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**Central Administrative Tribunal
Principal Bench**

OA No.3023/2004

New Delhi this the 13th day of December, 2006.

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mr. N.D. Dayal, Member (A)

Niranjan Singh,
S/o Shri Khubi Singh,
R/o H.No.120, Deep Gali,
Surya Nagar, Chandpur Road,
Bulandshahr, U.P.

-Applicant

(By Advocate Shri A.K. Shukla)

-Versus-

1. The Union of India,
Defence Secretary,
South Block,
Ministry of Defence,
New Delhi-110011.
2. The Manager,
Station (CSD) Canteen,
Bulandshahar, U.P.
3. The Commander,
H.O. Sub-Area,
Meerut Cantt, U.P.
4. Maj. Gen. B.W. Kelson,
General Officer Commanding,
Headquarters Uttar Bharat Area (Q),
Bareilly Cantt., U.P.

-Respondents

(By Advocate Shri J.B. Mudgil)

1. To be referred to the Reporters or not? *yes*
2. To be circulated to outlying Benches or not? *yes*

S. Raju
(Shanker Raju)
Member (J)

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O R D E R (ORAL)

Mr. Shanker Raju, Hon'ble Member (J):

Heard the learned counsel of both the parties.

2. Applicant, an ex-Subedar, impugns respondents' order dated 3.8.2004, whereby he has been dismissed from service as well as an order passed on 16.4.2005 in appeal, upholding the punishment.

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3. On the allegations that applicant while working as Manager (Canteen) used derogatory and unparliamentary language with the senior officers of Army was placed under suspension on 27.4.2004 and thereafter treating this order of suspension as a chargesheet, an enquiry conducted by the Army personnel, witnesses when examined, applicant had foregone his right to cross-examine the witnesses, though he has tendered his defence statement, when not considered, a finding recorded by the enquiry officer (EO), when responded to by applicant, culminated into an order passed by the disciplinary authority (DA), without recording reasons. When appeal of applicant could not be disposed of it led to filing of OA-3023/2004. The Tribunal by an order dated 8.2.2005 directed appellate authority to examine the contentions raised by applicant, which ultimately culminated into the appellate order, rejecting the appeal, gives rise to the present OA.

4. Learned counsel of applicant has taken a plethora of arguments, but at the outset, states that being a civilian employee applicant has to be proceeded against in a procedure meant for the civilian employee, holder of civil post. Accordingly he has raised an objection as to the EO being an Army officer to assail the enquiry proceedings.

5. Learned counsel would also contend that as no chargesheet has been issued and no proper opportunity of defence has been accorded without specifying the exact words which were derogatory or disrespectful, allegedly used by applicant of degrading nature directed against senior Army officers, applicant

has been deprived of a reasonable opportunity to defend the charge.

6. Learned counsel would also contend that the finding of the EO is *de hors* his defence contentions and a non-speaking one.

7. Learned counsel would further contend that the order passed by the DA is also non-speaking, no reasons have been accorded to come to a conclusion of guilt against applicant. Merely because applicant has refused to cross-examine, his other defence contentions having not been taken into consideration, would vitiate the order.

8. As regards appellate order, it is stated that his contentions have not been considered and only a mechanical order has been passed without application of mind.

9. Learned counsel would also contend that Shri R.S. Baswan who took the charge only on 1.4.2003 cannot be a witness, as he was not present on the date of the incident.

10. On the other hand, learned counsel of respondents has vehemently opposed the contentions and produced on record a copy of the enquiry report. It is stated that as the decision of the Allahabad Bench of the Tribunal is sub judice before the High Court of Allahabad regarding suspension in WP No.16524/2004, the same cannot be assailed before the Tribunal. However, it is contended that due procedure has been followed and reasonable opportunity has been accorded to applicant who has not availed the opportunity to cross-examine the witness and has also not produced defence witnesses. Accordingly, a commensurate



punishment has been inflicted on fining of the EO, which cannot be assailed in the present OA.

3 11. On careful consideration of the rival contentions of the parties, *audi alteram partem*, which is an embodied principle under the principles of natural justice, requires a due notice of the charges to the concerned employee before he is proceeded with. A chargesheet is a brief account of the accusation levelled against a government servant. If the charges are lacking in material particulars and non-specific, to defend the same would be next to impossible and in such an event denial of reasonable opportunity has to be inferred.

12. From the perusal of the record and as per the admission of respondents, no separate chargesheet has been issued but the order of suspension having been treated as a chargesheet is not a dues compliance of the service conditions of the canteen employees promulgated on 28.4.2003, as also annexed as Annexure-B of the conditions.

13. As regards finding of the EO, it is trite that in a disciplinary proceeding if a reasoned finding is recorded this dispenses with the requirement by DA to record a reasoned order. From the perusal of the enquiry report what we find is that the defence contentions raised by applicant have not even been mentioned or discussed and also rebutted, simply because the prosecution witnesses have not been cross-examined, has been implied to be an admission on the part of applicant as to the allegations, which is not fair, as even if a witness is not cross-examined, yet the

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government servant has a right to adduce evidence and give his defence statement to rebut the charges against him.

14. The finding of the EO from its perusal clearly shows that no reason has been arrived at as to why the allegations against applicant have been substantiated and in absence of any reference to the defence contentions, the defence version has outweighed the prosecution and finding is in contravention of the decision of the Apex Court in **Anil Kumar v. Presiding Officer & Ors.**, 1985 SCC (L&S) 815.

15. As regards order of DA, in its order passed on its *ipsi dixit* without recording any finding and reasons as to the charge, simply reiterating what has been stated by the EO where no reasons have been recorded, passed a non-speaking order, which according to the decision of the Apex Court in **Director (Marketing), Indian Oil Corporation v. Santosh Kumar**, 2006 (6) Scale 358, is not a valid compliance, shows non-application of mind, which cannot be countenanced.

16. As regards appellate order, though the directions of the Tribunal were to the effect that a reasoned order dealing with the contentions has to be issued, but the appellate authority simply stating the factual matrix of the case has not discussed any of the contentions raised by applicant and accordingly reasoned order has not been passed, which is not a valid compliance as per the decision of the Apex Court in **Narender Mohan Arya v. United Insurance Co.**, 2006 (3) SLR SC 92.

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17. We also note that applicant has been dismissed by an order passed on 3.8.2004, where the date of dismissal has been related back to a retrospective date of his suspension, i.e., 27.4.2004. It is trite that no order of dismissal could be issued from a retrospective date. Accordingly, this has to be treated from a prospective date, i.e., from 3.8.2004.

18. In the result, for the foregoing reasons, OA is partly allowed. Impugned orders are set aside. Applicant is to be reinstated in service forthwith but under deemed suspension. In such an event he would be entitled to all consequential benefits as per FR. However, this will not preclude respondents from proceeding further, if so advised, from the stage of issue of chargesheet, in accordance with law. Respondents shall comply with the aforesaid within a period of three months from the date of receipt of a copy of this order. No costs.



(N.D. Dayal)
Member (A)



(Shanker Raju)
Member (J)

'San.'