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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.246/2003

New Delhi this the 29th day of March, 2004

Hon'ble Shri S.A.Singh, Member (A)

I.M.Bhatia,
Chief Enforcement Officer,
Enforcement Directorate,
H.Q.Office, Lok Nayak Bhawan,
Khan Market, New Delhi-03

.....Applicant

(By Advocate Shri H.K.Handoo)

VERSUS

Union of India

1. The Secretary to Govt.of India,
Ministry of Finance, Department of
Revenue, North Block, New Delhi.

2. Director of Enforcement (FEMA),
Lok Nayak Bhawan, 6th Floor,
Khan Market, New Delhi-03

.....Respondents

(By advocate Shri N.S.Mehta with
Ms. Harvinder Oberoi)

O R D E R

The applicant is an officer of the Enforcement Directorate. While working as Enforcement Officer, he was placed under suspension on 03.6.1990 on the ground that disciplinary proceedings were contemplated against him. The suspension was revoked on 20.11.1990. The charge-sheet was issued on 12.1.1993 and he was awarded punishment of withholding of two increments without cumulative effect by respondent No.2 on 12.2.1999. The applicant filed an application before the Chandigarh Bench of the Central Administrative Tribunal and the Tribunal quashed the order of appellate authority with the following directions:-

"The order at Annexure A-2 and comments of the appellate authority produced in the file intimating rejection of appeal of the applicant by the appellate authority as well as the order as recorded in the file produced

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is hereby quashed and set aside. The appellate authority is directed to afford the applicant a personal hearing and thereafter pass fresh order under the relevant rules and the law by considering the grounds raised by the applicant in his appeal, Annexure A-II. Copy of such order be supplied to the applicant. Needless to mention that if applicant is aggrieved by the order of the appellate authority, he will be at liberty to come to this Tribunal/competent forum for challenging the order at Annexure A 1 and such appellate order and raise all the possible grounds under the law including the grounds taken in the present OA. We hope that the appellate order as directed above shall be passed within a period of four months from the receipt of copy of this order. No costs".

2. Respondents passed order dated 28.11.2002 holding that there was no reason for interference with the order passed by the disciplinary authority.

3. The applicant has impugned respondents' order dated 28.11.2002 on the grounds that it has been passed in a mechanical manner without taking into consideration his comments/representation against the tentative decision of the disciplinary authority, and the report of the enquiry officer dated 17.8.1998. The Chandigarh Bench of this Tribunal had issued an order directing the respondents to afford the applicant a personal hearing and thereafter pass a fresh order under the relevant rules and law by taking into consideration the ground raised by the applicant in his appeal, which is placed at Annexure A II. According to the applicant, it is apparent from the impugned order that this has not been done as it only talks of a personal hearing, as such it should be set aside.

4. It is the case of the applicant that respondent No.2 had issued a charge-sheet dated 22.12.1992 with a single article of charge which reads:

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"That the said Shri I.M.Bhatia, while functioning as Enforcement Officer in Delhi Zonal Office of Enforcement Directorate during the year 1989 and 1990 committed grave misconduct in as much as he failed to complete the investigation expeditiously within 15 days in F.NO.T-3/MISC/DZ/7349/89 Of M/s Skipper Travels as ordered by Shri M.S.Sandhu, the then Assistant Director. He also failed to make out a charge under FERA against the party in the said case.

Sh.Bhatia has thus shown (a) gross negligence, (b) dereliction of devotion to duty and (c) conduct unbecoming of a govt. servant in the discharge of his official duties. Shri Bhatia has thereby contravened Rule 3.1(1), (ii) and (iii) of the CCS (Conduct) Rules, 1964."

5. The inquiry officer had exonerated the applicant of the charge. However, the respondent no.2, the disciplinary authority disagreed with the enquiry officer and in the Note of disagreement re-wrote the charges converting the single charge into three separate charges. This is apparent from the copy of the disagreement note. The relevant portion^{is} reproduced:

Shri I.M.Bhatia, Enforcement Officer has been charged for contravention of Rule 3.1 (i), (ii) and (iii) of the CCS (Conduct) Rules, 1964 for:-

- a) Gross negligence.
- b) dereliction of devotion to duty.
- c) conduct unbecoming of a Govt. Servant in the discharge of official duty.

Precisely the three charges can further be described as:-

- i) failure to complete investigations expeditiously and within 15 days of being ordered to do so by the Supervisory Officer;
- ii) preparing and submitting a half, baked Investigation Report aimed at absolving the Company, its partners and officials of any charge of violation of Foreign Exchange Regulation Act; and



iii) by submitting ⁻⁴⁻ the file at the last moment without making thorough investigations, Shri I.M.Bhatia, E.O. precluded conducting of any further probe for FERA violations.

I would deal with all these three charges, individually, as under:"

6. This, according to the applicant, is not permitted as per CCA (CCS) Rules. This amendment of charge is a misjoinder, which renders the whole inquiry proceedings void abinitio. The appellate authority has also erred by asserting that there are three charges against the applicant as against the one article of charge in the charge-sheet.

7. The applicant also argued that he was denied the documents; specifically advice of the Central Vigilance Commission (CVC), which has prejudice his case. It has been clearly held by the Apex Court in the case of State of UP Vs. Shatrughan Lal and Another JT 1998 (6) SC 55 that in departmental proceedings where charge-sheet is issued and the documents which are proposed to be utilised against that person are indicated in the charge but copies thereof are not supplied to him inspite of his request, and he is, at the same time, called upon to submit his reply, there cannot be said that an effective opportunity to defend was provided to him. The applicant also relied upon the judgement of the Tribunal in OA 3094/2001 in the case of R.D.Gandhi Vs. Union of India and Another wherein it was held that it was mandatory upon the respondents to supply a copy of CVC report, which was not done. In view of the decision of the Apex Court in State Bank of India Vs. D.C.Aggarwal 1993 (1) SCC 13 it is mandatory upon the respondents to supply a copy

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of the CVC report, which was not done. Hence his case has been prejudiced. The applicant claims that the respondents are prejudiced against him as the charges have been constituted to deny him his rightful promotion, because there was no ground for issuing of charge-sheet. He had done a proper investigation in the case in question and his conclusions that no case of FERA violation was made out was found to be correct because the conclusion was upheld by the Appellate Court. This decision was accepted by the department because the department did not go in for an appeal against this judgement. In addition, the respondents have accepted that the integrity of the applicant is not in question but have suddenly put forward that the charge is really because of not submitting investigation report within 15 days as directed by superior officer. The applicant pleaded that the order of the Asstt. Director was impracticable because over 3000 documents had to be examined and the impracticably had been brought on record and to the notice of the superior. On these grounds, the applicant prays that the order dated 12.2.1999 passed by the respondent no.2 imposing the penalty of withholding of two increments (without cumulative effect) and also order dated 28.11.2002 of the appellate authority rejecting his appeal against the order of the disciplinary authority be quashed and the applicant be given all consequential benefits including seniority, arrears of pay and allowances.

8. The respondents have contested the case of the applicant. The premises of firm were searched by the officers of Enforcement Directorate in a case of

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FERA violation. A large number of documents were seized and the task of completing investigation of the case was given to the applicant on 14.12.1989 with the direction to complete the same within 15 days. The applicant did not complete the task in time and after a gap of more than seven months, i.e, just a few days before limitation period under Section 41 of FERA was expiring, submitted the file with a half baked investigation report suggesting that no case of FERA violation is made out but a case for investigation by the CBI. This practically absolved the firm of FERA violation. Further, by submitting the file at the eleventh hour, the applicant precluded any further deeper probe into the FERA violation. The charge-sheet was issued and after inquiry the penalty was imposed as per rules.

9. The respondents agreed that the charge-sheet mentioned only one article of charge but added that a plain reading of the charge alongwith statement of imputation of mis-conduct or misbehaviour in support of the article of charge shows that there were really three charges of misconduct bundled into one charge and as such it can be easily made out that there are three separate charges levelled against the applicant. Whereas the first charge deals with the failure to complete investigations within 15 days, the second one is related to intention of applicant in submitting half backed investigation report and the third concerning precluding the possibility of conducting of any further probe in the matter by delaying in submit the file. Though the disciplinary authority had concluded that the charge no.II was not substantiated, it however,

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held that the charge on not completing the investigation within a period of 15 days and delay in submission of file stood proved. The respondents stated that they took a lenient view and instead of imposing a major penalty decided to impose the minor penalty of withholding of two increments (without cumulative effect). And that this ground had already been raised in OA 189/PB/2000 and the Tribunal in their order dated 4.7.2002 had not found any fault with the penalty dated 12.2.1999.

10. The respondents submits that the report of the CVC was not supplied under the belief that it was part of internal correspondence between the disciplinary authority and the CVC and as such the disciplinary authority was not required to supply it, especially as it was not a document that had been relied upon in the list of documents attached with the charge-sheet. The respondents also added that the Tribunal could not go into the merits of the case and was only required to undertake a judicial review. However, the respondents stated during the course of the hearing, that they have no objection if the the case is remanded back for reconsideration after taking into consideration the representation of the applicant, which is annexed as Annexure A-11.

11. I have heard the parties and perused the documents on record.



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12. It is agreed by the respondents that the charge-sheet mentions one article of charge and that the single charge has been separated into three charges. However, they pleaded that the single charge in actuality is bundle of three charges as is obvious from the statement of imputation of mis-conduct or mis-behaviour. The article of charge defined in the charge sheet dated 22.12.1992 is reproduced in para 4 and the manner in which it has been separated into three separate charges by the disciplinary authority is reproduced in para 5. Comparison of the two shows that the single charge of not completing the proceedings within 15 days as ordered by the Asstt. Director in the FERA case has been expanded by adding two additional charges not mentioned in the original charge sheet. These are preparing and submitting a half baked investigation report aimed at absolving the company and its partners and officials of FERA violation and submitting the file at the last moment without making a thorough investigation thereby precluding conducting of further probe into the violation. These are clearly charges in addition to the charge framed in the charge sheet. However, if the interpretation of the disciplinary authority in its note of disagreement and also in the order dated 12.2.99 are compared with the statement of imputation of mis-conduct or mis-behaviour which is reproduced as below, it is apparent that three charges elaborated by the disciplinary authority indicating at para 5 earlier are in fact the basic allegations of mis-conduct or misbehaviour stated in the statement of imputation in support of the article of charge.

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Article-I

File No. T-3/Misc/DZ/7349/89 of M/s Skipper Travels was marked to Shri I.M. Bhatia, Enforcement Officer on 14.12.1989 by Shri M S Sandhu, the then Assistant Director with the stipulation that Enforcement Officer (IMB) shall complete the investigation expeditiously within 15 days. Shri Bhatia neither sought extension of 15 days time nor put up the file till 20.7.1990. Thus despite clear written orders to that effect he never submitted the file. When the limitation period was approaching on 7.8.90, Shri Bhatia hastily examined the Managing Director and General Manager of the Company only on 19.7.90 and 18.7.90 respectively and submitted a half baked investigation report suggesting that the case be referred to CBI to investigate the forgery aspect, practically absolving the firm and its partners/officials of any role in the FERA violation. Shri Bhatia also made no effort to establish the complicity of the firm in accepting forged certificates. By submitting the file at the last moment he was responsible for precluding any further probe into the FERA violation by M/S Skipper Travels. He also did not examine any other person/official of the firm to arrive at any meaningful conclusion as to who actually presented these forged encashment certificates at the counters. However, when the said case was thoroughly investigated by the Chief Enforcement Officer, a show cause notice amounting to Rs. 18,68,498/- was recommended for issuance against the said party u/s 16(1) of FERA, 1973 i.e. equivalent to Foreign Exchange, receivable against 129 forged encashment certificates. Submitting the file at the last moment without making thorough investigation was, therefore, deliberate and constitutes lack of integrity, gross negligence in the discharge of his official duties and the conduct unbecoming of a Govt servant. Shri I M Bhatia has thereby contravened Rule 3(1)(i)(ii) and (iii) of the CCS (Conduct) Rules, 1964."

Even if the disciplinary authority had not described them as three separate articles of charge the disciplinary authority would have to give its findings for the three allegations forming the imputation of mis-conduct. Therefore by merely describing the allegation in the imputation of mis-conduct as charges does not necessarily lead to mis-joinder of charges but at the most could be termed as a mis-nomenclature. I am



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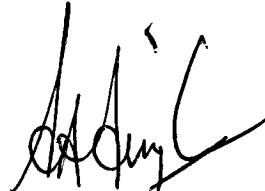
therefore unable to agree with the contention of the applicant that two additional charges have been added on to the original charge merely because the allegations in imputation have been described as charges rather than as allegations.

12. The respondents have agreed that they did not supply the copy of the CVC advice under the belief that it was part of internal correspondence between the disciplinary authority and CVC and as such it was not required to be supplied to the applicant. The applicant has relied upon the judgement of Apex Court in the case of State of UP Vs Shatrughan Lal and Another(supra) and also in the judgement of Tribunal in OA No. 3094/2001 in the case of R D Gandhi Vs. Union of India and Another that it was mandatory to supply the copy of CVC report. It is now settled law that non supply of the CVC advice is certainly violative of the procedural safeguard and contrary to fair and just enquiry. The need to supply a copy of the CVC advice has been clearly indicated in the GIC CVC letter No. 99/VGL/66 dated 28.9.2000 wherein a copy of the Commission's first stage advice may be made available along with the copy of the charge sheet and second stage advice to be made available along with the IO's findings to enable the concerned employee to make the representation against CVC advice, if he desired to do so.

13. In view of the fact that the CVC advice was not made available to the applicant and without going into the merits of the case and without deliberating into other legal grounds taken by the applicant, the impugned orders are quashed and set aside. However, the

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respondents are at liberty to pass fresh orders if they so desire, after making available the copy of CVC advice along with IO's findings and ~~that~~ thereafter proceeding as per rules. With these directions the OA is disposed of. No costs.



(S.A. Singh)
Member(A)

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