

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No. 84/2015

New Delhi this the 3rd day of February, 2017

Hon'ble Mr. P. K. Basu, Member (A)

P. P. Singh, Aged-62 years,
S/o. Sh. Kewal Singh
Retired Director (Finance),
ITDC, New Delhi
R/o. F-17/117, Sector-8,
Rohini, Delhi-110 085.Applicant

(By Advocate : Mr. Yogesh Sharma)

Versus

1. Union of India through the Secretary,
Ministry of Tourism,
Transport Bhawan, Parliament Street,
New Delhi.
2. The Deputy Secretary,
Ministry of Tourism (Vigilance Division)
Transport Bhawan, Parliament Street,
New Delhi.
3. The Vice-President (Finance & Accounts),
India Tourism Development Corporation Ltd.,
6th Floor, Core-8, Scope Complex,
Lodhi Road, New Delhi.Respondents

(By Advocate : Mr. A. K. Singh for R-1 & 2 and Mr. Anish Chawla with Ms. Mahima Gupta for R-3)

O R D E R (ORAL)

Hon'ble Mr. P. K. Basu, Member (A)

Learned counsel for the applicant states that after the conclusion of departmental proceedings the Presidential Order was issued dated 29.08.2014, which was as follows :-

“7. Now therefore, the Disciplinary Authority in exercise of powers conferred by Rule 27.3 of ITDC CD&A Rules, 2002 (further amended in the year 2010), considering the findings of Inquiry Report, reply of the charged officer, and in consultation with CVC, the President hereby imposes a penalty for recovery of 50% of the loss caused to corporation

due to misconduct of fraud and dishonesty of Shri PP Singh which amounts to Rs.10 lakhs to be recovered from Shri P. P. Singh's gratuity as contained in the Explanation (iv) of Rule 23-B of ITDC CD&A Rules, 2002 (further amended in the year 2010)."

2. It is stated that in this order it was directed that the amount of Rs.10 lakhs be recovered from the applicant's gratuity. However, vide order dated 10.11.2014, it has been ordered that the amount be recovered from funds available in his favour towards gratuity and also salary arrears and leave encashment.

3. Learned counsel for the applicant has raised two objections which are as under :-

- (i) that order dated 10.11.2014 is not a Presidential Order as nothing to that effect has been mentioned therein.
- (ii) Before passing such an order the applicant should have been granted an opportunity, in accordance with Rule 29 (a) of the CCS (CCA) Rules, which is as follows :-

"29-A. Review

The President may, at any time, either on his own motion or otherwise review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to his notice:

Provided that no order imposing or enhancing any penalty shall be made by the President unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in rule 11 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an enquiry under rule 14 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in rule 14, subject to the provisions of rule 19,

and except after consultation with the Commission where such consultation is necessary **[and the Government servant has been given an opportunity of representing against the advice of the Commission].”

4. Learned counsel on behalf of ITDC states that they have sought a clarification from the Ministry of Tourism on the first issue.

5. Heard the learned counsel. The objections raised by the applicant are valid objections. The O.A is therefore, disposed of with a direction to the respondents to give an opportunity to the applicant on conclusion of salary arrears and leave encashment for the purpose of recovery of an amount of Rs.10 lakhs and thereafter pass Presidential order. This exercise may be completed within 90 days after the receipt of a certified copy of this order. No costs.

(P. K. Basu)
Member (A)

/Mbt/