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

Date of Decision: 10.07.92

OA 1497/87

Shri Gopal Sharma ... Applicant.

Vs.

Indian Council of Agricultural Research and Anr. ... Respondents.

CORAM:

Hon'ble Shri P.C. Jain, Member (A).

Hon'ble Shri J.P. Sharma, Member (J).

For the Applicant ... Shri J.P. Verghese.

For the Respondents ... Shri N.C. Sikri with Shri V.K. Rao.

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

2. To be referred to the Reporters or not ? Yes.

(J.P. SHARMA)
MEMBER (J)

(P.C. JAIN)
MEMBER (A)

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PRINCIPAL BENCH, NEW DELHI
* * *

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Vs.
Indian Council of Agricultural Research and Anr. ...Respondents

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Hon'ble Shri P.C. Jain, Member (A)
Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant ...Shri J.P. Verghese
For the Respondents ...Shri N.C. Sikri with Shri V.K. Rao.

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

The applicant was posted as UDC with the respondents and has assailed in the OA the order dt.20.11.1986 by which the penalty of compulsory retirement on the applicant by the Appellate Authority was confirmed by the President, ICAR in a revision petition preferred by the applicant. Initially the Disciplinary Authority vide order dt. 10.7.1985 imposed a penalty of 'Removal from Service.' The applicant preferred an appeal and the penalty imposed was reduced to that of 'Compulsory Retirement' by the Appellate Authority by the order dt.21.11.1985. The petitioner filed a Revision Petition which has been rejected by the President, ICAR. The present application has been filed to challenge imposition of the penalty of Compulsory Retirement imposed on the applicant.

2. The applicant has prayed that the impugned order of compulsory retirement be quashed as illegal and contrary to to facts and that he be reinstated forthwith with all the consequential service benefits.

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3. The facts of the case are that the applicant was employed as LDC in ICAR on 9.9.1966 and was later promoted as UDC. At the relevant time when Memo dt.15.6.1983 with the chargesheet under Rule 14 of the CCS (CCA) Rules was served on him, he was working as UDC. The charge against the applicant is as follows :-

> "Shri Gopal Sharma while functioning as UDC, ICAR, Krishi Bhawan, New Delhi during the period 1980-81 dishonestly abetted Shri T.Sagar to misappropriate Rs.5,000 by appending false payment certificates on the payment vouchers pertaining to Shri P.N. Bhaduri, D.P. Motiramani, T.C.N.Singh and B.S. Pathak.
>
> And thereby failed to maintain absolute integrity and devotion to duty as laid down under Rule3(1)(i)(ii) (as extended to ICAR employees)."

The statemen of imputation of misconduct in support of articles of charge framed against the applicant, detailed in Annexure-2 to the chargesheet is reproduced below:-

> "Shri Gopal Sharma was functioning as Upper Division Clerk, ICAR, Krishi Bhavan, New Delhi duringthe period 1980-81. He was assisting Shri T.Sagar, Programme Officer (Impl) during the said period in arranging meetings, disbursing amount to meet expenses on TA/DA to the non-official members of the ICAR. A meeting was held on 22.3.80 at New Delhi which was attended by official/non-official members. He disbursed money on TA/DA to non-official members along with Shri T.Sagar. He appended false certificates in his writing on payment vouchers of 4 persons who had either not attended the meeting or if attended the meeting had not received any payment.

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S/Shri P.N. Bhaduri, D.P. Motiramani and TCN Singh did not attend the said meeting but Shri Gopal Sharma gave wrong certificates on the payment vouchers of the said persons that the amount was actually paid to them. Shri B.S. Pathak had attended the meeting but did not receive TA/DA but Shri Gopal Sharma gave false certificat on his payment voucher that Rs.700/- was paid to him although he had not received any such amount.

Shri Gopal Sharma was in connivance with Shri T.Sagar to misappropriate Rs.5000/- and he thereby failed to maintain absolute integrity and devotion to duty."

4. Rule 3(i) of the CCS (CCA) Rules, 1964 reads as follows :-

"Every Government servant shall at all times :

(i) maintain absolute integrity,

(ii) maintain devotion to duty, and

(iii) ..."

Shri Somnath Pal, Deputy Secretary, DARE was appointed as Enquiry Officer and Shri Jatinder Nath, Inspector, CBI was appointed as presenting officer on behalf of the administration in the said departmental enquiry. The applicant replied to the aforesaid charge memo on 27.6.1983 denying the charges totally. The preliminary enquiry in the case started on 10.11.1983. On 22.11.1983, the presenting officer was changed. The applicant denied all the charges on the very first day of the preliminary enquiry before the Enquiry Officer, i.e., on 10.11.1983. The applicant had no defence Assistant and the Enquiry Officer's report shows that the applicant did not choose to deploy any defence assistant on his behalf and participated and cooperated in the proceedings himself, though the applicant has alleged that he was not provided with the defence

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assistant or legal practitioner in the conduct of his defence. It is also stated by the applicant in para-6.11 that the Enquiry Officer proceeded with the regular enquiry without even awaiting the nomination of defence assistant by the applicant. The applicant has also stated that he was not provided inspection of the documents. It is further stated that there is gross violation of Rule 18 of the CCS (CCA) Rules, 1965 by not ordering common proceedings against the applicant and his immediate superior, Shri T.Sagar, who had also been chargesheeted for similar charge of misappropriating Rs.5000, while the applicant is alleged to have abetted the misappropriation by Shri Sagar. The Enquiry Officer, however, proceeded with the enquiry and the statements recorded earlier in the investigation of the criminal cases registered against the applicant and others on the basis of five FIRs., i.e., FIR No.27/81 dt.30.6.1981, FIR Nos.56/81 and 57/81 dt.27.11.1981, FIR No.9/82 dt.30.1.82, FIR No.31/82 dt.30.4.1982 were tendered in evidence, but the copies of these statement were not supplied earlier to the applicant. The objection of the applicant was not favourably considered regarding examination of all the prosecution witnesses in the presence of the applicant in the proceedings of the enquiry. The Enquiry Officer, however, over ruling the objection concluded the enquiry and subsequently after completing the enquiry against

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Shri T.Sagar also, though exparte, submitted the enquiry report on 15.4.1985 to the disciplinary authority. The disciplinary authority-Additional Secretary (Admn.), agreeing with the findings of the Enquiry Officer held that the basic charge of recording false certificate on the bills against Shri Gopal Sharma stood proved and the order of removal from service dt. 10.7.1985 was passed. The appeal against the same was disposed of by the Secretary, ICAR by the order dt.21.11.1985 by reducing the punishment of "Removal from Service" to that of "Compulsory Retirement". The Revision Petition against the same was dismissed by the President, ICAR by the order dt. 20.11.1986 observing that the points brought out by the applicant had already been considered by the Appellate Authority and that since no new points had been brought out in the revision petition, there was no justification to interfere with the order passed by the Appellate Authority. The applicant has assailed all these orders on a number of grounds detailed in para9(i) to (xii) of the Original Application.

5. The respondents contested the application and stated that the applicant dishonestly abetted Shri T. Sagar qua misappropriation of Rs.5,000 by appending false certificates

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on the payment vouchers pertaining to four non-official members and the applicant thereby failed to maintain absolute integrity and devotion to duty under CCS(Conduct) Rules, 1964 as adopted by ICAR under Byelaw 31. Regarding the inspection of the documents by the applicant, the respondents stated that he visited the CBI office on 19th and 30th November, 1983 and again on 29th December, 1983, but never complained of any misbehaviour or maltreatment by the police. As the record was available with CBI, the applicant was directed to inspect the documents at the place where it was kept. Regarding the supply of the statements of witness to the applicant, the proceedings of 21.1.1984 go to show that the presenting officer handed over copies of the statements given by Shri K.C.Mehta before the CBI on 4.6.1982 and 10.10.1982. With regard to the defence assistant, the Enquiry Officer has clearly written in the report that the applicant did not choose to deploy assistance of any defence assistant on his behalf and instead preferred to defend his case himself. It is further stated in para 6.13 that the involvement of applicant and Shri T.Sagar, Ex-Programme Officer of ICAR was technically different and the charges were not intrinsically identical or

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same and joint proceeding in such a situation is not mandatory and not even desirable when the two are likely to accuse each other. The action against Shri Rup Ram, Additional Secretary against whom also the FIR was lodged was not proceeded with departmentally in the light of the CBI investigation report. The respondents, therefore, stated that the applicant was given due opportunity to cross examine the witnesses after supplying the statements of the witnesses recorded earlier in the investigation by CBI. The case of the applicant has been considered on the principles of natural justice. It is, therefore, stated that the application be dismissed as devoid of merits.

6. We have heard the learned counsel for both the parties at length and have gone through the record of the case. The first contention raised by the learned counsel for the applicant is that FIR No.31/82 has been registered against the applicant on 10.8.1982 and a chargesheet has also been filed in competent court. The applicant is co-accused with Programme Officer, Shri T.R. Sagar. Since the accusations in the criminal case are almost the same as the charge in the departmental proceedings against the applicant, so the departmental enquiry should have been stayed. However, this point cannot now be

gone into as the co accused Shri T.R. Sagar had filed a Writ Petition before the Hon'ble Supreme Court and the same was dismissed. In that W.P., the specific relief claimed was to stay the departmental proceedings against him.

7. The second question raised by the learned counsel for the applicant is that the statementsof the witnesses earlier recorded in the investigation by CBI has been adopted in the departmental enquiry in spite of the objection raised by the applicant that the witnesses should be examined afresh and the witnesses mostly, if not all of them were of the department. It is also stated that the statements of these witnesses which were tendered in evidence and got authenticated by calling them at the enquiry, copies thereof were not supplied much in advance which has caused prejudice to the applicant and so a reasonable opportunity to defend in the enquiry proceedings has been denied. There is some substance in this contention of the learned counsel in_as_much as the Enquiry Officer himself in the enquiry report has observed that when on 21.1.1984, the statement of one of the witnesses, Shri K.C. Mehta was being tendered in evidence in the departmental enquiry and Mr.Mehta authenticated the same as having been given by him to CBI Inspector on 4.6.1982, the copy by that time had not been furnished to the delinquent. On the asking of the applicant, the copy of

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the statement was given to the delinquent and after that the delinquent crossexamined the witness. Still it appears that the applicant was not satisfied with the cross examination of the witness in view of the applicant being unprepared and was taken by surprise when the statement of Shri K.C.Mehta was tendered. The applicant has also made a written request for furnishing the copies of the statements of witness on 29.2.1984. The applicant has also protested to the Enquiry Officer by another representation (Annexure A) that the principles of natural justice demand that the statements of the witnesses may b be recorded in the presence of the charged officer so that he may have the opportunity to cross examine them. The applicant, therefore, requested that those statements which are not mentioned in the list of documents annexed to the charge memo may not be permitted to be relied upon. It also appears that the applicant had apprehension in his mind that the witnesses may depose before the CBI under duress or pressure and so it cannot be said that the statements so recorded are a free expression of opinion of the persons giving the statements. In the Evidence Act also, the statement given by an accomplice (Roop Ram) in the presence of the police loses much of its value. The statements of witnesses during the investigation are mostly unformed. The learned counsel for the applicant has also referred to observation in the enquiry report itself. Shri D.B. Issar, Assistant CDN(I) Section, in regard to his deposition on 10.9.1982 to CBI, stated before the Enquiry Officer that he has given such a statement but a portion written therein marked by letter 'A' by red ink was not given by him. It goes to show that certain statement has been disowned by the witness.

8. It is also contended by the learned counsel for the applicant that Shri V.V. Chugh, UDC, ICAR in his statement before CBI on 16.6.1982 has stated something about Shri T.Sagar, but did not implead the applicant regarding disbursement of money. Shri Chugh, has not been examined against the applicant in these proceedings though he has been examined in a simultaneous parallel proceeding against Shri T.R. Sagar; so finding on one of the accusations of disbursement by the applicant has been substantially effected by non-examination of this material witness. This witness has further stated that one Shri Asra Ram, Assistant Cashier, also a prosecution witness has disbursed amount to the persons who attended the meeting on 22.3.1980. GI DEPT&AR OM No.134/7/75-AVD-1 dt. 11.6.1976 permits statement of witness recorded at the preliminary enquiry/investigation to be read out to him and not admitted as evidence. However,

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this OM clearly lays down that a copy of the statement should be furnished to the delinquent three days in advance, i.e., before the date on which it is to come up at the enquiry. In the present case, however, a copy of the statement of Shri K.C.Mehta who was the main witness against the applicant regarding the disbursement of money, was not furnished to the delinquent earlier and was made available to him at the time when the examination-in-chief of the said witness was being recorded. From a perusal of the above, it is evident that the Enquiry Officer has not followed the procedure in letter and spirit resulting in denial of adequate opportunity to the delinquent in defending himself.

9. The principles of natural justice, of course, demand that if the witnesses were of the department itself and they were available, then they should have been examined in presence of the applicant as he was appearing in the proceedings of the case on every date. The applicant by the representation dt. 29.2.1984 (Annexure 7) requested the Enquiry Officer that the statement be recorded in his presence so that he can cross examine the witnesses on the various points deposed by them. It is also evident from that representation that the Enquiry Officer desired that he should give in writing and the same was tendered in writing also. The applicant has again made a representation in March, 1984

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that the statement of the witnesses might have been recorded under some influence or pressure of the CBI and should not be relied upon. The applicant also represented that the statements of the witnesses do not find mention in the list of documents attached with the chargesheet. The applicant has also represented that if these statements have to be made a part of the record, then the copies after due comparison be furnished to him and the statements be kept on record. The representation was made by the applicant well in time and the Enquiry Officer by the Memo dt.30.3.1984 (Annexure R5) advised the delinquent that list of documents relied upon by the department/ICAR in the chargesheet is to be distinguished from the list of witnesses and, therefore, both should be viewed separately. It also mentions that the copies of the statements recorded by CBI of various witnesses listed in the chargesheet were given to him for his convenience, the confirmation of these statements by the deponents before the enquiring authority and their subsequent recording as prosecution exhibits made these statements a part of the proceedings as evidence given by them before the enquiring authority. This illustrates the procedure adopted by the enquiring authority in taking the deposition of the departmental witnesses. Sub Rule 14 of Rule 14 clearly lays down, "The witnesses shall be examined by or on behalf of the presenting officer and may be cross examined by or on behalf of the Government servant." Thus the Enquiry Officer has not followed the procedure in furnishing the copies of the statements of witnesses recorded in preliminary enquiry/investigation to the delinquent and as such the delinquent was deprived of adequate opportunity of defending himself.

10. The contention of the learned counsel for the applicant that he was not provided with defence assistant has no basis as at no point of time the applicant has made an oral or written request to the Enquiry Officer for the facility of defence assistant.

11. The Enquiry Officer in his report has given findings on four allegations against the applicant while the charge against the applicant was that he dishonestly ab tted Shri T.Sagar, Programme Officer in 1980-81 to misappropriate Rs.5,000 by appending false payment certificates on the payment of four non official participants in the meeting of ICAR on 22.3.1980. There was no specific charge th.t the applicant has committed misconduct by preparing false payment bills with regard to four non official

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members, who had either not attended the meeting or if attended, have not received any payment. In the ultimate finding held by the Enquiry Officer, it has been held,

> "In the light of the above analysis of the evidence on record, I find that the part of the allegation, namely that SPS was in connivance with Sh.T.Sagar to misappropriate Rs.5,000 by appending false certificat on the four forms of bills in question has not been established conclusively though the other part of the charge namely that he failed to maintain devotion to duty has been definitely established beyond doubt."

Here it may be recalled that there was only one charge against the applicant and that is as follows :-

> "Shri Gopal Sharma while functioning as UDC, ICAR, Krishi Bhavan, New Delhi during the period 1980-81 dishonestly abetted Shri T.Sagar to misappropriate Rs.5,000/- by appending false payment certificates on the payment vouchers pertaining to Shri P.N. Bhaduri D.P. Motiramani, TCN Singh and B.S. Pathak.
>
> And he thereby failed to maintain absolute integrity and devotion to duty as laid down under Rule 3(i) (i) (ii) (as extended to ICAR employees)."

Actually the language of the charge shows that it was an act on the part of the delinquent of aiding Shri T.Sagar to misappropriate Rs.5,000 and the act of aiding was by appending false payment certificates on the payment vouchers pertaining to four non official members and by virtue of this act of aiding, the applicant was held to have failed to maintain absolute integrity and devotion to duty. The Disciplinary Authority observed that he agreed with the findings of the Enquiry Officer and formed the opinion that the basic charge of recording of false certificates on the bills against the applicant stands proved

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In fact if the imputation could have meant all this, i.e., recording of flase certificates on the bills, then the applicant should have been specifically charged to meet that charge in out his defence as to whether and in what circumstances those certificates on the bills have been given. But that has not been done so. The defence of the applicant has been that after a lapse of more than one year, Shri Sagar gave him TA bills of non official members along with the TA bills of non officials of other meetings and asked the SPS to record usual certificates on these bills and prepare adjustment account on behalf of the concerned officials. SPS accordingly recorded the certificates on the TA bills as instructed by Shri Sagar and submitted the papers to him for necessary action. According to the applicant to record a certificate on bill is purely an official and routine job. The applicant has also cited 3 defence witnesses to support his contention, but the Enquiry Officer while assessing the evidence on this point did not at all discuss the defence evidence to arrive at a finding. On the point of the defence of the SPS that what he did was in good faith and that he merely rendered clerical assistance to his immediate higher officer, i.e., Shri T.Sagar, Programme Officer, the Enquiry Officer wrote only one line in the report while analysing the evidence on this aspect that this aspect will be dealt with in

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the next part of this report where the last allegation made against the SPS will be discussed and the finding given therein has been quoted above. Thus it has not come in the finding of the Enquiry Officer that the applicant has dishonestly appended these bills knowing them to be wrong or false, but what he says he did was in compliance with the orders of his superior and rendered clerical assistance. The Enquiry Officer also did not hold that the applicant acted dishonestly or with an ulterior motive in discharge of his duties or had exceeded his act of doing the official act nor it is commented that the official was not assigned the dury which he has performed. The appreciation of evidence of the Enquiry Officer cannot be subject of scrutiny by the Tribunal, but it was the duty of the Disciplinary Authority as well as of the Appellate Authority to scrutinise the whole report of the Enquiry Officer on the basis of the evidence recorded and then to see if the order of penalty passed on the applicant was justified. When the applicant has been given a finding of non guilty in abetting in misappropriation of money by the Programme Officer, then by any stretch of imagination, it cannot be said that the charge levied against the applicant has been established. The learned

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counsel for the respondents, however, tried to distinguish the fact that the charge of misappropriation against the applicant was something different from the second para of the charge regarding his failing to maintain absolute integrity, but it is not so. In fact, in the first para of the charge the ingredient of the delinquency has been given which, if proved, would have amounted to misconduct in para-2 of the said charge falling under Section 3(1)(i)(ii) of the CCS (Conduct) Rules, 1964.

12. The learned counsel for the applicant also laid stress on holding of the separate enquiry, but in view of the finding given above, it is not necessary to deal with that aspect of the matter. However, Section 18 of the CCS(CCA) Rules, 1965 permits holding of the joint enquiry and the respondents in this case because of the special circumstances of the case proceeded separately against both the applicants and the principal offender though there was same Enquiry Officer and the enquiry also concluded almost at the same time. On this account, it cannot be said that the applicant has been denied adequate opportunity to defend himself or was in any way prejudiced in his defence.

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13. The learned counsel for the applicant, ~~however,~~ also laid great stress on non supply of documents, but there is no representation that any specific document was asked for by the applicant and that was not supplied except the statement under Section 161 recorded by CBI Inspector in investigating the criminal case RC 31/81 against the applicant in which Shri T.Sagar was also co-accused. The applicant has also challenged the order passed by the Appellate Authority dt.21.11.1985 by which the punishment of removal from service was modified to that of compulsory retirement and the same order has been upheld by the order of the Revisional Authority dt.30.11.1986 passed under Rule 29 of CCS(CCA) Rules. It is argued by the learned counsel for the applicant that the Appellate Authority did not pass any speaking order. The applicant preferred an appeal raising various points for the consideration of the Appellate Authority and the Appellate Authority did not consider those points and by the impugned order disposed of the said appeal only by the order as below :-

> "AND WHEREAS the undersigned in his capacity as the appellate authority has considered the records of the enquiry and has come to the conclusion that the points raised by Shri Gopal Sharma are not quite material and relevant and therefore, do not warrant consideration. However, as regards the quantum of punishment, the undersigned after careful consideration of the entirety of the case and taking a humanitarian view decided to reduce the punishment of 'Removal from Service' to that of 'Compulsory Retirement ".

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The giving of reasons is one of the fundamentals for an administrative order. In Madhya Pradesh Industries Limited vs. Union of India, AIR 1966 SC 671, the Hon'ble Supreme Court held, "A speaking order will at its best be a reasonable and at its worst a plausable one." The departmental proceedings have been held to be quasi-judicial in nature and the giving of reasons in the orders is, therefore, a judicial requirement. A final order which does not contain reasons for the conclusions reached shall be bad in law. The mention of reasons for arriving at the conclusions provides clarity and excludes arbitrariness. In the present case, as is evident from the order passed by the Disciplinary Authority dt.10.7.1984, the Disciplinary Authority observed that he agrees with the finding of the Enquiry Officer and that he is of the opinion that the basic charge of recording of false certificates on the bills against Shri Gopal Sharma stands proved. The Disciplinary Authority, however, did not take note of the charge mentioned in paragraph-1 of the same order where the charge was that he abetted Shri T.Sagar to misappropriate Rs.5,000 by appending false payment certificates on the payment vouchers. The Enquiry Officer in the concluding part of the enquiry, however, exonerated the applicant of this charge of misappropriation and at the same time observed that, "The other part of the charge namely that he failed to maintain devotion to duty has been definitely established

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beyond doubt." It will be evident from the article of charge that the delinquent in the event of the charge having been proved against him would have failed to maintain absolute integrity and devotion to duty as laid down under Rule 3(1) (i) (ii). The aforesaid rule pertains to misconduct by a Government servant and misconduct means, misconduct arising from ill motive; acts of negligence; errors of judgement of innocent mistakes, do not constitute misconduct. At the same time as held by the Hon'ble Supreme Court in the case of Union of India vs.J.A. Ahmed, AIR 1979 SC 1022, "Failure to attain highest standard of efficiency in performance of duties permitting an inference of negligence would not constitute misconduct." The Appellate Authority, therefore, totally ignored this aspect of the matter. In the case of Union of India vs. Permanand, reported in AIR 1989 SC 1185, and Ram Chandra vs. Union of India, 1986 (3) SCC 103, the Appellate Authority must consider all the points raised in the appeal. Thus the appellate order in this case cannot be sustained. The same is the state of affairs of the revisional order.

14. In view of the above discussion, we are of the

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opinion that the application should partly succeed and is, therefore, allowed with the following directions:-

(a) Orders of punishment imposed on the applicant by the Disciplinary Authority, Appellate Authority, Revisional Authority as well as the report of the Enquiry Officer are quashed. The applicant shall be taken back in service on the post which he held at the time the impugned order of removal from service was passed.

(b) The respondents shall be at liberty to proceed with the enquiry, if they so like by appointing an Enquiry Officer and the applicant shall be furnished all the documents and statements of the witnesses recorded during investigation and will also be allowed the help of the defence assistant, even of a lawyer, if he so chooses and the enquiry if so commenced against the applicant should be concluded within a period of six months from the date of receipt of a copy of this order.

(c) If no enquiry is held against the applicant as said above in clause (b) or if the enquiry is held and the applicant is exonerated, then he shall be entitled to full back wages from the date he was relieved of the post by virtue of the punishment order which has been quashed along with other consequential benefits and if the applicant is not exonerated, then the Disciplinary Authority shall pass necessary order for treating this period for the payment of salary etc. to the applicant.

In the circumstances, the parties shall bear their own costs.

(J.P. SHARMA) 10.7.92
MEMBER (J)

10/7/92
(P.C.JAIN)
MEMBER (A)