issued on 8th March, 1984 under Rule 14 of the C.C.S. (CCA) Rules, 1965. After the issue of the charge-sheet, the disciplinary authority has to wait for a period of ten days during which time the delinquent has to file his defence and thereafter, pass an order appointing the Enquiry Officer and the Presenting Officer. This goes to show that without <sup>waiting</sup> ~~for~~ <sup>reply,</sup> the defence ~~the~~ Enquiry Officer has been appointed, which is in clear violation of Rule 14(5) of the CCS(CCA) Rules, 1965. However, on this account, the whole of the enquiry is not vitiated. The applicant participated in the enquiry actively and seriously and there is nothing to show that he has been prejudiced <sup>or</sup> in any way, ~~did~~ <sup>or</sup> did not get a fair trial by this irregularity of the issue of charge-sheet along with the order of appointment of the Enquiry Officer and the Presenting Officer. Though the learned counsel for the applicant had argued ad nauseum, he could not make out any case of any unfairness caused to the applicant by the



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aforesaid order of the disciplinary authority.

8. Regarding the non-supply of certain documents, particularly the statement of witnesses, tape-recorded by One-Man Enquiry Committee of Dr. Lahiri, the applicant cannot make any dent in the due procedure adopted by the Enquiry Officer according to rules. In fact, those statements were not tendered into the evidence and more so, the One-Man Enquiry Committee was appointed after the initiation of the disciplinary proceedings by the serving of the charge-sheet on the applicant on 8.3.1984. What was the purpose of the One-Man Committee Report, is not explicit but the report only goes to show that it was with regard to the theft of the Monoblock Pumps and regarding their payment. The One-Man Committee Report has been filed by the applicant himself (Annexure D-21). The said report opined that the pumps were indeed stolen and removed from the N.P.L. campus. It has also been held in that report that it was practically impossible to clearly place the responsibility of the theft on any individual or group. Thus, this One-Man Committee Report cannot be said to be the basis of the Enquiry Officer's report, though it finds a mention in the body of the report. The other documents which the applicant got summoned from the Administration, were the leave applications which he submitted from 16.1.1984 to 21.1.1984 and even the leave applications were not traceable. However, the applicant has filed secondary evidence and a photocopy of the Peon-book to establish the stand taken by him that

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when he was on leave, he <sup>had</sup> <sup>for</sup> ~~applied~~ and the same was sanctioned and, in fact, that position cannot be disputed. When the secondary evidence produced by the applicant has been admitted and discussed, if the originals were not produced, it cannot be said to be a case where the applicant had been prejudiced by non-supply of certain documents. Thus, this contention of the learned counsel for the applicant also is a damp squib.

9. It is contended by the learned counsel for the applicant that the charges levelled are vague. A perusal of the charges goes to show that charge No.1 relates to missing of the applicant from his residence on 3.3.1984 without making any alternative arrangement or informing the Sr. A.O. A fire broke out on 3.3.1984 in the N.P.L. Campus and the same had to be tackled by the residents of the colony in the absence of the Security Officer. In the report of the Enquiry Officer dated 17.6.1986, he has concluded as follows:-

- (a) The charged officer was not present on the Campus at the time of fire accident on 3.3.84.
- (b) The charged officer did not inform the S.A.O. about his absence.
- (c) The charged officer, perhaps, made some arrangement during the absence, but that probably was not adequate.

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The learned counsel for the applicant argued and rightly so, that there is no categorical positive finding that the charge No.1 has been proved. It is admitted to the parties that 3rd and 4th March, 1984 were holidays in the N.P.L. A Security Officer also is entitled to avail of these holidays, like any other employee of the N.P.L. The applicant did admit that for a couple of hours he was away from his residence on 3rd March, 1984, which was a Saturday. It is not expected that on all the 24 hours on a holiday, the applicant had to detain himself to meet an extraordinary eventuality, nor does the Enquiry Officer refer to such administrative orders or instructions in his report. The only document referred to by the Enquiry Officer is the O.M. dated 31.1.1984 (p.72 of the paper-book). This document is an O.M. issued by the Sr.A.O. to the applicant, informing him that he had not been attending his duties without proper sanction of leave or prior permission, particularly when he had been staying within the compound. This is not expected of a responsible officer. He is advised not to proceed on leave without getting it sanctioned in advance. The understanding given by this O.M. is only confined to sanction of leave and that can be on a working day, when the N.P.L. is functioning. It does not embrace holidays or non-working days which are closed days in the N.P.L. This O.M., therefore, cannot



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tie down the applicant to his residence even on holidays for all the 24 hours. Of course, if he goes out of station, then he has to inform the Sr.A.O., or as the case may be. The applicant has admitted that he had been away for a couple of hours in the evening of 3rd March, 1984, but he had made alternative arrangements. He has also taken the stand that the Sr. A.O. was not available in the N.P.L., or the Campus at that time on that day and so he could not inform him. The Sr.A.O. himself, as a defence witness, confirmed the fact of his not being present till 5.00 p.m. on 3rd March, 1984 at his residence in the Campus, or in the N.P.L. It may be recalled that the Sr.A.O. was the Presenting Officer for the Administration. Thus, the conclusions 1 and 2 drawn on charge No.1 by the Enquiry Officer, do not make out a case of any misconduct against the applicant. Here, it may be emphasised that the manner in which the Enquiry Officer has drawn these conclusions by appreciating evidence, is not being interfered with. It is also not re-appreciation of the evidence done by the Enquiry Officer. Regarding the conclusion (c) that the charged officer made certain arrangements but they were not adequate, is not a categorical finding because the Enquiry Officer himself has used the words "perhaps", and "probably". It appears that because of vacillating mind, he did not come to any firm <sup>conclusion</sup> regarding not making arrangements to the ~~xxxxx~~ undisclosed satisfaction of the Enquiry Officer. In

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fact, it is because of some fire that broke out which was in the background which made the Enquiry Officer to use the term 'probably not adequate'. The Enquiry Officer, however, has been diffident in his own conclusions. Just in the last but one para. of the conclusion of charge No.1 in his Enquiry Report, he has observed, "As far as the role of shift incharge is concerned, from which statement it appears that, perhaps, he did to the best of ability, but the shift incharge, Shri Mir Singh, appears to be semi-literate kind of person." These observations are only surmises and conjectures. When the finding is that the delinquent officer made some arrangement in his absence and Shri Mir Singh, the senior-most Guard, was incharge of the affairs, then the charged officer cannot be condemned for inadequacy of arrangements. The delinquent has referred to an order of 2nd November, 1982 (exhibit 23) which shows that the Administrative Officer, by the office order No.189 for the Security Section has laid down that in the absence of Security Officer, the next senior-most man, i.e., Watch & Ward Assistant, or Armed Guard, will look after the duties of the Security Officer. If such a senior-most man appears to be semi-literate, then it is not the fault of the Security Officer, but a positive omission in the order No.189 dated 2nd Nov., 1982. In view of the above facts, it is not necessary to go

into further details on the conclusions arrived at by the Enquiry Officer on charge No.1. These conclusions appear to be totally perverse and not based on the direct evidence on record and rather give an impression that the Enquiry Officer injected his own opinion in drawing the conclusions. When once the Enquiry Officer has come to a conclusion that the charged officer had made some arrangements <sup>to cover</sup> his absence, no reasonable man can arrive at a finding that his absence on 3.3.1984 for a couple of hours from his residence, amounted to misconduct.

10. The Enquiry Officer has trisected the charge No.2 as follows:-

- (a) Were the pumps received in the N.P.L. stolen from the N.P.L.?
- (b) Did the charged officer ensure that the Guards on duty performed their beat duties properly?
- (c) Were the Guards found to be sticking to the Main Gate and Gate No.3 and points only in spite of the repeated instructions?

It may be recalled that charge No.2 against the applicant is that while functioning as Security Officer on 4.3.1984, he had not ensured that the Guards on duty performed their beat duties properly. In spite of the repeated instructions, the Guards were found to be sticking to the Main Gate and Gate No.3 and points only, with the result two newly acquired 10 H.P. Monoblock Becon Pumps costing about Rs.14,000/-, were pilfered, causing loss to the council. The defence



taken by the applicant is that these pumps were never installed at the foundation in the N.P.L. Campus and further that the nursery area where these pumps are said to have been installed, was out of bounds and this area was having a fencing and iron gate with a Mali, keeping it locked and he used to work there. The Enquiry Officer gave the finding that the pumps were received in the N.P.L. and stolen from there. He further gave a finding that there is preponderance of probability that the Guards on duty did not perform their duties properly. In arriving at this finding, the Enquiry Officer has referred to the order dated 16.2.1984 (Exhibit G-22). This order shows that the duties of the Security Guards should be placed on 3-8 hours' shifts at the following points in the Laboratory:-

- (i) Main Gate;
- (ii) Main building;
- (iii) Gate No.3;
- (iv) HEPP and GTV
- (v) Store Yard;
- (vi) Shift Incharge; and
- (vii) Director's Bungalow.

Further, it is laid down that the Security Guards, except on the two Gates, should keep on moving from one point to another in order to have effective security from security point of view. The deployment of staff on any additional point, will not be accepted. This order was issued by the

Sr. A.O., who has been examined as DW1 in this case. In his statement, he has not referred to any such fact which may show that the orders which were issued by him in February, 1984, have deliberately been not followed. No other prosecution witness has given any statement that the Guards were not attending to their work in accordance with the instructions. The Enquiry Officer also observed, "It is difficult to conclude unambiguously from above, whether the charged officer ensured that the Guards on duty performed their duties properly. It would, indeed, be difficult to find such a witness for the prosecution." After this observation, the conclusion by the Enquiry Officer that there is preponderance of probability that the Guards on duty did not perform their duties properly, is a perverse finding. What motivated the Enquiry Officer is that the beat interval varied 1-1½ hours, ~~which~~ is rather too long a period for this small distance (perhaps around 1 km and not 2.5 kms, as claimed by Shri Ram Singh, DW8). There was no material available with the Enquiry Officer and he has injected his own opinion. The Enquiry Officer has only treated the 'beat' as a normal walking distance, but it is not so. The patrolling party has to be vigilant and it cannot be said that they have only to traverse the distance between points. It is emphasised that the evidence is not being re-appreciated, but it is only the finding of the

Enquiry Officer which is totally perverse and could not be reached by a reasonable man.

11. Regarding the Guards found to be sticking to the Main Gate and Gate No.3 and points only, the Enquiry Officer has observed that there was no repeated instructions and only once the instructions were given. He has based his further observation that the Guards were sticking to the Main Gate and Gate No.3 and points only, only on surmises and conjectures as evidenced by the following last but one para of the Report:-

"Security Guards, during the oral enquiry, have stated that they were not sticking to points and were moving. But the long interval for the beats (1-1½ hours, as mentioned earlier) within between rest of 10-15 minutes, indicate that probably the beat was too slow or not there at all."

When once the Enquiry Officer has observed in the report that no prosecution witness was available to substantiate the fact that the Guards were not taking rounds of the beat, to arrive at a finding unmindful of the evidence on the point, would make the conclusion totally arbitrary and unjust. The breaking out of the fire on 3rd March, 1984 and the pilferage of the Monoblock Pumps on 4th March, 84, is a coincidence and the Sr. A.O. definitely would have exercised the administrative control properly by issuing the necessary instructions. The Enquiry Officer, however,



stated that the instructions issued only once on 31.1.1984 and not repeatedly.

12. Be that as it may, the Enquiry Officer has not given any finding that the charges served through the Memo. of Chargesheet stand proved. He has left everything for the consideration of the disciplinary authority and, in fact, the whole of the enquiry report appears to be a narration of statements given by the witnesses and here and there, certain expression of opinion by the Enquiry Officer from his own knowledge, which cannot be said to be fair, just and equitable. When there is no finding of the guilt ~~of the guilt~~ of the delinquent, the disciplinary authority has to exercise proper introspection and scrutiny of the evidence and the report rather than cursorily pass an order for imposition of punishment. The order by the disciplinary authority dated 10.6.1987 observed that the "Enquiry Officer.....has come to the conclusion that the articles of charge framed against Shri Lakhpat Singh have been proved.....", is a statement not supported by the report itself. He has not touched the vital points and the issues which were involved in the evidence and the report of the Enquiry Officer. This clearly shows non-application of mind leading to issue of a routine order.

13. In the present case, it was all the more necessary for the disciplinary authority to effectively apply mind to the findings of the Enquiry Officer, as it was a case where the applicant has alleged bias and prejudice against the Enquiry Officer and at the initial stage of the proceedings of the departmental enquiry, he prayed for the change of the Enquiry Officer. His prayer was not accepted even though he pressed emphatically upto the last administrative authority, i.e., the Director General of C.S.I.R. We have in our mind the authority of the Hon'ble Supreme Court with the decision of the Hon'ble Supreme Court in the case of R.P. Bhatt Vs. Union of India reported in A.I.R. 1986 S.C. 1040. In that case, the Hon'ble Supreme Court referred to the case of Som Dutt Dutta Vs. Union of India (AIR 1969 S.C. 414) that apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implication, there is no legal obligation that the statutory Tribunal should give reasons for its decision. There is also no general principle or any rule of natural justice that a statutory Tribunal should always and in every case give reasons in support of a decision. This decision has been approved by the Hon'ble Supreme Court in the case of S.N. Mukherji Vs. Union of India, Judgement Today, 1990, Vol.3, S.C. 630. Thus, it is not obligatory on the disciplinary authority to give its own reasons while agreeing with the

findings of the Enquiry Officer. However, in the present case, there is no clear finding of guilt given by the Enquiry Officer as referred to in the earlier part of the judgement.

14. The applicant has also preferred an appeal against the order of the disciplinary authority and the disciplinary authority too has passed ~~an~~ a very brief and succinct order without considering the various grounds taken in the Memo. of appeal by the applicant. The learned counsel for the respondents has almost conceded ~~on~~ this aspect of the matter. The order dated 13.6.1988 passed in appeal and the relevant part of it is reproduced below:-

"I find that the delinquent official has pointed out certain infirmities in the procedure like (i) appointment of Inquiry Officer and Presenting Officer simultaneously with the issue of chargesheet, (ii) investigating officer functioning as Presenting Officer, and (iii) notifying change of Presenting Officer by the Section Officer.

There is, therefore, some substance inasmuch as some infirmities in the procedure have been committed. However, none of these infirmities are of such a nature which have prejudiced the defence of the appellant in any material way. He was afforded full opportunity to cross examine witnesses and to present his defence witnesses. One of the main charges viz. he was absent without leave when a fire broke out, was not denied by him. This is a grave negligence of duty for a Security Officer.

The findings of the Inquiry Officer accepted by the Disciplinary Authority are based on the evidence on record.

I, therefore, agree with the findings of the Disciplinary Authority and consider that the penalty of the compulsory retirement imposed on Shri Lakhpat Singh is adequate and justified. Accordingly, I uphold the same."



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A perusal of the above order goes to show that the Appellate Authority had in his mind that the applicant had to obtain leave even on the holidays, i.e., Saturday, Sunday, etc. However, it is not so. The observation in the order is, "He was absent without leave when a fire broke out, was not denied by him". In fact, he <sup>have</sup> did not to obtain leave. He has to only inform the Sr. A.O. for his temporary absence from his quarter after making alternative arrangement. It has come in evidence that the Sr. A.O. was not available at his residence in the N.P.L. This fact is admitted by the Sr. A.O. himself. The Enquiry Officer, in his report, has come to the conclusion that the applicant did make alternative arrangement for his short absence on the closed day, when he temporarily went out for a couple of hours. The Appellate Authority, therefore, has to consider the contention of the applicant which he has taken in the grounds of appeal. This has not been done in the case.

15. The Supreme Court, after considering the earlier decision in the case of Union of India Vs. Tulsi Ram Patel (1985. (3) SCC 398) observed in para. 24 of its judgement in the case of Ram Chandra Vs. UOI, 1986(2) S.L.J. 249 S.C. as follows:-

"It is not necessary for our purposes to go into the vexed question whether a post-decisional hearing is a substitute of the denial of a right of hearing at the initial stage or the observance of the rules of natural justice since the majority in Tulsi Ram Patel's case (supra), unequivocally lays down that the only stage at which a Government servant gets a reasonable opportunity of showing cause against the action proposed to be taken in

regard to him, i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal."

16. The Full Bench judgement in the case of Shri Shankar K. Damla Vs. Union of India & Ors. reported in Full Bench Judgements, C.A.T. 1986-89, Vol.I, 269, had the occasion to consider about the contents of the appellate order and observed that the appellate authority must pass speaking orders. The Full Bench has also considered the case of Ram Chander Vs. Union of India, 1986 (2) SLJ 249 S.C., where the Hon'ble Supreme Court held that the appellate order was not sustainable as no reasonable opportunity was given to the appellant of being heard. Besides, the appellate order was not a speaking order. It, therefore, cannot be disputed that in spite of the defect in the Enquiry Officer's report, neither the disciplinary authority in the impugned punishment order, nor the appellate authority in the order dated 30.6.1988, has considered the various aspects which came in the evidence before the Enquiry Officer. The Enquiry Officer did not return a finding of guilt of the applicant and only based his conclusion which

does not, in any way, establish the fact that the charges framed against the applicant have been held to be proved. It is needless to repeat the various points already discussed regarding the defects in the findings of the Enquiry Officer's report. However, it may be emphasised even at the stake of repetition that the Enquiry Officer has only drawn conclusion which may be also taken in favour of the applicant and go a long way in exonerating him from the aforesaid charge Nos.1 and 2. In view of the above facts, the order of the disciplinary authority as well as the appellate authority cannot be sustained.

17. The finding is said to be perverse when it is arrived at without considering the material intrinsic value of the evidence and no reasonable man can arrive at such a finding. The enquiring authority cannot import its own calculation on the basis of surmises and conjectures in arriving at a conclusion. He cannot draw inferences which are not supported by evidence, oral or documentary, adduced before him. In the case of Union of India Vs. S.C. Goel, A.I.R. 1964 S.C. 364, a similar case came before the Hon'ble Supreme Court where <sup>evidence</sup> ~~was~~ inadequate or almost no evidence and the Court ~~was~~ justified in interfering with the findings arrived at by the Enquiry Officer on the guilt of the delinquent. There is another decision of the C.A.T., Cuttack Bench, J.P. Sharma Vs. Union of India reported in (1987 (4) A.T.C. 176) on the same point where the vague

finding was given by the Enquiry Officer.

18. In view of the above discussions, we come to the conclusion that no misconduct has been established on the basis of the charges levelled against the applicant, and that the findings arrived at by the Enquiry Officer are vague and perverse. These findings, therefore, which are not supported by any reasoning in the orders of the disciplinary authority as well as the appellate authority, are liable to be quashed, with the result that the order passed by the punishment authority as well as by the appellate authority has to be quashed.

19. The learned counsel for the respondents has referred to the authority of Allahabad High Court in the case of U.P. Electricity Board, Lucknow Vs. State of U.P. and Others, where instead of reinstatement, an amount of Rs.1 lakh was awarded to respondent No.4. The contention of the learned counsel for the respondents is that since the passing of the impugned order, another incumbent has joined on the said post and so, the award of compensation to the applicant in the event of his success would meet the ends of justice. We are not inclined to accept this contention basically because the applicant has been compulsorily retired from service by the impugned order dated 10th June, 1987 on the basis of a departmental enquiry. The applicant had promptly filed the application before us to the knowledge of the respondents and it shall be unjust to deny the applicant the benefit of

the present adjudication if it goes in his favour. The amount of compensation cannot be calculated because the applicant has a number of years to serve. When the order of punishment passed by the disciplinary authority and upheld by the appellate authority is struck down, the applicant has a right to be restored to his position in service which he was holding at the time of his being charge-sheeted.

20. We have not considered the argument of the learned counsel for the applicant of non-supply of the Enquiry Officer's report before passing the order of punishment. Earlier, the Tribunal decided <sup>such</sup> a case on the short point of non-supply of the copy of the Enquiry Officer's report and the matter was remanded to the respondents for fresh decision. The Hon'ble Supreme Court struck down the order and directed the case to be decided on merits. The case of Ramzan Khan (1991, 16 A.T.C. 505) is prospective in operation from the date of its judgement, i.e., 23rd November, 1991. Though the matter has been referred to the Larger Bench by the Hon'ble Supreme Court, the law that holds good is that in the cases which have been closed earlier than the decision of Ramzan Khan's case, cannot be re-opened.

21. In view of the above facts and discussions, the present application is allowed. The impugned orders of

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June, 1987 and 30th June, 1988 are quashed and set aside with the direction to the respondents to reinstate the applicant on the post of Security Officer. The applicant shall also be entitled to back wages from the date of his removal from service to the date of his reinstatement if he satisfies the authorities concerned that during this period, he was not gainfully employed elsewhere. The applicant shall also be entitled to the benefit of continuity of service for the purposes of seniority and promotion.

22. The respondents to comply with this direction preferably within a period of two months from the date of communication of the copy of the order. There will be no order as to costs.

*J.P. Sharma*  
(J.P. Sharma)  
Member(J)

9.7.93.

*I.K. Rasgotra*  
(I.K. Rasgotra)  
Administrative Member

9/7/93