

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

(A2)
(S)

Original Application No. 188 of 1988

Shri R.S. Arora

... . . . Applicant

Versus

Union of India and Others

... . . . Respondents

Hon. Mr. Justice U.C. Srivastava, V.C

Hon. Mr. K. Obayya, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant entered in the Government service under the control of respondents in the year 1962 as Store Keeper Gr. II i.e. in the Military Engineering Service. In the year 1975 he was promoted on the post of supervisor. While working as Supervisor B/s Grade I he was transferred from the office of Garrison Engineer. For the next promotion to Supervisor Grade I the applicant has to pass the departmental examination and the applicant passed the said examination in the year 1975 and as such he was given an ad-hoc promotion to the post of Supervisor Gr.II through an order dated 4th January 1979. On 18th June 1980 he was served with a charge sheet dated 9th May 1980 regarding certain discrepancies in the furniture etc which occurred while the applicant was posted as supervisor B/S Gr. II in the office of Garrison Engineer, East Lucknow under rule 14 of the Central Civil Services (Classification Control & Appeal) Rules, 1965. The applicant was directed through the aforesaid charge sheet

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that he should submit his written statement within ten days from the receipt of the said charge sheet. The perusal of the aforesaid charge sheet would also go to ~~show~~ show that the list of documents which have been relied upon in the charge sheet has been mentioned in Annexure 3 of the said charge sheet. On 27th June 1980, the applicant submitted his reply. On 27th October, 1980 the respondent no.3 passed an order through which the applicant was promoted to the post of supervisor Gr. I meaning thereby that the ad-hoc promotion, which was given on 4th January 1979 to the post of Supervisor Grade 1 was regularised and the said regularisation memo dated 22.10.1980 circulated by the respondent no.4 through letter dated 30.12.1980. Thereafter on 3rd December, 1980 after the promotion to the post of supervisor Gr. I the applicant was ordered to be reverted by the respondent no.3 on the ground that since the applicant was involved in a disciplinary case relating to discrepancies in furniture of the office of Garrison Engineer, East Lucknow and as such the applicant is brought down to his regular post on supervisor Grade II. Against the aforesaid reversion order the applicant filed a writ petition No.1063/81 R.S. Arora Vs. Union of India before the Lucknow Bench of Allahabad High court alongwith application praying there in for stay of the reversion order and an interim stay order was granted on 13.3.1981 which was subsequently confirmed by the Lucknow Bench of the Allahabad High court.

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2. On 3rd October 1980 Sri O.P. Rastogi was appointed as Enquiry Officer and Sri P.P. Bhatnagar Principal Barrack and Store Officer, was appointed as Presenting Officer on behalf of the respondents. On 24th December 1981, the Enquiry Officer submitted his enquiry report to the disciplinary authority i.e. respondent no.5. The perusal of the aforesaid enquiry finding would go to show that the applicant was exonerated from the charges levelled against him and the Enquiry officer has specifically stated that the applicant is not guilty of charges. After submission of the aforesaid enquiry report no action was ~~taken~~ taken by the disciplinary authority, neither the applicant was ever informed about the result of the said enquiry proceeding and the applicant reasonably took it that the chapter ^{was} of the said enquiry proceeding closed by the punishing authority. The perusal of the aforesaid findings would go to show that the presenting officer did not produce the relevant documents inspite of clear direction given by the Enquiry officer.

3. On 23rd November, 1984, the Punishing authority passed an order through which the following punishments have been imposed on the applicant.

(1) Censure

(2) Recovery of Rs.5000/- (to be recovered in 25 instalments of Rs.200/- per month)

Appeal against the aforesaid punishment order within the meaning of Rule 23(2) of the Rules 1965 on 21.1.1985, was preferred

While rejecting the aforesaid appeal the appellate order dated 30.10.1985 would go to show that the appellate authority has relied upon order sheet dated 14.5.1984 and 16.5. 1984. On 20.1.1986 the applicant filed a

representation before respondent no.2 Under Rule 29 of
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the Rules 1965. On 13th Feb. 1987 the representation preferred by the applicant was rejected and the punishment which was imposed on the applicant was upheld.

4. In view of the facts stated above it would go to show that the applicant was exonerated from the charges which were levelled against him twice but the punishing authority without overruling the findings given by the Enquiry Officer has held the applicant guilty.

5. The disciplinary authority has not considered the defence statement which was submitted by the applicant regarding the nature of the transactions made under the orders of incharge furniture. The disciplinary authority has also not taken into account the nature of the duties of the Supervisor Grade 11. If any order for the remittance of the case was passed by the disciplinary authority at any point of time after submission of first enquiry report by the then enquiry officer and neither the applicant was communicated about the reasons of disagreement of first enquiry report, the second enquiry is unreasonable, which was reopened by the order dated 16.5.1983.

6. The second enquiry report which was submitted on 1.6.1984 also exonerated the applicant from the charges levelled against the applicant, though it was an illegal document, as the Enquiry officer was not correct in submitting the second enquiry report, neither he has recorded any reason for submission of the second enquiry report. The perusal of the aforesaid order dated 23.11.84 through which the punishment was awarded against the

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applicant would go to show that the reasons for disagreement with the findings of the Enquiry Officer are not convincing as while passing the punishment order, the disciplinary authority has not stated the reasons that is why the documents were not shown to the applicant though listed. The said order would further go to show that reliance was placed by the disciplinary authority on the papers of staff court enquiry, but those documents were also not shown to the applicant during the course of departmental enquiry. The applicant was also not informed that whether the authorities have converted the charge sheet dated 18.6.80 which was issued under rule 14 into Rule 16 of the Rules 1965 as the punishment which was awarded to the applicant is minor punishment and covered under the rule 16 of the Rules 1965.

7. The learned counsel for the applicant contended that the second enquiry was not warranted by law on the ground of the said enquiry and the same cannot be sustained in the eyes of law and he also challenged the order passed by the disciplinary authority without issuing any show cause notice to the applicant by disagreeing with the findings recorded by the enquiry officer awarded the punishment and thereby he acted in violation of principles of natural justice in as much as reasonable opportunity to defend was not given to the applicant.

8. Sri K.C. Sinha, learned counsel for the respondents strongly refuted the plea and contended that the parties are governed by the CCS Rule 15 in this behalf, ~~which~~ Rule 15 of the CCS Rule empowers the disciplinary

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authority if it is not satisfied with the enquiry report for the reasons to be recorded to direct for further enquiry and report and the enquiring authority shall be responsible to hold further enquiry according to the provisions of Rule 20. The disciplinary authority, if it disagrees with the findings of the enquiring authority on any article of charge recorded against a charged person record his own findings under the said charges. He contended that the only duty casts upon the disciplinary authority was that it should record the reason for disagreement and record its own finding. From the record there appear no reasons were recorded. Without recording the reasons as to why the disciplinary authority has disagreed with the enquiry report, further action becomes vitiated.

9. The disciplinary authority disagreed with the finding of the Enquiry officer and in this case twice opportunity was given to the applicant and thereafter the disciplinary authority failed to record the finding as to why he disagreed with the enquiry report. Thus it appears that the principles of natural justice is violated and the punishment order cannot stand. In this case a reference was made to the case " Narayan Misra Vs. State of Orissa (1969, Services Law Reporter, Page-657) in which it has been held that principles of natural justice casts duty upon the disciplinary authority to give an opportunity to the delinquent employee in case he disagrees with the finding of the enquiry officer, and in case the same is not done further the version of the delinquent employee is not taken it vitiates principles of natural justice.

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10. In this back ground we hold that the proceedings and the punishment order in this case cannot be sustained. Accordingly this application is allowed. The punishment order dated 23.11.1984 and the appellate order dated 30.10.85 are quashed. However, it will be open for the disciplinary authority to go ahead with the report of the enquiry officer after giving a reasonable opportunity to the applicant issuing him show cause notice. No order as to the costs.

R. Bhambhani
Member(A)

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Dated: 28th March, 1992:

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