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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1244/87

Date of decision: 5-1-93.

Tilak Raj Khanna

...Applicant

Versus

Union of India & Ors..

...Respondents

CORAM :

THE HON'BLE MR. JUSTICE V.S.MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R.ADIGE, MEMBER(A).

For the applicant

...Ms. Mukta Gupta, proxy Counsel
for Ms. Avnish Ahlawat, Counsel

For the respondents

...Shri P.H. Ramchandani,
Senior Counsel

JUDGMENT (ORAL)

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

The petitioner was working as an Upper Division Clerk and was in-charge of the General Section in the Office of the Chief Settlement Commissioner, Department of Internal Security Division, Settlement Rehabilitation Division, Ministry of Home Affairs, New Delhi. A disciplinary enquiry was initiated against him on the allegation that he had made an attempt to commit theft of one tin of liquid soap. The allegation is that the petitioner handed over one tin of liquid soap to the peon working under him and accompanied the said peon with the said tin. He made an attempt to cross the gate. The man in-charge of the security posted at the gate was entitled to ensure that no

articles from the office are taken out without an appropriate written authorisation in that behalf. As the petitioner or the peon did not have any authorisation, it is alleged that this is a case where the petitioner attempted to/commit theft of one tin of liquid soap. An enquiry officer was appointed for the purpose of holding an enquiry who, after giving an opportunity to both the parties, submitted his report holding the charge levelled against the petitioner duly proved. Accepting the finding of the Enquiry Officer's report, the disciplinary authority passed an order imposing the penalty of reduction of pay by four stages from Rs.1440 to Rs.1320 for a period of five years which would have effect of postponing the future increments. It is the said order of penalty that the petitioner has challenged in these proceedings.

2. The principal contention of the learned counsel for the petitioner is that the finding of the Enquiry Officer's report, which has been accepted in toto by the disciplinary authority and which has been made the basis of the imposition of the impugned order, suffers from an error apparent on the face of the record. Our attention was drawn to the finding of the Enquiry Officer's report about the attempt made by the petitioner to commit theft. The Enquiry Officer has drawn the inference of an attempt to commit theft by the petitioner relying substantially on one factor,

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namely, that the bill of article was not found in possession of the petitioner when it was being taken out from the building. The Enquiry Officer has taken this circumstance into account for holding that the petitioner is guilty of attempt to commit theft. Apart from the statement that the bill of the article was not found in possession of the petitioner when it was taken out from the building, there is no other discussion whatsoever in the report of the Enquiry Officer. None of the witnesses examined on behalf of the Administration has spoken about the petitioner not being in possession of the bill of the article when it was being taken out from the building. On the contrary, there is a positive assertion in the petitioner's statement wherein he has stated that he was carrying with him the bill of the article when he was taking out the tin outside the building. There is no consideration of the statement of the petitioner which has remained unchallenged in the cross examination that he was having the bill with him when he was going out of the building along with the tin. It is ~~clearly~~ clearly established that there is non consideration of the statement of the petitioner which has a direct bearing on the finding recorded by the Enquiry Officer that the bill of the article was not found in possession of the petitioner. As already stated, there is no discussion about the statement of the petitioner in this behalf. We have, therefore, no

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hesitation in taking the view that the finding has been arrived at without considering the statement of the petitioner and without noticing that there is no positive evidence on behalf of the Department in support of this finding. Hence, this finding suffers from an error apparent on the face of the record. The finding of the Enquiry Officer's report that the petitioner is guilty of an attempt to commit theft is based largely on this ground. This finding is, therefore, vitiated. Having regard to ^{the} above, we consider it proper to remit the case for fresh disposal in accordance with law.

3. For the reasons stated above, the impugned order dated 1-5-87 (Annexure P-V) is hereby quashed and the case is remitted to the disciplinary authority to dispose of the matter afresh after appropriate consideration ^{of} the evidence produced in the case and in the light of the above discussion. We, however, like to make it clear that disciplinary authority should consider the material produced by both the parties in the enquiry and disciplinary authority is not bound to accept Enquiry Officer's report which suffers from infirmities stated above. It is open to the disciplinary authority to examine afresh the finding regarding the guilt of the petitioner as also the appropriateness of the punishment imposed. We make it clear that remittance of the case does not entitle the

disciplinary authority to permit either of the parties to produce new evidence. Entire case shall be decided on the basis of the material already produced by both the parties. As this case is already pending for a long time, we direct the disciplinary authority to dispose of the matter afresh within a period of four months from the date of receipt of the copy of the judgment. No costs.

S. R. Adige

(S.R.ADIGE)
MEMBER(A)

V. S. Malimath

(V.S.MALIMATH)
CHAIRMAN

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