

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 05th day of February, 2002.

Q U O R U M :- Hon'ble Mr. S. Dayal, Member- A.
Hon'ble Mr. A.K. Bhatnagar, Member- J.

Original Application No. 637 of 1996

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Original Application No. 793 of 1996. ✓

S.P. Singh S/o Late Beni Madhao Singh
R/o Handia, Distt. Allahabad.

.....Applicant in OA 637/96

Counsel for the applicant :- Sri Lalji Sinha

S.J. Rakesh S/o Late Ram Karan
R/o Vill. Tiwaripur (Bhupatti), Post- Bithauli
Distt. Allahabad.

.....Applicant in OA 793/96

Counsel for the applicant :- Sri A.K. Srivastava

V E R S U S

1. Union of India through Ministry of Textiles,
Udyog Bhawan, New Delhi.
2. Secretary, Textiles, Udyog Bhawan,
New Delhi.
3. Development Commissioner, Handicrafts,
West Block- 7, R.R. Puram, New Delhi.

.....Respondents

Counsel for the respondents :- Sri Amit Sthalekar

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O R D E R (Oral)

(By Hon'ble Mr. S. Dayal, Member- A.)

These two connected O.As have been filed by the applicants against the common order of punishment whereby both the applicants have been dismissed from service.

2. The relief sought by the applicants is to set aside the order of dismissal dated 18.04.1995 and the appellate order dated 08.03.1996 and direction to respondents to reinstate the applicants in service and pay them entire arrears of salary and allowances.

3. The applicant in O.A 793/96 was working as Carpet Training Officer at Carpet Weaving Training Centre, Saifabad, Distt. Pratapgarh and the applicant in O.A 637/96 was working as Store-Keeper-cum-Accounts Clerk at Advanced Training Centre, Baraon, Distt. Allahabad. A common charge sheet was issued against both the applicants who have been charged with none compliance of transfer order and consumption of liquor in the chamber of Assistant Director, Carpet Weaving Training-cum-Service Centre, Allahabad while on visit day. They abused and threatened the staff members. They were charged with contravention of rule 3(1) (II) (III) of the C.C.S (Conduct) Rules, 1964. A common enquiry was held against both the applicants resulting in a common order of dismissal of both of them. The disciplinary authority did not agree with the findings of the enquiry officer to the effect that the charge No.1 was not proved and charge No.2 was partly proved to the effect that the charged officers had occupied the

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chamber of the Assistant Director with the help of out-sider and created nuisance. The applicants filed an appeal against the order which was dismissed by the appellate authority by order dated 08.03.1996 which has also been challenged by the applicants.

3. We have heard Sri Lalji Sinha and Sri A.K. Srivastava, learned counsel for the applicants in both connected OAs and Sri Amit Sthalekar, learned counsel for the respondents.

4. The main ground taken by both the applicants is that disciplinary authority did not indicate any ground for dis-agreement with the report of the enquiry officer when it ^{was} sent to the applicants by notice dated 16.05.1994 for making any representation or submission within 15 days. Thus the applicants were denied an opportunity to present their defence against any dis-agreement which the disciplinary authority reached after the applicants had submitted their representation on receipt of enquiry report.

5. We find that the disciplinary authority had dis-agreed with the findings of the enquiry officer in its order of punishment stating ~~that~~ with regard to non-compliance of transfer order ~~it is stated~~ that the transfer order was not complied with till 22.08.1990 and was only cancelled by a subsequent order dated 23.08.1990. The enquiry officer had failed to examine this charge in its proper prospective. The disciplinary authority did not agree with the findings of enquiry officer regarding consumption of liquor and creating nuisance on the ground that

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some of the witnesses had stated that applicants alongwith out-siders had consumed liquor and had created nuisance.

6. Learned counsel for the applicant, ^Lhas~~re~~ relied upon the case of Yoginath D. Bagde Vs. State of Maharashtra and others 1999 SCC (L&S) 1385. After discussing case law on the subject, the Apex Court has ruled as follows :-

"..... If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reverding those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer."

7. It is clear from the pleadings that the applicants have not been given an opportunity to represent against the disagreement of the disciplinary authority with the report of the enquiry officer ^{on} ~~to~~ ^{account of the fact that} ~~the effect~~ that the disciplinary authority expressed its disagreement only in the order of punishment and not before that.. The disciplinary authority should have show the reasons for disagreement with the report of enquiry officer and his tentative conclusion to the applicant so that applicants ^{were} ~~shall~~ ^{be} in position to effectively represent against the same. Since this part has not been complied with,

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the orders of the disciplinary authority and the appellate authority cannot be sustained.

8. We, therefore, set aside the order of disciplinary authority dated 18.04.1995 and the order of appellate authority dated 03.03.1996. The disciplinary authority shall have a right to proceed, if it so wishes, against the applicants after serving tentative conclusion and disagreement with the report of enquiry officer on the applicants.

9. There shall be no order as to costs.

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Member (J).

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Member (AJ)