

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD.

Original Application No. 339 of 1990  
Transfer Application no.

Date of Decision 19/11/98

Hix, Lai

Applicant(s)

Prayer for the applicant Sri G. L. Mukherjee

Counsel for the  
applicant(s)

## VERSUS

### The Union of India and U.S.

Respondent(s)

294 Amit Sthalékar

Counsel for the  
Respondent(s)

C O R A M

Hon'ble Mr. Swayal, A.M.

Hon'ble Mr. Subbarao T.M.

1. Whether Reporters of local papers may be allowed to see the judgment ? **No**
2. To be referred to the Reporters or not ? **yes**
3. Whether their Lordship wish to see the fair copy of the judgment ? **yes**
4. Whether to be circulated to all Benches ? **No**

  
(SIGNATURE)

PIYUSH/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

(21)

\* \* \*

Allahabad : Dated this 19<sup>th</sup> day of November, 1998

Original Application No. 339 of 1998

District : Shahjahanpur

CURIA

Hon'ble Mr. S. Layal, A.M.  
Hon'ble Mr. S.K. Agarwal, J.M.

Mira Lal Son of Sri Lallu,  
Resident of Bahadurganj,  
Jail Road near Ravi Das Mandir,  
District Shahjahanpur.

(Sir G. N. Mukherjee, Advocate)

... Applicant)

Versus

1. The Union of India

Through Director General Ordnance Factories,  
Ackland Road, Calcutta.

2. The Additional Director General,

Ordnance Factories (Equipment Group),  
Gr. H.Qs. E.S.I.C. Bhawan,  
Sarvodaya Nagar, Kanpur.

3. The General Manager,

Ordnance Clothing Factory,  
Shahjahanpur.

(Sri Amit Shalekar, Advocate)

... Respondents

O R D E R

By Hon'ble Mr. S.K. Agarwal, J.M.

In this OA the applicant makes a prayer :-

(i) to quash the orders dated 31-7-1989 (Annexure-A-3),  
show cause notice dated 14-10-89 (Annexure-A-6)  
and appellate order dated 26-12-1989 (Annexure-A-5)  
and the order dated 14-12-1989 (Annexure-A-7).  
(ii) to direct the respondents to pay the applicant the  
difference of pay and allowances for the suspension  
period.

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(iii) to direct the respondents to pay the applicant his full pay and allowances and other consequential benefits according to the rules of the Dep'tt.

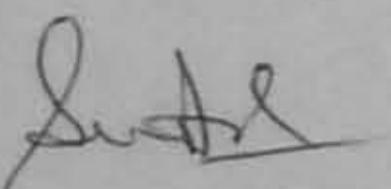
2. The facts of the case as stated by the applicant are that the applicant initially joined as Tailor in the Ordnance Clothing Factory, Shahjahanpur. Thereafter he was transferred to Medical Department and was promoted as Medical Assistant w.e.f. 20-4-1981. It is also submitted that on 11-8-1988 his son was suddenly admitted to Factory Hospital and the Ward Sahayak Hina Lal did not look after his son properly. He is alleged to have manhandled Ward Sahayak. The matter was reported to the concerned authority. A charge sheet was given to the applicant on 27-9-88. After completing the inquiry the Inquiry Officer submitted inquiry report on 29-5-89 not holding the applicant guilty of the charge levelled against the applicant but the disciplinary authority without assigning any reason imposed a penalty of reduction in pay by three stages vide order dated 31-7-1989 whereas there was no basis for differing with the inquiry officer's report. It is stated that the order of the disciplinary authority was without jurisdiction. The applicant filed an appeal to respondent no. 2, who has dismissed the same vide letter dated 26-12-1989. It is also stated that after passing the order dated 31-7-1989, the respondent no. 3 issued a show cause notice to the applicant and the applicant submitted his representation dated 3-11-1989. Thereafter, vide order dated 14-12-1989, the representation of the applicant was disposed of. It is submitted that action of respondent no. 3 was without jurisdiction as he was neither appointing authority nor the disciplinary

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It is also submitted that the respondent no. 2 who is subordinate to respondent no. 3, cannot be an appellate authority of the applicant and hence the appellate order is also without jurisdiction. It is further submitted that in this way the order regularising the period of suspension at Annexures A-7, was also without jurisdiction. Therefore, the applicant makes the aforesaid prayer.

3. A counter has been filed. In the counter affidavit, it is admitted that a charge sheet was issued to the applicant as on 11-8-1988 at about 12.30 P.M. that the applicant manhandled Hira Lal, while on duty and also slapped him and beat him with chappal, thereby caused injury on the throat of Hira Lal. The petitioner submitted a reply and thereafter an Inquiry Officer was appointed. The Inquiry Officer submitted its report to the General Manager in which the Inquiry Officer found that the charges against the applicant were not established. Thereafter, the report of the Inquiry Officer was examined and the disciplinary authority disagreed with the findings of the Inquiry Officer and found the applicant guilty of the charges and thereafter the impugned order of punishment was issued against the applicant. It is stated that the penalty of reduction of pay by three stages for the period of one year imposed on the applicant with further direction that he will not be given increment of pay during the penalty period and on expiry of this period the reduction will have the effect of postponing future increments of the pay vide order dated 31-7-1989.

  
Against this penalty ~~order~~ order, the applicant preferred the appeal which was dismissed. It is also stated that the suspension order was passed regarding regularisation of the suspension period of the applicant on the request

of the applicant. It is denied that the General Manager has no jurisdiction to impose the impugned punishment and it is stated that the General Manager being the disciplinary authority, had jurisdiction to impose the punishment. Therefore, on the basis of the claims made in the counter affidavit, the respondents have submitted to dismiss this OA with costs.

4. No rejoinder affidavit was filed in this case.
5. Heard learned counsel for the applicant and learned lawyer for the respondents and perused the whole record carefully.
5. On the perusal of the pleadings of the parties, it appears that vice order dated 31-7-1989, respondent no.3, did not agree with the findings of the Inquiry Officer and the disciplinary authority passed the following orders :-

"Taking into consideration all aspects of the case, the undersigned has come to the conclusion that Shri Hira Lal, Medical Assistant, is guilty of the charge levelled against him and the penalty of reduction of pay by three stages for a period of one year may be imposed on him. Accordingly, the undersigned, hereby, impose the penalty of reduction of pay by three stages for a period of one year on Shri Hira Lal, Medical Asst. Shri Hira Lal Medical Assistant will not earn any increment of pay during the penalty period and on expiry of this period the reduction will have the effect of postponing of future increments of his pay."

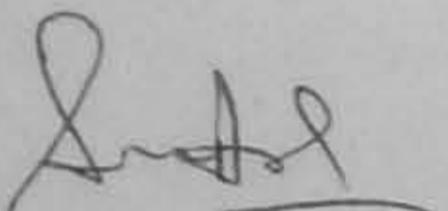
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6. But it appears that the disciplinary authority did not indicate the reason of his disagreement to the applicant before passing the impugned order of punishment dated 31-7-1989 against the applicant.
7. Learned counsel for the respondents during the course of arguments submitted that this ground has not been agitated by the applicant in his OA. Therefore,

the Tribunal should not take judicial notice of the above fact, while disposing of this OA. We are not inclined to accept the contention of the learned lawyer for the respondents as this Tribunal itself can take judicial notice of the fact which is legally necessary to examine in connection with this case.

8. We see that before passing the impugned order dated 31-7-1989, reasons of disagreement have not been communicated by the disciplinary authority to the applicant and no opportunity was given to the applicant for submitting his explanation before passing the impugned order against the applicant.

9. Sir Edward Coke in famous case 'Cooper Vs. Words worth' had held, "even God did not pass a sentence upon Adam before he was called upon to make his defence."

10. The Hon'ble Supreme Court in Narain Mishra Vs. State of U.P. & Ors, 1967 SLR Vol 3 SC Page 657, held that if the punishing authority differed from the finding of the Inquiry Officer and held the official guilty of the charge from which he was acquitted by the Inquiry Officer and no notice or opportunity was given to the delinquent official about attitude of the punishing authority, the matter will be against all the principles of fair play and natural justice and liable to be set aside.

  
11. In SC Leonath Vs. UOI & Ors (OA No. 2619/90 decided on 13-3-1997), 1998 (2) CAT Page 260, it was held that when the disciplinary authority disagrees with the Inquiry Officer the employee should be heard before imposing the penalty.

12. In KK Shashidharan Vs. Smt Post Offices, 1991(1) ATC CAT Page 304, Ernakulam Bench held that there will be violation of natural justice and fairplay if the

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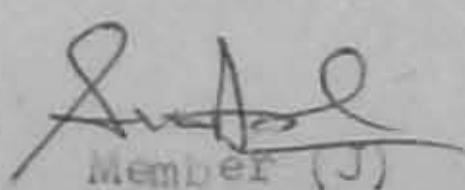
disciplinary authority's reasons for disagreement with the inquiry Officer's report are not furnished to the delinquent officer, which view also gets support in EK Samukh Lal Vs. UI, 1993 (23), AIR 726.

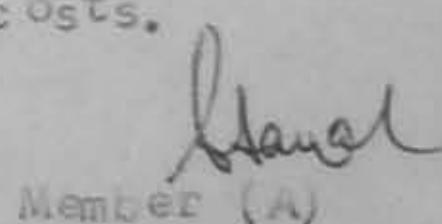
13. On the basis of the legal proposition as above, it is very much clear that the disciplinary authority after disagreeing with the inquiry officer's reports, must furnish a copy of reasons of disagreement and give explanation to the applicant before passing any order of penalty against the delinquent employee.

14. Therefore, looking to the facts and circumstances of the case, the disciplinary authority failed to comply with the principles of natural justice and fairplay. In view of this, the impugned order of punishment and the subsequent orders passed thereafter are liable to be quashed.

15. We, therefore, allow this OA and quash all the impugned orders as mentioned in the OA and remit the case to the disciplinary authority with the direction that the disciplinary authority shall pass a detailed speaking order, if the disciplinary authority differs with the Inquiry Officer's report. In case, the disciplinary authority (respondent no.3) disagrees with the Inquiry Officer's report, the reasons of disagreement must be communicated to the applicant and after receiving the explanation from the applicant, the necessary orders should be passed. ~~for this~~ <sup>The whole</sup> exercise must be completed within four months from the date of receiving a copy of this order.

16. There shall be no order as to costs.

  
Member (J)

  
Member (A)

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