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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1808 of 1987

Date of Decision: 13.7.93.

D.P.Vohra

.....Petitioner.

Versus

Union of India & othersRespondents.

For the petitioner: Shri M.K.Gupta, Counsel.

For the respondents: Shri P.P.Khurana, Counsel.

CORMA:

Hon'ble Mr. Justice V.S.Malimath, Chairman.

Hon'ble Mr.S.R.Adive, Member(A)

JUDGMENT(ORAL)

(By Hon'ble Mr.V.S.Malimath, Chairman)

The petitioner Shri D.P.Vohra at the relevant point of time was an Assistant in the Research Analysis Wing (RAW) of the Cabinet Secretariat, Government of India. Vide order dated 6.12.80(Annexure-P2), the Joint Director dismissed the petitioner from service after recording a finding that he is satisfied that the circumstances are such that it is not reasonably practicable to hold a regular enquiry as contemplated by the Central Civil Services(Classification, Control & Appeal) Rules, 1965. The said order was challenged by the petitioner in the High Court and the matter was ultimately taken to the Supreme Court. The Supreme Court vide its order dated 12.9.85 while dismissing the appeal observed that the petitioner could prefer a departmental appeal in which event it is for the appellate authority to examine whether a full-fledged departmental enquiry is possible. The petitioner, having preferred an appeal taking advantage of the observations of the Supreme Court, the same was examined by the appellate authority and an order (Annexure-P4) dated 23.6.86 was passed. The operative

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portion of the order which is relevant for our purpose may be extracted as follows:-

"Now, therefore, the undersigned while accepting the request of the appellate hereby remits the case to the disciplinary authority under provisions of Rule 27 Clause (2)(ii) of the said rules with the direction to conduct full and complete enquiry in accordance with CCS(CCA) Rules, 1965 and after completion of the enquiry, submit to the undersigned the findings for further consideration".

2. The Disciplinary Authority to whom the matter was remitted in turn appointed an Enquiry Officer who after serving the memo of charges on the petitioner conducted an enquiry. The Enquiry Officer submitted his report on 21.7.87 holding charge I proved and charge II as not proved. His report was submitted to the Disciplinary Authority who appears to have recorded his own findings on 14.8.87 and submitted the same along with the Enquiry Officer's report and the records of enquiry to the appellate authority. The appellate authority after receipt of the same passed the impugned order on 18.9.87(Annexure-P13). The impugned order says that the appellate authority examined the report of the Enquiry Officer, exhibits and the findings of the Disciplinary Authority dated 14.8.87 and formed the opinion that active participation in the agitation by the petitioner is amply proved by the statements of the witnesses recorded during the enquiry. He has also held that it is established that the petitioner made speeches of an inflammatory character during the agitation. He has also said that malignment is also brought out though it was more of a general nature rather than particularised. He said that the message was clear

enough that the higher officers were not doing their duty properly and were involved in a shady conduct. Considering all the facts and circumstances, the appellate authority recorded a finding to the effect that Charge No.1 has been fully proved and Charge No.II is not substantiated from the evidence on record. As the incident is more than six years' old now and the atmosphere has completely changed for better, taking a lenient view of the matter and with a view to give him a fresh chance to serve the department, the appellate authority passed the order imposing a penalty of reduction in the pay from Rs.440/- per month to Rs.425/- per month in the pre-revised time scale of pay of Rs.425-800 for a period of three years with immediate effect. It is further directed that the petitioner shall not earn increments of pay during the period of reduction and on the expiry of the said period, the reduction will not have the effect of postponing his future increments of pay. It is the said order that is challenged by the petitioner in these proceedings before this Tribunal.

3. The principal grievance of the petitioner in this case is that he did not have a fair and reasonable opportunity of defending himself in the disciplinary proceedings. It was submitted that if the appellate authority had remitted the case to the Disciplinary Authority, the petitioner would have an opportunity of persuading the Disciplinary Authority not to accept the case of the department against him and to exonerate him. That opportunity, it is submitted, has been denied to him. It is further submitted that if the Disciplinary Authority ^{had} made an order imposing penalty on the petitioner, he would have ^{had} a right of appeal to persuade the appellate authority by invoking Rule 27(2) (ii) of CCS(CC &A) Rules. That right has also been denied

to him by following a peculiar procedure in this case. The substance of the grievance, therefore, is denial of fair and reasonable opportunity to defend himself in the disciplinary proceedings. We shall, therefore, address ourselves only / question as that in our opinion is sufficient to dispose of this case.

4. When the petitioner invoked the right of appeal under Rule 27 in pursuance of the observations made by the Supreme Court, the scope of enquiry to be made by the appellate authority was limited. He was required to examine as to whether having regard to the changed circumstances, it is now reasonably practicable to hold a disciplinary enquiry. If he forms such an opinion, the order which he could have passed was to direct the Disciplinary Authority to hold a disciplinary enquiry in accordance with law. From the material placed before us, we are satisfied that the appellate authority did form the opinion that having regard to the changed circumstances, it is now reasonably practicable to hold an enquiry though when the order of dismissal came to be made on 23.6.86, it was not reasonably practicable to hold such an enquiry. The powers of the appellate authority are regulated by the statutory provisions contained in Rule 27. Rule 27(2) (ii) empowers the appellate authority to remit the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case. It is this power which the appellate authority ought to have exercised on his coming to conclusion that having regard to the changed circumstances, it is now reasonably practicable to hold a disciplinary enquiry against the petitioner, after setting aside the order imposing the penalty made earlier against the petitioner. Rule 27 does not empower the appellate

authority to make an order of the type it has passed in this case. What the appellate authority has done, is to remit the case to the Disciplinary Authority with a direction to conduct full and complete enquiry in accordance with rules and after enquiry to submit findings of the Disciplinary Authority to him for further consideration. It is obvious that the appellate authority did not properly understand the scope of the power conferred on him by Rule 27(2)(ii). Though the said provision empowers the appellate authority to remit the case to the authority which imposed the punishment with such directions as it may deem fit in the circumstances of the case, it is obvious that only such direction as would meet the ends of justice that could be issued to the authority which imposed the penalty. The said statutory provision does not empower the appellate authority to direct the Disciplinary Authority not to pass a final order in the disciplinary proceedings but only ^{to} remit the findings to him to enable him to pass a final order in the matter. We are satisfied that the appellate authority has mis-directed himself in regard to the scope and ambit of his power in regard to remission of the case in issuing appropriate directions to the Disciplinary Authority. It is this initial mistake committed by the appellate authority that has contributed to an unfortunate situation resulting in the petitioner being deprived of fair and reasonable opportunity of defending himself during the proceedings for the reasons to be stated presently. If the right order of remission was made by the appellate authority, the petitioner would have an opportunity of persuading the Disciplinary authority not to accept the case of the department. That opportunity has been denied to him by a peculiar type of order of remission

made by the appellate authority. The petitioner has also been deprived of the right of appeal as it was not possible for the petitioner to prefer an appeal there being no order of ^{the} Disciplinary Authority imposing penalty against which he could have invoked the right of appeal. Thus, the petitioner has been deprived of the right to persuade the appellate authority not to accept the findings and decision of the Disciplinary Authority against him. These are the consequences resulting from the earlier order made by the appellate authority on 23.6.86 quite contrary to the provisions of Rule 27(2) (ii). In these circumstances to avoid unnecessary protracted litigation and to ensure fairness to the parties, we consider it just and proper to dispose of this application with appropriate directions.

5. Though belatedly the petitioner has been furnished the copy of the Enquiry Officer's report on 19.11.87. So far as the findings of the Disciplinary Authority are concerned, on our suggestion Shri Khurana rightly and fairly furnished a copy to the petitioner's counsel. The petitioner has now been furnished the report of the Enquiry Officer and also the findings of the Disciplinary Authority. This would certainly enable the petitioner to put forward his case effectively before the appellate authority. In order to meet the demands of justice and fairness, we consider it appropriate to give the petitioner an opportunity of making a representation to the appellate authority on consideration of which he can pass an appropriate order in accordance with law.

6. For the reasons stated above, this application is disposed of with the following directions:-

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- i) The impugned order of the appellate authority (Annexure-P13) dated 18.9.87 is hereby quashed.

ii) On the petitioner submitting his representation against the proposed action in the disciplinary proceedings conducted in this case within a period of 15 days from this date to the appellate authority, the appellate authority shall pass a final order on consideration of the cause shown by the petitioner with utmost expedition and communicate the same to the petitioner.

7. Parties to bear their own costs.

8. Let a copy of this order be sent to the respondents.

Refugee
(S.R.ADIGE)

MEMBER(A)

Malimath

(V.S.MALIMATH)
CHAIRMAN.

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