

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 112 of 1997

DATE OF DECISION... 26.5.1999....

Shri Mangal Singh

(PETITIONER(S))

Mr. B.K. Sharma, Mr. S. Sarma.

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

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 SHRI 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.



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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 112 of 1997.

Date of decision : This the 26th day of May, 1999.

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

Hon'ble Shri G.L.Sanglyine, Administrative Member.

Shri Mangal Singh,
Work Charged Khalasi (since terminated),
Central Water Commission,
North Eastern Invn. Divn., No. II,
Jalsakti Puram, Xemabawk,
Aizawl-17, Mizoram

... Applicant

By Advocate Mr. S.Sarma.

-versus-

1. Union of India,
represented by the Secretary to
the Government of India,
Ministry of Water Resources,
New Delhi.

2. The Chief Engineer, (P & I),
Central Water Commission,
West Block No. II, Wing No. IV,
R.K.Puram, New Delhi-66.

3. The Superintending Engineer,
North Eastern Inv. Circle,
Central Water Commission,
Nuhome - Nongshilliang,
Shillong-14.

4. The Executive Engineer,
North Eastern Inv. Division No. II,
Central Water Commission,
Aizawl-17, Mizoram.

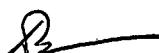
... Respondents

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

O R D E R

BARUAH J. (V.C.).

This is the second round of litigation regarding the dismissal of the applicant. The applicant was a regular Khalasi in the department of Central Water Commission. His services were terminated by Annexure-6 order dated 26.2.1991 on the allegation of submission of false certificates. This order was passed without



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affording any opportunity of hearing. Being aggrieved the applicant approached this Tribunal by filing an Original Application (O.A. 127/1991). The said Original Application was disposed of by this Tribunal by order dated 31.7.1995 setting aside the order of termination and directing to the Executive Engineer - respondent No.4 to hold a regular disciplinary enquiry into the alleged charge of production of false certificate regarding educational qualification. It was further directed that the applicant would be given reasonable opportunity of hearing. Thereafter the respondents started a fresh disciplinary proceeding as per the provision of Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 by Annexure-10 Office Order dated 6.11.1995. An enquiry officer was also appointed by the Disciplinary Authority in this regard. First day of hearing was fixed on 5.12.1995. At that time the applicant was at his native place in Bihar. The enquiry officer issued notice dated 17.11.1995. The grievance of the applicant is that he was not given sufficient time to make himself available before the said enquiry. Therefore on 5.12.95 he could not appear. He alleged that on that day enquiry was conducted in his absence, against all his interest. He was also asked to give the name of defence assistant by the said letter. According to the applicant time was insufficient for giving information to the enquiry officer. However, he appeared on the subsequent dates 20.12.1995 and 21.12.1995. According to the applicant the disciplinary proceeding was recorded in English language, unfamiliar to him. Due to the paucity of time, he could not engage any defence assistant. The enquiry officer after the enquiry found him guilty in all the three charges levelled against him.

The applicant submitted Annexure-20 representation dated 15.1.1996. This was disposed of by Annexure-21 order dated 30.1.1996 without taking into consideration of the points raised by the applicant. Being aggrieved the applicant preferred an appeal before the Appellate Authority namely, Superintending Engineer, North Eastern Investigation Circle, Central Water Commission, Shillong on 27.2.1996 but the Appellate Authority has not yet decided the appeal. Hence the present application.

2. In due course the respondents have entered appearance and filed written statement. We have heard Mr. S.Sarma, learned counsel appearing on behalf of the applicant and Mr. A.Deb Roy, learned Sr. C.G.S.C. Mr. Sarma submits that the entire proceeding is vitiated by error of law as well as procedures. The applicant was not given sufficient time to represent his case in as much as notice was issued without giving enough time. He was also not given enough time to find out defence assistant. Because of these, the applicant could not defend his case properly. According to the counsel for the applicant, it was a denial of reasonable opportunity of hearing. Mr. Sarma further submits that the representation of the applicant was disposed of without taking into consideration of the points raised by the applicant. Besides the appeal preferred by the applicant under the provisions has not yet been disposed of and that too without any reason whatsoever. Mr. Deb Roy on the other hand tries to justify the impugned action of the respondents. However, records have not been produced before this Tribunal though there was a clear averment in paragraph 17 of the application that the disciplinary

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proceeding at least on 5.12.1995 was taken in the absence of the applicant. As the records have not been produced Mr. Deb Roy is not in a position to show what action was taken on 5.12.1995. However, he pointed out that in the enquiry report there is no mention that any evidence was taken on 5.12.1995 only. On subsequent dates the applicant himself appeared. Learned Counsel Mr. Deb Roy is not in a position to show whether reasonable time was given to the applicant to appoint defence assistant. Mr. Deb Roy is not in a position to make any statement when asked by the Tribunal in the absence of records. He only submits that he tried his best to collect the records for submission before this Tribunal but failed.

3. On hearing the counsel for the parties and on perusal of the case records it is to be seen whether disciplinary proceeding was conducted in strict compliance of the CCS(CCA) Rules, 1965. The Disciplinary Authority or Enquiry Officer is required to provide reasonable opportunity of hearing to the delinquent officer or employee to defend his case under the provisions of CCS(CCA) Rules, 1965. In the absence of records and the detail particulars from both sides, it is not possible for this Tribunal to decide whether reasonable opportunity was given or not in defending the case of the applicant. When disciplinary proceeding is initiated the delinquent employee has got every right to defend himself and the authority is bound to follow the procedure prescribed. The averment made by the applicant in para 4.17 of the application has not been controverted by placing the records.

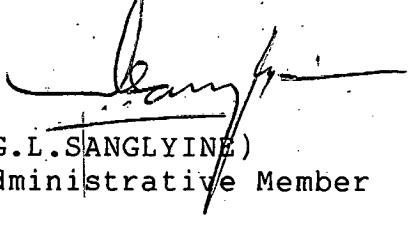
4. In view of the above, we feel it will be expedient if the Appellate Authority dispose of the

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appeal of the applicant by a reasoned order and therefore we direct the Appellate Authority to dispose of the appeal. While disposing of the appeal the contentions raised by the applicant shall be considered and thereafter dispose of the matter by a reasoned order. This must be done as early as possible at any rate within a period of two months from the date of receipt of this order.

5. Considering the facts and circumstances of the case, we however, make no order as to costs.


(G.L. SANGLYINE)
Administrative Member


(D.N. BARUAH)
Vice-Chairman

trd