

(15)

Central Administrative Tribunal
Principal Bench

O.A. No 230/2003

New Delhi this the 12th day of January, 2004

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri S.A. Singh, Member (A)

Pati Ram Suman,
R/o Village & Post Office-Aduki,
District: Mathura (U.P.).

-Applicant

(By Advocate: None)

Versus

1. Union of India,
(Through- The Secretary to the Government
of India), Ministry of Defence,
South Block, New Delhi.
 2. The Controller General of Defence Accounts,
Ministry of Defence, Government of India,
West Block-V, New Delhi-110 066.
 3. The Principal Controller of Defence Accounts,
'G' Block, Hutments,
K. Kamraj Marg,
New Delhi-110 011.
 4. The Local Audit Officer (Air-Force)
Agra-Cantt.
- Respondents
- (By Advocate: Mrs. R.O. Bhutia)

ORDER (Oral)

Hon'ble Shri Shanker Raju, Member (J)

As held by the Apex Court in **Rattan Lal Sharma**
Vs. **Managing Committee** 1993 SCC(L&S) 1106, if legal
pleas not raised but are relevant going to the root of
the matter requiring no probe, same can be
entertained.

2. Applicant impugns respondents' order dated
20.12.2001 imposing a penalty of dismissal, appellate
order dated 25.9.2002 modifying the punishment of
compulsory retirement with 20% cut in pension for five
years and 10% cut in Gratuity.

3. Applicant was proceeded against in a disciplinary proceedings where the Enquiry Officer has partly proved the charge. The Disciplinary Authority disagreed and along with the Memo dated 12.2.2001 served upon statement of disagreement where on the basis of his own finding, a final decision has already been arrived at by fully proving the charge. The aforesaid finding was responded to culminating into major punishment, against which appeal preferred resulted in dismissal, giving rise to the present OA.

4. As held by the Apex Court in **Yoginath D. Bagde Vs. State of Maharashtra and another** 1999 (6) SC 62, while disagreeing the Disciplinary Authority as to form a tentative view and thereafter on accord of reasonable opportunity to pass a final order.

5. Respondents' counsel vehemently opposed the contentions and stated that though the charges were shown to be conclusively proved but yet a reasonable opportunity to show cause notice was afforded to applicant and thereafter appellate order has been passed.

6. What we find in the present OA that on disagreement, *the* Disciplinary Authority has pre-determined its mind and conclusively held the charge proved against the applicant and then afforded an opportunity to applicant in violation of principles of natural justice and fair play, which cannot be countenanced.

7. The following observations have been made by the Apex Court in **Yoginath D. Bagde's** case (supra):-

"The Contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned counsel is that a final decision with regard to the charges levelled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank (supra) in which it had been categorically provided, following earlier decisions, that if the Disciplinary Authority does not agree with the findings of the Enquiry Officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the Disciplinary Authority that the findings already recorded by the Enquiry Officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case".

issue

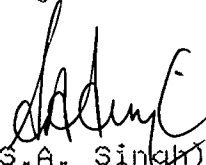
8. A similar issue when raised before the High Court of Delhi in CWP No.2665/2002 in **Commissioner of Police v. Constable Pramod Kumar & Anr.**, decided on 19.09.2002. Placing reliance on Bagde's case (supra) the following observations have been made:

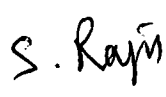
"However, while disagreeing with such findings, he must arrive at a decision in good faith. He, while disagreeing with the findings of the Enquiry Officer was required to state his reasons for such disagreement but such a decision was required to be a tentative one and not a final one. A disciplinary authority at that stage could not have pre-determined the issue nor could arrived at a final finding. The records clearly suggest that he had arrived at a

final conclusion and not a tentative one. He proceeded in the matter with a closed mind. An authority which proceeds in the matter of this nature with a pre-determined mind cannot be expected to act fairly and impartially."

9. If one has regard to the ratio laid down above, in the conspectus of the present case the disagreement arrived at cannot be sustained as well as the consequential orders.

10. In the result, for the foregoing reasons, OA is partly allowed. Impugned orders are quashed and set aside. However, it shall not preclude respondents, if so advised, to take up the proceedings from the stage of disagreement and then to pass a final order. The intervening period and its period would be subject to the order to be passed by the respondents after completion of the proceedings, in accordance with rules, law and instructions on the subject. No costs.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member (J)

cc.