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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

OA NO. 1476/2004

This the 10<sup>th</sup> day of August, 2004

HON'BLE SH. JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE SH. S.A. SINGH, MEMBER (A)

Y.K. Agarwal  
Dy. Director General (Rtd.)  
S/o Late Sh. Kishan Lal Agarwal  
R/o 11-A/73, Nehru Nagar,  
Ghaziabad.

..... Applicant

(By Advocate: Sh. S.C. Saxena)

Versus

Union of India through Secretary,  
Ministry of Health and Family Welfare  
Nirman Bhawan,  
New Delhi-110003.  
(By Advocate: Sh. Madhav Panicker)

..... Respondents

ORDER (ORAL)

Mr. Justice V.S. Aggarwal, Chairman

The applicant, Assistant Director General Stores, Medical Store Organisation has since superannuated on 31.7.2001. By virtue of the impugned order of 24.5.2004 his entire monthly pension has been forfeited on permanent basis.

2. Some of the other relevant facts would precipitate the question in controversy. Applicant while in service was arrested by the Central Bureau of Investigation on the allegation that he had demanded illegal gratification of Rs. One Lakh from one Om Saraf, Director M/s Novus Pharmaceuticals Ltd., Mumbai. It appears that after investigation the CBI did not deem it appropriate to submit a challan under Section 173 of Code of Criminal Procedure on the ground of demanding and accepting Rs. One Lakh. On the same assertions the departmental enquiry had been initiated against the applicant. The enquiry officer returned the finding that the charge has not been proved.

/s/ Ag

3. At this stage we need not dwell into other factors to which our attention was drawn by the learned counsel during the course of submission because we are not dwelling into certain merits of the matter. Therefore, those facts pertaining to whether the Minister Incharge had given the approval with the note of disagreement and certain correlated facts are not being mentioned.

4. However, on 1.7.2002 the note of disagreement had been served on the applicant as against the findings of the enquiry. The same reads:-

'I am directed to refer to this Ministry's communication of even number dated 27.5.2002 forwarding a copy of IO report and CVC's 2<sup>nd</sup> stage advice and your subsequent representation dated 3.6.2002 on the subject cited above and to convey the disagreement of Disciplinary Authority on the findings of the Inquiry Officer on the following grounds:

- (i) IO has not taken into account, the PO's brief while preparing the final inquiry report. Disciplinary Authority feels that since this is a CBI Trap case and the PO was from CBI, his brief should have been taken into consideration.
- (ii) Too much reliance has been placed on the statement of Sh. Kohli, Taxi Driver, who could easily have been influenced to give a wrong statement. Moreover, it is his word against Shri Om Sarafs. Further, it is felt that Shri Saraf, after landing at Delhi Airport at 11.15 AM, had sufficient time to go to R.K.Puram office at 12 noon and to Qutab Enclave around 1.00 PM after staying for 45 minutes in R.K.Puram Office.
- (iii) The contention of CO in his written brief submitted to IO that the statement of Shri Om Saraf may not be relied upon as he had changed his version (Ex-S-33, 34) is not acceptable to Disciplinary Authority is of the view that in both the versions of Shri Om Saraf, he has clearly indicated that money was indeed handed over to CO.
- (iv) The statement of Addl. DG (Stores) that Shri Agarwal was in meeting with him between 12.00 noon and 2.00 PM on 5.3.1997 is not backed by any documentary proof like meeting notice or record note of meeting and is clearly an effort by Addl. DG (Stores) to shield his subordinate and document of defence created by CO as an after thought. As noted by PO in his brief, if this fact was correct, why was it not pointed out by Addl. DG (Stores) during his examination in chief.
- (v) PO in his brief has pointed out that the money (Rs.20,000/-) was withdrawn from Current Account/Overdraft facility

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A/c No. 12442 in Development Credit bank Lt. Kurla Branch, Mumbai by the Director of that firm which was also confirmed by Shri S.K.Narayan, Branch Manager (CW-9) of the said bank. This amount was the among the currency notes were found by the independent witness Shri A.K.Sanan (SW-10) in Shri Y.K.Agarwal's Car in the presence of Shri Agarwal. Thus the payment of money is established on the basis of circumstantial evidences. Disciplinary Authority agrees with PO's view.

(vi) Most of the witnesses changed their statements given to CBI. CO has argued that CBI recorded whatever suited their purpose. Seen from a different angle, it can also be argued that the witnesses gave the truth in the heat of the moment before the CBI but were later tutored to give different statements.

(vii) PO in his written brief has stated that statement of Account Officer, Mr. G.Tamilmani had clearly established that there was delay in forwarding the bills to M/s Novas Pharmaceutical with some ulterior motive in mind.

(viii) The CO could not logically explain the source of money found in his car during the CBI raid.

In view of the above, Disciplinary Authority is of the view that the evidence clearly establish the alleged charges against Shri Y.K.Agarwal."

5. The precise argument of the learned counsel for the applicant is that this is not a tentative note of disagreement but is a final finding and therefore it is contrary to sub-Rule 2 to Rule 15 of the CCS (CCA) Rules.

6. We need not travel into arena of many precedence but reference with advantage is being made to the decision in the case of Yoginath D. Bagde vs. State of Maharashtra and another. 1999 (5) SLR 248. The Supreme Court in this regard held:-

"In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be

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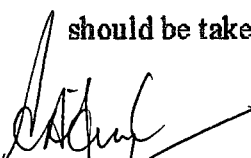
tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Articles 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."


7. A similar situation had come up before the Division Bench of Delhi High Court in Commissioner of Police vs. Constable Parmod Kumar and another CWP No.2665/2002 decided on 12.9.2002. Therein also the disciplinary authority had concluded that it disagreed with the conclusion of the enquiry officer and the Delhi High Court relying upon para 33 of the case decision in the case of Yoginath D. Bagde (supra) also concluded that when it is not a tentative decision, it was unfair to proceed against the petitioner in this regard.

8. As we have reproduced the relevant portion of the note of disagreement, it is clear that it is not a tentative note of disagreement but it can easily be taken that the disciplinary authority had made up its mind. He had not given a reasonable and a fair opportunity to the applicant. Necessarily, the note of disagreement must be a tentative note. On this short ground, therefore, we quash the impugned order and direct that the disciplinary authority may from the stage the order dated 1.7.2002 was

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passed pick up the loose threads and if deem appropriate, pass a fresh order in accordance with law. We make it clear that nothing said herein should be taken as an expression of opinion on the merits of the matter.

  
( S.A. SINGH )  
Member (A)

  
( V.S. AGGARWAL )  
Chairman

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