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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1840/2002

This the 31st day of July, 2003

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI KULDIP SINGH, MEMBER (J)

B.K.Chadha S/O S.L.Chadha,
R/O H-40, Sector-23,
Sanjay Nagar, Ghaziabad (UP)
Presently working as Assistant
(AFHQ) M.S.Branch,
Ministry of Defence,
South Block, New Delhi.

... Applicant

(By Shri S.K.Gupta for Shri B.S.Gupta, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Defence,
South Block, New Delhi.
2. Joint Secretary (Training)
and Chief Administrative Officer,
Ministry of Defence,
C-II Hutment, Dalhausie Road,
New Delhi-11.
3. Shri Falguni Rajkumar,
Joint Secretary (Training)
and Chief Administrative Officer,
Ministry of Defence,
C-II Hutments, Dalhausie Road,
New Delhi-11.

... Respondents

(By Shri S. Mohd. Arif, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

By order dated 26.10.1999 in disciplinary proceedings applicant was imposed a major penalty of reduction of pay by five stages from Rs.7,425/- to Rs.6,550/- in the pay scale of Rs.5500-175-9000 for a period of three years with withholding of future increments and postponement of future increments of pay. Applicant had challenged this punishment in OA

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No.1065/2000 which was decided by order dated 13.7.2001 (Annexure A-7) whereby the impugned orders were set aside and the case was remanded to the appellate authority to reconsider the proportionality of punishment in view of the observations made in the Tribunal's orders, and to pass detailed and speaking orders.

2. In the present proceedings, applicant has impugned order dated 20.9.2001 (Annexure A-1) whereby the President in compliance with the directions of this Court in OA No.1065/2000 has modified the original penalty to that of reduction of pay by two stages from Rs.7,425/- to Rs.7,075/- in the pay scale of Rs.5500-9000 for a period of two years with further direction that applicant will not earn any increment during the period of reduction which will have the effect of postponing his future increments of pay.

3. The learned counsel of applicant pointed out that applicant had been proceeded against on the allegation of subletting the Government accommodation, which was allotted to him to an unauthorised person before he handed over the same to the Government on 20.8.1998, and secondly, that he had failed to obtain sanction of the competent authority and also failed to inform the authorities about the acquisition of an immovable property. The learned counsel contended that as regards the first charge relating to subletting of Government accommodation, vide Annexure A-7, this Tribunal had held on the basis of insufficiency of evidence and inapplicability of the 1996 amendment in the

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CCS (Conduct) Rules retrospectively that the same does not survive. As regards the charge of acquisition of immovable property and about not furnishing information to the authorities about the same, the Tribunal had held that the misconduct was of trivial nature and as applicant had provided subsequent information, the alleged misconduct had been mitigated to some extent. The learned counsel stated that be that as it may, it was only a technical lapse which did not cast any shadow on applicant's integrity and even in terms of guidelines issued by the Central Vigilance Commission on 26.2.2001, such lapses should ordinarily attract a censure/administrative warning. In the end, the learned counsel of applicant stated that applicant had filed review petition under Rule 29(A) of the CCS (CCA) Rules on 18.10.2001 and 14.1.2002 both of which were not taken into consideration on the ground that they were not maintainable as they did not contain any new material or evidence other than which was already available and considered at the time of passing the order under review. The learned counsel objected to non-placement of the review petition for consideration before the competent authority.

4. On the other hand, the learned counsel of respondents contended that the term of reference of the remand of the case was limited to the reconsideration of the proportionality of the punishment keeping in view the observations made by the Tribunal in its order dated 13.7.2001. The appellate authority had considered all relevant facts, evidence on record and observations of

the Tribunal and modified the punishment of reduction of pay by five stages to two stages for a period of two years only. He stated that so far as the first charge was concerned, in deference to the observations of the Tribunal h it was virtually given up and as much h on that charge punishment imposed on applicant was in respect of the second charge alone and had been considerably reduced.

5. As regards non-consideration of the review petition under Rule 29(A) ibid by the competent authority for looking into the relevant records brought to the Court, the learned counsel fairly admitted that the review petition had not been placed before the competent authority.

6. We have given due consideration to the contentions made from both sides. We find that in the impugned order dated 20.9.2001 the concerned authority has not held the first charge of subletting as proved. It has taken into consideration the second charge alone. It has been stated that the President had taken into consideration the observations and findings of this Tribunal and reduced the penalty on the basis of the second charge held as proved. So far as the guidelines dated 26.2.2001 issued by the Central Vigilance Commission are concerned, they had been issued as guidelines to the Chief Vigilance Officers. There are no such guidelines issued by the department to the disciplinary or administrative authorities. These guidelines cannot have a mandatory character for the competent authority. The only valid point made on behalf

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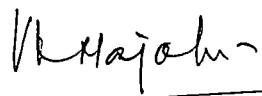
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of applicant is that his review petition has not been considered at the appropriate level. Annexures A-2 and A-3 have been issued at the Director level and not placed before the competent authority. When the order dated 20.9.2001 in pursuance of Tribunal's directions has been passed by order and in the name of the President, Annexures A-2 and A-3 could not have been issued at the level of a Director. Applicant's petitions dated 18.10.2001 and 14.1.2002 seeking review of order dated 20.9.2001 passed by the President have to be considered and disposed of by the President.

7. Having regard to the above discussion, Annexure A-2 dated 1.1.2002 and Annexure A-3 dated 31.1.1002 are quashed and set aside with direction to respondents that applicant's review petition under Rule 29(A) ibid should be considered and disposed of by the competent authority within a period of two months from the communication of the present orders.

8. The OA is disposed of in the above terms. No costs.


(Kuldip Singh)
Member (J)


(V. K. Maiotra)
Member (A)

/as/