

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No. 587/93

New Delhi: this the ^{1st} 26th day of May, 1999.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri S.D. Sharma s/o Shri Yag Dutt Sharma,
R/o C.II/142, Lodhi Colony,
New Delhi Applicant.

(By Advocate: Shri G.D. Gupta).

Versus

1. Union of India,
through Secretary,
Ministry of Finance,
Govt. of India,
New Delhi.

2. Secretary,
Ministry of Defence,
Govt. of India,
New Delhi

.... Respondents.

(By Advocate: Shri V.S.R. KRISHNA)

ORDER

BY HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A):

Applicant impugns the dismissal order dated 5.2.91 (Annexure-F) and seeks reinstatement with full back wages and other consequential benefits.

2. Heard both sides.

3. Respondents' counsel does not deny that while the Enquiry Officer in his findings dated 18.9.90 held that the second limb of the charge framed against applicant, that he was in the habit of absenting himself from duty unauthorisedly, was not established as the periods mentioned in the chargesheet stood regularised under rules, the Disciplinary Authority in his impugned order dated 5.2.91 held that the charge of applicant being in the habit of absenting himself from duty also stood proved against applicant.

4. In such circumstances, where the Disciplinary Authority differed from the findings of the Inquiry Officer, Shri G.D.Gupta has emphasised that the Disciplinary Authority should have communicated the reasons for his disagreement with the Inquiry Officer's findings in writing to the applicant, and given him an opportunity of being heard before imposing the punishment upon him. Admittedly that was not done in the present case.

5. In this connection Shri Gupta has relied upon the Hon'ble Supreme Court's judgment in Punjab National Bank & Ors. Vs. Shri Kunj Bihari Mishra and connected cases J.T. 1998 (5) SC 548. That judgment was delivered in the background of Regulation 7(2) Punjab National Bank Officers' Employers (Discipline & Appeal) Regulations, 1977 in which their Lordships have held thus:

"Principles of natural justice have to be read into Regulation 7(2) whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the Inquiry Officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Inquiry Officer."

6. As it is the principles of natural justice which have been relied upon by the Hon'ble Supreme Court, which must be deemed to have been always in existence and are universally applicable, respondents cannot argue that the aforesaid judgment would not apply in this case or would apply only prospectively.

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7. Accordingly the impugned order dated 5.2.91 is quashed and set aside. Respondents are directed to reinstate applicant within 1 month from the date of receipt of a copy of this order. The case is remanded back to respondents to take up the D.E. from the stage of the Disciplinary Authority communicating reasons for his disagreement with the findings of the Inquiry Officer. He will thereafter proceed in accordance with law and conclude the DE as expeditiously as possible and preferably within 4 months from the date of receipt of a copy of this order. The intervening period from the date of dismissal till the date of reinstatement and thereafter till the date of final disposal of the D.E. pursuant to the above directions will be regulated as per rules and instructions.

8. The DA stands disposed of in terms of para 7 above. No costs.

Lakshmi Swaminathan

(MRS. LAKSHMI SWAMINATHAN)
MEMBER(J).

S. R. Adige

(S. R. ADIGE)
VICE CHAIRMAN (A).

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