

Central Administrative Tribunal, Principal Bench

O.A. No.1151/2004

New Delhi, this the 16th day of August, 2007

Hon'ble Mr.L.K. Joshi, Vice Chairman (A)
Hon'ble Mr.Mukesh Kumar Gupta, Member (J)

O.A. No.1151/2004

Vishwa Vibhuti

....Applicant

(By Advocate: Shri M.M. Sudan)

versus

UOI and others

....Respondents

(By Advocate: Shri N.K. Aggarwal)

1. To be referred to the Reporters or not ?

Yes

2. To be circulated to other Benches of the Tribunal or not ?

Yes

L.K. Joshi

(L.K. Joshi)
Vice Chairman (A)

(22)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1151/2004

Hon'ble Mr.L.K. Joshi, Vice Chairman(A)
Hon'ble Mr.Mukesh Kumar Gupta, Member(J)

New Delhi, this the 16th day of August, 2007

Vishwa Vibhuti,
S/o Shri
R/o 178, Munirka Enclave,
New Delhi-110067

....Applicant

(By Advocate: Shri M.M. Sudan)

Versus

1. Union of India, through
The Secretary,
Ministry of Health,
Nirman Bhawan, New Delhi.
2. Director General Health Services,
Ministry of Health,
Nirman Bhawan, New Delhi.
3. Chief Controller of Accounts,
Ministry of Health,
Nirman Bhawan, New Delhi.
4. Drug Controller of Accounts,
Ministry of Health,
Nirman Bhawan, New Delhi.
5. Pay & Accounts Officer,
Ministry of Health & Family Welfare,
Govt. Medical Store Depot

.....Respondents

(By Advocate: Shri N.K. Aggarwal)

ORDER

Mr. L.K. Joshi, Vice Chairman (A)

In this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the order dated 26.05.2003 (Annex. A-1), by order and in the name of the President, signed by the Under Secretary to the Government of India in the Ministry of Health & Family Welfare by which a penalty of compulsory retirement from service with immediate effect with 30% cut in pension otherwise admissible on a permanent basis has been imposed upon the Applicant, has been assailed.

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2. In this O.A., an order had been passed on 25.05.2004 directing the Respondents to pass necessary orders with regard to 30% cut imposed in the pension, according to law and rules applicable. The Applicant filed a Review Application before the Tribunal which was disposed off on 27.01.2005 on the ground that there was no error apparent on the face of the record. The Applicant filed a Writ Petition © No.2941/2005 before the Hon'ble High Court of Delhi. The Hon'ble High Court has remanded the case back to the Tribunal with the following directions :

"8. Accordingly, the orders dated 25th May 2004 in O.A. No.1151/2004 and 27th January 2005 in R.A.169/2004 passed by the CAT cannot be sustained and are set aside. The parties are required to appear before the Central Administrative Tribunal on 1st March 2007. The respondent to file reply to the O.A. within four weeks from today. Rejoinder thereon, if any be filed within four weeks thereafter. The Tribunal is directed to dispose of the O.A. not later than 31st August 2007."

3. The facts of the case, as set out by the Applicant, are as follows. The Applicant was initially appointed as Depot Manager, Class-I at Govt. Medical Store Depot, Guwahati under Respondent No.1. In August, 1982, the Applicant was selected through Union Public Service Commission (UPSC) to the post of Deputy Assistant Director General under Director General Health Services (DGHS) and posted at R.K. Puram, New Delhi. On 15.11.1989, the Applicant was given in situ promotion and promoted to the post of Assistant Director General (Store) at Govt. Medical Store Depot, New Delhi. The Applicant was placed under suspension in July, 1996 pending disciplinary proceedings. On 27.04.1998, a charge-sheet was issued with the following Articles of Charge :

"STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI VISHWA VIBHUTI, THE THEN ADG.GSMD, GOVT. OF INDIA, NEW DELHI

Article I

That Shri Vishwa Vibhuti, while working as Asstt. Director General of Govt. Medical Store, M.S.O., Ministry of Health & Family Welfare, New Delhi as Chairman of the Purchase Committee with Sh. A.K. Singh, Depot Manager, GSMD, New Delhi, as Member of Purchase Committee during December 1991, approved the rates of neutracid submitted by Shri Vijaya Pharmacy, Hyderabad even when the firm was not registered with the Directorate General of Health Services, New Delhi which resulted in issuance of supply order No.1678 dated 24.12.1991 and 1757 dated 6.1.92. And thereby Sh. Vishwa Vibhuti has violated rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

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Article II

That Shri Vishwa Vibhuti while working as ADG, GSMD, New Delhi placed two supply orders No. 3151 and 3209 both of dated 23.2.94 for same items i.e. medicine proceph on M/s Sri Vijaya Pharmacy, Hyderabad, to purchase 6500 quantity each of Rs.47,125/- each respectively to justify the supply orders within his financial powers. And thereby Sh. Vishwa Vibhuti has violated Rule 3(1)(iii) of CCS (Conduct) Rule, 1964.

Article III

That Shri Vishwa Vibhuti while working as ADG, GSMD, New Delhi placed different supply orders on same date for procurement of same item i.e. order No. 4161 and 4162 both of dated 23.12.94 for medicine Campin-L Capsule and supply order No. 4219 & 4223 both of dated 26.12.94 for medicine Campin-L Capsule on M/s Invinex Pharmaceuticals, Hyderabad segregating the quantity of some medicines below Rs.50,000/- each item to bring within his financial powers. And thereby Sh. Vishwa Vibhuti has violated Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article IV

That Shri Vishwa Vibhuti while working as ADG, GSMD, New Delhi he has not intimated to his superior officers about his official dealings as ADG of GSMD with M/s Sri Vijaya Pharmacy, Hyderabad and Invinex Pharmaceuticals during the year 1991 to 1995, in which his wife Smt. Suman Vibhuti was partner/director respectively. And thereby he has violated Rule 4(3) of CCS (Conduct) Rule, 1964."

4. The Applicant was reinstated in 1998 and posted in Central Drug Control Organization of DGHS as Incharge of Training at Mumbai. Disciplinary enquiry against the Applicant was started in June, 1999 and in July, 1999, the Applicant was once again put under suspension. On 16.08.1999, the Applicant submitted his written argument to the enquiry officer. The enquiry officer completed the enquiry and submitted his report on 31.08.1999 in which Charge I was held to be not proved and Charges II, III and IV were held to be partly proved. The disciplinary authority thereafter sent a copy of the enquiry report by letter dated 29.09.1999 to the Applicant asking him to file a representation and the Applicant filed his representation on 01.11.1999. Thereafter, the Applicant was reinstated in March, 2000. On 10.06.2002, the disciplinary authority conveyed a disagreement note on the findings of the enquiry officer to the Applicant. The Applicant made a representation against the said note of disagreement, which is undated and is annexed at Annex. A-10. On reference to the UPSC, the

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Commission gave its advice on 09.05.2003 and observed as follows :

"In the light of their findings as discussed above and after taking into account all other aspects relevant to the case, the Commission consider that the charges proved against the CO are very grave and constitute grave misconduct on the part of the CO and the ends of justice will be met if the penalty of 'Compulsory Retirement from service with 30% cut in pension otherwise admissible' on a permanent basis be imposed on Shri Vishwa Vibhuti, the C.O. They advise accordingly."

5. On 26.05.2003, the Respondents passed the impugned order of compulsory retirement with 30% cut in pension. The Applicant submitted a review petition against it, which is annexed at Annex. A-12.

6. We have perused the record of the case with the assistance of the learned counsel of both sides and also heard their arguments. The learned counsel for the Applicant has contended that provisions of Rule 15 (2) and 14 (23) (i) of CCS (CCA) Rules, which are mandatory, have not been followed in this case.

7. Rule 15 (2) of the CCS (CCA) Rules, 1965 is as follows :

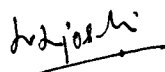
"15.(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desire, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant."

It is contended that the disciplinary authority has not given his tentative reasons for disagreement with the findings of the enquiry officer and an opportunity to the Charged Officer to make a representation about these tentative reasons, which is a mandatory provision.

8. Further Rule 14 (23) (i) of the CCS (CCA) Rules, 1965 is as follows :

"14 (23)(i) After conclusion of the inquiry, a report shall be prepared and it shall contain –

- (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) the defence of the Government servant in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and reasons therefor."





It has been contended that in the enquiry report, the mandatory requirements of Rule 14 (23) (i) of the aforesaid Rules have not been followed.

9. The learned counsel for the Respondents would contend that the impugned order dated 26.05.2003 was issued after giving adequate opportunity to the Applicant and by following the due procedure under CCS (CCA) Rules and after consulting the UPSC. He would further contend that the disciplinary authority had conveyed the reasons for disagreement with the report of the enquiry officer to the Applicant and issued the penalty order after taking into consideration the representation of the Applicant.

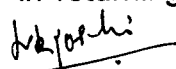
10. The note of disagreement of the disciplinary authority is at Annex. A-9, which is as follows :

"Subject : Departmental inquiry against Shri Vishwa Vibhuti, the then ADG (St.), New Delhi.

Sir,

I am directed to refer to your representation dated 1.11.99 on the subject cited above and to forward herewith a copy of IO report and CVC's 2nd stage advice and to convey the disagreement of Disciplinary Authority on the findings of the Inquiry Officer on the following grounds.

- (i) The argument the procedure of seeking approval of the Dte.GHS was not strictly adhered to and hence some mitigation for the conduct of Shri Vishwa Vibhuti is not acceptable because the violations of rules by some cannot be the grounds for total violation of such rules. In that case, there would appear no basis for having any rules for all.
- (ii) The IO himself admits that there was an onus on Shri Vishwa Vibhuti as the senior officers to have got the requisite approvals. In that case, it is not clear how he can hold charge no. 1 as "Not proved". The onus of responsibility is clearly proved as mentioned above. Hence conclusion of the IO cannot be accepted.
- (iii) Similarly the IO has not pointed out what part of the remaining three charges against Shri Vishwa Vibhuti have not been proved. If he is holding the argument that even if approval was obtained, the end would still be have been the same, since the product is a propriety item, then the argument is not acceptable because financial limits are laid down to control and monitor the system and to ensure that no distortions in terms of disproportionate purchase are made at any level and these constitute important checks in the system. The failure of Medical Stores Organization to notify these issues to Dte. GHS clearly led to lack of feedback to issue corrective steps. Hence the conclusions of the IO in returning the verdict of only





"partly proved" is not found to be based on sound rationale.

- (iv) The same holds good for the charge of not informing the superiors at Dte.GHS about his wife's involvement with the two companies, particularly since the report also mentions that the orders were placed on them only after she entered into partnership with them. Under the circumstances, it is not clear why the charge is not proved.

You are therefore, requested to give your representation/comments on the IO's report taking into account the decision of that Disciplinary Authority to disagree with Inquiry Officer within 10 days from the date of receipt of this letter."

11. It is clear from the perusal of the disagreement note that the requirements of Rule 15 (2) of CCS (CCA) Rules have not been met with and the tentative reasons for disagreement have not been communicated to the Applicant along with the enquiry report in the first instance. As we have noted earlier the enquiry report was sent to the Applicant on 29.09.1999 and he also gave his representation on 01.11.1999. Rule 15 (2) envisages that tentative reasons for disagreement should be sent along with the enquiry report. In the instant case the tentative reasons for disagreement have been communicated two years after the Applicant had given his representation to the enquiry officer's report.
12. We have perused the record of the departmental enquiry in File No.C-13011/31/96-Vig. After receiving the report of the enquiry officer, the Ministry of Health & Family Welfare (Vigilance Section) vide note on page 27 of the notesheet of the above mentioned file, decided to send a copy of the enquiry report to the Charged Officer for his comments. The Ministry thereafter proceeded to examine the report of the enquiry officer. Thereafter on 27.03.2000, the Joint Secretary and Chief Vigilance Officer of the Ministry agreed with the office note of the Under Secretary regarding disagreement on various points with the report of the enquiry officer. Even at this stage, this disagreement was not communicated to the Applicant and the matter was referred to the Central Vigilance Commission (CVC) after the approval of the disciplinary authority. The CVC, thereafter, gave its second stage advice by advising imposition of major penalty on the Applicant. It is only on 24.05.2002 that it was proposed to send the matter for advice of the UPSC and it was suggested that

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the response of the Charged Officer (Applicant) may also be obtained before sending the case to UPSC. It is thus clear from the records that at the time when the report of the enquiry officer was sent to the Applicant, no tentative disagreement note of the disciplinary authority was communicated to the Applicant.

13. In this context, reliance has been placed by the learned counsel for the Applicant on a judgment of the Hon'ble High Court of Delhi in Writ Petition © No.3422/1995 (S.K. Sharma v. Union of India and others) decided on 27.07.2004. In a case where the facts and circumstances are close to the facts and circumstances of the instant case, the Hon'ble High Court's judgment could be quoted in extenso as follows :

"It is, however, established from the records that at the time when the aforesaid report of the Inquiry Officer was sent to the petitioner no tentative disagreement note of the disciplinary authority was communicated to the petitioner and, therefore, it was assumed by the petitioner that the aforesaid inquiry report has been accepted by the respondents. Consequently, the petitioner wrote a letter to the disciplinary authority on October 7, 1993 seeking for all the benefits which the petitioner is entitled to. After receipt of the aforesaid letter from the petitioner, a letter was sent to the petitioner by the respondents on August 10, 1994 with an alleged disagreement note. A copy of the said letter sent on August 10, 1994 is annexed with the petition as Annexure P-6 and the alleged reasons for disagreement of the disciplinary authority are annexed thereto. The petitioner submitted his reply on August 26, 1994 and thereafter an order was passed on March 6, 1995 imposing upon the petitioner the penalty of reduction by two stages in the time scale of pay for a period of two years without cumulative effect. The aforesaid penalty which was imposed came to be clarified/rectified by order dated April 24, 1995 by using the expression "reduction by two stages in the time scale of pay for a period of two years, i.e., from Rs.4,125/- to Rs.3,875/- without cumulative effect." No statutory appeal as against the said order could be filed as the said order was passed in the name of the President and instead the present petition was filed in this court challenging the legality and validity of the order of penalty which was passed against the petitioner. The contention that is raised by the counsel appearing for the petitioner is that the disciplinary authority was required to record his tentative reasons for disagreement which were required to be communicated to the petitioner so as to offer to the petitioner a reasonable opportunity of hearing before actual reasons of disagreement are recorded, and the same having not been done in the present case the impugned order of punishment is illegal and without jurisdiction. In support of the aforesaid contention the counsel has relied upon the provisions of Rule 15 of the CCS (CCA) Rules and particularly to office memorandum which is dated November 27, 1995. The learned counsel has drawn our attention to the provision contained in paragraph 3 of the said circular which provides that where the inquiring authority holds a charge as not proved and the disciplinary authority takes a contrary view, the reasons for such disagreement in brief must be communicated to the charged officer along with the report of inquiry so that the charged officer can make an effective representation. It was also provided that the aforesaid procedure would require the disciplinary authority to first examine the report as per

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the laid down procedure and formulate its tentative views before forwarding the report of inquiry to the charged officer. Counsel for the petitioner also strongly relied upon the decision of the Supreme Court in **Punjab National Bank and others v. Kunj Behari Misra etc**, IV 1999 (1) All India Services Law Journal 271. In order to appreciate the contention of the counsel appearing for the petitioner we called upon the counsel for the respondents to produce the original records before us. Counsel appearing for the respondents has fairly submitted that the disciplinary authority has not recorded tentative reasons for disagreement but has only recorded the reasons for disagreement which were communicated to the petitioner. The records which are placed before us clearly indicate that no tentative reasons for disagreement were recorded by the disciplinary authority before recording the reasons for disagreement which were communicated to the petitioner. The records placed before us do not disclose that any such tentative reasons for disagreement were recorded by the disciplinary authority. Certain reasons for disagreement have been communicated to the petitioner but it is not disclosed from the records as to who has recorded the said reasons. The circular which is referred to only reiterates the aforesaid position. We have already extensively referred to the contents of the aforesaid circular in our preceding discussion. In Kunj Behari Misra (supra) the Supreme Court has laid down the law that whenever the disciplinary authority disagrees with the inquiring authority on any article of charge, then before it records its own findings on such charge it must record its tentative reasons for such disagreement and give the delinquent officer an opportunity to represent before it records its findings. The report of the Inquiry Officer containing its findings would have to be conveyed and the delinquent officer would have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Inquiry Officer. It was also observed by the Supreme Court that the principles of natural justice require the authority, which has to take a final decision and can impose the penalty, to give an opportunity to the officer charged of misconduct to file a representation to the disciplinary authority before the disciplinary authority records its findings on the charges framed against the officer. In our considered opinion, the ratio of the decision of the Supreme Court in Kunj Behari Misra (supra) and the aforesaid circular of the Government of India issued under the CCA Rules explaining the provisions of the CCS (CCA) Rules, are applicable to the facts of the present case and in the present case it was mandatory for the disciplinary authority to record his tentative reasons for disagreement with the findings of the Inquiry Officer. It was incumbent upon the disciplinary authority to communicate the said tentative reasons for disagreement to the petitioner so as to enable the petitioner to represent as against the same before the disciplinary authority records his own findings on the charges framed against the petitioner."

14. Paragraph 3 of the O.M. No.11012/22/94-Estt.(A) dated 27.11.1995 issued by DoP&T is as follows :

"3. A question has been raised in this connection whether the Disciplinary Authority, when he decides to disagree with the inquiry report should also communicate the reasons for such disagreement to the charged officer. The issue has been considered in consultation with the Ministry of Law and it has been decided that where the Inquiring Authority holds a charge as not proved and the Disciplinary Authority takes a contrary view, the reasons for such disagreement in brief must be communicated to the charged officer along with the report of inquiry so that the charged officer can make an effective representation. This procedure would require the Disciplinary Authority to first examine the report as per the laid down procedure and formulate its tentative views before forwarding the report of inquiry to the charged officer."

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15. The Hon'ble Delhi High Court in its order in S.K. Sharma (supra) has placed reliance on **Punjab National Bank and others v. Sh. Kunj Behari Misra**, JT 1998 (5) SC 548. The observations of the Hon'ble Supreme Court are as follows:

"As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

16. As we have observed earlier, the report of the enquiry officer is dated 31.08.1999. It was communicated to the Applicant on 29.09.1999 and received by him on 21.10.1999. The report of the enquiry officer was sent to the Applicant without giving the tentative reasons for disagreeing with the enquiry report. The Applicant made his representation to the enquiry officer on 01.11.1999 obviously under the impression that the enquiry report has been accepted by the disciplinary authority. The disciplinary authority thereafter has recorded a note of disagreement after taking into account the representation dated 01.11.1999 of the Applicant, which is also based on CVC's second stage advice. It has in a way become disagreement note to the representation of the Applicant. The correct procedure would have been the procedure as prescribed in Rule 15 (2) of CCS (CCA) Rules which clearly states that in case of disagreement with the findings of the inquiring authority on any article of charge, the disciplinary authority has to send the copy of the report of inquiring authority together with its own tentative reasons for disagreement. It is very clear that this procedure has been violated in this case.

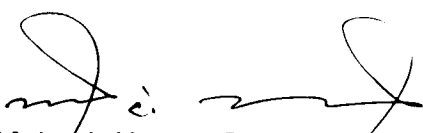
17. We have perused the official record as contained in File No.C.13011/31/96-Vig. and we do not find that procedure in accordance with Rule 15 (2) of the aforesaid Rules has been followed.

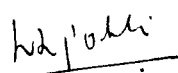
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18. In so far as the requirements of Rule 14 (23) (i) of CCS (CCA) Rules are concerned, we have gone through the report of the enquiry officer and find that the requirements of the above Rule have been fully met in the report and this argument of the learned counsel for the Applicant is not acceptable.

19. On the above grounds, we allow the O.A. and quash the impugned order, which would give all consequential benefits to the Applicant. The Respondents are however at liberty, if so advised, to proceed in the matter strictly in accordance with law and rules. The parties are left to bear their own costs.


(Mukesh Kumar Gupta)
Member (J)


(L.K. Joshi)
Vice Chairman (A)

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