

(10A)

Central Administrative Tribunal
Principal Bench

O.A. 2351/2000

New Delhi this the 1st day of August, 2001

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

M.S. Goel,
S/o Shri Nand Kishore Goel,
R/o 14, Vaishali Apartments,
Vikaspuri, New Delhi-18. ... Applicant.

(By Advocate Shri A.K. Behera)

Versus

1. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110001.

2. Lt. Governor,
NCT of Delhi,
Raj Niwas, Delhi.

3. Chief Secretary,
Govt. of NCT of Delhi,
5, Sham Nath Marg,
Delhi-110054.

4. Principal Secretary (Planning),
1, Kripa Narain Marg,
Delhi-110054.

5. Directorate for the Welfare
of SC/ST, through its
Secretary,
Govt. of NCT of Delhi,
Old Secretariat,
Delhi.

... Respondents.

(By Advocate Smt. Jasmine Ahmed)

O R D E R (ORAL)

Hon'ble Shri Shanker Raju, Member(J).

The applicant, who is a Head Clerk, has assailed an order dated 15.6.1998 wherein on a disciplinary proceeding, a major penalty of reduction of pay by one stage in the time scale of pay for a period of two years w.e.f. 1.7.1998 has been imposed upon the applicant with with-holding of

increments. This order was maintained by the appellate authority by the order dated 20.1.2000.

2. The applicant had been issued a Memorandum on the allegations that while functioning as Head Clerk (Statistical Assistant) in the STA Branch of Transport Department in May, 1990, he processed the application for issue of special permit No. 9747 for the period from 15.5.1990 to 1.6.1990 in respect of Bus No. DEP-7266 in an irregular manner in disregard of the laid down procedure with ulterior motive. After completion of the inquiry, the Inquiry Officer held the applicant guilty of processing the application for issue of special permit in an irregular manner but the allegations of ulterior motive have not been substantiated. The disciplinary authority without recording his tentative reasons for disagreement and without affording reasonable opportunity to the applicant held the applicant guilty of having malafide and ulterior motives and also on the charge of processing the application for issue of permit to favour the tout which has not been alleged against the delinquent official in the Memorandum.

3. The learned counsel of the applicant has taken several contentions to assail the impugned orders. At the outset, he has raised two contentions. Firstly, the disciplinary authority in violation of Rule 15(2) of the CCS (CCA) Rules and in derogation of the decision of the Hon'ble Apex Court in Yogi Nath D. Bagde Vs. State of Maharashtra (JT 1999 (Vol.7) SC 62) has neither recorded tentative reasons of disagreement while forwarding the findings of the Inquiry Officer and has not afforded a

reasonable opportunity to the applicant before imposing the punishment on a charge which has not been substantiated against the applicant. Secondly, it is contended that though the applicant has been alleged for processing the application for permit in an irregular manner in disregard of the laid down procedure but has been punished on a charge of favouring the tout which has not been alleged against him and against which he has not been afforded a reasonable opportunity to defend.

4. Strongly rebutting the contentions of the applicant, the learned counsel of the respondents stated that the disciplinary proceedings have been conducted in accordance with the CCS (CCA) Rules, 1965 and there is no illegality of the procedure. However, we find that no specific averments have been made by the respondents while controverting the legal grounds taken by the applicant.

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

6. As regards the first contention, we agree with the same. Admittedly, the Inquiry Officer in his Inquiry report has not substantiated the charge of mala fide or ulterior motives against the applicant. The disciplinary authority while imposing major punishment against the applicant has placed reliance on the said charge and had not accepted the assertion of the Inquiry Officer. Admittedly, neither any show cause notice was issued to the applicant nor tentative reasons for disagreement have been recorded as mandated under Rule 15(2) of the Rules ibid and the DOP&T

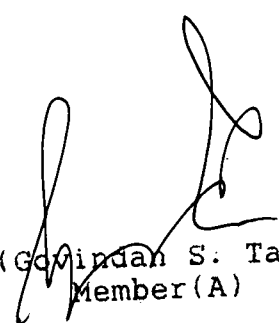
Notification dated 21.8.1900^h in which it has been made incumbent upon the disciplinary authority in cases of disagreement to record tentative reasons and to afford a reasonable opportunity to show cause to the Government servant to defend the same. The aforesaid procedure has been upheld by the Hon'ble Apex Court in Yogi Nath D. Bagde's case (supra). Even if there is no provision to this effect in the Rules, yet a show cause notice with reasonable opportunity should be issued to a Government servant which is in consonance with the principles of natural justice as in absence of any tentative reasons of disagreement being recorded by the disciplinary authority and its failure to afford a reasonable opportunity to the applicant really contravenes the procedural rules as well as the principles of natural justice and on this ~~acc~~^hcount, the inquiry is vitiated.

7. As regards the second contention of the applicant regarding consideration of an extraneous matter by the disciplinary authority which has not been allged in the Memorandum, we find that the applicant has been charged for adopting irregular procedure in disregard of the laid down procedure for processing the application for issue of permit. The disciplinary authority has held the applicant guilty of favouring the tout, i.e. allegedly an unauthorised person of the Bus owner which has not been put to the applicant and against which the applicant has been denied reasonable opportunity to defend.

8. In the result, having regard to the discussion above and reasons recorded, we allow this O.A., set aside the order of the disciplinary authority as well as the order

passed in appeal. The applicant is entitled for all the consequential benefits. However, it is open to the disciplinary authority to take up the proceedings from the stage of issuing notice to the applicant after recording tentative reasons for disagreement and also keeping in view the observations made above and to pass an order after affording reasonable opportunity to the applicant if so advised. The aforesaid exercise shall be completed within a period of two months from the date of receipt of a copy of this order. No order as to costs.

S. Raju
(Shanker Raju)
Member(J)


(Govindan S. Tampi)
Member(A)

'SRD'