

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR
O.A.No.308/2001 Date of order: 19/4/2002

Smt. Phyllis A. Roberts, W/o Sh. Anup, Matron Gr.II,
Divnl. Rly Hospital, Kota.

...Applicant.

Vs.

1. Union of India through General Manager, W.Rly, Churchgate, Mumbai.
2. Chief Medical Director, Headquarters Office, Churchgate, Mumbai.
3. Divisional Railway Manager, W.Rly, Kota.
4. Chief Medical Supdt, Railway Hospital, Western Rly, Kota.

...Respondents.

Mr. K.N. Shrimal : Counsel for applicant
Mr. S.S. Hasan : Counsel for respondents.

CORAM:

Hon'ble Mr. S.K. Agarwal, Judicial Member.

Hon'ble Mr. H.O. Gupta, Administrative Member.

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A filed under Sec.19 of the ATs Act, 1985 the applicant makes a prayer (1) to quash the order dated 9.1.99 passed by the disciplinary authority, order dated 26.4.99 passed by the appellate authority and order dated 18.7.2000 issued by the revisionary authority with all consequential benefits and (2) to quash the chargesheet.

2. In brief, facts of the case as stated by the applicant are that the applicant was allotted quarter No.579B (Type II) in Medical Colony, Kota. It is stated that a complaint was made against the applicant regarding sub-letting the said quarter. Enquiry was conducted and the



Enquiry Officer after thorough enquiry found the applicant not guilty of the allegations of sub-letting the quarter as there was no evidence of taking any rent from Smt.Savitri. Thus, the charges were not proved against the applicant, as per the enquiry report. But the disciplinary authority did not agree with the finding of the enquiry officer and imposed penalty of reduction for two stages below in time scale 6500-10500 for a period of 4 years with future effect, vide order dated 9.1.99. An appeal was filed and the appellate authority modified the order of the disciplinary authority and awarded the punishment of reducing the pay of one stage in the grade 6500-10500 for one year with future effect, vide order dated 26.4.99. Revision was filed which was rejected vide order dated 18.7.2000. Thereafter, the applicant served a notice of demand of justice on 16.6.2001 but with no result. It is stated that while the disciplinary authority disagreeing with the findings of the Enquiry Officer, failed to communicate the reasons of disagreement thereby did not give any opportunity to show cause/hearing before imposing the punishment, which is not sustainable in law. Therefore, the applicant filed this O.A.

3. Reply was filed. It is admitted that Sh.H.S.Meena, conducted the enquiry and found the applicant not guilty of the charges. It is stated that the disciplinary authority disagreed with the report of the Enquiry Officer and imposed the penalty vide order dated 9.1.99 which was not erroneous in any way. It is also stated that the appellate authority modified the order of the disciplinary authority as disproportionate and the revisionary authority has rightly rejected the revision filed by the applicant. Therefore, the applicant has no case.



4. Heard the learned counsel for the parties and also perused the whole record.

5. The learned counsel for the applicant argued that the disciplinary authority while disagreeing with the report of the enquiry officer, did not communicate reasons of disagreement to the applicant before imposing the penalty upon the applicant thereby no opportunity of show cause was given to the applicant, hence imposing the penalty upon the applicant by the disciplinary authority is not sustainable in law and in consequence to this, the orders of the appellate authority and the revisionary authority are also liable to be quashed. On the other hand, the learned counsel for the respondents has supported the action of the respondents' department.

6. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

7. The law on the subject has come up before the Apex Court of the country in catena of cases.

8. Sir Edward Coke in a famous case, Cooper Vs. Wordsworth, has observed; 'Even God did not pass a sentence upon Adam before he was called upon to make his defence'. In Narain Mishra Vs. State of Orissa, 1969 SLR Vol.3 SC 657, it was held by Hon'ble Supreme Court that if the punishing authority deferred from the findings of inquiry officer and held the official guilty of the charge from which he was exonerated by the enquiry officer and no notice or opportunity was given to the delinquent official about the attitude of punishing authority, the order will be against all the principles of fair play, natural justice and liable to be set aside. In Punjab National Bank & Ors Vs. Sh. Kunj

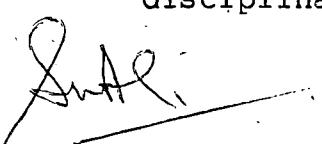


Behari Misra, 1998(3) ATJ SC 537, it was held by Hon'ble Supreme Court that whenever a disciplinary authority disagrees with the findings of inquiry authority on any article of charge and record its own findings, the reasons of such disagreement must be recorded and the delinquent must be given an opportunity to represent his case.

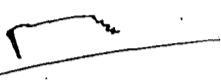
9. The same principle was reiterated in the latest judgment delivered by Hon'ble Supreme Court in Yogi Nath D.Bagda Vs. State of Maharashtra, JT 1999 (6) SC 62. In State Bank of India & Ors Vs. Arvind K.Shukla, ATJ 2001(7) SC 247, Hon'ble the Apex Court reiterated the earlier decisions and confirmed the view.

10. Looking to the legal position as referred above and facts and circumstances of this case, we are of the opinion that while disagreeing the report of the Enquiry Officer, it was the duty of the disciplinary authority to record its findings and reasons of such disagreement and should have been communicated to the delinquent and the delinquent must be given an opportunity to represent his case thereafter only the punishment should have been imposed upon him. But in this case, this has not been done. Therefore, the order of the disciplinary authority dated 9.1.99, the order of the appellate authority dated 16.4.99 and the order of the revisionary authority dated 18.7.2000 are liable to be quashed.

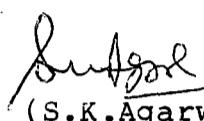
11. We, therefore, quash the impugned order dated 9.1.99 passed by the disciplinary authority, order dated 26.4.99 passed by the appellate authority and order dated 18.7.2000 passed by the revisionary authority and direct the disciplinary authority to pass appropriate order in case the disciplinary authority disagrees with the findings of the



Enquiry Officer, after communication of the reasons of disagreement to the applicant, after giving an opportunity to represent the case. The whole exercise shall be completed within 6 months from the date of passing of this order. No order as to costs.


(H.O.Gupta)

Member (A).


(S.K. Agarwal)

Member (J).