

-11-

Central Administrative Tribunal
Principal Bench

O.A. No. 1103 of 1998

New Delhi, dated this the 12th January, 2000

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mr. Kuldip Singh, Member (J)

Shri Raj Kamal,
S/o Shri Komal Prasad,
Asst. Director General, Foreign Trade,
O/o the Director General, Foreign Trade,
Udyog Bhawan, New Delhi. ... Applicant

(By Advocate: Shri K. Venkatramani, Sr. Counsel
with S/Shri S.C. Luthra & O.P. Khokha)

Versus

1. Union of India through
the Secretary,
Ministry of Commerce,
Udyog Bhawan, New Delhi.
2. Director General of Foreign Trade,
Udyog Bhawan,
New Delhi. ... Respondents

(By Advocates: Shri R.P. Agarwal)
with Shri D.S. Jagotra

ORDER

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns the Disciplinary Authority's order dated 3.3.97 (Annexure A-1) and the reviewing authority's order dated 19.12.97 (Annexure A-2) rejecting the review petition. He also impugns the order dated 11.11.92 (Annexure A 3/1) placing him under suspension and prays that the suspension period be treated as on duty for all purposes. Consequential benefits are also prayed for.

2. Applicant was proceeded against departmentally on 19.11.92 (Annexure A-5) on the charge that while working as Asst. Chief Controller of Imports & Exports in January, 1992 he demanded

~

Rs.20,000/- and accepted Rs.10,000/- as first instalment from Shri Bhagwan Bahirwani, Proprietor, Globe Overseas Trading Corporation on 27.1.92 as illegal gratification for passing the C.C.S. claim of that company under the simplified payment scheme pending with him.

3. Meanwhile applicant was suspended by order dated 11.11.92 (Annexure A-3) which was later revoked on 29.7.93 (Annexure A-4).

4. The D.E. was conducted by the Commissioner for Departmental Enquiries who in his report dated 23.2.94 (Annexure A-9) held the charge as not proved.

5. A copy of the enquiry report was furnished to applicant vide Memo dated 7.7.94 (Annexure A-8), for representation if any. It was made clear in the Memo that under rules it was for the disciplinary authority to come to a conclusion in respect of the charges and impose the punishment, and it was not obligatory on him to accept the I.O's findings.

6. Applicant submitted his reply on 14.7.94.

7. However, the Disciplinary Authority disagreed with the I.O's findings, and after noting the contents of applicant's reply dated 14.7.94, communicated the reasons for his disagreement to

applicant vide Memo dated 21.6.95 (Annexure A-10) for his representation, if any. Applicant submitted his representation on 30.6.95 (Annexure A-11).

8. Thereupon the Disciplinary Authority referred the matter to the UPSC for advice on 11.8.95. The UPSC in their reply dated 6.2.96 (Annexure A-12) advised that the charge did not stand proved, and applicant should be exonerated.

9. However, the Disciplinary Authority in his impugned order dated 3.3.97 enclosing therewith a copy of UPSC's letter dated 6.2.96, was of the opinion that the charge of demand and acceptance of bribe was proved constructively as well as on the basis of evidence against applicant. Accordingly he decided to disagree with the advice of UPSC on various grounds contained in the body of the order. The aforesaid order further records that Dept. of Personnel & Training had been consulted, who had also approved recording of disagreement with UPSC's advice. Accordingly by the impugned order, applicant was awarded the penalty of reduction to lower stage in the time scale for three years, with the further stipulation that applicant would not earn any increments during this period of reduction, and the reduction would have the effect of postponing applicant's future increments.

~

10. Applicant's review petition under Rule 29(A) CCS (CCA) Rules was rejected by impugned order dated 19.12.97 against which the present O.A. has been filed.

11. We have heard Shri Venkatramani, Learned Senior Counsel for applicant and Shri R.P. Aggarwal for respondents.

12. Besides taking the pleas of absence of evidence in support of the charges, great delay in finalising the proceedings; the heavy load of work upon applicant, and the review authority's impugned order dated 19.12.97 being a bald cryptic, non-speaking order, the main grounds advanced by Shri Venkatramani are that the impugned orders are fit to be quashed and set aside because of denial of natural justice, in not providing applicant the copy of the recommendations of the UPSC as well as the advice of Dp&T before issuing the impugned order.

13. Shri Venkatramani has also filed written submissions, in which these grounds have been elaborated upon. It is contended that the UPSC's recommendations were disagreed with, and just as an inquiry report which exonerates a Government servant cannot be withheld on the ground that the Disciplinary Authority has disagreed with the same, similarly denial of the recommendations of UPSC, whether relied upon or disagreed with, by the Disciplinary Authority, would be violative of the principles of natural justice and cannot be

sustained, being a denial of predecisional opportunity. It is further urged that the UPSC's recommendations exonerating the applicant cannot be brushed aside lightly and it was to overrule those recommendations that respondents chose to consult the DP&T, which authority was outside the scope of the CCS (CCA) Rules as well as of Article 320. It is argued that even assuming that respondents could seek such advice from DP&T, that advice constituted very valuable material as it was acted upon, but copy of the same was not supplied to applicant before the decision in the disciplinary proceedings was taken, which again was a denial of the principles of natural justice.

14. In this connection Shri Venkatramani has relied upon the Hon'ble Supreme Court's judgment in State Bank of India Vs. D.C. Aggarwal & anr. (1993) 1 SCC 13 and the CAT, PB order dated 21.1.94 in C.S. Khurana Vs. U.O.I. 1994 (2) AISLJ 360.

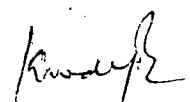
15. There is merit in Shri Venkatramani's contentions. ~~and~~ In the facts and circumstances of this particular case, non-supply of the UPSC's advice which was favourable to applicant, before the Disciplinary Authority passed the impugned order dated 3.3.97 was violative of the principles of natural justice as it denied him the opportunity of a pre-decisional hearing to highlight the UPSC's advice which was in his favour. Furthermore, even if it was open to Respondents to seek the DP&T's advice in these Disciplinary Proceedings before issuing the

-16-

penalty order, non-supply of a copy of that advice to applicant and not even affording him an opportunity to peruse the same, before the Disciplinary Authority passed the impugned order dated 3.3.97, in which that advice of DP&T which was unfavourable to applicant, ~~and~~ was relied upon by the Disciplinary Authority, ^{an} does constitute infirmity serious enough to vitiate the Disciplinary Proceedings on the grounds of being violative of the basic principles of natural justice. We are fortified in our view by the rulings relied upon by Shri Venkatramani and referred to Paragraph 14 above.

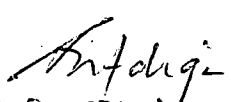
16. Under the circumstances the Disciplinary Authority's impugned order dated 3.3.97 cannot be sustained in law, and as that order forms basis of the Reviewing Authority's order dated 19.12.97 the aforesaid order dated 19.12.97 also cannot be *legally sustained*.

17. In the result the O.A. succeeds and is allowed to the extent that the impugned order of Disciplinary Authority dated 3.3.97, and that of the Reviewing Authority's ~~order~~ dated 19.12.97 are quashed and set aside. It will be open to Respondents to proceed against applicant strictly in accordance with law, but if they propose so to do, they should take a decision in this regard within threemonths from the date of receipt of a copy of this order. If during this period they propose not to proceed against applicant they should restore to him his salary and increments alongwith arrears immediately thereafter. No costs.


(KULDIP SINGH)

Member (J)

Gk


(S.R. ADIGE)

Vice Chairman (A)