

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A.No. 62

of 1997,

DATE OF DECISION. 5.5.1999.....

Shri J. Bhandari

(PETITIONER(S))

Mr A. Dastupta and mr S. Chakraborty

ADVOCATE FOR THE  
PETITIONER(S)

-VERSUS-

Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.c.

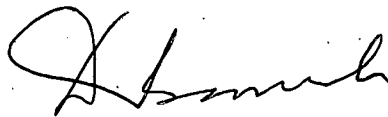
ADVOCATE FOR THE  
RESPONDENTS.

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.62 of 1997

Date of decision: This the 5th day of May 1999

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri Jiyalal Bhandari,  
Resident of Gurubandha,  
P.O. Missamari, District- Sonitpur,  
Assam.

.....Applicant

By Advocate Mr A. Dasgupta and  
Mr S. Chakraborty.

- versus -

The Commandant 311 COY ASC (Sup) Type 'D',  
C/o 99 APO.

2. The Director General Supply & Transport,  
Q.M.G. Branch, DHQ,  
New Delhi.

3. Major General,  
Quarter Master General Branch,  
Army Headquarter,  
New Delhi.

4. The Union of India, represented by the  
Secretary to the Government of India,  
Ministry of Defence,  
New Delhi.

.....Respondents.

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

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O R D E R

BARUAH.J. (V.C.)

This application has been filed by the applicant seeking certain directions to the respondents.

2. Facts for the purpose of disposal of this application are:

The applicant was a labourer engaged in loading and unloading operation of 311 Company ASC (Sup) Type 'D'. He is a civilian in the Defence Force. On 9.11.1995

*RB*

for certain alleged misconduct, two articles of charges were framed against him stating that he misbehaved with his superior officer and also used criminal force against his superior officer. On 20.11.1995 the Disciplinary Authority constituted a Board of Enquiry to enquire into the charges framed against the applicant. The Board consisted of three members, namely, IC-46655L Captain Aman Mehta, JC-64035L Nb/Sub R.S. Sagar and JC-64032IX Nb/Sub M.K. Sarkar. Though the board was constituted by the Disciplinary Authority, only Captain A. Mehta was present on the date of enquiry. However, no Presenting Officer and Workman Representative were appointed. After the constitution of the Board of Enquiry, the applicant was verbally asked to appear before the Board without specifying the date and without asking him to produce any document. On coming to know about the holding of enquiry the applicant appeared before the board, however without proper instructions. According to the applicant only Shri A. Mehta, one of the members of the Board, held the enquiry. The applicant was asked to give evidence and the said Shri A. Mehta recorded the evidence adduced by the applicant. Thereafter the applicant was asked to leave. The enquiry report was forwarded to the applicant which was, however, not authenticated. From the report the applicant also came to know that evidence of some witnesses on behalf of the Disciplinary Authority were taken. According to the applicant this was done in his absence. On the basis said enquiry report the applicant was found guilty of the charges and accordingly he was removed from service. To the utter surprise of the applicant he found that though the enquiry was conducted by Shri A. Mehta alone the enquiry report was signed by three persons, namely Shri A. Mehta, Shri M.K. Sarkar and

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Shri Satya Prakash, Nb/Sub. The applicant has alleged that Shri Satya Prakash was never appointed member of the Board of Enquiry by the Disciplinary Authority. Besides, Shri M.K. Sarkar was also not present at the time of holding of the enquiry. Being aggrieved by the decision of the authority the applicant preferred Annexure I appeal dated 20.2.1996 before the DGST, QMG Branch, Army Headquarter, New Delhi. The Appellate Authority dismissed the said appeal by Annexure J order dated 10.1.1997. However, the punishment of removal from service was converted to compulsory retirement. We quote the relevant portion of the Annexure J appellate order dated 10.1.1997.

"In view of the foregoing, under the provisions of Rule 27 of CCS(CC&A) Rules 1963, in my capacity as the Appellate Authority, I set aside the penalty of "dismissal from Service" as imposed on you by the disciplinary authority and reduce the same to "Compulsory retirement from service wef 23 Jan 96."

Hence the present application.

3. In due course the respondents have entered appearance and filed written statement.

4. We have heard Mr A. Dasgupta, learned counsel for the applicant and Mr A. Deb Roy, learned Sr. C.G.S.C. Mr Dasgupta submits that the Disciplinary Authority constituted a Board of Enquiry consisting of three members. However, the enquiry was conducted by only one person, i.e. Shri A. Mehta and the enquiry report was signed by two other persons, namely, Shri M.K. Sarkar and Shri Satya Prakash. According to Mr Dasgupta the Disciplinary Authority never appointed Satya Prakash as member of the Board. Mr Dasgupta also submits that one member alone could not have conducted the enquiry as the Disciplinary Authority constituted a Board consisting of three members. The further contention of Mr Dasgupta is that while conducting the enquiry the Board did not

follow.....

follow the mandatory procedure prescribed under Rule 14 of the CCS(CCA) Rules, 1965. Mr Deb Roy very candidly submits that the Disciplinary Authority having constituted a Board the enquiry ought to have been conducted by the Board itself. Mr Deb Roy very fairly submits that the enquiry was not conducted by the Board constituted. When asked about the non-compliance of the procedure prescribed under Rule 14 of the CCS(CCA) Rules, 1965, Mr Deb Roy submitted that from the records it does not appear that the prescribed procedure under Rule 14 of the CCS(CCA) Rules, 1965 was followed. However, Mr Deb Roy submits that the procedure prescribed under Rule 14 of the CCS(CCA) Rules, 1965 is mandatory in nature.

5. On the rival contentions of the learned counsel for the parties it is now to be seen whether the enquiry was properly conducted or not. As per the provisions of Rule 14(2) of the CCS(CCA) Rules, 1965, whenever the disciplinary authority if of the opinion that there are grounds for enquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself enquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to enquire into the truth thereof. Normally, the Disciplinary Authority has the power to conduct the enquiry. However, if the Disciplinary Authority decides not to make the enquiry by itself, it may appoint an authority to conduct the enquiry. The authority may be an individual or a Board and that board or individual acquires jurisdiction to conduct the enquiry only on being appointed by the Disciplinary Authority. In the present case, the Disciplinary Authority decided not to make the enquiry by itself and therefore, constituted a board consisting of three members. But, as submitted by Mr Dasgupta, only

one.....

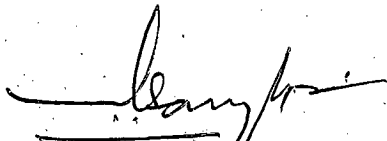
one member of the board, namely Shri A. Mehta, was present at the time of conducting the enquiry. This fact was specifically mentioned in the application of the applicant and it was not categorically denied by the respondents in the written statement. That being so, we are of the opinion that as appointed by the Disciplinary Authority the Board alone could have conducted the enquiry. A member of the Board alone did not have the jurisdiction to do so. Besides, from the record we find that one Shri. Satya Prakash, who was never appointed member of the Board, also signed the enquiry report. All these show that the enquiry was not conducted as per the provisions of Rule 14 of the CCS(CCA) Rules, 1965. We also find that no Presenting Officer was appointed. That apart, as submitted by Mr Dasgupta, evidence of witnesses on behalf of the Disciplinary Authority, was recorded behind the back of the applicant. Mr Dasgupta also submits that after the statements of the applicant were recorded he was asked to leave. The statements of the witnesses were recorded in the absence of the applicant without giving any opportunity to be crossexamined. This fact has been specifically mentioned in para 8 of the application. However, this has not been specifically denied by the respondents, except saying that 'the Inquiry Authority have asserted that laid down procedures were followed in letter and spirit whereas the applicant was non-cooperative and was trying to evade the enquiry'. In our opinion this was not enough and we are inclined to accept the averments of Mr Dasgupta. -

6. In view of the above we find that the enquiry was conducted most perfunctorily without following the procedure prescribed under Rule 14 of the CCS(CCA) Rules, 1965. Therefore, the findings arrived at on the basis of

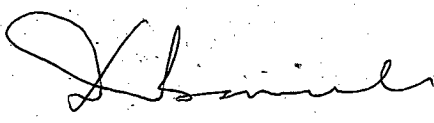
 such.....

such faulty enquiry cannot be the basis of any punishment including compulsory retirement. Therefore, we have no hesitation to set aside the impugned Annexure J order of compulsory retirement dated 10.1.1997. Accordingly we set aside the impugned order of compulsory retirement and the applicant will be deemed to be in service.

7. The application is accordingly allowed. No order as to costs.



( G. L. SANGLYINE )  
ADMINISTRATIVE MEMBER



( D. N. BARUAH )  
VICE-CHAIRMAN