IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

REVIEW PETITION NO.65/2003.
IN
ORIGINAL APPLICATION NO.444/2000.

Dated: 02.09.2004.

Hon'ble Shri Anand Kumar Bhatt, Member (A),
Hon'ble Shri S.G.Deshmukh, Member (J).

H.L.Gupta ...Applicant.
(By Advocate Ms.D.Fernandes)

Vs.

Union of India & Ors. ...Respondents.
(By Advocate Shri R.K.Shetty)

: ORDER :

{Anand Kumar Bhatt, Member (A)} - ORAL

Review Petition has been filed by the Respondents against the order dt. 22.8.2003 of the Tribunal in OA No.444/2000. The case was that departmental proceedings were taken up against the applicant. An inquiry was conducted. Enquiry Report was received by the applicant on 11.11.1995 at 10.20 a.m. The applicant was required to submit his representation within 15 days of the receipt of the said inquiry report. However, the Disciplinary Authority (for short, DA) without waiting for the representation of the applicant passed an order of punishment on 11.11.1995 itself. In the review petition filed by the Respondents (in the OA), ground has been taken that after receiving the copy of the inquiry report on 11.11.1995, representation was filed by the charged officer on the same day at 11.10 a.m. Therefore, the order passed by the DA on the same day on which the inquiry report was received by the charged officer (for short, CO) is in order. The DA's order was received by the CO ON 13.11.1995. The 15 days' time given to the co is the outer limit and after the receipt of the representation from the applicant the DA was fully justified in passing the order.

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There is error apparent on the face of the record in the order of the Tribunal dt. 22.8.2003 which should be corrected. Shri Shetty also pointed out that now the applicant has retired on 31.7.2004.

2. For the applicant in the O.A. Ms. D.Fernandes said that the application/representation by the applicant dt. 11.11.1995 which was given by him at 11.10 a.m. to the respondents (Exhibit - R-6 on page 120 of the paper book in the OA) is only a request for revocation of suspension. She also pointed out that Shri R.K.Shetty, the Counsel for the respondents stated at the bar on the day of hearing that orders of punishment was passed without waiting for the representation of the applicant on the date copy of the Enquiry Report was served on the applicant.

3. We have considered the case. The operative portion of the order of the Tribunal in OA No.444/2000 is as follows :

> "3. Submission made by the learned counsel appearing for the applicant that though the applicant was required to submit his representation within 15 days of the receipt of the enquiry report but the order of punishment was passed on the date the applicant received the enquiry report, this, according to the learned counsel violated Rule 16 of the CCS (CCA) Rules, 1965. Shri R.K.Shetty, learned counsel representing the respondents has very well stated at the Bar that the order of punishment was passed without waiting for the representation of the applicant on the date a copy of the enquiry report was served on the applicant. Though the appeal filed by the applicant against the order passed by the disciplinary authority came to be dismissed by order dt. 14.5.1999, the original order of punishment passed by the disciplinary authority being an order passed in breach of principles of natural justice is binding the appellate order is bound to also follow.
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> 4. In the circumstances, the application succeeds below :-
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> The impugned order is quashed with liberty reserved to the disciplinary authority to proceed from

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the stage of so call notice after receipt of enquiry report. It is, however, provided that in case the department intends to proceed further in the matter, the appropriate final decisions shall be taken by the disciplinary authority expeditiously within a period of four months from the date of receipt of this order. No order as to costs."

Shri R.K.Shetty, learned counsel for the respondents had stated at the time of hearing in the OA that DA had passed the order without waiting for the representation of the applicant on the same ~~date~~ day the that the copy of the Enquiry Report was served on the applicant. Under the circumstances, the respondents cannot make an about turn now and say that the representation was received, especially in view of the assertion of the counsel for the charged officer that the said representation was only for revocation of suspension. The Tribunal gave liberty to the DA to proceed from the stage of so called notice after receipt of Enquiry Report. As the charge memo was already issued to the applicant, the respondents ~~could~~ can very well continue with the inquiry even after the retirement of the charged officer.

4. Review Petition is rejected.

(S.G.DESHMUKH)
MEMBER (J)

(ANAND KUMAR BHATT)
MEMBER (A)

B.