

Central Administrative Tribunal
Principal Bench

O.A.No.1766/2001

Hon'ble Shri Justice V.S.Aggarwal, Chairman
Hon'ble Shri M.P.Singh, Member(A)

New Delhi, this the 4th day of September, 2002

Raghuvir Singh
s/o Late Ishwar Singh
r/o F-259, Nanakpura
New Delhi.

.... Applicant

(By Advocate: Sh. K.C.Mittal with Sh. Harvir Singh)

Vs.

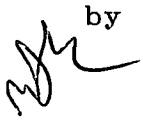
1. The Secretary
Department of Personnel & Training
Ministry of Personnel,
Government of India
North Block
New Delhi.
2. The Director
CBI, CGO Complex
Lodi Road
New Delhi-110 003.
3. The Joint Director
A.C.HQ, CBI
CGO Complex
Lodi Road
New Delhi.
4. DIG
Headquarters, CBI
CGO Complex
Lodi Road
New Delhi.
5. Shri Rakesh Asthana
Superintendent of Police
CBI, Dhanbad
(now DIG, CBI, Ranchi)
Jharkhand
(Respondent No.5, to be served through
Respondent No.2). ... Respondents

(By Advocate: Sh. N.S.Mehta)

O R D E R

By Shri M.P.Singh, M(A):

In the present OA, applicant is challenging the order dated 21.3.2001 by which the respondents have imposed upon him the penalty of reducing his pay by two stages from Rs.5850/- to Rs.5500/-, the minimum



[2]

of time scale of Rs.5500-175-9000 for a period upto his date of superannuation, i.e., 31.11.2001.

2. The admitted facts of the case are that the applicant while working as Sub-Inspector in Central Bureau of Investigation (in short as 'CBI') at Dhanbad, was departmentally proceeded and Memo. of Charge was issued to him on 28.5.1998. The imputation of the misconduct in support of the articles of charge framed against the applicant is as follows:

"That Shri Raghubir Singh, Sub-Inspector has been posted in AHD Unit, Dhanbad vide this office order No.217/97, dated 18.11.97.

That, leave of Shri Raghubir Singh, Sub-Inspector was sanctioned for the period from 16.3.98 to 18.3.98 by the SP, CBI, Dhanbad and he was specifically instructed to resume positively on 19.3.98 and not to extend the same. He had noted down the aforesaid instructions.

That, he was scheduled to resume his duty on 19.3.98 but he did not resume his duty from 19.3.98 till date and applied for extension of the same through FAX.

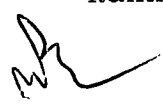
That, on 19.3.98 a memo no.1887, dated 19.3.98 had been sent to Shri Raghubir Singh, Sub-Inspector at his leave address and Shri Singh was directed that he must report for his duty immediately.

That on 22.4.98 another memo no.2574, dated 22.4.98 had been sent to Shri Raghubir Singh, Sub-Inspector at his leave address and was directed to resume his duty immediately.

That, Shri Raghubir Singh, Sub-Inspector did not resume his duty from 19.3.98 till date despite reminders/memos sent to him.

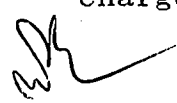
That, Shri Raghubir Singh, Sub-Inspector is irregularly and unauthorisedly absent from his duty since 19.3.1998 till date.

The aforesaid conduct of Shri Raghubir Singh, Sub-Inspector shows his tendency of insubordination, lack of devotion to duty, and he has acted in a manner unbecoming of a CBI Personnel, for which he is liable to be punished under Rule 6 of D.S.P.E. (Subordinate Rank) (Discipline and Appeal) Rules 1961."



[3]

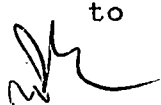
3. An inquiry was conducted against the applicant at Dhanbad. During the course of the inquiry, two witnesses were examined in the presence of the Charged Officer, who did not prefer to examine these witnesses in his defence. The Presenting Officer submitted his written brief which was sent to the Charged Officer, however, the Charged Officer did not submit the written brief to the inquiry officer. On the basis of deposition of the witnesses it has been proved that the applicant joined as Sub-Inspector in CBI, Dhanbad on 13.11.1997, he was sanctioned leave from 16.3.1998 to 18.3.1998 and specifically instructed to resume his duties on 19.3.1998. In spite of such clear instructions, applicant did not resume his duties on 19.3.1998 and submitted his medical certificates in support of his illness for the period 20.3.1998 to 21.1.1999. The applicant was given an opportunity to offer his written explanation within the period of 15 days. Applicant submitted his representation on 14.2.2001 stating that the finding of the inquiry officer are without jurisdiction. He also submitted that de-novo inquiry is in violation of the principles of natural justice. Since the applicant never attended the proceedings at Dhanbad, inquiry officer made a finding report to the SP and the same was put up to DIG/Patna for his approval to impose penalty on ex-parte basis. However, DIG/Patna ordered de-novo inquiry vide order dated 8.9.1999, accordingly fresh charge Memo. along with statement of imputation of misconduct was served on the applicant vide Memorandum dated 4.10.1999. The charges of the present inquiry are exactly similar to



[4]

the previous charges and no punishment with respect to the earlier inquiry was imposed by the disciplinary authority, who ordered for de-novo inquiry. The disciplinary authority carefully considered the facts and circumstances adduced during the inquiry, evidence on record, pleadings made by the charged officer and the conclusions drawn in respect of the charges against him and imposed the penalty on the applicant to the effect that the pay of the applicant be reduced by two stages from 5850/- to Rs.5500/-, the minimum of the time scale of Rs.5500-175-9000 for a period upto the date of superannuation of the applicant. Aggrieved by this, applicant has filed the present OA seeking direction to quash the order dated 21.3.2001 and further direction to the respondents to constitute a review DPC for promotion to the post of Inspector, with all consequential benefits.

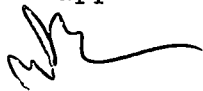
5. We have heard both the parties. During the course of the arguments the learned counsel for applicant has submitted that de-novo inquiry was ordered by the disciplinary authority, which is not permissible under the rules. The reasons for holding De-novo inquiry have also not been communicated to the applicant. He has further submitted that a copy of the report of the earlier inquiry was also not given to him. He has also submitted that the applicant was placed under suspension in May, 1998 but the subsistence allowances was not paid to him till November, 1998, therefore, the applicant could not go to his place of posting at Dhanbad to attend the



34

inquiry proceedings. Applicant had represented that the inquiry should be held at New Delhi where he was undergoing medical treatment, however, respondents did not hold the inquiry at Delhi. On the other hand, inquiry officer continued with the inquiry proceedings at Dhanbad, even though the applicant was transferred to New Delhi on 21.7.2000.

6. Learned counsel for respondents has submitted that the de-novo inquiry was held as per the provisions of Rule 15 of the CCS (CCA) Rules, 1964. As such it cannot be said that there was no need of de-novo inquiry or it caused prejudice to the applicant. He has also submitted that non-payment of ~~subistence~~ allowances has not been taken as one of the grounds by the applicant earlier for not attending the inquiry proceedings at Dhanbad. Therefore, he cannot take this ground for not attending the DE proceedings at this stage. Learned counsel for respondents has also submitted that during suspension, the Headquarter of the applicant was fixed at Dhanbad, the applicant was directed to report for duty at Dhanbad ^{but he} ~~and~~ ^{also} did not participate in the inquiry. He has further submitted that on 19.3.1998, the applicant had sent a fax message requesting for extension of his leave for another 10 days as his vehicle ^{was not} ~~traced~~ by the local police by that time. On 19.3.98 he had also informed SP, CBI, Dhanbad that he developed fever and back bone pain and on account of illness he could not report back to office. Medical prescription annexed by the applicant indicated that he was advised rest from



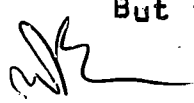
20.3.1998. These contradictory statement/information given by the applicant proves that at least, the applicant was not ill on 19.3.1998.

7. We have carefully considered the rival contentions of the parties and perused the material on record. During the course of the arguments, the learned counsel for applicant has taken mainly the following three grounds for setting aside the order of punishment:

- a) De-novo inquiry is not permissible under the rules as no reasons have been communicated to hold the De-novo inquiry.
- b) The applicant was suspended in May, 1998 whereas his subsistence allowance was paid in November, 1998, therefore, the applicant could not have gone to his place of posting at Dhanbad to attend the inquiry proceedings.
- c) Inquiry proceedings should have been held at New Delhi where the applicant was under medical treatment.

8. As far as ground (a) above is concerned, we find that Rule 15 of CCS (CCA) Rules, 1965 provides for holding de-novo inquiry. In this preposition we are supported by the Judgement of the Hon'ble Supreme Court in K.R. Deb v. The Collector of Central Excise, Shillong, AIR 1971 SC 1447. In the aforesaid judgement, we find that the Apex Court has held as under:

"13. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for



Contd.....7/-

(7)

completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority".

9. In the present case, we find that de-novo inquiry was ordered by the DIG, CBI on the ground that the inquiry held by the IO was not proper and there were some defects therein. Therefore, de-novo inquiry ordered by the disciplinary authority was in accordance with Rule 15 of the CCS (CCA) Rules, 1965 and therefore ground taken by the applicant in Para 7(a) is rejected.

10. As regards the plea taken by the applicant that he was not paid the subsistence allowance and therefore, could not go to his place of posting to attend the disciplinary proceedings, we find that non-payment of subsistence allowance was not taken as one of the grounds by the applicant for not attending the inquiry proceedings at Dhanbad, when the inquiry proceedings were in progress.

11. As regards the third ground, we notice that his place of duty was at Dhanbad and his Headquarter was also fixed at Dhanbad. Therefore, the inquiry proceedings held at Dhanbad by the respondents were justified. Hence, the plea taken by the applicant that inquiry proceedings should have been held in New Delhi is not tenable and is accordingly rejected.



Contd....8/-

37

12. We also find that the inquiry has been held in accordance with rules prescribed and the respondents have afforded ample opportunities to the applicant to participate in the inquiry and thus principles of natural justice have been observed by them. It is a settled legal position that the Tribunal cannot re-appreciate the evidence and also cannot go into the quantum of punishment unless it shocks the conscience of the Court. In view of the foregoing reasons, we do not find any ground to interfere with the order dated 21.3.2001 passed by the respondents. The OA is therefore bereft of merit and is accordingly dismissed. No costs.


(M.P. SINGH)
MEMBER (A)


(V.S. AGGARWAL)
CHAIRMAN