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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 461 of 1992.

Date of decision : January 31, 1994.

Dilip Rath ...

Applicant.

Versus

Union of India and others ...

Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? ~~No~~ Yes.
2. Whether it be circulated to all the Benches of the ND Central Administrative Tribunals or not ?

(H. RAJENDRA ERASAD)
MEMBER (ADMINISTRATIVE)
31 JAN 94

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(K. P. ACHARYA)
VICE-CHAIRMAN

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For the applicant ...

M/s. Devanand Misra,
Deepak Misra,
R.N. Naik, A. Deo,
B.S. Tripathy, P. Panda,
D.K. Sahu, Advocates.

For Respondent No.1

Mr. Akhyaya Kumar Mishra,
Addl. Standing Counsel (Central)

For Respondent No.2

Mr. K.C. Mohanty,
Government Advocate (State)

CORAM:

THE HON'BLE MR. K. P. ACHARYA, VICE-CHAIRMAN

A N D

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

ORDER

K. P. ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to pass appropriate orders quashing the disciplinary proceeding pending against the applicant and giving a direction to consider the case of the applicant for promotion to the selection grade post of Indian Police Service.

2. Shortly stated, the case of the applicant,

Shri Dilip Rath, is that he is a member of the Indian

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Police Service. While functioning as Superintendent of Police, Balasore certain item of charges contained in a charge-sheet was delivered to the applicant. Not only the applicant answered the charges by filing a written statement of defence but a regular enquiry was conducted against him. While the matter stood thus, this application was filed to quash the proceeding. As a matter of fact this case for quashing of proceeding was heard at length and during the pendency of the case for preparation and delivery of judgment, there was a change in the circumstances. The enquiry officer submitted his report and the disciplinary authority having concurred with the findings of the Enquiring Officer proposed that an order of censure be passed against the applicant for the irregularities that are alleged to have been committed by him and accordingly, opinion of the Union Public Service Commission was sought for which in its turn, concurred with the views expressed by the State Government. Hence, an order of censure has been passed against the applicant for which, the original application was sought to be amended and the amendment sought for stood allowed.

Opportunity was given to the respondents to file their counter to the amendment incorporated and brought on to the record.

3. In their counter, the respondents maintained that the applicant who is a member of the Indian Police Service had committed gross illegalities in due

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discharge of his official duties and since principles of natural justice have been complied with in its strictest terms and there being overwhelming evidence on the side of the prosecution bringing home the charges against the applicant, the order of punishment should not be unsettled- rather it should be sustained. In a crux, it is maintained that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant, Mr. K. C. Mohanty, learned Government Advocate (State) and Mr. Akhyaya Kumar Misra, learned Additional Standing Counsel (Central) for the Central Government.

5. The initial objection rightly taken by Mr. Deepak Misra, is that even if there is overwhelming evidence on the side of the prosecution (conceding for the sake of argument but not admitted) yet the order of punishment has been vitiated because of non-compliance of the principles of natural justice. Mr. Deepak Misra, invited our attention to ^{the} relevant portion of the enquiry report submitted by the Enquiring Officer who was no less than an Officer of the Cadre of Inspector General of Police. From the report it is found that copies of certain documents which were proposed to be relied upon by the Prosecution to bring home the charges against the delinquent officer were not supplied to the applicant.

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The enquiring Officer persuaded himself to be satisfied with the fact that the applicant, Shri Dilip Rath was given an opportunity to inspect the documents and that was sufficient compliance of law. It is mentioned by the Enquiring Officer as follows:

" Shri Dilip Rath made serious allegation against the prosecution. In this connection my order on Note Sheet dated 18.4.89 is pertinent. Shri Dilip Rath was given opportunity for inspection of documents which had not been afforded to him earlier by the prosecution. "

(Emphasis is ours)

We can understand and accept the argument of learned Government Advocate(State) that furnishing of copies of the documents to Shri Dilip Rath was not at all necessary or they were not material for the purpose and therefore, rightly, copies were not given to him. But that is not the case of the State Government . That is also not the case of the enquiring Officer who has not breathed a single word regarding the importance or non-relevance of the documents. The enquiring Officer remained satisfied by the fact that Shri Dilip Rath, the applicant was given an opportunity to inspect the same. Law on the subject has been very well settled. Relying on a plethora of judicial pronouncements, Hon'ble Mr.Justice R.S.Pathak(as my Lord the Chief Justice then was) speaking for the Court in a judgment reported in 1986 SCC(L&S) 502(Kashinath Dikshita vrs. Union of India and others) was pleased to observe as follows:

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" When a Government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible ? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf.

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No doubt the disciplinary authority gave an opportunity to the appellant to inspect the documents and take notes as mentioned earlier. But even in this connection the reasonable request of the appellant to have the relevant portions of the documents extracted with the help of his stenographer was refused. He was told to himself make such notes as he could. "

Here is a case, which is of similar nature. Copies of documents relied upon by the prosecution to bring home the charge against the applicant were not supplied to him. How can he build his defence in the absence of such documents ? Even at the time of enquiry, the Enquiring Officer did not think it worthwhile to furnish copies of documents to Shri Dilip Rath and give him some opportunity to file amended ~~sticker~~ written statement of defence. In
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our opinion, the applicant was taken aback and was confronted with certain documentary evidence about which he had no knowledge and was deprived to effectively cross-examine the witnesses etc. In such circumstances, the principles laid down by Their Lordships in the case of Kashinath Dikshita(supra) apply in full force to the facts of the present case and we find there is substantial force in the contention of Mr. Deepak Misra that the applicant has been seriously prejudiced.

6. The next question of law that emerges from the facts of the case is that the disciplinary authority has not passed a reasoned order. On a reference to Annexure-8 one would find that a cryptic order of punishment has been passed wherein it is stated as follows:

" WHEREAS disciplinary proceedings under Rule 8 of the A.I.S. (Discipline & Appeal) Rules, 1969 were initiated against Sri Dillip Rath, IPS (SPS-1977) vide Home Department Memo No. 53224/P dated 21.7.87 in respect of the charges mentioned in Annexure-I.

2. WHEREAS an enquiry into the articles of the charge was held in accordance with Rule-8 of the A.I.S. (Discipline and Appeal) Rule, 1969 and Shri D.N. Singh, IPS, Ex-Special Inspector General of Police, Training Co-ordination & Director, SPA, Orissa, Cuttack was appointed as the Enquiring Authority vide Home Department Order No. 8058/P dated 9.2.88 and he submitted his report on 28.12.89 a copy of which was communicated to Sri Rath vide Home Department Memo No. 23769/P dated 12.3.91.

3. AND WHEREAS the Governor has carefully considered the records of the proceedings, the report of the Enquiring Authority including his findings on each article of charge, representation made by Sri Rath, and the advice of the Union Public Service Commission contained in Commission's letter No. F3/25/91-SI dated 30.7.93 (copy enclosed at Annexure-II) and agrees with the advice of Union

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Public Service Commission.

4. NOW THEREFORE, in the light of the findings as above and after taking into account all relevant factors and the advice of the U.P.S.C. the Governor considers that ends of the justice would be met if the penalty of 'censure' is imposed upon Sri Dillip Rath and Orders accordingly. "

NO reasons have been assigned as to why the disciplinary authority agrees with the reasoning and findings of the enquiring Officer. The disciplinary authority remained satisfied by the reasonings of the Union Public Service Commission. Needless to be stated that the Union Public Service Commission is an advisory body. But the punishing authority is the disciplinary authority who has a cardinal duty cast on him to give reasons as to why it comes to the conclusion that the charges have been brought home against the delinquent officer. We would rely upon the observations of Their Lordships of the Supreme Court reported in AIR 1986 SC 1173 (Ram Chander v. Union of India and others). Therein Their Lordships at paragraph 24 of the judgment were pleased to observe as follows:

" Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government Servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair-play and justice also require that such a personal hearing should be given. "

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Learned Government Advocate (State), Mr. Mohanty submitted with vehemence that the principles of law laid down in the case of Ram Chander (supra) pertains to the appellate authority as to how he should dispose of the appeal by giving a reasoned finding. In our opinion, the principles laid down by Their Lordships apply with more strictness to the disciplinary authority which could be equated with the original court of trial. As in the case of civil court or a criminal court, the original court of trial is required to discuss the evidence in extenso and to give its reasonings, Similarly the disciplinary authority must give reasons for coming to its conclusion especially when in the present case the enquiring officer has not at all discussed the evidence on record except relating to the charges of lack of integrity on the part of the applicant and in respect of that charge the enquiring officer has come to a conclusion that prosecution has failed to establish the said charge and the disciplinary authority has concurred with this finding. It is most unfortunate that the enquiring officer in regard to the other charges did not discuss the evidence. He remained satisfied by saying in so many places that his orders of different dates be referred to. In our opinion, the enquiring officer, has adopted a slip-shod method. Of course, there are certain judgments of the Supreme Court that the disciplinary authority need not assign reasons in detail where it agrees with the reasonings and findings of the enquiring officer. But in the present

case, as stated earlier, there has been no discussion of the evidence on record and hence the reasonings assigned by the enquiring officer are cryptic. Therefore, in our opinion, it was very much necessary for the disciplinary authority to discuss the evidence and assign reasonings as to why ~~he~~^{he} comes to the conclusion that the charges had been brought home against the applicant, Shri Dilip Rath. Both the enquiring officer and the disciplinary authority having failed in their onerous duties and responsibilities we are forced to come to the conclusion that this is a case of no evidence. Hence, we do not find any merit in the aforesaid contention of learned Government Advocate (State) and we are of further opinion that in the peculiar facts and circumstances of the case, the principles laid down by Their Lordships in the case of Ram Chander (supra) have equal application to the disciplinary authority.

7. Due to the violation of principles of natural justice and the principles laid down by Their Lordships of the Supreme Court in the case of Ram Chander (supra), we do not feel it just and expedient in the interest of justice to sustain the order of punishment.

We therefore quash the order of punishment passed against the applicant and exonerate him of the charges levelled against him. We would further direct that in case the applicant is due for promotion his ^{case} should be considered (if not already considered).

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As regards the prayer no.(b) to the effect that the case of the applicant should be considered for promotion to the selection grade post in Indian Police Service cadre with effect from October-November, 1990, we are unable to express any definite opinion on this subject. We leave it to the Government to consider this aspect and pass orders according to law.

8. Thus, this application is accordingly disposed of.
NO Costs.

MEMBER (ADMINISTRATIVE)
31 JAN 94

Leeds 31.1.94

VICE-CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
January 31, 1994/Sarangi, Sr.P.A.