

(14)

NEW DELHI, THIS THE 12TH OF JANUARY, 1994.

Shri Rafi Uddin ...
S/o Sh. Siraj Uddin ...
R/o 2624 Shamsi Cottage ...
Choori Walan Delhi-6 ... Applicant

(NONE PRESENT FOR THE APPLICANT)

vs.

Union of India through
Secretary,
Ministry of Defence
Government of India
South Block
Central Secretariat
New Delhi-1

... Respondents

(Sh.Sethu Ramalingam,departmental representative)

ORDER (ORAL)

JUSTICE S.K.DHAON:

Proceedings under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as the Rules) were initiated against the applicant. Ultimately, on 9.3.1984, the UP Mukhya Prashasan Adhikari passed an order of punishment removing the applicant from service. Invoking Rule 23 of the Rules, the applicant preferred an appeal. The appellate authority on 1.6.1984 dismissed the appeal. The aforesaid two orders are being impugned in this OA.

2. Rule 19 of the Rules provides inter-alia that notwithstanding anything in Rule 14 to Rule 18 where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in the Rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.

وفاقی

15

3. The disciplinary authority in its order gave two reasons for recording the satisfaction that it is not reasonably practicable to hold an inquiry. The first reason is that the chargememo sent under registered post at the known address of the applicant returned with the following endorsement:-

"Prapat Karta Bharat se bahar chala gaya".

The second reason given is that the notices sent by the inquiry officer at the known address of the applicant in Delhi and Bombay were returned undelivered.

4. In his memorandum of appeal, the applicant highlighted his personal tale of woe. However, in para 10, he pleaded:

"


In view of what has been submitted above, I beseech upon your goodself to kindly reconsider my case sympathetically in context of aforementioned inherent lacuna and my untold sufferings and to give me ONE MORE OPPORTUNITY on humanitarian grounds for which act I alongwith my entire family members including my aged mother will remain gratefully indebted to your magnanimity."

5. In **UNION OF INDIA AND ANOTHER vs. TULSIRAM PATEL** (1985(2) S.L.J. 145), the Supreme Court has held in para 113 that in a case falling under clause (b) of the second proviso to Article 311(2) or a provision in the service rules analogous thereto, the dispensing with the inquiry by the disciplinary authority was the result of the situation prevailing at that time. If the situation has changed when the appeal or revision is heard, the government servant can claim to have an inquiry held in which he can establish that he is not guilty of the charges on which he has been dismissed, removed or reduced in rank. He, however, cannot by reason of the provisions of clause(3) of Article 311 contend that the inquiry was wrongly dispensed with and it was reasonably practicable to hold an inquiry because by the said clause(3) the decision on this point of

the disciplinary authority has been made final. The departmental representative, Shri Setu Ramalingam has contended that the decision in **TULSIRAM PATEL's** case will not help the applicant as he has not, in his memorandum of appeal, claimed that an inquiry should be held so as to establish his innocence. It is trite law that pith and substance and not the form should be seen. We have read and re-read the memorandum of appeal. We are convinced that the substance of para 10 of the memorandum of appeal is that the applicant beseeched ~~upon~~ the appellate authority to give him an opportunity to prove his innocence and that could be done only by holding an inquiry afresh.

6. In view of the decision of the Supreme Court in **TULSIRAM PATEL's** case(supra), the order of the appellate authority is not sustainable. This OA succeeds in part. The order passed by the Chief Administrative Officer in his capacity as the appellate authority is quashed. He is directed to rehear the appeal preferred by the applicant by holding an inquiry on the charges levelled against him(the applicant). It goes without saying that the appellate authority shall give every opportunity to the applicant in the inquiry. The appellate authority shall pass his orders after holding the inquiry and giving every opportunity to the applicant as expeditiously as possible but not beyond a period of 4 months from the date of production of a certified copy of this order by the applicant.

7. There shall be no order as to costs.


(B.K.SINGH)
MEMBER(A)


(S.K.DHAON)
VICE-CHAIRMAN(J)

SNS