

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.304/2002

New Delhi this the 23rd day of October, 2002.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

A.K. Meena,
S/o late Sh. B.K. Meena,
R/o 159/1, Kishan Ganj,
Railway Colony,
Delhi.

-Applicant

(By Advocate Shri Raj Singh)

-Versus-

1. The Lt. Governor,
Raj Niwas, Delhi.
2. Govt. of N.C.T. of Delhi,
through its Chief Secretary,
Players Building, I.P. Estate,
New Delhi.
3. Medical Superintendent,
L.N. Hospital,
Jawahar Lal Nehru Marg,
New Delhi.

-Respondents

(By Advocate Shri Ajesh Luthra)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents minor penalty order dated 7.12.2000 as well as appellate order dated 4.12.2001, upholding the punishment. He has sought quashing of these orders and treatment of suspension period as spent on duty.

2. Applicant who was working as UDC, on a raid conducted by the CBI was implicated in a criminal case FIR No. RC-102-A/95-DLI dated 13.11.95 under the Prevention of Corruption Act, 1988. Applicant was also placed under suspension on 14.11.95 but was reinstated back on 16.3.97.

3. CBI through its report dated 19.5.97 found the evidence weak to suffice the allegation in the court of law, but recommended a minor penalty against the applicant.

4. Applicant, accordingly, was served with a memorandum under Rule 16 of the CCS (CA) Rules, 1965 on the allegation that on 13.11.95 during the CBI raid, on search an amount of Rs.1000/- was recovered which was concealed in between the cavity of top of the table and the right side drawer, which could not be plausibly explained. Applicant replied to the show cause notice and also filed his reminder dated 26.3.2000.

5. Disciplinary Authority by an order dated 7.12.2000 imposed upon the applicant a penalty of withholding of promotion for a period of three years upon the applicant. Applicant preferred an appeal against the minor penalty, which was rejected by the Lieutenant Governor by order dated 4.12.2001, giving rise to the present OA.

6. Learned counsel for the applicant contends that as per the provisions of Rule 16 (d) it is incumbent upon the disciplinary authority to record a finding on each imputation of misconduct which has not been done in the present case.

7. One of the contentions of the applicant is that although he has filed his reply to the show cause on 11.9.98 the contentions therein have not been considered by the disciplinary authority but rather his defence in the reminder representation was considered which deprived the applicant a reasonable opportunity.

8. Shri Raj Singh further contended that the disciplinary authority has not recorded any finding and also failed to record reasons for dispensing with the departmental enquiry and places reliance to support his contention on a decision of the Apex Court in Mansa Ram v. G.M. Telecommunication, (1980) 3 SLR 530. It is further contended that no finding has been recorded by the disciplinary authority regarding applicant guilty of any misconduct and the period of suspension has not been decided.

9. It is lastly stated that the disciplinary authority despite a specific request of the applicant has not afforded a personal hearing to the applicant.

10. Respondents' counsel Sh. Ajesh Luthra vehemently denied the contentions and stated that the CBI raid was conducted and as the applicant has failed to count for the money recovered and has not tendered any explanation a minor penalty was recommended by the CBI. The defence statement of the applicant was taken into consideration and his subsequent rejoinder as well. In so far as the plea of not recording the finding it is stated that the disciplinary authority has recorded a specific finding as to the guilt of the applicant and thereafter a punishment was imposed.

11. It is further stated that the appellate authority has applied its mind and passed a reasoned order. In so far as not recording reasons for holding a disciplinary proceeding it is stated that unless a request is made to hold an enquiry by the delinquent official it is

not incumbent upon the disciplinary authority to record any reasons and the personal hearing by the disciplinary authority is not mandatory.

12. We have carefully considered the rival contentions of the parties and perused the material on record. At the outset, as settled by the Apex Court, the Tribunal cannot re-appraise the evidence or sit as an appellate authority over the findings of the disciplinary or appellate authorities. It is only if a legal infirmity crops up in the enquiry or the findings are perverse and the punishment is on no misconduct, interference is warranted.

13. From the perusal of the order passed by the disciplinary authority we find that the contention of the applicant taken in his representation has been considered by the disciplinary authority and as no material was produced to show that why the money which was recovered by the CBI was concealed between the cavity of the top of the table on right side drawer was plausibly explained. The allegations, which amounted to lack of integrity and devotion to duty, a minor punishment has been imposed, which does not suffer from any legal infirmity, which does not suffer from any legal infirmity.

14. In so far as recording its own finding as per rule 16 (d) the disciplinary authority has recorded its own finding and held the applicant guilty.

15. As regards recording of reasons for not holding enquiry, the condition precedent for that is that the delinquent official makes a request to hold a

disciplinary enquiry as there is nothing on record to indicate that such a request has been made. In our considered view reasons for not to hold an enquiry which is not envisaged under Rule 16 cannot be found fault with.

16. As regards personal hearing is concerned, the same is not prescribed under Rule 16. As such the same cannot be claimed as a matter of right by the applicant and no prejudice has been shown to be caused on account of non-grant of personal hearing to the applicant. As regards the decision referred to, the same is distinguishable and would not apply to the facts and circumstances of the present case.

17. We have carefully perused the disciplinary authority and appellate authority orders and we find that the orders have been issued after due application of mind and are reasoned orders. The appellate authority, i.e., Lieutenant Governor has upheld the punishment after elaborate discussion of the contentions of the applicant.

18. No other legal and valid grounds have been raised to assail the impugned orders.

19. In the result and for the reasons recorded above, the OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

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(Govindan S. Tampi)
Member (A)