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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(7)

O.A. NO. 2546/91

DECIDED ON : 13.9.1993

Amar Nath

... Petitioner

Vs.

Delhi Administration & Ors ... Respondents

CORAM :

THE HON'BLE MR. JUSTICE S. K. DHAON, V.C.(J)

THE HON'BLE MR. B. N. DHOUNDIYAL, MEMBER (A)

Shri Shyam Babu, Counsel for Petitioner

Shri Madan Gehra, Counsel for Respondents

J U D G M E N T (ORAL)

(By Hon'ble Mr. Justice S. K. Dhaon)

On the basis of preliminary inquiry, necessary proceedings were initiated against the petitioner. Inquiry Officer was appointed. He submitted his report. The Punishing authority on 3rd August, 1990 passed an order, dismissing the petitioner from service. On 16th May, 1991, the appellate authority dismissed the appeal of the petitioner. The aforesaid two orders are being impugned in the present application.

2. In the fore-front, the learned counsel for the petitioner has urged that the appellate authority, in its order, heavily relied upon ~~on~~ the proceedings in the preliminary inquiry and yet he has recorded a finding that it was not necessary to supply to the petitioner, a copy of the proceedings held in the preliminary inquiry. It is urged that since the petitioner had not been supplied with a copy of the proceedings of the Preliminary inquiry, the order of the

appellate authority stands vitiated.

3. The appellate authority has dealt with various pleas, raised by the petitioner before it, in different paragraphs. In paragraph 1 its order recites :

"..... His statement is corroborated by the statement of Inspr. Nem Dutt Bhardwaj who conducted the Preliminary Enquiry into the matter and found the allegations against the appellant substantiated. "

Clearly, the appellate authority is of the opinion that the finding recorded by this Inspector in the Preliminary Inquiry stands corroborated by the statement of the witness, referred to in the earlier part of paragraph 1, namely, Man Singh.

In paragraph 2(c) it is observed;

" From the Preliminary Inquiry conducted by Inspector Neam Dutt Bhardwaj the allegations against the appellant were substantiated. "

Again there can be no escape from the situation that the appellate authority had made use of the proceedings in the preliminary inquiry.

Then para 2(i) says;

"It is ^{not} necessary to supply the copy of the PE enquiry to the appellant as all the Pws were examined in his presence and every opportunity was given to the appellant to record their statements and to cross-examine them."

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4. It is apparent from the order of the appellate authority that it thought that it was not necessary to supply to the delinquent a copy of the proceedings of the Preliminary Inquiry and a copy of the report submitted by the officer authorised to conduct the preliminary inquiry. We have already observed that the appellate authority relied heavily upon the report submitted by the officer conducting the preliminary enquiry.

5. The learned counsel for the respondents has urged that, in fact, no witness was examined at all in the preliminary inquiry. He has also urged that, in fact, the petitioner was supplied with a copy of the report of the officer, who conducted the preliminary inquiry. He draws our attention to the copy of the summary of allegations, given to the petitioner alongwith list of witnesses and documents. He points out that under the heading "document", the first item is "report of S.H.O." He contends that the S.H.O. concerned was appointed to hold the preliminary inquiry and the report referred to is actually the report, which the officer gave after finishing the preliminary inquiry. We do not propose to enter into controversy whether the alleged report of the S.H.O. was really the report of the officer, who held the preliminary enquiry. We have already indicated that the appellate authority proceeded on the assumption that it was not necessary in law to supply a copy of the report of the inquiry officer, who conducted the preliminary inquiry. In our opinion, the appellate authority committed a patent illegality in taking that view. It is well settled that if help is taken of

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either the proceedings in the preliminary inquiry or the report of the officer conducting the preliminary inquiry, then, a copy of such a report or a copy of such proceedings should be given to the delinquent concerned. Failure to do so would result in violation of Article 311(2) of the Constitution which mandates that a reasonable opportunity should be given to a Government servant to defend himself.

6. As a result of the fore-going discussion, there is no escape from the conclusion that the order of the appellate authority is not sustainable. The appellate authority shall hear the appeal of the petitioner afresh and give him an opportunity of being heard in person. It shall examine the question as to whether any witness was examined in the preliminary inquiry and, if so, whether reliance was placed on the testimony of such a witness, cited by the Inquiry Officer or by the punishing authority. It shall also examine the question whether report of the S.H.O., referred to under head "document", is the report of the officer, authorised to conduct the preliminary inquiry. It shall, therefore, decide the appeal of the petitioner on merits.


7. The appellate authority shall dispose of the appeal as expeditiously as possible but not later than three months from the date of presentation of a certified copy of this order before it.


8. The petition succeeds in part. The order of the appellate authority dated 16th May, 1991 is quashed. We make it clear that the order of the punishing authority is kept intact.

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9. It goes without saying that if the petitioner is aggrieved by the order of the appellate authority, he shall be at liberty to ventilate his grievance before an appropriate forum.

10. With these directions, the application is disposed of. No costs.


(B.N.Dhoundiyal)
Member(A)


(S.K.Dhaon)
Vice Chairman

/sds/