

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

....

Original Application No. 541 of 1996

this the 11th day of March 2004.

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER (A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Lokesh Chandra Chaturvedi, S/o S.S. Chaturvedi, R/o
3-A/125 Azad Nagar, Kanpur Nagar.

Applicant.

By Advocate : K.K. Tripathi.

Versus.

1. Union of India through Ministry of Defence (Finance), New Delhi.
2. Controller General of Defence Accounts, West Block-V, R.K. puram, New Delhi.
3. Chief Controller of Accounts (Factories), 10, Auckland Road, Calcutta.
4. Controller of Accounts (Factories), Accounts office, Field Gun Factory, Kanpur Nagar.

Respondents.

By Advocate : Sri D.S. Shukla.

ORDER

PER MRS. MEERA CHHIBBER, MEMBER (J)

By this O.A., applicant has challenged the order dated 9.12.94 whereby applicant had been removed from service and the order dated 22.2.96 whereby his appeal was rejected.

2. The brief facts as alleged by the applicant are that while working as Sr. Auditor, applicant was charge-sheeted on 26.8.92 on the allegation that he had made payment against fake bills. He denied the charges, therefore, Enquiry Officer (in short E.O.) was appointed. E.O. gave his report holding him guilty only ^{on B} the basis of handwriting expert's opinion without producing him

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as a witness. The disciplinary authority removed him from service vide order dated 9.12.94 (Annexure-3). Being aggrieved, he filed appeal, but that was also rejected on 22.2.96.

3. Counsel for the applicant raised only one point that department could not have taken expert⁸ opinion from a ~~fit~~ ^{private B} agency that too without producing him in the enquiry, ^{for cross examination B} thus, denying him of his opportunity to cross examine him. It amounts to denial of right to defend as entire report is based on expert's opinion. In support of his contention, he relied on AIR 1989 Allh 133.

4. Respondents on the other hand have opposed this O.A. on the ground that applicant did not make any such request before the E.O. If he wanted, he could have requested the E.O. to summon the expert. Since no such effort was made by him before E.O., applicant cannot be allowed to raise this point first time in the O.A. He relied on 2003 (11) UPLBEC SC 1047 in support of his contention that Tribunal should not interfere in cases of penalty lightly.

5. We have heard both the counsel and perused the pleadings as well as original record produced by the respondents as directed by us. Perusal of the disciplinary proceedings show that full opportunity was given to the applicant as well as his defence assistant as it is specifically written in ordersheet dated 14.7.93 that original copy of handwriting expert report was shown to the charged Govt. servant and defence Assistant. Defence Assistant wanted a copy of the report, but E.O. did not agree as the relevant extract was already noted. This ordersheet is duly signed by charged Govt. servant without any protest or without requesting for the handwriting expert for cross, ^{thus} ~~but~~ no such effort was made by him. At his juncture, it would be relevant to quo

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quote the latest view taken by Hon'ble Supreme Court which is reported in JT 1996 (3)SC 712, in rel. State Bank of Patiala Vs. S.K. Sharma. It was held therein that the interest of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end as that would be counter productive exercise. It was explained by Hon'ble Supreme Court that the court should see as to what prejudice has been caused to the delinquent by virtue of the irregularity. Similar view was expressed by Hon'ble Supreme Court in the case of Managing Director ECIL Vs. B.Karunakaran & Ors. reported in 1993 SCC (L&S) 1184, therefore, as per the new judgments now we have to see what prejudice has been caused to the applicant. It is seen that the hand writing expert's opinion had to be sought because applicant had denied the charge levelled against him. In these circumstances, the only authentic way was to obtain the expert's opinion as the charges against applicant was that he had passed fraudulent payments and defrauded the state to the tune of Rs.14075/-.

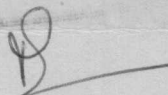
6. The E.O. has recorded after seeing the evidence that SAR was initially passed for Rs. 575/-, whereas the exact entitlement was for Rs.500/- only, but subsequently in the cash copy of SAR Rs.1400/- was added in words as well as figures. This amount of Rs.1400/- was not added in other payment records viz. payment register and office of SAR dated 20.12.1989.

7. The handwriting expert had only confirmed the body writings to see whether the writing was that of applicant or some other person. The hand writing expert

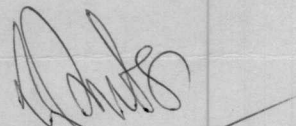


has given his opinion that the writing on documents was that of applicant. The hand writing expert is an independent person who cannot be said to have any prejudice against the applicant as he would not even have known who the applicant is. More-over if applicant had any doubt about the correctness of hand writing expert's opinion, he could always have given the handwriting report from some other experts or have requested to produce the expert so that he may xxx him, ^{the E.O. P2} ~~therefore~~ ^{but not having done so,} it cannot be said that principles of natural justice have been violated. Infact in the abovesaid judgment of S.K. Sharma the facts were that there were two witnesses Balwant Singh and Kaur Singh. Copies of their statements were not furnished though S.K. Sharma was permitted to peruse them and take notes therefrom. Out of these two witnesses Balwant Singh was ^{not} examined and only Kaur Singh was examined. The delinquent did not raise any objection during the enquiry that non-furnishing of the statements has disabled ^{him P2} from effectively xxx the witnesses or to defend himself. In these circumstances, Hon'ble Supreme Court held that no prejudice has been caused to the delinquent.

8. Almost identical situation is present before us in this case. Since this situation is ^{covered P2} ~~concerned~~ by the above said judgment and applicant had not raised any objections ^{can} at appropriate stage, we hold no prejudice be said to have been caused to him. Therefore, the O.A. is found to be devoid of merit. The same is accordingly dismissed with no order as to costs.



MEMBER (J)



MEMBER (A)

GIRISH/-