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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD

Allahabad : Dated this 3rd day of November, 2000  
Original Application No. 787 of 1997

CORAM :-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiquddin, J.M.

S.K. Varma, Son of Late Sri T.P. Varma,  
S.A. In Commander Works Engineer  
No.1, Wheeler Barracks, Kanpur Cantt.  
(Sri BP Srivastava, Advocate)

..... Applicant

Versus

1. Union of India through  
The Secretary Ministry of Defence,  
New Delhi.
2. The Commander Works Engineer No.1,  
Wheeler Barracks Kanpur Cantt.

(Km. Sadhna Srivastava, Advocate)

..... Respondents

O R D E R (U\_r\_a\_l)

By Hon'ble Mr. S. Dayal, A.M.

This application has been filed for declaring the order dated 8-7-1997 as null and void. The applicant also seeks a direction to the respondents not to record any warning in the Service Book of the applicant. A recordable warning in this case was awarded to the applicant for not deducting sales tax and income tax for materials lying at site.

2. The admitted facts are that this warning has been given without any show cause notice to the applicant.

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In the light of this the applicant has sought the relief as above.

3. Learned counsel for the applicant has contended that although a recordable entry has been given but in effect this warning is going to hamper the career of the applicant at every stage when the question of the applicant's promotion comes up. He has placed reliance on AIR 1967 SC 1269 (State of Orissa Vs. Dr. (Miss) Binapani Dei and others). In that case before the Apex Court, the date of birth of the applicant was challenged and the applicant was retired earlier than the date earlier recorded in her Service Book, which had been continued to be accepted. The Apex Court found that the respondents in this case changed the date of birth without showing the material on which the order was passed to the applicant. The Apex Court has laid down the following law which are administrative in character :-

"It is true that even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence".

4. Learned counsel for the respondents has argued that recordable warning is not a punishment. She ~~clearly~~ <sup>fairly</sup> ~~concedes~~ <sup>concedes</sup> that the applicant was not afforded any opportunity before the recordable warning was issued. She also contends that the applicant would have represented his case to the respondents.

5. We have seen the order passed in the case of the applicant giving her recordable warning. The order

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reads as under :-

"1. While you were working under GE(P) Fy Kanpur as SA-I a contract bearing CA No. CELZ/KAN/28 of 90-91 -Provn of External Electrification works for Multistorey Bldg at OFC Kanpur concluded. During Technical Examination of work, it is observed that payment against materials lying at site was made to contractor pertaining to financial year 92-93 ending Mar 93. The tax was required to be deducted on full payment including material. But Income Tax /Sale Tax has been deducted on work done only. No ST/IT has been deducted on the payment made for material lying at site. The GE agreed the recovery of Rs.1,55,388/- and recovered the amount of IT/ST from the subsequent RAR.

2. STE's observation reveals that proper care has not been made while checking RAR effectively which is breach to Rule 3(i)(ii), hence over payment of Rs.1,55,388/- was made to the contractor for some period and it is established by agreeing recovery against IT/ST its recovery against work done/actual recovery.

3. The report has been examined by CECC Lucknow/CELZ Lucknow, it has been decided to issue Recordable Warning for the above lapses. You are responsible for making over payment to the contractor.

4. In view of above, you are hereby warned to be more careful in performance of duties and avoid lapses in future.

5. Please treat that it is a Recordable Warning."

6. The order is dated 08-7-1997. The order has clearly been made on account of certain lapses on the part of the applicant. Although warning awarded his a recordable warning, it would be covered within the ambit of the administrative order mentioned by the Apex Court in the case cited before us. Therefore, the impugned order dated 8-7-1997 (Annexure-1 to the OA) of the respondent no.2 is set aside.

7. In case the respondents want to proceed against the applicant they should give him an opportunity to show cause. They may take any such action within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

Member (J)

Member (A)

Dube/