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CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH

LUCKNOW

O.A. No. 197/1990

Ram Kumar

Applicant

versus

The State of U.P. & others

Respondents.

Shri A.P. Singh

Counsel for the applicant.

Shri Raza Zaheer

Counsel for Respondents.

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Hon. Mr. Justice U.C.Srivastava, V.C.

Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice U.C.Srivastava, V.C.)

The applicant who was a Member of Indian Administrative Service, born in U.P. Cadre on 19th July, 1976, was promoted to selection grade on 3.7.89. He was placed under suspension vide order dated 7.1.83 and was served with a charge sheet on 31.1.83. The applicant denied the charges levelled against him. After receipt of applicant's reply he was reinstated by the State Govt. vide order dated 16.9.83, but subsequently the then Secretary, Department of Hill Development was appointed as Enquiry officer and he submitted his report, on the basis of which, in consultation with the U.P.S.C. an order was passed by the State Govt. withholding of increment for one year without cumulative effect against which the

applicant preferred an appeal. The enquiry officer after making enquiry in respect of five charges held that the charge No. 1 was not proved and the 4 charges were inter-linked with each other. From the punishment order passed by the State Govt. dated 30.4.86 the applicant's plea stands corroborated that the recommendations of the enquiry officer were accepted by the State Govt. who recommended for the punishment referred to above and the matter was referred to U.P.S.C. and the U.P.S.C. did not agree with the punishment and advised that the applicant's annual increment may be stopped for one year without any cumulative effect and it is thereafter the State Govt. passed some punishment order.

2. The applicant against this minor punishment filed appeal on 03.3.87, in continuation of which he filed yet another supplementary appeal on 10.4.90. The Central Govt. rejected the appeal vide order dated 18.1.90. The applicant raised a number of pleas in Memo of appeal including that the copy of enquiry report was not given to him. One of the grounds was that Rule 11 of All India Services (Discipline & Appeal) Rules, were not followed, which provide as under:

"Rule 11: When there is any difference of opinion between the State Govt. and the Commission on any matter covered by these rules, such matter shall be referred to the Central Govt. for its decision."

3. The report of the enquiry officer was assailed by the learned counsel for the applicant on many grounds

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including that the applicant was not on unauthorised leave. It is not necessary to make reference to all the things. The question for consideration in this case is as ^{to} whether the rule 11 extracted above was followed, and whether the punishment order is liable to be quashed. The matter has been decided by the Central Govt. itself, and as such it cannot be said that there is any violation of rule 11, in as much as final punishment order, as communicated by Central Govt. has been passed by the punishing authority. There is difference between pre-decisional and post decisional hearing. The order which has been passed is not a speaking order and it cannot be said that all the pleas which were taken by the applicant, were considered. In the case of Institute of Chartered Accountants of India vs. L.K. Ratna and others (1986 AIR 714) wherein it has been held that pre-decisional hearing is not a substitute for a post-decisional hearing by the appellate authority. ~~xxxxxxxxxxxxxx~~ ~~xxxxxxxxxxxxxx~~ ~~xxxxxxxxxxxxxx~~ In this case the same position arises. When the matter went in appeal before the Central Govt. the Central Govt. had to look into the matter and it cannot be said that the Central Govt. could have done ^{it} earlier, but subsequently also. There has been reference to Central Govt. and it should have passed order when the matter went in appeal.

4. Accordingly even if the matter was decided in appeal, it was not compliance of the Rule 11 and it cannot be said

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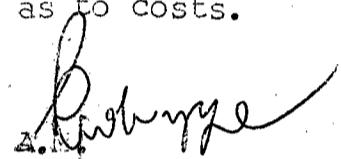
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that there was sufficient compliance of the rule.

Accordingly, this application deserves to be allowed.

Order dated 1.5.86 passed by the State Govt and the order dated 10.4.1990 are quashed and the Central Govt. is directed to consider the two opinions and expeditiously decide the matter within 3 months, as the State Govt. will make formal reference expeditiously.

5. The application is disposed of as above. No order as to costs.


V.C.

Shakeel/

Lucknow: Dated 6.8.92.