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CENTRAL ADMINISTRATIVE TRIBUNAL, ALIABAD BENCH.

Registration O.A. No. 1368 of 1988

Ashok Kumar Ahuja Applicant.

Versus

Union of India
and others Respondents.

Sri A.V. Srivastava, counsel for the applicant.

Sri K.C. Sinha, counsel for the Respondents.

Hon'ble Mr. D.K. Agrawal, J.M.
Hon'ble Mr. K. Obayya, A.M.

(By Hon'ble Mr. D.K. Agrawal, J.M.)

Aggrieved by the punishment order dated 31.12.1986 passed by the disciplinary authority dismissing him from service, the applicant Sri A.K. Ahuja posted as Senior Store Keeper, Central Ordnance Depot, Kanpur has filed this application under Section 19 of the Administrative Tribunals Act, 1985 for setting aside the dismissal order confirmed in appeal by an order dated 3.11.1987.

2. We have heard the learned counsel for the parties and perused the record. We do not consider it necessary to go into the merits of the case because we notice that one of the grounds raised by the learned counsel for the applicant is that before the disciplinary authority passed the punishment order, the applicant had ^{not} been furnished with the report of enquiry officer on the basis of which the disciplinary authority proceeded to pass the impugned order. It has also been brought to our notice that the Enquiry Officer exonerated the applicant while the disciplinary authority had not agreed with the findings of the Enquiry Officer without

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affording an opportunity of hearing on representation to the delinquent employee, the disciplinary authority inflicted the punishment of removal from service. Even in the earlier decisions, it was held that as and when the disciplinary authority does not agree with the findings of the Enquiry Officer, it becomes necessary for the disciplinary authority before recording findings to the disadvantage of the delinquent government servant that an opportunity should be given to him. The point stands settled by the latest decision of Hon'ble Supreme Court in the case of Union of India Vs. Mohd Ramzan Khan and others reported in Judgment Today 1990 (4) Supreme Court 456. The Supreme Court, after consideration of earlier decisions held that the obligation to furnish a copy of the Enquiry Report in disciplinary proceedings before the order is passed by the disciplinary authority is an obligation arising out of principles of natural justice and remains unaffected by 42nd Amendment of the Constitution of India.

3. The application is, therefore, allowed and the impugned order dated 31.12.1986 as confirmed in appeal on 3.11.1986 is set aside. It shall be, however, open to the respondents to reopen the proceedings from ~~this~~ stage immediately after submission of the enquiry report. The disciplinary authority shall provide an opportunity to the applicant to make a representation within specified time and after passed an order in accordance with law.

4. It has been contended before us that the applicant was not cooperating. The allegation of non-cooperation has been denied by the applicant. Therefore, in the interest of justice, we hereby direct that the applicant has already

Ok agreed

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been furnished the copy of the enquiry report dated 21.7.1986 which has been filed on record as well. The learned counsel for the applicant has, however, pointed out to us the plea contained in para-10 of the counter affidavit which mentions that the enquiry was finalised by the enquiry officer on 12.8.1986 and the report was submitted on 25.8.1986 before the respondent no. 4 i.e. Officer Incharge, A.O.C. Records, Post Box No.3, Sikandrabad. Thus, it creates a confusion as to whether reliance has been placed by the disciplinary authority on some other enquiry report as well.

4. In these circumstances, we hereby direct the disciplinary authority to supply a copy of the enquiry report as mentioned in para-10 of the counter affidavit, within 15 days of the receipt of the copy of this order. The disciplinary authority ^{shall} then provide an opportunity to the applicant to make a representation and proceed to pass an order. In the meantime, the applicant shall be placed in the same position as he was on the date the punishment order was inflicted and become entitled to such subsistence allowance as permissible under the rules from the date of the order passed by the disciplinary authority on 31.12.1986. The applicant shall also be entitled to all the arrears of the suspension period till the date he is again deemed to be under suspension and an order in the light of our findings shall be passed by the disciplinary authority accordingly. Parties Shall bear their own costs.

R. Bhargava
Member (A)

Dated: 20.8.1991
(n.u.)

D.K. Garg
Member (J) 20.8.91.