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Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH LUCKNOW.

Registration O.A. No. 43 of 1991 (L)

M.L. Verma Applicant.

Versus

Union of India,
and Others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, Member(A)

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

The applicant who is working as Superintendent in the passport office, Lucknow by means of this application has challenged the enquiry proceedings against him including the show cause notice as well as the enquiry report and has also prayed for quashing the punishment order dated 26.3.1990 and has prayed that he may be allowed all the consequential benefits. Subsequently, by way of amendment he has also challenged the appellate order dated 7.6.1991 dismissing the appeal of the applicant and has prayed that he may be promoted as Public Relation Officer w.e.f. 15.12.1988 with all consequential benefits of seniority and arrears of salary. Prior to his posting at Lucknow, the applicant was posted at New Delhi and there he was given a memorandum dated 4.12.1985 requiring to give his explanation for the alleged derelection of duty within 15 days. The applicant submitted his explanation to the aforesaid memorandum by his letter dated 19.12.1985 ~~on~~ denying the allegations contained in the memorandum, but he was served a memorandum along with the charge-sheet on 23.31.12.1986 containing 6 article of charges and an enquiry officer was appointed to this effect. The applicant

submitted his reply to the above chargesheet denying all the charges. The enquiry against the applicant was conducted by the Central Vigilance Commissioner, New Delhi. The charges against the applicant were that he had processed applications urgently and caused delivery of passports in one single day without any urgency having been marked or even otherwise justified in the cases. He did not exercise care and caution in respect of out of jurisdiction cases ostensibly made to appear as residents of Bareilly and extended passport facilities by disregarding the relevant provisions of the passport Act and that he exhibited lack of devotion to duty, security mindedness and failed to maintain absolute integrity and had exhibited undue interest, lack of devotion to duty and conduct unbecoming of a Government Servant and had authorised to issue of passports incomplete applications and that functioning as Superintendent and second senior most officer in the passport office, Bareilly and not only had committed acts of commission and commission himself but had also failed to detect and rectify the same and further while functioning as Superintendent had got the records in the passport office, altered in order to issue and deliver passports to M/s Glove Overseas Enterprises, Bareilly on 20.4.1988. The applicant moved an application for expeditious enquiry. The enquiry proceedings were transferred to under Secretary (PVA) who was appointed as enquiry officer. Before the new enquiry officer, the witnesses were examined and the defence statement of the applicant was recorded and the applicant also submitted his written arguments. After conclusion of the enquiry, a show cause notice along with the enquiry report was served on the applicant on 14.12.1989. The enquiry officer reported that the

charge Nos. II, III and IV were not proved against the applicant and he was given benefit of doubt in respect of article -V. Article I was only held to be proved in part. Article -V was held proved against the applicant. The applicant submitted his reply to the aforesaid show cause notice along with the enquiry report dated 8.12.1989 asserting that the none of the charges against him stand proved and that the same are baseless. It appears that without due consideration of the applicant's reply to the show cause notice, the Additional Secretary by his order dated 26.3.1990 imposed the punishment of reduction by one stage from Rs. 2120 to 2060 in the pay scale of Rs. 1640-60-2600-EB-75-2900 for a period of two years w.e.f. 1.4.1990. The applicant made an enquiry regarding the appellate authority and ultimately, he filed an appeal which appeal was also dismissed. As no reply was received by the applicant in the period of 6 months, he approached this Tribunal, against the said punishment order. The respondents have justified the appellate order which according to them was a speaking order and the matter was referred to the Deputy Minister who passed the order on behalf of the President of India, being a competent authority for the same and no request and ~~request~~ for personal hearing was made to the appellate authority, as such, the appellate authority was not obliged to give personal hearing to the appellant. The applicant who claimed promotion, was duly considered along with others for promotion to the grade of PRO on adhoc basis. However, since disciplinary proceedings were pending against him, it was decided to reconsider his case after disciplinary proceedings were over. As the

result of the disciplinary proceedings, major penalty was imposed on the applicant, and he was not entitled for promotion to the post of PRO.

2. Sri Manan, learned counsel for the applicant contended that the charge-sheet against the applicant was vague, non-existing and without application of mind and no charge-sheet was issued to any other officials of the passport office who ^{were} ~~was~~ working at the relevant point of time and who were also responsible for issuing of the passport, in respect of which, according to the applicant, nothing wrong was done. According to the applicant no passport ^{was issued} ~~was issued~~ by the applicant wrongly and the disciplinary authority has exonerated the applicant on the said charge. So far as charge No. V is concerned, it was proved without any evidence on record, which in fact, was not proved at all. Whereas, charge Nos. II, III and IV ~~were~~ not proved by the enquiry officer itself. The representation made by the applicant was not considered by the disciplinary authority who passed the impugned order and the applicant has no occasion to assail the findings regarding the Article No. 6 as the said charge was not proved by the enquiry officer. As the article no. 4 was dropped, the article no. 5 could not have been said to have been automatically proved as the same was linked and connected with charge no. 4. According to the learned counsel, in case the disciplinary authority did not agree with the findings recorded by the enquiry officer, the applicant should have been given an opportunity to file a representation against the same and without considering the representation of the applicant, no punishment order could have been passed, and this violates the principle of natural justice. In this connection, a reference has been

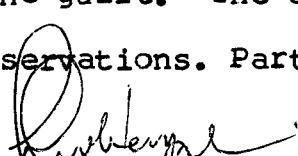
made to the case of Shri Narain Mishra Vs. State of Orissa, (1960) SLR page 657, it was held that whenever, the disciplinary authority disagrees with the findings of the enquiry officer, the disciplinary authority should be given a show cause notice to the delinquent employee calling upon him to file his representation against the intention of the disciplinary authority who issued a show cause notice containing reasons for the same, and if this was not done, the same violates the principle of natural justice and the punishment order, in these circumstances, appears to be quashed. As the disciplinary authority did not express any intention of disagreeing with the finding and did not give any opportunity to the applicant, to defend his case, the order passed by the disciplinary authority is in violation of the principle of natural justice and can not be sustained. It may be mentioned here that the appellate authority did not pass any speaking order, and a duty was cast upon the appellate authority to give a personal hearing to the applicant, and in case there was refusal by the applicant, obviously, he could have decided the case of the applicant. The question of giving a personal hearing to the delinquent employee in appeal has already been settled in the case of Ram Chandra Vs. Union of India and others, A.I.R. 1986 (SC) page 1173.

Sri Manan, learned counsel for the applicant also further contended that it appears that the disciplinary authority did not go through the findings of the enquiry officer and passed the order without applying his mind and this would be evident from the fact that there is discrepancy in two orders in respect of the charges held to have been proved. The disciplinary authority in its order held that the enquiry officer held the Articles II, III, IV and VI as

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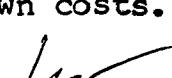
against the applicant. These averments make it clear that the disciplinary authority even did not apply its mind to the findings of the enquiry officer and the incorrect observations made by him, indicates that the order passed by the disciplinary also suffers from non-application of the mind.

3. Accordingly, this application deserves to be allowed and the punishment order dated 26.3.1990 is quashed. However, it will be open for the disciplinary authority to give a show cause notice to the applicant regarding his intention to disagree with the finding of the enquiry officer and in case, he desires to do so and thereafter, proceed in accordance with law. In case, during the pendency of these proceedings, the applicant's case can be considered for promotion, the same may be done without prejudice and even if promotion is given to him, that will not confer any right unless he is cleared of all the guilt. The application is disposed of with the above observations. Parties to bear their own costs.


Member (A)

Dated: 20th May, 1992

(m.u.)


Vice-Chairman