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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1339/90.

Date of decision. 21-11-94.

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri Raj Singh,
S/o Shri Balbir Singh,
Ex-Headwarder,
Central Jail,
Tihar.

Residence:

C-20, Central Jail Complex,
Tihar,
New Delhi-110 064.

... Applicant

(By Advocate Shri S.C. Luthra)

versus:

1. Delhi Administration
through its Home Secretary,
5, Shamnath Marg,
Delhi-110 054.

2. Inspector General of Prisons,
Central Jail, Tihar,
New Delhi-110 064.

... Respondents

(By Advocate Ms. Avnish Ahlawat)

O_R_D_E_R

[Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial)]_7

The applicant, who was a Head Warder in the Central Jail, Tihar, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 5.4.1989 removing him from service, which was passed after holding departmental enquiry against him under Rule 14 of the CCS (CCA) Rules, 1965.

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2. The relevant facts leading to the institution of the departmental enquiry are that on 3.6.1986 when the applicant was on night duty in Jail No.2, it is alleged, that at about 10.30 P.M. during the course of a surprise visit by Shri Rajesh Somaal, Superintendent Central Jail, the applicant was found sitting outside the jail outer gate called 'Deori Area' and on being questioned ^{13.} ~~as to how~~ about this, he replied in a most discourteous manner, which is unbecoming of a Government servant. Further, when he was asked to produce the Night Report Book, he behaved rudely using derogatory language. It was also alleged that when the Superintendent recorded his report on the last page of the register produced by the warden staff, the applicant remarked that he could write even more as at best he could suspend or terminate his services and cannot hang him. On the following day, the applicant was suspended. The articles of charge together with the list of documents by which the charges were to be proved and the list of witnesses had been served on the applicant vide memo. dated 26.2.1987. The Enquiry Officer had recorded the statement of five witnesses on behalf of the prosecution and two witnesses on behalf of the applicant which are placed at Annexure A-4 and thereafter, submitted his report, copy of which is at Annexure A-9. as filed by the applicant.

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3. The learned counsel for the applicant, Shri S.C. Luthra, has impugned the penalty order dated 5.4.1989 on the following grounds, namely, -

- (i) That the provisions of Rule 17 of the CCS (CCA) Rules, 1965 have not been complied with inasmuch as the order of the disciplinary authority cannot be deemed to have been communicated to the applicant because he was not supplied with the copy of the enquiry report, which when subsequently supplied to him (Annexure A-9), was incomplete as the last page was missing;
- (ii) that in the list of witnesses given in the statement of articles of charge (Annexure A-3) while it is mentioned at para (ii) 'Statement of Driver Shri Ram' yet one Ram Singh Driver was examined in his place, inspite of the fact that the applicant had raised this objection before Enquiry Officer, which was turned down;
- (iii) that there was no sufficient evidence by independent witnesses other than the two personal orderlies viz., Harphool Singh, Warder, and Ram Singh, Driver, who were attached to the Superintendent of Jail, Shri Rajesh Somaal and hence, there was no evidence to prove the charges.

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(iv) that the Enquiry Officer was biased inasmuch as he has referred to the witness, Shri Rajesh Somaal as the 'star witness' in para 13 of his report;

(v) that since he has been appointed by the D.I.G., who is his disciplinary authority, the order passed by the Inspector General (Prisons) is invalid.

4. The respondents have denied the above avernments in their reply. The learned counsel for the respondents has vehemently denied that the complete enquiry report was not supplied to the applicant and that is why his subsequent representation dated 30.5.1989 (Annexure A-10) was rejected vide letter dated 4.10.1989 (Annexure A-11). It was argued that if the applicant had not received the complete enquiry report, the applicant would not have been able to submit his appeal in which he has stated that the disciplinary authority has adopted the findings of the enquiry officer. On the other grounds alleged by the applicant, including the evidence produced before the enquiry officer, they have stated that it was due to ^atypographical mistake that the name of the driver of the Superintendent, (Jail), who was a witness to the incident, Shri Ram Singh was mentioned as Driver 'Shri Ram'.

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instead of 'Ram Singh'. They have also stated that there is no driver by the name 'Shri Ram' working in the Jail and, therefore, the Enquiry Officer had rightly rejected the objection raised by the applicant on this account. With regard to the evidence, Mrs. Avnish Ahlawat, learned counsel for the respondents, states that this was not a case of no evidence and the Tribunal is not competent to re-appraise the evidence having regard to the well-settled principle of law (See UOI v. Parma Nanda [AIR 1989 SC 1185]). They have also refuted the allegation of bias against the Enquiry Officer and they have stated that the enquiry had been held in accordance with the relevant rules. In the circumstances, they have prayed that the petition may be dismissed.

5. We have carefully considered the pleas taken by Shri S.C. Luthra, learned counsel for the applicant and Ms. Avnish Ahlawat, learned counsel for the respondents and the records.

by Shri Luthra

6. The important question raised in this case is whether the provisions of Rule 17 of the C.C.S.(C.C.A.) Rules, 1965 have been complied with or not. This Rule provides as under :-

" Orders made by the disciplinary authority shall be communicated to the Government servant who shall also be supplied with a copy of the report of the inquiry, if any, held by the disciplinary authority and a copy of its findings on each article of charge, or where disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority and a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority (unless they have already been supplied to him) and also a copy of the advice, if any, given by the Commissions and, where the disciplinary authority, has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance."

In this case, the applicant has himself annexed a copy

of the enquiry report held under Rule 14 of the CCS (CCA)

Rules at Annexure A-9. Shri Luthra, learned counsel for the applicant contends that since he has not been supplied with the full text of the enquiry/report as required under Rule 17 of the CCS (CCA) Rules he was unable to prefer a proper appeal against penalty order dated 5.4.1989. He has drawn our attention to the letter addressed by the applicant to the Inspector General of Prisons dated 12.4.1989 (Annexure A-7) in which he has stated that he has not been supplied a copy of the report, which was then sent subsequently vide letter dated 23.5.1989 (Annexure A-8). The applicant's version is that he has not been supplied the complete copy of the report as the concluding portion of the document is missing which allegation has been denied by the respondents. They have stated that the full text of the enquiry report was supplied to the applicant but he has annexed the same without the last page of the report containing four lines. In his representation dated 30.5.1989, the applicant has demanded that not only he is entitled to a complete copy of the Enquiry Officer's report but that he is entitled to get ' a copy of the original report as signed and submitted by the Enquiry Officer and not a photo-stat

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copy which is not an authenticated copy.' This representation has been rejected vide letter dated 4.10.1989 (Annexure A-11).

7. The findings of the disciplinary authority read as follows :-

" AND WHEREAS the enquiry officer after having heard all witnesses and after scrutinising all records has held that it is proved beyond a reasonable doubt that the charges levelled against the delinquent official stands proved."

Shri Luthra contends that since the last portion of the enquiry report had not been supplied to him, it is not possible to say what was the conclusion of the enquiry officer because the last sentence on page 16 of the report is incomplete after the words " as stated earlier from the statement of the witnesses it has been proved....". It is significant to note that the word "beyond" on this page has been scored of.

18. The respondents have not filed a copy of the enquiry officer's report. By our order dated 15.9.1994 the respondents were directed to produce the relevant disciplinary proceedings file including the complete copy of the Enquiry Officer's report. Inspite of several

opportunities, the respondents have failed to produce the relevant records of the case.

9. Having regard to the correspondence referred to above, particularly to the repeated requests of the applicant to be given the copy of the enquiry report, we are satisfied that the respondents have failed to supply the full text of the Enquiry Officer's report to the applicant thereby violating the provisions of rule 17 of the CCS(CCA) Rules, 1985 and the principles of natural justice. The requirement of affording reasonable opportunity to the applicant under Article 311(2) of the Constitution and the CCS(CCA) Rules has been denied to him which is, therefore, illegal and bad in law.

10. In Premnath K. Sharma v. UOI & Ors. (T.A.No. 2/1986 decided on 6.11.1987 - Full Bench Judgment (1986-1989) Bahri Brothers, Delhi P. 245) the Full Bench of this Tribunal has held that even after the 42nd amendment of Article 311(2) of the Constitution, the Article envisages reasonable opportunity of being heard in respect of the charges. It was held in this case as follows :-

" Any finding of the Disciplinary Authority

on the basis of the Enquiry Officer's report which is not furnished to the charged officer would, therefore, be without affording a reasonable opportunity in this behalf to the charged officer. It would offend the principles of natural justice. It is common knowledge that very often the Enquiry Officer's report largely influences the Disciplinary Authority. The Rules governing disciplinary proceedings also give great importance to this report and require the Disciplinary Authority to record reasons for disagreeing with the report. Hence, where the report is adverse to the charged officer, it becomes all the more necessary to furnish him a copy of the report and afford him an opportunity to make his representation against it before the Disciplinary Authority records its findings and imposes the penalty."

Following the decision of the Supreme Court in Bachhittar Singh v. State of Punjab (AIR 1963 SC 395) the Tribunal has held "... Even after the 42nd Amendment to Article 311(2) the enquiry cannot be said to conclude by the submission of an enquiry report. It continues till the Disciplinary Authority receives the entire material and reserves it for recording his findings on charges and imposes the penalty, if any. Before the matter is finally reserved for recorded such finding, any material that is placed on record in the shape of the enquiry report must be given to the charged officer and he must be awarded a reasonable opportunity to make his representation. This is all the more necessary after the amendment because now

unlike in the past, Article 311(2) does not envisage any opportunity to make a representation against the proposed punishment. No such notice is required to be issued. Hence, before the Disciplinary authority finally closes the enquiry where (to) the enquiry is delegated to an Enquiry Officer, he should afford an opportunity to the delinquent officer to make his representation after furnishing a copy of the report. Failure to do so would amount to denying reasonable opportunity to the charged officer to make his representation in respect of charges levelled against him. That would offend clause (2) of Article 311. Affording an opportunity to participate in the enquiry cannot be a substitute for the right to make representation against the Enquiry Officer's report which cannot be disregarded by the Disciplinary Authority except for reasons to be recorded in writing and not otherwise. Of course such an opportunity need not be by way of personal hearing."

11. In the facts and circumstances of the case, ~~the non-furnishing of the complete enquiry officer's report to the applicant violates the order dated 5.4.89 of removal from service. The penalty order is, therefore, quashed and~~ set aside. However, we make it clear that it is open to the respondents to complete the disciplinary proceedings in accordance with law from the stage of supplying a complete copy of the enquiry report to the applicant

and affording him a reasonable opportunity of hearing as provided under the law. In view of this, we are not expressing any views on the other grounds taken by the applicant in the O.A.

12. The Tribunal vide Order dated 10.7.1990 had stayed the operation of the order dated 20.4.1990 (Annexure A-14) whereby it had been sought to cancel the allotment of the Government accommodation to the applicant. The stay is made absolute till the disciplinary proceedings are disposed of by the competent authorities as directed above.

13. The O.A. is allowed to the extent indicated above but in the circumstances we make no order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

S.R. Adige
(S.R. Adige)
Member (A)