

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

Original Application No. 586 of 1992

this the ____ day of May '2000

HON'BLE MR D.V.R.S.G. DATTATREYULU, MEMBER (J)
HON'BLE MR S. MANICKAVASAGAM, MEMBER (A)

Lodli Prasad Misra

... Applicant

Versus

Union of India through Cabinet Secretary, Cabinet Secretariat,
Government of India, New Delhi.

2. The Secretary, R & A.W., Cabinet Secretariat, Government
of India, Room No. 8 B, South Block, New Delhi.
3. Additional Secretary (Personnel).
4. Joint Secretary (P), Nos 3 & 4 R. & A.W. Cabinet
Secretariat, Govt. of India, New Delhi.

... Respondents

Sri D.P. Srivastava .. Advocate for the applicant

Sri A.K. Chaturvedi .. Advocate for the respondents

O R D E R

D.V.R.S.G. DATTATREYULU, MEMBER (J)

The applicant in this case prays to quash the impugned
orders dated 10.3.89, 6.11.91 and 20.12.91 under the
Annexures Nos. A-2, 2 & 3 and to allow the applicant all
the service consequential benefits including confirmation,
seniority and promotion.

2. The brief facts of the case are as follows :

The applicant was functioning as Field Assistant (G.D.)
at Lucknow. He was placed under suspension by order dated
24.2.1981. The chargesheet was served on the applicant on
14.7.1981/18.7.1981 which is at Annexure-4, stating that
he had committed mis-conduct and tried to raise funds for
providing financial aid to the dismissed and suspended
employees and thereby he violated rule 7 of C.C.S. (Conduct)

document
Rules, 1964. The applicant demanded certain demands, but was not supplied to him. Therefore, he could not furnish the written statement properly, but the enquiry officer ^{had} proceeded to hold the enquiry. Thereafter, the witnesses were examined by the prosecution officer before the enquiry officer, but as the relevant documents were not supplied, the applicant could not cross examine the witnesses. Further, after necessary documents, the enquiry officer submitted his report on 23.12.86. The enquiry report was not supplied to the applicant. The disciplinary authority passed an order dated 13.7.87 reducing the pay of the applicant by three stages from Rs. 272/- to 255/- for a period of two years. It is further stated that the applicant will not earn the increments of pay during the period of reduction. It is stated that on ^{Completion} enquiry the reduction will not have the effect of postponing his future increments of pay (Annexure-6). According to the applicant, the findings of the enquiry officer are perverse. Therefore, he preferred an appeal. The appellate authority passed an order on 20.1.1988 setting aside the order of punishment passed by the disciplinary authority, remitting the case to the disciplinary authority with the direction to hold a de novo enquiry against the applicant from the stage of recording the statement of witnesses and then the report of the enquiry officer alongwith the comments. This is as per Annexure-8. The enquiry officer was appointed as per Annexure-9. The enquiry officer examined certain witnesses. The enquiry officer has not summoned the defence witnesses. Subsequently, without closing the prosecution case, examination and cross examination of the defence witnesses in hurry. According to the applicant, the disciplinary authority submitted ^{Report} alongwith its remarks to the appellate authority. All

the materials as called-for by the appellate authority, the appellate authority imposed the present punishment. Against this punishment, the applicant preferred a review petition, which but the same was dismissed. Hence, this application praying for the above mentioned relief.

3. The respondents filed their reply. Denied the allegations made in the application parowise. It is stated that the application is barred to be considered for non-impleading the Additional Commissioner, Special Bureau, Lucknow, who is the necessary party in this application. It is also stated that the applicant has challenged the order dated 10.3.89, which is barred by limitation. The respondents traversed in the ~~denying in~~ ^{as} reply deciding the case which have already been stated by the applicant. It is stated that the enquiry was properly conducted. The full opportunity was given to the applicant after considering the necessary material, the appellate authority imposed the present punishment of censure. It is also stated that the applicant was confirmed as Field Assistant w.e.f. 1.7.89 after consideration by the competent authority. It is stated that the applicant will be considered for promotion as and when his turn will come. The further allegations were denied parowise.

4. We have heard the learned counsel appearing for both sides and considered the petition, Counter, Rejoinder and all the Annexures filed by the parties.

5. The point for consideration is whether the applicant's prayer for quashing of the proceedings and giving him all consequential benefits is to be granted or not.

6. Though, it is the contention for the applicant that he was not given sufficient opportunity by providing him necessary documents and assistance, It is seen from the Counter and also by the various Annexures that the applicant was given ^{2u}

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full opportunity especially when the punishment imposed originally against the applicant was set aside and de-nevo enquiry was ordered by the appellate authority. In the De-nevo enquiry all the witnessess were examined and the applicant had full chance of cross examining all the witnesses and producing the defence witnesses. There is nothing on record to show that the enquiry was in any way ~~not according to law~~ biased. There is also nothing on record to show that either the enquiry officer was biased against the applicant or even the disciplinary authority is also biased against the applicant. The appellate authority by a reasoned order has considered the entire material and imposed the punishment of censure which is a minor penalty. There is nothing on record to show that any kind of perverse or arbitrary findings were arrived at by the authorities. In view of this, there is no ground to interfere with the punishment imposed. Hence, the question of quashing of punishment, the prayer of the applicant has to be negated..

7. Further, the point that the punishment imposed being censure, it will not stand that the applicant be not considered for appointment and for confirmation. Therefore, the applicant is entitled to the relief of being confirmed from the date when his immediate junior was confirmed. It is stated in the reply itself that the applicant has to be considered for further promotion as and when the applicant comes within the zone of consideration for promotion.

Therefore, this prayer of the applicant is to be granted. In the result, the O.A. is partly allowed with the following orders :

(i) The respondents are directed to confirm the applicant from the date when the immediate junior to him was confirmed in the said post of Field Assistant.

(ii) The applicant has to be considered for promotion

at the time when the applicant comes within the zone of consideration for promotion to the next category in the line.

(iii) The above orders shall be complied with by the respondents within three months from the date of communication of this order.

(iv) The parties shall bear their own costs.

Syam Sunder S..

MEMBER (A)

12/5/2000

LUCKNOW DATED:

GIRISH/-

12/11/2000

MEMBER (J)