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Central Administrative Tribunal
Principal Bench, New Delhi.
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Regn. No. OA 81/87

Date of decision: April 29, 1991

Suresh Kumar

Applicant

Vs.

Union of India

Respondents

PRESENT

Shri R.L. Sethi, counsel for the applicant.

Shri O.N. Moolri, counsel for the respondents.

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Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).

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

(Judgment of the Bench delivered by Hon'ble Shri
Justice Ram Pal Singh, Vice-Chairman (J).)

By this application, filed under Section 19 of the Administrative Tribunals Act, 1985 (hereafter referred as 'Act'), the applicant prays that the impugned order dated 16.10.86 and the enquiry proceedings be set aside. He also prays that he be allowed to be continued in service with consequential relief.

2. The applicant was recruited to Class IV post as Khalasi with effect from 25.8.81 in the Railway Department. On 15.5.86, a chargesheet was issued against him by the Enquiry Officer who was appointed to enquire charges against him. The Enquiry Officer submitted his Enquiry Report to the disciplinary authority. Annexure A-1 is the order passed by the disciplinary authority in which it has been mentioned that the disciplinary authority has provisionally come to the conclusion that Suresh Kumar is not a fit person to be retained in service in the interest of the public service. It is further mentioned in Annexure A-1 that the disciplinary authority imposes upon Shri Suresh Kumar, Khalasi, the penalty of removal from service with immediate effect. The disciplinary authority passed orders (Annexure A-1) on 16.10.86. Aggrieved by this order, the applicant

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preferred an appeal on 21.11.86 before the appellate authority, the Dy. CCS (C-Spl.), Northern Railway, Baroda House, New Delhi. On 30.3.87, vide Annexure R-7, the appellate authority intimated the applicant that his appeal has carefully been considered by the competent authority and following orders have been passed. For convenience, the order passed is reproduced:

"I have also examined the merits of the case and find that the charges have been proved against the employee beyond any shadow of doubt.

Under the circumstances, I do not find any force in the appeal and regret the request for withdrawal of the penalty for removal from service.

This is for your information please."

3. It would be pertinent to note that in Annexure A-1 by which the disciplinary authority passed the final orders, he has mentioned that he has provisionally come to the conclusion that Suresh Kumar is not a fit person to be retained in service. If Annexure A-1 is the provisional order for imposing a penalty, then where is the final order passed by the disciplinary authority. The learned counsel for the respondents has also not brought any record to our notice by which the final order has been passed by the disciplinary authority.

4. In their return, the respondents have controverted the case of the applicant mentioned in the O.A. and, according to them, the enquiry was in accordance with the law and the rules; that the order passed by the disciplinary authority was in accordance with law and that before passing the appellate order, the appellate authority has carefully considered the appeal filed by the applicant before it.

5. If the disciplinary authority in Annexure A-1 has provisionally come to the conclusion and awarded the punishment, then a final order should have been passed by the disciplinary

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authority. It appears that no final order was passed by the disciplinary authority in this case.

6. When the applicant preferred the appeal before the appellate authority, the cryptic and telegraphic order passed by the appellate authority was also not in accordance with the law. When the applicant raised in the grounds of his appeal (Annex. R-6) the various points, then those points should have been considered by the appellate authority in its judgment of appeal. The appellate authority should also have noted that the disciplinary authority has passed only a provisional order of punishment and should have asked for a final order to be passed by the disciplinary authority. From the very perusal of the appellate order (Annex. R-7), it appears that the appellate authority has not applied its mind either to the provisional order of punishment imposing a major penalty upon the applicant and has also not considered any of the points raised in the Memo of Appeal (R-6). In Annex. R-6, the applicant had raised not only the points of law, but also points of facts. The appellate authority has also failed to discuss the points raised in the appeal. Clearly, the appellate authority has abdicated its powers as appellate authority and has failed to consider the grounds raised before him by the appeal. It would also be relevant to observe that on perusal of Annex. R-7, the judgment passed by the appellate authority, nowhere the applicant has been given the opportunity of being heard.

7. In the case of Ram Chander Vs. Union of India & Others (ATR 1986 S.C. 252), the apex court observed that in such a view of the matter, the infirmities in the order passed by the appellate authority can never be sustained and liable to be quashed. We also place reliance upon the Full Bench Judgment of this Tribunal in the case of Shri Shankar K. Damle vs. Union of India & Others (Full Bench Judgments of Central Administrative Tribunals (1986-1989) p. 269) in which it has been held that the appeal

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has been decided by a cryptic order without affording a reasonable opportunity to the delinquent. Fairness and justice demand that the delinquent should not be denied the necessary opportunity to indicate his innocence before the appellate authority. The appellate authority in such circumstances would be able to analyse and reappreciate the evidence in all its aspects, to arrive at a proper conclusion, as to whether the evidence is adequate to prove the guilt or is wanting or tenuous, so as to warrant exoneration.

8. In the memorandum of appeal, the applicant had raised the points that the enquiry was held in English while he does not understand that language and he insisted the Enquiry Officer to conduct the enquiry in Hindi, but he did not pay any attention. This ground, raised in the memorandum of appeal, should have been considered by the appellate authority because participation of the delinquent in an enquiry without understanding the language clearly causes prejudice and it can be said that the delinquent has been prejudiced during the enquiry. Prejudice is the womb of injustice. Similarly, the other points raised in the memorandum of appeal should have been exhaustively considered by the appellate authority. As observed earlier, the applicant was not afforded an opportunity of being heard by the appellate authority. At the Bar, the learned counsel for the applicant also submitted with regard to the quantum of punishment awarded to him. As is well known, the quantum of punishment should be proportionate to the gravity of the misconduct committed by the delinquent. All these matters need to be considered by the appellate authority itself.

9. Consequently, we quash the appellate order and remand the matter to the appellate authority for disposing of the appeal

Clerk.

in accordance with law and also the observations made hereinabove. The appellate authority shall dispose of the appeal within a period of three months from the date of the receipt of the copy of this order. The O.A. is allowed to the extent indicated hereinabove. The parties are directed to bear their own costs.

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(P.C. JAIN) 29/4/1991
MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH)
VICE-CHAIRMAN (J)