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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION No. 908/2005

....., THIS THE 25th DAY OF Sam, 2007

HON'BLE MR. JUSTICE KHEM KARAN ... VICE CHAIRMAN

HON'BLE MR. M. JAYARAMAN ... MEMBER (A)

C.P. Sonkar,
Superintendent (Retired),
S/o Late Sri Nankulal,
R/o 24/1-A, Bhawapur,
Allahabad.

Applicant

(By Advocate Shri M.A. Siddiqui)

Vs.

1. Union of India, through
Under Secretary to Ministry of Finance,
Department of Revenue,
Government of India,
New Delhi.

2. Commissioner,
Central Excise and Customs Commissionerate,
Allahabad.

3. Commissioner,
Central Excise Commissionerate,
Kanpur.

4. Commissioner,
Central Excise Commissionerate,
Lucknow.

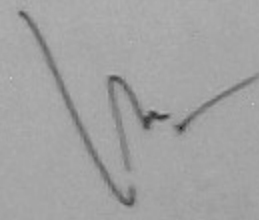
Respondents

(By Advocate Shri Saumitra Singh,
Senior Central Government Standing Counsel)

ORDER

Hon'ble Mr. Justice Khem Karan, Vice Chairman :

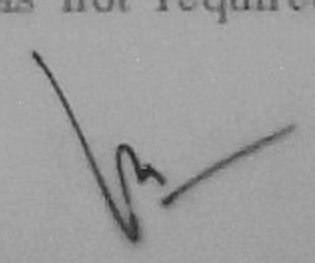
The applicant is challenging order dated 03.05.2005, issued by the Ministry of Finance, Department of Revenue, Government of India, reducing the monthly Pension of the applicant by 25% and for directing the respondents not to reduce any portion of Pension.



2. It appears that proceedings under Rule 14 of the C.C.S. (CCA) Rules, 1965, (hereinafter referred to as the Rules of 1965), were initiated against the applicant vide memorandum dated 24.03.1998, and while these proceedings were still pending, he retired on 30.06.2000, and so the pending proceedings were continued under Rule 9(2)(a) of C.C.S. (Pension) Rules, 1972. After necessary inquiry as per rules, Article of charges No.2,3 and part A of article 4 were found proved. The applicant was supplied with a copy of the inquiry report and his version was called for in relation thereto which he submitted on 10.12.2002. He tried to say that the findings of the Inquiry Officer against him were not justified. It appears that the Government sought the advice of the Union Public Service Commission (Commission for short) and the Commission gave its advice dated 02.03.2005 (copy of which was annexed to the impugned order) and after considering all the materials including the advice of the Commission, the Government agreed with the Inquiry Officer and thereafter passed the impugned order reducing the Pension of the applicant by 25% on permanent basis.

3. The applicant is challenging this order dated 03.05.2005, of the Government on the grounds, inter-alia, that the same has been passed mechanically and without application of mind, that the advice of the Commission, which was taken into consideration by the Government for passing the impugned order, was not supplied to him prior to passing of the penalty order and he was not given opportunity to meet the same and that the complainant Shri Jalaluddin, on whose complaint, the proceedings were initiated did not appear to support the charges and that the applicant or his defence assistant was not afforded reasonable opportunity to cross-examine Ram Khelawan.

4. The respondents have filed reply contesting the claim. They say that in view of Rule 32 of C.C.S. (CCA) Rule, 1965 (hereinafter referred to as the Rules of 1965), the copy of the advice of the Commission was not required to be

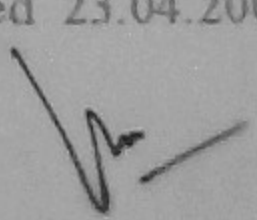


supplied to the applicant before the orders of penalty and the same was to be supplied along with the final orders and so, the respondents were fully justified in not giving copy of the same to the applicant and in not giving an opportunity to him to have his say in the context of that advice, before passing of the impugned orders. As regards the complaint that a statement of Ram Khelawan was recorded in the absence of the applicant or his defence assistant, they have stated in para 14 of the reply, that though the same was recorded in the absence of the applicant, he was given time to cross examine Ram Khelawan on 30.03.2000. According to them, it was not necessary to record the statement of Shri Jalaluddin.

5. The applicant has stated in para 13 of his rejoinder that it is true that he received the letter on 27.03.2000, asking him to come and cross examine P.Ws on 30.03.2000, but, owing to time being short he or his defence assistant were not in a position to do so. He says, when the Presenting Officer had closed the inquiry on 27.01.2000, it was not open to him to record the statement of Shri Ram Khelawan, that too, in the absence of Presenting Officer, charged officer or his defence assistant. He has said that he objected to the same by making a representation dated 29.03.2000.

6. We have heard Shri M.A. Siddiqui, the learned counsel for the applicant and Shri Saumitra Singh, the learned Senior Standing Counsel for the Government of India, and have perused the entire material on record. Shri Siddiqui has also placed on record his written arguments.

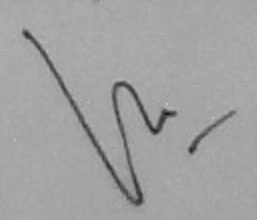
7. The first submission of Shri Siddiqui is that since the copy of the advice of the Commission, relied on in the impugned order, was not supplied to the applicant and his version in the context thereof was not obtained, prior to the passing of the impugned order imposing the penalty of reduction in Pension, so, in view of the law laid down by Bombay Bench of this Tribunal in Batabyal Vs. Union of India & Ors. [(1996) 34 ATC 466]; decision dated 23.04.2004 of



Ahmedabad Bench of this Tribunal in O.A. No.219/2001, M.A. No.207/2004, Mahendra Doshi Vs. Union of India & Ors., the punishment order is vitiated in law for want of affording reasonable opportunity of hearing.

8. On the other hand, Shri Saumitra Singh, has tried to meet this argument by referring to Rule 32 of the Rules of 1965, which provides for sending the copy of the advice of the Commission, to the delinquent official along with the copy of the final order of penalty/punishment.

9. There is no dispute on the point that the Union Public Service Commission was consulted and its advice was taken into consideration for passing the order dated 03.05.2005, reducing the monthly Pension of the applicant by 25%. It is also not in dispute that before the orders dated 03.05.2005, the applicant was not given a copy of the said advice nor was given opportunity to meet it, if he so liked. In Amarnath Batabyal's case (supra), the Division Bench, considered the question as to whether a delinquent official was entitled to the copy of the advice of the Union Public Service Commission or Central Vigilance Commission, before any decision was taken by the authority concerned. After referring to Union of India Vs. Ramzan Khan [(1991) 1 SCC 588] and to the Constitution Bench decision of the Apex Court in Managing Director, E.C.I.C., Hyderabad, Vs. B. Karunakar [(1994) 4 SCC 727], the Bench concluded in para 29 that any material which was being considered by the Disciplinary Authority should be in the knowledge of the delinquent employee and he should have been given a chance to rebut the same. In para 34, the learned members observed that supplying the copy of the report of the Commission along with the punishment order served no purpose and in saying so, the learned members relied on a decision of Principal Bench of this Tribunal, rendered in January, 1994, in Charanjit Singh Khurana Vs. Union of India [1994 (27) ATC 378]. We would like to quote the following observations of the Principal Bench, in Khurana's case (supra):



"The reasoning given by the Commission in support of its advice are an additional material unknown to the employee by are taken into consideration by the disciplinary authority while arriving at its conclusion. The advice of the Commission constitutes an important material before the disciplinary authority, which is likely to influence its conclusion. We, therefore, take the view that the right to receive a copy of the advice of the Commission is an essential part of the reasonable opportunity at the first stage, as envisaged in Article 311(2) of the Constitution and also a requirement of the principles of natural justice. Before the judgment of the Hon'ble Supreme Court in Managing Director, ECIL, Hyderabad, the legal position was fluid and the mist has been cleared now. Rule 32, of the rules, by necessary implication denied to a delinquent employee the right to receive a copy of the advice of the Commission before the disciplinary authority took its decision on the question whether the charge against such an employee stood established."

The Ahmedabad Bench of this Tribunal has also taken the same view in Mahendra doshi's case referred to above.

10. The learned counsel for the respondents has not been able to produce before us any authoritative judicial pronouncement, taking the view contrary to one taken in the above mentioned cases. He has tried to have benefit from Rule 32 of the Rules of 1965. In view of binding precedents as referred to above, we have no option but to hold that the applicant was denied reasonable opportunity of hearing, ^{by} not supplying to him copy of the advice of Commission, and by not giving him an opportunity to meet the same, before passing the orders dated 03.05.2005. The question ^{is} as to whether non supply of the copy of the advice of the Commission vitiates the punishment order and can it be quashed on this ground alone.

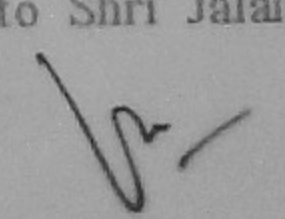
11. Shri Siddiqui has argued that a close perusal of para 6 of the punishment order would reveal that the conclusion of the Government as regards the guilt of the applicant is mainly based on the advice of the Commission. Shri Siddiqui says that since the Government was greatly influenced by the assessment made by the Commission and since the applicant had no opportunity to meet that assessment of the Commission, the applicant was greatly prejudiced in his defence. He says that it is not that the Commission did not deal with the material,

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received during the course of inquiry. He says that the applicant was greatly prejudiced by non-supply of the copy of advice of the Commission, so much so, he could not show that the Commission erred in toeing the conclusions reached by the Inquiry Officer.

12. Upon careful perusal of the impugned order dated 03.05.2005 and also the copy of the advice dated 02.03.2005 of the Commission, we find it difficult to reject the submission of Shri Siddiqui. In other words, the impugned order dated 03.05.2005, is bad in law for the reasons stated above and cannot be sustained. We think Rule 32 of the Rules of 1965, will not come to the rescue of the respondents as the judicial pronouncement as stated above are to the effect that supply of the opinion or advice of the Commission to the delinquent official before the punishment order is part and parcel of the principles of natural justice. Moreover, Rule 32, does not prohibit the authorities from supplying copy of such advice before the final orders. It simply says that copy of the advice shall be supplied along with the punishment order. By that, it cannot necessarily be inferred that the rule prohibits supply of such advice before final order.

13. The second contention of Shri Siddiqui is that non examination of Shri Jalaluddin, the complainant of the case is fatal one and so finding of guilt as recorded by the Inquiry Officer and as upheld in the impugned order is not sustainable in fact. It is true that Shri Jalaluddin had made a complaint against the applicant and others that they unnecessarily harassed and wrongfully confined him on 04.08.1984 and had coerced him to sign one paper or the other and to extract illegal gratification from him. Even if it is assumed for the sake of argument, it is difficult to say that his non examination during the course of inquiry, is fatal to the finding of guilt. There were other witnesses also who were examined during the inquiry. Some of the charges are a little not directly connected to the allegation of Shri Jalaluddin. For example, in Article No.3, it is said that on 08.09.1994, 24 envelopes were handed over to Shri Jalaluddin



through a Panchnama and these contained Riyals, Bank drafts, Indian currency, but seizure list (panchnama) dated 05.08.1994, did not mention about these 24 envelopes which were subsequently handed over to Shri Jalaluddin on 08.09.1994. The charge was that by not showing these 24 envelopes, the applicant and others were planning to mis-appropriate the contents thereof. What we want to say is that it cannot be said that it was Shri Jalaluddin alone, who could have unfolded the articles of charges. Moreover, this Tribunal will perhaps, be not justified in entering into the adequacy or inadequacy of the material on which the finding of guilt is based. It is never the contention of Shri Siddiqui that finding of guilt is not based on any evidence. So, we do not agree with Shri Siddiqui that non examination of Shri Jalaluddin affects the finding of guilt so upheld by the final authority.

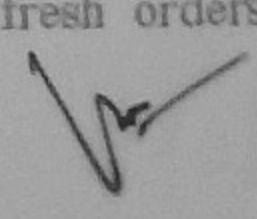
14. The next submission of Shri Siddiqui is that since the evidence of Shri Ram Khelawan, Assistant Collector, was recorded in the absence of the applicant or his defence assistant and since he had no opportunity to cross examine him, the order deserves to be quashed on this ground alone. It is evident that the evidence of Shri Ram Khelawan was recorded in absence of the applicant or his defence assistant. But, it is also a fact that the applicant was given an opportunity to cross examine him, But he could not or did not avail of the same. ^{that} All the applicant states is that, he was not given reasonable opportunity to cross examine Shri Ram Khelawan. We think that the statement of Shri Ram Khelawan ought to have been recorded after giving information to the applicant about the date and time, etc., but, since the applicant was given opportunity to come and cross examine him on the date so fixed for the purpose, so it is not a case, that the applicant was not given opportunity of cross-examining Shri Ram Khelawan. Each and every infraction of the principles of natural justice will not vitiate the punishment order, unless, in the circumstances of the case it is found that the same greatly prejudiced the delinquent official.

15. Shri Siddiqui has also tried to say that the charge sheet was issued after four years of the alleged incident and final orders were passed after about 11 years of the alleged incident, so, in view of the decision of the Ahmedabad Bench of this Tribunal in M.N. Qureshi Vs. Union of India & Ors. (1982) 9 ATC 500, the punishment order deserves to be quashed. We have gone through it and we are of the view that the facts and circumstances in that case were totally different. Each case has to be decided in the light of its own facts and circumstances and no hard and fast rule can be laid down as to how much delay will vitiate the inquiry. We are not prepared to interfere with the order on the ground of delay. Shri Siddiqui has cited Prem Chand Mishra Vs. State of U.P. [(2006) 63 ALR 7] so as to say that it will not be proper to leave the matter to the Disciplinary Authority to hold a fresh inquiry, ignoring the bar of limitation under Article 351 A of Civil Service Regulation (CSR). It appears that the facts of that case were quite different. There, the charges were of mere negligence and irregularity of years 1986-87 and had no direct allegations of embezzlement, etc. There the petitioner had gone to the Hon'ble High Court, against reversion order dated 22.08.1990, operation of which had been stayed vide order dated 07.09.1990. So, what we want to say is that Prem Chand Mishra's case does not help Shri Siddiqui in saying that the chapter should be closed.


16. No other point was argued.

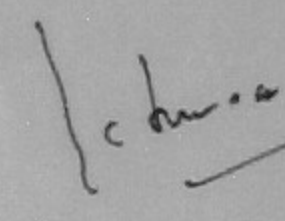
17. In view of our conclusion reached on the first point, the punishment order dated 03.05.2005, is not sustainable in law, because, before passing it, the applicant was not given an opportunity to meet the advice dated 02.03.2005, of the Union Public Service Commission, which was heavily relied on by the Government for reducing the Pension of the applicant.

18. So, the O.A. is allowed and the impugned order dated 03.05.2005, is hereby quashed, but, with liberty to Respondent No.1, to pass fresh orders in



accordance with Rules, after giving an opportunity to the applicant to meet the advice dated 02.03.2005, of the Union Public Service Commission. No order as to costs.


25-1-2007
(M. JAYARAMAN)
MEMBER (A)


25.1.07
(JUSTICE KHEM KARAN)
VICE CHAIRMAN

psp.