

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. NO. 160

of 1997

29-6-1999
DATE OF DECISION.....

Sri D. Dutta

(PETITIONER(S))

Mr. B. Malakar

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Mr. B. C. Pathak

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



CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.160 of 97.

Date of Order: This the 29th Day of June 1999.

HON'BLE MR.JUSTICE D.N.BARUAH, VICE-CHAIRMAN
HON'BLE MR.G.L.SANGLYINE, ADMINISTRATIVE MEMBER

1. Sri Durjoy Dutta
S/o Sri Debendralal Dutta
South Hill Colony,
P.O. Lumding
District, Nagaon. Applicant

By Advocate Mr.B.Malakar

-Vs-

1. The Union of India,
Represented by
The Director, Subsidiary Intelligence Bureau,
Ministry of Home Affairs (MHA), Govt. of India,
New Delhi.
2. The Additional Director,
Subsidiary Intelligence Bureau
Chandigarh.
3. The Asstt. Director, SIB
Govt. of India, Chandigarh Respondents.

By Advocate Mr.B.C.Pathak, Addl.C.G.S.C.

O R D E R.

BARUAH J(VC):

The applicant, at the material time was working in SIB at Chandigarh. Two articles of charges were framed against him. The articles/charges alongwith the statements of the imputation were served on the applicant asking him to show cause as to why disciplinary action should not be taken against him. The applicant duly replied to the show cause notice. The disciplinary authority not being satisfied with his reply decided to hold an enquiry. An Enquiry Officer was appointed. The Enquiry Officer intimated the applicant by issuing


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notice regarding fixing of date of hearing, atleast on two occasions. However, notices were not returned after service and therefore, the disciplinary proceedings could not commence. Notices were again issued to the applicant. Thereafter, the applicant joined his duty and also participated the enquiry. After recording the evidence of the witnesses on behalf of the disciplinary authority the statements of the applicant were recorded. However, the applicant could not produce the witness. At the time of enquiry the enquiry officer asked whether the applicant required a defence assistant. The applicant accordingly asked for a defence assistant. The enquiry officer asked the name of the defence assistance however, the applicant could not name the defence assistance. Under Rules 14 of the CCS(CCA) Rules, 1965 a delinquent employees may seek help of a defence assistance. In this case according to the applicant he was not aware of such provisions. However, on conclusion of the enquiry the applicant was found guilty of the charges and he was awarded penalty of removal from service. The applicant preferred an appeal before the appellate authority. Appellate authority rejected the appeal by order Annexure 8 dated 14-5-98. Hence this application.

We have heard Mr.B.Malakar learned counsel for the applicant and Mr.B.C.Pathak learned Addl.C.G.S.C. for the respondents. Mr.B.Malakar submits that the procedure prescribed under Rule 14 CCS(CCA) Rules 1965 had not been fully complied with in as much as the applicant was not asked as to whether he needed defence assistance at the time of the enquiry. Mr.Pathak, learned Addl.C.G.S.C. on the other hand, submits that during the enquiry the charged

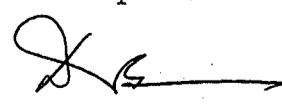


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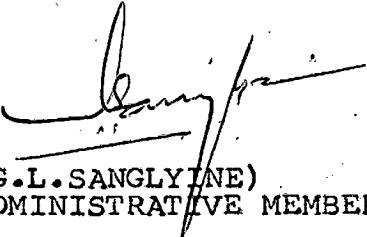
employee admitted the charge. Therefore, according to Mr. Pathak there was no violation of natural justice. Mr. Malakar further submits that the proceeding was taken in Hindi. The applicants' mother tongue was Bengali and he did not understand either Hindi or English. Accordingly, he was prejudiced.

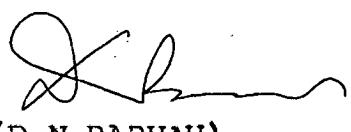
On hearing the learned counsel for the parties we feel that the applicant was not given proper opportunity, at least he being a class IV employee he was not aware of safeguard available to him under the rules. We feel that during the enquiry the disciplinary authority ought to have informed him about his right to get defence assistance. This was not done by the authority.

Considering the entire facts and circumstances of the case we are of the opinion that the disciplinary proceedings were not conducted in the manner contemplated under Rules. The applicant was not given proper opportunity of hearing. Therefore, we find that the penalty imposed by the disciplinary authority on the basis of the findings of the Enquiry Officer cannot sustain in law. We therefore, set aside the impugned Annexure VI order of removal dated 12-12-1995. The appellate order has not been challenged. However, we feel that since the applicant has challenged the order of removal it may amount to challenging the appellate order as well. Accordingly, we make it clear that the authority may proceed with the disciplinary proceeding afresh if so advised, after giving full opportunity to the applicant to defend himself including taking help of a defence assistance. The enquiry should be conducted in a language which is understood by the applicant and if it is not possible it should be explained to him in his language.


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In view of the above we set aside the impugned Annexure VI order of removal from service dated 12-12-1995. The application is accordingly disposed of. No order as to costs.


(G.L. SANGLYINE)
ADMINISTRATIVE MEMBER


(D.N. BARUAH)
VICE-CHAIRMAN

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