CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:506/1997
AND 507/1997
DATED THE 14th DAY OF ~~AUG~~ September, 2001

CORAM:SHRI S.L.JAIN, MEMBER(J).
SHRI G.C.SRIVASTAVA, MEMBER(A)

Smt.M.K.Lakshmikutty
Block-A, Flat No.5/1,
IInd Floor, Mariazinha Apts,
Opp.Ciba-Geigy, Corlim,
Ilhas, Goa 403 110. ... Applicant

By Advocate Shri Suresh Kumar

V/s.

1. Union of India through its
Director General of Indian
Council of Agriculture Research,
Krishi Bhavan, New Delhi 110 001.

2. Indian Council of Agriculture
Research, through its Acting
Director, with his Office, Ela,
Old Goa 403 402.

3. Director (Vigilance), Indian
Council of Agriculture Research,
Krishi Bhavan, New Delhi 110 001. ... Respondents

By Advocate Shri V.G.Rege

(ORDER)

Per Shri G.C.Srivastava, Member(A)

These two OAs have been filed by the applicant challenging the appellate authority's order dated 10/3/97 rejecting her appeal against her compulsory retirement from service (OA-506/97) and appellate authority's order dated 8/8/96 rejecting her appeal against the penalty of withholding of promotion for a period of two years.

2. Since a common question of law and fact are involved in the above two OAs, we are passing a common order covering both the cases.

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3. The reliefs claimed in OA-506/97 are as under:-

8.a.the impugned order dated 10/3/97 be quashed and set aside.
b. The order of the Disciplinary Authority dated 31/7/1996 be quashed and set aside.
c. The report of the Enquiry Officer dated 6/4/1996 be quashed and set aside and consequently the disciplinary proceedings initiated against the applicant be quashed and consequently the applicant be reinstated in the service alongwith all the consequential benefits.

The reliefs claimed in OA-507/97 are as under:-

8.a.the impugned Order dated 8/8/1996 be quashed and set aside.
b. The order of Disciplinary Authority dated 30/12/1995 be quashed and set aside.
c. The report of the Enquiry Officer dated 28/11/1995 be quashed and set aside, and the disciplinary proceedings initiated against the Applicant be quashed, and consequently the applicant be promoted alongwith all the consequential benefits.

4. According to the applicant an enquiry was conducted against her for the charges issued to her vide memo dated 26.4.1995 (in OA 506/97) and vide memo dated 28.7.1995 (in OA 507/97). She was supplied with a copy of the report of the Enquiry Officer dated 6.4.1996 and dated 28.11.1995& was asked to furnish her written explanation on the said reports. She gave her written explanations and subsequently she was given another opportunity to show cause why proposed penalty should not be imposed. She furnished her reply and the aforesaid penalties were imposed vide the impugned orders. She filed an appeal before the respondent - 1 against the above orders of Disciplinary Authority

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on 17.8.1996 and 22.2.1996. Subsequently, the applicant reminded respondent no.1 regarding her appeal against compulsory retirement. Since her appeal was not decided, she filed a writ in the Hon'ble High Court and the Writ Petition was disposed of directing the respondent no.3 to dispose of the appeal within three months from the date of the order. Finally, the appeal of applicant was disposed of vide the impugned order dated 10.3.1997 and separately vide order dated 8.8.1996. Aggrieved by this she has approached this Tribunal.

5. In their reply, the respondents have stated that the appeal of the applicant has not been dismissed summarily as the order clearly sets out the case of the applicant and gives its findings in detail. According to them, the Appellate Authority found no justification to interfere with the order passed by Disciplinary Authority and accordingly rejected the appeal. They have further stated that the appellate authority did not find it necessary to call the applicant for personal hearing as the later had admitted the authenticity of the documents produced by the prosecution during the course of the enquiry proceedings. Even under the law it is not necessary that a personal hearing be given to the appellant. They contend that the appellate authority has taken into consideration all the points raised in the appeal and has passed the order dated 10/3/97 and dated 8.8.1996 and hence the prayer of the applicant deserves to be rejected.

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6. We have heard Shri Suresh Kumar and Shri V.G.Rege, learned counsel for applicant and respondents respectively. We have also carefully examined the pleadings and the documents produced on record.

7. During arguments, Shri Suresh Kumar for the applicant has raised the issue that the applicant had specifically requested for personal hearing in her appeal but the appellate authority has not given an opportunity of personal hearing to her and has rejected the appeal without hearing the applicant. He has also drawn our attention to the case of Ram Chander V/s. Union of India and Ors- 1986(3)SCC-103 and has argued that the appellate authority must afford an opportunity of hearing and pass a reasoned speaking order. As in the instant case, the appellate authority did not afford an opportunity of personal hearing to the applicant, the impugned order passed by appellate authority gets vitiated. He has also referred to the judgements of the High Court of Judicature at Mumbai, Panaji Bench, Goa in Writ Petition No.87 of 1994 wherein the appeal of the Petitioner has been decided by the Appellate Authority without giving him an opportunity of hearing. The Hon'ble Court quashed and set aside the same and directed the Appellate Authority to hear the petitioner in person or represented by any of his friends or by his Counsel. On the contrary, Shri Rege for the respondents has argued that as per C.C.S. (C.C.A) Rules under which the punishment has been awarded and the appeal has been decided, personal hearing to be provided to the delinquent employee

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concerned is at the discretion of the Appellate Authority and since the Appellate Authority in this case did not consider it necessary to grant him personal hearing, the impugned order cannot be considered to be bad in the eye of law.

8. We have considered the rival claims in this regard and would like to refer to Rule 27 (5) of the C.C.S. (C.C.A.) Rules which deals with personal hearing by the Appellate Authority. The relevant provisions are extracted below :

> *(5) Personal hearing at the discretion of appellate authority in major penalty cases.* - The Committee of the National Council (JCM) set up to review the CCS (CCA) Rules, 1965, has recommended that provision may be made for personal hearing by the Appellate Authority of the employee concerned if the appeal is against a major [penalty.
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> 2. The above recommendation has been considered in all its aspects. Rule 27 of the CCS(CCA) Rules, 1965, does not specifically provide for the grant of a personal hearing by the Appellate authority to the Government servant before deciding the appeal preferred by him against a penalty imposed on him. The principle of right to personal hearing applicable to a judicial trial or proceeding even at the appellate stage is not applicable to departmental inquiries, in which a decision by the appellate authority can generally be taken on the basis of the records before it. However, a personal hearing of the appellant by the appellate authority at times will afford the former an opportunity to present his case more effectively and thereby facilitate the appellate authority in deciding the appeal quickly and in a just and equitable manner. As Rule 27 of the CCS (CCA) Rules does not preclude the grant of personal hearing in suitable cases, it has been decided that where the appeal is against an order imposing a major penalty and the appellant makes a specific request for a personal hearing, the appellate authority may after considering all relevant circumstances of the case, allow the appellant, at its discretion, the personal hearing.
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> [G.I.,Dept. of Per.& Trg., O.M.No. 11012/20/85-Est.(A), dated the 28th October, 1985.]

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> 3. It has been decided that in all those cases where a personal hearing is allowed by the appellate authority in terms of the above O.M., the Government servant may be allowed to take the assistance of a defence assistant also, if a request is made to that effect.
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> [G.I., Dept. of Per. & Trg., O.M. No. 11012/2/91-Estt. (A) dated the 23rd April, 1991.]"

9. From the above, it would be seen that although the grant of opportunity of personal hearing to the appellant is a discretion which lies with the appellate authority and cannot be enforced as a mandatory obligation it is relevant to point out that in the instant case (OA506/97) the appellate authority while passing the impugned order does not seem to have examined and considered the request of the applicant for personal hearing in the proper perspective. In this regard we reproduce the relevant para of the impugned order dated 10.3.1997.

> "(iii) Smt. M.K. Lokshmikutty was given an opportunity personal hearing on 29.6.95 but she did not avail of the opportunity. Thereafter, the disciplinary authority issued a duly reasoned and speaking order after critical examination of the inquiry report, written brief of the Presenting Officer, defence reply and written representation of the charged officer regarding the inquiry report."

10. The applicant has very strongly rebutted the above observations in his OA stating that the disciplinary authority itslef had issued show cause notice dated 9.6.1995 and though in the order of disciplinary authority it has been mentioned that the applicant was given an opportunity of personal hearing about the proposed penalty, in fact, no such hearing was given. He further states that this ground was raised in Para 21 and ground

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no.viii in her appeal. According to her, the show cause notice was issued to her on 29.6.1996 to represent against the proposed penalty.

11. There seems to be lot of force in the submission of the applicant. We find from the impugned order dated 10.3.1997 that the question regarding personal hearing before deciding the appeal has not been properly considered by the appellate authority and the observations made by the appellate authority as reproduced in para 9 (supra) do not pertain to the opportunity of personal hearing requested by the applicant, before deciding the appeal. Although the respondents have stated in their reply that the question regarding personal hearing was already considered by the appellate authority and the same was not considered necessary, but there is no evidence in the impugned order to that effect or produced as part of pleadings that the question was so considered. In this connection, we would like to refer to the observations of the Hon'ble Supreme Court in the case of Ram Chander Vs. Union of India & others, 1986 (3) SCC 103, where the apex Court had observed that after the constitutional change brought about it seems that the only stage at which now a civil servant can exercise this valuable right is by enforcing his remedy by way of a departmental appeal or revision, or by way of judicial review.It would thus appear that after the 42nd Amendment in the Constitution of India, the stage of appeal has become extremely important so far as the delinquent enquiry is concerned and so far as the rights of being afforded a reasonable

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opportunity of defence counsel & personal hearing in our considered view therefore stands out as a stage of disciplinary action when the delinquent employee has an opportunity to put forward his defence once again and also any further facts which he considers relevant for a fair disposal of his case and if the employee is deprived of such step, this would amount to a denial of reasonable opportunity of defence.

12. In view of the above, we are of the considered view that the action of the appellate authority in not having given a personal hearing to the applicant before deciding the appeal is not sustainable. As far as the second impugned order dated 8.8.1996 is concerned we find that the same does not conform to the requirements as laid down by the Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms, O.M.No.134/1/81-AVD I, dated the 13th July, 1981 inserted as Government of India's instruction below Rule 15 of the CCS (CCA) Rules, 1965 which is reproduced as below -

> " <u>Self-contained, speaking and reasoned order to be passed and to issue over signature of prescribed disciplinary/appellate/reviewing authority.</u>- As is well known and settled by courts,disciplinary proceedings, against employees conducted under the provisions of CCS (CCA) Rules, 1965, or under any other corresponding rules, are quasi-judicial in nature and as such, it is necessary that orders in such proceedings are issued only by the competent authorities who have been specified as disciplinary/appellate/reviewing authorities under the relevant rules and the orders issued by such authorities should have the attributes of a judicial order. The Supreme Court, in the case of Mahavir Prasad Vs. State of U.P. (AIR 1970 SC 1302) observed that recording of

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reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal.

2. However, instances have come to the notice of this Department where the final orders passed by the competent disciplinary/appellate authorities do not contain the reasons on the basis whereof the decisions communicated by that order were reached. Since such orders may not conform to legal requirements, they may be liable to be held invalid, if chalolenged in a Court of Law. It is, therefore, impressed upon all concerned that the authorities exercising disciplinary powers should issue self-contained, speaking and reasoned orderfs conforming to the aforesaid legal requirements.

3. Instances, have also come to notice where, though the decisions in disciplinary/appellate cases were taken by the competent disciplinary/appellate authorities in the files, the final orders were not issued by that authority but only by a lower authority. As mentioned above, the disciplinary/appellate/reviewing authorities exercise quasi-judicial powers and as such, they cannot cannot delegate their powers to their subordinates. It is, therefore, essential that the decision taken by such authorities are communicated by the competent authority under their own signatures, and the order as issued should comply with the legal requirements as indicated in the preceding paragraphs. It is only in those cases where the President is the prescribed disciplinary/appellate/reviewing authority and where the Minister concerned has considered the case and given his orders that an order may be authenticated by an officer, who has been authorised to authenticate orders in the name of the President."

In the light of the above, we are of the considered view that the impugned order is not a self contained reasoned and speaking order and therefore not sustainable.

13. Accordingly, without going into the merits of the case we quash and set aside the impugned orders dated 10.3.1997 and dated 8.8.1996 and direct the appellate

authority to consider the appeal of the applicant afresh and after giving personal hearing to her pass appropriate speaking order as required under rules.

14. With the above directions, the OAs stand disposed of. However, the applicant will have the liberty to seek appropriate legal remedy in case she is still dis-satisfied with the order which may be passed by the appellate authority in pursuance of the above directions.

15. Parties will bear their own costs.

(G.C.Srivastava)
Member (A)

(S.L.Jain)
Member (J)