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In the Central Administrative Tribunal
Principal Bench: New Delhi

1. OA No.660/87 Date of decision: 28.10.1992.

P. Ramachandra Rao ...Petitioner

Versus

Secretary, Ministry of Finance
Government of India, New Delhi
& Others ...Respondents

2. OA No.114/87

P. Ramachandra Rao ...Petitioner

Versus

Secretary, Ministry of Finance Government
of India, New Delhi & Others ...Respondents

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman
The Hon'ble Mr. I.K. Rasgotra, Member(A)

For the petitioner Mrs. Sunita Rao, Counsel.

For the respondents Mrs. Raj Kumari Chopra,
Counsel.

Judgement(Oral)
(Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner who started his career as Inspector, Central Excise on the basis that he is a member of Scheduled Tribe as he had claimed that he belongs to the Konda Kapu community. In due course, he stood promoted as Superintendent, Central Excise. A disciplinary inquiry was held against him, alleging that he has secured appointment by falsely claiming that he is a member of the Konda Kapu community, a Scheduled Tribe. The charge ^W levelled against him was that he obtained the

appointment by fraudulent representation. The disciplinary inquiry resulted in a finding against the petitioner and imposition of the punishment of compulsory retirement vide order dated 11.4.1986. The petitioner challenged the said decision by way of appeal. The appellate authority by the impugned order dated 11.2.1987 not only dismissed the petitioner's appeal but suo motu enhanced the penalty to dismissal from service. The petitioner has challenged the said decision in these two Original Applications.

2. The principal grievance of the petitioner is that enhancement of penalty from compulsory retirement to dismissal from service was made without giving the petitioner an opportunity of showing cause in the matter. There is a positive averment of the petitioner that no such opportunity was given to the petitioner before the penalty was enhanced. That statement is not controverted by the respondents in the reply filed. The impugned order also does not state that any such opportunity was given to the petitioner. Hence, we are inclined to believe the statement of the petitioner that the enhancement was brought out without the petitioner being given a reasonable opportunity of being heard in the matter.

3. Rule 27 (2), proviso (iv) of the C.C.S. (C.C.A) Rules says that:

"no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 16 of making a representation against such enhanced penalty."

It is, therefore, clear that this is a case not only of violation of the principles of natural justice but also violation of the statutory mandate. We, therefore, have no hesitation in holding that enhancement of penalty is clearly illegal and invalid. The order dismissing the appeal is also not a speaking order. No reasons have been assigned for rejecting the contention raised by the petitioner in his appeal. The petitioner had also sought a personal hearing and there is no reference in the impugned order as to why such a personal hearing was declined to him. In these circumstances, it is not possible to sustain the impugned order which is a composite order, both dismissing the appeal as also enhancing the penalty.

4. For the reasons stated above, impugned order No.2/87 dated 11.2.1987 made by the President of India is hereby quashed. The case is remitted back to the appellate authority for disposal of the appeal, in accordance with law. Having regard to the circumstances, we direct that the personal hearing be accorded to the petitioner before the appeal is disposed of. If the appellate authority is inclined to take action for enhancement of penalty, we reserve liberty to take such action but only after giving the petitioner an opportunity of being personally heard in the matter. As this is a very old matter, we consider it appropriate to direct the appellate authority to complete the entire process as expeditiously as possible, but preferably within a period of six months from the date of receipt of a copy of this judgement. Both the O.As. accordingly stand disposed of by these directions. No costs.

5. Let a copy of this judgement be placed in the case file of OA-114/87.


(I.K. Rasgotra)

Member(A)

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(V.S. Malimath)
Chairman