

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT NAINITAL

Nainital this the 20th day of April, 2001

C O R A M :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mej. Gen. K.K. Srivastava , A.M.

Orginal Application No. 1490 of 1994

Suresh Nand Maindola, S/o Late Luxmi Dutt Maindola
R/o Mohanpur, Premnagar, Dehradun. At present working
as a Surveyor in No. 1 Party (NC), Survey of India,
Dehradun.

..... Applicant.

Counsel for the applicant :- Sri Rajendra Dobhal

V E R S U S

1. Union of India through the Secretary,
M/o Science and Technology, New Delhi.
2. Additional Surveyor General of India,
North Zone, Chandigarh.
3. Director, Northern Circle, Survey of India,
Dehradun

..... Respondents

Counsel for the respondents :- Sri S. Mandhyan

O R D E R (Oral)

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

By this application under section 19 of the
Administrative Tribunal's Act, 1985, applicant has
challanged the order dt. 30.05.94 by which he has been



punished on conclusion of enquiry and order dt. 07.09.94 by which appeal of the applicant has been partly allowed.

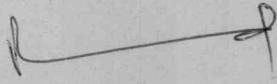
2. The facts giving rise to this controversy are that applicant was serving as Surveyor under Survey of India. On 29.08.88, he was functioning as a Detachment Officer in Alaknanda Valley during summer field 1988. It is alleged that Sri Ram Prasad, Dy. Superintending Surveyor when visited the site for inspection, the applicant misbehaved and used unparliamentary language against him. It is also alleged that he instigated the armed gaurds, who were posted there for the security of Government records, to manhandle Sri Ram Prasad. Third charge was that amount of Rs. 5720/- was drawn for employment of Porters by submitting false contingent bills between 01.08.88 to 22.09.88. The memo of charge dt. 06.03.89 was served on the applicant. The applicant filed his written statement and denied the charges. The Enquiry Officer submitted his report on 09.04.1992 with the conclusion that the charges framed have been found proved. A copy of enquiry report was served on the applicant. The disciplinary authority accepted the report of the enquiry officer and passed the order of punishment reducing the applicant to the post of Topo Auxiliary Grade II until he was found fit after a period of 3 years from the date of this order, to be restored to the higher post of Surveyor. He also directed recovery of Rs. 5720/- drawn by the applicant falsely on the basis of contingent bills for the employment of Porters. Applicant filed an appeal which has been partly allowed by ~~the authority~~



order dt. 07.09.94 (annexure- 2). The appellate authority set-aside the order so far as recovery of Rs. 5720/- was concerned but he maintained the punishment and reduced the applicant in pay scale by two stages. ^{and the pay} of Sri S.N. Maindola was reduced by two stages from Rs. 2150/- to Rs. 2050/- in the time scale of pay of Rs. 1400-40-1600-50-2300-EB-60-2600 for a period of 3 years w.e.f 01.10.94. Aggrieved by the said order, applicant has approached this Tribunal.

3. Sri R. Dobhal, learned counsel for the applicant has submitted that for proving charge No. 1 regarding misbehavior and unparliamentary language against superior officer, reliance has been placed on two letters. One is dt. 18.04.91 written by Commanding Officer, 14th Sikh Regiment and another letter dt. 19.11.88, written by Commandant, 5th, Sikh Regiment. It is submitted by learned counsel for the applicant that copy of letter dt. 18.04.91 was not given to the applicant and he could not know the contents of the same. It is also submitted by learned counsel for the applicant that complainant of the case Sri Ram Prasad was not examined nor the two gaurds were examined who were the eyewitnesses. Thus the charge No.1 is totally based on two letters, written by two Army officers which were not examined nor the applicant was given opportunity to controvert the same. Appellate authority while considering this aspect has observed as under :-

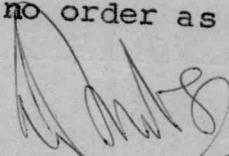
" It is immaterial if the copy of this letter of 14 Sikh Regiment has not been made available to the appellant as this is a repetition of letter No. 0042/Discp/A dated 19.11.88 from 5 Sikh Regiment which was made available and has been enclosed as annexure- VI to the appeal. "



4. From the aforesaid observation it is clear that the applicant was denied the opportunity to controvert the charges by cross examination. In our opinion, procedure adopted do not satisfy the principles of natural justice as the applicant could not ^{get} the opportunity to cross examination the author of the letter. If the author of letter could not be made available to appear before the Enquiry Officer, he should have been examined by appointing commission or by sending the questionnaire. The impugned order is also unsustainable as the complainant and two security gaurds who were eye-witnesses, have not been examined.

5. In the facts and circumstances, in our opinion the charges could not be said to have been proved. For the reasons stated above this O.A. is allowed. The orders Dt. 30.05.94 (annexure-1) and 07.09.1994 (annexure-2) are quashed. However, it would be open to the respondents to conclude the enquiry after serving a copy of letter dt. 18.04.1991 and after giving opportunity to the applicant to rebut the letter in the light of observation made above.

6. There will be no order as to costs.


Member-A.


Vice-Chairman.

/Anand/