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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELLHI

OA 2251/91 &
OA 2261/91

New Delhi this the 18th Day of September, 1995

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

Hon'ble Shri R.K. Ahooja, Member (A)

Shri R.S. Dahiya,
Son of Shri Sobha Singh,
1/106 Sadar Bazar,
Delhi Cantt.
Delhi-110 010. ... Applicant

(By Advocate: Shri B.S. Charya)

Vs

1. Delhi Administration,
   5 Sham Nath Marg,
   Delhi. (through its Chief Secretary)

2. The Commissioner,
   Food, Supplies and Consumer Affairs,
   Delhi Administration,
   2 Sham Nath Marg, ... Respondents
   Delhi.

(By Advocate: Mrs. Avnish Ahlawat)

O.A. No. 2261 of 1991

Shri S.S. Sehrawat,
Son of Shri Chandgi Ram,
Delhi Cantt,
Delhi-110 010. ... Applicant
(By Advocate: Shri B.S. Charya)

1. Delhi Administration,
   5 Sham Nathugh its Chief Secretary,
   Delhi (through its Chief Secretary)

2. The Commissioner,
   Food, Supplies & Consumer Affairs,
   2, Sham Nath Marg,
   Delhi. ... Respondents

(By Advocate: Mrs. Avnish Ahlawat)

O R D E R

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

As the facts circumstances and questions involved in both these cases are identical these two cases are heard and disposed off together.

2. Shri S.S. Sehrawat applicant in OA-2251 of 1991 and Shri R.S. Dahiya applicant in OA-2261 of 1991 are working as Inspectors Grade II under the second respondent. Both of them were served with memorandum of charges of identical nature. The gist of the charges were that they while on duty consumed alcohol from the office and behaved in disorderly manner. It was also alleged that on certain days during duty hours they after consuming liquor from outside came to the office and created a situation which is not conducive to discipline in the office. As the applicants denied the charges an enquiry was held. Accepting the report of the enquiry officer the disciplinary authority imposed on both the applicants the penalty of withholding of two annual increments without cumulative effect by orders dated 6.3.1990. The applicants filed appeals to the 1st respondent. The first respondent rejected the contention of the applicants and by orders dated 21.1.1991 directed the applicant to show cause as to why the penalty should not be enhanced to reduction of pay by four stages for a period of two years. Both the applicants submitted their explanations. They were also heard in person by Chief Secretary Shri V.K. Kapur. But by impugned orders dated 15.7.1991 Shri R.K. Takkar his successor in the office of the Chief Secretary as appellate authority imposed on both the applicants the penalties of reduction in pay by four stages w.e.f. 1.7.1991 stipulating that they would not earn increment during the period of reduction and that on the expiry of the period the reduction could not have the effect of postponing their future increments. It was impugning these orders that the applicants had

filed their applications. It has been alleged in the application that the charges were vague, that the enquiry was not held in conformity with the Rules, and that the disciplinary authority did not apply their mind to the facts and evidence and therefore the chargesheet and the orders of the disciplinary and appellate authority are liable to be set aside.

3. When the application came up for final hearing none appeard for the respondents. Shri Charya, Counsel for the applicants appeared. We have carefully gone through the pleadings and documents on record and have heard Shri Charya the counsel of the applicant. Shri Charya stated that the applicants are pressing the prayer for setting aside the orders of the first respondent enhancing the penalities and are not pressing the conditions against the chargesheet, the enquiry and the orders of the disciplinary authority.

4. Shri Charya argued that the order of the first respondent enhancing the penality is vitiated and unsustainable because while the person who heard the applicant on the question of enhancement of penality was Shri V.K. Kapur, the impugned orders were passed by Shri R.K. Takkar, the successor in office of Shri Kapur. Shri R.K. Takkar did not have the opportunity of hearing the applicants. The orders enhancing the penalities passed by him suffers from lack of application of mind argued Shri Charya, the counsel of the applicant. We found coinsiderable force in this argument. Shri V.K. Kapur who had given the applicants opportunities for personal hearing alone could have applied his mind to

what was revealed through such hearing. Since he did not pass the final order, his successor in office should have given them another opportunity for persoinal hearing so as to consider objectively whether the penalities had to be enhanced or not. In the order of the first respondent issued by Shri R.K. Thakkar nothing is seen mentioned as to what were stated by the applicants during the personal hearing. Therefore it is evident that Shri V.K. Kapur had not recorded any detailed notes and that he had not reached any conclusion as to whether the penalities should be enhanced or not. Under these circumstances as argued by Shri Charya, the personal hearing has been rendered ineffective. Shri R.K. Thakkar who succeded Shri V.K. Kapur in the office of the Chief Secretary should have given personal hearing to the applicants before he made up his mind as to whether in the facts and circumstances of the case emerging from the evidence recorded at the enquiry as also during the personal hearing it was necessary to impose a higher penality on the applicants than what had already been imposed by the disciplinary authority. Since Shri Tekkar has not heard the applicants and as he in his order has not referred to any facts or circumstances observed by his predecessor during the personal hearing we are left with no alternative but to hold that the orders of the first respondent enhancing the penalities are bad for non application of mind and are therefore liable to be set aside.

5. In the result in the light of what is observed in the foregoing paragraph we allow both these applications in part while upholding the orders of the

disciplinary authority dated 6.3.1990 imposing on the applicants the penalties of witholding of two increments without cumulative effect, We set aside the orders of the first respondent dated 15.7.1991 imposing on the applicants the enhanced penalties of reduction in pay by four stages in both these cases. There is no order as to cost. When the dictation of the judgement was over Ms. Mansha Nigam appeared as proxy cojunsel for the respondents.

(R.K. Ahooja)
Member (A)

(A.V. Haridasan)
Vice Chairman(J)

Mittal