

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

DATE OF DECISION : 9.1.1991

O.A. NO.643/1986

SHRI J.P. TYAGI

...APPLICANT

VS.

CHIEF SECRETARY, DELHI ADMN. & ORS. ...RESPONDENTS

✓ O.A. NO.669/1986

SHRI L.N. SHARMA

...APPLICANT

VS.

CHIEF SECRETARY, DELHI ADMN., DELHI ...RESPONDENT

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

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANTS

...SHRI G.R. MATTA

FOR THE RESPONDENTS

...MRS. AVNISH AHLAWAT

1. Whether Reporters of local papers may be allowed to see the Judgement?

2. To be referred to the Reporter or not?

JUDGEMENT (ORAL)

(DELIVERED BY SHRI I.K. RASGOTRA, HON'BLE MEMBER (A))

Shri G.R.Matta, learned counsel for the applicant had completed his submissions in this case on 14.5.1991. Briefly, the points agitated by the learned counsel for the applicants were that the Chief Secretary, Delhi Administration is not the competent authority to impose major penalty viz. reducing the pay by one stage from Rs.1,000 to Rs.960 for 3 years without commulative effect in the case of the officers of DANICS Civil Service

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Grade-II and that the competent authority for imposing the penalty is the Union of India. The additional grounds taken by the learned counsel for the applicants related to the reliance placed by the Enquiry Officer on a preliminary enquiry conducted by the Vigilance Department and non supply of certain documents by the respondents to the Enquiry Officer. The case was adjourned to enable the learned counsel for the respondents to study/produce the records related to the enquiry report. The learned counsel for the applicant is not present today. We have heard Mrs. Avnish Ahlawat, counsel for the respondents in both the cases. The learned counsel pointed out that the applicants were appointed to DANICS Civil Service Grade-II in terms of Rule 25 (3) of DANICS Rules. The relevant rule is as under :-

"Notwithstanding anything contained in these rules, where appointment to a duty post is to be made purely as a local arrangement for a period not exceeding six months, such appointment may be made by the Administrator from persons who are included in the list prepared under sub-rule (4) of Rule 15, of Rule 24 or who are eligible for inclusion in such list."

It is also admitted by the applicants that they were appointed to the duty post of DANICS in Grade-II carrying the pay scale of Rs.650-1200 by the Administrator of the

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Union Territory of Delhi, i.e., Lieutenant Governor.

According to part-2 of the Schedule in the CCS (CCA) Rules, 1965, item-28, Joint Secretary, Ministry of Home Affairs is the appointing authority for regular appointment to DANICS, Grade-II. Once an officer is appointed to DANICS on regular basis, the disciplinary authority for imposition of all penalties is the Joint Secretary, Ministry of Home Affairs. In the present case, the applicants are substantive holders of Class-II (Gazetted) posts under Delhi Administration. In their case, the Chief Secretary is the competent authority for imposition of penalty under the CCS (CCA) Rules vide item 32(3) of the Schedule. The Chief Secretary, Delhi Administration, therefore, was competent to impose the penalty of stoppage of three increments without commulative effect as per the order dt. 13.11.1984. As far as the competency of the disciplinary authority to impose the penalty is concerned, we are inclined to agree with the learned counsel for the respondents. The question of quashing the impugned order within grant of competency does not arise. However, in the course of perusing the said order dt. 13.11.1984, we observe that

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as per para-8 that the copy of the enquiry report was supplied to the concerned officers along with the order imposing the penalty. They were thus deprived of the opportunity of making a representation to the disciplinary authority before it made up its mind to impose the penalty on them. In accordance with the Full Bench judgement in Prem Nath K.Sharma's case as confirmed in the case of Union of India Vs. Mohammed Ramzan Khan, reported in JT 1990(4) SC 456, it is necessary in the interest of justice and in accordance with the principles of natural justice to furnish a copy of the enquiry report to the delinquent official to enable him to make a representation to the disciplinary authority explaining his case before the disciplinary authority makes up its mind to impose the penalty. The order of imposing the penalty, therefore, is against the declared law by the Hon'ble Supreme Court and is, accordingly invalid. Ordinarily, we would have allowed the disciplinary authority after setting aside the impugned order, to give an opportunity to the delinquent official to make representation and to proceed further from that stage of the enquiry. We, however, find that Shri J.P.Tyagi, applicant in OA 643/86 was of 56 years of age on 11.8.1986 when he filed the OA. He would have thus retired from

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the service on superannuation. Shri L.N.Sharma, applicant in OA 669/86, on the other hand, retired from service on 28.2.1986 and thereafter filed the Original Application on 11.8.1986.

2. In the circumstances of the case, we set aside and quash the impugned orders of imposing the penalty on the delinquent officials vide Order No.F.7(28)/81-Vig./4883 dt. 13.11.1984 and Order No.F.7(28)/81-Vig./4893 dt. 13.11.1984 (Annexure A IV). The applicants shall also be entitled to the consequential benefits in the form of revised pensionary benefits due to them on account of restoration of their position in the relevant scale of pay. As regards the arrears on account of pay, D.A. etc., however, shall be payable.

3. Since the penalty is being set aside on the technical ground of non supply of the copy of the enquiry report to the applicants and the further enquiry cannot be held due to retirement on superannuation of the applicant, we leave it to the respondents to take a decision in that respect. We further direct that the arrears on account of revised pensionary benefits, if any, shall be paid to the applicants with interest @ 12% within 12 weeks

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from the date of communication of this order.

(J.P. SHARMA)
MEMBER (J)

9.1.92

(I.K. RASOTRA)
MEMBER (A)