

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 20th day of JANUARY 2004.

Original Application no. 955 of 1988.

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman
Hon'ble Mr. D.R. Tiwari, Member (A)

Ram Naresh Srivastava, S/o Sri R.S.L. Srivastava,
 Ex EDBPM Poora Kalan (Diblapur) Distt. Etawah,
 R/o Vill & P.O. Poora Kalan Via Debiapur,
 Distt. Etawah.

... Applicant

By Adv : Sri U.Nath

V E R S U S

1. Supdt. Posts Etawah.
2. DPS, Kanpur.

... Respondents

By Adv : Km Sadhna Srivastava

O R D E R

Justice S.R. Singh, VC.

Heard Sri U. Nath, learned counsel for the applicant and Km. Sadhna Srivastava, learned counsel for the respondents. We have also perused the pleadings and order dated 28.7.1995 passed by the Bench of this Tribunal directing the OA to be listed after decision of reference already made to the Full Bench by the Madras Bench of this Tribunal in view of the divergent views expressed in two decisions of Hon'ble Supreme Court, one in case of State of Orissa Vs. Narain Misra, 1969 SLR 569 and another in State Bank of India Vs. S.S. Koshal reported in 1994 SCC (L&S) 1019.

2. The question involved is as to whether it was incumbent upon the disciplinary authority to afford an opportunity to

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show cause to the delinquent in the case where the disciplinary authority expressed disagreement with the finding recorded in favour of the delinquent by the Enquiry Officer. When the matter was heard earlier by the Bench it was noticed that the Madras Bench after noticing the divergent views expressed by two Division Benches of Hon'ble Supreme Court has referred the matter to a Full Bench and that is why the Bench earlier directed the case to be listed after the decision of the referred case.

3. Learned counsel for the parties are not in a position to tell us whether the referred case has been decided nor they are able to tell us the reference of the above case. However, the matter seems to be concluded in view of subsequent judgment of Hon'ble Supreme Court in Yoginath D. Bagde Vs. State of Maharashtra and others reported in 1999 SCC (L&S) 1385, wherein it has been held by their lordships that requirement of affording opportunity of hearing, as laid down in Punjab National Bank Vs. Kunj Bihari Misra, (1998) 7 SCC 84, being in consonance with Article 311 (2) and being a Constitutional right to be heard has to be read into a rule which does not make specific provision to this effect. The disciplinary authority in fact required to convey to charged employee its tentative reasons for disagreeing with the finding of the Enquiry Officer and communicated its reason so recorded to the charged employee. Since the Enquiry Officer in the present case has exonerated the applicant from charge levelled against him, the disciplinary authority will ought to have communicated its

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tentative disagreement with the finding recorded with the enquiry officer before recording its final opinion and punishing the applicant.

4. We are of the opinion that the O.A. deserves to be allowed on this point. Accordingly the O.A. succeeds. The impugned orders are quashed. The matter is remitted to the Disciplinary Authority with direction to communicate its finding of disagreement to the applicant calling upon him for the same before final decision in the Disciplinary proceedings within a period of four months. In the meantime the applicant shall be taken to be put off duty.

5. Parties are directed to bear their own costs.

Dtwa
Member (A)

Raj
Vice-Chairman

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