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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 3094/2001

New Delhi, this the 22nd day of August, 2003

Hon'ble Sh. V.K.Majotra, Member (A)
Hon'ble Sh. Shanker Raju, Member (J)

R.D.Gandhi
Chief Enforcement Officer
Enforcement Directorate (FEMA)
2nd Floor, Jitendra Chambers
Near RBI Building, Offi. Ashram Road
Ahmedabad.

...Applicant

(By Advocate Sh. P.P.Khurana with
Ms. Seema Pandey)

V E R S U S

Union of India through

1. The Secretary
Govt. of India
Ministry of Finance
Dept. of Revenue
New Delhi.
2. The Director Enforcement
Directorate of Enforcement
Loknayak Bhawan, Khan Market
New Delhi.

...Respondents

(By Advocate Sh. H.K.Gangwani)

O R D E R (ORAL)

Shri Shanker Raju,

Applicant impugns the respondents' order dated 16-10-2000 imposing upon him a punishment of reduction in the time scale of pay by two stages for a period of three years with cumulative effect. Quashment of the above has been sought with all consequential benefits.

2. Applicant who is working as Chief Enforcement Officer while working as Enforcement Officer in 1986 was issued with a memo for a minor penalty under Rule 16 of the CCS (CCA) Rules, 1965 vide memo dated 17-4-90. Applicant responded to it by seeking documents.

3. By an order dated 24-8-90, memo has been withdrawn and it has been decided to initiate disciplinary proceedings against the applicant for a major penalty. Though initially a common proceedings has been ordered under Rule 18 of the CCS (CCA) Rules ibid but the same was not progressed and a separate enquiry has been held against the applicant by virtue of which an appellate authority of the applicant has become his disciplinary authority blocking his right of appeal.

4. Inquiry Officer was appointed and the Inquiry proceeded. In the inquiry report, applicant was exonerated from charges (ii) and (iv) whereas was held guilty of charges (i) and (iii).

5. Disciplinary authority vide memo dated 9-6-98 disagreed with the inquiry report on allegation IV. Applicant responded to the dis-agreement memo by objecting to it and demanding copy of the CVC comments obtained on the inquiry report. The same was refused vide communication dated 29-7-98.

6. UPSC was consulted. Thereafter respondents by an order dated 16-10-2000 imposed the penalty on the applicant.

7. Applicant being aggrieved with the aforesaid, preferred an appeal which was rejected on the ground that as the orders have been passed by the President, no appeal lies, giving rise to the present OA.

3. Lt. sr. counsel for the applicant Sh. P.P.Khurana appearing with Ms. Seema Pandey raised several legal issues to assail the impugned orders. Placing reliance on CVC Notification dated 26-9-2000, it is contended that in view of decision of the Apex Court in State Bank of India Vs. D.C.Agarwal (1993 (1) SCC 13), it is mandated upon the respondents to have supplied a copy of CVC report which ultimately has not been served upon the applicant.

4. The proceedings are inordinately delayed as the incident pertained to 3-8-86 whereas the memo under Rule 14 of the Rules ibid was issued on 6-7-93 and the proceedings was culminated in the year 2000 after seven years.

5. Referring to Rule 15 of the Rules ibid, it is stated that the orders passed by the President are non-speaking without containing reasons shows non-application of mind.

6. No reasons have been recorded to withdraw the minor penalty chargesheet and to issue a major penalty which is contrary to OM dated 5-7-79.

7. Inquiry Officer has been appointed before submission of written statement by the applicant which is in contravention of Rule 14 (5) of the CDS Rules ibid.

8. Applicant has been deprived of a valuable right of appeal as though the Director Enforcement was the disciplinary authority on the pretext of common

proceedings, President became the disciplinary authority but common proceedings had not seen the light of the day as such valuable right of appeal has been denied.

14. Reply of the applicant has not been considered by the UPSC in respect to the disagreement note.

15. On the other hand, respondents' counsel Sh. H.K.Gangwani vehemently opposed the contentions and by producing the relevant records stated that reasons have been recorded on file to impose the major penalty upon the applicant.

16. It is stated that though CVC advise as per Notification dated 28-9-2000 mandates supply of the report but the same is curable and the matter be remanded back to the respondents.

17. In so far as withdraw of minor penalty chargesheet is concerned, it is stated that the reasons have been recorded to issue a major penalty chargesheet. In so far as other contentions are concerned, it is stated that inquiry has been held as per the procedure laid down and no prejudice has been caused to the applicant.

18. In the additional affidavit, respondents contends that compared to the allegations levelled against the applicant, a very lenient view has been taken

19. We have carefully considered the rival contentions of the parties and perused the material on record.

20. Apex Court in D.C. Aggarwal's case (supra) clearly held that supply of the CVC advise by the disciplinary authority which was prepared behind the back of the delinquent without his participation non-furnishing of the copy of advise is violative of procedural safeguards and contrary to the fair and just inquiry. This has been reiterated by the High Court of Karnataka at Bangalore in CP 6558/93.

21. Moreover as per Memorandum issued by CVC, it is laid down that CVC advise is to be issued to the delinquent. As admittedly the orders have been passed by the disciplinary authority on 16-10-2000. Before that the Instructions came into effect, the rejection of request of the applicant for supply of CVC advise and the action of the respondents by non issuing the same to the applicant is in contravention of Instructions dated 26-9-2000 as well as contrary to the decision of the Apex Court in D.C. Aggarwal's case (supra). On this count alone, the impugned order cannot be sustained in law.

22. However, we find that though on dis-agreement on allegation (iv), the disciplinary authority has not considered the reply put forth by the applicant and rather mechanically agreeing with the Commission's advice imposed upon the applicant a major penalty. This is too in our considered view cannot be countenanced. As a quasi judicial

authority, it is incumbent upon the President to record reasons in support of order. From the perusal of the order, the same is bald, mechanical and is non-speaking. The contention put forth by the respondents that reasons have been recorded in the file can not be countenanced as the same have been recorded by the Desk Officer though agreed to by the Ministry concerned. The fact remains that the reasons had neither been incorporated in order dated 16-10-2000 nor communicated to the applicant.

23. Rule 15 of the CCS (CCA) Rules and OM No. MHA/DP&A.RO.M.No.134/1/81-AVDI dated 13-7-81 as well as 5-11-85 based on a decision of the Apex Court in Mahavir Prasad Vs. State of U.P. AIR 1970 SC 1302 mandates recording of reasons in support of reasons by an authority acting as an quasi judicial authority.

24. The Constitutional Bench of the Apex Court in S.N. Mukherjee Vs. UOI (1990 (4) SCC 594) has observed as follows :-

"The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative

authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case."

25. Having regard to the above, as the order of the President acting as a disciplinary authority is non-speaking, the same violates principles of natural justice and fair play and cannot be sustained in law.

26. We also find that though the common proceedings were ordered against the applicant under Rule 18 of the Rules ibid but have not been proceeded rather he had been proceeded against in a separate proceedings. With the result, the Director, Enforcement who was to act as a disciplinary authority, by virtue of order passed under Rule 18 of the Rules ibid, President has been made the disciplinary authority. With the result the applicant has been deprived of an opportunity of appeal. When the applicant has preferred an appeal, the same has been turned down vide order dated 9-8-2001 resorting to provisions of Rule 22 (i) of the Rules ibid that no

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appeal is lies against the orders passed by the President. Apex Court in Nagar Panchayat Vs. D.C.Taneja (2002 SCC (I&S) 7181) held that when the penalty is imposed by the appellate authority exercising the powers of disciplinary authority, there is a denial of right of appeal.

27. The contentions put forth by the learned counsel for the respondents to remand back the case cannot be countenanced as the allegations pertained to year 1986, the applicant had faced the ordeal of disciplinary proceedings for the last 15 years, it would not be in the interest of justice and fair play in peculiar facts and circumstances of the case to remand it back.

28. In the result, without deliberating on other legal grounds taken by the applicant, OA is allowed. Impugned order is quashed and set aside. Applicant shall be entitled to all consequential benefits which shall be disbursed to him within a period of two months from the date of receipt of a copy of this order.

S. Raju
(Shanker Raju)
Member (J)

/vks/

V.K.Majotra
(V.K.Majotra)
Member (A)