

CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 42/92

this the 20th Day of March, 2001

HON'BLE SMT. LAKSHMI SWAMINATHAN, VC (J)

HON'BLE MR. A.K. MISRA, AM

Gopal Krishna Dwivedi, aged about 51 years, s/o Sri Radhey Shyam Dwivedi, R/o C-2/3, Vivek Vihar, Lucknow Cantt., Lucknow.

....Applicant

By Advocate: Shri Ratnesh Lal B/h for Shri Anil Kumar.

Versus

1. Union of India, through Secretary, Ministry of Defence (Finance), South Block, New Delhi-110001.
2. Controller General of Defence Accounts, West Block-5, R.K. Puram, New Delhi.
3. Controller of Defence Accounts, Cariyappa Road, Lucknow Cantt, Lucknow.
4. Accounts Officer (Administration), Office of the Controller of Defence Accounts, Cariyappa Road, Lucknow Cant., Lucknow.

....Respondents

By Advocate: Shri A.K. Chaturvedi.

ORDER (ORAL)

SMT. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)

In this application the applicant has challenged the vires of the orders passed by the respondents dated 31.12.1990 and 16.9.1991 rejecting his representations and awarded him<sup>a</sup> penalty of 'Recordable Warning'.

2. The brief relevant facts of the case are that the applicant while functioning as <sup>Senior J.R.</sup> Auditor received a memorandum dated 15.11.1990 from the respondent. In this memo, the respondents have stated that the applicant had organised a joint representation and also appended his signature regarding enhancement of the value of Diwali Gift being distributed in the office of the PAO(ORs) AMC,

Lucknow. They have also stated that <sup>the</sup>act of the applicant in organising and making a joint representation amounts to subversion of discipline as per the provisions of Rule 3 of the CCS (Conduct) Rules, 1964 and Government of India Decision (16). They had, therefore, asked the applicant to explain within 3 days of the receipt of this letter as to why disciplinary action should not be taken against him. To this memo, he had replied to respondent No. 3, i.e. Controller of Defence Accounts (CDA), in which he has inter-alia, stated that, to the best of his belief, he has not appended his signatures to any joint representation and had requested the authority to make available to him a copy of the joint representation before arriving at a decision in the matter. Admittedly, it is clear from paragraph 17 of the Counter Reply filed by the respondents, that <sup>a</sup>copy of the joint representation said to have been signed by the applicant was not given to him before the disciplinary authority i.e. respondent No. 3 passed the impugned order dated 31.12.1990 giving him 'recordable warning'.

3. Shri Ratnesh Lal, learned counsel has submitted that even subsequently, the applicant had requested the respondents to supply a copy of the joint representation, on which they have relied upon, but this has not been done. The appellate authority i.e. Respondent No. 2 had thereafter dismissed the representation made by the applicant vide his order dated 16.9.1991. He has relied on the judgement of the Hon'ble Supreme Court in Kashi Dikshita Nath Vs. Union of India 1986(3) SCC, 229. He has submitted that in the facts of the present case, the respondents have violated the principles of natural justice as they have refused to give him a copy <sup>of</sup> the relied upon document. He has also submitted that even the appellate authority i.e. CGDA had taken a decision that no further representation should be given by him based on

the joint representation, which was available in the record of the respondents. The respondents have submitted that the Review Petition dated 20th September, 1991 addressed to Respondent No. 2, along with the photo copy of the joint representation in which the applicant had stated that he had not appended his signature, was not genuine because the copy of the joint representation available in the respondent's records exhibits the signature of the applicant at S.No.2, along with other persons who had signed the joint representation.

4. Learned Counsel for the applicant has submitted that inadvertently he has not filed the copy of the rejoinder. However, he has filed a copy of the rejoinder which has been given to the learned counsel for the opposite party. Accordingly rejoinder is taken on record.

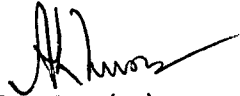
5. We have carefully considered the pleadings and the submissions made by Shri Ratnesh Lal, learned counsel for the applicant and Shri A.K. Chaturvedi, learned counsel for the respondents.

6. It is clear from the records that at no time either the disciplinary authority or the appellate authority had given a copy of the joint representation said to have been signed by the applicant, as requested by him in his various representations, before a decision had been taken to punish him with 'recordable warning'. It is also clear from the reply filed by the respondents that they had also made a comparison of the signature on the joint representation from the records available with them with a copy, later on given by the applicant, and this is a document they have relied upon. We are therefore, satisfied that this is a case where there has been violation of the principles of natural justice as the applicant has been punished without giving him a reasonable opportunity to put forward his case on the relied upon document. We are fortified in our view by

the decision of the Hon'ble Supreme Court in Kashi Nath Dikshita's case (Supra). Therefore, the impugned orders are liable to be set aside.

7. It is noticed that no disciplinary action has been taken against the applicant, excepting that a recordable warning has been issued to him by the impugned order dated 31.12.1990, followed by the appellate order conferring this punishment. The applicant's counsel had contended that the order has not been conveyed by the appellate authority. However, we do not find any illegality on this account, merely because the decision of the appellate authority has been conveyed to the applicant by another officer.

8. In the result, for the reasons given above, the impugned orders dated 31.12.1990 and 16.9.1991 issued by the respondents are quashed and set aside. Neither of the learned counsel were able to categorically state whether the applicant is still in service or not as on date. In the circumstances of the case, in case the applicant is still in service, liberty is granted to the respondents to proceed in the matter in accordance with law, otherwise they will not take any further action. No order as to costs.

  
MEMBER (A)

  
VICE CHAIRMAN (J)

LUCKNOW: DATED: 20.3.2001

HLS/-