

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA No.532/2015

This the 3rd day of April, 2017

Hon'ble Shri Justice Permod Kohli, Chairman
Hon'ble Shri K N Shrivastava, 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-110085.

....Applicant

(Through Advocate: Shri 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. India Tourism Development Corporation Ltd.
Through the Chairman
6th Floor, Core-8, Scope Complex
Lodhi Road, New Delhi.
4. The Secretary, Chief Vigilance Commission
Vigilance Bhawan, INA, New Delhi.Respondents

(Through Advocate: Shri A.K. Singh for Res. Nos. 1 and 2,
Shri Anish Chawla for Res. No.3 and Shri R.V. Sinha for Res.
No.4R N Singh)

Order (oral)

Justice Permod Kohli, Chairman

While serving as Director (Finance), India Tourism Development Corporation Ltd. (ITDC), the applicant was served with a charge sheet under Rule 26 of ITDC Conduct, Discipline & Appeal Rules, 2002 vide Ministry's Memorandum No.C-14016(1)/2009-Vig. dated 26.02.2010 for initiation of major penalty proceedings. As many as five articles of charges were framed against him. The applicant submitted his representation/written statement of defence on 22.03.2010(Annexure A-3) in reply to the aforesaid memorandum. The Disciplinary Authority having not been satisfied with the representation constituted an inquiry by appointing the inquiry officer and presenting officer. The inquiry officer on completion of the inquiry submitted his report dated 18.09.2013 to the Disciplinary Authority holding 4 out of the 5 articles of charges as proved whereas one article of charge i.e. No.3 was held not proved. The Disciplinary Authority, accepting report of the inquiry officer, communicated the same to the applicant vide communication dated 06.11.2013 for his response. The applicant submitted his response to the Disciplinary Authority on 12.12.2013. The Disciplinary Authority on consideration of the inquiry report and the response of the

applicant thereon, passed the impugned order dated 29.08.2014 imposing a penalty for recovery of Rs.10 lakh to be recovered from the applicant's gratuity.

2. Apart from various other grounds, Shri Yogesh Sharma, learned counsel appearing for the applicant has argued that the Disciplinary Authority had sought the second stage CVC advice and relying upon the said advice, the Disciplinary Authority has imposed the penalty vide the impugned order without even serving the copy of the CVC report upon the applicant and seeking his response. Applicant has made specific allegations in para 5(n) of the OA. In response to para 5(n) what is stated in the counter affidavit is that the applicant was allowed to inspect the record. The specific allegation that the CVC advice was not served upon the applicant is not in dispute. Apart from that, we find from the impugned order itself that the Disciplinary Authority while imposing the penalty has relied upon the CVC advice. The said para of the impugned order reads as under:-

"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 of

Rs.10 lakhs to be recovered from Shri PP 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)."

3. From the above, we find that the penalty has been imposed upon the applicant on the basis of the second stage CVC advice. From the averments made in the OA and the counter affidavit, we are of considered opinion that the CVC advice was never served upon him. Otherwise also there is no specific averment in the counter affidavit that at any stage the second stage CVC advice was served upon the applicant for his response.

4. Thus, without going into other aspects of the matter, this OA is to be allowed on account of non furnishing of 2nd stage CVC advice which has grossly violated the principles of natural justice. This OA is accordingly allowed. The impugned penalty order dated 29.08.2014 is hereby set aside. The respondents are directed to furnish the copy of the 2nd stage CVC advice to the applicant within a period of two weeks from the date of receipt of copy of this order. The applicant shall have the liberty to file his representation/response to the 2nd stage CVC advice within a period of four weeks thereafter. On receipt of the representation of the applicant to the CVC advice, the

Disciplinary Authority shall examine the response of the applicant and on due consideration of the same, pass a fresh reasoned and speaking order within a period of two months thereafter. The release of gratuity would depend upon the outcome of the fresh order that may be passed by the Disciplinary Authority.

(K N Shrivastava)
Member(A)

(Justice Permod Kohli)
Chairman

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