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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 770/91

DATE OF DECISION 30/4/1991

SHRI JASWANT SINGH

APPLICANT

VERSUS

UNION OF INDIA

RESPONDENT

CORAM:

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT

SHRI BABU LAL, COUNSEL

JUDGEMENT OF THE BENCH DELIVERED BY
HON'BLE MR.I.K. RASGOTRA, MEMBER(A)

The applicant, Shri Jaswant Singh, working as U.D.C. in the Ministry of Defence has filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the Order Nos:

- (i) A/45013/4/87D(Est.I/Gp.I) dt. 4.1.1989
- (ii) A/45013/4/87D(Est.I/Gp.I)/1538-S/Def.Secy/90,
dated 18.1.1990.
- (iii) PC A/45013/4/87/D(Est.I/Gp.I), dated 14.1.91

When it came up for admission the case
Counsel
was presented by Shri Babu Lal/ appearing for the applicant
On hearing the learned counsel for the applicant and
perusal of the OA, we consider that this is a fit case
for disposal at the admission stage itself.

2. Briefly the applicant was charge-sheeted for unauthorised absence from duty w.e.f. 6th March, 1987 to 18.10.1987 under Rule 14 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965.

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The Inquiry Officer in his report did not hold Shri Jaswant Singh guilty of the charges levelled against him. The disciplinary authority however disagreed with the findings of the report of the Inquiry Officer and recorded the reasons therefor in his order dated 4th January, 1989 (Annexure A-I). After considering the matter, the disciplinary authority passed the following orders:-

"AND, WHEREAS, in view of the foregoing, the undersigned disagrees with the findings of Inquiry Officer and holds Shri Jaswant Singh guilty of unauthorisedly absenting from duty with effect from 6th March, 1987 to 18th October, 1987. The undersigned also holds Shri Jaswant Singh guilty of not caring to acknowledge the Government communications sent to him directing him to report for duty immediately.

NOW, THEREFORE, keeping in view all the facts and circumstances of the case in their entirety, the undersigned imposes the penalty of "withholding of two increments of pay with cumulative effect" on Shri Jaswant Singh, UDC, Ministry of Defence."

The disciplinary authority also enclosed a copy of the report of the enquiry officer along with his order dated 4th January, 1989. The applicant submitted an appeal against the said order on 13.10.1989 and the same was disposed of vide order dated 18.1.1990 revising the penalty of withholding of two increments of pay with cumulative effect imposed by the disciplinary

authority to "withholding of two increments of pay without cumulative effect for a period of years." The applicant thereafter filed a revision petition on 14.9.1990 to the President of India, which was disposed of on 14.1.1991 upholding the penalty imposed on the applicant in exercise of powers under Rule 29 of the CCS (CCA) Rules, 1965. The Revisionary Authority also observed vide paragraph 4(vii) of the order that:

"there was no provision at the relevant time for providing a copy of inquiry report to the charged official before passing final orders."

3. We have considered the submissions as brought out by the learned counsel for the applicant and gone through the record carefully.

4. It is obvious from the above that the disciplinary authority furnished a copy of the inquiry report to the delinquent official only with the order imposing the penalty of withholding of two increments of pay with cumulative effect. In the case of **Premnath K. Sharma V. Union of India & Ors. (T.A. No.2/86)** decided by the Full Bench on 6.11.1987 it has been held that:

"14. That the Enquiry Officer's report constitutes material and a very important material on which the findings of the Disciplinary Authority rest cannot be gainsaid. In fact, under the Rules referred to above the Disciplinary Authority is required to record reasons, if it disagrees with the findings of the Enquiry Officer. The importance of enquiry report cannot be over-emphasised,

.....It is obvious that when the learned Chief Justice refers to the charges proved against the government servant, it is not intended to be suggested that the findings made by Enquiry Officer in that behalf are final. The enquiry report along with the evidence recorded constitute the material on which the government has ultimately to act. That is the only purpose of the enquiry held by competent officer and the report which he makes as a result of the said enquiry.

Thus in addition to the evidence recorded during the course of the enquiry, the Enquiry Officer's report also constitutes material and a very important material at that. Even after the amendment, clause (2) of Article 311 envisages reasonable opportunity of being heard in respect of the charges. In order to fulfil the constitutional requirement of affording a reasonable opportunity to the charged officer, he must be given an opportunity to challenge the report also."

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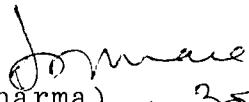
"Even if the report is favourable, it may not bring out all the points and some times very important points supporting the charged officer's case may be omitted. The Disciplinary Authority may itself not catch these points if the report of the Enquiry Officer is considered by him without giving an

opportunity to the delinquent officer to submit his representation against the enquiry report. 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 influenced 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."

It is to meet the requirement of affording a reasonable opportunity to the charged officer that it is obligatory on the part of the disciplinary authority to supply a copy of the Enquiry Report to the delinquent official to enable him to make a representation after taking into consideration the facts and circumstances and the findings of the Enquiry Officer. To meet the provisions of Article 311(2) of the Constitution of India this requirement has always been there. In the circumstances of the case we set aside the orders of the disciplinary authority dated 4.1.1990; appellate authority dated 18.1.1990 and the revisionary authority dated 14.1.1991. The respondents however are not preclu-

ded from remitting the enquiry for further processing from the stage of supplying a copy of the inquiry report to the delinquent official so that a reasonable opportunity is given to him to submit a representation to the disciplinary authority before it decides to impose any penalty on him.

The OA is disposed of as above with no orders as to costai¹ the administrative discipline.


(J.P. Sharma)
Member (J)

35/4/91


(I.K. Rasgotra)
Member (A)
35/4/91