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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO. 1944/2004

New Delhi, this the 20th day of December, 2004

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)**

Dr. V.K. Sinha
ADG (HA)(Retd),
R/o Flat No. 9358,
C-9, Vasant Kunj,
New Delhi.

...Applicant

(By Advocate: Shri G.D. Bhandari)

-versus-

Union of India through:

1. The Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.
2. The Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi. ...Respondents

(By Advocate: Shri J.B. Mudgil)

ORDER (ORAL)

Justice V.S. Aggarwal, Chairman:

Applicant [V.K. Sinha, Assistant Director General (Hospital Administration)]
seeks to assail the impugned order of 25.6.2003. The operative part of the same reads:-

“AND WHEREAS an inquiry in the case of Dr. V.K. Sinha was held by Sh. Sarvesh Kumar, CDI, CVC who in inquiry report held the charges as “partly proved” while the Ministry had disagreed with the findings of the inquiry officer observing that the charges framed against Dr. V.K. Sinha were proved substantially and forwarded a copy of the report to Dr. Sinha for his version.”

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NOW THEREFORE, after considering the inquiry report, the records of the inquiry, the submission of Dr. Sinha on the report the facts and circumstances of the case and in disagreement with UPSC (Copy of advice of UPSC and reasons for disagreement enclosed) President has come to the conclusion that the charges against Dr. V.K. Sinha are proved and his action warrants a penalty of 5% cut in his pension, otherwise admissible for a period of two years and orders accordingly."

2. The sum and substance of the facts are that following Articles of charge were served to the applicant:-

"Dr. V.K. Sinha, a CHS Officer, while working as ADG(HA) in Dte. General of Health Services during the year 1993 has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government Servant in as much as he recommended/issue Customs Duty Exemption Certificate (CDEC) in favour of a Hyderabad based Instt. namely M/s. Anu Fertility and Contraception Services and Research Instt. for duty free importation of certain medical equipments with some ulterior motive and by violating the laid down conditions in Custom's Notification No. 64/88 dated 1.3.88 and mis-guided the Directorate before the issue of CDEC. Dr. Sinha retained the approved proposal for about 50 days with some malafide intention with him without any justification whatsoever and reopened the issue later on.

2. By his aforesaid act, Dr. V.K. Sinha has exhibited lack of integrity and devotion to duty unbecoming of a Govt. servant. His action resulted in loss of precious revenue to the public exchequer and a wrongful gain to a private instt. Thus contravening the provisio of rule 3.1(i), 3.1(ii), and 3.1(iii) of CCS (Conduct) Rules, 1964 and violation of conditions laid down in Custom's Notification No. 64/88 dated 1.3.88."

3. A statement of imputation of misconduct and misbehaviour had also been served on the applicant. The enquiry officer had been appointed. The enquiry officer, in his report dated 26.7.1999, only recorded that part of the charges stood proved.

4. At this stage, it is relevant to mention that when matter was referred to the Union Public Service Commission, it also recorded that the applicant deserves to be exonerated.

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of the charges levelled against him. A note of disagreement has been recorded vis-à-vis advice of the Union Public Service Commission.

5. The argument advanced is that in the impugned order it has been held that charges against the applicant stood proved. It is contended that there was no 'note of disagreement' recorded against the report of the Enquiry Officer nor conveyed to the applicant and, therefore, the impugned order cannot sustain.

6. As one glances through the impugned order of 25.6.2003, it appears that Ministry had disagreed with the findings of the enquiry officer observing that the charges stood proved but there is no 'note of disagreement' that has been recorded. In all fairness, though the disciplinary authority has a right to disagree with the report of the enquiry officer, it should be conveyed to the delinquent and his representation should be considered before any such order can be passed.

7. Seemingly and inadvertently this important fact has been ignored.

8. Resultantly, on this ground, we quash the impugned order and direct that from the stage the report of the enquiry officer was received, if deemed appropriate, fresh proceedings may be taken in accordance with law.



(S.A Singh)
Member (A)



(V. S. Aggarwal)
Chairman

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