

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 1309/2000
T.A No.

(10)

Date of Decision 11-5-2001

Sh.M.M. Agarwal

..Petitioner

Sh.T.C. Aggarwal

..Advocate for the Petitioner(s)

Versus

UOI through the Secretary ..Respondent
Dept. of Supply, Ministry of
Commerce, Nirman Bhawan, N/Delhi

Sh. R. V. Sinha, learned counsel ..Advocate for the Respondents
through proxy counsel Shri
R. N. Singh.

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampli, Member (A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to
other Benches of the Tribunal ? No

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

Central Administrative Tribunal
Principal Bench

O.A. 1309/2000

New Delhi this the 11 th day of May, 2001.

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Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A).

Shri M.M. Agarwal,
S/o Shri Bishan Prakash,
E-12, Xavier Apartment,
Saraswati Vihar, Delhi-34. Applicant.

(By Advocate Shri T.C. Aggarwal)

Versus

Union of India, through
The Secretary,
Department of Supply, Ministry
of Commerce, Nirman Bhawan,
New Delhi. Respondents.

(By Advocate Shri R.N. Singh proxy for Shri R.V. Sinha)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

This application has been filed by the applicant against the penalty imposed on him of reversion to the lower grade of Assistant Director for a period of two years and rejection of his revision petition by the respondents' orders dated 9.2.1999 and 27.3.2000.

2. The applicant, while working as Deputy Director of Supplies (hereinafter referred to as 'DD') with the respondents was issued a Memorandum of Charges dated 5.7.1994 under Rule 14 of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'the Rules'). It was alleged against the applicant in the Articles of charge issued against him that, while functioning as DD from 1987-1990, he had dealt with the case relating to procurement of microphones from M/s Electronics Enterprises, New Delhi

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against Indent No. 5(18)/86-D(P) dated 9.12.1987 received from the DG, AIR, New Delhi and had committed grave misconduct in due discharge of his duties. He was charged with specific lapses/irregularities which had resulted in (i) Indenting Department not getting the entire Stores; (ii) the receipt of consignees of some uninspected stores which were of little or no use and (iii) fraudulent receipt of payment of the order of Rs.69,80,922/- by M/s Electronics Enterprises, from the paying authority. It was alleged that "Thus, the Government was put to a considerable loss and the firm made wrongful gain". In the circumstances, the applicant was charged that by the aforesaid acts of Commission and Omission, he had failed to maintain absolute integrity and devotion to duty and conducted himself in a manner unbecoming of a Government servant violating the provisions under Rule 3(1) of the CCS (Conduct) Rules, 1964.

3. A Departmental inquiry had been held against the applicant on the aforesaid charge. Shri T.C. Aggarwal, learned counsel, has taken a number of grounds to challenge the penalty orders and he has relied on the judgements, referred to in the O.A. as well as in the list of cases (copies placed on record). He has submitted that in the first instance, it is the office which is required to peruse the papers relating to the firm M/s Electronics Enterprises and assist the Tender Purchase Committee (TPC) who are experts. He has submitted that there is no lapse or irregularity on the part of the applicant for which he could be charged for misconduct. He has relied on the findings of the Inquiry Officer in paragraph 4.4.4. The

Inquiry Officer in his report dated 29.8.1997 has given his findings that Charge-I (iii) of the Charges was held proved, relevant portion of which reads as follows:

"That the applicant had committed grave misconduct in due discharge of his duties inasmuch as he did not (iii) ensure to obtain as per the prescribed procedure/instructions the Banker's report and a proper and valid Income-tax Clearance Certificate (ITCC) in respect of the agent firm M/s Electronics Enterprises, and also a capacity report on the manufacturer firm, M/s AKG Accoustics (India) Ltd., Gurgaon, from the Inspection Authority stated in the indent, before taking a decision for awarding the contract on M/s Electronics Enterprises, an unregistered and untried firm as also an agent".

According to the learned counsel, the charge proved against the applicant is not based on any evidence or reasons. According to him, this conclusion is based on the Inquiry Officer's own personal observations and is, therefore, illegal. He has submitted that the certificate, etc. referred to in Charge-I(iii) is not required by DGS&D as M/s Electronics Enterprises was a past supplier.

4. Another ground taken by the learned counsel for the applicant is that the penalty order has been passed without giving a copy of the UPSC letter which had recommended major penalty to the applicant. He has relied on the judgement of the Tribunal in **Charanjit Singh Khurana vs. Union of India** (1994 (27) ATC 378). He has submitted that the penalty order has been based on the CVC communication, copy of which was also not given. Learned counsel has also submitted that the penalty order is a non-speaking order. He has also submitted that no personal hearing was given to the applicant by the respondents which, according to him, is also a ground for quashing the penalty orders.

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5. The respondents in their reply have submitted that the competent authority, that is, the President has, after taking into account the Departmental proceedings, in which full opportunity had been given to the applicant to state his defence, passed the penalty order. They have submitted that considering all the relevant facts and circumstances, findings of the Inquiry Officer and the applicant's representation, the advice of the UPSC had been obtained and the competent authority had come to the conclusion that Article of Charge I (iii) is proved against him for good and sufficient reasons. The conclusion of the Inquiry Officer regarding the proof relating to Article of Charge 1 (iii) is also based on the evidence on record. Thereafter, the penalty to the lower grade of Assistant Director for a period of two years has been imposed on him. Learned counsel for the respondents has contended that the decision of the disciplinary authority is not arbitrary and is based on evidence. According to him, there has also been no denial of the principles of natural justice and there are no grounds to allow the O.A. as prayed for by the applicant. He has relied on the judgement of the Tribunal in **N.N. Chakravarty Vs. Union of India (OA 331/2000)**, decided on 13.3.2001 (copy placed on record); **Commissioner and Secretary to the Government and Ors. Vs. Shri C. Shanmugam (1998(2) SCC 394)**; **Director General of Police & Ors. Vs. R. Janibasha (1998 (9) SCC 490)** and **B.C. Chaturvedi Vs. Union of India (AIR 1996 SC 484)**.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. Excepting on one point which is discussed below, we do not find merit in the other grounds taken by Shri T.C. Aggarwal, learned counsel for the applicant. His submission that it is for the other officers in the office to peruse the papers relating to the firm M/s Electronics Enterprises and the applicant himself does not have any specific responsibility with regard to the verification of the Banker's report and valid Income-Tax Clearance Certificate (ITCC) in respect of the firm, cannot be accepted. As held by the Tribunal in a recent case of N.N. Chakraborty (supra), the applicant as a Government servant cannot state that he has no responsibility while in the office, and it is the responsibility of persons in the ranks below or above him to do the needful. This ground is, therefore, rejected. Similarly, the contention of the learned counsel for the applicant that this is a case of no evidence is also rejected. It is clear from a perusal of the Inquiry Officer's report that the firm, in question, was not a past supplier of the respondents and as per the procedure laid down in the Office Manual, the applicant was, therefore, required to check the various documents which he has failed to do. The contention of the learned counsel for the applicant that as the firm was a past supplier for other Departments, the applicant did not check these documents is, therefore, irrelevant as he has not complied with the procedure laid down by the respondents while dealing with the tender documents of such a firm. The Inquiry Officer has fully discussed the evidence placed before him and has stated that the Capacity Report and other papers called for by the officers, including the applicant, have been done in a haphazard manner and the Capacity Report did not give vital

information to enable the Inspection Authority to give a proper CR of the firm, which is in accordance with the procedure laid down in the Office Manual. In the circumstances, his conclusion that the CR of the manufacturer M/s AKG Accoustics was not obtained before placing the order on the unregistered and untried firm M/s Electronics Enterprises, cannot be faulted. The conclusions arrived at by the Inquiry Officer are clearly based on evidence on record and the contentions of the learned counsel for the applicant to the contrary are, therefore, rejected. We have also considered the judgements relied upon by the applicant, but they will not assist him on these issues.

(b)

8. The other main contention of the learned counsel for the applicant was that the copy of the UPSC letter and the advice of the CVC who had recommended that major penalty should be imposed on the applicant have not been communicated to him before the punishment order was issued. Having regard to the Full Bench judgement of the Tribunal in **Chiranji Lal Vs. Union of India & Ors.** (2000 (1) ATJ 3), reliance placed by the applicant on the D.B. judgement of the Tribunal in C.S. Khurana's case (supra) cannot be accepted. In **Chiranji Lal's case** (supra), the Full Bench of the Tribunal had, after examining the relevant provisions, including the procedure prescribed under Rule 14 of the CCS (CCA) Rules, 1965, which is relevant to the present case, held as follows:

....The basic principle of natural justice in application to a disciplinary case is that the charged officer should have a fair hearing. He has an opportunity to accept or deny the charge. In case he denies the charge in major penalty proceedings, he has a right to oral enquiry in which he can put forward his case and explain and

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answer the evidence adduced against him.....Even if the UPSC disagrees with the provisional conclusion of the disciplinary authority it has to give its reasons but those reasons are based on the same material as were before the disciplinary authority and such advice is thus no more than an assistance to the disciplinary authority in applying its mind and coming to a final conclusion. The charged officer has already given his interpretation and comments on the findings of the enquiry officer, the UPSC gives its own and the disciplinary authority can then finally make up its mind. We cannot, therefore, say that non-supply of the advice at the pre-decisional stage to the charged officer is a denial of fair hearing to the applicant as he has already exercised his right to fair hearing when he has made a representation on the same material as is before the UPSC".

(Emphasis added).

In view of the aforesaid Full Bench judgement of the Tribunal, the contention of the applicant that ^{the} failure of the respondents to give a copy of the UPSC advice prior to passing of the penalty order vitiates the order, is also rejected.

9. In **State Bank of India Vs. D.C. Aggarwal and Anr.** (1993(23) ATC 403), the Supreme Court has held as follows:

"The order of the disciplinary authority in this case is vitiated not because of mechanical exercise of powers or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of Rule 50(5) of the S.B.I. Supervisory Staff (Service) Rules. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the disciplinary authority but was examined and relied on, was certainly violative of procedural safeguard and contrary to fair and just inquiry. The submission that CVC recommendations are confidential, copy of which could not be supplied, cannot be accepted. Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the disciplinary authority.

18.

(Emphasis added)

In this case, the Inquiry Officer had exonerated the respondent on which the CVC had disagreed and had recommended imposition of major penalty of removal. Following the above judgement, the CVC had issued letter dated 28.9.2000, relevant portion of which reads as follows:

"The Commission, at present, is being consulted at two stages in disciplinary proceedings, i.e. first stage advice obtained on the investigation report before issue of the charge-sheet, and second stage advice is obtained either on receipt of reply to the charge-sheet or on receipt of inquiry report. It, however, does not seem necessary to call for the representation of the concerned employee on the first stage advice as the concerned employee, in any case, gets an opportunity to represent against the proposal for initiation of departmental proceedings against him. Therefore, a copy of the Commission's first stage advice may be made available to the concerned employee along with a copy of the charge-sheet served upon him for his information. However, when the CVC's second stage advice is obtained, a copy thereof may be made available to the concerned employee, along with the IO's report to give him an opportunity to make representation against IO's findings and the CVC's advice, if he desires to do so".

(Emphasis added)

10. In the present case, it is noticed that the applicant had filed a Review Petition taking a ground that his case should be reviewed, as the advice of the CVC had been considered by the disciplinary authority which was not made available to him, thereby depriving him of his right to rebut the findings of the CVC. To this, in the review order dated 27.3.2000, the respondents have stated that in Vigilance cases though CVC's advice is taken by the competent authority as per the procedure, yet the competent authority has imposed the penalty on the applicant for good and sufficient reasons after taking into consideration the findings of the Inquiry Officer, his representation with

reference to the Inquiry Officer and the UPSC's advice. Therefore, the respondents have stated that it is not mandatory for the competent authority to forward the CVC's advice to the delinquent officer and seek his comments for consideration in terms of the provisions of the Rules. (9)

11. The above conclusions of the respondents in the order dated 27.3.2000 are clearly contrary to the CVC's letter dated 29.10.2000, following the judgement of the Supreme Court in D.C. Aggarwal (supra) which was delivered on 13.10.1992. Needless to say, merely because the CVC issued the letter only on 28.9.2000, does not mean that the law laid down by the Supreme Court as early as 1992 was not binding on the respondents in the present case. As the respondents have not given a copy of the CVC's advice to the applicant, it would mean that the disciplinary authority has relied on certain extraneous materials which the applicant is not aware of. This is, therefore, violative of ~~the~~¹⁸ procedural safeguards and contrary to the principles of natural justice.

12. In the result, for the reasons given above, the O.A. partly succeeds and is allowed as follows:

- (1) The impugned orders passed by the disciplinary authority dated 9.2.1999 and the reviewing authority dated 27.3.2000 are quashed and set aside.
- (2) The case is remitted to the disciplinary authority to give a copy of the advice of the CVC to the applicant and to afford him an opportunity to represent against the same before taking a

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decision in the matter. Thereafter, the disciplinary authority shall pass an appropriate order in accordance with law within two months from the date of receipt of a copy of this order.

No order as to costs.


(Govidan S. Tampli)
Member(A)
"SRD"


(Smt. Lakshmi Swaminathan)
Vice Chairman(J)