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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.7/2001

Monday, this the 13th day of January, 2003

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Shri K.C. Biswal
Inspector of Police
Central Bureau of Investigation
Special Investigation Cell-IV
Lucknow (UP)

...Applicant

(By Advocate: Shri D.S.Chaudhary)

Versus

1. Union of India
through the Secretary
Department of Personnel & Training
Ministry of Personnel, Public Grievances
& Pension
Central Secretariat
New Delhi-1

2. Director
Central Bureau of Investigation
Block No.3 CGO Complex
Lodhi Road, New Delhi-3

3. Smt. Rina Mitra
Supdt. of Police
CBI/SPE
Bhubaneswar
(service to be effected through
respondent No.2)

...Respondents

(By Advocate: Shri R.N.Singh)

O R D E R (ORAL)

Shri Govindan S. Tampi:

This OA has been filed challenging the order dated 1.6.2000 passed by the Special Director, CBI, Disciplinary Authority's order of 15.4.1997 and Appellate Authority's order dated 13.1.1999.

2. Heard S/Shri D.S.Chaudhary and R.N.Singh, learned counsel for the applicant and the respondents respectively.

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3. The applicant (Shri K.C.Biswal) while working as Inspector, CBI in Bhubaneswar was proceeded against by charge-sheet of 14.6.1996, containing a few allegations. On the Inquiry Officer's recording a finding that the charges stood proved, Disciplinary Authority, on 15.4.1997, passed order imposing on the applicant the punishment of stoppage of two increments, which was upheld by the Appellate Authority on 13.1.1999. As directed by Lucknow Bench of this Tribunal in applicant's OA-209/2000, 25.4.2000, the applicant's representation was considered and rejected on 1.6.2000. All the above orders are under challenge in this OA. Applicant had been dealt with in terms of Rule 8 of Delhi Special Police Establishment (Subordinate Ranks) (Discipline and Appeal) Rules, 1961 (for short "SPE (SR) (D&A) Rules, 1961").

4. Grounds raised in this OA are that (i) proceedings against him have been undertaken mala fide and at the instance of respondent No.3, (ii) he was under suspension but the penalty imposed on him was a minor one and, therefore, his period of suspension was to be treated as duty; (iii) the impugned order was bad in law and against the principles of natural justice.

5. In the reply filed on behalf of the respondents, it is pointed out that the applicant's conduct throughout has been improper. Number of allegations were raised against him, including filing false complaints against the superiors. After making necessary preliminary inquiries, the competent authority

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issued him the charge-sheet. Proceedings thereafter followed which culminated in the imposition of the impugned penalty. Applicant has been given all the necessary opportunities and procedures have been gone through properly and nothing irregular has been committed by the respondents. The applicant had only attempted to spread discord and apathy among the staff and to create indiscipline. His allegations against respondent No.3 had no basis at all.

6. Separate counter affidavit has been filed by respondent No.3, denying all allegations made by the applicant. She had indicated that her action throughout has been above board and the applicant's allegation should be dismissed.

7. During the oral submissions, the applicant raised a fresh ground that in terms of SPE (SR) (D&A) Rules, 1961, the only punishment which could have been awarded to him was a minor penalty, whereas the respondents have referred to the CCS (Conduct) Rules, 1964 in the Memorandum, thus making the applicant liable even for major penalty. On the other hand, it has been argued by the learned counsel for the respondents that these points had not been taken by the applicant in his appeal against the Disciplinary authority's order. He could not, according to the respondents, raise those issues in the OA.

8. We have carefully considered the matter. The respondents' preliminary objection that the applicant has

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raised new grounds, during the oral submissions, do not merit acceptance, as legal issues can be issued for the first time even at the stage of oral submissions. The same is, therefore, rejected. As far as the nature of the punishment issued to the applicant, a doubt persists as to its nature whether it is a minor or major penalty. If we consider the nature of penalties as enunciated in Rule 5 of SPE (SR) (D&A) Rules, 1961, withholding of increments would fall in the category of minor penalty. However, read with provisions of Rule 11 of CCS (CCA) Rules, withholding of increments with cumulative effect would amount to major penalty, also in view of the decision of the Hon'ble Apex Court in State of Punjab & Others v. Ram Lubhaya Bagga etc. etc. decided by that Court on 26.2.1998. At the same time, the applicability of CCS (CCA) Rules has been ousted by Rule 27 of SPE (SR) (D&A) Rules, 1961. However, we would have to consider this as a major penalty. We also observe that the order passed by the Special Director on 1.6.2000 is totally bald and non-speaking and has not considered any point raised by the applicant. In fact, the order dated 15.4.1997 has been passed by the Disciplinary authority, wherein an opinion has been formed about the misconduct of the applicant even before the inquiry started. It would, therefore, appear that this issue has been pre-judged. On account of this, the punishment imposed by him and upheld by the Special Director appear to be vitiated and, therefore, liable to be quashed and set aside. At the same time, this is a matter where the respondents would have to be given opportunity of dealing with the case once again.

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9. In the above view of the matter, the OA partly succeeds and is accordingly disposed of. The impugned orders dated 15.4.1997 passed by the Disciplinary authority and the order dated 1.6.2000 passed by the Special Director are quashed and set aside. The matter is remanded to the respondents to pass fresh orders strictly in accordance with law, as contained in SPE (SR) (D&A) Rules, 1961. This may be done within three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

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(Govindan S. Tampi)
Member (A)

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