CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 3238/2002

This the 8th day of July 2003

HON'BLE SH. KULDIP SINGH, MEMBER (J)

D.R.Rohilla
Chemist Grade-I,
Bank Note Press,
Dewas (M.P.).

(By Advocate: Sh. L.R.Khatana)

Versus

1. Union of India
through Secretary to the Govt. of India,
Department of Economic Affairs,
Ministry of Finance,
North Block,
New Delhi.

2. Sh. M.D.Singh
General Manager,
Bank Note Press,
Dewas (Madhya Pradesh)

3. Sh. R.K.Maggo,
Under Secretary (Cy.II) Section,
Department of Economic Affairs,
Ministry of Finance,
North Block,
New Delhi.sf

(By Advocate: Sh. A.K.Bhardwaj)

ORDER

Applicant has been punished with a penalty of censure which he claims the same has been imposed upon him in blatantly arbitrary, illegal, unreasonable and perverse manner with malafide intentions and without application of mind.

2. The facts in brief are that the applicant who is working as a Group 'A' officer and is holding the post of Chemist Grade-I in the Bank Note Press, Dewas had been given additional duties vide an order Annexure A-3 to look after all vigilance matters. Vide a letter dated 31.10.2001 (Annexure A-4) the applicant made a request to the General Manager of the Press to relieve him of his additional duties of vigilance w.e.f. 1.11.2001. However, vide letter dated 21.11.2001 the

applicant was issued a memo under the subject Discipline - calling for explanation vide which the applicant was informed that applicant was vested with additional duties of vigilance with his prior consultation and applicant had not shown any reservations for the same and applicant vide his letter dated 31.10.2001 had made a request for being relieved of additional duties. But before his request could be considered by the competent authority the applicant is alleged to have taken his own unilateral/arbitrary decision to relief himself from the additional duties of vigilance matters entrusted to him w.e.f. 1.11.2001 itself. So this act of the appliant was termed as if the applicant had acted in a rash and deliberate manner and denied the competent authority to make alternate arrangements and it was also informed that this irresponsible act on his part is a serious misconduct. So an explanation was called vide letter dated 20.11.2001.

3. Applicant submitted his explanation vide letter dated 24.11.2001. It appears that the explanation was not found satisfactory. So department issued another memo dated 5.3.2002 wherein after referring the earlier memo and explanation given by the applicant it was mentioned that from the contents of his reply it was found that applicant has acted in an irresponsible way unbecoming of a Govt. servant. So applicant was directed to explain why action should not be taken against him for his misconduct. This notice is signed by Sh. R.K.Maggo, Under Secretary to the Govt. of India but it contains that this memo has been issued with the approval of the competent authority. Applicant submitted an explanation to this vide Annexure A-8. the affidavit Annexure A-9, an order inflicting minor penalty of censure vide a Presidential order dated 7.6.2002 was conveyed to him. Applicant has assailed the same. Applicant submits that this

penalty has been imposed on him without arriving at a finding of misconduct and holding the charge to be proved. It is also pleaded that this order is totally perverse, malafide and totally illegal and without application of mind by the disciplinary authority. It is further submitted that respondents have not passed a speaking order on the representation of the applicant for non-acceptance thereof or as to how the same has not been found to be satisfactory and the impugned order is, therefore, arbitrary and liable to be set aside. It is also submitted that penalty has been imposed without following due process of law and provisions of Constitution of India and the statutory service rules inasmuchas the copy of the UPSC has not been supplied to the applicant despite several requests. It is further submitted that applicant understands as if applicant did not consult the UPSC which is a mandatory requirement It is further stated that respondents have violated the principles of natural justice and have denied him the opportunity to defend himself.

4. Respondents are contesting the OA. Respondents pleaded that since the post of Chief Administrative Officer had fallen vacant, so his work was assigned to three officers including the applicant. Vigilance matters was entrusted to the applicant and this was done after due consultation with them and applicant had never put any reservation till he abandoned his duties. Respondents also pleaded that penalty of censure was imposed on the applicant only after taking his explanation and penalty was imposed on him only when the explanation was not entirely satisfactory. Applicant had submitted that due to additional workload he was unable to attend fully to his regular duties.

5. As regards obtaining advice from UPSC is concerned, respondents submitted that Article 320 (3) (b) has lost much of its importance since the decision of the Hon'ble Supreme Court that while Article 311 confers a right upon the Government servant but Article 320 (3) (C) does not confer any such right. The consultation prescribed by the sub-clause is only to afford proper assistance to the Govt. in assessing the guilt or otherwise of the delinquent officer as well as the suitability of the penalty to be imposed. But for the omission of or irregularity in such consultation, the aggrieved officer has no remedy in a Court of law nor any relief under the extraordinary powers conferred by Articles 32 and 226 of the Constitution.

6. As regards the reply dated 7.3.2002 given in response to the memo issued, it is submitted that the applicant himself admitted about his inability to attend to the additional duties and therefore the penalty imposed after calling his explanation. Consultation of CVC is not required as per Annexure R-9. It is denied that no principles of natural justice have been violated.

7. I have heard the learned counsel for the parties and gone through the record.

8. Counsel for applicant submitted that Rule 16 of the CCS (CCA) Rules prescribe a procedure for imposing minor penalties. Counsel for applicant submitted that according to Rule 16(1) it is incumbant upon the Government to inform the delinquent official in writing of proposal to take action against him and of the imputations of misconduct or misbehavious on which it is proposed to be taken and a reasonable opportunity of making such representation should be

given. In this case the memo has been issued without conveying any proposal to take action against the applicant. The memo dated 20.11.2001 simply called for explanation and memo dated 5.3.2002 did not propose that any action is to be taken against him.

9. In support of this counsel for applicant referred to a judgment reported in 1991 (1) CAT AISLJ 493 wherein in para 14 it was observed as under:-

> "As regards minor penalties, Rule 16 of the CCS (CCA) Rules lays down the procedure. Accordingly, a full fledged inquiry in the manner laid down in Rule 14, has to be made in every case in which the disciplinary authority is of the opinion that such inquiry is necessary. In other cases, the Government servant should be informed in writing of the proposal to be taken against him and of the imputations of the misconduct or misbehaviour on which it is proposed to be taken and he has to be given reasonable opportunity of making such representation as he may wish to make against the proposal. It is only after the disciplinary authority takes into consideration the represetnation/the record of inquiry and after recording a finding on each imputation of misconduct or misbehaviour, that it can pass the final order of imposition of penalty or exoneration of the Government servant concerned, as the case may be. The Government of India have standarised the form in which the memorandum of charge for minor penalties should be issued to Government servants (vide Swamy's Compilation of CCS (CCA) Rules, ibid, pages 158-159)."

10. After referring the same, counsel for applicant submitted that since Rule 16 of CCS (CCA) Rules prescribes a separate procedure for conducting an enquiry which means that there should be a proposal to take action against the applicant against imputation of misconduct and there is a standard form prescribed for issuing memo of charge for minor penalties. The same should have been issued to the applicant, since in this case this has not been done. Applicant has not been informed that there was a proposal to take action for minor

penalty nor the chargesheet was issued on the prescribed form, so applicant had been deprived of the opportunity to defend himself. As against this, counsel for respondents submitted that it is not mandatory to issue the chargesheet on the standard form. Once the chargesheet issued complies with the provisions of Rule 16 in pith and substance then no fault can be found with it.

11. In support of this contention, counsel for applicant referred to a judgment reported in 1995 (2) SC SLJ 375 in case of State Bank of Bikaner & Jaipur and others vs. Prabhu Dayal Grover. In that case also the submissions were made on behalf of the delinquent officers that chargesheet was not issued and it has been held that regulation 68 (2)(iii) provides that where it is proposed to hold an enquiry the Disciplinary Authority shall frame definite and distinctive charges on the basis of the allegations against the Officer and the articles of charge, together with a writing to the Officer. The Court observed that this rule has been framed to fulfil the basic postulates the rules of natural justice that a fair, adequate and reasonable opportunity of being heard should be given to the person arraigned which, obviously, would not be possible unless he is specifically told of the accusations levelled against him. We are unable to hold in the facts of the instant case that Grover (delinquent official) was not so told. Of course it may be said that letter communicating the accusation made against Grover which we have reproduced above does not answer description of a 'formal chargesheet' but then the contents thereof specifically disclose the charge levelled against him.

12. Relying upon the same, counsel for respondents say that principles of natural justice require that delinquent offical should be informed of the allegation and that an action is to be taken against the delinquent officer and in this case the issuing of memo after considering the explanation given by the applicant goes to show that it fully answers the principle as laid down in Rule 16 which postulates procedure for imposing minor penalties and the use of word "that the applicant is directed to explain why action should not be taken against him for the above misconduct" goes to show that the chargesheet was brought home to the applicant which indicated allegations in an unambiguous manner and even a lay man could well understand it. A proposal to that action was also conveyed to the applicant and then as per the procedure prescribed under Rule 16, the applicant was given an opportunity to give his explanation. So if the chargesheet has not been issued on a standard form that does not vitiate the procedure or the order passed by the disciplinary authority. In my view also, the contetnions as raised by the counsel for applicant have no merits because the principles of natural justice only describe that no one should be condemned. In this case before issuing the memo proposing to take action the applicant had already been issued an earlier memo dated 20.11.2001 which also conveyed that the applicnat had abandoned his duties without awaiting formal order from the higher authorities and his explanation was called for. After his explanation was considered then a memo dated 5.3.2002 was issued in conformity with Rule 16 of the CCS (CCA) Rules. Merely the same was not issued in the standard form which appended to Rule 16 of CCS (CCA) Rules does not vitiate the same but again an opportunity was given to the applicant to give his explanation which too was considered and only then a presidential order imposing penalty of censure was passed after consideration of his

reply. Rule 16 do not require any more to be done in this case. So I find that there is no fault in the procedure adopted by the respondents.

13. The next point taken by the applicant is that U.P.S.C. is not consulted which is mandatory. According to law as laid down in case of M.L.Srivastava vs. Union of Inida, the contention of the applicant is that in the case of M.L.Srivastava it has been held that where regulation have been framed for consultation of U.P.S.C. for certain orders to be passed by the disciplinary authority of which censure is one of the orders for which consultation of U.P.S.C. is required, so it is mandatory for the respondents to consult U.P.S.C. Respondents submitted that consultation of U.P.S.C. is not mandatory and in support of his contention he relied upon a Full Bench decision in OA-1744/97 where it was held that the advice of the U.P.S.C. is merely an assistance to the disciplinary authority in applying its mind and even if U.P.S.C. disagrees with the conclusion of the disciplinary authority it has to give its reasons but those reasons are to be based on the same material as were before the disciplinary authority and such advice is thus no more than an assistance to the disciplinary authority in applying its mind and coming to a final conclusion. On the basis of these lines, counsel for respondents submitted that the advice of the U.P.S.C. is not binding one. Counsel for respondents also referred to another judgment of State of Madhya Pradesh and others vs. Dr. Yashwant Trimbak 1996 (1) SC SLJ 130. Counsel for respondents also referred to another judgment reported in 1997 (1) SC SLJ 335 State of Andhra Pradesh & Anorther vs. Dr. Rahimuddin Kamal wherein it was held as under:-

"Held non consultation with the vigilance commission would not render removal order, illegal word "Shall" appearing in Rule 4(2) of DPT Rules is not mandatory."

14. I have considered these rival contentions raised by the counsel for the parties. As regards the judgment of State of U.P. vs. Manbodhan Lal Srivastava was concerned, I find that Hon'ble Supreme Court in this case had observed that the provisions of Articles 320 (3)(c) of the Constitution of India are not mandatory and that they do not confer any rights on a public servant so the absence of consultation or any irregularity in consultation does not afford him a cause of action in a court of law. Assuming for the sake of arguments that the regulations relied upon by the applicant did mention that the respondents should have consulted U.P.S.C. but the fact remains that at best it could be said that there was an absence of consultation which only amounts to irregularity in consultation but does not afford him (delinquent official) a cause of action in court of law. Even if the respondents have not consulted the U.P.S.C. that was a mere irregularity and that cannot afford a cause of action to th applicant in court of law. So on that ground applicant cannot challenge the impugned order passed against him.

15. Counsel for applicant had also submitted that in this case the proceedings have not been initiated with the approval of the Minister. In support of his contention he referred to Government of India decision No.38 given under Rule 14 of CCS (CCA) Rules. This decision prescribes for initiation of Group 'A' officers. It is necessary that in cases where the disciplinary authority is the President, the initiation of the disciplinary proceedings should be approved by the Minister.

16. It would be sufficient if the Minister's order are obtained for taking action ancillary to the issue of the charge-sheet at the stage when the papers are put up to him for initiation of disciplinary proceedings. However, formal orders of the Minister should be obtained at the stage of passing final orders in the name of the President imposing penalty. Counsel for respondents, as against this, has submitted that order against him has been passed by the President and signatures of the Finance Minister were also obtained before passing the formal final order. When the chargesheet was issued it was issued with the approval of the competent authority. Thus, this contention of the applicant also has no merits and the same should not be accepted. To my mind also the memo issued to the applicant shows that vide first memo dated 20.11.2001 it was the General Manager who had called for his explanation and the memo giving direction to the applicant to explain why action should be taken against him, had been issued with the approval of the competent authority. Infact this memo dated 5.3.2002 shows that action was initiated to impose minor penalty and since the same has been issued with the approval of the competent authority and signatures of the Minister has also been obtained before passing for formal final order. So I think there is sufficient compliance with the Govt. decisions on this score also which has been relied upon by the applicant. Hence no interference is called for.

17. In view of the above discussion, none of the contentions has merits. OA is completely devoid of merits and is, accordingly, dismissed.

(KULDIP SINGH)
Member (J)

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