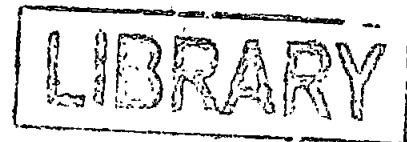


CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



No. O.A. 350/00107/2021
M.A. 350/00089/2021

Date of order: 16.09.2021

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri G.P. Agrawal,
Son of Shri K.L. Agarwal,
Aged about 58 years,
Residing at Ballygunge Government Flat,
Flat No. A-23, 14, Iron Side Road,
Ballygunge, Kolkata - 700 019,
And presently holding the post of
The Deputy Director General,
Ordnance Factory Board,
10A, Shaheed Khudiram Bose Road,
Kolkata - 700 001.

.... Applicant

- V E R S U S -

1. Union of India,
Service through the Secretary,
Ministry of Defence (Defence and Production),
Government of India,
South Block,
New Delhi - 110 001;
2. The Under-Secretary,
Ministry of Defence (Defence and Production),
Government of India,
South Block,
New Delhi - 110 001.
3. The Director,
Central Vigilance Commission,
Satarkta Bhawan,
G.P.O. Complex,
Block - A,
INA,
New Delhi - 110 023.



4. The Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi – 110 069.
5. The Chairman & Managing Director &
Disciplinary Authority,
Security Printing and Minting
Corporation of India Limited,
16th Floor, Jawahar Vyapar Bhawan,
Janpath,
New Delhi – 110 001.
6. The Chief Vigilance Officer,
Security Printing and
Minting Corporation of India Limited,
16th Floor, Jawahar Vyapar Bhawan,
Janpath,
New Delhi – 110 001.
7. The DGOF-cum-Chairman,
Ordnance Factory Board,
Having his office at
10A, Shaheed Khudiram Bose Road,
Kolkata – 700 001.



.... Respondents

For the Applicant : Mr. P.C. Das, Counsel
Ms. T. Maity, Counsel

For the Respondents : Mr. S. Paul, Counsel
Mr. A.K. Chattopadhyay, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved with the disciplinary proceedings initiated against him
culminating in a major penalty order, the applicant has approached this

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Tribunal under Section 19 of the Administrative Tribunals Act, 1985

praying for the following relief:-

- “(a) To quash and/or set aside the impugned memorandum of charge-sheet dated 26th June, 2018 against the applicant with the Article of Charges issued by the Chairman and Managing Director & Disciplinary Authority, Security Printing and Minting Corporation of India Limited owned and controlled by the Government of India being Annexure A-4 of this original application.
- (b) To quash and/or set aside the impugned memo dated 18th June, 2020 issued by the Under-Secretary, Government of India, Ministry of Defence by violation of Rule 15(2) of the CCS (CCA) Rules, 1965 being Annexure A-9 of this original application;
- (c) To quash and/or set aside the impugned office memo dated 23.12.2019 issued by the Central Vigilance Commission, New Delhi being Annexure A-10 of this original application.
- (d) To quash and/or set aside the impugned major penalty order of punishment dated 7th December, 2020 imposed by the Disciplinary Authority by violation of Rule 15(2) of the CCS (CCA) Rules, 1965 despite the charges are not proved in the enquiry proceeding, a major penalty punishment of reduction to two stages lower in the time scale of pay for a period of one year has been imposed and such impugned penalty order of punishment has been communicated to the applicant vide office order dated 17.12.2020 being Annexure A-12 of this original application.
- (e) to declare that the so-called major penalty order of punishment dated 7th December, 2020 imposed by the Disciplinary Authority despite the charges are not proved in the enquiry proceeding is totally arbitrary and bad in law and the violation of the Rule 15(2) of the CCS (CCA) Rules, 1965 and to quash and/or set aside the entire proceeding including the charge-sheet as well as against the impugned office memo dated 18th June, 2020 being Annexure A-9 of this original application and the impugned office memo of CVC dated 23.12.2019 being Annexure A-10 of this original application and against the impugned order of major penalty order of punishment dated 7th December, 2020 being Annexure A-12 of this original application and to exonerate the applicant from all the charges and/or allegations along with all consequential benefits;
- (f) To pass an appropriate order directing upon the respondent authority to exonerate the applicant from all charges and to give all consequential benefits including his promotion to the next higher grade with effect from the date when DPC was held.”



2. Heard Ld. Counsel for the applicant. While, Mr. S.Paul, Ld. Counsel appears for the Union of India (Department of Defence Production, Ministry of Defence), respondent No. 4, namely, UPSC, is represented by Ld. Counsel, Mr. A.K. Chattopadhyay. The pleadings are complete and written notes have been furnished by both parties.

[Handwritten signature]

3. The brief facts in this matter, as articulated by Ld. Counsel for the applicant is that, the applicant who is working as Deputy Director General, Ordnance Factory Board, Kolkata was sent on deputation to the post of General Manager and joined the India Government Mint, Noida as General Manager in Madhya Pradesh Unit of Security Printing and Minting Corporation (SPMCIL) on 30.1.2015 until his repatriation on 31.7.2018.

That, on 19.3.2010, a Global tender notice had been floated for procurement of 500 Mpcs. of Rs. 10 bimetallic coin blanks. Consequent to which, on 2.2.2011, an agreement was executed between the India Government Mint, Noida and M/s. Mittal Appliances Limited, Indore. On 13.4.2016, the India Government Mint, Noida settled the outstanding payment of M/s. Mittal Appliances Limited, Indore.

On 26.6.2018, however, a memorandum of chargesheet was issued against the applicant by the office of respondent No. 5. The applicant replied against such memorandum of charges on 25.7.2018. On 22.9.2018 the respondents informed him that the documents asked for by the applicant at Srl. Nos. 5, 6 and 7 of the list of documents were not available and the documents mentioned at Srl. Nos. 7(a), (b), (c) and (d) of the said list were never received by the applicant (Annexure A-6 to the O.A.).

An Inquiry report was thereafter prepared by the Enquiry Officer on 3.1.2019 (Annexure A-8 collectively) wherein the enquiry officer arrived at the conclusion that the Articles of Charge were "not proved". The said Inquiry report with the copy of second stage advice of CVC was provided to the applicant vide Memo dated 18.6.2020 (Annexure A-9 to the O.A.).

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The applicant replied to such memorandum vide his submissions at Annexure A-11 to the O.A. The disciplinary authority thereafter imposed a major penalty on the applicant vide his orders dated 17.12.2020 at Annexure A-12 collectively to the O.A., culminating in a penalty of "Reduction to two stages lower in the time scale of pay for a period of one year not adversely affecting his pension" with immediate effect.

Challenging the entire disciplinary proceedings, and, particularly, the penalty order thereon, the applicant has approached this Tribunal praying for the aforementioned relief. Ld. Counsel for the applicant would also state that the Departmental Promotion Committee had met in the meanwhile for considering candidates for promotion to the grade of Sr. General Manager. The applicant's case, however, has been kept in sealed cover for the panel year 2020 and that the applicant has also been overlooked for other channels of career improvement such as the posts of HOD and CMD respectively on account of the disciplinary proceedings.

4. Ld. Counsel for the applicant would assail the disciplinary proceedings mainly on the following grounds:

- (i) That, it was disclosed in memorandum dated 18.6.2020 (Annexure A-9 to the O.A.) that the disciplinary authority had tentatively agreed with the findings of the enquiry officer that the articles of charge was not proved against the applicant.

After having "carefully examined" the advice of CVC dated 23.12.2019 which opined that that charges against the applicant were proved, the disciplinary authority had, however, arrived at the conclusion that there were enough grounds for proceeding with major penalty proceedings against the applicant. The applicant

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would allege that as the disciplinary authority had subsequently disagreed with the findings of the enquiry officer, a disagreement note should have been issued by the disciplinary authority to enable the applicant / charged officer to react thereon, and by his inaction to issue the disagreement note, the disciplinary authority had violated Rule 15(2) of CCS CCA Rules, 1965. Further, as such disagreement note was not furnished to the applicant, the applicant was deprived of his right to natural justice to respond to such note.

(ii) Ld. Counsel for the applicant would further aver that CVC in its memo dated 23.12.2019 (Annexure A-10 to the O.A.) had referred to a reference from SPMCIL seeking second stage advice from CVC to cite the following observations of the comments of SPMCIL Vigilance:-

" The Inquiry Officer after conducting inquiry in accordance with the law against the Charged officials in the case, namely, Shri Yesh Pal Singh, the then CM (T), IGM, Noida, Shri Praveen Gupta, the then DM (F&A), IGM, Noida, Shri Rajkumar R., Officer (Material) and the then CPSO I/c IGM, Noida and Shri Surendra Kumar then then AM (F&A), GM, Noida, have concluded that none of the allegations leveled against the Charged Officials have been substantiated and hence the charge contained in the various Articles are not proved. I have gone through the Inquiry Report and have following comments on the various findings of the Inquiry Officer.

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And upon completion of his observations on the above named charged officials, would come to the conclusion that:

"6. It is further submitted that after careful examination of the matter, CVC vide OM No. 017/FNC/010/372419 dated 26.2.2018 and 017/FNC/010/372480 dated 27.02.2018 and advised SPMCIL for initiation of major penalty proceedings against all five COs and to make recover of refunded amount Rs. 1.56 crores from M/s Mittal Appliances Limited (MAL). It was also advised to examine the lapses on the part of Cos with respect to criminal misconduct in accordance with PC Act, 1998 and register of complaint to CBI for further investigation in the matter to prove the charge of criminal conspiracy, cheating and criminal misconduct. Further, CVC also advised, if required in this matter, may seek legal opinion. As per advice of CVC, legal advice was sought from M/s. Singhanian and Partners, who opined after going through the records which including the contract, the minutes of meeting of

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SCGM in which decisions for levying the LD was made, the documents pertaining to refund of LD and the reason thereof for refunding by the officers under investigation, and all other necessary documents including the detailed investigation report of the vigilance department, SPMCIL, etc. vide letter dated 23.3.2018 that IPC Section 420/120 are attracted against the concerned officials of SPMCIL and officials of M/s MAL. However, they could not find any evidence regarding exchange of money, favour of gift against the Cos and officials of M/s. MAL under 13(1)(B) of the PC Act. They further advised SPMCIL to file a written complaint to CBI for the purpose of conducting investigation in the matter. Finally, they conducted that though the possibility of corruption cannot be ruled out, but the same can be established only after the appropriate investigation by prosecution agency.

Therefore, SPMCIL should file a written complaint to CBI. Subsequent, the matter was examined by designated disciplinary authority and after his observation, second legal opinion was sought from same firm i.e. M/s Singhania and Partners. The legal firm within a few months' time without any new facts (except LD recovered from firm) opined that initiating criminal proceedings against Cos would not be appropriate. As M/s Singhania and Partners both legal opinions were contradictory to each other, third opinion was obtained from other law firm. On the basis of the documents forwarded to the firm, it opined that the contract is entire in nature and further that there is misconduct on the part of Shri G.P. Agarwal, the then GM, IGM Noida and other four officials. The penal provisions that may be attracted are Section 420 and 120 (B) of the IPC and Section 7, 8 and 13 of the PC Act. In order to show criminal conspiracy and likelihood of corruption, an inquiry would be needed to prove the link between the parties involved in providing the criminal conspiracy and also to bring to light the gratification received by these officials to bring it under relevant provisions of the PC Act and IPC.

As per advice of CVC, opinion of legal firms and after approval of CMD, SPMCIL, the case was forwarded to CBI vide letter dated 31.5.2019 u/s 17(A) of PC Act, 1988 to conduct further investigation in this matter.

Keeping in view the above observations/comments, the case is being forwarded to the Hon'ble Commission for seeking Second Stage Advice in respect of 4 COs. without tentative outcome in the departmental inquiry in case of CO, Shri GP Agrawal, the then GM, IGM, Noida, who is serving in his present cadre after repatriation, keeping in view the urgency in the matter as one of the CO, Shri Yesh Pal Singh is due for retirement on 28.2.2020."

Ld. Counsel for the applicant would vociferously submit that, in the preamble to the notes of CVO of SPMCIL, there was no reference to the applicant. In spite of such omission, in his concluding comments, the said CVO had referred to the case of the applicant, who was then serving in his parent cadre after repatriation. Ld. Counsel for the applicant, would, therefore, argue that the comments of the CVO, SPMCIL were not specifically associated with the applicant, and, also since none of the comments of CVO, SPMCIL were based on the

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enquiry report on the applicant, the respondent authorities have erred in concluding that the charges are proved on the comments of the CVO, SPMCIL.

(iii) Ld. Counsel for the applicant would also assail the memorandum dated 18.6.2020 on the ground that the disciplinary authority had arrived at his conclusion only upon examination of the 2nd stage advice of CVC and not upon application of mind. Consequently, as the CVC can neither act as the appellate authority nor as the disciplinary authority, the disciplinary authority was expected to have exercised his judicial discretion while arriving at his conclusion as to whether major penalty proceedings were indeed required to be initiated against the applicant. In support, Ld. Counsel for the applicant would cite the ratio contained in ***Nagaraj Shivarao Karjagi v. Syndicate Bank, Head Office, Manipal and another, (1991) 3 SCC 219.***

(iv) Ld. Counsel would further argue that no first stage advice was issued to the applicant / charged officer, and, that, no document with respect to the charges were produced even on demand during enquiry proceedings.

4. The respondents, namely, Ministry of Defence (Department of Defence Production) as well as the UPSC have both submitted their replies as well as their written notes.

The UPSC, namely, respondent No. 4,

(i) has contested the specific allegations of the applicant that the advice of the UPSC was not taken before issuance of the charge memorandum to submit that, as per CCS CCA Rules, 1965, UPSC, is not required to be



consulted before issuance of the charge memorandum, and, that, it is for the disciplinary authority to take a decision in this regard.

(ii) Respondent No. 4 would also refer to Clause (2) of Rule 5 of the UPSC (Exemption from Consultation) Regulations, 1958 to state that *"it shall not be necessary to consult the Commission in regard to any disciplinary matter affecting a person belonging to a Defence Service (Civilian)."* The said Office Memorandum dated 1.9.1958 has been furnished by the Ld. Counsel for respondent No. 4, during hearing.

5. The respondents from the Department of Defence Production, Ministry of Defence would refer to the following issues raised by Ld. Counsel for the applicant:-

"(1) The Central Vigilance Commission (in short CVC) did not consider the Enquiry Report while making it's opinion.

(2) The staff of the Mint who had also been charge sheeted were not saddled with punishment like the applicant.

(3) The Disciplinary Authority/Punishing Authority did not serve any disagreement note before disagreeing with the report and findings of the enquiry officer."

Ld. Counsel for the respondents would proceed respond to the above as under:-

(i) That the Central Vigilance Commission is to furnish his independent opinion on the basis of material on record including chargesheet, documents pertaining to the charges, proceedings of the day to day enquiry etc. and that, as the Central Vigilance Commission is not the disciplinary authority, the said Commission is not to be guided by the report of the



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enquiry officer, and, if there is a difference of opinion in the report of the enquiry officer and the opinion of the disciplinary authority, it is the task of the disciplinary authority to conclude accordingly.

- (ii) That, as the Govt. of India Mint is not a Government Organisation and as such the decision of the Mint authorities are not binding on the Ministry of Defence, and, accordingly, the disciplinary authority would not be bound by the opinion of the Mint authorities.
- (iii) That, in the case of disagreement and in the event that the advice of CVC are against the charged official, the disciplinary authority, upon obtaining such CVC advice, and, after having examined the representation on such advice, would arrive at his final decision.
- (iv) Ld. Counsel for the respondents would also, during hearing, refer to a circular dated 3.12.2014 to cite the following to establish that in case of the applicant, while there was no need to obtain first stage advice from CVC, second stage advice was to be necessarily sought by the disciplinary authority.

"3. The Commission on a further review of the consultation mechanism and to provide for speedy finalization of disciplinary proceedings, has now decided to dispense with the consultation for second stage advice of the Commission in cases where the disciplinary authority (DA), on consultation of disciplinary proceedings, proposes to impose a penalty which is in line with the Commission's first stage advice in respect of officers falling within the jurisdiction of the Commission also. Such cases would, henceforth, be dealt at the level of the CVO and DA concerned in the Organization/Department. However, the CVO should forward an action taken report along with a copy of IO's findings and the final order issued by DA in all such cases of officers for Commission's record. It is further clarified that all such cases where the disciplinary authority proposes to take any action which is at variance with the Commission's first stage advice would continue to be referred to the Commission for obtaining second stage advice."

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- (v) During hearing, Ld. Counsel for the respondents would also furnish an acknowledgement from the applicant while receiving the memorandum dated 18.6.2020.
- (vi) Ld. Counsel for the respondents would also bring on record an Office Memorandum of DOP&T dated 1.3.2017 to cite as follows:-

"3. The matter has been considered in consultation with UPSC and CVC and following are being reiterated:-

- (i) All cases, where the Disciplinary Authority (DA) decides to impose a penalty after conclusion of the proceedings and where UPSC consultation is required as per existing rules/instructions, shall not be referred to the CVC for second stage consultation.
- (ii) The CVC circular 8/12/14 of 3rd December, 2014 stipulates that all such cases where the DA proposes to take any action which is at variance with the Commission's first stage advice would continue to be referred to the Commission for obtaining second stage advice. In this regard it has now been clarified by CVC that the aforementioned circular applies only to the disciplinary cases of non-Presidential appointees including officials of CPSEs, Public Section Banks, and Autonomous Bodies etc. The above instructions, therefore, do not apply to the cases of the officers of Group A services of the Central Government, All India Services (AIS) and such other categories of officers of the Central Government where consultation with UPSC is necessary before imposition of any of the prescribed penalties.

4. In a situation where a conclusion of the departmental proceedings, DA is of the tentative view that no formal penalty needs to be imposed in respect of officers of Group 'A' services of the Central Government. All India Services (AIS) & such other categories of officers of the Central Government and refers to case for second stage consultation with CVC and if CVC advises imposition of a penalty which the DA on consideration decides not to accept, then this becomes a case of disagreement between DA and CVC which as per standing instructions require resolution by DoPT."

- (vii) Further, in response to the issue that there was no first stage advice sought from CVC in case of the applicant, Ld. Counsel for the respondents would refer to DOPT's Office Memorandum dated 29.11.2012 which states as follows:-

"xvii. In order to ensure expeditious disposal of disciplinary proceedings, vide DoP&T's O.M. No. 372/19/2011-AVD-III(Pt.1) dated 26.9.2011, the second stage consultation with CVC in disciplinary matters has been dispensed with except in those cases where consultation with UPSC is not required as per extant rules/instructions. This may be followed. Since there will be only one consultation after receipt of IO's report (either with CVC or the UPSC; as the case may be), it is expected that the new procedure would substantially reduce

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the time taken in finalizing disciplinary proceedings after receipt of the IO's report."

And, that, (viii) the CVC vide their communication dated 27.2.2018 had issued certain instructions to the CVO, SPMCIL with a rider that directions were not to be shared with the Charged Officer at such stage.

Ld. Counsel for the respondents would also rely on the orders of the Principal Bench of the Central Administrative Tribunal in O.A. No. 3139/2010 (**R.P. Sharma (Retd. V. Union of India & ors.)**) which directed that:

"24. Having considered the totality of facts and circumstances of the case, and having been guided by the statutory provisions on the issues and well settled position in law, we hold that (i) the disciplinary procedure has been vitiated at the stage of the disagreement note, (ii) the misconduct is not grave but merely procedural lapse; and (iii) consequently, the penalty inflicted on the Applicant by the President cannot be sustained in the eyes of law."

Respondents would also seek the support of a decision of the Hon'ble High Court of Punjab and Haryana in the matter of **Devinder Singh Grover vs. The Food Corporation of India** delivered on 20.2.1997 wherein it has been held that:

"7. In the circumstances as mentioned above, the reasons for disagreement would be such a material which should be given to the delinquent official as it is he who is to persuade the Disciplinary Authority not to disagree with the findings of the Enquiry Officer. Such a material as observed above, comes into being after the report has been submitted by the Enquiry Officer, which report as stated above, in this case happened to be in favour of the petitioners."

6. The moot issue to be resolved in the instant matter is whether there has been a violation of the procedural formalities as laid down in CCS (CCA) Rules, 1965 and whether procedural justice was denied to the applicant.

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7. The primary allegation made by the applicant is that the disciplinary authority had tentatively agreed with the findings of the enquiry officer as that charges were not proved and had referred such findings to the CVC for second stage advice, recommending "exoneration" of the applicant. Upon receipt of the second stage advice of CVC, however, the disciplinary authority arrived at the conclusion that there were enough grounds for major penalty proceedings against the applicant. Accordingly, as it was incumbent on the disciplinary authority to elucidate his reasons of disagreement in a detailed disagreement note and forward the same to the charged officer for his reaction to the same. The disciplinary authority, however, did not furnish any independent opinion on his behalf but rather only forwarded the copy of the enquiry report with the copy of the second Stage Advice of CVC to the applicant for his written submissions on such reports and advice.

Ld. Counsel for the applicant would, therefore, allege that the provisions as laid down in Rule 15(2) of the CCS (CCA) Rules, 1965 have been violated.

8. We would, hence, refer to the provisions of Rule 15 of the CCS (CCA) Rules, 1965, which states as follows (emphasis supplied):-

"15. ACTION ON INQUIRY REPORT:

(1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

[(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**

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article of charge to the Government servant who shall be required to submit, if he so desires, 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.

*[(3) (a) In every case where it is necessary to consult the Commission, the Disciplinary Authority shall forward or cause to be forwarded to the Commission for its advice:

(i) 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; and

(ii) **comments of Disciplinary Authority on the representation of the Government servant on the Inquiry report and disagreement note, if any** and all the case records of the inquiry proceedings.

(b) The Disciplinary Authority shall forward or cause to be forwarded a copy of the advice of the Commission received under clause (a) to the Government servant, who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, on the advice of the Commission."

(4) The Disciplinary Authority shall consider the representation under sub-rule (2) and/or clause (b) of sub-rule (3), if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (5) and (6).

(5) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in rule 16, make an order imposing such penalty.

(6) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed.]"

Upon an analysis of Rule 15(2) of CCS (CCA) Rules, 1965, the following is inferred:

- (i) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the enquiry;
- (ii) The disciplinary authority shall also forward his own reasons for disagreement, if any, with the findings of the enquiry authority on any article of charges to the Government servant.

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And, once such enquiry report as well as the tentative reasons for disagreement, are forwarded to the Charged Officer, the Charged Officer would have the right to submit his written representation or submission to the disciplinary authority within the time specified for this purpose.

Rule 15(3) also lays down procedure where it is necessary to consult the Commission and the following procedure has been outlined for this purpose.

(a) The disciplinary authority will furnish a copy of the enquiry report with his own tentative reasons for disagreement, if any, with the findings of the enquiry authority on the articles of charges.

(b) Comments of the disciplinary authority on the representation of the Government servant on the enquiry report and the disagreement note, if any.

And, that, advice obtained from the Commission should be forwarded to the charged officer for his response, if any, and, thereafter, as laid down in Rule 15(4), the disciplinary authority shall consider the representation under sub-rule (2) and/or clause b of sub-rule 3, if any, submitted by the government servant and record its findings before proceeding further in the matter as specified in sub-rule 5 and 6 of Rule 15 of CCS (CCA) Rules.

At this stage, it would be relevant to quote the memorandum dated 18.6.2020 (Annexure A-9 to the O.A.) that was furnished to the applicant/ charged officer. The said memorandum is extracted below with supplied emphasis:-

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Confidential
No. 13024/15/Vil.I.OFB/2018/D(Vig)/I
Ministry of Defence
Department of Defence Production
New Delhi - 110 011
Dated the 18th June, 2020

MEMORANDUM

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3. WHEREAS, on his repatriation to OFB, his Disciplinary Authority in the Ministry examined the Inquiry Report and tentatively decided to agree with the findings of the Inquiry Officer. The Disciplinary Authority agreement with the findings of the Inquiry Officer has tentatively held the Article of Charge - I, II & III far against Shri G.P. Agrawal as 'Not Proved'. With these tentative views of the Disciplinary Authority, the cases forwarded to CVC for 2nd Stage Advice recommending "Exoneration" of Shri G.P. Agrawal, the then GM/IGM Noida (now AGM/OFK).

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5. AND WHEREAS, the Disciplinary Authority carefully examined the above advice of the CVC and had come to the conclusion that there are enough grounds for proceeding with 'Major Penalty' proceedings against Shri G.P. Agrawal in view of the comments given by CVO/SPMCIL vide his comments dated 18.10.2019 to CVC and also in view of the conclusion drawn by CVC in its 2nd Stage Advice. The Disciplinary Authority had, therefore decided to accept the 2nd Stage Advice of CVC.

6. NOW, THEREFORE, a copy of the Inquiry Report along with a copy of CVC's 2nd Stage Advice issued vide O.M. No. 017/FNC/010/552280 dated 23.12.2019 along with its enclosures is hereby provided to Shri G. Agrawal, the then GM/IGM Noida (now AGM/OFK), to make his representation/submission, if any, on the findings of the Inquiry Officer and CVC's advice, in writing within 15 days of receipt of this Memorandum, failing which, it will be presumed that he has nothing to say in the matter and the case will be processed on the basis of available information for orders of the Disciplinary Authority.

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By order and in the name of the President

Sd/-

(Shailesh Ram)
Under Secretary to the Government of India

Upon a close scrutiny of the above, we detect the following procedural lapses:-

It is admitted in the instant memo that the disciplinary authority had tentatively agreed with the report of the enquiry officer that the

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charges were not proved and had recommended "exoneration" of the applicant to the CVC while seeking their 2nd stage advice.

In terms of Rule 15(3)(a)(i) & (ii) of the CCS (CCA) Rules, the disciplinary authority was duty bound to send a copy of the enquiry report together with his own tentative reasons for disagreement, if any, and his comments on the submissions of the charged officer thereon to the Commission.

In the instant case, no tentative reasons for disagreement were brought on record as the disciplinary authority had prima facie agreed to the finding of the enquiry report that none of the charges were proved against the applicant charged officer.

(ii) It is very clear that Rule 15(3)(ii) says that the disciplinary authority was also duty bound to forward to the Commission the representation of the government servant on the enquiry report and the disagreement note, if any. In the instant matter, as there was no disagreement with the report of the enquiry officer, the applicant/ charged officer's representation on such disagreement note could not be forwarded to the Commission. The respondents have also not brought anything before us to establish that the representation of the applicant even on the enquiry report was sent to the Commission while seeking their advice. On the other hand, we decipher that it was by a memorandum dated 18.6.2020 when the applicant charged officer was forwarded for the first time a copy of the enquiry report as well as a copy of the CVC second stage advice for further submissions from his end. Hence, the disciplinary authority at the outset, had erred in not furnishing the enquiry report, even if favourable, for the reaction of the applicant charged officer.

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(iii) A clear policy statement has been outlined in Rule 15 of the CCS (CCA) Rules etc. that, in the event the disciplinary authority disagrees with the findings of the enquiry officer, the tentative reasons for disagreement have necessarily to be forwarded to the charged officer.

In the instant matter, we find the disciplinary authority has "carefully examined" the CVC's advice and arrived at the conclusion that there are enough grounds for proceeding with major penalty proceedings against the applicant. Nowhere in rule 15 of the CCS (CCA) Rules, the disciplinary authority has been permitted to accept the CVC's advice as a foundation of his disagreement with the findings of the enquiry officer, rather it is expected that the disciplinary authority, who is the most vital official and the lynch pin in any disciplinary proceedings, should ab-initio apply his mind and arrive at clear and specific reasons for disagreement with the report of the enquiry officer.



It is a settled principle of law that almost all rules contemplate initiation of departmental proceedings on the satisfaction of the disciplinary authority and the punishment to be imposed is also a matter of discretion of the disciplinary authority. Hence, the disciplinary authority being the fulcrum and the nucleus in the disciplinary proceedings, his conduct would guide the scope of adherence to natural and procedural justice in the process.

In Rule 15 of the CCS (CCA) Rules, it has been provided that in case of disagreement with the enquiry report, the disciplinary authority must record the tentative reasons of disagreement, record his findings if the evidence already on record is sufficient for that purpose, or remit the case to the enquiry authority for further enquiry and report.

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In State Bank Of India vs S.S.Koshal reported in **1994 SCC, Supl.**

(2) 468 it was held that it was open to the disciplinary authority to come to its own conclusion on the charges. In **Ram Kishan v. Union of India, (1995) 6 SCC 157** the Hon'ble court went on to hold that the disciplinary authority is obliged to issue a fresh notice, to give specific reasons on the basis of which the disciplinary authority disagreed with the findings of the enquiry officer.

The Court observed as follows:-

" The purpose of the show-cause notice, in case of disagreement with the findings of the inquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusion reached by the inquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the finding by the inquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show-cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusion reached by the inquiry officer. In the absence of any ground or reason in the show-cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect."

More importantly, in **Yoginath D. Bagde v. State of Maharashtra, (1999) 7 SCC 739**, the Hon'ble Court was adjudicating a matter where the disciplinary authority had decided to disagree with the findings in the enquiry report which are favourable to the delinquent. The Hon'ble Court held that he has to give an opportunity of hearing to the delinquent after forwarding to him the tentative reasons for his proposed disagreement, and, that, this will be the position even if the rules do not expressly provide for giving such an opportunity.

In the same line of thought, in **Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84**, it was held that:

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".....even if the rules are silent, the delinquent would have to be given an opportunity of being heard even if the disciplinary authority proceeds from the proposals to his decision and this opportunity is to be given by communicating to the delinquent the tentative reasons for the proposed disagreement to enable him to make a representation."

In ***Ranjit Singh v. Union of India & ors. (2006) 4 SCC 153*** the

Hon'ble Apex Court held as follows:-

".....The principles of natural justice are required to be complied with by the disciplinary authority in the event he intends to differ with the findings of the enquiry officer and in such an event the prejudice doctrine would not be applicable. The disciplinary authority was also required to apply his mind to the materials on record. The enquiry officer arrived at findings which were in favour of the appellant. Such findings were sought to be overturned by the disciplinary authority. Thus, the power sought to be exercised by the disciplinary authority, although not as that of an Appellate Authority, but is akin thereto. It was obligatory on the part of the disciplinary authority, in the absence of any show-cause filed by the appellant, to analyse the materials on record afresh particularly because even CBI, after a thorough investigation in the matter, had not found any case against the appellant and thus, filed a closure report. It should not have relied only on the reasons disclosed by him in his show-cause notice which was only tentative in nature."



Accordingly, the judicial ratio guide us to conclude that when the disciplinary authority disagrees from the findings of the enquiry authority, he is bound both by rules and the principle of natural justice to enable the charged officer to represent against his notes of disagreement, particularly, when the disciplinary authority decides to disagree with such findings of the enquiry officer that are favourable to the charged officer.

9. Coming to the instant matter at hand, we decipher from Annexure A-9 to the O.A. reference to a "careful examination" of the disciplinary authority of the second stage advice of the CVC and thereafter his arriving at a conclusion that there are enough grounds for proceeding with the major penalty proceedings against the applicant.

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Further reference is made to the major penalty orders dated 7.12.2020 (Annexure A-12 to the O.A.), wherein the disciplinary authority has concluded as follows:-

"11. AND WHEREAS, the Disciplinary Authority after giving careful consideration to the Charge Memorandum, inquiry report, **the Disagreement Statement**, 2nd stage Advice of CVC, the representation(s) submitted by the said Shri G.P. Agrawal and also all other records/aspects relevant to the case has concluded for the reason given above that the Charges are "Proved" against the said Shri G.P. Agrawal and it constitutes grave misconduct on his part. Therefore, considering the nature/gravity of charge, it has been decided by the Disciplinary Authority that ends of justice would be met in this case, if Major Penalty is imposed on the said Shri G.P. Agrawal, the then General Manager, IGM, Noida (now DDG/OFBQ)."

No such disagreement statement, despite the averments of the disciplinary authority, has been brought on record.

10. Accordingly, we are of the considered view that the disciplinary authority arrived at his conclusions to initiate major penalty proceedings against the applicant only on the basis of second stage advice of CVC and not after independent application of his mind. The disagreement notes ought to have reflected adequate and reasoned deliberations, as to whether the predominant reasons contained in the advice of the CVC vis-à-vis the findings of the enquiry report in the form of concrete and objective reasons that compelled the disciplinary authority to disagree with the findings of the enquiry officer particularly in modification to his earlier tentative views recommending "exoneration" of the applicant/charged official.

Ld. Counsel for the applicant would bring forth before us the following observations in **Nagaraj (supra)** wherein the Hon'ble Court went on to further elaborate as follows:-

"17..... In this context, reference may be made to Article 320(3) of the Constitution. Article 320(3) like Regulation 20 with which we are concerned provides that the Union Public Service Commission or the State Public Service

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Commission, as the case may be, shall be consulted on all disciplinary matters affecting a civil servant including memorials or petitions relating to such matters. This Court in **A.N. D'Silva v. Union of India 1962 Supp 1 SCR 968** has expressed the view that the Commission's function is purely advisory. It is not an appellate authority over the inquiry officer or the disciplinary authority. The advice tendered by the Commission is not binding on the government. Similarly, in the present case, the advice tendered by the Central Vigilance Commission is not binding on the Bank or the punishing authority. It is not obligatory upon the punishing authority to accept the advice of the Central Vigilance Commission.

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19..... The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the fact and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer."

On the other hand, the findings of this Tribunal in **R.D. Sharma (supra)** or that of the Hon'ble High Court of Punjab & Haryana in **Devinder Singh Grover (supra)** have both resulted in the conclusion that non-furnishing of disagreement note vitiates the proceedings. Such conclusions therefore do not come to the aid of the respondents, despite their reliance on these two judgments for support.

In the instant matter, enough material has been furnished before us to substantiate that procedural justice has been violated in terms of Rule 15 of CCS (CCA) Rules, 1965 and as laid down in the various judicial ratios, cited, **supra**.

The disciplinary authority was well within his rights to either:

- (i) Remit the case with reasons to the enquiry authority for further enquiry;
- or
- (ii) To prepare a detailed disagreement statement on the outcome of application of his mind on the variance between his opinion

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authority



consequent to the advice of the CVC and the conclusion arrived at by the enquiry officer on all or some of the charges.

In the instant matter, the disciplinary authority had not resorted to either of these procedural obligations but has rather simply communicated the enquiry report and the CVC's advice to the applicant/charged officer, and, even while imposing the major penalty, dispensed with the entire requirement of a detailed disagreement memo with a cursory reference to a non-existing disagreement statement. We are hence convinced that there has been a failure of procedural justice to the prejudice of the applicant.

11. Accordingly, following the ratio of **Chairman LIC Of India & Ors vs A. Masilamani 2008 (12) Supreme Today 224**, we would quash the memorandum dated 18.6.2020 as well as the major penalty orders dated 7.12.2020, and, would remand the matter back to the disciplinary authority to proceed from the stage at which the proceedings have been vitiated. The disciplinary authority would hereafter issue a detailed memo of disagreement, if any, and, thereafter, proceed further as per law in concluding the proceedings against the applicant/charged officer within a period of four months from the date of receipt of a copy of this order.

12. With these directions, the O.A. is disposed of. No costs.

M.A. No. 350/00089/2021 praying for appropriate orders is disposed of accordingly.

(Dr. Nandita Chatterjee)
Administrative Member
SP

(Bidisha Banerjee)
Judicial Member