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Central Administrative Tribunal
Principal Bench

O.A. No. 296 of 2003

New Delhi, dated this the 12th September, 2003.

HON'BLE MR. KULDIP SINGH, JUDICIAL MEMBER
HON'BLE MR. R.K.UPADHYAYA, ADMINISTRATIVE MEMBER

C.P.Katyal,
Section Officer,
Ministry of Home Affairs,
Border Management Division,
Room No. 81-A-North Block,
New Delhi

....Applicant.

(By Advocate: Shri K.B.S.Rajan)

Versus

1. The Union of India,
through
the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi

....Respondent.

(By Advocate: Shri A.K.Bhardwaj)

ORDER

Shri R.K.Upadhyaya, Administrative Member

This application under section 19 of the Administrative Tribunals Act, 1985 has been filed seeking a direction for setting aside the order of punishment dated 18.12.2001 and order of Revisional Authority dated 27.9.2002 issued in pursuance to the charge sheet under section 16 of CCS(CCA) Rules, 1965 dated 24.6.1993 (Annexure-P1).

2. The applicant, a Section Officer in the Ministry of Home Affairs, while posted in the Rehabilitations Division, was appointed as Managing Officer. He was replaced by Shri Surjeet Singh, Under Secretary, as Managing Officer. According to the respondents, he committed certain misconduct.

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Therefore, he was issued charge-sheet under section 16 of CCS(CCA) Rules, 1965 as under:

"3. With his replacement as Managing Officer by Shri Surjeet Singh, Under Secretary, Shri Katyal was expected to hand over all records relevant to his said charge, including the Rehabilitation Division's File No.15/1/96-SS, to his successor against proper receipt. It was in any case for him to ensure that all such records were properly handed over to his successor and the responsibility squarely lay on him in this regard.

4. Rehabilitation Division's File No.15/1/96-SS is no longer traceable. Shri Katyal has not been able to inform the successor Managing Officer regarding the whereabouts of the said file to Shri Surjeet Singh, Under Secretary, nor has he been able to trace the same inspite of the fact that it was only who has to be responsible for making available the said important file of the Rehabilitation Division to the successor Managing Officer.

5. Rehabilitation Division's File No.15/1/96-SS is an important one. In the said file, various directions communicated to the Government by Hon'ble High Court of Delhi in the cases referred to above, have been dealt with. Keeping in view the important contents of the said file, it was imperative for Shri Katyal to have ensured that it was appropriately handed over to the successor Managing Officer or to his senior officers in the Rehabilitation Division so that the important issues dealt with in the said file were not lost sight of and the cases were adequately defended before the Hon'ble High Court of Delhi on behalf of the Government. Shri Katyal neither ensured that this was done nor has he been able to say anything in regard to the availability of the file in his custody inspite of the fact that it was his responsibility alone as Managing Officer that such an important file of the Rehabilitation Division was duly handed over to his successor or to his senior officers in Rehabilitation

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Division after keeping proper record with him. Shri Katyal has miserably failed on his account.

6. By his acts as aforesaid, Shri C.P. Katyal, Section Officer, has shown lack of devotion to duty thereby violating Rule-3(1) (ii) of CCS(Conduct) Rules, 1964."

3. In response to the charge-sheet, the applicant submitted his reply. However, the Disciplinary Authority in consultation with the UPSC imposed a penalty vide order dated 27.6.2000. The applicant was awarded punishment of withholding one increment for a period of two years without cumulative effect in the time scale of his pay. Feeling aggrieved, the applicant assailed the order of punishment by filing OA No.963/2001 which was disposed of by order dated 6.11.2001 with the following directions:

".....Matter is remanded back to the disciplinary authority to accord a reasonable opportunity to the applicant including his representation by furnishing the report of the preliminary enquiry and thereafter to take a final decision and pass a detailed and speaking order within three months from the date of receipt of a copy of this order....."

4. Thereafter, the applicant was given a copy of the preliminary enquiry report along with the memorandum of charge-sheet dated 18.12.2001. The applicant submitted his detailed reply to memorandum of charge-sheet on 17.1.2002. The learned counsel of the applicant submitted that after considering the reply of the applicant as well as the advice of UPSC, the Disciplinary Authority had, without application

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of mind, reimposed the same punishment of withholding one increment for a period of two years without cumulative effect.

5. The revision petition, filed by the applicant, has also been rejected vide order 27.9.2002. Hence the present OA.

6. At the time of hearing on this application, the learned counsel of the applicant stated that he wanted to confine his prayer to relief regarding punishment only. He further stated that the relief in Clause (d) of Para 8 of the OA relating to promotion be treated as having been withdrawn.

7. Learned counsel of the applicant invited our attention to the memorandum dated 24.6.1999 of charge-sheet wherein the applicant has been charged with mis-conduct of neither handing over the file No.15/1/96-SS to his successor(Under Secretary) nor has he been able to trace the same inspite of the fact that it was he only who has to be held responsible for making available the said important file. Learned counsel of the applicant invited our attention to the advice of UPSC dated 27.3.2000 wherein the Commission concluded that "the charge against the CO is proved though no malafides have been alleged or proved." The learned counsel stated that the conduct of the applicant was in conformity with the normal procedure for handing over of records as no physical handing over of file had taken place nor receipt taken. In this connection, he has also

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invited attention to the subsequent advice of UPSC wherein the contention of the applicant that "in absence of any instructions/guidelines for transfer of records, he cannot be held responsible/negligent for failure to formally transfer records to his successor" has been noticed. The Commission has further observed that "though the contention of the CO in normal circumstances is acceptable, as also observed by the DA, it is felt that CO at the time of his being relieved, should have brought the important cases to the notice of his successor especially case relating to "Contempt Petition" against Home Secretary and CO himself pending in the Delhi High Court"(Emphasis supplied).

8. The Disciplinary Authority in the impugned order of punishment has also stated as follows:

"10. AND WHEREAS the President after taking into consideration the representation made by the CO, took a view that he was negligent in his duties and a minor penalty may be imposed on him for the following reasons:-

(i) The contention of the CO in normal circumstances is acceptable. However, the CO at the time of his being relieved, should have brought the important cases to the notice of his successor especially case relating to contempt petition pending in the Delhi High Court.

(ii) The case was all along handled by the CO himself and he used to take the file personally to the senior Officers and get their orders and as such the file remained all along in the custody of the CO without any entry in the movement register.

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(iii) It is the normal practice to brief the successor officer about

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important cases and if necessary, important papers/files are handed over to him for his personal attention."

9. The contention of the learned counsel of the applicant is that the charge-sheet was regarding handing over the record to his successor but the punishment order has changed the charge wherein the applicant has been held guilty of not following "the normal practice to brief the successor officer about the important cases....." As has been pointed out earlier, the CO was held responsible for not handing over the file to his successor officer and obtaining signature. Learned counsel of the applicant, therefore, stated that the entire order of punishment deserves to be quashed on this short ground alone.

10. The respondents have opposed the contentions of the applicant. It is stated that the directions of this Tribunal in OA No.963/2001 dated 6.11.2001 in the case of applicant have been followed. The applicant was given a copy of the preliminary enquiry report. Now the procedural defects have been removed. There is no violation of principles of natural justice. Therefore, the order of punishment deserves to be upheld. Regarding the contentions, raised by the learned counsel of the applicant, the learned counsel of the respondents invited attention to the memorandum of charge-sheet dated 24.6.1999.

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According to the learned counsel, the contents of Paras 2 and 3 of the charge-sheet make it clear that he has not been able to inform the Managing Officer. Therefore, the punishment awarded is with reference to the same charge. The contention of the applicant that he was not supposed to handover the files/documents to his successor after preparing list of relevant files/documents as there is no such requirement under instructions of the Government or the practice followed in case of transfer/postings has been noted by the Disciplinary Authority in his order. It was stated that the observation made by the Disciplinary Authority is to the effect that the contention of the CO in normal circumstances is acceptable but since it was an important file, the CO at the time of his being relieved, should have brought the important cases to the notice of his successor. According to learned counsel, the fact that there was no malafide on the part of applicant was taken into account and as such the applicant has been awarded only a minor punishment of withholding one increment for a period of two years without cumulative effect. According to the learned counsel, this OA being devoid of any merit be dismissed.

11. We have heard the learned counsel for parties and have perused the materials available on record.

12.. A bare reading of the sequence of the events and the order of the respondents goes to suggest that some sort of pre-determined decision to award some

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punishment to the applicant has been made. This impression is supported by the quantum of punishment which was earlier awarded to the applicant by order dated 27.6.2000 and has been maintained even in the impugned order dated 18.12.2001. On the face of it, it appears that the present order is a reasoned and detailed one but a close look into the said order reveals that merely on the facts as stated earlier have been rejected.

13. The applicant has raised a point that there was no practice of obtaining a receipt of the list of files of the successor while handing over the record. This contention of the applicant appears to have been accepted as can be seen from the advice of UPSC as well as the order of the Disciplinary Authority. However, there has been emphasis that the applicant should have personally handed over the file No.15/1/96-SS to his successor. If there is no normal practice to hand over file personally, the applicant is not expected to make a departure in respect of a particular file which may be important from the point of view of respondents. Learned counsel of the respondents was pointedly asked at the time of argument to bring to our notice Govt. Standing Order or the instructions on the issue of giving "brief" to the successor officer by the transferred employee. He merely stated that he would like to seek said instructions if the time was granted. However, it was noticed that it was not the part of the record or pleadings of the respondents.

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Therefore, we did not consider it reasonable to give time for this purpose and have proceeded to decide the matter.

14. As noticed earlier, the memorandum of charge-sheet dated 24.6.99 refers to the misconduct for not handing over the file to his successor officer. It was also pointed out in this memorandum that the applicant failed to give any information so that the file could be traced. This misconduct has now been changed in the order of punishment. The Disciplinary Authority has noticed that "the contention of the CO in normal circumstances is acceptable". If his contention is acceptable, then he cannot be punished for misconduct. If the applicant is being punished for not following the normal practice to brief his successor officer about the important cases, the same could have been framed as an Article of charge in the memorandum of charge-sheet dated 24.6.99. Therefore, we do not find that the order of Disciplinary Authority is sustainable in law on the facts of this case. As a consequence, the order of Revision Authority dated 27.9.2002 also will not be sustainable. Therefore, the order of punishment based on the charge-sheet dated 24.6.99 and the Revisional Authority's order are hereby quashed and set aside and the original application is allowed. The respondents are directed to give consequential benefits to the applicant

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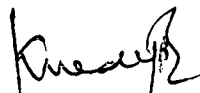
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within four months from the date of receipt of a copy of this order.

15. In the result, this OA is allowed without any order as to costs.



(R.K. Upadhyaya)
Member (A)



(Kuldip Singh)
Member (J)

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