

Central Administrative Tribunal, Principal Bench

Original Application No.683 of 2003

New Delhi, this the 5th day of August, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K. Naik, Member(A)

Tej Pal Singh
Presently working as
Fireman No. 742,
S.P. Marg Fire Station,
Delhi Fire Service,
New Delhi

.... Applicant

(By Advocate: Shri S.K. Gupta)

Versus

1. Govt. of NCT of Delhi,
Through The Chief Secretary
Delhi Secretariat
Players Building, I.P.Estate,
New Delhi-2
2. Principal Secretary (Home)
Delhi Secretariat
Players Building, I.P.Estate,
New Delhi-2
3. Chief Fire Officer,
Delhi Fire Service,
Fire Headquarters,
Connaught Circus,
New Delhi

.... Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant is a Fireman and assails the order passed by the disciplinary authority dated 14.5.2001 and also by the appellate authority dated 5.3.2002.

2. The facts alleged against the applicant were that he was working at Laxmi Nagar Fire Station in the year 1995. On 2.8.95, the officer incharge was lying in the barrack. At the dead of night, he heard some noise and went to the Watch Room. He came to know that there was noise in the barrack of the firemen. He heard the sound of

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an indecent song from the barrack of Tej Pal Singh. The officer incharge had sounded the alarm and took the roll call. The applicant was found to be under the influence of liquor and was calling bad names to the officer incharge in the presence of the staff. He had broken the glasses of two windows.

3. Disciplinary proceedings were initiated. The enquiry officer had been appointed who returned the findings that the applicant had committed misconduct and caused damage to the property of the Delhi Fire Service which was unbecoming of a Government servant. In pursuance of the said report, the disciplinary authority passed the following order:

"Whereas a Major RDA No.1/94/95/DFS/Vig. was pending against FM-742 Sh. Tej Pal posted at S.P.M. Marg Fire Station. Thereafter CFO on 20.4.2001 passed following orders:

I have gone through the findings of the Enquiry Officer according to which charges levelled against FM-742 Tej Pal Singh had been approved. It was a case under Major penalty. Accordingly the following penalty is imposed on the said fireman:

"Reduction to a lower stage in the time scale of pay for a period of three years. He will not earn increments during this period and after the expiry of the period, the reduction will have the effect of postponing the future increments of pay."

The applicant preferred an appeal which was dismissed. Hence the present application.

4. During the course of submissions, learned counsel for the applicant contended that the report of the enquiry officer has not been supplied to the applicant and,

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therefore, a fair opportunity has been denied and principles of natural justice violated.

5. In answer to it, respondents' learned counsel pointed -

(a) the applicant has not alleged that any prejudice is caused to him by non-supply of the enquiry report; and

(b) it was not necessary to supply the report of the enquiry officer in the absence of any prejudice having been alleged.

The learned counsel relied upon the decision of the Supreme Court in the case of State of Uttar Pradesh vs. Harendra Arora & ors., 2001 (6) SCC 392.

6. So far as the decision rendered by the apex court in the case of State of U.P. vs. Harendra Arora (supra) is concerned, indeed the ratio deci dendi of the same is that if report of the enquiry officer is not supplied, this would be a procedural flaw but prejudice must be shown to have been caused. In the case the Supreme Court held that if prejudice is caused, in that event it will not be proper not to supply the enquiry officer's report otherwise it would be a procedural flaw.

7. With this backdrop, necessarily we can dwell into the facts of the present case. We have already referred to

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above the basic facts that after the report of the enquiry officer, the disciplinary authority had passed the order which is being challenged before us. In this backdrop, the applicant would not know as to what is the report and what is in the mind of the disciplinary authority. He does not get a fair opportunity in the facts of the present case to bring it to the notice of the disciplinary authority as to why the impugned order should or should not be passed. It would be the facts and circumstances of each case which may prompt the Tribunal to decide whether prejudice is caused or not. In the present case in hand when the applicant was not aware as to what was going on before the impugned order comes to his notice, prejudice is writ large.

8. As regards the plea that it has not been specifically pleaded in the present application that prejudice has been caused, the same has to be stated to be rejected. Once the impugned order is claimed to be quashed on the ground that report has not been supplied, then the law of pleadings cannot be construed so strictly to state that in the absence of it having been so stated in precise words that prejudice is caused, the applicant would not be heard on that count.

9. Resultantly, we allow the present application and quash the impugned orders. The disciplinary authority, if so advised, may from the stage the report of the enquiry officer was received, supply the copy of the same and pass any fresh order in accordance with law.

Naik
(S.K. Naik)
Member (A)

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(V.S. Aggarwal)
Chairman