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Central Administrative Tribunal
Principal Bench, New Delhi.

OA-396/90

New Delhi this the 9th Day of June, 1994.

Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman
Hon'ble Mr. B.N. Dhaundiyal, Member(A)

Shri Manohar Lal,
Team Mate,
Beas Construction Board,
(Power Wing) GSS, Sub.Div.III,
Beas Project, Bhiwani. Applicant

(through Sh. R.L. Sethi - none present)

versus

1. Union of India,
through the Secretary,
Beas Construction Board,
45, Kaka Nagar, New Delhi.
2. Shri M. S. Tandon,
Executive Engineer,
GSS Division, BP(PN),
Bhiwani.
3. Sh. R.N. Bansal,
S.D.O. GSS Sub.Div.No.III,
Beas Project, Bhiwani. Respondents

(through Sh. K.C. Mittal - none present)

ORDER (ORAL)
delivered by Hon'ble Mr. Justice S.K. Dhaon, V.C.

The applicant was subjected to disciplinary proceedings after being furnished with a chargesheet and a statement of imputation thereto. An enquiry officer was appointed. He submitted his report to the disciplinary authority. The disciplinary authority on 7.2.1990 gave a show cause notice to him (the applicant) asking him to explain as to why he should not be dismissed from service. Before the disciplinary authority could pass a final order of punishment, the applicant came to this Tribunal by means of this O.A. On 20.3.1990, this Tribunal directed

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the respondents to maintain status quo in respect of the applicant. That interim order continues to operate even now.

Whatever the reason, the fact remains that even till today no order of punishment has been passed against the applicant. Therefore, the judgment of the Supreme Court in the case of Managing Director, ECIL versus K. Karunakaram (JT 1993 (6)p.1) squarely applies to the facts of this case.

From a perusal of the show cause notice it transpires that the disciplinary authority had accepted the findings of the enquiry officer that the charges had been brought home to the applicant. It appears that the disciplinary authority proceeded under a misconception of law. By the Constitution (42nd Amendment), the requirement of giving a second show cause notice with respect to the quantum of punishment to be awarded to a delinquent was done away with. The Supreme Court in the case of Managing Director, ECIL (supra) has taken ^{an} a view that apart from the evidence produced by the prosecution in the departmental enquiry, the defence offered by the delinquent government servant, the enquiry officer's report forms an additional material to be considered by the disciplinary authority while arriving at the conclusion as to whether the charge stands proved or not. In paragraph 26, the Supreme Court has emphasised that the disciplinary authority is required to consider the evidence, the report of the enquiry officer and the representation of the employee against it before passing a final order in the disciplinary proceedings. Consideration means an objective consideration after due application of mind. Therefore, the disciplinary authority is required to assess itself the evidence

before it in the light of the enquiry officer's report and record reasons in support of its order.

Since this matter has become pretty old, the disciplinary authority shall afford a fresh opportunity to the applicant to submit his explanation to the enquiry officer's report. After the receipt of the explanation from the applicant, it shall consider the whole matter in the light of the judgment of the Supreme Court in the case of Managing Director, ECIL (supra) and in the light of the observations made in paragraph 26 of that judgement and in the light of the observations made in this judgement.

With these directions, this O.A. is disposed of finally but with no order as to costs.

The interim order dated 20.03.1990 is vacated.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL)
MEMBER (A)

S.K. Dhaon
(S.K. DHAON)
VICE CHAIRMAN

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