Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.45/2014

New Delhi, this the 25th day of May, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)

Sh. Rajendra Dattatrya Holkar,
Age about 48 years,
S/o. Sh. Dattatraya Holkar,
R/o. 8/9, Type-III,
Boat Club Road, Khadhki,
Pune. ..
Applicant

(By Advocate: Sh. S. K. Gupta)

Versus

Union of India through

1. Secretary,
   Ministry of Defence,
   South Block, New Delhi.

2. Commandant & MD,
   512, Army Base Workshop,
   Khadhki, Pune – 411 003.

3. Col. Vinod Huilgol,
   Inquiring Authority,
   C/o. Commandant & MD
   512, Army Base Workshop,
   Khadhki, Pune – 411 003. ..Respondents

(By Advocate : Mr. Rajinder Nischal)

O R D E R (ORAL)

Justice M. S. Sullar, Member (J).

The challenge in the instant Original Application (OA), filed by the applicant, Rajender Dattatrya Holkar, is to the impugned inquiry report dated 21.05.2013 (Annexure A-1),

order dated 16.12.2013 (Annexure A-2), whereby a penalty of compulsory retirement was imposed on him by the Disciplinary Authority DA.

2. The epitome of facts and material, which needs a necessary mention for the limited purpose of deciding, the core controversy involved in the instant O.A, and emanating from the record, is that applicant was holding the post of Assistant Executive Engineer (AEE), in the office of Commandant & MD 512, Army Base Workshop (Respondent no. 2), at the relevant time. On 31.10.2011, he was stated to have committed the theft in the Army Store, for his personal gains. As per the statement of imputation of misconduct, the applicant has confirmed and confessed that he was taking these store items, for his personal use and also regretted his wrongful act. In this manner, he was stated to have exhibited the lack of integrity and conduct unbecoming of a Government servant.

3. As a consequence thereof, he was departmentally dealt under the provisions of Central Civil Services (Classification, Control & Appeal), 1965 [hereafter to be referred to as "CCS (CCA) Rules"] and was served with the following impugned memorandum and articles of charge dated 02.07.2012 (Annexure A-6).

"STATEMENT OF THE ARTICLE OF CHARGE FRAMED AGAINST EX. NO. 14691127F, FOREMAN (NOW AEE) SHRI RD HOLKAR, 512 ARMY BASE WORKSHOP, KIRKEE, PUNE.

Article-I

1. That the said **Ex No.14691127F, Foreman (Now AEE) Shri RD Holkar, 512 Army Base Workshop, Kirkee, Pune-411 003** while working as Foreman (Now AEE) in 512 Army Base Workshop, Kirkee, Pune-3 committed an act of Gross Misconduct, in that on 31st October, 2011 at 1315 hrs while moving out from Wksp Main gate for lunch after making entry in the IN/OUT lunch register, during the routine search of his car bearing Regd No. MH-04-BS 5502, by security staff No. 13747584-N L/Nk Ranbir Singh, he was found in possession of Govt. stores concealed in a plastic bag in his car dicky without any valid Gate pass in the presence of Security JCO No. JC438552L Nb Sub Basappa Kademani and this amounted to committing theft of Govt. stores for his personal gain.

2. **Ex No. 14691127F, Foreman (Now AEE) Shri R D Holkar** by his above act exhibited lack of inregrity and conduct which is unbecoming of a Govt. Servant and thereby violating Rule 3 (1) (i) & 3 (1) (iii) of the CCS (Conduct) Rules, 1964."

4. In pursuance thereof, applicant submitted his reply, which was stated to be unsatisfactory. Consequently, the Enquiry Officer (EO) was appointed, who completed the inquiry proceedings and came to a definite conclusion that charges attributed to the applicant stand proved beyond doubt vide his impugned inquiry report dated 21.05.2013 (Annexure A-1).

5. Agreeing with the findings of the EO, a penalty of compulsory retirement was passed by the Hon'ble President, in exercise of the power conferred upon him, under Rule 15 of the CCS (CCA) Rules.

6. Aggrieved thereby, the applicant has preferred the instant O.A, challenging the inquiry report (Annexure A-1) and punishment order (Annexure A-2) on the following grounds, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

"A. Because while passing the impugned order dated 16.12.2013 and the inquiry report, the respondents have erred in law as well as facts.

B. Because it is a fact that the document dated 11.01.2013 (Annexure A-12) was not a relied upon document and cannot become the part of the inquiry proceeding. It is submitted that even the author of the letter never appeared it the inquiry and the aforesaid document was introduced at a very late stage when examination and cross examination of the witnesses were already over and hence, the inquiry officer committed the illegality and when the applicant took up the plea in the representation dated 02.08.2013, the aforesaid plea was not even met by the disciplinary authority while passing the impugned order.

C. Because it is submitted that even the author of the document i.e. preliminary inquiry report was not shown as the witnesses in the list of witnesses and the aforesaid comments which was shown at Sl. No. 1 of the list of witnesses was heavily relied upon by the inquiry officer.

D. Because the fact cannot be ignored that on 02.11.2011 itself, the applicant had represented the office of respondent no. 2 and stated that some conspiracy is being hatched to tarnish his image and character.

E. Because the fact cannot be ignored that the Dickey of the vehicle/car was found to be unlocked by the searcher which is an admitted fact and by no stretch of imagination, it can be alleged that the applicant was involved in removing the brass rods from the Stores.

F. Because when the applicant took up his defence in the defence brief stating therein that there was no counting whatsoever in respect of Stores and the brass rods were not the part of the Stores, the aforesaid plea of the applicant was never met by the inquiry officer.

G. Because on receiving the inquiry report, the applicant took up the specific pleas in para 6, 9, 16 which goes to the root of the case and based upon the aforesaid plea, even the charge of theft cannot be levelled against the applicant, the disciplinary authority while issuing the punishment order, nowhere met with the aforesaid specific pleas raised by the applicant.

H. Because the judgment of Union of India Vs. K. A. Kittu (supra) specifically supports the case of the applicant "

7. On the basis of aforesaid grounds, the applicant has sought to challenge the impugned inquiry report (Annexure A-1) and punishment order (Annexure A-2), in the manner indicated herein above.

8. The contesting respondents refuted the claim of the applicant and filed the reply, wherein it was pleaded that a preliminary inquiry was ordered, in which it was established that the applicant was involved in committing theft from Government store for his personal use. He committed the theft of 15 Brass Rods weighing 7.874 Kg on 31.1.2011. He was, accordingly charge sheeted and regular departmental proceedings were initiated against him vide Presidential Order dated 02.07.2012. The EO has correctly given his report and DA i.e., the President, has rightly imposed penalty of compulsory retirement on the applicant. The respondents have admitted the factual matrix of the case. However, virtually reiterating the validity of the impugned inquiry report and order, the respondents pleaded that the applicant was rightly punished by the competent authority, after following due procedure of inquiry. It will not be out of place to mention here that the contesting respondents have stoutly denied all other allegations contained in the O.A and prayed for its dismissal.

9. Controverting the allegations in the reply filed by the respondents and reiterating the grounds contained in the O.A, the applicant filed the rejoinder. That is how we are seized of the matter.

10. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after considering the entire matter, we are of the considered

view that the instant OA deserves to be partly accepted for the reasons mentioned hereinbelow.

11. As is evident from the record that the EO submitted his report dated 21.05.2013, in which it was concluded that the charges framed against the applicant stand duly proved, beyond any doubt. Thereafter, the inquiry report was supplied and the applicant submitted his detailed representation dated 03.08.2013 (Annexure A/13) raising 21 issues to disprove the charges against him.

12. Strangely enough, the DA did not address a single issue while imposing the penalty of compulsory retirement on the applicant vide impugned order at Annexure A/2, which, in substance, is as under:-

> "And WHEREAS, the President after carefully considering the facts of the case/evidence available on records and findings of the IO, submission the CO and comments of Army Base Workshop in the light of the relevant facts and circumstances of the case, held that the charge of involving theft of government property levelled against Shri R. D. Holkar, AEE stands proved.
>
> Thus, Shri R. D. Holkar failed to maintain absolute integrity and exhibited a conduct not befitting to a govt. servant.
>
> Now THEREFORE, the President in exercise of the power conferred upon him under Rule-15 of the CCS (CCA) Rules, 1965, hereby imposes the penalty of "Compulsory Retirement" upon Shri R. D. Holkar, AEE with immediate effect."

13. Meaning thereby, the impugned punishment order is non-speaking and non-reasoned order.

14. What cannot possibly be disputed here is that Central Vigilance Commission in its wisdom has taken a conscious decision and issued instructions vide Office Order No.51/09/03 dated 15.09.2003, which reads as under:-

"**Subject: - Need for self-contained speaking and reasoned order to be issued by the authorities exercising disciplinary powers**.

Sir/Madam,

It was clarified in the Department of Personnel & Administrative Reforms' OM No. 134/11/81/AVD-I dated 13.07.1981 that the disciplinary proceedings against employees conducted under the provisions of CCS (CCA) Rules, 1965, or under any other corresponding rules, are quasi-judicial in nature and therefore, it is necessary that orders issued by such authorities should have the attributes of a judicial order. It was also clarified that the recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy, or reached on ground of policy or expediency. Such orders passed by the competent disciplinary/appellate authority as do not contain the reasons on the basis whereof the decisions communicated by that order were reached, are liable to be held invalid if challenged in a court of law.

2. It is also a well-settled law that the disciplinary/appellate authority is required to apply its own mind to the facts and circumstances of the case and to come to its own conclusions, though it may consult an outside agency like the CVC. There have been some cases in which the orders passed by the competent authorities did not indicate application of mind, but a mere endorsement of the Commission's recommendations. In one case, the competent authority had merely endorsed the Commission's recommendations for dropping the proposal for criminal proceedings against the employee. In other case, the disciplinary authority had imposed the penalty of removal from service on an employee, on the recommendations of the Commission, but had not discussed, in the order passed by it, the reasons for not accepting the representation of the concerned employee on the findings of the inquiring authority. Courts have quashed both the orders on the ground of non-application of kind by the concerned authorities.

3. It is once again brought to the notice of all disciplinary/appellate authorities that Disciplinary Authorities should issue a self-contained, speaking and reasoned orders conforming to the aforesaid legal requirements, which must indicate, inter-alia, the application of mind by the authority issuing the order."

15. Exhibiting the necessity of passing of speaking orders, the Hon'ble Apex Court in the case of ***Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others (2009) 4 SCC 240*** has held as under (para 8):-

> "8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. **Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation"**.

16. An identical question came to be decided by Hon'ble Apex Court in a celebrated judgment in the case of ***M/s Mahavir Prasad Santosh Kumar Vs. State of U.P. & Others 1970 SCC (1) 764*** which was subsequently followed in a line of judgments. Having considered the legal requirement of passing speaking order by the authority, it was ruled that "**recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim**. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons, the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just". It was also held that "while it must appear that the authority entrusted with the quasi-judicial authority has reached a conclusion of the problem before him: it must appear that he has reached a conclusion which is according

to law and just, and for ensuring that he must record the ultimate mental process leading from the dispute to its solution". Such authorities are required to pass reasoned and speaking order. The same view was again reiterated by Hon'ble Apex Court in the case of ***Divisional Forest Officer Vs. Madhuusudan Rao JT 2008 (2) SC 253.***

17. There is yet another aspect of the matter, which can be viewed entirely from a different angle. The perusal of the impugned punishment order would reveal that the DA had called and relied upon the comments of Army Base Workshop while passing the impugned order. It is not a matter of dispute that the copy of such comments was not supplied to the applicant to enable him to file objection or explain the position with regard to the comments of the Army Base Workshop. It is now well settled principle of law that if the competent authority intends to rely upon some report/comments, then, it is obligatory for them to supply the copy of the same to the delinquent officer. This matter is no more res integra and is now well settled.

18. An identical question came to be decided by the Hon'ble Apex Court in the case of ***S.N. Narula Vs. U.O.I. and Others (2011) 4 SCC 591***. Having considered the matter, it was ruled as under:-

> "6. We heard the learned counsel for the appellant and the learned counsel for the respondent. It is submitted by the counsel for the appellant that the report of the Union Public Service Commission was not communicated to the appellant

before the final order was passed. Therefore, the appellant was unable to make an effective representation before the disciplinary authority as regards the punishment imposed.

7. We find that the stand taken by the Central Administrative Tribunal was correct and the High Court was not justified in interfering with the order. Therefore, we set aside the judgment of the Division Bench of the High Court and direct that the disciplinary proceedings against the appellant be finally disposed of in accordance with the direction given by the Tribunal in Paragraph 6 of the order. The appellant may submit a representation within two weeks to the disciplinary authority and we make it clear that the matter shall be finally disposed of by the disciplinary authority within a period of 3 months thereafter".

19. Sequelly, the Hon'ble Supreme Court in the case of ***Union of India and Others Vs. S.K. Kapoor 2011 (4) SCC 589*** has held as under:-

"6. Mr. Qadri, learned counsel for the appellant submitted that the copy of the Report of the Union Public Service Commission was supplied to the respondent-employee along with the dismissal order. He submitted that this is valid in view of the decision of this Court in Union of India vs. T.V.Patel, (2007) 4 SCC 785. We do not agree.

7. In the aforesaid decision, it has been observed in para 25 that 'the provisions of Article 320(3)(c) of the Constitution of India are not mandatory'. We are of the opinion that although Article 320(3)(c) is not mandatory, if the authorities do consult the Union Public Service Commission and rely on the report of the commission for taking disciplinary action, then the principles of natural justice require that a copy of the report must be supplied in advance to the employee concerned so that he may have an opportunity of rebuttal. Thus, in our view, the aforesaid decision in T.V. Patel's case is clearly distinguishable.

8. There may be a case where the report of the Union Public Service Commission is not relied upon by the disciplinary authority and in that case it is certainly not necessary to supply a copy of the same to the concerned employee. However, if it is relied upon, then a copy of the same must be supplied in advance to the concerned employee, otherwise, there will be violation of the principles of natural justice. This is also the view taken by this Court in the case of S.N. Narula vs. Union of India & Others, Civil Appeal No.642 of 2004 decided on 30th January, 2004".

20. Likewise the Hon'ble Delhi High Court in the case of **Union of India and Ors Vs. Ashok Kumar Arora** in **Writ Petition (C) No. 590/2008** decided on 26.04.2011 has held

that the DA called and had taken into consideration the comments from the Chief Engineer, Southern Command, even a copy of which was not supplied to the delinquent official. It was observed that under the procedure for enquiry, there was no provision to take the comments of the Chief Engineer, Southern Command and any order of disciplinary authority passed on such extraneous/foreign material or evidence, cannot legally be sustained.

21. Thus, seen from any angle, the impugned order cannot legally be sustained in the obtaining facts and special circumstances of the case.

22. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

23. In the light of the aforesaid reasons, and without commenting further anything on merits, lest it may prejudice the case of either side, during the course of subsequent departmental proceedings, the OA is partly accepted. The impugned order (Annexure A-2) is set aside.

24. As a consequence thereof, the case is remitted back to the DA to decide the matter afresh after supplying the copy of the comments of the Army Base Workshop before passing the fresh speaking & reasoned punishment order. No costs.

Needless to mention, here is that, since this OA is disposed of on the limited points of non-supply of the comments of the Army Base Workshop and non-speaking

order, so in case the applicant still remains aggrieved with the order to be passed by the competent authority, in that eventuality, he would at liberty to challenge the same on all the grounds contained in the instant OA.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh