

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 652 of 2003

Jabalpur, this the 17th day of December, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

H.C. Bhindwar, S/o. Shri Tularam
Bhindwar, aged 48 year, Occupation
service, presently posted as Inspector
in the office of Narcotics Commissioner
of India, Central Bureau of Narcotics,
Mall Road, Morar, Gwalior-474006.

... Applicant

(By Advocate - Shri J. Sharma)

V e r s u s

1. Union of India, through Secretary,
Ministry of Finance, Department of
Revenue, Government of India,
New Delhi.
2. The Member (P&V) (Revisionary
Authority), Central Board of Excise
& Customs, New Delhi.
3. The Narcotics Commissioner of
India, Central Bureau of Narcotics,
19 the, Mall Road, Morar, Gwalior-
474006.
4. Deputy Narcotics Commissioner,
Central Bureau of Narcotics,
Mahaveer Nagar First, Jhalabad Road,
Kota, Rajasthan 324005.

... Respondents

(By Advocate - Shri V.K. Sharma)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has
claimed the following main relief :

"i) that, the impugned orders contained in
Annexure A-1, A-2 and A-3 may kindly be quashed with
all consequential benefits and the respondents may
kindly be directed to release the payments of
remaining amount of salary withheld in view of the
impugned orders and make payment of entire arrears of
pay alongwith 18% interest."

2. The brief facts of the case are that the applicant is
holding the post of Inspector and is presently posted in
the office of the Narcotice Commissioner of India, Central

Bureau of Narcotics, Mall Road, Morar, Gwalior. While he was working as Inspector in the office of the District Opium Officer Bhilwara he was served with a charge sheet dated 3.4.1997. He submitted the written statement denying the charges levelled against him and requested for dropping the charge sheet. The enquiry officer exonerated the applicant from all the charges levelled against him. The disciplinary authority forwarded the copy of the enquiry report to the applicant and sought his representation vide letter dated 27.7.1998. The applicant submitted his representation. After lapse of more than two years the disciplinary authority issued a letter dated 19.9.2000 disagreeing with the finding of the enquiry officer and again sought representation from the applicant. On 17.10.2000 the applicant submitted his representation and interalia submitted that the enquiry officer recorded his finding on the basis of evidence on record and after lapse of more than two years, decision of disagreement is neither proper nor legal. Without taking into consideration the representation and without properly considering the evidence on record, the respondent No. 4 issued final show cause notice to the applicant. The applicant submitted his representation on 21.12.2000. But the disciplinary authority passed the impugned order dated 5.3.2001 (Annexure A-1). Thereafter the applicant preferred an appeal and revision petition. Both were rejected by the respondents. Hence, this Original Application is filed.

3. Heard the learned counsel for the applicant and the respondents and carefully perused the records.

4. It is argued on behalf of the applicant that after conducting the enquiry the enquiry officer has submitted his report in which he has clearly mentioned that the

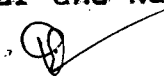


charges against the applicant are not proved. The disciplinary authority asked for explanation of the applicant vide order dated 27.7.1998 (Annexure A-6). The applicant submitted his explanation but the disciplinary authority issued a dissenting note after lapse of more than two years on 19.9.2000 (Annexure A-8). The applicant submitted his representation against it on 17.10.2000 (Annexure A-9) and thereafter the disciplinary authority vide its letter dated 6.12.2000 (Annexure A-10) issued the show cause notice, to the applicant in which he has mentioned that "I have carefully gone through the reply dated 18.10.2000 submitted by Shri H.C. Bhindwar and have tentatively come to the conclusion that in this case one of the major penalty reduction to a lower stage in the time scale of pay for a specified period is proposed to impose upon him." The applicant submitted his reply also. He further drawn our attention towards the judgment of the Hon'ble Supreme Court in the case of Yoginath D. Bante Vs. State of Maharashtra and another, (1999) 7 SCC 739 in which the Hon'ble Supreme Court has held that "show cause notice issued in the present case to appellant with regard to proposed punishment, held, did not meet requirement of the law because final decision to disagree with the enquiry officer had already been taken before issuing show cause notice." He further argued that according to the rules there is a time limit for passing the final orders on the enquiry report which is three months while in the present case the disciplinary authority has passed the order after a lapse of more than two years. Our attention is also drawn towards Annexure A-12 filed with the rejoinder by the applicant.

5. In reply the learned counsel for the respondents argued that the dissenting note Annexure A-8 was prepared

after due consideration of all facts and circumstances of the report of the enquiry officer and the applicant was given every opportunity to defend his case. He submitted his representation and further a show cause notice was also issued to the applicant and against it also the applicant submitted his representation. Thereafter the disciplinary authority passed the impugned order dated 5.3.2001 (Annexure A-1). The applicant preferred an appeal against it which was also considered and rejected. He further preferred a revision petition against the order of the appellate authority which was also rejected after due consideration. Hence, the action of the respondents is legal and justified.


6. After hearing the learned counsel for both the parties and on careful perusal of the records, we find that the enquiry officer had submitted his report exonerating the applicant from all the charges and stated that the charges against the applicant were not proved. The disciplinary authority prepared the note of disagreement on 18.9.2000 i.e. after about a lapse of two years. The time limit for passing the final order on the enquiry report is prescribed as three months. Though it is not mandatory according to the rules but it is provided that in cases where the disciplinary authority feels that it is not possible to adhere to this time limit, a report may be submitted by him to the next higher authority indicating the additional ^{within} period/which the case is likely to be disposed of and the reasons for the same. In the present case the disciplinary authority has not submitted any such report. We have perused the show cause notice dated 6.12.2000 issued by the disciplinary authority in which it is mentioned that "I have carefully gone through the reply dated 18.10.2000 submitted by Shri H.C. Bhindwar and have tentatively come




to the conclusion that in this case one of the major penalty reduction to a lower stage in the time scale of pay for a specified period is proposed to impose upon him." We also find that the Hon'ble Supreme Court in the case of Yoginath D. Bagde (supra) held that "Disciplinary authority before forming its final opinion, has to convey to charged employee its tentative reasons for disagreeing with the findings of the enquiry officer - Show cause notice issued in the present case to appellant with regard to proposed punishment, held, did not meet requirement of the law because final decision to disagree with the enquiry officer had already been taken before issuing show cause notice." Hence, the aforesaid show cause notice issued by the disciplinary authority with prior imposition of the penalty is against the principles laid down by the Hon'ble Supreme Court in the aforesaid case.

7. Thus considering all the facts and circumstances of the case, we are of the opinion that the impugned orders passed by the respondents are liable to be quashed and set aside. Accordingly, the orders passed by the disciplinary authority dated 5.3.2001 (Annexure A-1), appellate authority dated 13.7.2001 (Annexure A-2) and revisional authority dated 10.10.2002 (Annexure A-3) are quashed and set aside. The applicant shall be entitled for all consequential benefits except the interest which he has claimed in this OA.

8. Accordingly, the Original Application is allowed. There shall be no order as to costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman