



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

0A.473/91

0A.705/91

OA. 706/91

Date of Decision: 16.10.1992

Shri A.K. Mehrotra- Applicant in OA.473/91
Shri Charan Singh - Applicant in OA 706/91
Shri D.C. Chodha - Applicant in OA 705/91

Vs.

Shri D.C. Vohra - Counsel for the applicants.

Shri P.P.Khurana - Counsel for the respondents.

CORAM:

The Hon'ble Mr. P.K. KARTHA, Vice-Chairman(2)

The Hon'ble Mr. B.N. DHUNDIYAL, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporters, or not? Yes

JUDGEMENT

(of the Bench delivered by
Hon'ble Member Shri B.N.DHOUNDIYAL)

The three applicants in these OAs are aggrieved by three separate orders dated 15/16.1.91, by which their appeals against the minor penalty of withholding an increment for one year imposed by the Disciplinary Authority i.e. Secretary, Revenue, Ministry of Finance, were rejected. 6
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2. The charges against the three employees who share the same room No.267-D, in the North Block, Central Secretariat, New Delhi, relates to the same event and the punitive orders emanate from the common proceedings. We, therefore, dispose of, all the three OAs by a common Judgement.

3. Shri A.K. Mehrotra, applicant in OA 473/91 and Shri D.C. Chodha, applicant in OA.705/91 are working as Assistants, and Shri Charan Singh, applicant in OA 706/91, is working as a Peon. According to them, on 5.5.89, they left the office at 6.15 pm. At 7.15 pm. the Security Staff was alleged to have found two half filled glasses and a near empty liquor bottle in their room. On 11.5.89, Director Administration, Department of Revenue, issued a charge memo alleging that they were consuming liquor in their office room. The applicants denied the charge and pointed out that they had left the office with the Section Officer at 6.20 pm. On 3.8.89, an enquiry was initiated against them under Rule-16 of the CCS(CCA) Rules, 1965 for minor penalty. In their detailed written submissions, they requested for an inquiry. This was denied and on 30.5.90, by separate orders, penalty of withholding of one increment was imposed on them. They submitted an appeal against the order on 25.6.90. By separate impugned orders dated 15/16.1.91, their appeals were rejected. *Am*

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4. The respondents have stated that the charge of drinking liquor in office premises was reported by the Deputy Chief Security Officer M.H.A. and while they denied the charge, they were not able to give any convincing explanation. There was no reason to disbelieve the report of the Security Staff particularly, when the latter had reported to the Caretaker of the Department, who was present in the office and had also reported the matter on phone to Director (Administration), Department of Revenue the same evening. Also the room had been sealed by the Security Staff and was opened next morning in the presence of DS(GAR) and Director(Admn.). In the opinion of the Disciplinary Authority, there was hardly any need for formal enquiry in this case, as the charge against the applicants stood substantiated beyond reasonable doubt. They were allowed inspection of the report of the Deputy Chief Security Officer, M.H.A. as requested for, by them. Their appeals, which were considered by the appellate authority, were dismissed with the approval of the Finance Minister. As laid down in Rule-16 of the CCS(CCA) Rules, 1965, it is the discretion of the Disciplinary Authority to hold, or not to hold, a formal enquiry, where ^{1/} penalty of ~~this~~ minor nature is involved. ^{Ar}

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5. We have gone through the records of the case and heard the learned counsel for both parties. Even though in case of minor penalties, the question whether to hold an enquiry, or not, is left to the discretion of the Disciplinary Authority, this discretion has to be exercised judicially, particularly so, in the present case, where the charge is based on a single event. If the employees were found consuming liquor, the single door of the room could have been locked from outside, witnesses collected, their identity cards could have been impounded, or they could have even been subjected to breath test or medical test. Neither the order of the Disciplinary Authority nor the impugned orders dated 15/16.1.91 by the Appellate Authority made any reference to the letter dated 10.11.1989, from Shri R.G. Chhabra, Section Officer, certifying that he and the applicants left the office on 5.5.89 at 6.20 pm. This had been mentioned by the applicants in their representations. As urged by the applicants, this statement by the immediate superior officer provided a valid ground for ordering an enquiry, so that, they would have had an opportunity to defend themselves, so as to prove their innocence. The rejection of the request for conducting an inquiry has led to the denial of right of the applicants, to establish their innocence. The respondents have an obligation

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to consider fairly and objectively the defence of the petitioner. Such representations should be considered by the Disciplinary Authority and orders passed should indicate that the Disciplinary Authority is aware of the points raised and have relevant answers.

The alleged altercation between the applicants and the Security Staff has not even been mentioned. Merely to say, that after careful consideration, certain conclusions have been reached is not enough. The single event on which the whole inquiry was based is not proved by any reliable evidence, particularly, in view of the categorical statement by the Section Officer that the employees had left the office with him at about 6.20 pm.

6. In the case of the applicants in OA 473/91 and OA 705/91, the President of India is the Appointing Authority. Rule-16 of the CCS(CCA) Rules, 1965, provides, interalia, that no minor penalty can be imposed in such a case, except after consulting the UPSC and that the records of the proceedings shall include the advice of the UPSC. In the instant case, the UPSC was not consulted before the impugned orders of punishment were passed. Rule-27 of the CCS(CCA) Rules, 1965, provides, interalia, that the appellate authority shall consider

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whether the procedure laid down in these Rules has been complied with, and if not, whether, such non-compliance has resulted in the violation of the provisions of the Constitution of India, or in the failure of justice. The Appellate Authority failed to apply its mind to the aforesaid provision. It has been stated in the counter affidavit that the requirement of consulting the UPSC has been inadvertently overlooked before passing the orders in appeal and that the Department has now made a reference to the UPSC and would modify/revise its orders in the light of the UPSC's advise, which is awaited. In our opinion, any ex post facto consultation will not cure the defects in the conduct of the proceedings. No minor penalty could have been imposed against S/Shri Mehrotra and Chodha before consulting the UPSC. The entire proceedings are vitiated by non-application of mind.

7. In the conspectus of the facts and circumstances of the case, we feel that the application ~~has~~ merit, in so far as no proper application of mind either by the Disciplinary Authority or Appellate Authority is disclosed, in considering fairly and objectively, the defence of the petitioner. We, therefore, set aside and quash the impugned orders of the Disciplinary Authority dated 15/16.1.94 and of the Appellate Authority dated 15/16.1.94 and direct that the applicants shall be paid their increments

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from the due date.

7. Let a copy of this order be placed in all the three files.

There will be no order as to costs.

B.N. DHOUDIYAL
(B.N. DHOUDIYAL) 16/10/52
MEMBER(A)

*Ans. At
16/10/52*
(P.K. KARTHA)
VICE CHAIRMAN(J)

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