

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

RA No. 40/90 in

O.A. No. 171/86

T.A. No.

199

DATE OF DECISION 25.10.1990.

Shri B.B. Dubey

Petitioner

Advocate for the Petitioner(s)

Versus

C.A.G. of India &amp; Others

Respondent

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. P.C. JAIN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,  
Vice Chairman(J))

The petitioner in this RA is the original applicant in OA 171/86 which was disposed of by the Tribunal by judgment dated 3.3.1989. After the said judgment was pronounced, he filed MP 39/90 on 4.12.1989 which was heard on 28.2.1990 by another Division Bench of which one of us (P.K. Kartha) is a member. It was observed that in MP 39/90, he has/prayed for setting aside the judgment of the Tribunal delivered on 3.3.1989 on the ground that he was not heard before the judgment was delivered. The Division Bench directed that the said MP be placed before the same Bench which delivered the judgment, treating it as a Review Application for passing appropriate orders. On 12.7.1990, the

petitioner and the learned counsel for the respondents appeared before us and agreed that MP 39/90 which has been treated as RA 40/90 may be disposed of by the same Bench which delivered the judgment on 3.3.1989, by circulation.

2. The petitioner has stated that he could not be present on 21.7.1989 when the case was heard in his absence and that he could not file the present petition earlier as he had sustained an injury in his leg which required medical treatment and rest. He has prayed that he be given an opportunity to be heard. He feels that the Tribunal was misguided by the learned counsel of the respondents and consequently the decision of the Tribunal went against him.

3. We have carefully gone through the records of the case. The petitioner has not brought out any new facts warranting a review of our judgment dated 3.3.1989. He has also not drawn our attention to any error apparent on the face of our judgment.

4. The relief sought in OA 171/86 is for a declaration to be issued to the respondents to promote the petitioner to the post of Deputy Comptroller and Auditor General of India or its equivalent. He had alleged that in the disciplinary proceeding initiated against him by memorandum dated 4.6.1975 culminating in the order dated 26.12.1975 he was not given reasonable opportunity to defend himself and that the enquiry held after the appellate authority

or

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remitted the case to the disciplinary authority pursuant to order dated 6.4.1977, was bad in law. He has repeated the same contentions in the present petition. In para 14 of the judgment, the Tribunal has observed that it cannot sit in appeal over the decision of the authorities holding a departmental enquiry against a public servant. It was further observed that where there is some evidence in support of the charges - as in this case - the Tribunal is not expected to review or reappraise the evidence. The Tribunal did not see any infirmity in the enquiry held against the petitioner so as to warrant interference. After going through the present petition, we see no reason to take a different view.

5. In the present petition, the petitioner has also challenged the validity of the enquiry initiated pursuant to the memorandum dated 20.9.1985. This had been raised in the amended application filed by him earlier. In para 17 of the judgment, the Tribunal observed that by the said amendment, he had changed the complexion/substance of the original application and that in case he was aggrieved by the impugned proceedings, he will have to seek his remedies by filing a separate application in accordance with law, after exhausting the remedies available to him under the relevant service rules. We reiterate the same view.

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6. In the light of the above, we see no merit in the present petition and the same is dismissed. There will be no order as to costs.

*(Dec)*  
25/11/91  
(P.C. JAIN)  
MEMBER (A)

*(Signature)*  
(P.K. KARTHA)  
VICE CHAIRMAN(J)