

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
(ALLAHABAD BENCH) ALLAHABAD.

C.A. NO.
TA. NO.

65189

OF 199

Date of decision 26-11-92

.....R.K. Sharma.....Petitioner

.....Shri V.K. Bhatnagar.....Advocate for the petitioner

Versus

...U.O.I. & others.....Respondent

.....Advocate for the Respondents

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CORAM :-

The Hon'ble Mr. Justice S.K. Dhan, J.C.
The Hon'ble Mr. K. Chagga, A.M.

1. Whether Reporters of local papers may be allowed to see the judgment
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether to be circulated to all other Benches ?

Signature

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

O.A.No.65 of 1989.

R.K.SharmaApplicant.

Versus

Union of India & othersRespondents.

Hon'ble Mr.Justice S.K.Dhaon, V.C.

Hon'ble Mr.K.Obayya, A.M.

(By Hon'ble Mr.Justice S.K.Dhaon, V.C.)

Disciplinary proceedings were initiated against the applicant. A charge-sheet was given to him. An Enquiry Officer was appointed. The Enquiry Officer opined that the applicant is guilty. Having been found him guilty, the Punishing Authority on 31.12.86 passed an order dismissing the applicant from service. Appeal, preferred by him, was dismissed on 3.11.87 by the Director General of Ordnance Services. The orders of Punishing Authority and the Appellate Authority are impugned in the present application.

2. The charge against the applicant was that while acting as Store Keeper in COD, Kanpur on 8.12.84, he intentionally left the lock of the rear door of shed open enabling certain other Government servant to commit theft of the property worth Rs.8,19,500/- and thus he abated the theft.

3. The Enquiry Officer, on the basis of the earlier statement recorded by the Court of enquiry, which is treated to be a confessional statement, recorded the opinion that the applicant is guilty. The Punishing Authority also relied upon the confessional statement.

4. We have gone through the Appellate Authority's order more than once. Paragraph 3 of the order alone can be considered to be the decision of the appeal.

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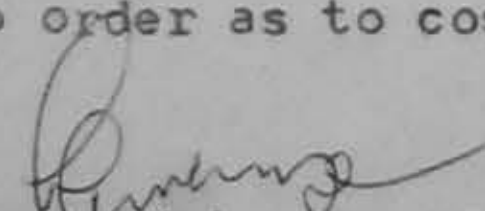
It recites as under:-

"Now, therefore, the undersigned, in exercise of the powers conferred vide Rule 27 of CCS (CCA) Rules, 1965, rejects the appeal dated 21.2.87 of the said Shri R.K.Sharma and confirms the punishment awarded to him as the same is considered adequate and meets the ends of justice"

5. Sub-Rule 2(b) of the aforesaid rules provides that;

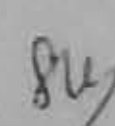
"Appellate Authority shall consider whether the findings of the Disciplinary Authority are warranted by the evidences on record."

6. This aspect was altogether ignored by the appellate authority and it proceeded on assumption on the findings recorded by the Punishing Authority that the applicant really abetted the theft. The appellate authority has to exercise statutory powers and should have given an opportunity to the applicant. This tribunal has no jurisdiction to re-appraise the shortcoming in the judgment. The application succeeds and is allowed in part and the orders dated 31.12.86 and 3.11.87 are quashed. The appellate authority shall reconsider the matter after giving opportunity to the applicant and will decide the crucial question of fact as to whether the confessional statement could be used against the applicant and as to whether the applicant has really confessed his guilty. Thereafter, it shall record its finding and shall pass the order expeditiously and not beyond a period of one month from the date of receipt the certified copy of this order from the applicant. There shall be no order as to costs.


MEMBER (A)

DATED : NOVEMBER 26, 1992

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VICE CHAIRMAN.