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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

T.A. 956/87
(Writ Petition 5324/82)

G.S. Sharma

...Petitioner.

versus

Union of India & others ...Respondents.

Shri Yatindra Singh

..Counsel for petitioner.

Shri P.N. Katju

..Counsel for respondents.

Hon. Mr. D.K. Agrawal, Judicial Member.

Hon. Mr. M.M. Singh, Adm. Member.

(Hon. Mr. D.K. Agrawal, J.M.)

Writ Petition No. 5324/82 filed before the High Court of Judicature at Allahabad on transfer to the Tribunal under section 29 of the Administrative Tribunals Act, 1985 and was registered as T.A. No. 956/87 as indicated above.

2. Briefly, the facts are that the petitioner, employed as Cashier in Central Railway, was suspended vide order dated 10.12.1979 on the charge of negligence and misconduct resulting in loss to the tune of Rs 20,000 to the Railway Administration. As a result of enquiry, he was dismissed from service vide order dated 9.11.81. Appeal was dismissed on 25.2.82 except that punishment of dismissal from service was converted into removal from service. The petitioner has challenged the order of punishment on the ground that he was not afforded opportunity to defend himself in as much as he was not supplied documents despite his application dated 20.6.80, 18.9.80 and 16.3.81. It is further alleged that the petitioner was refused adjournment by the enquiry officer on 18.8.81 and the enquiry was made to proceed ex parte

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against him in his absence. These allegations have not been controverted. The principal question, therefore, is as/whether in view of the denial of opportunity to the petitioner to inspect the documents, amounts to denial of opportunity to defend himself. The second question is as to whether the enquiry officer was justified to proceed ex parte in the absence of the petitioner. It is not denied that the evidence of the prosecution witnesses was recorded in the absence of the petitioner and that the petitioner, thus, had no opportunity to cross-examine the witnesses. It is also alleged that the copy of the enquiry report was not supplied to the petitioner. The last ground by itself may not be held to be sufficient to set aside the disciplinary proceedings, because the matter is still under consideration of Hon. Supreme Court. It is further alleged that the appellate order is non speaking order in as much as the points raised in the memo of appeal were not discussed, nor findings recorded thereon. Taking into account these facts, we are inclined to hold that the petitioner was not afforded reasonable opportunity to defend himself. Consequently, the order of punishment and the order passed in appeal are liable to be set aside. Accordingly, we set aside the order of punishment dated 9.11.81, the order passed in appeal dated 25.2.1982 and remand the case to the disciplinary authority for fresh enquiry in accordance with law. The period from the date of dismissal to the date of retirement shall be deemed to be the period under suspension. We may observe in passing that the competent authority shall keep it in mind as to what punishment commensurates with the neglect or misconduct, if any, on the part of the applicant, is to be awarded to the petitioner, ^{in the event} ~~in case~~ the finding of guilt is returned

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against the petitioner, particularly in view of the result of the civil suit and the observation of Hon. Supreme Court in Special Leave Petition. Parties shall bear their own costs.

M H Suresh

Adm. Member.

DR Qureshi
4.9.90.

Judicial Member.

High Court Allahabad dated 4.9.90