



join his duties nor take any action to justify his action.

2. The disciplinary authority, on careful consideration of the enquiry report agreed with the findings of the Enquiry Officer and held the applicant guilty of the charges namely, for unauthorisedly absenting from duty from 8.6.82 to 24.10.86. Therefore, the disciplinary authority imposed upon the applicant the penalty of reduction to a lower post, reducing the applicant from T.C.M. Grade I <sup>to the post of</sup> Khallasi Helper. The applicant submitted an <sup>idk</sup> appeal and he mentioned, among other things in the appeal, that a copy of the enquiry report was not supplied to him.

3. The appellate authority issued order on 26.2.87 on the appeal of the applicant enclosing a copy of the findings of the Enquiry Officer and reducing the punishment imposed by the disciplinary authority as a special case as under:

"You will be reverted to the post of TCM/MW -III in Gr.950-1500, subject to your passing the suitability test conducted by ASTE/MWM/NDL. You will be placed as Senior-most WM/TCM-III in MWM Organisation and your seniority position will be fixed above Shri N.K.Murari. Your future promotions to any posts in Grade II and above will be based on this seniority position and subject to suitability tests prescribed under the ext<sup>a</sup>ent rules".

3. The applicant has sought the relief that the order of punishment dated 2/8.12.86 be quashed as illegal and against the principles of natural justice and that the order of his transfer be also quashed and consequently he should also be paid the emoluments as T.C.M. Grade I.

4. The learned counsel for the respondents contended that:-

i) The appeal was rejected after sympathetic

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consideration by the appellate authority who had made the penalty less severe.

- ii) The chargesheet given to the applicant was correct as the applicant was unauthorisedly absent.
- iii) His request for voluntary retirement was not permitted, as he did not fulfil the criteria for voluntary retirement. The applicant had also filed an application before this Tribunal to get an order of voluntary retirement. But his application was rejected by the Tribunal on the ground that the notice of retirement was defective. The order of the Tribunal is at Annexure 8 and is dated 8.5.87. The order of the Tribunal while enunciating the facts, also mentioned that the applicant was guilty of two spells of absence, one from 25.5.76 to 27.1.82 and another from 8.6.82 to 24.6.88. Against the second spell an order of punishment had been passed, against which the applicant filed an appeal and therefore, the Tribunal is not concerned with this absence or with the disciplinary proceedings. The Tribunal dealt with the period of unauthorised absence from 25.5.76 to 25.1.82.

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4. The short point that is to be considered in this case is about the propriety of passing the order of penalty without giving a copy of the

enquiry report to the delinquent official. The law is well settled on this point in the case of Mohammad Ramzan Khan Vs. Union of India & Ors. (A.I.R. 1981- S.C. 471). The Hon'ble Supreme Court had held that the enquiry report should <sup>be</sup> ~~be~~ supplied before passing the order on the principles of natural justice. And in Prem Nath K.Sharma Vs. Union of India & Ors. (A.I.R. 1988 (3) S.L.J. 449 (C.A.T.) <sup>also</sup>, it has been held that enquiry report should be supplied before passing the order. The law is also well settled on the point that the Rule laid down by Hon'ble Supreme Court is binding upon all cases pending before the Court or to be filed in future. In this regard the Full Bench judgement in the case of Balwant Singh Kumar Singh Gohil Vs. Union of India & ors. decided on 11.7.91 (O.A. 209/87- Full Bench Judgement - C.A.T. Ahmedabad) would also refer.

5. In the conspectus of the above view of the matter the order of punishment is quashed and so also the order on his appeal. However, this may not preclude the disciplinary authority from continuing with the departmental enquiry in accordance with law from the stage of supply of enquiry report, enabling the disciplinary authority to make a fresh order thereafter taking into account the applicant's representation. Such a step would also give an opportunity to the applicant to point out some alleged discrepancies in the order of penalty e.g. the ld. counsel for the applicant argued that the order of penalty mentioned the period of unauthorised absence from 8.6.82 to 24.10.86 whereas <sup>chargesheet</sup> in the/

it was mentioned that the unauthorised absence was from 7.6.82.

6. With the above direction and order the case is disposed of. There is no order as to costs.

*I.P. Gupta*  
( I.P.GUPTA ) 7/11/91  
MEMBER(A)

*Ram Pal Singh*  
( RAM PAL SINGH ) 7.11.91  
VICE CHAIRMAN(J)