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THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH:

ALLAHABAD

Registration O.A. No. 148 of 1987

Kailash Tiwari Applicant.

Versus

1. The Union of India through Secretary
Ministry of Finance (Defence) New Delhi.
2. The Financial Advisor,
Ministry of Finance (Defence)
New Delhi.
3. The Controller General of Defence
Accounts West Block/V Ramakrishnapuram,
New Delhi.
4. The Controller of Defence Accounts (Air Force)
107, Rajpur Road, Dehradun.

. Respondents.

Hon'ble Mr. A.B. Gorthi, A.M.
Hon'ble Mr. S.N. Prasad, J.M.

(Delivered by Hon'ble Mr. S.N. Prasad, J.M.)

The applicant has approached the Tribunal under section 19 of the Administrative Tribunals Act of 1985 with the prayer that the order dated 26th June 1984 alongwith the order passed by the appellate authority as communicated vide letter dated 23.1.1987 passed against the applicant be set aside and the applicant be allowed to continue on the post of auditor under the respondents with all benefits attached to the post of the auditor, and full pay for the period of suspension be awarded to the applicant holding that the order of suspension passed against the applicant was illegal and unjustified.

2. Briefly, stated the facts of this case as mentioned in the petition of the applicant are, inter-alia, are, that the applicant was recruited and appointed as upper Division Clerk in IAO (AF) Manauri, Allahabad under jurisdiction of respondent no.3

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of respondent no.3 vide his order no. AN/1/570/REII/XXII dated 19.2.1965. He maintained his work upto standard and was confirmed in his cadre w.e.f. 1 February, 1962, and under the policy of Government of India the applicant was re-designated as an 'AUDITOR' instead of Upper Division Clerk to which he agreed. Now he is Auditor in LAO (AF) Gorakhpur. His L.A.O. Sri Alfred Jung and sectional Head Sri Janardan Dube S.O. (A) and colleague Auditors Sri Lalji verma and a widow Smt. Madhubala are annoyed with the applicant. It is further stated that aforesaid Sri Alfred Jung Developed immoral aspiration against said Smt. Madhubala and made efforts to entice her for disdainful relation. Smt. Madhubala repelled Sri Alfred Jung and made complaints against him to higher authorities and also murmured in the office before the applicant and Sri Lalji Verma. Sri Alfred Jung stood defeated in his dirty mission and desired help of the applicant and Sri Lalji Verma to harass Smt. Madhubala until she surrendered. The applicant and Sri Lalji Verma also repelled Sri Alfred Jung and he stood defeated on all sides. The aforesaid Sri Alfred Jung became annoyed against the applicant and Sri Lalji Verma and Smt. Madhubala with ^{~ a view ~} ~~the~~ to harm and harass the applicant. He concocted the criminal case against them, and also sent wrong confidential reports against them to the respondent no.3, who without probing into the report suspended the applicant and the aforesaid Lalji Verma and also issued charge-sheet against the applicant and aforesaid Lalji Verma under rule 14 of CCS (CCA) rules 1965 for major penalties. F.I.R. which was lodged by the aforesaid Alfred Jung, was ^{~ that criminal case ~} ~~tried~~ in the court of Chief Judicial Magistrate, Gorakhpur under section 323/504, I.P.C. and he was clearly acquitted by the aforesaid Court.

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In the memo of charges no eye witnesses were mentioned and the departmental enquiry was held in arbitrary manner, In violation of Article 311(2) of the constitution of India, Since, the aforesaid Shri Alfred Jung was a party himself to the incident his confidential report was illegal, unwarranted and discordable, yet respondent no.4 being subordinate to respondent no.3 acted in an unbecoming manner simply to please respondent no. 3 who being the disciplinary authority gave no decision on the enquiry report and the respondent no.2 who was next higher authority over respondent no.3 issued un-warranted and dictatorial punishment order vide his No. AN/XIII/13500(59)/6 Vol.I dated 26.6.1984. Several junior Auditors have been promoted as S.G.A. and the applicant has been deprived of his rightful claim due to aforesaid illegal punishment order whereby the applicant has been reduced in rank. The impugned order has been passed without giving proper opportunity to the applicant. As the applicant was posted at Gorakhpur and the enquiry was to be held at Dehradun he requested the disciplinary authority to hold the enquiry at Gorakhpur where he will be able to engage a defence counsel to assist him and ~~that~~ at Gorakhpur he will be able to disprove the charges more effectively as the incident allegedly took place at Gorakhpur and both prosecution and defence witnesses could easily be available there, but his request was refused and he was forced to attend the enquiry at Dehradun. No one agreed to go to Dehradun to act as defence Counsel nor one of the important defence witness Smt. Madhubala Srivastava agreed to go to Dehradun. Thus he was denied of the reasonable opportunity on 13.4.83 by the Inquiry Officer who did not supply documents to the applicant, which were asked for through the application of the applicant dt. 13.4.1983. A photostat copy of the application on

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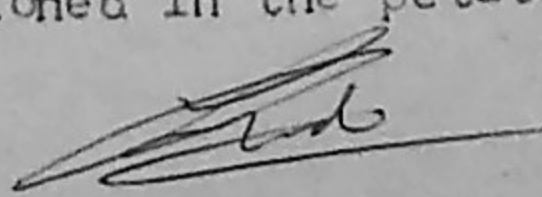
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and order of Inquiry Officer passed on that application are enclosed as Annexure, 20^{and} 21 to this petition. The copy of enquiry report was not supplied to the applicant, and the provisions of Rule 17 of C.C.S. (C.C. & A) Rules were not complied with. The appellate authority did not apply his mind to the facts and circumstances of the case and rejected the appeal mechanically in violation of rules and the principles of natural justice and fairplay and in violation of the provisions of Rule 31 of C.C.S. (C.C. & A) Rules and as such the impugned orders should be set aside.

3. In the counter-affidavit, filed by the respondents, it has been stated, inter-alia, that the applicant is not holding the designation of permanent auditor but he has been reduced to the post of clerk as measure of penalty w.e.f. 26.6.1984 for the illegal act of the applicant against Shri Alfred Jung by the applicant on 3.5.1982. F.I.R. was lodged and apart from criminal proceedings, the applicant was departmentally proceeded with and in the course of enquiry he was afforded reasonable opportunity to defend himself and the enquiry officer submitted his report in accordance with rules and procedure and punishment order was passed by the disciplinary authority validly and properly according to the rules and procedure and there was no irregularity or illegality. It has been further stated that order of the appellate authority was passed validly and properly according to the provisions^{and} of rules and procedure of CCS (CCA) Rules 1965 and the application of the applicant is liable to be dismissed.

4. Rejoinder affidavit has been filed by the applicant, wherein almost all the facts and allegations of the applicant as mentioned in the petition have been reiterated.



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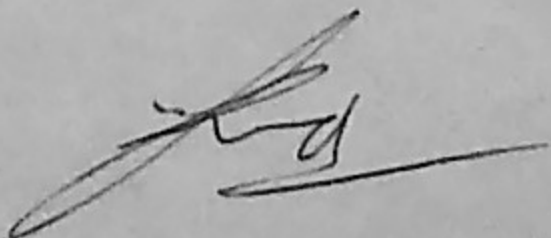
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5. After the amendment in the petition, supplementary counter-affidavit (additional reply) has been filed by the respondents wherein it has been, inter-alia, stated that the applicant was supplied with a copy of the enquiry report along with the order dated 26.6.1984 under his registered communication dated 5.10.1984, a photostat copy whereof has been filed as annexure 1^{to}. Supplementary counter-affidavit (additional reply) and acknowledgement receipt in regard thereto has been filed as annexure 2^{to} supplementary counter-affidavit, and it has been further stated that in view of above circumstances the application of the applicant is liable to be dismissed.

6. We have heard learned counsel for both the parties and have thoroughly and carefully gone through the records of the case.

7. Besides the other ^{points} ~~points~~, the learned counsel for the applicant has drawn our attention to para 12 of the application and to annexure 20 and 21 to the application and has argued that a perusal of these ^{papers} ~~papers~~ clearly shows that the documents which were demanded by the applicant on 13.4.83 during the course of enquiry and which were quite essential for effective defence of the applicant, and on the basis of which the enquiry report and the findings in the enquiry report were based, were not supplied to the applicant as would be obvious from the order of the enquiry officer (Annexure 21) and as such the entire proceeding was vitiated and the enquiry report and findings of the enquiry officer were vitiated and thus this being so, the impugned order of the Disciplinary Authority dated 26.6.1984 and the order of

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the Appellate Authority which was communicated vide letter dated 23.1.1987 are liable to be quashed on this ground alone and in support of his arguments has placed reliance on the following rulings:-

(i) 1967 S.L.R. "Trilok Nath Vs. Union of India" (S.C.) at page 759 wherein it has been held by their Lordships of Hon'ble Supreme Court that had the copies of the documents been furnished to the appellant he might, after perusing them, will have exercised his right under the rule and asked for an oral inquiry to be held. Therefore,, in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the first information report and the statements recorded at the Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry. The Inquiry held must, in these circumstances, be regarded as one in violation not only of rule 55 but also of Art. 311(2). Accordingly we quash the order of removal of the appellant from service passed by the Chief Commissioner of Delhi:

(ii) A.T.R. 1986(2) S.C.186(Supreme Court of India) "Kashi Nath Dikshita(Petitioner) Vs. Union of India and others (Respondents) at page 186 wherein it has been enunciated by their Lordship of Hon'ble Supreme Court that "when a Government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend

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why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. It has further been enunciated that "in this case, the impugned order of dismissal rendered by the disciplinary authority was held to be violative of Article 311(2) of the Constitution of India on the ground that the appellant has been denied reasonable opportunity of defending himself and on that account it was null and void."

(iii) A.I.R. 1988(2) C.A.T. 621 (Central Administrative Tribunal, Allahabad),

(R.P. Singh (Petitioner) Vs
Union of India and others (Respondents)

at page 621 wherein it has been enunciated that the failure to supply copy of enquiry report vitiates the enquiry proceeding.
8.

The learned counsel for the respondents has argued that the documents which were demanded by the applicant through his application dated 13.4.83 (Annexure-20 to the application) were not essential documents as the enquiry report and the findings of the enquiry officer were not based thereon, and has further argued that non-supply of the documents, as referred to in the above application of the applicant, did not in any way caused any prejudice to the applicant, and has further argued that the applicant was afforded reasonable opportunity to defend himself and in support of his argument, has placed reliance on the following ruling :-

A.I.R. 1988(Supreme Court) 1338.

"Kailash Chander Asthana Petitioner
Versus

State of U.P. and others Respondents."

at page 1338, wherein it has been enunciated "U.P. Disciplinary proceedings (Administrative Tribunal) Rules(1947), R.9(3), Explanation

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Disciplinary Proceedings - Copy of report of Administrative Tribunal conducting inquiry - Supply of, to delinquent Govt. Servant- Explanation to R.9(3) dropped after amendment of Art. 311 of Constitution by 42nd Amendment- Disciplinary Proceedings held after amendment-Govt. servant concerned cannot legitimately demand a second opportunity- As such non-service of the copy of report was immaterial."

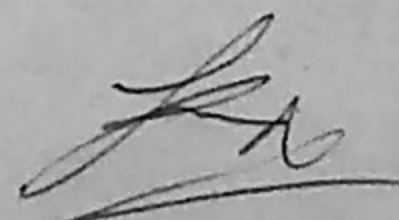
9. We have ^{perused} ~~heard~~ the above rulings.

10. This is important to point out that from the perusal of Annexure-2 to the application it is apparent that the applicant had demanded on 13.4.1983 the following documents:-

- i. Copy of the statement of Shri Alfred Jung.
- ii) Copy of the Statement of Shri J. Dubey.
- iii) Medical Report.
- iv) Copy of the statement of Shri Bhardwaj.
- v) copy of charge sheet of Lal Ji Verma and K.D. Singh.

10. A perusal of the enquiry Report (Annexure-4) shows that the besides other witnesses the name of Shri Alfred Jung was also mentioned as witness No.1 by the evidence of whom the Articles of charge was proposed to be substantiated or proved. In this context, it is worth while making mention of this fact that it is the aforesaid Alfred Jung who was the complainant and who had lodged F.I.R. against the applicant. Annexure 19 is the copy of the said F.I.R. A perusal of Annexure-21 shows that the documents demanded by the applicant through his above application dated 13.4.1983 were not supplied by the enquiry officer. This fact should also not be lost

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sight of that from the perusal of para 3 of the Supplementary counter (Additional reply) dated 21.9.1988, ^{~ filed by the respondents ~} it becomes obvious that copy of the enquiry report along with the impugned order dated 26.6.1984 was sent to the applicant on 5.10.1984 ~~was~~ under registered communication and not before imposing penalty and before passing the impugned order dated 26.6.1984.

11. This is also significant to point out that a perusal of the enquiry report and ~~at the~~ findings in the enquiry report ~~and~~ of the enquiry Officer (Enquiry Authority) reveals that the findings of the Enquiry Officer were based also on the statement of the aforesaid Shri Alfred Jung who was the main witness being the complainant and the alleged victim at the ^{~ hands} ~~hands~~ of the applicant.

12. Thus, from the foregoing discussions and having regard to the above relings relied upon by the learned counsel for the parties, and keeping in view the above glaring facts and circumstances of the case, we are of the opinion and ~~accord~~ accordingly held that the applicant was not afforded reasonable opportunity by the Enquiry Officer [~] during the course of enquiry and as ~~such~~ the aforesaid impugned orders passed by the Disciplinary Authority and by Appellate Authority stand vitiated and are liable to be quashed and the above rulings relied upon by the learned counsel for the applicant go a long way in supporting the above arguments of the learned counsel for the applicant as the facts of the instant case are found to be in resemblance with the facts of these rulings up to a great extent; whereas the above arguments of the learned counsel for the respondents are found to be devoid of force and weight as the facts of the instant case are found to be distinct and different from the facts of the above ~~instant~~ ruling relied upon by him.

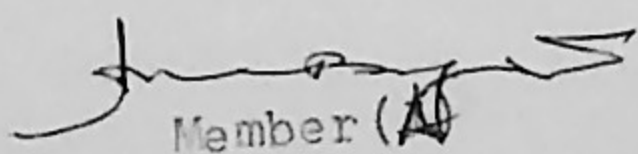
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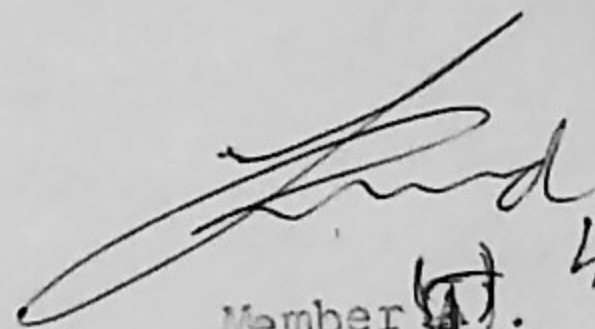
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13. In view of what has been stated above, we allow the application of the applicant and the above impugned orders of the Disciplinary Authority dated 26.6.1984 and of Appellate Authority are hereby quashed. The respondents are at liberty to supply the copy of the above documents as referred to in Annexure-20, and to give him opportunity to make his defence and proceed to complete the disciplinary proceedings from that stage in accordance with the relevant and extant rules and procedure. If the respondents choose to continue the disciplinary proceedings and complete the same as directed above, the manner as to how the period spent in the proceeding should be treated, would depend upon the ultimate result. The application of the applicant is decided as above with no order as to costs.


Member (A)


Member (B). 4.10.91

October 4th, 1991

RKA