

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 2nd day of May, 2001

Original Application No. 972 of 1994.

CORAM :-

Hon'ble Mr. SKI Naqvi, J.M.

Hon'ble Maj Gen KK Srivastava, A.M.

Jai Bhagwan Ravi, Son of Late J.P. Jain,
Resident of 104/10, J.K. Colony, Jajmau,
Kanpur-2080010, previously employed as
Superintendent, B/R Grade I, Office of the
Garrison Engineer (P) 6360, C/o 56 A.P.O.
(Sri Rakesh Verma, Advocate)

..... Applicant

Versus

1. Union of India through the Secretary,
Ministry of Defence, Government of India,
New Delhi.
2. The Engineer-in-Chief, Engineer-in-Chief's
Branch, Army Headquarters, Kashmir House,
DHO PO New Delhi-110011.
3. The Chief Engineer, Northern Command,
c/o 56 A.P.O.
4. Chief Engineer, Srinagar Zone, P.O. Batwara,
Srinagar-190004.
5. Garrison Engineer (P) 6360
C/o 56 A.P.O.
(Km. Sadhna Srivastava, Advocate)

... Respondents

S. C. S.

O R D E R (O_r_a_l)

By Hon'ble Mr. SKI Naqvi, J.M.

The applicant while posted as Superintendent B/R Grade II (Adhoc) and working as Superintendent B/R Grade I(Adhoc) was subjected to disciplinary proceedings on the charges under two heads. The first charge was that he remained absent without permission and having leave sanctioned, secondly on the ground that he did not comply with the directions to report to the Chief Medical Officer Kanpur for medical opinion about his sickness. After due enquiry the Inquiry Officer submitted his enquiry report holding the applicant not guilty of the charge framed against him under Article I and held him guilty of the charge framed against him under Article II. The disciplinary authority did not uphold the recommendation of the Inquiry Officer as far as Article I is concerned and he awarded the punishment of dismissal from service.

2. The main grievance of the applicant is that when the disciplinary authority did not agree with the finding of the Inquiry Officer on Article I, no opportunity was afforded to the applicant to persuade the disciplinary authority to accept the favourable conclusion of the Inquiry Officer and since the punishment order is cumulative effect of taking both the charges ^{as proved} ~~for proving~~ the position could have been otherwise had the applicant been able to persuad the disciplinary authority.

3. The respondents have contested the case, filed counter reply with specific mention that there is no provision under Rule to issue notice when the disciplinary authority disagrees with the finding of the Inquiry Officer.

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4. We have heard learned counsel for both the parties and perused the record.

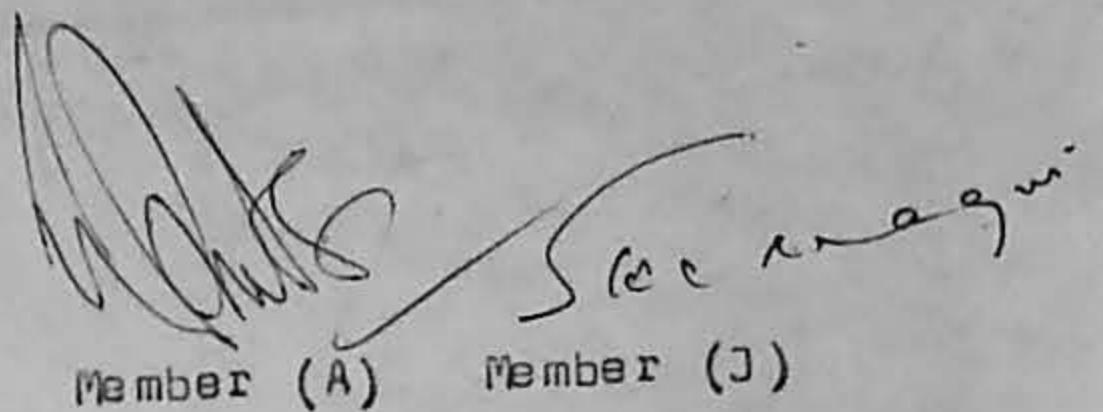
5. Sri Rakesh Verma, counsel for the applicant took us through ~~the~~ Punjab National Bank & Ors Vs. Kunj Bihari mishra reported in 1998 SCC (L&S) 1783, which is the law laid down by the Hon'ble Supreme Court and is valid as law of the land till the time, according to which :-

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent, before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

6. Having examined ~~examined~~ relevant facts and circumstances, we are of the opinion that the referred law is fully applicable to the present case and, therefore, the impugned order (Annexure-A-1) stands quashed with consequential benefits to be provided within six months from the date of presentation of a copy of this order. Since, by now, the applicant has attained the age of superannuation on 31-7-1997, it will

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not serve any purpose if the matter is remanded with ^{any} this direction to regularise the irregularly passed order. The OA is allowed accordingly. There shall be no order as to costs.



Member (A) Member (J)

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