

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 2029/92

(3)

New Delhi, this the 8th day of September, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri K. Muthukumar, Member (A)

Sh. D.S. Sindhu,
C-49, Sector No. 9,
New Vijay Nagar,
Ghaziabad.Applicant
(By Advocate: Shri VSR Krishna)

Versus

Union of India through

1. Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Financial Advisor,
(Defence Services),
Ministry of Defence,
Finance Division,
South Block, New Delhi.
3. The Controller General of
Defence Accounts,
West Block V, R.K.Puram,
New Delhi.

....Respondents

(By Advocate: Sh. N.S. Mehta)

O R D E R (ORAL)
[Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)]

Petitioner in this case was issued a chargesheet alongwith two other officers while working in the office of Controller of Defence Account, North Meerut. Enquiry Officer thoroughly examined the case and found both the colleagues of the petitioner have committed the misconduct and the enquiry officer had absolved the petitioner stating that the petitioner has no role to play.

[Signature]

Disciplinary authority was not agreeable with the findings of enquiry officer and proceeded to give his own reasons alongwith the impugned order which he passed on 1.10.1991 while dismissing the petitioner from service alongwith two of his colleagues.

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After notice this matter has come up for final hearing on the regular board. Counsel for the petitioner submitted that even for the enquiry notices issued were not served on him and this fact was noticed by the enquiry officer and as far as he is concerned, the inquiry proceeded ex parte. But that fact has no relevance as far as the result of the enquiry, till the stage of enquiry officer, is concerned. But the contention of the learned counsel for the petitioner is that in case the disciplinary authority disagreed with the findings of the enquiry officer and if he proceeded to pass a punishment with the reasons for disagreement in a composite manner in the same order he should have given the petitioner an opportunity to meet the grounds in opposition by the disciplinary authority so that the petitioner may have full opportunity to meet the new grounds now being incorporated in the punishment order itself by the disciplinary authority.

Learned counsel for the petitioner relied upon a decision of this court wherein one of us was Member to the said order. The said decision is dated 4th December, 1997 in OA 1267/94 in the matter of Dhanwant Singh vs. UOI and others. Perusal of the said order shows that it on all four scores, covers the facts of this case as well, and petitioner has not

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received the notice even for the enquiry and it is for the first time he obtains an order of dismissal from the disciplinary authority without notice.

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In the circumstances, we have no hesitation to hold that the disciplinary authority should have given a prior intimation before he proceeded to inflict penalty order against him. Disciplinary authority should have indicated his disagreement with the findings of the enquiry officer and forwarded the tentative conclusion to the petitioner by way of notice before proceeding to award penalty of dismissal so that the principles of natural justice may be met fully. The absence of which has resulted in an order highly prejudicial to the petitioner, who has not participated the enquiry.

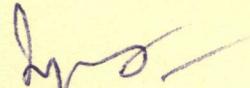
We see considerable force in the contention of the counsel for the petitioner who also stated that even though on the said date the rules were silent on these areas, in such circumstances disciplinary authority was to give a notice indicating the tentative conclusion arrived at by the disciplinary authority. Considering all aspects of the case, we proceed to direct the respondents to issue the following directions:-

- a) The order of the disciplinary authority as well as the appellate authority both are quashed giving liberty to the respondents to continue with the proceedings from the stage of issuing notice at the instance of disciplinary authority stating therein the reasons for his deference with the conclusions of the

enquiry officer, alongwith his tentative conclusions, and thereafter the petitioner will have also the liberty to proceed with the case in accordance with the rules. The petitioner shall be re-instated in service. It goes without saying that the petitioner will be entitled to all consequential benefits.

These orders shall take effect immediately and shall be implemented within eight weeks from the date of the receipt of the copy of this order.

This OA stands allowed to the extent stated above with no order as to costs.



(K. Muthukumar)
Member (A)



(Dr. Jose P. Verghese)
Vice-Chairman (J)

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